

MARINE FISHERIES ADVISORY COMMISSION

September 19, 2019

DFW Headquarters

Westborough, MA

In attendance:

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

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

Department of Fish and Game: Ron Amidon, Commissioner.

Massachusetts Environmental Police: Lt. Matt Bass and Lt. Pat Grady.

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Kane called the September 19, 2019 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

REVIEW AND APPROVAL OF SEPTEMBER 19, 2019 BUSINESS MEETING AGENDA

Chairman Ray Kane stated that at the request of the Division of Marine Fisheries (DMF) the agenda item regarding “In-Season Adjustments to Menhaden Trip Limits” would be moved from an action item to a discussion item. There were no objections to this adjustment. The Chairman moved for a motion to adopt the September 19, 2019 MFAC business meeting agenda. **Bill Doyle made a motion to approve the agenda. The motion was seconded by Mike Pierdincok.** The Chairman for a vote. **The motion was approved unanimously.**¹

REVIEW AND APPROVAL OF AUGUST 15, 2019 DRAFT BUSINESS MEETING MINUTES

Chairman Kane asked if there were any amendments to the August 15, 2019 MFAC draft business meeting minutes. No amendments were offered. The Chairman moved for a motion. **Bill Doyle made a motion to approve draft minutes as provided.**

¹ It should be noted that following the vote on to adjust the Period I (January 1 – April 22) fluke limits for 2020, there was discussion regarding the MFAC taking action to make in-season adjustments to the 2019 Period II (June 10 – December 31) commercial open fishing days for fluke. This was addressed following lunch, an action was taken, and the relevant discussion is under the “Action Items” header.

Pierdinock seconded the motion. The Chairman called for a vote. **The motion was approved unanimously.**

PUBLIC COMMENT

Chairman Kane stated that the format of the agenda was changing. The MFAC would now accept public comment at the beginning of business meetings. This public comment would address items not listed on the agenda. This was not intended to solicit public testimony on “action items”, as the public should be submitting such comments at public hearing or during written public comment periods. There was no public in attendance and no public comment was provided.

CHAIRMAN’S COMMENTS

Chairman Kane stated that the Atlantic States Marine Fisheries Commission’s (ASMFC) Striped Bass Board sent out a scientific report on the pending striped bass addendum. He found the report to be very technical and dense. Accordingly, Ray asked Mike Armstrong - DMF’s Assistant Director and the ASMFC’s Striped Bass Board Chair - to provide a synopsis of the report’s findings prior to the October ASMFC meeting.

COMMISSIONER’S COMMENTS

Commissioner Ron Amindon highlighted several recent and upcoming events. First, he visited the Coonamesset River with Lt. Governor Polito on September 12. The purpose of the visit was to highlight and celebrate the Department of Fish and Game’s (DFG) fish passage and riverway work. DFG was able to obtain \$4 million in outside funding to add to the \$1 million provided by the state to complete the project. The Division of Fish and Wildlife was hosting a MA Green Careers Conference at the Westborough Field Office on September 20. The Big MOE was scheduled for September 20 in Sturgis, MA. Commissioner Amidon lauded the Big MOE as a great sportsman’s event that encouraged youth participation. DFG’s technical staff was hosting a series of presentations at DFG agency offices to demonstrate the state’s GIS mapping program’s emerging capabilities and interactivity. The first of these meetings was scheduled for September 23 in Boston; meetings would also be held in New Bedford, Gloucester and Westborough. Lastly, on September 24, DFG was holding its annual Pride and Performance Awards in Boston. Award winners include DFG General Counsel Rich Lehan, DMF’s Eel Grass Team, DMF’s Samantha Kass, and DFW marketing staff.

DIRECTOR’S COMMENTS

Director David Pierce announced that he would be retiring from DMF on November 1, 2019. The MFAC applauded David. Sooky Sawyer and Chairman Kane both questioned how this would affect the Director’s role at the ASMFC and the New England Fishery Management Council (NEFMC). With regards to the NEFMC, the DMF Director has a permanent seat at the NEFMC. The next Director would assume that seat and they would either attend NEFCM meetings or tap a staff member as their proxy. With regards

to the ASMFC, the next Director will have to determine what boards they sit on, and what boards they will have a proxy sit on.

Mike Pierdinock asked about the timeline for hiring the next Director. Commissioner Amidon stated that DFG was in the process of finalizing a job posting and assembling an interview team. Once DFG had a candidate, the Commissioner would make a recommendation to the MFAC. Bill Doyle asked if the MFAC would be involved in vetting the next Director. The Commissioner indicated that he would likely have at least one MFAC member on the interview panel.

David attended the recent DMF public hearing in Buzzards Bay on September 11. The meeting was sparsely attended. Most of the testimony received addressed tautog permitting and tagging. David would introduce several final recommendations later in the meeting on those management issues.

The NEFMC was scheduled meet from September 24 - September 27. In advance of this meeting, staff were working on a number of issues relevant to scallops, sea herring and ecosystem-based management.

Regarding sea herring, the Gulf of Maine Research Institute (GMRI) was given a contract to study Georges Bank/Nantucket Shoals herring spawning. This research is expected to help the NEFMC better protect spawning herring.

Ray Kane stated that enhancing spawning protections for herring on Georges Bank/Nantucket Shoals herring was an NEFMC priority. Ray cited past research by Steve Correia (former DMF biologist) that highlighted the importance of herring spawning on Nantucket Shoals to the health of the herring resource. Director Pierce noted that Steve's work was conducted following the collapse of the herring resource in the 1970s. It demonstrated that the Nantucket Shoals spawning biomass was instrumental in rebuilding the Georges Bank herring biomass.

On the topic of sea herring spawning, Director Pierce noted that the MA/NH herring spawning closure in the Gulf of Maine was scheduled for September 23 - November 3. Additionally, the commercial herring fishery in Area 1A (inshore Gulf of Maine) is subject to a quota closure during the period of September 15 – October 31.

Regarding the scallops, the focus of the NEFMC would be on access issues in the Gulf of Maine (GOM). The GMRI produced a report documenting a large abundance of sea scallops in the GOM. As a result, NEFMC was grappling with emerging user group conflicts between the small boat inshore fleet and the large vessel offshore fleet. Additionally, the NEFMC was expected to consider some area closures in the GOM to allow smaller scallops. The Stellwagen Bank National Marine Sanctuary is also concerned about how increased scallop fishing effort on the Bank may impact habitat. DMF staff was scheduled to meet with Sanctuary staff to discuss this.

Sooky Sawyer noted the offshore fleet was advocating that the GOM demarcation line be moved further north to allow them greater access to Stellwagen Bank. The inshore fleet objected to this, due to concerns that the large boat fleet would quickly fish out the area at the expense of the longer-term profitability of the small boat fleet. David stated that DMF favored limiting access to Stellwagen Bank to the small boat inshore fleet.

Ray Kane asked David about the “Peter Pan scallops” off the Nantucket Lightship. David explained that these were Atlantic sea scallops that grew at atypically slow rates due to resource competition driven by local abundance and environmental factors such as water depth. There was then some discussions regarding allowing the fleet access to these scallops and impacts on quota management.

DMF staff were working with the Massachusetts Fisheries Institute (MFI) to produce a report regarding the findings of DMF’s GOM Cod Industry Based Survey and the video trawl survey conducted by Kevin Stokesbury and UMASS Dartmouth’s School of Marine Science and Technology (SMAST). Preliminary analysis indicates that both surveys show a large drop in the biomass of cod on Stellwagen Bank. Additionally, there is little evidence in the GOM cod stock structure demonstrating that the stock is rebounding. However, DMF’s spring 2019 inshore trawl survey found a large spike in young cod (Age 1); it will be interesting to see how this large year class recruits into the fishery.

Vineyard Wind have provided the Executive Office of Energy and Environmental Affairs (EEA) with a draft mitigation proposal. DMF and fishing industry groups are reviewing the proposal. David expected that Vineyard Wind would present a formal mitigation package in the near future.

Recent amendments were made to state law to allow the expansion of lobster processing opportunities and commerce with shell-on lobster parts (e.g., claws). In response, DMF intended to file emergency rules to bring state regulations into phase with the amended statute. This would allow the in-state sale and processing of a greater variety of shell-on lobster parts; previously only frozen shell-on tails weighing more than 3 ounces could be processed and sold.

Deputy Director Dan McKiernan noted this primarily allows the processing and sale of “cocktail claws”. However, a multi-national Massachusetts based seafood dealer is interested in investing in a plant in New Bedford - where they could utilize local seafood processing labor and infrastructure – to process whole live lobsters into shell-on parts and import shell-on parts for processing. These changes would accommodate this activity as well. Jared Silva anticipated that DMF would hold a public hearing on these emergency regulations immediately before the start of the October MFAC business meeting and that the MFAC would vote to adopt final rules at that meeting.

Kalil Boghdan, Dan McKiernan and Jared Silva briefly discussed the history of this law and amendments to it. Director Pierce noted that DMF produced two reports (2012 and 2018) to the legislature on this topic and these reports were critical to getting the law

amended. He thanked Dan and Jared for their work on these reports, and he thanked Commissioner Amidon for his work with EEA and the legislature.

Ray Kane asked if the revised lobster processing laws would have a positive economic impact on local lobstermen. Sooky Sawyer stated that it would not hurt the local lobster industry. It may lower some shipping and trucking costs for processors, but he was uncertain if those savings would trickle down to increases in ex-vessel value. The biggest benefit to the local industry may be that it may make lobsters more accessible to consumers and increase overall market demand.

On October 10, the Division of Marine Fisheries and Massachusetts Fisherman's Partnership will co-host the annual Seafood Day at the State House. The event will be held in the Great Hall from 11AM to 1PM. Chairman Kane encouraged MFAC members to attend; the event provides an opportunity for Commission members to meet with legislators and legislative aides to discuss their interest and concerns.

The Director reviewed two recent adjudicatory hearing decisions. In the Matter of Hendricks, DMF suspended a commercial harvester's shellfish permit through 2021 for contaminated shellfish violations. If the harvester renews in 2022 (or thereafter) their permit is subject to a three-year probationary period. In the Matter of Santapaola, DMF revoked a commercial coastal lobster permit for a variety of lobster violations. The individual also had a history of non-compliance with the state's lobster conservation regulations.

Deputy Director McKiernan noted that the Massachusetts Environmental Police (MEP) made Facebook posts when these incidents first occurred and they generated a lot of attention. He then asked if they would follow up and similarly publicize these final decisions. Lt. Bass noted that he would look into it. Commissioner Amidon wanted to increase the visibility of these decisions, but did not think it was appropriate for DMF to promote it, and supported Dan's suggestion that it be done through the MEP. Lt. Bass expressed his appreciation for DMF's work to build up the adjudicatory hearing process.

LAW ENFORCEMENT COMMENTS

Lt. Bass handled comments for MEP. He focused first on recent enforcement incidents. In the lobster fishery, there was an incident involving scrubbing and bleaching lobsters and another incident involving gear molestation. The striped bass fishery along the Canal had produced a number of recent violations, and there were investigations into organized poaching efforts.

On the personnel side, MEP recently hired nine recent officers. Five are about to become field officers, while four are attending the police academy. Lt. Bass expected seven of these officers will be assigned to coastal districts. MEP are still in the process of hiring another three officers.

Lt. Bass asked if DMF could convene the MFAC's Law Enforcement Sub-Committee in the coming months to discuss tightening some existing regulations for 2020. Jared Silva stated he would work to schedule this meeting.

Deputy Director McKiernan raised a recent black sea bass incident whereby an individual possessed multiple limits of fish, which he said were attributable to a variety of permits. This renewed concerns at DMF regarding one individual being able to hold multiple permits for the same species. Lt. Bass stated that there are some legitimate instances, but most of the time it is a guise for overages. Dan suggested this be discussed at the sub-committee meeting. Chairman Kane suggested DMF allow these permits to be renewed, but held as inactive, rather than forcing them to surrender the permit. This would allow a pot fishermen to retire out of the pot fishery and transfer that business, then continue to fish as a rod and reel fishermen.

Bill Doyle and Lt. Bass discussed the setting of recreational lobster gear on shellfish aquaculture grants. Lt. Bass advised Bill that this should not be occurring and added that if the buoy numbers were provided to MEP they would discuss it with the permit holder.

FINAL PERMITTING DECISIONS

Retail Farmer's Market Permit

Director Pierce stated that farmer's markets have become popular venues for food sales. To take advantage of this popularity, certain seafood dealers are increasingly interested in selling seafood products at these venues. DMF has accommodated this emerging activity through issuing "Retail Truck" permits. However, this permit class was not designed for this activity and there has been some confusion among local boards of health regarding regulation and inspection. For 2020, DMF will establish a "Retail Farmer's Market" permit class. By enhancing the permitting specificity the Department of Public Health (DPH) will be able to issue these local boards of health more precise guidance regarding inspection and food code regulation.

Bill Doyle asked if this would allow aquaculturists to sell their shellfish at farmer's markets. Dan stated that this new permit class would not change how DPH addresses the sale of raw shellfish at these venues. DPH has a policy that restricts this activity and there is very little interest in amending that given time-to-temperature controls and public health risks.

Commercial Tautog Permitting and Use of Control Date

Director Pierce stated that in 2017 the ASMFC's Tautog Board approved Amendment 1 to the Interstate Tautog Fishery Management Plan. Among other things, this Amendment requires states adopt commercial harvester tautog tagging by 2020. In anticipation of having to implement this program, DMF established a regulated fishery permit endorsement in 2018 and adopted a control date (August 27, 2017) prior to the start of the 2017 commercial fishing season.

In 2018 and 2019, DMF issued approximately 2,000 tautog endorsements. DMF cannot effectively administer the tagging program in a manner that complies with the ASMFC's tagging program requirements with this many potential participants. Accordingly, Director Pierce intended to use the control date and qualifying criteria to limit entry to the fishery in 2020.

For 2020, DMF will only issue tautog endorsements to those commercial fishermen who held a tautog endorsement in 2018 or 2019 and sold at least 120 pounds tautog in any year from 2010 – 2016. 2010 – 2016 represents that time period between the start of trip level harvester reporting and the control date. These thresholds are consistent with public comment, which advocated DMF move forward qualifying criteria that use the longest time horizon in order to be more accommodating to commercial fishermen.

DMF estimates that this will limit future participants to about 200 permit holders. This is commensurate with the number of fishermen who reported selling any tautog in any year between 2014 – 2018. DMF will also allow the transfer of these limited entry permits consistent with existing limited entry permit transfer regulations (322 CMR 7.06). These regulations require a commercial harvester sell at least 1 pound of fish in four of the past five years (with limited exceptions).

Tangentially, this winter, DMF will review the transferability of other limited entry rod and reel endorsements in order to encourage new entrants into commercial fishing. Recently, there has been emerging interest (especially at the recent Bourne public hearing) regarding allowing the transfer of rod and reel endorsements for fluke and black sea bass. There are a number of justifiable reasons to review whether these permits should stay non-transferable, and if they become transferable, what – if any – actively fished criteria should be adopted.

Kalil Boghdan asked what fisheries are limited entry. Dan stated DMF issues endorsements to participate in fisheries for certain species, as well as for the use of net and trap gears. Nearly all gear endorsements have been limited entry since the early 1990s. More recently, DMF has begun making species-specific endorsements limited entry because of constraints posed by the quota. At present, striped bass, bluefish and scup are the principal open-entry rod and reel fisheries; most other fisheries are subject to a limited entry scheme.

ACTION ITEM

Commercial Tautog Tagging Program

Deputy Director McKiernan reviewed Director Pierce's recommendation and the commercial tautog tagging program recommendation memorandum. The memorandum describes the background and mandate for the program; details regarding tag allocation and distribution; harvester tagging requirements and commercial fisherman tagging reports; and seafood dealer and purveyor requirements.

Ray Kane, Dan McKiernan and Jared Silva reviewed the dealer and seafood purveyor rules requiring the liquidation of tautog tagged during the prior calendar year. The proposed final regulations state that a tautog with a tag from the prior calendar year may only be sold to an end consumer and all tautog with a tag from the prior calendar be liquidated by the dealer or seafood purveyor before the first day of March. Dan noted that these rules were designed to accommodate seasonal demand for the fish during the Chinese New Year.

Mike Pierdinock, Jared Silva, Dan McKiernan and Lt. Bass then discussed potential legal challenges posed by jurisdictional boundaries. There were concerns that Rhode Island fish would be landed in Massachusetts and count against the Massachusetts quota. Dan McKiernan anticipated that Massachusetts (and other states) will likely find deficiencies in their rules and will have to amend their programs accordingly. Ray asked if this would require an AMSFC addendum. Dan stated that it probably would not because most of the tagging program's details are in Tautog Board's tagging program guidelines, not the FMP.

Bill Doyle felt that this program required a disproportionate amount of administration and oversight given the size of the commercial quota and its value. Dan agreed with Bill's assessment, and he anticipated certain states may give tautog a gamefish status rather than continue administering the program. While the MA/RI stock is in good shape, stocks in other regions are overfished with overfishing is occurring. Moreover, tautog is considered to be one of the most poached fish on the Atlantic coast. Accordingly, the tagging program is designed to prevent poaching and better control effort. Lt. Bass confirmed that this fish was grossly poached coast-wide. Director Pierce added that poaching may be exacerbating stock conditions, particularly as stocks are very localized.

Chairman Kane asked for a motion. **Sooky Sawyers made a motion to adopt a commercial harvester tautog tagging program for 2020 consistent with the specifications set forth in the Director's recommendation memorandum, the motion was seconded by Bill Doyle.** No further comments were made. The Chairman called the motion to a vote. **The motion passed unanimously.**

Period I Summer Flounder Limits

Nichola Meserve reviewed the Period I (January 1 - April 22) summer flounder management system. The period is given a target allocation of 30% of the annual quota, the open fishing season is February 1 - April 22, with a 500 pound possession and landing limit that is reduced to 100 pounds once 25% of the annual quota is landed.

From 2011 - 2017, DMF ran a pilot program allowing a weekly landing limit of between 1,000 and 2,000 pounds depending on the year. This was done to provide greater access to the period's quota allocation. However, this pilot program was disbanded in 2018 in response to quota cuts. Over the past two years (2018 and 2019), the Period I fishery only landed 9% and 3% of the overall quota. This was in part due to the elimination of the pilot program, low trip limits in Massachusetts resulting in vessels

landing in other states, as well as the fact that NMFS prohibited Carlos Rafael's fleet from fishing.

With the recent increase in the quota, and the expectation that the quota will remain at this elevated level through at least 2021, Director Pierce was recommending that the fishery open on January 1 rather than February 1 and the possession and landing limit be increased from 500 pounds to 1,000 pounds. This is expected to provide the offshore fishery with more access to the period's available quota allocation.

Nichola then reviewed public testimony. The Buzzard's Bay hearing was dominated by inshore summertime (Period II) fishermen. These fishermen expressed concern that this action would impact the quota allocation available to the Period II fishery. DMF was confident that landings can be monitored to keep the Period I fishery within its target allocation thereby ensuring the Period II allocation is unaffected. There was also some concern that additional Period I landings could negatively impact the ex-vessel value during Period II. DMF did not agree with this; low ex-vessel value during the summer of 2019 was likely due to the increase in the coast-wide quota putting more fluke in the seasonal supply chain. However, DMF intended to inform its Seafood Marketing Program that there was an emerging interest in improving the local marketing of certain species to enhance local summertime demand. DMF also intended to host an ad hoc meeting this winter to discuss the management of the Period II fishery moving forward.

Chairman Kane opened the recommendation up for debate.

Sooky Sawyer asked about the timing of the fluke fisheries. Dan McKiernan stated the Period I fishery occurs from January 1 – April 22 when the fish are primarily offshore in federal waters. Then the Period II directed fishery begins on June 10 when fluke are typically inshore in state-waters. The Period II fishery usually closes by the end of the summer or early fall when the fish are still inshore. However, this year, it appears the Period II fishery will remain open until early winter. This will allow the offshore fishery access to this year's quota again. Nichola Meserve added that unlike scup, there are not state and federal quota management periods. The quotas are allocated to the states and each state is responsible for managing that quota. Massachusetts targets the Period I fishery taking 30% of the quota and the Period II fishery has access to whatever remains.

Mike Pierdinock asked what percentage of the Period I landings in prior years came from Carlos Rafael. Jared Silva stated that he did not have that data on hand, and it was likely confidential. However, having administered the previously described weekly limit pilot program, Rafael's fleet received a majority of the Letters of Authorization issued. Mike P. noted that Carlos was on the verge of selling his fleet. He was interested in DMF intended to transfer state endorsements with this transfer. Director Pierce stated that DMF would accommodate the transfer the state permits with the sale of the federal permits. Dan McKiernan added that if the federal permits are moved, but the state permits are not, then the vessel will not have a state landing permit. This forces the vessel to either discard the fish or land fish in other states where they may

hold permits. DMF wants to avoid regulatory discarding and encourage the landing of fish in Massachusetts.

Lou Williams stated that an unintended consequence of catch shares is that there is a lack of supply of local fish getting to the markets on a consistent basis. This lack of consistency in the supply chain reduces demand and hurts ex-vessel value. In turn, fishermen become less profitable and consolidation occurs. He supported the Director's recommendation because it would allow the offshore fleet to bring in the fish and build a market. In turn, having a market may help out the inshore summertime fishermen, as there may be more demand for the additional quota.

Lou then brought up that the inshore fleet was interested in increasing the number of open fishing days per week. He noted that while they did not support this measure a month prior, fishing conditions were decent and they wanted to take advantage of good weather days, in anticipation of inclement weather days that are typical in October.

Chairman Kane stated that this was off topic. The Director and the Chair were amenable to addressing this topic later in the meeting. Director Pierce stated he would confer with staff and determine what, if anything, could be done.

The Chairman asked for a motion. **Bill Doyle made a motion to adopt the Director's recommendation and the motion was seconded by Mike Pierdinock.** No further comments were made. The Chairman called the motion to a vote. **The motion passed unanimously.**

Director Pierce stated that DMF was scheduled to meet with Representative Cabral (New Bedford) to revisit potentially allowing Period I fishermen to possess trip limits from multiple states while transiting Massachusetts' waters and offloading the state's landing limit. He expected to discuss this further with the MFAC at their October meeting.

Ocean Quahog Trip Limits

Deputy Director McKiernan reviewed the Director's recommendation memorandum. The Director recommended the MFAC vote in favor of reducing the state-waters ocean quahog dredge trip limit from 26 cages to eight cages. This recommendation was consistent with a recent industry based petition. DMF attempted to solicit public comment on this petition on multiple occasions, including the most recent public hearing, and no comment was submitted. This indicated to Dan that the industry did not object to the proposal.

Dan added that the ocean quahog resource in state-waters is typically sparse. However, in the past there have been large discrete sets. The revised trip limit would allow small dredge boats to fish on these discrete sets for extended periods of time. It would also make it less profitable for larger vessels displaced from the federal Nantucket Shoals surf clam dredge fishery to become active in state waters, which addressed the petitioner's concerns. Additionally, it could mitigate potential gear conflicts if the

quahogs are abundant in areas where there is a high density of fixed fishing gear (e.g., Cape Cod Bay).

Tim Brady asked what type of unit a cage represented. Dan stated that it was a volumetric equivalent of about 23 bushels.

The Chairman asked for a motion. **Bill Doyle made a motion to adopt the Director's recommendation and the motion was seconded by Tim Brady.** No further comments were made. The Chairman called the motion to a vote. **The motion passed unanimously.**

Regulatory Housekeeping

Jared Silva reviewed the Director's recommendations. He noted that there were three separate recommendations to codify longstanding declarations and permit conditions. First, DMF recommended the horseshoe crab bait harvest closure in Pleasant Bay be adopted as a regulation; this was first adopted in 2006. Second, DMF was recommended adopting the 6,000 pound spiny dogfish trip limit as regulation; this has been the trip limit since 2016 and is expected to remain in place through at least 2021. Lastly, as the moratorium on the commercial harvest of northern shrimp was expected to endure given environmental factors and DMF recommended adopting this moratorium in regulation. Jared suggested that rather than voting on each item individually, the MFAC should vote to adopt them in a single motion. No objections were raised to this approach.

No comments were made. The Chairman asked for a motion. **Lou Williams made a motion to adopt the Director's recommendations and the motion was seconded by Sooky Sawyer.** The Chairman called the motion to a vote. **The motion passed unanimously.**

Period II Commercial Fluke Open Fishing Days

Following lunch, DMF and the MFAC revisited prior discussion regarding potentially adjusting the commercial fluke open fishing days. While this discussion and decision occurred later in the meeting it is memorialized in this section as it was an action item.

Director Pierce recommend adding Saturdays as an open commercial fluke fishing day during the period of September 21 – October 31.

At the August 2019 MFAC business meeting, DMF and the MFAC considered an action to increase in the number of open commercial fishing days. However, Director Pierce decided to forgo any action to increase the number of fishing days per week due to opposition from the commercial trawl fleet over market concerns. At that time, these fishermen were concerned that adding more fishing days per week would increase the supply of fish and negatively impact ex-vessel value, which was reportedly low already. This decision to take no action followed a July 31 – August 14 public comment period.

However, Lou Williams was informed by members of the trawl fleet that they would support an increase in the number of open commercial fishing days to help mitigate against worsening fall weather. Deputy Director McKiernan reported that he had similarly heard this from some trawlers.

Dan noted that certain dealers previously commented on the proposal to increase the number of fishing days and they stated a preference to not send trucks to Cape Cod to buy fish on Fridays and Saturdays because this fish would not get to market until Monday. However, most of the trawl fleet was utilizing the pilot program that allowed them to land multiple day limits. By extending the fishing week to include Saturday, then Saturday's fish could be landed on Sunday and this would address these market concerns.

Mike Pierdinock strongly objected to the recommendation. He felt that this would increase commercial fishing effort on the weekend and negatively impact recreational fishing activity. He stated that he would not support any adjustment to the commercial fishing schedule unless it came after the closure of the recreational fluke fishery on October 8. Tim Brady agreed with Mike P. Tim noted that they were only asking to forgo this change for three weeks.

Lou Williams argued that if the change did not go into effect until mid-October it would not provide much relief to the commercial fishery. Weather and offshore migration would likely constrain the small boat dragger fleet's ability to target this fish in the second half of October. Lou added that he did not think this would increase fishing effort and landings, but provide the fleet with a greater ability to fish around the weather. Sooky Sawyer agreed with Lou. He stated that given fall weather the commercial fleet would not likely fish all six open days.

Mike P. stated that Saturdays are the most popular recreational fishing days and critical days during the fall for the for-hire fishery. If the MFAC were to add Saturdays as a commercial fishing day, then both the commercial and recreational fleets would be fishing side-by-side on nice weather days. Trawl activity could disrupt where fish are located and how the fish are feeding. In turn, catch in the recreational fishery may be negatively affected. Chairman Kane questioned if there would be much spatial overlap between the commercial and recreational fleet, as most trawlers were fishing east of Nantucket. Mike P. stated that the larger fish were currently in this area and he expected this is where the for-hire fleet would be fishing.

Kalil Boghdan asked how the recommended change may impact quota utilization. Jared Silva stated that the recommended action was more focused on providing additional flexibility to the commercial fishery, than it was to harvest the remaining quota. Jared expected that whatever remained of the 2019 commercial quota would likely be taken by the offshore fishery in November or December.

Kalil then asked how this may impact regulatory discarding. Jared Silva and Dan McKiernan stated that the commercial minimum size is 14" and the minimum mesh size

is 6.5” and explained that based on these dynamics there is very little catch and regulatory discarding of undersized fish.

The Chairman asked for a motion. **Lou Williams made a motion to adopt the Director’s recommendation and the motion was seconded by Sooky Sawyer.** No further comments were made. The Chairman called the motion to a vote. **The motion passed 4-3 with the Chairman casting the deciding vote.**

DISCUSSION ITEMS

Decision Not to Adjust 2019 Commercial Striped Bass Limits

Director Pierce reminded the MFAC that at the August 2019 MFAC business meeting he decided to forgo an action to increase the number of open commercial striped bass fishing days per week due to recent increases in daily landing rates that indicated that such adjustments may be premature. At that time, the Director stated he would continue to monitor landings and if landing rates were to slow again he would consider increasing the number of open commercial fishing days. Any increase in the number of open commercial fishing days would come with an 18% reduction in the commercial quota; this would reset the 2019 commercial quota at the expected 2020 level (approximately 713,000 pounds) to account for recent benchmark stock assessment that found striped bass to be overfished with overfishing occurring.

David stated that dealer reports from mid-August and mid-September indicate that daily landing rates dropped from their late-July and early-August peak. Based on prior history, he expected landing rates would continue to wane through the remainder of the season. David speculated that if he were to increase the number of open fishing days, the commercial fishery would still be unlikely to land a revised 713,000 pound quota this year.

Then Director Pierce informed the MFAC that he would not be recommending increasing the number of open commercial fishing days. This was largely driven by concerns about the status of the resource. Additionally, David expected that an action to increase commercial fishing access would stoke anger among recreational fishermen, which would be counterproductive to this winter’s goal of adopting management measures to rebuild the resource.

Mike Pierdinock objected to a statement made by David in his verbal summary and memorandum. Mike P. noted that the recreational fishery did not universally object to providing additional opportunities for commercial fishermen to harvest their quota. These objections came from a vocal segment of the recreational fishery that appeared to be a coordinated effort to stop such an action from occurring.

Lou Williams agreed with the Director’s decision. However, Lou added that local availability is not a good indicator of overall abundance and the presence and absence of fish in certain areas is cyclical.

Mike P. agreed with Lou and stated that the intuitive reaction of many fishermen is to see a lack of fish in places where they usually catch them and assume it is indicative of the stock. However, there are a number of factors (e.g., forage, predators, environment) that may be affecting where the fish aggregate. Cooler waters and bait availability were likely driving good fishing conditions off Block Island and along the North Shore. Conversely, the presence of seals and sharks combined with warm water temperatures likely limited the availability of striped bass around Cape Cod. Mike P. did note that catch coast-wide was reflecting the year-class and size structure data in the stock assessment, which he thought gave additional legitimacy to the assessment's findings.

Kalil Boghdan was interested in what was driving the lower than usual striped bass landings over the past two years, specifically, whether it was a product of abundance or changes in effort and participation. Mike A. stated that DMF would look into fishery performance over the fall and winter. However, he suspected the decrease in commercial harvest rates is likely attributable to both the availability of fish in state-waters and participation in the commercial fishery. Environmental factors are likely keeping striped bass from aggregating around Cape Cod, and this imposed over a small stock size is likely driving down effort and participation. Local availability is often the driving factor in participation and harvest in recreational fisheries, and he felt this would also be true for an open entry rod and reel commercial fishery like striped bass. Dan McKiernan added that the state's current commercial management system was implemented at a time when the fish were highly abundant around Cape Cod and it was designed to slow catch rates and extend the length of the commercial season. This management system likely has a limiting effect on landings now that the fish are less abundant.

Chairman Kane stated that Director Pierce's decision to take no action was short-sighted. Ray favored taking action to increase the number of open commercial fishing days. He felt this would provide commercial fishermen with greater flexibility to fish around worsening fall weather. Additionally, the fleet would be afforded more access to the available quota, particularly as DMF was projecting they would not land a revised 713,000 pound quota with additional fishing days provided. David respected the Chairman's point of view, but disagreed.

Mike P. and Mike A. then briefly discussed the format of the upcoming ASMFC Striped Bass Board meeting. Mike A. suggested that interested parties speak at the public hearing and submit written public comment.

Upcoming ASMFC-MAFMC Meeting

Nichola Meserve informed the MFAC that the ASMFC and MAFMC were scheduled to jointly meet on October 8 and 9. The main purpose of this meeting is to set the 2020 and 2021 commercial quotas and recreational harvest limits for scup, black sea bass, fluke and bluefish. There are new operation stock assessments for scup, sea bass, and bluefish. The Council's Scientific and Statistical Committee (SSC) recommended increasing the scientific uncertainty buffers for bluefish and black sea bass due to several factors, including MRIP's influence on these stock assessments. The Monitoring

Committees had met earlier in the week to make recommendations for the Council/Boards to review.

Black Sea Bass

The black sea bass assessment is strong and annual catch limits will increase for 2020 and 2021. Based on the Monitoring Committees recommendations, Nichola projected that Massachusetts can expect a 55-65% increase in its commercial quota. DMF will hold meetings over the winter to discuss how to manage the commercial fishery to account for this sizeable increase in the quota. Despite this increase in overall catch limits, it is likely that the recreational fishery will not be afforded similar liberalizations. While the recreational harvest limit will be increased by a similar amount, recreational landings may need to decrease from 2018 to avoid more restrictive measures. Preliminary 2019 MRIP data (complete through Wave 3) show harvest is lower in comparison to 2018, but this trend may not continue through Waves 4–6. At present the recreational/commercial allocations are 51% to 49% split. Applying the revised MRIP data to the historic reference period would result in a 55% to 45% split; not enough of a change to avoid a recreational cut on its own.

Scup

The annual catch limit for scup is expected to remain close to status quo for 2020. There will likely be a small cut to the commercial quota, but this may not impact the commercial fishery in Massachusetts given that the current quota is underutilized by about 50%. However, the recreational fishery may be facing potentially substantial constraints on season and/or bag limit. The recreational harvest limit for 2020 could be set in the 5 to 7 million pound range, whereas MRIP data shows a coast-wide harvest in 2018 of 13 million pounds and harvest in 2019 through Wave 3 is up 7% comparatively. While the bag limit is high, few anglers are taking it, so changes could be substantial.

The recreational/commercial allocation is set at 22% to 78% split, and is largely the cause of what would necessitate substantial cuts to the recreational fishery while the commercial quota has been vastly underutilized. Director Pierce and Deputy Director McKiernan noted that these allocations were based on data from the 1980s when there was a substantial commercial fishery and market demand for scup. These conditions no longer exist due to market and regulatory reasons. Accordingly, commercial fisheries are not harvesting a substantial quantity of quota, while recreational fisheries are now at their limits.

Fluke

Annual catch limits for fluke will remain status quo in 2020. DMF will be meeting with its summertime inshore commercial fishery this winter to discuss fluke management. The 2020 recreational harvest regulations will be set in response to 2019 MRIP data. Through Wave 3, MRIP shows that coastwide recreational harvest is down around 30% compared to 2018. If this trend were to continue, DMF may be able to liberalize its harvest limits for 2020.

Bluefish

Bluefish is now considered overfished and the catch limits for 2020 will be reduced. MRIP data indicates that the recreational fishery will take its entire 2020 recreational harvest limit. Accordingly, there will be no transfer of recreational harvest to the commercial fishery next year, further reducing the commercial quota. However, this may have little impact on existing commercial fisheries because the quota is underutilized. New constraints will be placed on the recreational fishery, yet these adjustments will need to be modeled after more complete 2019 data are available. Nichola added that Massachusetts 2019 Wave 3 MRIP harvest was down 91% compared to 2018, but there were increases in harvest in other states, particularly North Carolina and Florida, resulting in a coastwide increase thus far.

Tim Brady asked if Massachusetts had a recreational bluefish quota. Nichola stated that it did not. The coast-wide harvest is limited by a recreational harvest limit and controlled by a 15-fish bag limit (10 in MA). Tim then asked how the recreational fishery can transfer fish to the commercial fishery. Nichola stated that this is done on a coast-wide basis when an underage of the recreational harvest limit is projected and thus does not have a constraining effect on the recreational fishery.

Deputy Director McKiernan stated that MRIP adopted a new method for incorporating effort data over the last few years and when the MRIP data were recalibrated it twerked assessments. For some fisheries, like fluke, this just created a proportional increase in estimated biomass. For other fisheries, it shows the scale of the recreational fishery is far more substantial than previously estimated.

Director Pierce stated that the ASMFC and MAFMC are going to have to make difficult decisions regarding commercial and recreational allocations. He anticipated this would have to be done through an Amendment process, which would take at least a year or two. Consequently, other processes, such as Secretarial action on an emergency basis, were being preliminarily discussed to provide more immediate relief.

Ray Kane, Tim Brady, and Mike Pierdinock agreed that changes to the commercial and recreational allocations are necessary. Mike P. warned that if the recreational fisheries, particularly for scup and black sea bass, are required to take substantial cuts despite continued high abundance it would further erode faith in the management system, particularly within the for-hire industry. Mike P. urged DMF to consider allocating unused commercial quota to its recreational fishery and separating the for-hire mode from the private angler mode. He felt that with these potential cuts, coupled with the pending adjustments to the recreational striped bass limits and the ongoing cod and haddock issues in the Gulf of Maine, could cripple the state's for-hire industry.

Period II Fluke Pilot Program Update

Deputy Director McKiernan stated that following the August MFAC DMF staff immediately implemented pilot program to allow trawlers to fish on consecutive open fishing days without having to land fish on a daily basis. Participating vessels may possess and retain up to 600 pounds of fluke per two-day trip, provided they do not retain more than 300 pounds per day. This allows vessels to lay-up overnight near

Nantucket to reduce their steaming time and overhead costs. Fish taken on the first day of the trip is to be segregated in a container that is sealed with a DMF issued tag to prevent non-compliance with the daily limits. The program has been well received, with about twenty vessels obtaining an LOA to participate.

Mike P. asked if this program would be discussed at the winter meeting with Period II fishermen. Dan stated that it would.

Other Public Hearing Items

Deputy Director McKiernan stated that DMF was delaying final rule making to establish an April 29, 2019 control date for the LCMA1 lobster and crab trap fishery. Dan reminded the MFAC that this control date was approved by the ASMFC's Lobster Management Board at their spring 2019 meeting in anticipation of forthcoming right whale conservation regulations. However, over the summer it became apparent that the state of Maine and its lobster industry intended to fight further right whale conservation measures and it was unclear if they were going to adopt this control date. When DMF took public comment on control date proposal it was apparent that Massachusetts fishermen did not support enacting the control date without Maine and New Hampshire also implementing it. Accordingly, this issue was being tabled for the time being.

Jared Silva stated that DMF would wait for the ASMFC's Coastal Shark Board to meet in late October before proposing any final coastal shark regulations.

Mike P. stated that he was corresponding with NMFS regarding shark possession limits and he would forward this correspondence to Jared. Additionally, Mike noted that federal rules do not prohibit fishermen from targeting white sharks in federal waters, but fishermen required to released them if caught, whereas state rules prohibit targeting and landing white sharks. If DMF were to match federal rules, he thought DMF may want to address that discrepancy. Mike P. and Lou Williams then briefly discussed the observed increase in the local presence of sharks north of Cape Cod this past summer.

Commercial Menhaden Management

Deputy Director McKiernan stated that DMF considered increasing the menhaden trip limits from 6,000 pounds to 12,000 pounds to help facilitate the harvest of the remaining 2019 commercial quota. However, rather than increase the trip limit, DMF was working to obtain a transfer of up to 800,000 pounds of quota from Connecticut. This would increase the state's overall quota and commercial landings would be below the 95% quota threshold. Accordingly, DMF would be able to reopen the fishery with a 25,000 pound trip limit and the fishery would likely be able to operate at this level for the next few weeks until the fish migrated out of state-waters.

Sooky Sawyer asked how soon the quota transfer would occur. Nichola speculated that it would occur on either Friday, September 20 or Monday, September 23.

Chairman Kane and Sooky Sawyer briefly discussed bait prices and the 2019 bait

market. Sooky noted that one issue with the menhaden fishery in New England is that it did not overlap with the fall run for the lobster fishery, when bait is in high demand.

Mike P. asked Nichola to review prior quota transfers this year. Nichola stated that DMF's initial 2019 commercial menhaden quota was set at about 6 million pounds. In late August, DMF obtained a quota transfer of 500,000 pounds combined from Connecticut and Rhode Island. This allowed the fishery to continue to operate at the 25,000 pound trip limit through most of September. Now DMF was looking to obtain an additional 800,000 pounds from Connecticut to keep the fishery open at the 25,000 pound trip limit level until the fish migrate out. Dan added that the 25,000 pound trip limit accommodates the small scale seine fleet conducted onboard modified lobster boats and is principally sold locally as lobster bait.

Mike P. asked how this may impact forage available to the commercial bluefin tuna fishery, which reopens on October 1. Lou Williams did not expect it would have much of an impact given that this fishery is being conducted in inshore areas and not out in open waters.

COMMISSION MEMBER COMMENTS

Bill Doyle asked if the MFAC would be involved in the hiring process for the next Director. Commissioner Amidon stated that he intended to involve MFAC members.

Sooky Sawyer asked why commercial could not fish recreationally under their commercial permit but for-hire fishermen could. Jared Silva explained that the purpose of the recreational fishing permit is to develop a registry of anglers to estimate effort. The for-hire fishery is part of the recreational fishing sector and the for-hire permit is a recreational fishing permit. Therefore, the for-hire permit places the permit holder on the registry and requiring they obtain a second permit would be redundant. This is not true for the commercial fishery, which is managed as an entirely separate sector.

Lou Williams asked if by February 2020 DMF could provide an update on whether or not the state-waters groundfish fishery would be subject to a closure. Story Reed indicated that DMF's Statistics Project was already working on this analysis and he expected it a determination could be made prior to February.

Lou noted that DMF provides an LOA to draggers participating in the Nantucket Sound mixed trawl fishery to land a bycatch of horseshoe crabs if they do not hold a limited entry horseshoe crab endorsement. With the increase in the fluke quota, the horseshoe crab quota closed early forcing the discarding of crabs later in the season. Accordingly, there was some interest in DMF potentially adjusting this so that horseshoe crab permit holders can continue to land 300 crabs per trip, and LOA holders would have a lower limit.

Tim Brady brought up the recreational Gulf of Maine cod fishery. He stated that the fishery opened on September 15 for the first time in three years. He was grateful for this

opportunity and was hopeful the recreational fishery would have a longer season in future years.

Mike P. stated that the for-hire fleet was closely monitoring their catch and effort for Gulf of Maine cod this fall in order to compare this to MRIP data, since the poor weather during the second half of September had few vessels leaving the dock.

Chairman Kane thanked the MFAC members for the attendance. He encouraged them to attend the upcoming ASMFC striped bass hearings, Seafood Day at the State House, and the Annual October ASMFC meeting in New Hampshire.

ADJOURNMENT

The Chairman requested a motion to adjourn. **Bill Doyle motioned to adjourn the September 19, 2019 MFAC business meeting. The motion was seconded by Lou Williams. The motion was approved unanimously and the meeting was adjourned.**

MEETING DOCUMENTS

- September 19, 2019 MFAC Business Meeting Agenda
- August 15, 2019 MFAC Business Meeting Draft Minutes
- Retail Farmer's Market Permit for 2020 Decision
- Commercial Tautog Permitting Decision
- Commercial Tautog Tagging Program Recommendation
- Final Recommendation to Liberalize the Fluke Period I Limits for 2020
- Final Recommendation on Ocean Quahog Trip Limits
- Regulatory Housekeeping Recommendations
- 2019 Commercial Striped Bass Open Fishing Days
- October 2019 MAFMC Meeting Agenda
- Period II Fluke Pilot Program Update
- Other Items Reviewed at September 2019 Public Hearings

FUTURE MEETINGS

9AM

October 17, 2019

DFW Field HQ

1 Rabbit Hill Road

Westborough, MA

9AM

November 14, 2019

DFW Field HQ

1 Rabbit Hill Road

Westborough, MA

9AM

December 19, 2019

DFW Field HQ

1 Rabbit Hill Road

Westborough, MA