

## **MARINE FISHERIES ADVISORY COMMISSION**

**February 14, 2019**

**DFW Headquarters**

**Westborough, MA**

### **In attendance:**

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

*Division of Marine Fisheries:* David Pierce, Director; Daniel McKiernan, Deputy Director; Michael Armstrong, Assistant Director; Kevin Creighton, CFO; Robert Glenn; Jeff Kennedy; Jared Silva; Nichola Meserve; Story Reed; Tracy Pugh; and Steve Wilcox.

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

*Massachusetts Environmental Police:* Lt. Matt Bass.

*Members of the Public:* Chris Chadwick; Tom Turner; Jason Wentworth; Al Cestaro; Phil Coates; Eric Morrow; Keith Baker; Chris Whitten.

## **INTRODUCTIONS AND ANNOUNCEMENTS**

Chairman Kane called the meeting to order welcoming everyone to the February 2019 MFAC business meeting.

The Chairman stated that there were several potentially contentious action items on the agenda today. The public would be afforded an opportunity to address the MFAC. He then reviewed protocol for public comment. The Chairman allows one member of the public to speak in favor of and one member of the public to speak in objection to each item. They are afforded 3-5 minutes to address the MFAC prior to the MFAC debating the issue. All other public comments may be addressed at the end of the business meeting under the relevant agenda item.

## **REVIEW AND APPROVAL OF FEBRUARY 14, 2019 BUSINESS MEETING AGENDA**

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

**Arthur “Sooky” Sawyer made a motion to approve the agenda. The motion was seconded by Bill Doyle. The Chairman called the motion to a vote. The motion was approved unanimously.**

## **REVIEW AND APPROVAL OF JANUARY 24, 2019 DRAFT BUSINESS MEETING MINUTES**

Chairman Kane requested that DMF refine page 12 of the draft minutes to reflect that the NEFMC had approved but the Council had not yet adopted sea herring buffer zones. He then asked if there were any additional edits to or comments on the January 24, 2019 MFAC draft business meeting minutes.

No further comments were made. The Chairman then asked for a motion to approve the January 24, 2019 draft business meeting minutes with the proposed amendment. **Bill Doyle made a motion to approve the amended minutes. Sooky Sawyer seconded the motion.** The Chairman called the motion to a vote. **The motion was approved unanimously.**

### **COMMISSIONER'S COMMENTS**

Commissioner Amidon discussed ongoing anadromous fish passage work. He focused on the Forge Pond Dam in Brockton. He expected DMF to be permitted to begin work on this dam in the coming months.

The Commissioner stated that the Lobster Processing Bill was moving its way through the Legislature. He anticipated a bill would be filed and voted on in an upcoming session.

Ron and Secretary Beaton recently met with the Martha's Vineyard Fisherman's Preservation Trust. The purpose of this meeting was to discuss the development of the Vineyard Wind site and help the Trust engage with stakeholders on this project.

The state's annual budget process has begun. In the immediate future, the Commissioner would be making a presentation to Secretary Beaton and key staff on DFG and DMF's budgetary needs.

The annual Massachusetts' Saltwater Fishing Derby Awards was scheduled for Saturday, February 16<sup>th</sup> at the Boston Conference and Exhibition Center upstairs from the New England Boat Show. The Commissioner encouraged MFAC members to attend the awards.

Deputy Director stated that DMF would reimburse MFAC members for their mileage, parking and ticket to the boat show. Mike Armstrong added that a ticket to the boat show as not necessary to attend the awards.

### **DIRECTOR'S COMMENTS**

Director Pierce noted that the MFAC was one member short this meeting following Andrew Walsh's resignation in January. The Director had sent Andrew a letter expressing his gratitude for his participation and input during his tenure with the MFAC.

David noted that there was some recent local media coverage on spiny dogfish that inaccurately reported the species was endangered. This raised concerns that access European markets may be limited in response to this misreporting. DMF was working with GARFO were working to correct the misreporting and stymie any negative market impacts it could have.

The ASMFC recently announced a series of hearings in ME, NH and MA on Draft Addendum II to the Sea Herring FMP. The MA hearing was scheduled for 6PM on April 1, 2019 at DMF's Gloucester Office. The purpose of the Addendum is to strengthen spawning protections in the Gulf of Maine.

DMF was seeking input from recreational fishermen in order to inform the state's position on an upcoming ASMFC Addendum to set the 2019 recreational fishing rules for black sea bass, scup and fluke limits. DMF had received a good amount of public comment. David expected more details about potential options would be available in March.

DMF denied OCEARCH a scientific permit to conduct white shark research in state-waters. The denial was due the bait and capture techniques that OCEARCH employs. These techniques may enhance aggressive behavior and increase public safety risks. As these sharks are abundant in our near-shore waters during the summer tourist months, the Director did not intend to issue scientific permits to any entities whose research utilized bait and capture techniques, or any other technique that is likely to alter shark behavior in a manner that increases public safety risks.

Chairman Kane applauded the Director's position. He stated that several years prior the MFAC approved a rule to prevent the public from baiting or chumming for sharks due to concerns regarding altering behavior and public safety risks. Issuing a permit to OCEARCH to use the techniques would be contradictory to previously stated concerns and management objectives.

Offshore wind energy development remained a key issue facing the state's fishing industry. A report was just released that addressed the potential impacts of Vineyard Wind on the fishing industry. David felt that the report underemphasized these impacts. Commissioner Amidon noted that DMF was and will continue to be consistently involved in offshore wind energy development discussions. Chairman Kane asked Director Pierce who DMF's key offshore wind energy staffers were. Director Pierce indicated those staffers are Kathryn Ford, John Logan and Cate O'Keefe out of the New Bedford office.

The Division's bi-annual newsletter was recently published and highlighted the articles on spiny dogfish and striped bass.

Bill Doyle asked about the procedure for appointing a new MFAC member. Commissioner Amidon stated that resumes are submitted on a continuous basis and

they are then reviewed and vetted. Recommendations are then made up through the Secretary's office to the Governor, who is responsible for making the final appointment.

Bill asked about how long it would take to fill the recently vacated seat. Ron stated that he has started to solicit names and the process is ongoing. However, he could not speculate when the appointment would be made.

Bill followed up and asked if Andrew filled a mobile gear or groundfish specific seat or if his seat was ad hoc. Ron stated that while Andrew represented certain groundfish and mobile gear interests, all seats are ad hoc. However, there is a history of having a diversity of interests represented on the MFAC and he expected this would continue moving forward. So, whoever is appointed to that seat would likely have experience in similar fisheries.

### **LAW ENFORCEMENT COMMENTS**

Lt. Bass stated that MEP's winter enforcement efforts have been focused on identifying and removing fixed gear from the Large Whale Seasonal Closure Area. In addition to this, they were involved in local shellfish cases and federal sea scallop seizures. With regards to personnel, MEP were still looking to hire two officers in addition to the 10 officers that were recently hired and are currently in field training.

Sooky Sawyer raised concerns about alleged lobster overages by offshore draggers unloading in Gloucester. He requested MEP make a greater effort to inspect these vessels. Lt. Bass stated he would look into the issue.

Commissioner Amidon and Chairman Kane both advocated that MFAC members speak with their State Representatives and Senators about increasing the number of MEP officers to enhance enforcement.

### **ACTION ITEM**

#### Shellfish Sanitation, Management and Contaminated Relay

Chairman Kane asked if any members of the wanted to comment on this recommendation. No comments were made. The Chairman then asked DMF to review the recommendation with the MFAC.

#### *Shellfish Sanitation, Management and Contaminated Relay Regulations*

Jared Silva and Dan McKiernan explained that the National Shellfish Sanitation Program Model Ordinance (MO) sets forth nation-wide standards for shellfish sanitation to which states must adhere. Historically, DMF had complied with the MO through a series of policies, practices and permit conditions. In light of several recent shellfish sanitation violations that resulted in permit sanctions, DMF decided to codify these longstanding rules as regulation. Codifying this as regulation would enhance enforcement, education and compliance, and ensure that DMF was managing its shellfish fisheries in explicit conformity with the MO.

Jared summarized the proposal and explained how these policies and permit conditions were being codified. He added that this regulatory effort also resulted in a substantial recodification of DMF's existing shellfish regulations.

Public comment was supportive of the proposal. The MA Aquaculture Association and the Wellfleet Shellfish Advisory Board did suggest some minor edits to either further clarify certain provisions or align DMF's regulations more closely with the MO, which DMF considered in the final recommendation.

Jared stated that Director Pierce was recommending that the MFAC approve the regulations as presented at public hearing with several minor modifications to address public comment received. These modifications included: refining the definition of "fish or fishing" to better address how certain shellfish dredge gear is stowed; to clarify that the harvest vessel must only be clean of debris when harvesting or transporting shellstock; conform its shellstock washing regulation to the language of the MO; move existing commercial shellfish management provisions that do not address shellfish sanitation out of the proposed shellfish sanitation section into their own regulatory section; address issues regarding the recording of time of harvest in intertidal areas as time of exposure and the enforcement of the shellfish night closure; and make several minor stylistic changes to the regulatory language.

Chairman Kane asked for a motion to be made to adopt the recommendation. He would then allow for debate on the recommendation. **Bill Doyle made a motion to adopt the Director's recommendation as provided by DMF. The motion was seconded by Charlie Quinn.**

No comments were made. The Chairman then called the motion to a vote. **The motion was approved unanimously.**

#### *Shellfish Relay Fee*

Deputy Director McKiernan briefly reviewed DMF's contaminated shellfish relay program. This program moves shellstock from bacteriologically contaminated areas along Mt. Hope Bay and the Taunton River to non-contaminated areas on Cape Cod and Buzzards Bay for natural purification and propagation. These receiving municipalities contract a dredge boat to harvest and relay this shellfish. They typically pay about \$20 per bushel to the dredge boat. Imbedded in this cost is a \$1.00 per bushel fee paid to the supervisory authority who oversees the harvest and relay, recently the supervisory authority has been the Swansea Harbormaster.

Director Pierce noted that state law (Chapter 47 §112 of the Acts of 2017) now requires that DMF establish an additional per bag fee for shellfish moved as part of the state's contaminated shellfish relay program. This fee is paid by the municipality receiving the contaminated shellfish to DMF who then will proportionally disburse funds to source municipalities on an annual basis.

To comply with this state law, the Director was proposing a \$1.00 per bushel fee. This \$1.00 fee represented an approximate 5% increase in the cost of relayed shellfish based on the approximate \$20 per bushel figure. David was uncertain how this increase in cost would be accounted for (e.g., increase in municipal budgets, change in price paid to the dredge boats, reduction in shellfish harvested).

While this fee did not require MFAC approval, the Director wanted to provide them with an opportunity to comment on this fee before he implemented it by regulation.

Mike Pierdinock stated that in the public comment and at the public hearing he heard officials from receiving municipalities express concerns about how the implementation of this new fee in Fiscal Year 2019 may impact local budgets.

The Director noted that while he understood these concerns, it was clear to him the legislative intent was to implement this fee. Accordingly, he did not think it was appropriate to delay implementation.

Bill Doyle stated that this additional fee represents a small dollar amount. Despite tight local budgets, he did not expect many towns would have issues getting emergency funding allocated to cover this new cost.

#### Whelk Minimum Size Management and Gauge Increase Schedule

Chairman Kane asked if any members of the wanted to comment on this recommendation. Tom Turner spoke in opposition to the recommendation.

Tom stated that industry shares DMF's concerns regarding the sustainable management of the fishery. However, they do not support the proposed gauge increase because of the economic impact they anticipate it will have on the fishery. Industry members advocated that more scientific research was needed before such a potentially devastating measure is implemented. Accordingly, Tom requested the MFAC vote down this recommendation and table it for one year so that additional data can be collected and management alternatives developed.

Director Pierce thanked Tom for his comments. He noted that Tom's statement was echoed at public hearing and in the extensive written comments provided by Attorney Markey. David stated that he prepared a memorandum to the MFAC that responded to each of those concerns and critiques raised by industry. He then provided a brief presentation that summarized the findings of the memorandum for the MFAC.

In conclusion, the Director stated that there was strong scientific evidence in support of the proposed gauge increase schedule and the gauge increase is minimally necessary even if other alternative management strategies are developed. Accordingly, he was recommending the MFAC vote to adopt the proposed gauge increase schedule (Table 1). This schedule would increase the gauge width by 1/8" on a biennial basis beginning in 2019 and concluding in 2029. The terminal gauge width would be 3 5/8", which corresponds to an animal with a 3 7/8" shell width and 50% size at maturity.

<b>Table 1. Schedule for Whelk Gauge Increases, Corresponding Shell Widths at 50% Retention, and Percentage of Mature Female Whelks at Shell Width</b>						
	<b>2019</b>	<b>2021</b>	<b>2023</b>	<b>2025</b>	<b>2027</b>	<b>2029</b>
<b>Chute Gauge Width</b>	3"	3 1/8"	3 1/4"	3 3/8"	3 1/2"	3 5/8"
<b>Shell Width at 50% Legal</b>	3 3/16"	3 5/16"	3 7/16"	3 9/16"	3 3/4"	3 7/8"
<b>Percent Female Size at Maturity</b>	0%	0%	0%	5%	20%	50%

Chairman Kane asked for a motion to be made to adopt the recommendation. He would then allow for debate on the recommendation. **Bill Doyle made a motion to adopt the Director's recommendation as provided by DMF. The motion was seconded by Charlie Quinn.**

Chairman Kane asked if this recommendation applied to knobbed whelk, as well as channeled whelk. Director Pierce stated that they did.

Charlie Quinn asked about the annual shell growth rates for whelks. DMF Biologist Steve Wilcox stated that female whelks in Massachusetts waters grow about 1/4 inch per year. Charlie noted that this was less than the proposed gauge increase and asked if DMF expected whelks would grow into the fishery over the course of a year. Steve Wilcox said that this would likely occur with near legal sized whelks.

Sooky Sawyer then asked if a whelk that is currently just sub-legal at the 2 7/8" would be legal at the 3" gauge by the fall. Steve stated that whelks usually grow during the fall, so it may not be at legal size by the fall but he expected it would be at legal size by next spring.

Lou Williams stated that when the minimum size was last increased industry saw an approximately 40% reduction in landings. However, DMF predicted that the reduction in landings would only be 10%. If DMF similarly underestimates landing reductions going forward the commercial fishery will no longer be profitable. Moreover, he was not seeing a decrease in annual commercial landings that would be expected with a stock on the verge of collapse. For these reasons, he did not support this recommendation. Instead he preferred either industry's recommendation to table the measure or for DMF to pursue a less aggressive approach that would have more limited economic impacts on the commercial fishery.

Director Pierce disagreed with Lou. He stated that he did not think a 1/8" biennial gauge increase was all that aggressive for a species that grows 1/4" per year. In fact, he was quite concerned that given the current state of the stock and the fact that the minimum gauge width does not begin to protect spawning females until 2025 that his recommendation was too modest.

The Chairman requested DMF address the discrepancy Lou cited between DMF's projected landings reduction from the last minimum size adjustment and the actual reduction in landings from 2016 to 2017.

Steve Wilcox explained that DMF derived this projection from commercial sea sampling data. DMF sampled the size of animals coming up in fisherman's traps and compared it to the effective change in the minimum size. Based on this, DMF predicted that the change in minimum size management would produce a 10-15% reduction in landings. This figure does not account for other factors that may impact annual landings (e.g., changes in population size, fishing effort, weather, compliance).

However, from 2016 to 2017 we saw landings a 33% reduction in landings by weight. DMF reassessed the projected impacts of the change in minimum size management and found that it contributed to a 17% reduction in landings. The remaining loss was due to other factors.

Bob Glenn added that DMF cannot project landings from year-to-year. This is because there are a variety of independent variables, including recruitment, fishing effort, and environmental variables, that influence landings that DMF cannot account for. What DMF can do is look at catch at size in one year and estimate the portion of the landings that will be impacted the following year by a change to a minimum size. This calculation assumes a whole number of other variables do not change. If these variables do change then landings may end up being much higher or lower than the DMF's predicted change in landings attributable to a minimum size adjustment.

Deputy Director McKiernan noted that the last adjustment to the minimum size management scheme included a change in how these animals are gauged. Prior to 2017, the animals were measured using a "parallel method of measurement". Due to the asymmetry of whelks, this method of measurement gave a lot of discretion to the individual measuring the animals. There were widespread reports that there were low levels of compliance with the minimum size and the gauging method was being manipulated by many fishermen to retain sub-legal sized whelks. Due to these concerns, DMF moved to an "any orientation method of measurement". This change removed a lot of the discretion in measurement. Accordingly, Dan felt that much of the loss of landings seen between 2016 and 2017 may be attributable to greater compliance with the minimum size.

Lt. Matt Bass agreed that the switch in gauging methods ended the debate on how to gauge these animals and resulted in greater minimum size compliance.

Mike Pierdinock asked if DMF was predicating there would be a 10% decrease in landings every year the gauge is increased. Director Pierce reiterated that DMF was not projecting inter-annual changes to landings due to the number of independent variables that cannot be accounted for. Steve Wilcox stated that using past sampling data about 25% of last year's catch that would have to be discarded in 2019 if the recommended gauge increase were adopted.



Mike P. recalled a conversation he had with a whelk dealer who was concerned that if the landings decrease and the price increases then they will be forced to buy whelks from other jurisdictions.

Director Pierce stated that he had a similar conversation with the dealer. However, he felt that if the continued availability of large numbers of small juvenile whelks were necessary to ensure that the market is satisfied then we are going to collapse this stock and this fishery in MA trying to meet this demand.

Ray Kane stated that he heard arguments from buyers that they are considering looking to other states to meet market demand. However, he did not have a good understanding of how active or viable the whelk fisheries in other states are. He asked DMF to present on this in the future, if the data were available.

Sooky Sawyer asked if DMF had seen a drop in catch per unit effort (CPUE). Bob Glenn referred Sooky to the public hearing presentation. He noted that there has been a substantial decline in CPUE over the past decade.

Bill Doyle supported the recommendation. He felt it was foolhardy to believe there is a market to protect when the fishery is not sustainably managed and the resource is depleted.

Mike P. stated that he felt compelled to support this measure due to the stock assessment and DMF's concerns about stock collapse. However, he wanted to confirm DMF's willingness to continue to work with and engage industry on this issue. Director Pierce stated DMF would continue to work with whelk fishermen and researchers on management alternatives and relevant scientific studies. However, he would not ask his staff to continue to review and reassess size-at-maturity data. Numerous size-at-maturity studies have been conducted that confirmed DMF's initial 2012 study and he felt the science on this topic was settled.

Bill Doyle asked the Chairman move the motion to a vote. Mike P. supported this.

The Chairman then called the motion to a vote. **The motion was approved 3-1-1 with Lou Williams voting in opposition and Sooky Sawyer abstaining.**

#### Recommendations to Further Protect Right Whales

Deputy Director McKiernan reviewed DMF's two proposals.

First, DMF was moving to adopt a 10 knot speed limit during March and April within the waters of Cape Cod Bay that would apply to vessels smaller than 65'. DMF would be able to rescind or extend this closure via the Director's declaratory authority in response to the presence or absence of right whales. This regulation did not require MFAC approval, as it was being filed under G.L. c. 130 s. 17(10) and not G.L. c. 130 s. 17A. However, the Director wanted to give the MFAC an opportunity to discuss the measure.

Second, DMF was proposing a regulatory mechanism that would allow the Director to use his declaratory authority to extend (and then later rescind) the existing fixed gear closures to protect right whales (e.g., Large Whale Seasonal Closure Area) in response to the presence and absence of right whales. DMF was not proposing to be able to rescind these closures in advance of their current end dates because there are overarching federal rules that would prevent this. This action would require MFAC approval.

With regards to the second proposal, DMF was considering the development of a pilot program that would authorize lobstermen in affected ports to set their gear after sunset. This could potentially help alleviate some of the bottlenecks that occur at the docks when the Large Whale Seasonal Closure is lifted. This pilot program would be initiated through a Letter of Authorization that would specify that the night closure to trap fishing does not apply to the setting of gear for a period of time following the lifting of the Large Whale Seasonal Closure. If the pilot program proved successful, DMF may consider pursuing a legal fix to the night closure rule.

Chairman Kane highlighted how central right whale conservation has become at interstate and federal fisheries management meetings. Dan noted that this was in response to a recent decline in the population, low calving rates in recent years, the pending jeopardy finding and the potential for additional closed areas.

Bill Doyle asked if inner harbor areas in Cape Cod Bay were exempt from the speed limit rule, like they had been under the emergency rule filed in 2018. Jared Silva stated that Plymouth, Duxbury, Kingston, Barnstable and Wellfleet harbors were exempt from the speed limit rule.

Bill the raised concerns about whale watch boats. He noted that last year there were reports of numerous vessels operating in excess of the speed limit. Dan noted that most whale watch boats are 65' and greater are subject to the longstanding federal speed limit in Cape Cod Bay and on Stellwagen. Sooky stated that he heard reports similar to Bill and added that these vessels may be turning their AIS systems off. Lt. Bass stated he would look into this issue this spring.

The Chairman asked that a motion be made on DMF's recommendation to allow the Director to use his declaratory authority to adjust the timing of existing fixed gear closures to protect right whales. **Sooky Sawyer made a motion to adopt DMF's recommendation. The motion was seconded by Bill Doyle.** No further comments were made. The Chairman called the vote. **The motion was approved unanimously.**

## **DISCUSSION ITEMS**

### Review of Recent ASMFC and NEFMC Meetings

Dan McKiernan discussed the recent ASMFC Lobster Board meeting. He stated that the pending NMFS jeopardy finding regarding right whales was creating some dysfunction in management. The Board approved to go out to public hearing with a Draft Addendum

to reduce endlines by up to 40% and address extra trap tag allowances. Dan expected public hearings to occur in the summer and a final vote by the board by the fall meeting.

DMF was very apprehensive and suspicious about this approach. The focus so far has been to reduce endlines through cuts to trap allocations. However, there is not a consistent proportional relationship between the number of traps fished and the number of endlines fished, as fishermen configure their gear differently. This problem becomes even more confounded when the discrepancies in the quality of data collection on traps and endlines fished between states is accounted for; MA has very good data, however, ME does not. Therefore, it will be difficult to determine if the state with the largest lobster fishery is even meeting their management targets. Dan noted that he would be attending the ME Fisherman's Forum to see how ME would be addressing this with their fishery.

Due to concerns about the trap cut approach, there had also been some discussion about extending fixed gear closures and mandating weak rope. Dan expected these options would also be met with some resistance.

Sooky Sawyer stated that MLA would be holding an emergency delegates meeting to discuss the various issues and options. He also expressed his frustration with the lack of political support for MA's lobster fishery from the state's federal congressional delegation. He noted that DMF and the MA lobster fishery has consistently taken steps to protect right whales; however, the federal delegation has not stood up and advocated for what its industry has done, nor has it pointed out what other states have failed to do.

Ray Kane asked about the presence of whales in Nantucket Sound last summer. Bob Glenn stated two dead whales washed into the area. Dan noted that the Atlantic Large Whale Take Reduction Plan included an exemption to allow single trap fishing around MA's south coast due to a lack of co-occurrence of the presence of fixed gear and large whales. This allowed the black sea bass, scup and whelk pot fisheries to continue to function as single pot fisheries. However, this exemption may come up again following NMFS jeopardy finding if the fishermen opted to fish singles.

Bob Glenn noted that the anticipated jeopardy finding is expected to exclusively target the lobster fishery in the Gulf of Maine. He did not anticipate that it would address other fixed gear fisheries that co-occur with the right whales. He found this to be troubling and shortsighted.

Mike Pierdinock highlighted a written comment submitted by Oceana regarding DMF's speed limit proposal. Embedded in this comment (p 9) is a map that shows survey tracks and right whale sightings. He noted the cluster of right whale sightings south of Martha's Vineyard and Nantucket and noted that this was where offshore wind farms were being developed. He expressed his frustration that NGOs and conservation groups were quick to raise issues regarding the fishing industry and boaters, but were predictably absent when addressing the impacts of offshore wind energy projects. He

opined that if the wind arrays were oil platforms these groups would not be taking the same hands off approach.

Nichola Meserve reviewed the recent ASMFC's Summer Flounder, Scup and Black Sea Bass Board meeting and provided an update on the upcoming MAMFC Committee Meeting for these species.

The ASMFC Board meeting focused on recreational fisheries management. She anticipated the black sea bass regulations would likely be status quo, but DMF would likely adjust the season start date to open on May 18<sup>th</sup> (the Saturday), rather than May 19<sup>th</sup>, which may require a slight adjustment to the closure date. For scup, the Northern Region (MA-NY) could liberalize their limits to accommodate a 27% increase in harvest. This would likely be accomplished through extending the for-hire bonus season or increasing the bonus season bag limit. DMF was currently seeking public comment to guide decision making.

Mike P. stated that based on his conversations with members of the charter and head boat fleet, there was a preference to open the recreational black sea bass fishery on Saturday, May 18<sup>th</sup> and there was also support for an increase to the bonus season bag limit. Ray Kane stated that if the bonus season were to be extended the charter and head boat fleet members he spoke to preferred it be extended into Wave 4, not Wave 2.

On the commercial side there was some discussion regarding adjusting black sea bass quota allocations. The Board was looking to do this through the ASMFC and not the MAFMC because the southern New England states do not have seats on the MAFMC. Nichola expected the Mid-Atlantic states would resist potential quota reallocation proposals.

Nichola stated that the winter MAFMC meeting had been postponed due to the federal government shut down. The meeting was rescheduled for March 6 and 7. She expected the Council would review and approve the fluke stock assessment. The setting of 2019 recreational fishing limits for fluke would proceed once the assessment was approved. The MAFMC was also expected to review an Amendment to the FMP that addresses the redistribution of commercial quota allocations. Similar to discussions regarding black sea bass, she did not expect the states to our south would be supportive.

Nichola then moved onto discuss the ASMFC's Menhaden Board meeting. VA's legislature had failed to implement the Chesapeake Bay Cap provision set forth in Amendment 3 to the FMP. However, the Board concluded that the Chesapeake Bay Cap provision in the FMP did not have a strong enough scientific basis to pursue a non-compliance finding with the Secretary of Commerce. Omega Protein fished within the cap in 2018 and the Board was hopeful that they would do so again in 2019. The Board would continue to review and analyze eco-system based reference points with the goal of developing a more scientifically sound approach to a Chesapeake Bay Cap to be implemented in a future adjustment to the FMP.

Sooky Sawyer and Dan McKiernan briefly discussed the state's complicated menhaden management system. Sooky was concerned about NY and NJ purse seiners heading north and fishing in MA's southern waters. Dan stated that they would need to hold a variety of limited entry permits to do so. Moreover, Buzzards Bay was closed to mobile gear fishing.

Mike Armstrong stated that he would present on the striped bass assessment later in the meeting. However, he wanted to mention that the ASMFC's Striped Bass Board did not support a federal proposal to open up an area of the EEZ between Montauk and Block Island. The Board noted that this action would likely lead to increased fishing effort and mortality, and this was not appropriate given the results of the stock assessment.

Director Pierce briefly covered the recent NEFMC meeting. He and staff were focused on the development of the 2019 recreational fishing limits for Gulf of Maine (GOM) cod and haddock. The development of these limits had been delayed by the federal government shutdown. Additionally, the NEFMC had initiated the development of an Amendment to the Atlantic Sea Scallop FMP. This Amendment was designed to address LA and LAGC access issues, as well as the NGOM boundary. The NEFMC was scheduled to hold take public comment on the scoping document this winter. David would continue to brief the MFAC and seek their input on this Amendment as it moves through the Council process.

#### Review of Fishing Year 2018 State-Waters Groundfish Landings

Director Pierce reminded the MFAC that at their January 2019 business meeting they approved a commercial groundfish closure in MA Bay during the month of April. The closure language included a provision that would allow the Director to rescind the closure based on whether or not landings from the state-waters fleet would exceed the state-water subcomponents or contribute to exceeding federal ACLs (specifically GOM cod and winter flounder).

DMF's Statistics Program compiled the groundfish landings for the state-waters fleet in 2018. For GOM winter flounder, the fleet had landed 146% of the sub-component, but with the underutilization of federal quotas, he did not expect this would contribute to the fishery exceeding the federal ACL. For GOM cod, the fleet had landed 61% of the sub-component and would likely stay under the sub-component this year.

Based on this data, David anticipated that he may not rescind the April closure this year. He noted that while the fleet had not landed its sub-component for GOM cod, he was concerned about providing additional access in April, as the cod are likely to be in spawning condition.

Lou Williams expressed frustration with David's anticipated decision. He stated that the intended purpose of the April closure was to realign the state-waters fishery with the state-waters subcomponents and ensure that federal ACLs were not exceeded. The data showed that the state-waters fleet is way under its sub-component for cod and

accordingly April should be opened. Lou felt the goal posts were being moved by David using spawning cod protection to justify an April closure.

David noted that he has long been concerned about protecting spawning cod. This concern was a driving factor in his decision to recommend closing April in MA Bay, as noted in the memorandum.

David also noted that while the state-waters fleet was under its sub-component for GOM cod, it was well over its sub-component for GOM winter flounder. Lou argued that the overage of the sub-component for GOM winter flounder was not sufficient grounds to keep April closed. Federal quotas for GOM winter flounder are underutilized and will provide a sufficient buffer to prevent an overage of the ACL.

David stated that waters north of Marblehead also remained open to commercial groundfishing in April. Lou stated that this was a meaningless concession. This area was not a productive fishing ground in April and it was closed to mobile gear under another regulation.

Lou expressed his desire to David to either reconsider his position or better explain his decision. Chairman Kane asked if David would provide a written rationale to the MFAC at the March meeting. David agreed.

Mike P. stated that there is a concern among Boston Harbor recreational anglers that the commercial fleet is hurting the recreational fishery in this area. He expects they will be angry with the fact that the state-waters fleet exceeded the sub-component for winter flounder. David noted that while the state-waters fishery has exceeded the sub-component the overall ACL will likely be underutilized.

#### Wind Energy Development Update

Director Pierce noted that he covered this update in his comments.

Mike P. reiterated his previously stated concerns that the NGO and conservation community were turning a blind eye to the potential impacts of offshore wind farms on right whales and other marine species. He was concerned that when these farms do impact marine species, it will be the fishermen who will pay for the negative impacts. While he had consistently advocated for a more gradual approach to develop these wind farms - in order to better understand their impacts - he recognized this was not going to happen.

David stated DMF has and will continue to raise these concerns. However, he was uncertain how BOEM would address them. Mike P. thanked DMF for their work to address this, but was frustrated that they were seemingly the lone voice.

## **PRESENTATION ON BENCHMARK STRIPED BASS ASSESSMENT**

Dr. Mike Armstrong provided the MFAC with a presentation on the recent striped bass assessment. The assessment found that the stock is overfished with overfishing occurring. The new assessment used the updated MRIP effort data. As a result, estimates of recreational harvest and release mortality have increased. If the prior assessment were recalibrated to account for this data, it would have also demonstrated that the stock was overfished with overfishing occurring since about 2010. Despite this, it is noteworthy that stock conditions have not changed significantly in recent years.

Mike A. noted while it is typical for this stock experience below average recruitment in numerous years in a time-series and for a large year class or two to support the stock, this trend has been more pronounced over this past decade plus. Since 2007, all but four year classes have been below average and several are similar to the low levels experienced early-to-mid 1980s. Poor recruitment is likely attributable to environmental factors in the Chesapeake Bay.

Mike A. also pointed out that recreational release mortality is now the largest source of mortality in the fishery coast-wide. In 2017, it was estimated to contribute to 48% of all mortality. This is more than recreational harvest (42%), commercial harvest (8%) and commercial release mortality (2%). MA is largely a recreational catch and release fishery. MRIP data estimates that MA recreational anglers caught about 13 million fish in 2018. Of those 13 million fish, only about 300,000 were reported kept, the remainder were released. Applying the 9% discard mortality rate, MA recreational anglers are estimated to kill over 1 million striped bass per year through release mortality.

Based on this assessment, Mike A. concluded that the ASMFC would initiate an Addendum to the FMP. This Addendum would likely reduce the coast-wide commercial quota and require an increase to the recreational minimum size. For coastal states, the minimum size could be increased to around 30". However, in a catch and release state like MA, the conservation benefits of a minimum size increase are going to be more limited. The challenge for MA is going to be managing release mortality in the recreational fishery. This underscored why DMF was moving forward with the proposed gaffing prohibition and inline circle hook mandate.

Director Pierce asked if MA could reduce mortality by the requested level simply by mandating the use of circle hooks. Mike A. and Bob Glenn were uncertain and noted it is difficult to quantify a reduction in mortality that circle hooks are already being used, that the mandate would only apply to certain bait fishing activities, that compliance will not be 100% and that there are numerous other factors that contribute to release mortality (e.g., length of fight, handling). Mike A. noted that a MD study showed that the use of inline circle hooks reduced release mortality by about 90% due to a reduction in gut hooking. If recreational release mortality in MA could be reduced by 90% (from ~1 million fish to 100,000 fish) then perhaps we could meet our conservation goals through a circle hook mandate. However, Mike A. did not expect that type of reduction to be realistic.

Sooky asked how much release mortality could be reduced by a gaffing prohibition. Mike A. stated that the mortality rate associated with releasing gaffed fish was likely very high. However, the releasing of gaffed fish likely contributes very little to overall striped bass mortality. However, it is worthwhile to consider a prohibition on gaffing given that it is an easily avoidable source of potential mortality.

Mike Pierdinock asked about the appropriateness of DMF proposing certain striped bass conservation measures based on an assessment that has not yet been approved by the ASMFC. Mike A. noted that DMF intended to propose the circle hook and gaffing rules regardless of the assessment; the assessment results merely underscore the timeliness of DMF's proposals. Moreover, Mike A. expected the assessment would be imminently approved and the only reason it remained unapproved was because of the timing of the federal government shutdown.

Mike P. asked about climatic shifts and potential impacts on survey inputs. Specifically he was interested in whether or not fish could be missing from the assessment because they moved offshore to cooler waters. Mike A. directed Mike P.'s attention to the catch composition slide in the assessment presentation (#9). He stated that we can observe year classes move through the fishery through both surveys and catch data. So, there is a good understanding of what the biomass is even if larger fish spend more time off shore. The only that mortality may be overestimated due to this type of behavior is if these fish moved offshore, stayed offshore and were never encountered.

Mike P. stated that given fishing behavior, handling techniques and tackle used, the for-hire fishery likely has a much lower discard mortality rate than the rank-and-file recreational fishery. Accordingly, he struggled with these two fisheries being accounted for together in the assessment.

Mike P. the asked if commercial discards are factored into the assessment. Mike A. stated that they were included but represented a data poor aspect of the assessment. However, he opined that if there were a large unaccounted for source of mortality it would show up in year class decay data and this has not occurred.

Mike A. provided some background on the history of the discard mortality rate. He noted that this was based on a catch and release study conducted by DMF in the 1980s in Cat Cove using a variety of terminal tackle and handling techniques. He noted that the study did have its limitations, but it still represents the best available data on the subject. Mike A. added that there was some research being conducted into the impacts of salinity and temperature on release mortality.

Lou Williams did not understand the conservation benefit of increasing the recreational minimum size if recreational release mortality is the largest contributor to overall mortality.

The Chairman allowed for questions from the public.



Former DMF Director Phil Coates and Mike Armstrong discussed the incorporation of MRIP data into this assessment. Phil asked in MRIP considered including a survey to get data on tackle used to catch fish. Mike A. stated that the survey was designed to estimate harvest based on catch and effort and wanted to limit other data points that could increase the noise in the survey technique.

### **COMMISSION MEMBER COMMENTS**

Sooky Sawyer recalled that at the February meeting there was some discussion as to whether the state-waters groundfish fishery impacted quota available to the federal fishery, as a result of exceeding the state-waters sub-component. He reported that his ACE for GOM cod had been reduced from FY18 to FY19 despite the ACL for cod going up. He attributed this to the FY17 overage of the GOM cod ACL.

Bill Doyle brought up several issues. First, he again asked the DMF and the MFAC look into means of encouraging younger people to become involved in commercial fisheries. Next, he stated his longstanding concern about the enforcement of no discharge zones. He was hopeful DMF and the MFAC could work to address this with MEP and USCG. Lastly, he brought up his desire to see the state work towards more uniform shellfish aquaculture regulation across municipalities, particularly those that share bodies of water. He opined that it may be time to have the state take over some of the management of tidal lands from the locals.

Deputy Director McKiernan stated that he would speak with Bill offline on his first two issues. His last issue would require a change to the statute. Dan felt that the MA Shellfish Initiative would be a good forum for this discussion and that this body could develop a position and recommendation on the issue.

Mike P. recalled the Director's opening comments regarding the report on spiny dogfish that erroneously stated it was overfished. In his experience working in shark and tuna management, certain interests use the status of other stocks of the same species to encourage conservation of another stock. For instance, there were calls to limit the Atlantic Bluefin tuna fishery based on the status of the stock in the Pacific. He was curious if this was what was occurring with spiny dogfish.

Chairman Kane thanked MFAC members for their attendance. Ray asked Jared Silva to circulate an updated contact list of MFAC members.

### **PUBLIC COMMENT**

Eric Morrow, Keith Baker and Chris Whitten spoke on recreational scup limits for 2019. Eric and Keith favored an increase in the bag limit and an extension of the for-hire bonus season in Wave 4. Chris Whitten preferred opening the scup bonus season up in April.

Nichola Meserve noted that she has received similar written comment. These comments would help inform DMF's decision making this spring. She did note that rules are going to have to be set region-wide (MA-NY), so it will be difficult to craft a boutique set of rules that satisfy all stakeholders.

No further comments were made.

## **ADJOURNMENT**

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

## **MEETING DOCUMENTS**

- February 14, 2019 MFAC Business Meeting Agenda
- January 24, 2019 Draft Business Meeting Minutes
- Recommendation on the Codification of Shellfish Rules at 322 CMR 16.00
- Memorandum on Contaminated Shellfish Relay Fee
- Recommendation on Whelk Gauge Increase
- Response to Letter Submitted on Behalf of Massachusetts Whelk Fishermen
- Recommendation on Proposals to Further Protect Right Whales
- 2019 ASMFC Winter Meeting Summary

## **FUTURE MEETINGS**

**9AM**

**March 14, 2018**

**Division of Fish and Wildlife Field HQ  
1 Rabbit Hill Road  
Westborough, MA**

**9AM**

**April 11, 2018**

**Division of Fish and Wildlife Field HQ  
1 Rabbit Hill Road  
Westborough, MA**

**9AM**

**May 9, 2018**

**Division of Fish and Wildlife Field HQ  
1 Rabbit Hill Road  
Westborough, MA**

**9AM**

**June 13, 2018**

**Division of Fish and Wildlife Field HQ  
1 Rabbit Hill Road  
Westborough, MA**