

MARINE FISHERIES ADVISORY COMMISSION

December 15, 2016

DFW Field Headquarters

Westborough, MA

In attendance:

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

Division of Marine Fisheries: David Pierce, Director; Daniel McKiernan, Deputy Director; Assistant Director Michael Armstrong; Kevin Creighton, CFO; Story Reed; Nichola Meserve, Jared Silva; Melanie Griffin; and Cate O'Keefe.

Department of Fish and Game: George Peterson, Commissioner; Mary Lee King, Deputy Commissioner; Richard Lehan, General Counsel; and Doug Christel, Special Assistant.

Office of Law Enforcement: Lt. Matthew Bass and Lt. James Cullen.

Members of the Public: Brian Morganson; Brett Hoffmeister; Daniel Pronk; Thomas Dunham; Ron Borjenson; Edward Barrett; Manuela Barrett; Tim Barrett; Steve Welch; Mike Anderson; and Beth Casoni. A number of individuals arrived after the meeting began and appeared to be interested in Nantucket's mobile gear petition.

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Ray Kane noted that Governor Baker appointed Sooky Sawyer to the Marine Fisheries Advisory Commission (MFAC). Sooky replaced Bill Adler whose term expired in October 2016. Sooky introduced himself to the MFAC. Sooky currently serves as President of the Massachusetts Lobsterman's Association and is a commercial lobster and groundfish fisherman.

APPROVAL OF DECEMBER 15, 2016 BUSINESS MEETING AGENDA

Director David Pierce noted that he was moving the "Nantucket Mobile Gear Petition" up the agenda and it would be handled as a future public hearing item, not a discussion item. Andrew Walsh objected. He noted that individuals may be planning on attending to hear the discussion of this issue and by moving it up the agenda they may miss the opportunity. No further objections were made.

**REVIEW AND APPROVAL OF THE NOVEMBER 8, 2016
DRAFT BUSINESS MEETING MINUTES**

No comments were made. **Andrew Walsh made a motion to accept the minutes as written. The motion was seconded by Charles Quinn. The November 2016 minutes were approved unanimously.**

CHAIRMAN'S COMMENTS

Chairman Raymond Kane thanked the MFAC members for their attendance and strongly encouraged them to attend the to-be-scheduled winter public hearings. He also thanked DMF staff member, Nichola Meserve, for her work at the Mid-Atlantic Fishery Management Council (MAFMC) representing Massachusetts' recreational black sea bass and fluke interests. Ray noted that Nichola pursued a working group to discuss the continuation of the regional ad-hoc black sea bass management model and he asked her to describe the role of the working group. Nichola stated that she would be covering the MAFMC meeting and the working group in detail later in the meeting; however, she added that the working group was expected to meet by conference call in January 2017 in advance of the late-January Atlantic States Marine Fisheries Commission (ASMFC) and mid-February MAFMC meetings.

COMMISSIONER'S COMMENTS

Commissioner George Peterson stated that Doug Christel was leaving his role as special assistant to the Department of Fish and Game. Doug would be returning to the National Marine Fisheries Service after the holiday. George thanked Doug for his work for the Department of Fish and Game, his involvement in complicated marine fisheries issues and his facilitation of the Governor's advisory panel on groundfish.

DIRECTOR'S COMMENTS

Director Pierce also recognized Doug Christel and thanked him for his work for the Department and the Division.

David then moved on to highlight ongoing survey work with the Industry Based Survey (IBS) and the Open Codend Survey. The second leg of the IBS study was ongoing. However, the presence of lobster gear on survey sites was presenting a substantial challenge. In fact, he was concerned that the inability to complete survey may compromise the study and make the resulting data less valuable than anticipated. David noted that fixed gear is a common problem facing trawl surveys. To ameliorate these conflicts, DMF has set up had set up a text notification system and worked through MLA to communicate survey locations. Despite these efforts, gear conflicts this year were particularly severe during the IBS and MA's seasonal trawl survey. He and staff intended to further address these issues with lobstermen at the MLA annual weekend with the goal of facilitating timely gear removal. With regards to the Open Codend Survey, the Director noted that scientific papers documenting the survey work have

been accepted into prestigious journals and are pending publication. David was hopeful that data from both the IBS and the Open Codend Survey could eventually be incorporated into NMFS assessment data.

At the request of Lou Williams, MA permitted gillnet fishermen recently met with David and staff in Gloucester. The purpose of the meeting was to discuss industry's interest in potential regulatory changes to existing springtime (May/June) groundfish closures. The changes would be to roll back the closure areas to enhance access to monkfish, dogfish and flounders. DMF staff was currently evaluating this request, particularly as it relates to cod conservation efforts and enforcement. David expected an analysis would be completed this winter for review by the MFAC at an upcoming meeting. Accordingly, if a recommendation for a rule change was made, it would not be included on the docket for the 2017 winter public hearings. Therefore, it was unlikely that any potential rule change would be implemented for this upcoming spring.

The Massachusetts Seafood Marketing Committee recently met in New Bedford. The committee advises DMF on initiatives to promote seafood consumption and awareness. Prior to the meeting, members of the committee and DMF also visited the New Bedford Fishing Heritage Center. David added that the Heritage Center was scheduled to show a movie, produced in the 1960s by the MA Seafood Council (a predecessor to the committee), which portrays the work done by fishermen to supply consumers with seafood.

To enhance the monitoring of the mid-water trawl herring fleet to better understand catch and bycatch composition, a Research Set-Aside (RSA) program was developed to fund cooperative research and dockside monitoring. DMF is one of the research partners on this RSA program. This year the mid-water trawl fleet was using RSA trips to target mackerel. This prompted some concern from the public and recreational fisheries advocates that the fleet was targeting small (tinker) mackerel; available catch data did not substantiate this claim.

The Cape Cod Times recently published an article that covered the gray seal symposium held on Nantucket. This symposium was discussed at length by the Director and the MFAC at the November 2016 business meeting. David suggested the MFAC read the article to better understand the variety of opinions that were expressed at the symposium.

Lastly, the Director described the Belding Award. This award is named after Dr. David Belding, an early 20th Century marine biologist (from MA) who revolutionized the field and much of his work on bivalves remains pertinent today. The award has historically been given by DMF and the MFAC to individuals for the contributions to marine fisheries science and management. David recommended that the award be given to Bill Adler for his career's work with the MFAC, the ASMFC and the MLA.

Sooky Sawyer made a motion for the MFAC to vote in favor of Bill Adler receiving the 2016 Belding Award. The motion was seconded by Lou Williams. The MFAC voted unanimously in favor of Bill Adler receiving the Belding Award.

Director Pierce stated he would notify Bill Adler that he would be receiving the award. David would then discuss with Bill the venue where he would like to receive it.

LAW ENFORCEMENT COMMENTS

Lt. Matt Bass handled the comments for Law Enforcement. Lt. Bass did note that with the change in seasons priorities were shifting away from finfish fisheries towards the Massachusetts Seasonal Large Whale Seasonal Closure and whale-safe lobster gear. Throughout the winter and early spring, Law Enforcement would be working with DMF and the Provincetown Center for Coastal Studies to remove lobster gear present in the Seasonal Closure.

ACTION ITEMS

Winter I Scup Limits

Jared Silva explained that the annual commercial scup quota is broken down into three seasonal periods: Winter I (January – April); Summer (May – October); and Winter II (November – December). The Winter Periods are federally managed for periods when scup are caught offshore; whereas the summer period is state-managed and occurs when scup are caught in inshore waters. For the federally managed periods, NMFS sets possession limits and states may then adopt landing limits up to the federal possession limit. For the 2017 Winter I Period, NMFS adopted a 50,000 pound possession limit. Accordingly, DMF was proposing to adopt a complementary 50,000 pound landing limit. Adopting a complementary limit allows lawfully caught fish to be landed in MA.

Jared noted that the Winter I scup catch comes principally from trawlers working offshore. Most of the catch during this period is landed in states to our west and south (e.g., RI, NY, NJ). For these reasons, DMF did not believe that adopting a complementary landing limit would increase effort or discards. Rather, it would simply allow lawfully caught fish to be landed in MA ports to the benefit of state's seafood economy.

There were no questions or comments.

Andrew Walsh made a motion to adopt a 50,000 pound possession and landing limit for MA during the 2017 Winter I (January 1 – April 30) fishery. This motion was seconded by Gus Sanfilippo. The MFAC voted unanimously in favor of the motion.

Ray Kane was critical that the ASMFC and MAFMC had not revisited the commercial and recreational quota allocation split for scup. He noted the commercial scup fishery runs a consistent annual quota underage, yet the unharvested fish was not reallocated

to the recreational fishery. The recreational fishery, particularly charter and head boats, could benefit from additional allocation as it would allow for liberalizing the recreational limits.

Nichola Meserve stated that the current commercial and recreational split was 78% to 22% in favor of the commercial fishery. She added that there is some interest at the MAFMC to consider revising this split, as well as the seasonal commercial periods. However, these initiatives have been put to the side to address summer flounder and the development of a new Amendment.

Director Pierce added that he has encouraged the MAFMC to address the recreational and commercial split in the past. However, there was little interest in moving such a proposal forward because commercial fishermen and dealers were attempting to redevelop markets for scup. Accordingly, there were concerns about maintaining a consistent potential level of supply.

Ray expressed his support for the development of a commercial scup market. Yet, the commercial quota was currently underutilized. So, he advocated the position that it would be beneficial to create a mechanism to move some unused commercial quota to the recreational fishery. He noted that this could even be done with the caveat that if commercial markets are established and additional commercial quota is needed then the fish will be immediately reallocated to the commercial fishery.

David stated he was willing to reengage the MAFMC on the issue.

ITEMS FOR FUTURE PUBLIC HEARING

Jared Silva stated that DMF would be introducing several new proposals for public hearing. These proposals would be included on the same public hearing docket as those proposals previously reviewed by the MFAC during fall 2016 business meetings. The draft regulations were currently under executive review. Jared expected that public hearings may be held as early as late January, but more likely during mid-February. DMF was looking to hold several hearings to accommodate geographically diverse stakeholders.

Andrew Walsh suggested a hearing be scheduled for the South Coast to accommodate New Bedford area fishermen.

Nantucket Mobile Gear Petition

Director Pierce described Nantucket's mobile gear petition, particularly their request for a May 1 – October 31 mobile gear closure within 3 miles of the Nantucket archipelago. David reviewed DMF's analysis of this request and stated that based on this analysis he is unconvinced by Nantucket's arguments in favor of the closure. Despite this, the Director had discussions with numerous individuals and officials from Nantucket, and believed that it was sensible to bring the closure proposal to public hearing. The

Director further specified that he was not recommending the proposal or supporting the proposal. However, he wanted to provide the petitioners with an opportunity to publically comment on their proposal and respond to DMF's analysis. Additionally, DMF would be pursuing the two other aspects of Nantucket's petition, which included a 1 7/8" minimum net mesh size in the squid fishery and a prohibition on the use of net strengthens in the squid fishery because they may further reduce net mesh selectivity.

Andrew Walsh appreciated the thoroughness of the memorandum provided by the DMF. However, he did not support the Director's decision to take the mobile gear closure proposal out to public hearing because the agency's analysis did not support it. Andrew further argued that as a matter of practice DMF should not move forward proposals unless clearly supported by science. Lou Williams agreed.

Andrew added that this petition arose due to a perceived issue with the squid fishery and subsequently grew into a proposal that impacts all mobile gear fishing. He thought this was unfounded and it presented substantial unintended consequences across a broad group of fishermen. Additionally, if the squid fishery was the driving factor in the petition then DMF and the MFAC had to consider the interplay with federal management, as the summer squid fishery was concentrated in federal waters just south of the island in recent years. To that point, the MAFMC was developing a Squid Capacity Amendment for public hearing that included proposals to address permitting and Trimester 2 (May – August) quota management. These proposals could potentially have substantial impacts on the fishing activity around Nantucket and address some of the concerns driving the petition.

Deputy Director McKiernan agreed with Andrew's comments regarding interplay with federal management. He stated that if the MAFMC were to establish sub-quotas for Trimester 2 then the distribution of effort may dramatically change.

Andrew agreed, noting that sub-quotas would likely create distinct geographical seasons and prevent the fleet from concentrating in areas for prolonged periods. He added that the geographic distribution of squid is fluid and squid might be abundant in Long Island Sound or off Montauk next year, resulting in the fleet moving into these areas.

Kalil Boghdan asked what the total catch of squid was during Trimester 2 in 2016. Deputy Director McKiernan stated that the total harvest was about 18 million pounds. The initial 2016 Trimester 2 quota was approximately 8 million pounds, then an additional 4 million pounds rolled over from a Trimester 1 (January – April) underage, resulting in a de facto quota of about 12 million pounds. Then an additional 6 million plus pounds were harvested after the 12 million pound quota was taken under a 2,500 pound incidental trip limit.

Dan noted that the fishery that occurred in federal waters under the incidental trip limit was particularly problematic in 2016. While the limit was designed to allow an incidental catch of squid when targeting other species, there are no federal restrictions on the

continued use of small mesh gear, areas fished or catch composition once the incidental limit was implemented. With an abundance of squid just south of the islands, vessels continued to make day trips to target squid under this incidental allowance. During this period, there were reports of substantial high-grading and discarding. This caught the attention of local residents and media. Dan added that a fall 2016 MAFMC meeting on squid, some fleet members admitted that this incidental fishery could be managed better. To this end, the MAFMC was reconsidering the quota management system for Trimester 2 and potential sub-allocations.

With the discussion moving towards federal management, the Director took the opportunity to add that the MAFMC met earlier this week and a buffer zone proposal was removed from the Squid Capacity Amendment. He noted that the vote was close and it would likely come up again, particularly when considering the MAFMC's focus on forage fisheries. Andrew Walsh stated that he expected the buffer zones will be reconsidered as soon as 2018 as part of the next plan amendment. Ray Kane stated the MAFMC was committed to obtaining more data on squid spawning before proposing any closed areas, and the Northeast Fishery Science Center's squid mop study could provide some of this information.

Chairman Kane requested that further comments be focused on DMF's proposal and not federal management proposals, which the MFAC does not vote on. Andrew had no further comments on federal management, but noted that these were important tangential issues that needed to be considered when reviewing any potential state regulation that intends to affect the squid fishery.

The Chairman took comments from the public.

Ed Barrett did not support the mobile gear closure around Nantucket. He asked if an MFAC vote was required to authorize DMF to take an item to public hearing. Chairman Kane and Director Pierce indicated that a vote was not required.

Ron Borjenson also objected to the closure. He stated that the south Cape mobile gear fishery was a historically important source of revenue and was becoming increasingly important with low limits and consolidation in the groundfish fishery. He was concerned that if this proposal went to public hearing a populous anti-mobile gear opinion would emerge and sway DMF to support the closure. Therefore, he was looking towards the MFAC to send a clear message to DMF that such a closure will not be approved.

Director Pierce acknowledged the concerns raised by Ron and Ed. He stated that DMF's final recommendation will be based on sound science and management principles and not popular opinion. David added that he has heard concerns from Cape and Island fishermen and residents regarding the perceived impacts of mobile gear fishing and he remains unconvinced that this closure is necessary. However, he wanted to provide opportunity for additional public discourse and provide supporters of this petition the opportunity to present scientific arguments to refute DMF's initial analysis.

At the conclusion of this discussion, Andrew Walsh recommended that DMF conduct a comprehensive review and evaluation of the trawl fisheries conducted in state-waters south of Cape Cod. This would include a review of existing closures, trip limits, mesh size limits, fishing days and seasons, as well as available bycatch and discard data. This evaluation could then assist the MFAC and DMF in reviewing how the mobile gear fishery in this area should be managed, as well as any future proposed rule changes.

Setting of Artificial Non-Trap Structures to Attract Lobsters

Deputy Director McKiernan reviewed the memorandum provided to the MFAC. He highlighted that these structures are being set by lobster divers in shallow waters off the Outer Cape, particularly Herring Cove in Provincetown. These structures were causing gear conflicts with rod and reel and mobile gear fishermen. While state law prohibits the unpermitted setting of such structures, Law Enforcement requested an explicit regulation be promulgated. Accordingly, DMF was proposing to prohibit the possession and setting of such structures, as well as the taking of lobsters from such structures.

Chairman Kane recalled that this issue had been previously addressed by the MFAC. Dan stated that a few years back DMF provided a report to the MFAC on the presence of these structures after being documented by a DMF dive team. However, due to a variety of issues (e.g., litigation between Provincetown and surf clam dredge fishermen), DMF did not move a specific regulatory proposal.

Combining Recreational and Commercial Fishing Trips

The combining of commercial and recreational trips is most prevalent in the state's southern hook and line bottom fish fisheries (e.g., scup and black sea bass). The open fishing periods for the species do not always align. For instance: the commercial scup fishery is open in June and the commercial sea bass fishery is closed but the recreational fishery for both species is open. As a result, certain anglers are found to be commercially fishing for scup and recreationally fishing for black sea bass during the same trip.

This has raised questions about whether this activity is legal or not. Some officers have viewed possession of a closed commercial species during a commercial trip as a violation of commercial fishing regulations. However, other officers note that if an individual holds both a commercial and recreational fishing permit there is no regulation prohibiting combining recreational and commercial fishing trips. Similarly, DMF staff provided variable advice to interested fishermen. There is also a perceived bias towards providing this allowance for fishermen who use rod and reels aboard small vessels, but not other more industrial scale vessels and gear types.

In 2012, DMF attempted to resolve this through an advisory ruling. The advisory ruling explained that the combining of recreational and commercial fishing trips was unlawful. However, Law Enforcement has argued that they cannot effectively make a case without an explicit regulation. So in 2015 DMF went to public hearing to explicitly prohibit this activity, but ultimately a final recommendation was not made to the MFAC.

This issue was raised again by Law Enforcement during the summer of 2016. Chairman Kane deferred the issue to the MFAC Law Enforcement Sub-Committee. The issue was discussed at the October Sub-Committee meeting. Two potential solutions were debated: (1) an explicit prohibition on combining recreational and commercial fishing trips; and (2) allowing a nominal amount of recreational catch (e.g., single bag limit) to be kept during a commercial fishing trip.

At present, DMF was looking to take both options out to public hearing. Deputy Director McKiernan noted that if a nominal allowance option were to be preferred there may be a potentially problematic data collection issue. Under current data collection standards (SAFIS and MRIP) - that are outside of the purview of DMF - there is no overlap between the recreational and commercial sectors and catch combined on the same trip is not counted towards either harvester group. So, by addressing this issue in regulation and providing a nominal allowance, DMF may have to make the argument to federal or interstate management bodies that this catch is ultimately negligible.

Lt. Matt Bass stated that Law Enforcement supported an explicit regulation, but did not have a preferred management option between the two proposals. Lt. Cullen agreed.

Kalil Boghdan served on the Sub-Committee and noted there was a seeming preference for providing some type of nominal allowance. However, the allowance would apply only to species that are closed commercially and would not allow fishermen to retain a recreational limit of a species in addition to their commercial limit.

Andrew Walsh asked if DMF intended to take comment on whether or not an allowance would apply to certain commercial gear types or all commercial gear types. Jared Silva stated that this one of the issues DMF was trying to resolve: should this allowance apply only to commercial anglers or should it apply to any commercial fisherman with a rod and reel on board?

Ray Kane took a comment from the public. Bill Lister stated that he was under the impression that this activity was prohibited. Dan stated that this has been DMF's longstanding interpretation of the law. However, there is no explicit rule. So DMF was proposing to create a specific rule. Ray highlighted that this confusion was why this issue should be moved forward to public hearing.

Mobile Gear Horseshoe Crab Limits

During the late-fall, DMF met with members of the South Cape Cod mobile gear fleet and the Associates of Cape Cod (ACC). The purpose of the meeting was to discuss the availability of crabs to the ACC for the production of LAL for use in medical device testing.

Deputy Director McKiernan stated that a number of potential resolutions were discussed at this meeting. Among these resolutions, DMF supported two regulatory amendments. First, DMF would increase the horseshoe crab limit for mobile gear fishermen from 300 crabs to 600 crabs during the late-spring or early-summer. Second, DMF would exempt

mobile gear fishermen from some or all of the late-spring and early-summer lunar spawning closures, with a preference for lifting the exemption at the June 9th start of the fluke fishery. Combined, these measures may create an economic incentive for mobile gear fishermen to target crabs, which would then enhance the supply of crabs available to the biomedical firm.

Chairman Kane asked Brett Hoffmeister from ACC for his opinion on this proposal. Brett stated that there was a substantial decrease in crab availability during the summer of 2016. This may have occurred in part because the large abundance of squid was moving mobile gear fishing effort off of crabs, but it may have also occurred because mobile gear fishermen were not targeting crabs because it was not profitable under current limits. Considering the supply shortage in 2016 and the pending fluke quota cuts, ACC supported DMF's proposal to promote this fishery and enhance the crab market.

Andrew Walsh noted he attended the late-fall meeting and supported the proposal.

DISCUSSION ITEMS

Proposal to Adjust Marine Fishery Fines and Penalties

Jared Silva provided a presentation on a draft proposal by DMF to enhance, streamline and modernize the state's marine fishery penalty schedules at G.L. c. 21A §10H and G.L. c. 130. DMF was presenting this proposal to the MFAC in advance of submitting it to Secretary Beaton with the goal of having legislation drafted to amend statutory penalty schedules. The draft proposals were developed with the assistance of Law Enforcement, the MFAC Law Enforcement Sub-Committee and the Department of Fish and Game.

There are four general recommendations within the proposal: (1) amend G.L. c. 21A, §10H to increase the marine fishery non-criminal fines; (2) amend G.L. c. 130 to increase the criminal fines and penalties, primarily through enhancing the utilization of a default (rather than statute specific) penalty; (3) establish a civil penalty at G.L. c. 130; and (4) amend or repeal outdated sections of G.L. c. 130 that are no longer relevant or consistent with modern fisheries management and conservation practices. The details of the proposal are described in DMF's memorandum.

Chairman Kane asked what the timeline was for potentially moving forward legislation. Commissioner Peterson stated that the next legislative session begins in 2017. If draft legislation were filed during this session, it could potentially be signed into law by the Governor in 2017, following legislative review and hearings.

Commissioner Peterson asked if the MFAC supported DMF's proposal. Support was unanimous. Deputy Commissioner Mary Lee King suggested a letter be drafted from the MFAC to the Administration expressing their unanimous support for this proposal. Chairman Kane consented to having a letter drafted for his signature.

Deputy Director McKiernan asked Commissioner Peterson if similar letters of support from industry groups would be helpful to move this proposal forward. The Commissioner indicated that they would.

Update from MAFMC on Recreational Black Sea Bass, Scup and Fluke

Nichola Meserve provided an update on the federal and interstate management of black sea bass, scup and fluke and the timeline for the development and implementation of 2017 recreational limits.

Black Sea Bass

The interstate fishery management plan allows for the continuation of the ad hoc regional management approach in 2017 and the ASMFC management board tentatively approved the continuation of this approach in 2017. An alternative management approach would have required the development of an addendum to the plan and this was unlikely given time constraints. However, Massachusetts has been disadvantaged by this approach since it was implemented in 2012. For this reason, Nichola requested that a working group be developed to review the effects of this approach and potentially resolve disproportionate impacts. Nichola expected the working group would meet by conference call in January, prior to the ASMFC meeting at the end of the month.

Nichola then provided a briefing on the benchmark stock assessment. This stock assessment was subject to peer review at the end of November 2016. Previous stock assessments did not pass peer review because of issues with the assessment model and the life history characteristics of black sea bass; this stock assessment addressed these modeling issues (e.g., stock structure) and was expected to pass peer review and be approved for management use by the MAFMC and ASMFC in mid-February 2017. The assessment was positive, with a not-overfished or experiencing overfishing determination; stock size north of Hudson Canyon in particular has increased. These findings match what fishermen had been seeing on the water over the past decade.

The impact of the stock assessment on fisheries management was still to be determined. While the assessment suggests that the overfishing limit could be set at 12.1 million pounds for 2017, the MAFMC's Scientific and Statistical Committee (SSC) still has to review risk and uncertainty before developing catch limit specifications for the recreational and commercial fisheries (the SSC is scheduled to meet in late-January 2017). Nichola added that fisheries managers have little influence on the SSC in setting these limits.

Fluke

Due to the results of the most recent fluke stock assessment and projected recreational harvest estimates for 2016, the recreational fluke fishery is facing substantial harvest reductions in 2017. Under the state-specific management approach using 1998 harvest to determine allocations or the regional approach used more recently where these allocations are shared, Massachusetts would be exempt from a cut, but other states (e.g., CT, NY) would face severe (~50%) harvest restrictions. A draft addendum was

initiated by the ASMFC to consider other approaches that would result in less disparate regulations between states. Many of the proposed options would result in all states (including MA) taking a harvest cut in 2017. The states will hold public hearings on the draft addendum in January, followed by a Board decision on the management approach in early February.

Nichola also reviewed the ongoing development of an amendment to the federal fluke fishery management plan. This amendment addressed four major issues: (1) goal and objectives of the plan; (2) recreational management strategies; (3) commercial management strategies; and (4) recreational and commercial catch limit allocations. She expected that these issues would be addressed in a piece meal fashion as their development is on different timelines. Accordingly, management measures may be implemented as soon as 2018, while others may not be implemented until 2020. The recreational fishery issues, including for-hire/private angler allocations, may require the most amount of time to address. Due to the dependence on MRIP data, the MAFMC may forgo addressing recreational issues until after the MRIP data review in 2017. Further complicating the development of this amendment is that the MAFMC may expedite the development of a new benchmark stock assessment, most likely for 2018.

Scup

With regards to scup, the regional management approach was continued. The northern region (MA-NY) could be required to cut harvest by 15% in 2017 based on preliminary harvest projections for 2016. Managers from the northern region will meet this winter to review final harvest estimates and discuss how to address a potential mandatory harvest reduction.

Following Nichola's presentation, DMF took questions from the MFAC.

Chairman Kane asked if the north/south split for black sea bass was based on different stocks and if the population growth in the northern region could potentially allow for greater allocation increases for these states.

Nichola stated that the north/south split was geographical and it occurred at Hudson Canyon. The population is still considered one stock but there is limited mixing of fish north and south of the Hudson Canyon. At present, region specific reference points do not exist and the entire coast is subject to a single harvest limit. However, if the stock assessment was approved and adopted for management use, it potentially opened up the door for an amendment to the fishery management plan to establish regional reference points or implement allocation adjustments.

Bill Doyle asked what avenues existed for recourse if black sea bass catch limits were set at an unacceptably low level based on the stock assessment results. Nichola reiterated that there is little room for action under the current system, given that managers are beholden to the advice of the SSC when setting harvest limits (per federal law).

Director Pierce stated that the opportunity always existed for MA to not comply. However, this was not a favorable approach because such actions reduce your ability to gain support from states on other important fishery issues. Additionally, the ASMFC policy board can issue a non-compliance statement engendering intervention by the US Secretary of Commerce to close the state's fishery.

Ray Kane stated that there were rumblings that NJ may go out of compliance on black sea bass or fluke if the limits were not favorable. David stated that states often threaten this, but few seldom do because it is unlikely to ultimately be beneficial due to the repercussions.

Commissioner Peterson asked that with the stock assessment showing growth of the stock in the northern region if the working group meeting would address developing potential management approaches that would reflect species distribution.

Nichola reiterated that given the timeline to develop limits for 2017 the ad hoc regional management approach would continue for this year. The immediate purpose of the working group was to review the disparate impacts caused by the approach and potentially address them for 2017. The working group, or a similar group, may then be reconvened to begin the development of management strategies for 2018 and beyond, which could include moving away from the ad hoc approach and reviewing allocations through a management plan revision.

Andrew Walsh postulated that if the black sea bass stock were to be split and managed separately on the north/south divide there would be cause for the NEFMC to jointly manage the species with the MAFMC. David stated that he did not expect that the stock would be split and managed separately. However, he intended to continue to push NMFS on giving joint management authority to the NEFMC and he believed that the stock assessment results support this position.

Shellfish Advisory Panel Meeting

Deputy Director McKiernan briefly reviewed the history and purpose of the Shellfish Advisory Panel (SAP). He then noted the Panel met in late-November 2016 and a written meeting summary would be made available to the public in the near future. He noted that a number of important issues were discussed at the meeting: (1) a swipe card pilot program to create a single commercial record for shellfish sales (replacing the current two-ticket harvester/dealer reporting system); (2) requiring seed hatcheries to be permitted to sell seed into MA; (3) a review of the 2016 *Vp* management season, highlighting a reduction in *Vp* related illnesses; and (4) future initiatives to potentially regulate the razor clam minimum size and the use of solvents to extract razor clams.

Bill Doyle stated that he was recently appointed to the SAP and he attended the November meeting. He was impressed by the mix of people and the working relationship between industry and government. He stated that he would like to see these meetings be held biannually to address emerging seasonal issues. He also

expressed a desire to see representatives from Law Enforcement and the Department of Public Health at the meetings.

Kalil Boghdan asked if the SAP had further discussions regarding ASP monitoring. Dan stated that they received a similar presentation to the MFAC. However, they did not have substantive discussions regarding monitoring; the 2016 ASP bloom was the first bloom like this in MA waters and there is no means of forecasting if it will occur in subsequent years. However, DMF brought on Dr. Chrissy Petitpas as a full-time employee. She specializes in marine toxic algae and will play a critical role with shellfish toxin issues.

Bill Doyle stated that DNA testing was seemingly having a positive impact on managing *Vp* and he was curious if similar work could be done to predict the marine algae that produce ASP. Dan was uncertain.

Chairman Kane expressed his thanks to DMF for their work with industry, particularly on *Vp*, to reduce illness risk and keep fishermen fishing. Dan credited Chris Schillaci, particularly his work with industry on time to icing compliance and the development of a peak-season open water wet storage area off Edgartown to mitigate *Vp* illness risks associated with summertime harvest from Katama Bay.

OTHER BUSINESS AND MFAC COMMENTS

Andrew Walsh reiterated his desire to see DMF initiate a full review of the South Cape Cod trawl fishery. He noted that rules have been put in over the years to facilitate certain objectives, but they should be reviewed for their coherence. This analysis would help DMF and the MFAC to better understand fishery performance and management and provide potential management alternatives.

Kalil Boghdan stated that he was interested in learning more about the state's trawl fisheries, particularly with regards to practices to reduce bycatch and discard mortality rates.

Deputy Director McKiernan noted that there was a seeming interest from the MFAC to have DMF hold numerous public hearings within a region of the state (e.g., southern MA) to accommodate fishermen from various ports. The argument is that this will provide a local forum and encourage public participation. Dan expressed concern about this approach, as it may create biased management outcomes due to turnout at a specific hearing where a specific point of view was expressed. He noted that it is valuable to the management process to have a diversity of opinions show up at hearings. For this reason, he favored holding fewer hearings within geographical regions.

Bill Doyle stated after the holidays he would like to work with state government officials to address No Discharge Area enforcement. Mary Lee King noted that in contact with

Bruce Carlisle from Coastal Zone Management – who manage the state’s No Discharge Areas – to raise Bill’s concerns. At this juncture, she was looking to Bill to provide potential meeting dates.

Bill then stated he also wanted to meet with DMF to discuss having the state develop uniform baseline aquaculture regulations. He noted that current local controls over aquaculture were resulting in competitive advantages across municipalities and as the industry matures this becomes more burdensome.

Lou Williams expressed his concerns that the Director was moving forward to public hearing with Nantucket’s mobile gear petition despite the fact that DMF’s analysis did not support the petition. He added that he found the petition to be anti-commercial fishing and elitist. Director Pierce stated that his conclusion to go to move this item forward to public hearing was not based on DMF’s analysis, but instead to provide the petitioners an opportunity for public comment and to address the concerns raised in DMF’s analysis.

Lou then stated that in the past the MFAC had a Permitting Sub-Committee. He was interested in reforming this sub-committee and for the sub-committee to review allowing the transferability of gillnet permit endorsements.

COMMENTS FROM THE PUBLIC

Brian Morganson, a charter boat fisherman from Nantucket, thanked Director Pierce for moving forward to hold a public hearing on Nantucket to address the town’s mobile gear petition. He supported Andrew Walsh’s suggestion that DMF review the mobile gear fishery south of Cape Cod and objected to Lou Williams’ opinion that the Nantucket mobile gear petition was elitist.

Brian then expressed concerns regarding the state’s fines proposal, particularly the civil fine. Specifically, he was worried that this opened the door for large fines being levied against fishermen who could not afford it. DFG General Counsel Rich Lehan responded.

Rich explained the civil fine would be one of a number of tools that enforcement could use. The most common tool for them to use is the non-criminal fine, which results in a small fine. The civil fine would be used only in severe cases where a large penalty is warranted by the state does not want to pursue a criminal action against the individual. Additionally, it is not a resolution that DMF or Law Enforcement could pursue unilaterally, as it would need to be handled by the Attorney General’s office.

Brian also agreed with Bill Doyle’s comments regarding municipal control over aquaculture. He noted that it was very expensive to enter into aquaculture on Nantucket and more affordable entry would benefit some of the islands full-time watermen.

No further comments were made. **The meeting was adjourned.**

Meeting Documents

- December 15, 2016 MFAC Business Meeting Agenda
- November 8 2016 MFAC Draft Business Meeting Minutes
- Recommendation for 2017 Winter I Scup Limits
- Nantucket Town and County Petition
- Prohibiting the Setting of Artificial Structures to Take Lobster
- Combining Recreational and Commercial Fishing Trips
- Horseshoe Crab Limits for Mobile Gear Fishermen
- DMF Proposal to Increase Marine Fishery Fines and Penalties and Amend or Repeal Outdated Statutory Sections
- Working Group for 2017 Recreational Black Sea Bass Management
- Belding Award Nomination

Next Meetings

February 9, 2017
DFW Field Headquarters
1 Rabbit Hill Road
Westborough, MA

March 9, 2017
DFW Field Headquarters
1 Rabbit Hill Road
Westborough, MA

April 6, 2017
DFW Field Headquarters
1 Rabbit Hill Road
Westborough, MA

May 4, 2017
DFW Field Headquarters
1 Rabbit Hill Road
Westborough, MA

June 15, 2017
DFW Field Headquarters
1 Rabbit Hill Road
Westborough, MA