



**MARINE FISHERIES ADVISORY COMMISSION
BUSINESS MEETING AGENDA**

10:30AM

November 17, 2023

**DMF's South Coast Field Station at SMAST
836 S. Rodney French Blvd
New Bedford, MA 02747**

1. Call to Order and Routine Business (10:30 – 10:45)
 - a. Introductions and Announcements
 - b. Review of November 2023 Business Meeting Agenda
 - c. Review and Approval of September 2023 Draft Business Meeting Minutes
2. Comments (10:45 – 11:00)
 - a. Chairman
 - b. Law Enforcement
 - c. Commissioner
 - d. Director
3. Action Items (11:00 – 11:15)
 - a. Recreational Cod and Haddock Limits
 - b. In-Season Adjustment to Period I Summer Flounder Limits
4. Items for Future Public Hearing (11:15 – 11:45)
 - a. Proposals to Amend Shellfish Harvest and Handling Rules
 - b. Proposals to Amend Permit Transfer Rules
 - c. Update on Proposed Lobster Regulations and Addendum XXVII
5. Discussion Items (11:45-12:45)
 - a. Interstate Fisheries Management Update
 - b. Federal Fisheries Management Council Update
 - c. Quota Managed Species Update
 - d. Commercial Surf Clam Industry Update
 - e. MFAC Law Enforcement Focus Group
6. Other Business (12:45 – 1:00)
 - a. Commission Member Comments
 - b. Public Comment
7. Adjourn (1:00)

All times provided are approximate and the meeting agenda is subject to change.
The MFAC may amend the agenda at the start of the business meeting.

The presentation of the 2023 Belding Award will immediately follow the adjournment of the November MFAC business meeting.

Future Meeting Dates

December 19, 2023
via Zoom

MARINE FISHERIES ADVISORY COMMISSION

Tuesday, September 19, 2023

DFW Field Headquarters

1 Rabbit Hill Road

Westborough, MA 01581

In attendance:

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

Department of Fish and Game: Commissioner Tom O’Shea

Division of Marine Fisheries: Daniel McKiernan, Director; Bob Glenn, Deputy Director; Kevin Creighton, Assistant Director; Jared Silva; Julia Kaplan; Justin Bopp; Nichola Meserve; Melanie Griffin; and Anna Webb.

Members of the Public: Phil Michaud, Domenic Santoro, and Jamie Bassett

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Ray Kane thanked everyone for their attendance and called the September 19, 2023 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

REVIEW OF SEPTEMBER 19, 2023 BUSINESS MEETING AGENDA

Chairman Kane asked if there were any amendments to the September 19, 2023 MFAC business meeting agenda. No amendments were proposed.

REVIEW AND APPROVAL OF AUGUST 16, 2023 DRAFT BUSINESS MEETING MINUTES

Chairman Kane asked if there were any amendments to the August 16, 2023 draft business meeting minutes. No amendments were sought.

The Chairman then requested a motion be made to approve the minutes. **Sooky Sawyer made the motion to approve the August 16, 2023 business meeting minutes. Mike Pierdinock seconded the motion. The motion passed unanimously 6-0-1 with Chairman Kane abstaining.**

CHAIRMAN’S COMMENTS

Chairman Ray Kane welcomed everyone and thanked the Commission for their continued attendance. He then turned the floor over to Commissioner O’Shea.

COMMISSIONER'S COMMENTS

Commissioner O'Shea started his comments by stating he appreciated everyone travelling to Westborough for today's meeting.

He then discussed the Healey Administration's executive order on biodiversity, which would be formally announced at DFW's Westborough facility on September 21. DFG is developing a strategic plan that to implement the Governor's biodiversity goals.

Tom reported that he has received numerous comments from the conservation community regarding the horseshoe crab fishery. Accordingly, he has asked Director McKiernan to revisit the management of the horseshoe crab fishery at a future MFAC business meeting.

The Commissioner attended two recent events with DMF. First, was the Meet the Fleet event hosted in Menemsha by the Martha's Vineyard Fishermen's Preservation Trust. The next was a retirement party for Jeff Kennedy and Diane Regan, two long-time employees of DMF's Shellfish Program.

DIRECTOR'S COMMENTS

Director Dan McKiernan started his comments by providing the MFAC with an update on right whale conservation and management. NOAA announced a grant program to enhance right whale protection efforts through which DMF will receive about \$4.2 million each year for the next several years. These funds will be in part used to enhance right whale surveillance programs. NOAA is also proceeding with rulemaking to seasonally close the so-called "Massachusetts Bay Wedge"—an area of federal waters east of Boston between DMF's state waters closure and the federal Massachusetts Restricted Area. Director McKiernan supported this action and sent a letter to NOAA urging them to enact the closure for 2024.

DMF's Seafood Marketing Program is finalizing on a promotional video to promote Massachusetts lobster fishery and recognize the industry's work and sacrifices to protect right whales. Dan was hopeful this would help counteract some negative press from the red listing of lobster by the Monterey Bay Aquarium.

With regards to offshore wind, he had the opportunity to tour the south fork wind array and discussed the distances between the turbines. He also provided an update on Gulf of Maine wind projects (which will be using floating platforms), as well as some impact mitigation programs being implemented to assist displaced fishers. Several states are looking into an MOU that would allow for various mitigation monies to be placed into a regional common pool.

The Director welcomed questions from the MFAC.

Sooky Sawyer expressed his disappointment that DMF advocated for the federal wedge closure. He also argued DMF should more strongly advocate for the interests of LMA2 lobster trap fishers who are subject to substantial federal time-area closures south of the islands to protect right whales during their peak fishing season.

Dan McKiernan and Bob Glenn explained that DMF advocated that NOAA Fisheries adopt a smaller closure area south of Nantucket. However, despite DMF's objections, NOAA moved forward to implement the larger closure area favored by conservation organizations.

Ray Kane asked who is overseeing the budget for right whale surveillance and monitoring. Bob Glenn stated this would fall under his purview. Ray Kane hoped this data, combined with federal lobster tracker data, would be used to make closures more surgical in the future.

Bill Amaru asked several clarifying questions regarding right whales, data that will come from tracking right whales, and how the data will be used once accumulated. Bob Glenn provided clarification on each topic.

Mike Pierdinock asked about the AI being utilized within the whale tracking technology. Bob Glenn stated that the AI is designed to differentiate between whale sounds and can detect cod and other species as well.

Ray Kane asked when DMF intended to begin to deploy acoustic monitoring technology. Bob stated this would likely be done this winter.

FISHERY PERFORMANCE AND QUOTA MANAGED SPECIES UPDATE

Anna Webb provided the MFAC with a current year-to-date performance of its commercial quota managed fisheries for black sea bass, bluefish, summer flounder, scup, spiny dogfish, tautog, and menhaden. DMF will re-evaluate the management of some of these commercial fisheries this fall given performance this year and quota changes anticipated for 2024. Anna Webb stated that quota for menhaden is tracking much lower compared to previous years. Anna then discussed ex-vessel value and landings across all species. She noted that landings have been lower and therefore ex-vessel value is lower. Anna welcomed questions from the Commission.

Bill Amaru asked about where the data source for quota monitoring. Anna stated it tracks the primary purchase, meaning that fish being sold by commercial fishers to seafood dealers.

Ray Kane asked if the seafood marketing program is doing outreach for scup and other underutilized species. Dan stated that Wendy Mainardi is working to advertise underutilized species.

Mike Pierdinock asked about gear types being factored into quota utilization as well as size of fish being caught. Anna Webb provided an in-depth clarification for Mike regarding gear-types.

ACTION ON COMMERCIAL MENHAEN IN-SEASON ADJUSTMENT

Nichola Meserve presented on DMF's proposed commercial menhaden in-season adjustment. By way of background, the 2023 menhaden quota has been largely underutilized due to lack of inshore availability, with less than 25% of the quota being landed. While it is unlikely that the fish will show up in large quantities during the fall season, there may be opportunities for vessels fishing offshore to encounter large quantities of menhaden and land this fish in Massachusetts. To wit, Nichola recommended the MFAC approve an in-season adjustment to: (1) suspend the trip limit trigger that would reduce the trip limit from 120,000 pounds to 25,000 pounds once 50% of the quota is taken and instead allow commercial fishers to land up to 120,000 pounds until 90% of the quota is taken; and (2) maintain the Friday closure to purse seining during any period when the trip limit is at 120,000 pounds. Nichola concluded her comments by summarizing some public comments received.

Kalil Boghdan asked clarifying questions regarding the quota and some user group conflicts between the commercial and recreational fishers. Nichola Meserve and Jared Silva responded to Kalil.

Shelley Edmundson asked about the differences in catch between Massachusetts and Maine landings. Dan and Nichola reported there were some fish available along Downeast Maine. However, it appeared the large biomass of fish bypassed our inshore waters this year. It was speculated that this may have been environmentally driven (e.g., vernal rainfall). Additionally, in the northeast, the menhaden fishery tends to be episodic and local abundances of menhaden may dramatically vary from year to year.

Kalil asked about fishermen in Maine coming to fish in Massachusetts. Dan stated that he doesn't believe there will be a large influx of Maine fishers in response to this in-season adjustment. However, Massachusetts would welcome lawfully permitted carrier vessels to land fish taken offshore in Massachusetts ports.

Ray Kane asked about menhaden's geographic range. Micah Dean clarified the stock ranges primarily from North Carolina to Maine but have been observed in Canadian waters. Kalil Boghdan asked about the health of the menhaden stocks in other states. Micah explained that the recent stock assessment demonstrates the stock condition is strong. There are a large number of adult fish in the population, as evidenced by the fish being observed in New England and Canada in recent years, as older fish migrate further.

Mike Pierdinock suggested a prohibition on Friday seining in Boston Harbor to reduce user group conflicts. Dan stated he would consider including this in a public hearing proposal for 2024, but it was not part of the in-season adjustment recommendation.

Kalil Boghdan asked DMF to confirm the recommendation would only be in effect for the remainder of 2023. DMF confirmed this. Kalil then asked about the timeline for rule making for next year's regulations. Dan stated DMF will commence rule making this winter to implement changes prior to the 2024 season. This would be discussed in more detail under the next agenda item.

The Chairman requested a motion be made to approve the menhaden in-season adjustment. **Sooky Sawyer made a motion to approve the menhaden in-season adjustment, Shelley Edmundson seconded the motion. The motion passed unanimously 6-0-1 with Chairman Kane abstaining.**

ITEMS FOR FUTURE PUBLIC HEARING

Commercial Fishing Rules for Quota Managed Species Menhaden

Nichola discussed DMF's proposed draft regulatory amendments affecting menhaden fishery beginning in 2024. The rationale behind these proposals is to add more flexibility for fishery to achieve quota under wider range of resource availability conditions.

The proposals include: (1) moving the start date of the purse seine fishery back from June 15 to June 1; (2) if adopted, establish a conditional date of July 1 to start the fishery at 25,000lb trip limit if the fishery reaches the trip limit trigger to reduce the trip limit to 25,000 pounds prior to June 30; (3) clarify that the Friday closed fishing days remains in place so long as a 120,000 pound trip limit is in place; and (4) adopt a conditional date of September 1, whereby if 50% of the quota is not taken then the 120,000 trip limit remains in effect throughout the remainder of the year.

Mike Pierdinock asked the ages of the fish that are being caught and what the mesh size is. Micah confirmed that the menhaden that are caught are primarily 2-4 years old. Jared Silva stated DMF does not have a minimum mesh size for purse seines. Mike Pierdinock requested DMF consider a Friday closure in Boston Harbor as part of this public hearing proposal.

Chairman Kane suggested DMF consider an earlier season opening to ensure the quota is taken if the fish arrive early and depart as they did this year. Sooky Sawyer explained the local bait market and noted an earlier start date could exhaust the quota early resulting in bait issues for the lobster fleet.

Bill Doyle suggested DMF provide a presentation on bait fisheries and bait fish usage in Massachusetts.

Ray Kane asked about the future public hearing schedule. Jared Silva stated DMF would likely host a series of public hearings in February and March to facilitate rule making prior to May 1.

Summer Flounder

Jared Silva discussed DMF's proposed draft regulatory amendments affecting the commercial summer flounder fishery for 2024. These proposals respond to an anticipated 60% cut in the annual commercial fishing quota for 2024 and 2025 and consider recent fishery performance.

Jared stated that despite this large quota cut, the quota was underutilized in recent years, and drastic management adjustments are likely not warranted. Accordingly, DMF was proposing to reduce the April 23 – August 31 trip limit by 100 pounds for all gear types and the September trip limit by 200 pounds for all gear types. Ultimately, the choice is whether or not industry prefers to maintain higher daily limits and potentially close the fishery during the summer or take a slight cut to daily fishing limits in hopes of maintaining the fishery into September.

Jared noted that the September 14 memorandum to the MFAC indicated DMF did not intend to take action to amend the limits during Period I (January 1 – April 22). However, following conversations with industry and neighboring states, DMF anticipates proposing to reduce the Period I trip limit from 10,000 pounds to 5,000 pounds. While regulatory amendments cannot be implemented in time for the 2024 season, DMF would consider using its in-season adjustment authority to facilitate such a change for next year.

Kalil Boghdan asked why the quota was not been reached in several years. Jared Silva explained the various environmental and economic factors affecting the inshore summer flounder fishery, which DMF previously documented in a variety of presentations and memorandum. Nichola Meserve also added that the prior stock assessments likely overestimated biomass and inflated quotas. This is evidenced by the fact the most recent stock assessment shows summer flounder experienced overfishing in 2022 despite coastwide quota underages.

Sooky Sawyer asked when a majority of the quota is caught. Jared stated DMF has historically allocated 30% of the quota to the Period I fishery and remaining quota to the Period II fishery. However, in recent years, the Period I fishery has been taking most of its allocation, while the Period II fishery has been underperforming its allocation and the split in landings between the two periods is more 50-50.

Bill Amaru expressed concern over the quota cut and stated that he believes a lack of boats and effort plays a role in the quota not being met. Bill Amaru added that the horseshoe crab fishery takes place simultaneously with the summer flounder fishery. Jared Silva reassured Bill that despite the quota cut, substantial changes in management are not likely necessary and added that part of DMF's goal is to keep the summer flounder and horseshoe crab fisheries open at the same time.

Shelley Edmundson asked about the schedule for summer flounder stock assessments. Nichola stated that research track assessments are typically every two years.

Buoy Line Marking and New Rope with Tracer

Bob Glenn discussed a proposed regulatory exemption to allow commercial trap fishers to meet buoy line marking and weak rope rules if fishing fully formed weak rope that is red or red and white (candy cane) with a “MASS LOBSTER” tracer visible to the naked eye throughout. Bob Glenn commended the Massachusetts Lobstermen’s Association and Beth Casoni for their efforts on developing this buoy line.

Kalil Boghdan asked who is responsible for the costs of this rope. Bob Glenn stated that there is a portion of an annual appropriation dedicated to getting gear (weak rope and gear marking tools) to pot fishers.

Sooky Sawyer thanked DMF and the Protected Species Program for their efforts on this issue. He stated that the gear giveaways from DMF helps compliance with the weak rope regulations.

Bill Doyle asked if there was a length of vertical lines that was exempt from the weak rope rules. Bob stated that compliance with the weak rope rules is across the board and there are no exemptions based on buoy line length. determined based on rope length.

Permitting

Dan McKiernan discussed two proposals related to permitting. First, DMF is seeking to allow the electronic display of its commercial fishing permit. At present, DMF requires a hard copy of the permit be in possession, but with the new permitting system in place fishers can hold their permit electronically. Second, DMF is looking to allow latent limited entry permit endorsements to be transferred to immediate family members. This would make DMF’s transfer program for limited entry endorsements consistent with the program for Coastal Lobster Permit transfers.

Bill Doyle suggested a sub-focus group of the permitting sub-committee that focuses on getting younger fishers into the fishery. Bill Amaru echoed Bill’s sentiment and expressed concern over the aging fleet. Bill Doyle suggested alternative fisheries as being an option to get new fishers into the fishery. Shelley Edmundson suggested a revolving loan fund as an incentive to getting into the fishery.

DISCUSSION ITEMS

New England Fishery Management Council Update

Melanie Griffin provided the MFAC with an update regarding the New England Fishery Management Council. The presentation focused on federal trawl survey issues; climate change planning; management issues pertaining to scallops, red crab, groundfish, skate, and herring; and protected species management. Of particular interest to the MFAC and state-waters fisheries management was potential specifications for Gulf of Maine haddock for 2024 and 2025, which may result in DMF having to make some regulatory adjustments for the upcoming fishing season. Melanie added that former DMF employee, Dr. Cate O’Keefe is now the executive director of NEFMC.

Review of Commercial Surf Clam Industry Meeting

Dan McKiernan provided the MFAC with brief history of surf clam management and an overview of the issues the industry currently faces. He then provided three updates relevant to surf clam management. First, the agency met with industry representatives and has initiated a pilot program to test the efficacy of electronic vessel monitors in spatial-temporal management. This may help DMF modernize its approach to spatial surf clam management and better protect sensitive habitats. Second, DMF was provided an informal review of the Center for Coastal Studies' preliminary results into the marine ecology and geology at Herring Cove Beach and the potential impacts hydraulic surf clam dredging may have on this area's marine ecology and geology. While most of the hypotheses tested, particularly regarding fishery impacts were inconclusive, the study found that Herring Cove was not a high energy area and past dredge tracks were more persistent than expected. The final report is expected to be released soon and it may further inform DMF on how to best manage the fishery. Lastly, DMF continues to have discussions with DEP regarding jurisdictional issues and the application of the Wetlands Protection Act to commercial fishing activities.

Whelk Fishery Management

Dan McKiernan discussed whelk fishery management and stated that DMF studies have shown the channeled whelk resource is overfished and overfishing is occurring and the current size-at-harvest does not provide any protection to female spawning stock biomass. Several years back, DMF and the MFAC enacted a series of incremental gauge increases to raise the size-at-harvest to 50% size-at-maturity. The current gauge schedule increases the minimum size by 1/8" every three years and reaches the terminal gauge size in 2033.

Concerns have been expressed that this management approach is having severe negative economic impacts on the industry and will result in a female only fishery at the terminal gauge size. Accordingly, there is interest in developing potential alternative management approaches to reduce fishing mortality and enhance spawning stock biomass. To this point, DMF met with State Representative Cabral and SMAST researchers about obtaining funding for a PhD student to develop a management strategy evaluation to explore a range of potential management options for the channeled whelk resource and conch pot fishery.

Shelley Edmundson stated she believes it's a great step forward and reiterated her long standing concern that the gauge changes would result in an all-female fishery.

Ray Kane suggested a slot limit to allow for the commercial fishery to remain profitable while protecting larger spawning sized females.

Kalil Boghdan expressed concern over the status of the fishery being overfished and depleted. Bob Glenn provided an in-depth explanation of the status of the fishery and the reasons behind why the resource is vulnerable to overfishing. There was further discussion amongst Kalil Boghdan, Dan McKiernan, and Ray Kane regarding the

possible management practices to support commercial fishermen while preserving the stock.

PRESENTATION ON STRIPED BASS CITIZEN SCIENCE PROGRAM

Micah Dean provided the MFAC with a presentation on DMFs striped bass citizen science program to improve release mortality data.

Commissioner O'Shea commended DMF for their work on this project.

Chairman Kane was hopeful similar program could be emulated in other states to enhance the collection of this data on a coastwide basis and educate anglers on proper handling methods.

Mike Pierdinock commended DMF for this project. Mike P. was very happy to see the use of partnerships to help spread the message of striped bass conservation.

Kalil Boghdan was hopeful that this program will help reduce the tension between recreational and commercial fishers and help recreational fishers realize that most of the mortality in this fishery is occurring in their sector and is driven by a variety of fishing techniques and handling practices.

Ray Kane asked Micah about handling time and the vitality of the fish. Micah stated that the optimal handling time is less than 2 minutes. Ray Kane then followed up by asking about the mucus membrane surrounding the fish and what happens when the membrane is impacted. Micah stated that striped bass are hardy for the most part and the membrane is not necessarily the biggest issue.

Bill Amaru thanked Micah for the presentation and commended him for the work.

OTHER BUSINESS

Next MFAC Business Meeting and Location

Jared stated that the October meeting will be moved to November 17th in person in New Bedford and the December meeting will be held virtually on December 19th.

Commission Member Comments

Bill Doyle provided anecdotal evidence regarding water quality. He spoke to the biofouling on his aquaculture gear, as well as the variety of species of marine algae observed this year and the presence of blue crabs in the Three Bays system. Bill added that he is interested in any work DMF may be doing to better qualify biomedical horseshoe crab release mortality.

Bill Amaru stated he prefers in-person meetings and hopes that more meetings can be in-person. Ray Kane echoed Bill Amaru's comments and thanked everyone for their attendance.

PUBLIC COMMENTS

Domenic Santoro explained that commercial fishers need access to a variety of fisheries, often at the same time, to be profitable. He explained how mobile gear fishers in Nantucket Sound rely on targeting both horseshoe crabs and summer flounder during the same trip. He then highlighted how closing one fishery early negatively impacts the businesses making it more difficult to be profitable and tie fishing seasons together.

Phil Michaud sent a letter to the MFAC after the August meeting and hoped they were able to consider his concerns regarding the horseshoe crab fishery. Phil explained that the inshore dragger fleet has diminished compared to ten years ago, as profits have not increased with expenses. He appreciated DMF's working to keep the summer flounder limits high enough to make trips profitable, but he was concerned about the direction horseshoe crab management was moving in. He was hopeful that could consider increasing the biomedical quota to accommodate a longer season, particularly if the fishery could demonstrate its mortality is close to 0%.

Jamie Bassett stated that he would be willing to present to the MFAC on the biomedical horseshoe crab fishery and what he has observed during his experience handling these animals.

ADJOURNMENT

Chairman Ray Kane requested a motion to adjourn the September 19th MFAC business meeting. **Bill Amaru made a motion to adjourn the meeting. The motion was seconded by Kalil Boghdan. The motion was approved by unanimous consent.**

MEETING DOCUMENTS

- September 19, 2023, MFAC Business Meeting Agenda
- August 16, 2023, Draft MFAC Business Meeting Minutes
- Quota Managed Species Presentation
- In-Season Adjustment for Menhaden Memo
- Menhaden In-Season Adjustment Presentation
- Menhaden Public Hearing Proposal
- Summer Flounder Public Hearing Proposal
- Buoy Line Marking Public Hearing Proposal
- Buoy Line Proposal
- Permitting Public Hearing Proposal
- Surf Clam Management Update Presentation
- Striped Bass Citizen Science Presentation
- New England Fishery Management Council Update

UPCOMING MEETINGS

**November 17, 2023
10:30AM
836 S Rodney French Blvd
New Bedford, MA 02744**

**December 19, 2023
9AM
Via Zoom**

Draft



The Commonwealth of Massachusetts

Division of Marine Fisheries

(617) 626-1520 | www.mass.gov/marinefisheries



MAURA T. HEALEY
Governor

KIMBERLEY DRISCOLL
Lt. Governor


REBECCA L. TEPPER
Secretary

THOMAS O'SHEA
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: November 9, 2023

SUBJECT: **Final Recommendation on Recreational Cod and Haddock Limits**

Recommendation

I recommend the MFAC vote in favor of final regulations that establish the recreational fishing limits for cod and haddock. This action makes final the recently enacted emergency measures.

1. Gulf of Maine Cod. An open season of September 1 – October 31 with a 1 fish bag limit and 22” minimum size.
2. Georges Bank Cod. An open season of September 1 – May 31 with a 5-fish bag limit and 23” minimum size.
3. Gulf of Maine Haddock. An open season of April 1 – February 28 with a 15-fish bag limit and 18” minimum size for anglers onboard a for-hire vessel and a 10-fish bag limit and 17” minimum size for all other anglers.

Background

Effective August 14, 2023, NOAA Fisheries implemented changes to the recreational fishing limits for cod and haddock for Fishing Year 2023 (May 1, 2023 – April 30, 2024). See Table 1 for changes. This action responds to annual adjustments in the overall recreational catch limits, estimated recreational catch and effort models, data provided through NOAA’s Bio-Economic model, and input from the New England Fishery Management Council. The purpose of these changes is to optimize recreational fishing activity and ensure conservation objectives are met.

Species	Mode	Season	Bag Limit	Size Limit
GOM Cod	All Anglers	Sep 1 – Oct 31 Apr 1 – Apr 14 Sept 1 – Oct 7	1-fish	22”
GB Cod	All Anglers	Sep 1 – May 31 Aug 1 – Apr 30	5-fish	23” 22” to <= 28”
GOM Haddock	All Anglers	May 1 – Feb 28	20-fish	17”
	Private Anglers	Apr 1 – Apr 30	10-fish	
	All Anglers For-Hire	May 1 – Feb 28 Apr 1 – Apr 30	20-fish 15-fish	17” 18”

As a matter of practice, once NOAA Fisheries sets their annual limits, DMF responds and adopts complementary limits by emergency regulation. This is done to have a consistent and coherent set of regulations across state and federal jurisdictions and thereby ensure Massachusetts is not undermining federal conservation objectives (as required by federal law at 16 USC 1856) and that fish lawfully caught in the federal zone can be landed in Massachusetts ports. Accordingly, DMF adopted complementary limits by emergency regulation on September 18, 2023; these emergency regulations expire after 90-days (December 17, 2023) unless adopted as a final regulation.

To adopt these as final regulations, DMF held a public comment period from September 11, 2023 through October 13, 2023 and hosted a virtual public hearing on October 10, 2023. DMF did not receive any written public comment and the virtual public hearing closed after 15 minutes as no members of the general public were in attendance.

Recreational Cod and Haddock

Stock	Mode	Open Season	Bag Limit	Size Limit
GB/SNE Cod	All	September 1 – May 31 August 1 – April 30	5-fish per angler	≥23" ≥22" and ≤28"
GOM Cod	All	September 1 – October 31 September 1 – October 7 April 1 – April 14	1-fish per angler	22"
GOM Haddock	Private	April 1 – February 28	10-fish 20-fish	17"
	For-Hire	April 1 – February 28	15-fish 20-fish	18" 17"

GB/SNE Cod

- Shifts season by one month from Sept – May to Aug – Apr and eliminates slot in favor of min size.
- FY23 harvest target set at 249,112 pounds compared to 480,608 pounds for FY22.
- NOAA projects shifts in season and size limit coupled with season long implementation should achieve harvest reduction.

GOM Cod

- FY23 sub-ACL (423,288 pounds) NOAA's bio-economic model suggests this adequately constrains catch of GOM cod.
- Extends fall season at expense of spring season with no changes to bag or size.

GOM Haddock

- Bio-economic model showed reduction in mortality needed to stay within FY23 sub-ACL (1.34 mlbs)
- NOAA preferred split mode approach due to concerns about discarding and for-hire economics.





The Commonwealth of Massachusetts

Division of Marine Fisheries

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Secretary

THOMAS O'SHEA
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: November 9, 2023

SUBJECT: **Recommendation on In-Season Adjustment to 2024 Period I Summer Flounder Limits**

Recommendation

I recommend the MFAC vote in favor of an in-season adjustment to reduce the 2024 Period I (January 1–April 22) commercial summer flounder limit from 10,000 pounds per trip to 5,000 pounds per trip.

Rationale

This recommendation responds to an expected 56% reduction in Massachusetts' 2024 commercial summer flounder quota from just under 1.36 million pounds to roughly 600,000 pounds and the resulting Period I allocation (30% overall) from about 400,000 pounds to 180,000 pounds compared to 2023. I anticipate this trip limit adjustment will still accommodate the landing of summer flounder caught offshore during the wintertime in Massachusetts ports and the utilization of the Period's quota allocation. However, it will reduce the likelihood of the Period I fishery closing early forcing vessels to forgo summer flounder fishing or land in other states (if so permitted).

As set forth in my September 14, 2023 memorandum, DMF intends to respond to this pending quota reduction by proposing formal amendments to its commercial summer flounder regulations. Public hearings will be held during the winter, followed by MFAC review and approval, and final rules (if approved) being promulgated during the spring of 2024. While this memo did not include any proposed changes to the Period I trip limits, I reconsidered this position and at the September business meeting indicated that I would include a reduction to the Period I trip limit. This decision was informed by conversations with several prominent commercial fishers and dealers involved in the Period I fishery who supported a trip limit reduction to avoid an early season closure and neighboring states indicating their intentions to reduce their wintertime summer flounder limits. Given the timing of our anticipated regulatory process overlapping with the 2024 Period I fishery, these potential amendments would have a negligible impact for 2024. Therefore, I am recommending this in-season adjustment to affect the 2024 fishing year and the regulatory changes will then carry this limit over into the 2025 season (for which the quota is preliminarily set equal to 2024).

A written public comment period is required for any in-season adjustment and DMF conducted a written public comment period from October 26 through today, November 9. A small number of public comments were received. Comments received came exclusively from the recreational fishing sector and supported actions to reduce the commercial harvest of summer flounder. Unfortunately, DMF did not receive any written public comment from dealers or fishers who participate in the Period I fishery. This is

usually an indication the action is not opposed by industry and this presumption is supported by preliminary informal conversations DMF had with industry earlier this fall in developing this recommendation.

Overview of Quota Adjustments

Following 2017, the state's summer flounder quota went through a series of increases that raised it from its all-time low in 2017 (389,573) to an all-time high in 2022 (1.39 million pounds) with a 1.36 million pound quota for this year. This increase in the state's quota was driven by higher coastwide quotas (notably after the incorporation of revised MRIP recreational catch estimates into the stock assessment), as well as a change to the state-by-state quota allocations beginning in 2021 under Amendment 21 to the Federal Fishery Management Plan. Amendment 21 attempts to increase equity across states with regards to their quota allocations when the stock is in a strong condition as indicated by coastwide quotas that are at or above historical averages (i.e., by providing equal shares of the coastwide quota that exceeds 9.55 million pounds).

The 2023 stock assessment was released this summer and formed the basis of the 2024 specifications. This assessment shows that while the stock is still not overfished (about 83% of its biomass target in 2022), spawning stock biomass (SSB) is now trending downward again. The promising 2018 year class was much smaller than previously thought and joins the below average recruitment events that have occurred since 2011. Moreover, the stock was experiencing overfishing in 2022 (F at 103% of its threshold), despite the catch limits not being exceeded indicating that the projections associated with the previous assessment were overly optimistic. The assessment has been slightly underestimating fishing mortality and overestimating stock biomass, the effect of which was compounded by adding three years of data to the assessment model (2020-2022.).

Based on this new assessment, the Mid-Atlantic Fishery Management Council (MAFMC) and Atlantic States Marine Fisheries Commission (ASMFC) set the 2024/2025 quota at 8.79 million pounds. This is a 42% reduction from 2023's 15.27 million pound coastwide quota. This also drops the coastwide quota below the 9.55 million pound threshold for the next two years, resulting in state-by-state quotas reverting back to their baseline allocations. Accordingly, Massachusetts will only receive its 6.82% share, rather than the 8–9% we have been receiving the past three years, resulting in an expected state quota of about 600,000 pounds in 2024 and 2025.

Attachments

Written public comments

From: [Harlod Brennan](#)
To: [Fish, Marine \(FWE\)](#)
Subject: Agree to DMF of flounder
Date: Thursday, October 26, 2023 11:52:35 AM

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

I agree that with the reduction for Flounder catch for 2024

Sincerly

Harold Brenna
Saugus Ma

From: [R & G Balthaser](#)
To: [Fish, Marine \(FWE\)](#)
Subject: flounder
Date: Friday, October 27, 2023 9:30:06 AM

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Please reduce the limit of summer flounder.

Sent from [Mail](#) for Windows

From: [ARTHUR BRODEUR](#)
To: [Fish, Marine \(FWE\)](#)
Subject: Flounders
Date: Thursday, October 26, 2023 7:30:02 PM

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I agree with whatever you're recommending. You are the experts
Thank you

Sent from my iPhone

From: [Fletch1951](#)
To: [Fish, Marine \(FWE\)](#)
Date: Thursday, October 26, 2023 1:21:01 PM

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I am in favor of reducing the summer flounder commercial limit. I am also in favor of eliminating the commercial Striped Bass season altogether.

From: [Tony Salvado](#)
To: [Fish, Marine \(FWE\)](#)
Subject: Public Comment Sought on In-Season Adjustment to Decrease Period I Summer Flounder Limit for 2024
Date: Saturday, October 28, 2023 11:43:02 AM

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

All I can say is that you're ruining the Fluke fishery for recreational anglers. It appears that Black Seabass is the next fishery to be depleted by COMMERCIAL OVERFISHING. I already see the difference inshore. You ruined the Cod fishery already. Who in their right mind would spend 50-100 dollars in fuel to catch 1 Cod... REALLY. The Pollack are impossible to find in fall.

It's a shame there are no recreational lobbyists to pay people off!!!

That's all

From: [Richard Nardini](#)
To: [Fish, Marine \(FWE\)](#)
Subject: summer flounder commercial harvest reduction
Date: Thursday, October 26, 2023 12:52:11 PM

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi, legal summer flounder are very hard to come by in Buzzards bay, this reduction would likely help the situation

Period I Summer Flounder

Recommendation:

MFAC approve an in-season adjustment to reduce the 2024 Period I (January 1 – April 22) commercial summer flounder limit from 10,000 pounds to 5,000 pounds.

Background

- DMF has liberalized summer flounder limits in recent years with record quotas and underutilization.
- 2023 stock assessment shows not overfished but overfishing occurring.
- For 2024/25, the coastwide quota is being reduced to 8.79 mlb (42% compared to 2023).
- Quota drops below 9.55 mlb threshold set by Amendment 21 that results in states going back to baseline quota shares.
- MA anticipates 2024/25 state quota will be about 600,000 pounds (56% reduction compared to 2023)

Rationale

- In 2023, P1 fishery took about 326,000 pounds.
- P1 allocation (30%) will be reduced from about 400,000 pounds in 2023 to 180,000 pounds for 2024/25.
- Reducing P1 trip limit by ~50% to 5,000 pounds should reduce the likelihood of the fishery closing early and forcing vessels to forgo summer flounder fishing or land in other states (if open and permitted).
- Reduced trip limit will still be substantial enough to accommodate landing of fish taken offshore in MA.
- Public comment favored action.
- Given timing, using in-season adjustment to implement for 2023 and then will bake trip limit adjustment into regs later in 2024.





The Commonwealth of Massachusetts Division of Marine Fisheries

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MAURA T. HEALEY
Governor

KIMBERLEY DRISCOLL
Lt. Governor

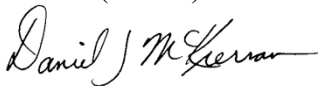
REBECCA L. TEPPER
Secretary

THOMAS O'SHEA
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: November 9, 2023

SUBJECT: **Future Public Hearing Item – Limited Entry Endorsement Transfer Amendments**

Proposals

DMF will proceed to public hearing to potentially amend its limited entry regulated fishery permit endorsement transfer regulations in the following ways:

1. Implement an Immediate Family Member Transfer Exception to allow an otherwise transferable latent limited entry permit endorsement to be transferred to an immediate family member.
2. Expand the definition of Immediate Family Member to reflect a wider diversity of family structures.
3. Relax the transferability rule for Fluke, Sea Bass, and Tautog endorsements so that they only have to be actively fished in two out of the last five years, rather than the current four out of the last five years.

Rationale

At the request of industry members, and working with the MFAC Permit Focus Group, DMF has been examining the transfer eligibility criteria for certain limited entry regulated fishery permit endorsements for the past several months. This exercise was designed to examine ways to increase access for new and existing commercial fishers to access certain fisheries. Currently, the transfer of limited entry permits and endorsements is governed by a series of long-standing laws, regulations, and policies. By regulation, most limited entry permits and endorsements need to have been “actively” fished during four out of the last five years to be eligible for transfer. In some cases, actively fished in a given year is further defined by regulation or policy with a minimum threshold (e.g. one trip limit in aggregate in a year for Fluke, Sea Bass, and Tautog endorsements). These criteria were modeled after the longstanding Coastal Lobster Permit transfer regulations.

Immediate Family Transfers

The Coastal Lobster Permit transfer regulations include an exception allowing the transfer of latent permits (i.e., those that have not been actively fished for four out of the past five years) between immediate family members. This is a long-standing exception, supported by the lobster industry. Despite DMF emulating its limited entry permit endorsement transfer regulations after the Coastal Lobster Permit transfer regulations, a similar exemption does not exist for the transfer of limited entry endorsements. In recent years, DMF has received numerous requests for immediate family member transfers on certain endorsements, and in some instances these requests have been denied because the endorsement(s) is latent

and not otherwise transferable (e.g., through [DMF's Bundling Policy](#)). Moving forward, DMF seeks to accommodate the transfer of latent, but otherwise transferable, limited entry endorsements among immediate family. We expect this will help keep family businesses and traditions intact.

Immediate Family Definition

While reviewing the immediate family member transfer exception, DMF determined its current definition of "immediate family member"¹ is outdated and does not reflect the diversity of modern family structures. Accordingly, we seek to adopt a more inclusive definition that would minimally include step and adoptive relationships, consistent with other definitions in state law and regulation.

Actively Fished Criteria for Fluke, Black Sea Bass and Tautog Endorsements

The Focus Group and DMF spent considerable time discussing approaches to relaxing DMF's permitting rules to create greater access to our fisheries. Through these discussions, DMF settled on an iterative and data-driven approach to revisiting the standard that a permit must be actively fished during four out of the past five years. At present, DMF is proposing to relax this standard for Fluke, Sea Bass, and Tautog endorsements to two out of the last five years. Fluke, Sea Bass, and Tautog endorsements are being considered first because they are quota monitored fisheries with low barriers to entry (e.g., infrastructure investment) and are accessible to persons seeking to enter the commercial fishing industry. Additionally, rod and reel fishing effort targeting these species are variable from year-to-year and this can in turn make the current four out of five year standard a high bar to reach.

At the recommendation of the Focus Group, DMF conducted an analysis of each of the three endorsements to determine the potential number of transferable endorsements at various thresholds between one out of five years to four out of five years. Actively fished in a given calendar year for each of these endorsements is defined by existing [DMF policy](#) as having landed and sold at least one trip limit, in aggregate, during that calendar year. While there have been recent annual adjustments to possession limits for fluke and black sea bass, the following thresholds were used as proxies for this analysis: 300 pounds for fluke, 250 pounds for black sea bass, and 120 pounds for tautog.

Figures 1 through 3 below show the analysis for Fluke, Sea Bass, and Tautog, respectively. For all three endorsement types, relaxing from a four out of five years actively fished threshold to two out of five years more than doubles the number of potential endorsements of each type that would potentially be considered transferable based on activity alone. Moreover, additional endorsements may ultimately be transferable when the permit bundling policy is applied (e.g., latent Tautog, Fluke, or Black Sea Bass endorsements may be transferred if bundled with an active Tautog, Fluke, or Black Sea Bass endorsement). This does not account for a permit holder's desire to transfer these endorsements.

As a proxy for the number of permit holders potentially interested in transferring one of these endorsements, DMF also looked at the age of the permit holders with actively fished endorsements. At the two-out-of-five-year activity threshold, approximately half of the active endorsements are held by permit holders over 60 years old. We feel that this is the age group that may be more inclined to retire and transfer their endorsements.

The challenge in creating a new transferability standard is finding the sweet spot between enhancing the potential supply of transferable permits to benefit industry and fishermen and diluting transferability thresholds to a point where we substantially increase effort and participation to a point where we negatively impact fishery performance, quota consumption, and profitability.

¹ At 322 CMR 7.00, immediate family is defined as, "the legal father, mother, wife, husband, sister, brother, son, daughter, grandparent, or grandchild."

I believe the two-out-of-five-year standard finds this sweet spot, whereas the even more liberal one-out-of-five-year standard would be problematic. I am comfortable with effectively doubling the number of potentially transferable Fluke, Sea Bass, and Tautog endorsements and such a change would make approximately 66 Fluke endorsements, 289 Sea Bass endorsements, and 97 Tautog endorsements transferable. The increase in the number of transferable endorsements would provide significantly more opportunities for new commercial fishers to enter and existing commercial fishers to diversify their portfolios. Based on our analysis, a standard of actively fished in one-out-of-five-year standard would increase the number of potentially transferable endorsements by three to four-fold (as compared to a doubling achieved at the proposed two-out-of-five-year standard). This would produce an even larger number of potentially transferable endorsements given the combined effect of the low threshold for what constitutes actively fished (i.e., one trip limit per year), the lack of an owner-operator requirement for these endorsements, and our current bundling policy. In effect, such a standard would allow a person who holds all three endorsements to transfer them after having a third-party (hired captain) land and sell one limit of one species against their permit during a single season. Accordingly, I do not support relaxing the standard to this level.

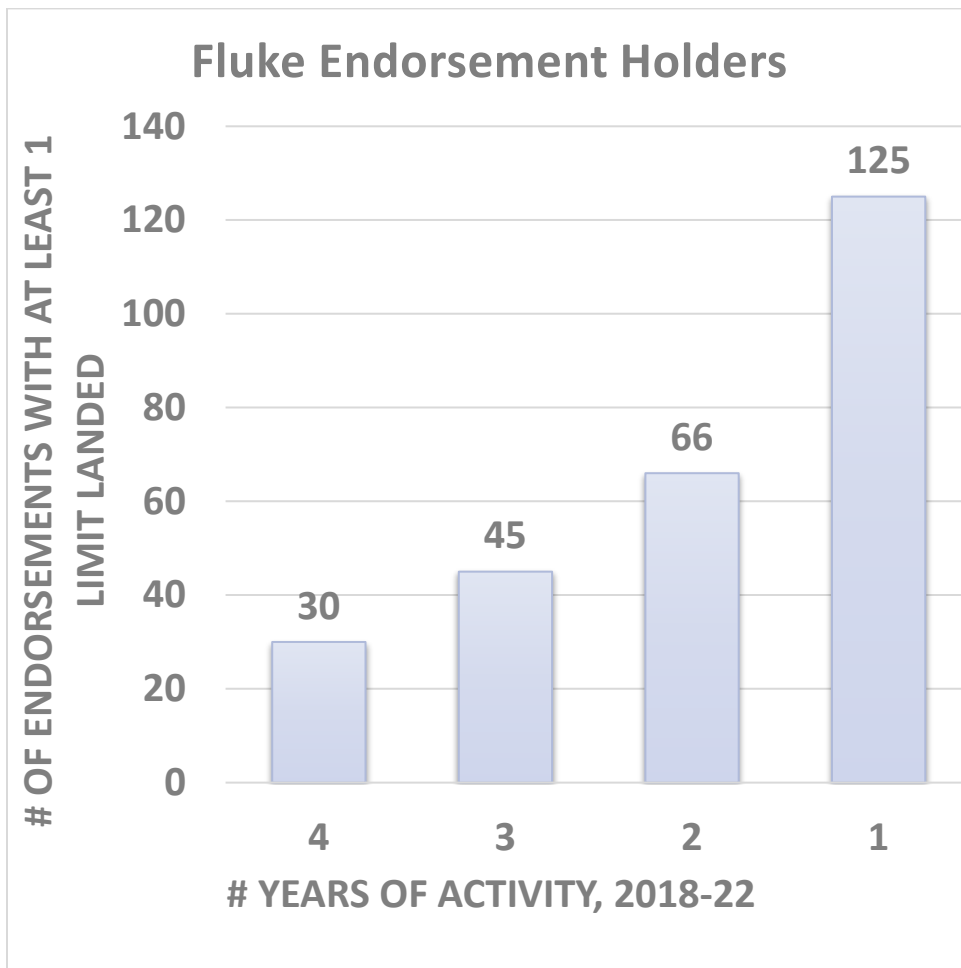


Figure 1. Fluke Activity

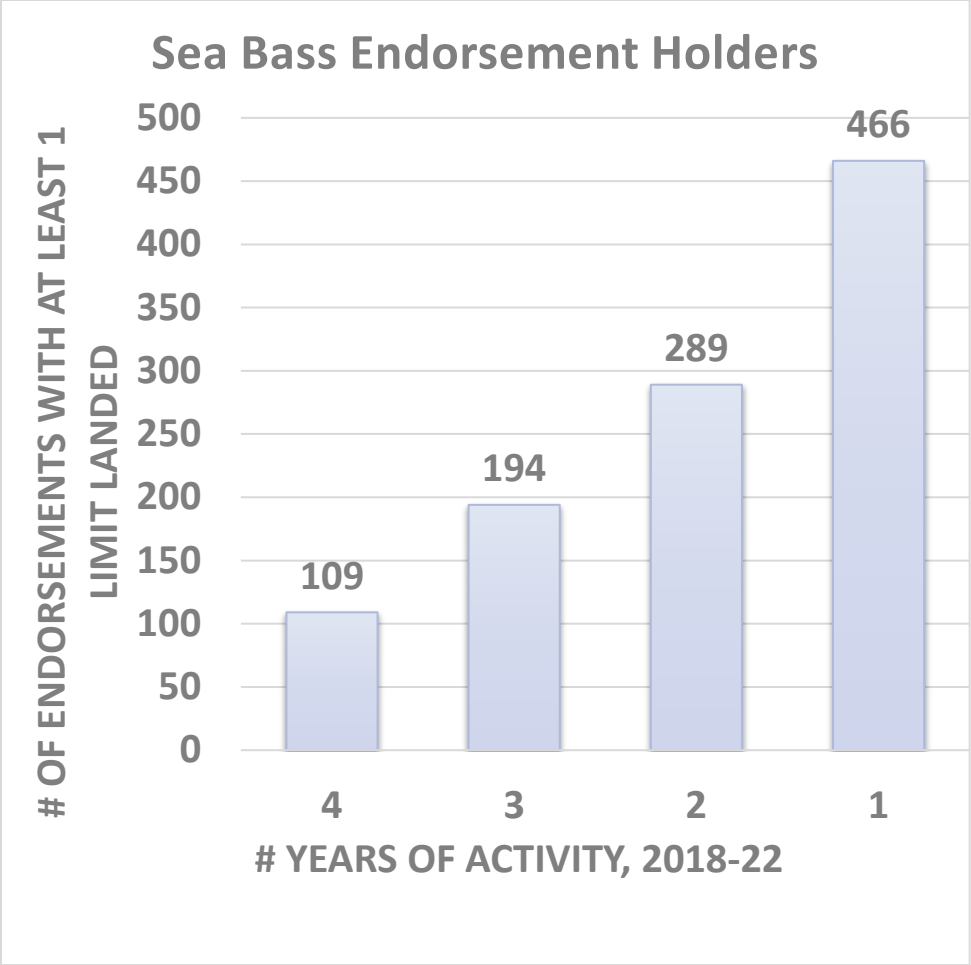


Figure 2. Sea Bass Activity

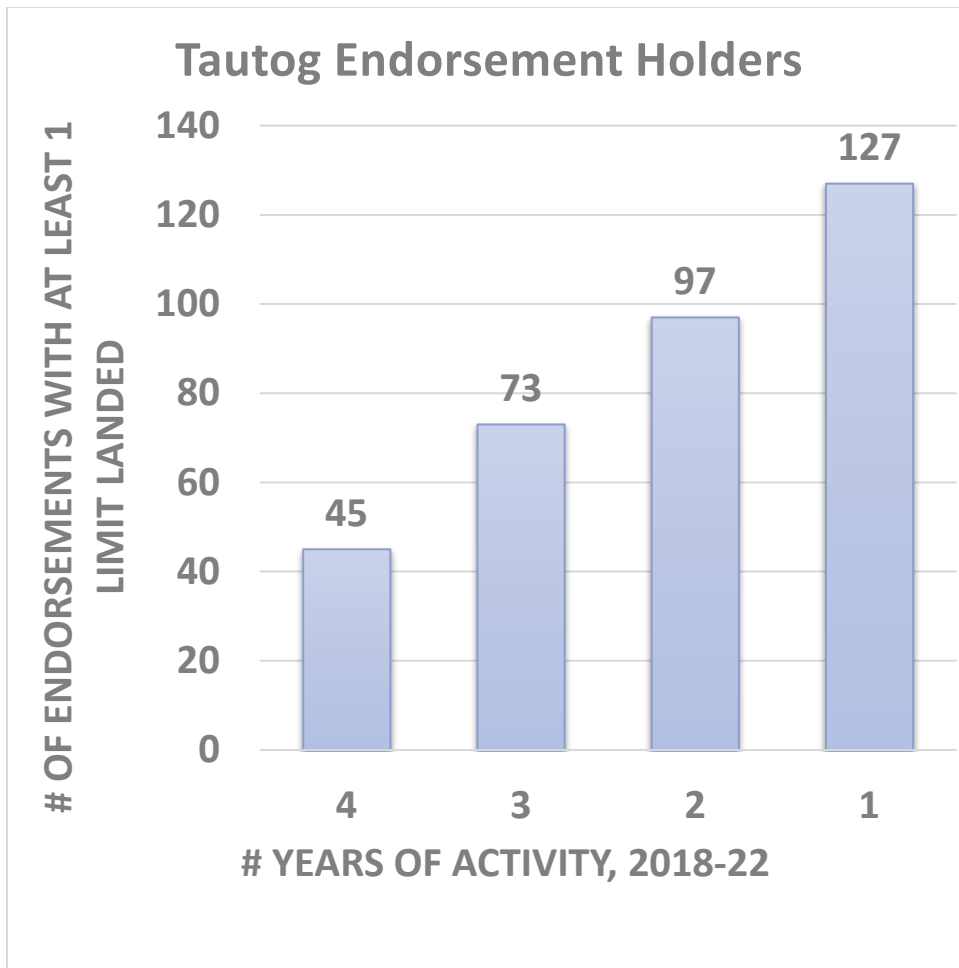


Figure 3. Tautog Activity

Additional Discussion

An additional item came up at the October 30, 2023 Permit Focus Group meeting regarding the actively fished criteria for Coastal Lobster Permits endorsed to fish in Lobster Management Area (LMA) 1. Currently, in order to be considered transferable an LMA 1 Coastal Lobster Permit has to have landed and sold at least 1,000 lbs of lobster or landed and sold lobster on at least 20 occasions as evidenced by harvester and dealer reporting in four out of the past five years. The scenario that came up involves Coastal Lobster Permit holders who are also permitted in other fisheries (e.g. sea scallops) and choose to prosecute one of those fisheries in a given year instead of lobstering. If the permit holder chooses to do this and foregoes lobstering completely for two or more years in a span of five consecutive years, then the Coastal Lobster Permit would no longer be considered transferable. The case was made that an otherwise full-time commercial fisher is being penalized for a business decision to prosecute another fishery for which they are permitted. To address this, DMF could adopt other alternative transferability criteria to allow for the transfer of a Coastal Lobster Permit that does not meet the actively fished criteria if the permit met other commercial fishing thresholds (e.g., permit holder had more than \$20,000 of ex-vessel sales in another fishery in a given year). DMF will discuss this more with industry with the possibility of a future rulemaking proposal.

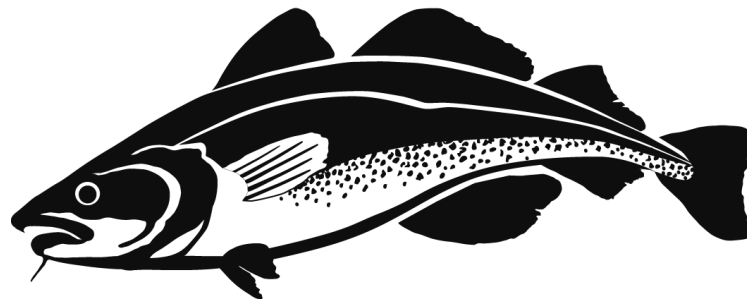
Attachment

October 30, 2023 Presentation to Permitting Focus Group

Permitting Focus Group

October 30, 2023

Marine Fisheries
Commonwealth of Massachusetts



Purpose

Endorsement-Specific Activity Standards

- Review scenarios estimating the number of additional endorsements that could become transferable if standards are relaxed from the 4 out of 5 years
- Scenarios run on Fluke, Sea Bass, and Tautog endorsements
- Age of permit holders taken into consideration
- Receive feedback and move forward



October 31, 2023

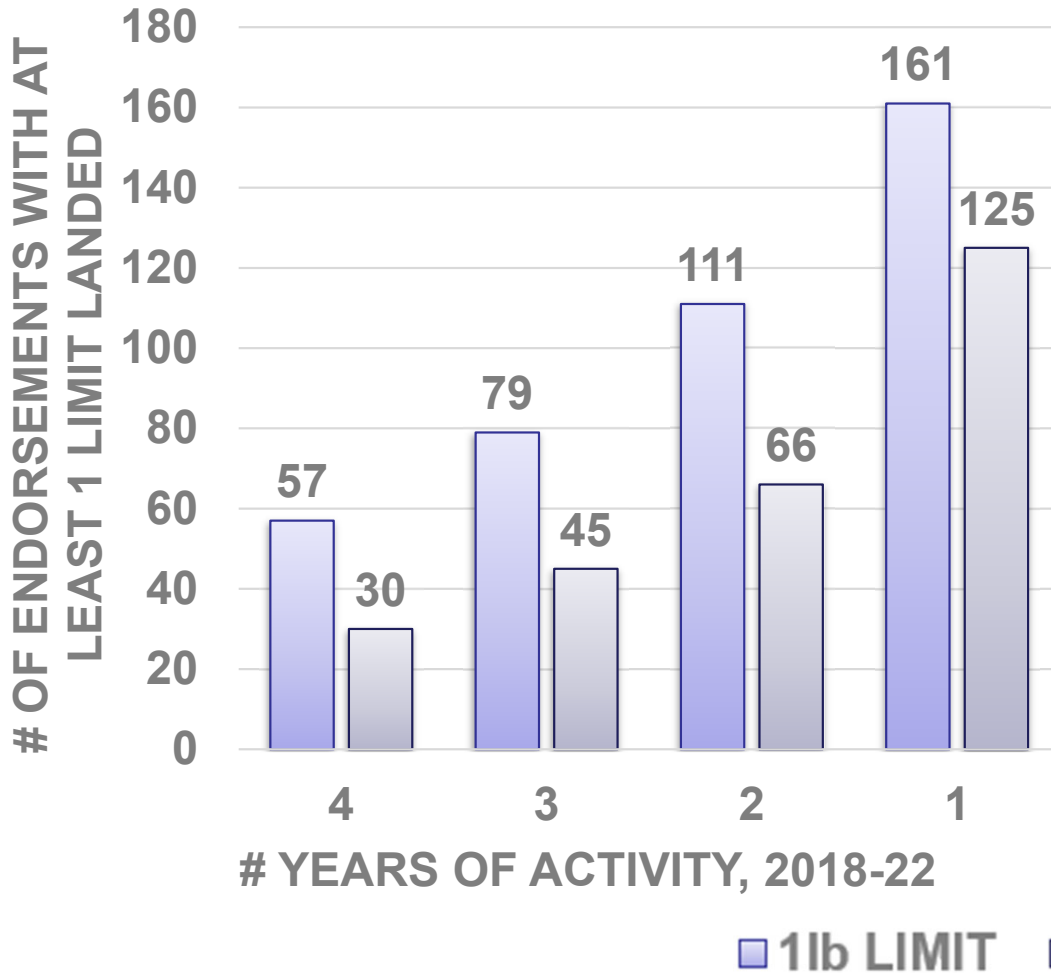
Slide 2



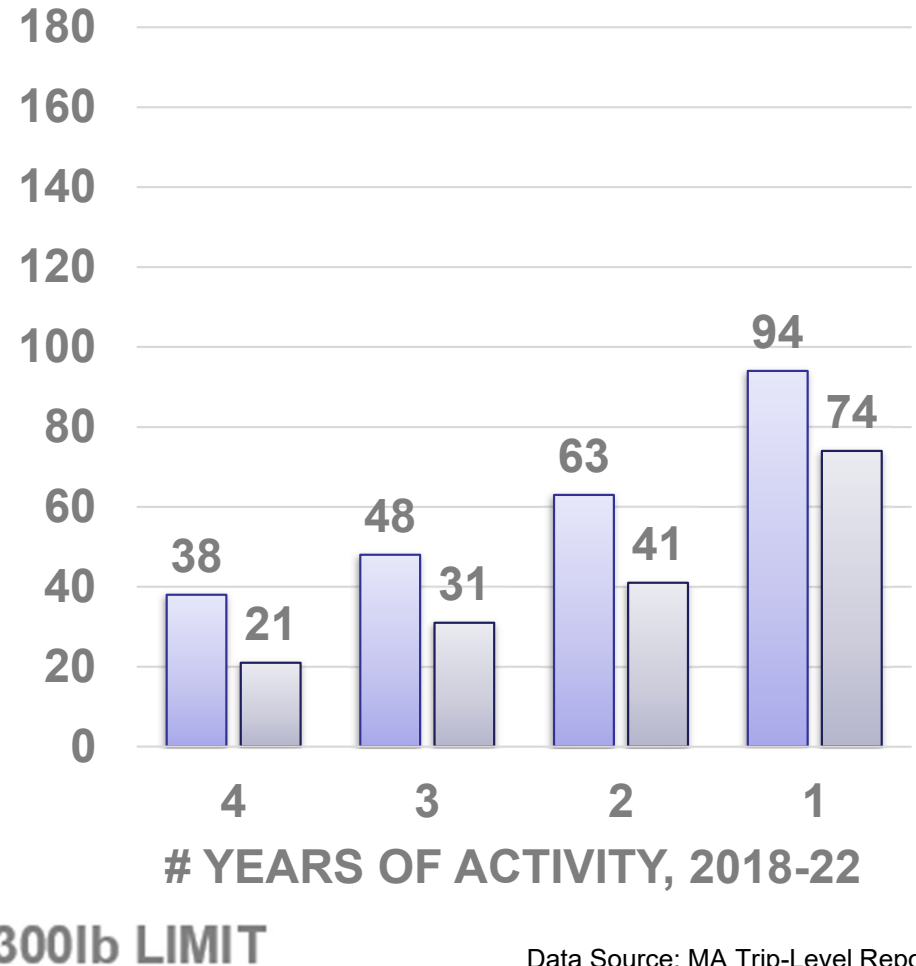
Fluke Activity

Estimated # of Fluke Endorsements Qualifying for Various Transfer Scenarios in 2023 based on Activity from 2018-22

All Permit Holders



Permit Holders over 60



Data Source: MA Trip-Level Reports and NMFS VTRs, 10/27/2023



October 31, 2023

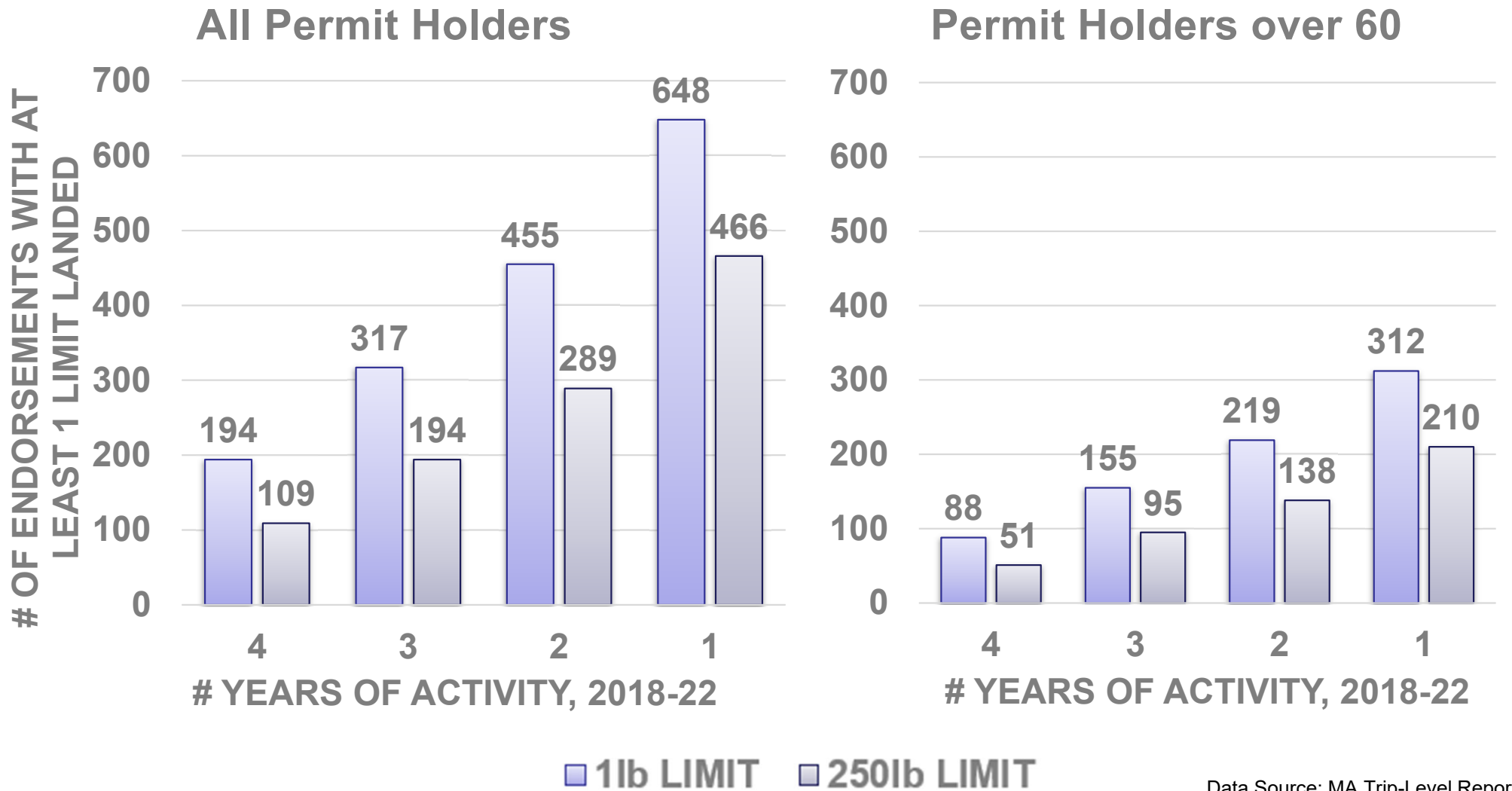
Slide 3

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Sea Bass Activity

Estimated # of Sea Bass Endorsements Qualifying for Various Transfer Scenarios in 2023 based on Activity from 2018-22



Data Source: MA Trip-Level Reports and NMFS VTRs, 10/27/2023



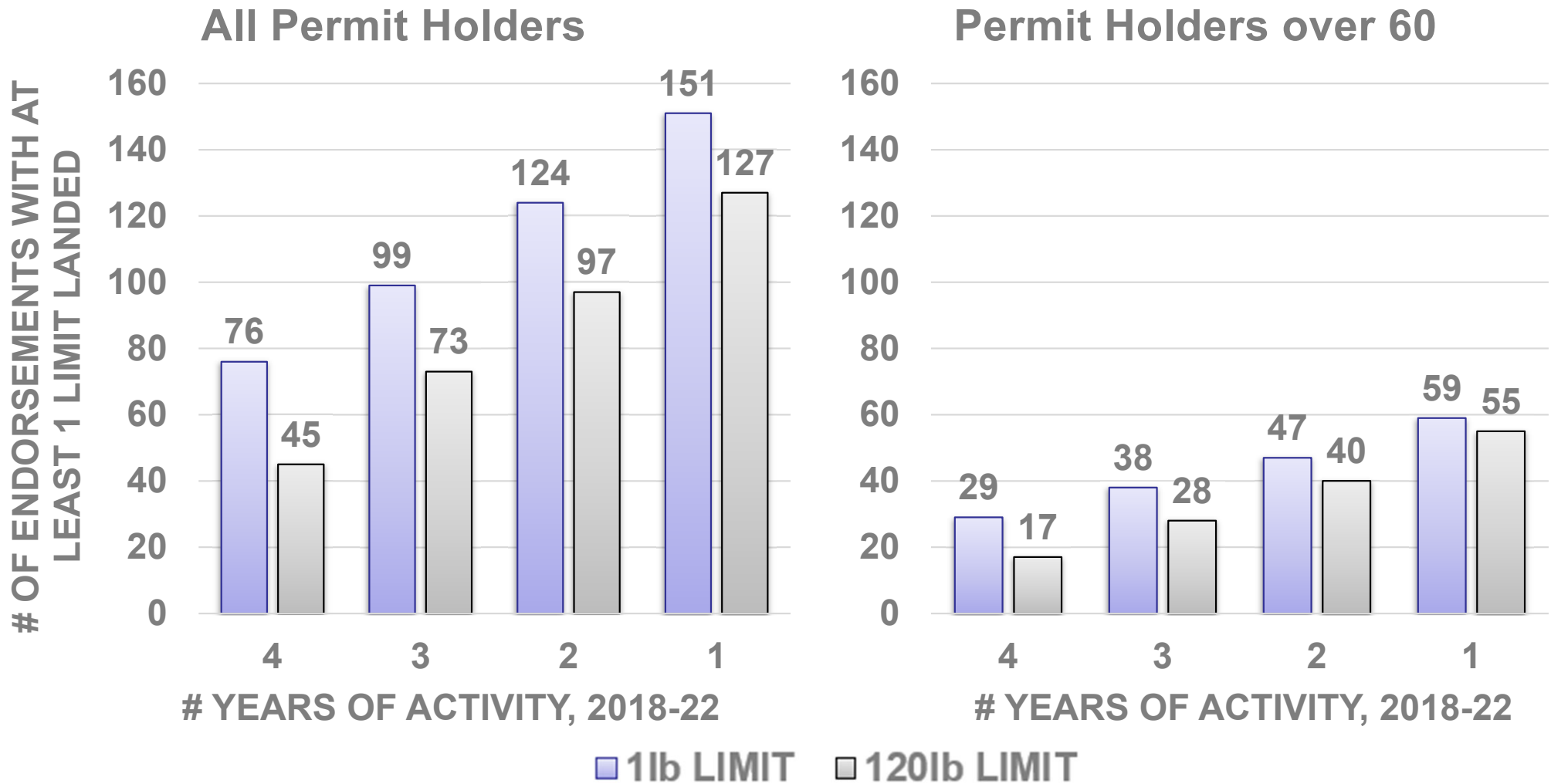
October 31, 2023

Slide 4



Tautog Activity*

Estimated # of Tautog Endorsements Qualifying for Various Transfer Scenarios in 2023 based on Activity from 2018-22



*Tautog endorsements began to be issued in 2018 and became limited entry in 2020. Five years are still considered for current transfers.

Data Source: MA Trip-Level Reports and NMFS VTRs, 10/27/2023



October 31, 2023

Slide 5

Marine Fisheries
Commonwealth of Massachusetts



Additional Considerations

- Bundling policy will create additional movement of endorsements (e.g., an inactive Fluke endorsement can be bundled with an active Sea Bass endorsement)
- Immediate family transfer exception to actively fished standards will create movement not captured in these scenarios



October 31, 2023

Slide 6



Number of Issued Endorsements by Year

Endorsement	2018	2019	2020	2021	2022	2023
Fluke	674	656	635	612	587	562
Sea Bass	1,260	1,224	1,168	1,117	1,078	1,039
Tautog	2,040	2,044	218	214	210	204

Ages of 2023 Permit Holders with the Rod & Reel endorsements, regardless of activity status

Age Bin	FLUKE	SEA BASS	TAUTOG
<=30	10	23	5
>30 to <=40	15	72	22
>40 to <=50	31	126	38
>50 to <=60	121	256	52
>60 to <=70	173	312	57
>70	123	180	23
Age Unknown	89	70	7



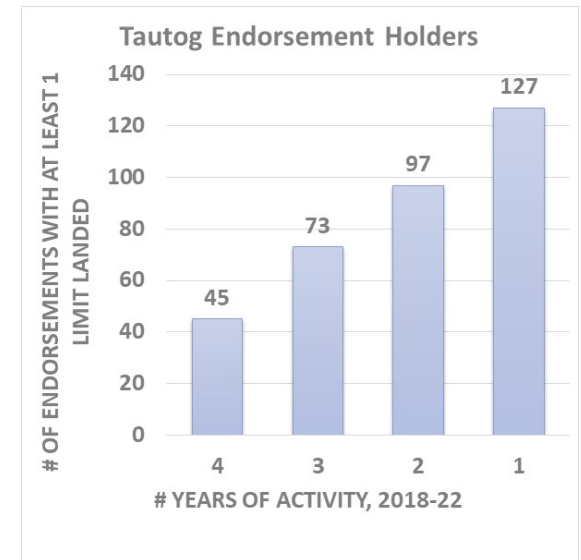
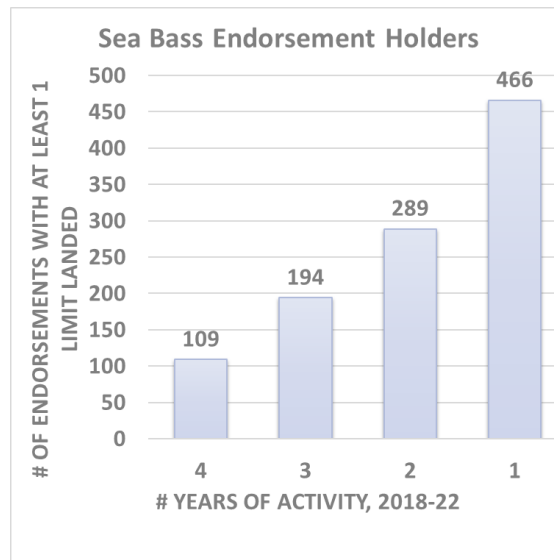
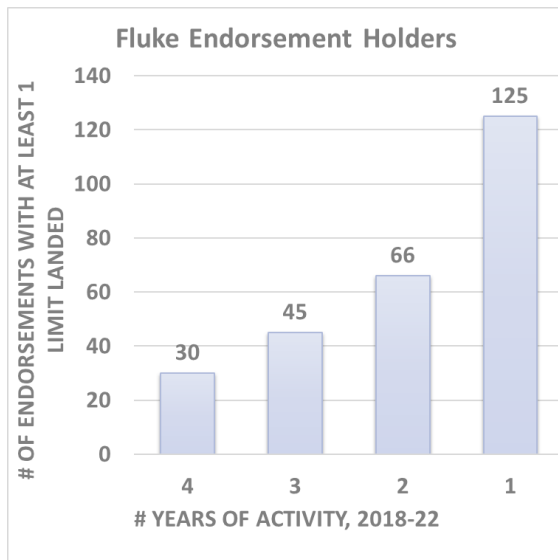
Public Hearing Proposals for Permit Endorsement Transfer Rules

Immediate Family Transfers

- Allow transfer of latent, but otherwise transferable, permit endorsements to an immediate family member.
- Expand definition of immediate family to reflect a wider diversity of family structures.

Actively Fished Criteria

- Relax transferability standards for Fluke, Black Sea Bass, and Tautog endorsements so they only have to be fished two out of the last five years to be considered actively fished. Current standard is four-out-of-five.





The Commonwealth of Massachusetts

Division of Marine Fisheries

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THOMAS O'SHEA
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
Massachusetts Shellfish Advisory Panel

FROM: Daniel J. McKiernan, Director 

DATE: November 9, 2023

SUBJECT: **Updates to Shellfish Sanitation, Harvest, Handling, and Management Regulations**

Overview

DMF seeks to make several minor modifications to its shellfish regulations [322 CMR 6.00 and 16.00] for the upcoming 2024 fishing season. These proposed adjustments respond to routine changes in the *Vibrio* Control Plan, observed deficiencies in the regulatory code identified during recent enforcement and compliance efforts, and housekeeping efforts to improve the organization of state regulations. In summary, the changes should improve the management of shellfish fisheries in the Commonwealth benefiting both industry and public health. DMF will also review this regulatory proposal with the Shellfish Advisory Panel (SAP) at its upcoming fall 2023 meeting. I anticipate these proposals will proceed to public hearing this winter for final MFAC approval and implementation by springtime 2024.

Proposals

Vibrio Management Plan for the Harvest and Handling of Oysters

State regulations at 322 CMR 16.07 establish the protocols and performance standards consistent with the state's *Vibrio parahaemolyticus* (*Vp*) Control Plan, required by the National Shellfish Sanitation Program and approved annually by the Massachusetts *Vibrio* Working Group (DMF, DPH and MEP) to minimize the public health risk associated with *Vp* and the consumption of raw oysters. This includes a variety of risk controls during harvest and handling designed to minimize temperature abuse to prevent elevating risk and record keeping requirements to verify compliance with risk controls and aid in illness traceback.

The existing regulations generally require oysters to be adequately iced prior to leaving the point of landing and within two hours from time of harvest or first exposure in an intertidal area. This requirement is more stringent—requiring adequate icing within one hour from time of harvest or first exposure in an intertidal area—for certain shellfish growing areas during the peak summertime period (July 1 – September 15). This is done to prevent temperature abuse and inhibit the growth and proliferation of the *Vp* bacterium in oysters.

The current regulation prescribes several methods to comply with this adequate icing requirement. This includes: (1) surrounding mesh bags of oysters with at least two inches of ice between each bag and between the bags and the sides and bottom of an icing container and applying three inches of ice on top of the mesh bags; (2) placing loose oysters into an icing container with at least two inches of ice between the loose oysters and the sides and bottom of the icing container and applying three inches of ice on top of the

loose oysters; or (3) fully submerging oysters into an icing container holding an ice slurry or cold water dip that is at or below 45°F.

In recent years, industry has worked through DMF to adopt less prescriptive standards, and in 2023, the less prescriptive standards were adopted in the *Vp* Control Plan. This included requiring: (1) mesh bags containing oysters be completely surrounded by ice, including at the bottom of the container and each level of bags, so that each bag is continuously and completely covered with ice; (2) loose oysters in a container of ice be completely surrounded by ice, including at the bottom of the container and each level of bags, so that each bag is continuously and completely covered with ice; and (3) exempting harvesters from icing requirements if the primary buyer takes on the burden of icing at the landing site and within the time-to-icing window.

Unfortunately, given the 2023 *Vp* Control Plan was not approved and implemented until May 18, 2023, DMF was unable to amend its regulations for the current *Vp* Control Season. Rather, DMF committed to industry it would update its regulations for the 2024 season. This proposal seeks to make the modifications to the icing regulations consistent with this commitment.

Night Closures

Historically, night fishing for shellfish has been prohibited to prevent non-compliance with the state's sanitary harvest and handling requirements to protect public health, as well as local and municipal controls for managing the stock. Such prohibitions restrict fishing effort to daytime hours only so that the activity can be more closely monitored and patrolled for compliance. This has been accomplished through a layering of state laws and local regulation. State law at G.L. c. 130, §68 prohibits the taking or digging of shellfish from one-half hour after sunset to one-half hour before sunrise from any waters licensed as an aquaculture site and requires an aquaculture licensee to forfeit their license site should they violate the rule. Additionally, state regulations at 322 CMR 4.06 prohibit night fishing with mobile gear, which would apply to various state managed commercial shellfish fisheries (e.g., bay quahog dredge, surf clam and ocean quahog dredge). However, there is not a corollary state rule at G.L. c. 130 or 322 CMR 16.00 that blanketly prohibits the wild harvest of shellfish during nighttime hours. Rather, we rely on municipalities to enact such management controls under their home rule authority at G.L. c. 130, §52.

With this in mind, there is some logic in adopting such a provision in the state's commercial shellfish regulations. The creation of a uniform state-wide standard for commercial fishers would enhance enforcement and compliance. Additionally, it would promote public health by allowing state criminal and civil penalties and administrative sanctions to be applied in instances of non-compliance and enabling the Massachusetts Environmental Police to enforce night commercial shellfish fishing closures.

Additionally, the citation in our bay quahog dredge regulation referencing the night fishing closure for mobile gear needs to be updated.

Sanitary Icing of Shellfish

There is some regulatory ambiguity regarding the sanitary icing of shellfish. DMF regulations at 322 CMR 16.02 define icing as meaning "to apply ice made from a DMF approved potable water source to shellfish for temperature control". Additionally, DMF regulations at 322 CMR 16.04 prohibit the icing of shellstock with ice obtained from any source other than an approved source that uses potable water and properly maintained ice machines. In their totality, the regulatory intent is for the rules to apply to all shellstock under all circumstances. The agency's interpretation is consistent with the National Shellfish Sanitation Program Model Ordinance [§II, c. VIII.02.H.(1)], which specifies "any ice used in storage or cooling of shellfish during harvest shall be made from a potable water source..." with the term 'harvest' being defined as "the act of removing shellstock from growing areas and its placement on or in a manmade conveyance or other means of transport."

However, some aquaculturists have argued the regulations should more narrowly apply to market bound shellfish only. This matter came to a head this past winter when certain aquaculture interests on Cape Cod were observed using skating rink ice for overwintering shellfish. They argued this activity was lawful because: (1) the regulatory section at 322 CMR 16.04 is titled “The Sanitary Harvest, Handling, and Transportation of Market Bound Shellfish” and this titling therefore precludes the application of the regulations therein to any culture activities; and (2) they argue that 14-day re-submergence requirement post overwintering would provide the shellstock with the opportunity to purge itself of any contaminants.

DMF responded in writing to the Massachusetts Aquaculture Association of February 1, 2023 (attached). In summary, the letter stated DMF’s definition of icing at 322 CMR 16.02 is broad and would require potable ice be applied to shellfish under all circumstances; stated that ice generated from resurfacing of a staking rink and scraped from a parking lot does not meet potable water standards; expressed concerns that such has likely been exposed to biological and industrial contaminants and other potential adulterants and that application of this ice to shellstock runs counter to safe food handling practices and could erode public confidence; the 14-day re-submergence requirements were not intended to address the purification of shellstock adulterated in this manner and there are no studies into the purification process that would safely justify a re-submergence accommodation in this scenario. Additionally, the letter stated that the use of salvaged rink ice points to a critical need to increase the availability of affordable and clean ice and DMF would work with the industry in such endeavors.

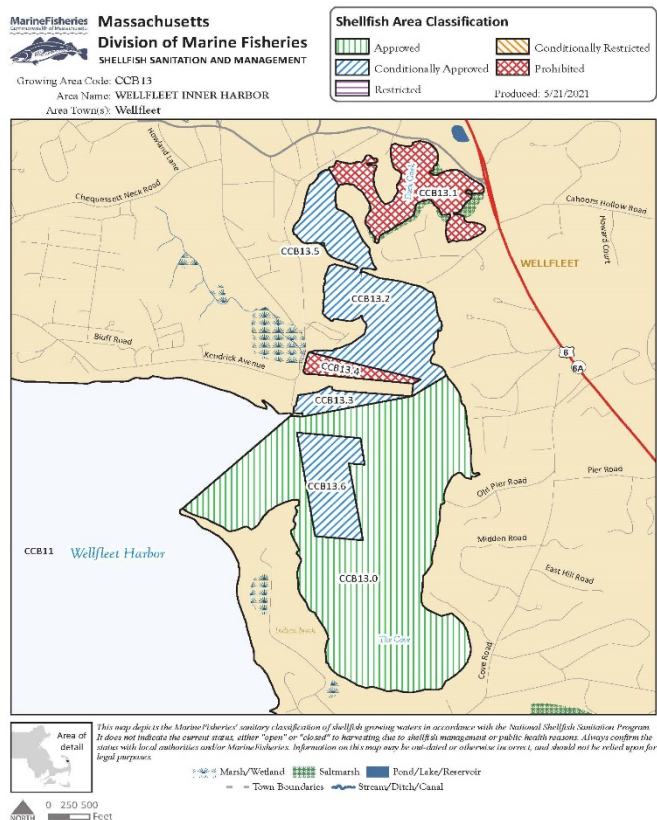
To eliminate any remaining confusion on this subject, DMF intends to amend the regulatory language at 322 CMR 16.00 so that it is clear that icing standards apply to all shellstock under all circumstances.

Shellfish Tagging

Many shellfish growing areas in our state contain sub-areas with different water quality classifications. For instance, the highly productive shellfish growing area CCB13 – Inner Wellfleet Harbor (Figure 1) contains waters that are classified as “Approved”, “Conditionally Approved”, and “Prohibited”. As such, there are three different standards affecting shellfish harvest within CCB13 depending on the precise geographical location.

With regards to harvest location, Massachusetts’ shellfish harvester tagging regulations at 322 CMR 16.05 require the harvester tag contain “the shellfish growing area name and number from where the shellfish was harvested.” This does not adequately specify that the sub-area must be identified. We attempt to further interpret the regulation through the annual [Shellfish Harvest, Handling, and Transport Affidavit](#), which all commercial shellfish permit holders must sign, that states the tag must contain the “most specific shellfish area name and number.” Even still, it is not

Fig. 1 – Cape Cod Bay 13 – Inner Wellfleet Harbor



uncommon for commercial fishers to list only the primary shellfish growing area. This unnecessarily confounds the efficacy of the shellfish tagging program and may inadvertently enhance the public health risk associated with consuming shellfish.

Accordingly, I seek to amend the regulatory language at 322 CMR 16.05 to further specify the harvester tag contain the most specific shellfish area name and number. Implementing this will require harvester add some additional information onto their shellfish tags and compliance will necessitate outreach and education by DMF, the Massachusetts Environmental Police, and local shellfish authorities. However, I think this adjustment, while minor, is critical to implementing a sound shellfish harvester tagging program that is consistent with the National Shellfish Sanitation Program Model Ordinance. Note that the Model Ordinance's guidance documents for shellstock tagging [§IV c. III.04] state the harvester tag must include, "the most precise identification of the harvest location or aquaculture site as is practicable."

Moderately Contaminated Shellfish

In Massachusetts there is a commercial fishery for soft-shell clams that occurs in certain shellfish growing areas around Boston Harbor and the Merrimack River that are classified as Conditionally Restricted. The sanitary survey for a Conditionally Restricted area demonstrates shellfish contain a limited degree of contamination at all times. This commercial fishery is conducted in accordance with state law at G.L. c. 130, §75 and DMF's implementing regulations at 322 CMR 7.02 and 10.00.

In effect, we permit Master Diggers—who are bonded to assure compliance with the regulations—and may engage in the harvest, possession, transportation, and ultimately the sale of moderately contaminated shellfish. Additionally, Master Diggers may employ and supervise permitted Subordinate Diggers authorized to harvest moderately contaminated shellfish and possess it at the landing site for sale to a Master Digger. Following harvest, the Master Digger is to arrange the transport of the moderately contaminated shellfish to DMF's depuration facility in Newburyport and then from our depuration facility for sale into commerce.

DMF manages the acquisition and throughput of moderately contaminated shellfish at the depuration plant through a plant schedule. While state regulations do not specifically require such a schedule, we enforce it through permitting rules at 322 CMR 7.02 coupled with the strict transport and holdover rules at 322 CMR 10.00. To enhance the transparency and enforceability of our regulatory program, I intend to amend 322 CMR 10.00 to specifically require Master Diggers (or their transport agents) to adhere to DMF's Shellfish Plant Digging Schedule.

Previously, DMF discussed recodifying its moderately contaminated shellfish regulations within its Shellfish Harvest and Handling regulations at 322 CMR 16.00. However, given uncertainties surrounding the fishery and the depuration plant, I am not going to endeavor to make this change at this time. Accordingly, the moderately contaminated shellfish regulations will remain at 322 CMR 10.00.

Updates to Shellfish Sanitation, Harvest, Handling, and Management Regulations



Rapid Cooling (Icing)



PROPER ICING TECHNIQUE FOR HARVESTERS

Ice oysters within 2 hours of time of harvest or prior to leaving the point of landing, whichever occurs first



Vibrio Management Plan for the Harvest and Handling of Oysters

Current *Vibrio* icing regulation:

- (1) surrounding mesh bags of oysters with at least two inches of ice between each bag and between the bags and the sides and bottom of an icing container and applying three inches of ice on top of the mesh bags;
- (2) placing loose oysters into an icing container with at least two inches of ice between the loose oysters and the sides and bottom of the icing container and applying three inches of ice on top of the loose oysters; or
- (3) fully submerging oysters into an icing container holding an ice slurry or cold water dip that is at or below 45°F.

Amended *Vibrio* icing regulation:

- (1) mesh bags containing oysters be completely surrounded by ice, including at the bottom of the container and each level of bags, so that each bag is continuously and completely covered with ice;
- (2) loose oysters in a container of ice be completely surrounded by ice, including at the bottom of the container and each level of bags, so that each bag is continuously and completely covered with ice;

Also, exempting harvesters from icing requirements if the primary buyer takes on the burden of icing at the landing site and within the time-to-icing window.

DMF committed to industry it would update its regulations for the 2024 season

Sanitary Icing of Shellfish:

322 CMR 16.02 defines icing as meaning “to apply ice made from a DMF approved potable water source to shellfish for temperature control”

322 CMR 16.04 “The Sanitary Harvest, Handling, and Transportation of Market Bound Shellfish” prohibits the icing of shellstock with ice obtained from any source other than an approved source that uses potable water and properly maintained ice machines.

In their totality, the regulatory intent is for the rules to apply to all shellstock under all circumstances.

Some aquaculturists have argued the regulations should more narrowly apply to market-bound shellfish only

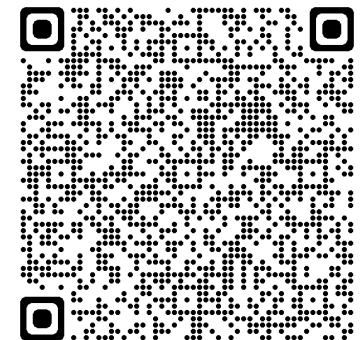
National Shellfish Sanitation Program (NSSP) Model Ordinance [§II, c. VIII.02.H.(1)] specifies “any ice used in storage or cooling of shellfish during harvest shall be made from a potable water source...” with the term ‘harvest’ being defined as “the act of removing shellstock from growing areas and its placement on or in a manmade conveyance or other means of transport.”

To eliminate any remaining confusion on this subject, DMF intends to amend the regulatory language at 322 CMR 16.00 so that it is clear that icing standards apply to all shellstock under all handling circumstances.



As It Happens

Blood, puke and spit: Why skating rink ice piles could be a biohazard



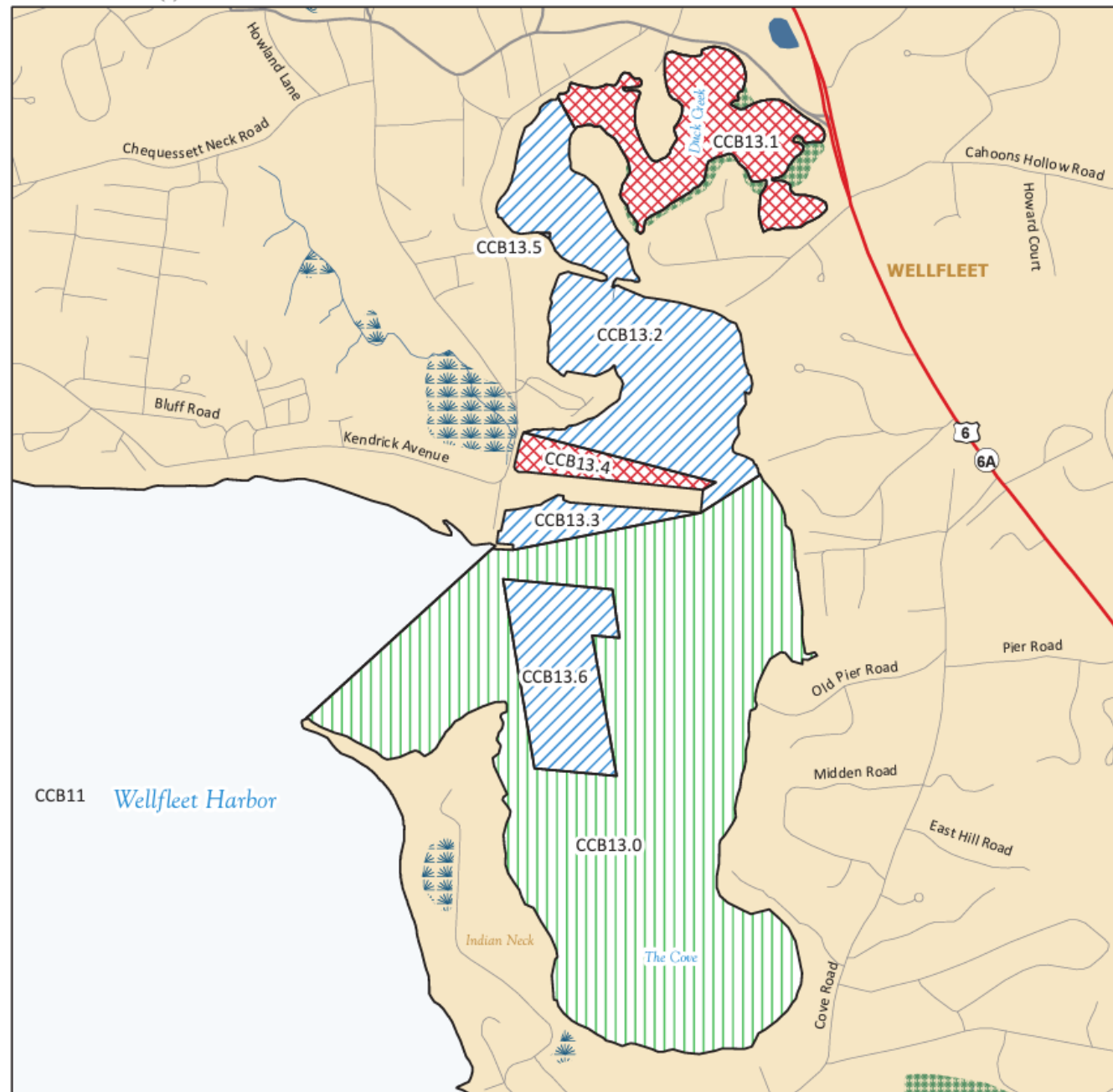
Shellfish Tagging:

HARVESTER TAG	
NAME:	John Smith
HARVESTER PERMIT #:	111-111
HARVEST DATE:	7/2/15
TIME:	12:05
HARVEST AREA:	MA CCB-13 Tot 1:35
TYPE OF SHELLFISH:	Oyster
QUANTITY OF SHELLFISH:	100
THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS.	

Many shellfish growing areas in our state contain sub-areas with different water quality classifications. For instance, the highly productive shellfish growing area CCB13 – Inner Wellfleet Harbor contains waters that are classified as “Approved”, “Conditionally Approved”, and “Prohibited”.

Shellfish harvester tagging regulations at 322 CMR 16.05 require the harvester tag contain “the shellfish growing area name and number from where the shellfish was harvested.” This does not adequately specify that the sub-area must be identified.

NSSP: harvester tag must include, “the most precise identification of the harvest location or aquaculture site as is practicable.”



Shellfishing Night Closure:

G.L. c. 130, §68 prohibits the taking or digging of shellfish from one-half hour after sunset to one-half hour before sunrise from any waters licensed as an aquaculture site and requires an aquaculture licensee to forfeit their license site should they violate the rule.

322 CMR 4.06 prohibit night fishing with mobile gear, which would apply to various state managed commercial shellfish fisheries (e.g., bay quahog dredge, surf clam and ocean quahog dredge)

No state statute or regulation that blanketly prohibits the wild harvest of shellfish during nighttime hours. Rather, we rely on municipalities to enact such management controls under their home rule authority at G.L. c. 130, §52.

Creation of a uniform state-wide standard for commercial shellfishers would enhance enforcement and compliance, promote public health by allowing state criminal and civil penalties and administrative sanctions to be applied in instances of non-compliance and enable the MA Environmental Police to enforce night commercial shellfish fishing closures.

A blanket night closure would also bolster justification for smaller Prohibited Safety Zones around Wastewater Treatment Plant Outfalls

Moderately Contaminated Shellfish Harvested for Depuration:

DMF manages the acquisition and throughput of moderately contaminated shellfish at the depuration plant through a plant schedule. While state regulations do not specifically require harvesters to adhere to such a schedule, we enforce it through permitting rules at 322 CMR 7.02 coupled with strict transport and holdover rules at 322 CMR 10.00. To enhance the transparency and enforceability of our regulatory program, we intend to amend 322 CMR 10.00 to specifically require Master Diggers (or their transport agents) to adhere to DMF's Shellfish Plant Digging Schedule.

MA Division of Marine Fisheries Shellfish Purification Plant Digging Schedule

The Division of Marine Fisheries has set the following Shellfish Purification Plant digging schedule for Conditionally Restricted areas in the Merrimack River, Pines River, and Greater Boston Harbor.

This schedule is subject to change if there is a closure of shellfish areas due to rainfall, marine biotoxins, emergency situations, or change in operations at the Shellfish Purification Plant in Newburyport.

Wednesday November 15, 2023

Boston will NOT dig
Quincy will NOT dig
Merrimack will dig N2.6 'Basin Mooring Area' in Newbury/Newburyport

Tide: 5:50 AM +0.8'

Thursday November 16, 2023

Boston will NOT dig
Quincy will dig GBH 1.1 'Spinnaker Island' in Hull
Merrimack will dig N2.6 'Basin Mooring Area' in Newbury/Newburyport

Tide: 6:34 AM +0.9'

Friday November 17, 2023

Boston will NOT dig
Quincy will dig GBH 1.1 'Spinnaker Island' in Hull
Merrimack will dig N2.6 'Basin Mooring Area' in Newbury/Newburyport

Tide: 7:21 AM +1.0'





The Commonwealth of Massachusetts

Division of Marine Fisheries

(617) 626-1520 | www.mass.gov/marinefisheries



MAURA T. HEALEY
Governor

KIMBERLEY DRISCOLL
Lt. Governor


REBECCA L. TEPPER
Secretary

THOMAS O'SHEA
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: November 9, 2023

SUBJECT: **Update on Addendum XXVII to American Lobster Fishery Management Plan and Forthcoming State Regulations**

Overview

DMF is amending its (previously announced) public hearing proposal for measures to comply with Lobster Addendum XXVII to: (1) change the implementation date for the “immediate measures” from January 1, 2024 to January 1, 2025; and (2) adopt the 5-year schedule of “triggered measures” for implementation on January 1 2025, 2027, 2028, and 2029.

Background

At the MFAC’s August 2023 meeting, I provided a [memorandum](#) that described draft amendments to the state’s lobster management regulations necessary to comply with Addendum XXVII to Amendment 3 to the Interstate Fishery Management Plan for American Lobster, which addresses anticipated declines in Gulf of Maine/Georges Bank spawning stock biomass. This included: (1) measures to be immediately implemented for 2024—i.e., establishing a uniform maximum carapace size and v-notch possession rules among federal and state-only permit holders in the Outer Cape Cod Lobster Conservation Management Area (OCCLCMA) and limit the issuance of trap tags in LCMA1 (Inshore Gulf of Maine) and LCMA 3 (Offshore Gulf of Maine/Georges Bank)); and (2) future rules that would become necessary to implement should the addendum’s recruitment-based management trigger be fired¹—i.e., establishing a five-year schedule to implement additional adjustments to increase the LCMA1 minimum carapace size and adjust escape vent rules and decrease the LCMA3 and OCCLCMA maximum carapace size.

At the ASMFC’s Lobster Management Board (“Board”) October 2023 meeting, the Technical Committee reported that, with the inclusion of recently released 2022 data in the time series, the GOM/GBK recruitment index had declined 39% from the 2016–2018 reference period, surpassing the trigger point of a 35% decline. As a result, Addendum XXVII (as passed in May 2023) required states increase the LCMA1 minimum carapace size from 3 ¼” to 3 5/16” for June 1, 2024 with additional rule changes affecting LCMA1, LCMA3, and OCCLCMA scheduled to occur on June 1 of 2026, 2027, and 2028.

The trigger point was reached sooner than the Board expected when developing and approving Addendum XXVII. Commissioner Pat Keliher (Maine) made a compelling argument for delaying implementation to coordinate changes with Canada to avoid trade implications and provide gauge makers

¹ When the addendum’s GOM/GBK recruitment index declines by 35% from the reference period, the management trigger is fired. 2016–2018 is used as the reference period because it represents the last three years of data used in the 2020 stock assessment.

and harvesters sufficient time to prepare. While Maine sought a 1-year continuance (to start the 5-year implementation schedule on June 1, 2025), the Board agreed to a 6-month delay (to January 1, 2025) provided the implementation deadline for the “immediate measures” for OCCLCMA and trap tag issuance also be changed to January 1, 2025. See Table 1 for the new implementation schedule.

While states are not required to adopt implementing regulations until January 1, 2025, the Board encouraged states to move ahead with the adopting such rules as soon as possible to avoid “kicking the can.” Accordingly, I intend to go out to public hearing in early 2024 to implement these rule changes for 2025 and beyond. The public hearing and rule-making process will also include other draft regulatory proposals affecting trap gear fishing that I wish to implement for the 2024 fishing year (i.e., allowing the use of the fully-formed weak rope with “MA Lobster Tracer”).

Table 1. Effective Schedule for Implementation of Addendum XXVII

Effective Date	What Change Will Be Implemented		
	LCMA 1	LCMA 3	OCCLCMA
January 1, 2025	Limit trap tag issuance to trap allocation with no extra trap tags awarded. Minimum carapace size increase from 3 1/4” to 3 5/16”.	Limit trap tag issuance to trap allocation with no extra trap tags awarded.	Establish 6 3/4” maximum carapace size for state waters. V-notch standard changes from 1/4” sharp v-notch without setal hairs to 1/8” v-notch with or without setal hairs for state waters.
January 1, 2026	N/A	N/A	N/A
January 1, 2027	Minimum carapace size increase from 3 5/16” to 3 3/8”.	N/A	N/A
January 1, 2028	Trap escape vent size change from 1 15/16” by 5 3/4” rectangular or 2 7/16” circular diameter to 2” by 5 3/4” rectangular or 2 5/8” circular diameter.	N/A	N/A
January 1, 2029	N/A	Maximum carapace size decrease from 6 3/4” to 6 1/2”.	Maximum carapace size decrease from 6 3/4” to 6 1/2”.

Public Hearing Proposals for Addendum XXVII to Lobster FMP

Implementation Dates for Management Actions in Addendum XXVII

Effective	LCMA 1	LCMA 3	OCCLCMA
January 1, 2025	Limit trap tag issuance to trap allocation with no extra trap tags awarded. Minimum carapace size increase from 3 1/4" to 3 5/16".	Limit trap tag issuance to trap allocation with no extra trap tags awarded.	Establish 6 3/4" maximum carapace size for state waters. V-notch standard changes from 1/4" sharp v-notch without setal hairs to 1/8" v-notch with or without setal hairs for state waters.
January 1, 2026	N/A	N/A	N/A
January 1, 2027	Minimum carapace size increase from 3 5/16" to 3 3/8".	N/A	N/A
January 1, 2028	Trap escape vent size change from 1 15/16" by 5 3/4" rectangular or 2 7/16" circular diameter to 2" by 5 3/4" rectangular or 2 5/8" circular diameter.	N/A	N/A
January 1, 2029	N/A	Maximum carapace size decrease from 6 3/4" to 6 1/2".	Maximum carapace size decrease from 6 3/4" to 6 1/2".





Atlantic States Marine Fisheries Commission

2023 Annual Meeting Summary

Sustainable and Cooperative Management of Atlantic Coastal Fisheries

2023 Annual Meeting
October 16-19, 2023

For more information, please
contact Toni Kerns, ISFMP,
Tina Berger, Communications
or the identified individual at
703.842.0740

Meeting Summaries, Press Releases and Motions

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ATLANTIC HERRING MANAGEMENT BOARD (OCTOBER 16, 2023)

Meeting Summary

The Atlantic Herring Management Board met to set the quota periods for the 2024 Area 1A (inshore Gulf of Maine) fishery, receive an update from the New England Fishery Management Council, and elect a Vice-Chair.

The Board considered quota periods for the 2024 Area 1A fishery. Per Amendment 3 to the Interstate Fishery Management Plan for Atlantic Herring, quota periods shall be determined annually for Area 1A. The Board can consider distributing the Area 1A sub-ACL using bi-monthly, trimester, or seasonal quota periods. The Board can also decide whether quota from January through May will be allocated later in the fishing season, and underages may be rolled from one period to the next within the same year.

For the 2024 Area 1A fishery, the Board adopted a seasonal quota approach with 72.8% available June-September and 27.2% available October-December with underages from June through September rolled into the October through December period, if applicable. These 2024 quota periods are the same as the quota periods implemented for the last four fishing years. The Area 1A fishery to close when 92% of the sub-ACL is projected to be reached, as required by Amendment 3.

The Board received an update from the New England Fishery Management Council (Council) on [development of Amendment 10](#) to the federal Atlantic Herring Fishery Management Fishery Management Plan. The Council had already been working on an action “revisiting the Inshore Midwater Trawl Restricted Area that was developed under Amendment 8.” At its September 2023 meeting, the Council renamed the action to “minimize user conflicts related to the Atlantic herring fishery.” The Council also designated the action as an amendment intended to “address spatial and temporal allocation and management of Atlantic herring at the management unit level to minimize user conflicts, contribute to optimum yield, and support rebuilding of the resource.” The Council plans to conduct scoping meetings to inform the range of issues to be considered in Amendment 10. The Council’s Herring Committee and Plan Development Team will develop a scoping document and meeting schedule to be reviewed by the Council at their January 2024 meeting.

Finally, the Board approved Doug Grout, the New Hampshire Governor’s Appointee, as the new Vice-Chair.

For more information, please contact Emilie Franke, Fishery Management Plan Coordinator, at EFranke@asmfc.org.

Motions

Move that the Board implement seasonal quota for the 2024 Area 1A sub-ACL seasonally with 72.8% available from June through September and 27.2% allocated from October through December, with no landings prior to June 1, and for underages to be rolled over into the next quota period for 2024.

Motion made by Mr. Kaelin and seconded by Mr. Train. Motion passes by unanimous consent.

Move to nominate Doug Grout as Vice-Chair of the Atlantic Herring Board.

Motion made by Ms. Griffin and seconded by Dr. Davis. Motion passes by unanimous consent.

AMERICAN LOBSTER MANAGEMENT BOARD (OCTOBER 16, 2023)

Press Releases

Jonah Crab Benchmark Stock Assessment and Peer Review Finds Population Abundance Remains Above Historic Lows but Needs to be Closely Monitored

Beaufort, NC – The 2023 Jonah Crab Benchmark Stock Assessment and Peer Review Report indicates the range-wide population of Jonah crab remains above historic lows of the 1980s and 1990s. However, evidence of declining catch per unit effort (CPUE) in the fishery presents substantial concern and uncertainty for the status of the stock.

Based on life history and fishery characteristics, the assessment divided the population into four stocks: offshore Gulf of Maine (OGOM), inshore GOM (IGOM); offshore Southern New England (OSNE) and inshore SNE (ISNE). According to the stock indicators, IGOM, OGOM, and OSNE recruit, exploitable, and spawning abundance conditions from 2019-2021 were neutral or positive relative to historical periods. Indicators generally agree across these stocks that abundance has not been depleted compared to the historic low abundance observed in the 1980s and 1990s. There are no reliable abundance indicators for the ISNE stock so no determination about the condition of this stock's abundance could be made at this time. Young-of-the-year settlement indicators generally show neutral conditions and do not indicate that recruitment in the GOM stocks will decline to historical lows in the near future. Settlement conditions are unknown for SNE stocks.

“As the first range-wide assessment of Jonah crab along the Atlantic coast, this assessment represents a significant advancement in our understanding of the species, its life history characteristics, and distinct fisheries by stock unit,” stated Board Chair Jason McNamee of Rhode Island. “I commend the members of the Stock Assessment Subcommittee and Technical Committee for their successful completion of a challenging, data poor assessment.”

According to the Peer Review Panel, “Despite the limited availability of current data, there is considerable urgency for the assessment due to a very steep, three-year, decline in landings. Commercial landings have declined 51% in three years, after an unprecedented 30-fold rise in landings. Although the recent decline is not well-detected in fishery-independent stock indicators, there is some evidence of declining CPUE in the fishery, creating substantial concern and uncertainty for the status of the stock. Given the mixed signals, the status of the Jonah crab stock is highly uncertain.

Current conditions closely resemble early stages of the collapse of the Canada Jonah crab fishery in the early 2000s. In the first three years of the crash, Canada landings dropped 58%. Within five years, landings fell 97%, and stock biomass could no longer support a fishery. Fishery-independent trawl indicators had not fully captured the signals of a rapidly declining stock. However, declining fishery CPUE was observable preceding and during the landings crash.

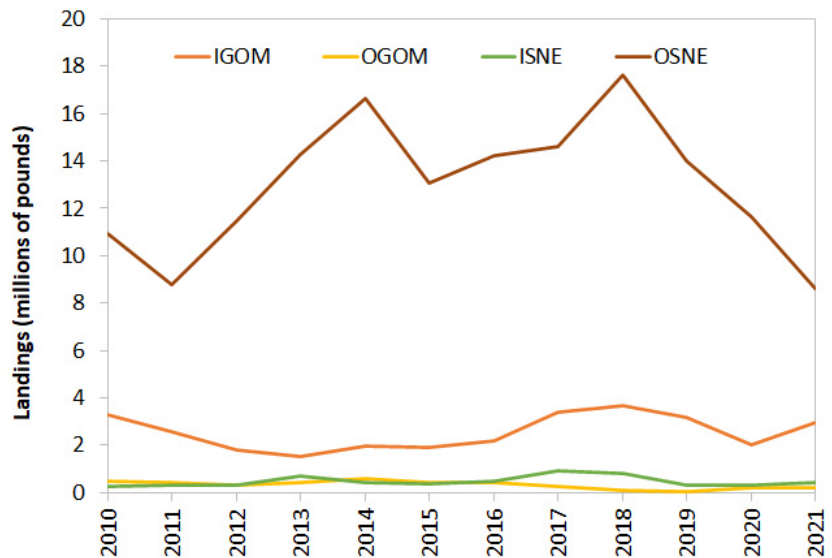
Given the high level of uncertainty in the status of the Jonah crab stock, the Panel strongly recommends close monitoring of annual stock indicators in the next few years. Annual indicators can determine whether sharply declining recent landings are signaling the start of a ‘bust’ phase of a

boom-and-bust arc, or are due to fishery and market-related factors uncoupled with Jonah crab abundance.”

There are notable differences between the fisheries that operate in each of the stock areas. The vast majority of coastwide landings have come from the OSNE stock, accounting for 70-85% of annual coastwide landings from 2010-2021. The IGOM stock has supported the second largest fishery, accounting for 9-24% of annual coastwide landings from 2010-2021. Both the ISNE and OGOM have supported smaller fisheries, never accounting for more than 5% of annual coastwide landings from 2010-2021.

The high proportion of participants contributing to Jonah crab landings indicates a directed fishery in the OSNE stock that targets Jonah crab, yet only a small number of participants account for the large magnitude of landings from this stock. The other three stocks have fisheries that are characteristic of bycatch fisheries that are targeting American lobster. These fisheries have low proportions of participants that land Jonah crabs from pot/trap gears. In the case of the IGOM stock, there is a relatively high number of participants targeting lobsters and not landing Jonah crabs. This represents considerable capacity for growth in a Jonah crab fishery if these participants were to switch to targeting Jonah crab.

Jonah Crab Commercial Landings by Stock Area



Landings have shown different trends across stocks, but the landings from OSNE declined steadily from the time series high in 2018 (17.6 million pounds) in the last three years of the time series (2019-2021). This trend is believed to be influenced by factors other than available abundance but should continue to be monitored closely. There was insufficient information to describe fishing mortality or exploitation with confidence and these population parameters remain major uncertainties.

In response to the assessment findings and peer review panel recommendations, the American Lobster Management Board accepted the Benchmark Stock Assessment and Peer Review Report for management use and tasked the Technical Committee with recommending possible measures or actions to address the concerns about stock status and recent fishery trends.

A stock assessment overview, which provides a more detailed description of assessment results, as well as the stock assessment and peer review report will be available on the Commission’s website at <https://asmfc.org/species/jonah-crab> under Stock Assessment Reports. For more information on the stock assessment, please contact Jeff Kipp, Senior Stock Assessment Scientist, at jkipp@asmfc.org; and for more information on Jonah crab management, please contact Caitlin Starks, Senior Fishery Management Plan Coordinator, at cstarks@asmfc.org.

American Lobster Board Extends Addendum XXVII Implementation Date to January 1, 2025

Beaufort, NC – The Commission’s American Lobster Management Board modified the implementation date for measures under Addendum XXVII to Amendment 3 to the Interstate Fishery Management Plan for American Lobster to January 1, 2025 (see table for specific dates). Addendum XXVII was adopted in May 2023, and established a trigger mechanism to automatically implement management measures to provide additional protection of the Gulf of Maine/Georges Bank (GOM/GBK) spawning stock biomass.

Under Addendum XXVII, changes to gauge and escape vent sizes in Lobster Conservation Management Areas (LCMAs) 1 (Gulf of Maine), 3 (offshore federal waters) and Outer Cape Cod (OCC) would be initiated based on an observed decline in recruit abundance indices of 35% from the reference level (equal to the three-year average from 2016-2018). With the inclusion of recently released 2022 data in the time series, the trigger index has declined by 39%, surpassing the trigger point of a 35% decline. The measures triggered include two increases to the minimum gauge size in LCMA 1, a corresponding change in the LCMA 1 escape vent size, and a single decrease to the maximum gauge size in LCMA 3 and OCC.

“Because the trigger was tripped much more quickly than we anticipated, the delay in implementing the gauge size increase will provide the Gulf of Maine states the opportunity to coordinate with Canada regarding possible trade implications, and give the industry and gauge makers additional time to prepare for these changes,” stated Pat Keliher from Maine.

Addendum XXVII also implements a standard v-notch definition of 1/8” with or without setal hairs in LCMA 3 and OCC, and a standard maximum gauge size of 6 ¾” for state and federal permit holders in LCMA 3 and OCC. Additionally, for LCMA 1 and 3 permit holders, states must limit the issuance of trap tags to equal the harvester trap tag allocations unless trap losses are documented. The implementation date for these measures is now January 1, 2025.

The following table specifies the timing of management changes for each of the three LCMAs addressed under Addendum XXVII as modified.

When change(s) will be implemented	What change will be implemented		
	LCMA 1	LCMA 3	Outer Cape Cod
January 1, 2025	Trap tags issuance limited to harvester allocation		v-notch definition: 1/8” with or without setal hairs; Maximum gauge size: 6 ¾”
January 1, 2025	Minimum gauge size: 3 5/16”		
January 1, 2027	Minimum gauge size: 3 3/8”		
January 1, 2028	Escape vent size: 2 x 5 3/4” rectangular; 2 5/8” circular		
January 1, 2029		Maximum gauge size: 6 1/2”	Maximum gauge size: 6 1/2”

For more information, please contact Caitlin Starks, Senior Fishery Management Plan Coordinator, at cstarks@asmfc.org or 703.842.0740.

PR23-24

Meeting Summary

In addition to accepting the Jonah Crab Benchmark Stock Assessment and Peer Review Report for management use, and modifying the implementation date for Addendum XXVII, the Board also reviewed the 2024 annual data update for American lobster, and approved Terms of Reference for the next Lobster Benchmark Stock Assessment.

An annual data update process between American lobster stock assessments was recommended during the 2020 stock assessment to more closely monitor changes in stock abundance. Data sets updated during this process indicate exploitable lobster stock abundance conditions expected in subsequent years and include young-of-year settlement indicators, trawl survey indicators, and ventless trap survey sex-specific abundance indices. This is the third data update including data through 2022. In general, Gulf of Maine indicators show declines from time series highs observed during the stock assessment, and Georges Bank indicators show slight improvement since the stock assessment. Southern New England indicators show continued unfavorable conditions with some further signs of decline since the stock assessment.

Staff presented draft Terms of Reference (TORs) and timeline for the next benchmark stock assessment for American lobster, which is scheduled for completion in 2025. Given the evidence that environmental conditions impact the lobster population, the Board requested that the assessment also identify, describe, and, if possible, quantify the effect of environmental and climatic drivers on stock abundance at various time scales.

Additionally, the Board discussed a potential action at the New England Fishery Management Council that is considering scallop fishery access on the Northern Edge on Georges Bank. The Board tasked the Lobster Technical Committee to compile information on the lobster resource and fishery in and around the Northern Edge that could help characterize potential impacts on the lobster population and fishery in the area.

For more information, please contact Caitlin Starks, Senior Fishery Management Plan Coordinator, at cstarks@asmfc.org.

Motions

Move to accept the Jonah Crab Benchmark Stock Assessment and Peer Review Report for management use.

Motion made by Mr. McKiernan and seconded by Mr. Train. Motion passes by (11 in favor).

Motion to task the Technical Committee to recommend possible management measures or other options to correct what appear to be deficiencies in the stock.

Motion made by Mr. Train and seconded by Mr. Grout. Motion passes by unanimous consent.

Motion to amend the approval of Addendum XXVII to change the implementation date. The implementation date for all management measures shall be January 1, 2025, including those measures triggered under Section 3.2. Year 2 and year 3 measures would be implemented by January 1 of the following calendar years for which they are required.

Motion made by Mr. Keliher and seconded by Mr. Borden. Motion passes (10 in favor, 1 opposed).

Move to modify terms of reference 4 to identify, describe, and, if possible, quantify the effect of environmental/climatic drivers on stock abundance considering annual to decadal scales

Motion made Mr. Keliher and seconded by Mr. Grout. Motion approved by unanimous consent.

Move to task the Lobster Technical Committee (TC) to compile information on the lobster resource and fishery in and around the Northern Edge on Georges Bank. This is in relation to a potential action at the New England Fishery Management Council (NEFMC) which is considering scallop fishery access on the Northern Edge. A starting place for this tasking could be reviewing information that the Lobster TC compiled when ASMFC commented on the NEFMC's Omnibus Habitat Amendment 2. Areas of interest include:

- **Information on the presence and abundance of lobsters, including ovigerous lobsters, in and around the Northern Edge by month/season**
- **Lobster fishery effort in and around the Northern Edge by month/season**
- **Potential impacts of mobile gear on the lobster population in the area**
- **Information on the habitat type and depth preference of lobsters which could inform our understanding of lobsters on the northern edge if there are limitations in the data**
- **Whether current reporting by Area 3 vessels is representative, or an underestimate, of lobster effort in the Northern Edge area and how future requirements (i.e., federal eVTR requirement, vessel tracking) will impact the data available**

Motion made by Mr. Keliher and seconded by Mr. Grout. Motion passes by unanimous consent.

TAUTOG MANAGEMENT BOARD (OCTOBER 16, 2023)

Meeting Summary

The Tautog Management Board met to consider a Technical Committee (TC) report on the commercial tagging program and discuss potential changes to the program.

In response to a Board task at the August meeting to identify and evaluate alternative tag types, the TC met and identified the T-bar, Petersen disc, and dart tags as potential alternatives to test along with the smaller NBT tag. However, the TC noted that with the timeframe between the August and October meetings, only the smaller NBT tag could be evaluated and the study would be limited to two weeks. In order to conduct a more robust study that would include all potential tag types over 30 days, results will not be available until summer 2024.

The Board also discussed proposals to suspend the commercial tagging program while alternative tags are evaluated. In response to public comments and the results of the TC surveys reviewed in August 2023, New York requested that the Board consider either pausing the program through emergency action or a fast-tracked addendum until the Board could consider alternative tags, or potentially suspending the program indefinitely if a new tag could not be identified. The Board agreed that alternative tags need to be studied with the goal of finding a tag that could meet the objectives of the program and alleviate the concerns of live market harvesters and dealers. However, based on feedback from the Law Enforcement Committee that the program appears to be achieving its goal of reducing the number of illegal fish in the market, there were concerns about the effects on compliance if there was a pause in the program. In addition, there were states that have seen an increase in the value of their fish since the tagging program has been implemented. Ultimately the Board decided to maintain the program in its current form for the 2024 fishing year, during which time the alternative tags can be researched. For more information, please contact James Boyle, Fishery Management Plan Coordinator at jboyle@asmfc.org.

Motions

Main Motion

Move that the Tautog Management Board, by emergency action, as defined in the ISFMP Charter, suspend the Coastwide Commercial Tautog Tagging Program for 180 days to prevent additional negative impacts to the live market fishery and initiate an Addendum that will implement the suspension for the remainder of the 2024 fishing year and consider a longer term suspension if a suitable tag, satisfying Objective 4 in section 4.4.1 of Amendment 1, cannot be identified in time for implementation for 2025.

Motion made by Mr. Maniscalco and seconded by Dr. Davis

Motion to Substitute

Motion to substitute to initiate a fast-track addendum that will address negative impacts to the live market fishery, satisfying Objective 4 in section 4.4.1 of Amendment 1.

Motion made by Mr. Hasbrouck and seconded by Dr. Davis. Motion fails (1 in favor, 8 opposed).

Main Motion

Move that the Tautog Management Board, by emergency action, as defined in the ISFMP Charter, suspend the Coastwide Commercial Tautog Tagging Program for 180 days to prevent additional negative impacts to the live market fishery and initiate an Addendum that will implement the suspension for the remainder of the 2024 fishing year and consider a longer term suspension if a suitable tag, satisfying Objective 4 in section 4.4.1 of Amendment 1, cannot be identified in time for implementation for 2025.

Motion made by Mr. Maniscalco and seconded by Dr. Davis. Motion fails (1 in favor, 8 opposed).

ATLANTIC COASTAL FISH HABITAT PARTNERSHIP STEERING COMMITTEE (OCTOBER 16 & 17, 2023)

Meeting Summary

The Atlantic Coastal Fish Habitat Partnership (ACFHP) Steering Committee met to review the 2023-2024 Action Plan; discuss accomplishments and next steps; updated subcommittees and working groups; and delved into fundraising strategies, including the ACFHP Business Plan and BIL/IRA funding opportunities. The Committee also finalized its FY25 ACFHP funding application and heard from guest speakers, including Todd Miller from the North Carolina Coastal Federation and Jason Olive and Ryan Roberts from the National Fish Habitat Partnership. Despite an unsuccessful attempt at securing \$24,582,681 for the NOAA Climate Resilience Regional Challenge for eight oyster reef restoration projects spanning from Florida to New Hampshire, the Committee remained optimistic about the NOAA Transformational Habitat Restoration opportunity, targeting \$15 million for multi-habitat restoration projects in focused watersheds in Georgia, Delaware, and New Hampshire. The ACFHP FY25 Funding Application, open from October 31, 2023 to January 31, 2024, supports fish habitat conservation projects, with no specified upper funding limit but a mandatory 1:1 non-federal match requirement (Tribes exempted). The application process places more emphasis on diversity, equity, inclusion, and public access. For more information, please contact Simen Kaalstad, ACFHP Director, at skaalstad@asmfc.org.

HORSESHOE CRAB MANAGEMENT BOARD (OCTOBER 16, 2023)

Press Release

Horseshoe Crab Board Sets 2024 Specifications for Delaware Bay-Origin Horseshoe Crabs

Beaufort, NC – The Commission’s Horseshoe Crab Management Board approved harvest specifications for Delaware Bay-origin horseshoe crabs. Taking into consideration the output of the Adaptive Resource Management (ARM) Framework Revision, the Board set a harvest limit of 500,000 male and zero female Delaware Bay-origin horseshoe crabs for the 2024 season.

“The Board stands behind the ARM Framework Revision as the best available tool to set harvest limits for horseshoe crabs of Delaware Bay-origin. As a result of its use, the Delaware Bay horseshoe crab population has been increasing, with abundance of both female and male horseshoe crabs in the Delaware region at an all-time high since 2003. Despite this positive finding, the Board elected to implement zero female horseshoe crab harvest for the 2024 season as a conservative measure, considering continued public concern about the status of the red knot population in the Delaware Bay,” stated Board Chair John Clark of Delaware.

To make up for the lost harvest of larger female crabs, the Board agreed to increase Maryland and Virginia’s male harvest quotas with an offset ratio of 2:1 males to females. Using the allocation methodology established in Addendum VIII, the following quotas were set for New Jersey, Delaware, Maryland, and Virginia:

	Delaware Bay-Origin Horseshoe Crab Quota (no. of crabs)	Total Quota**
State	Male Only	Male Only
Delaware	173,014	173,014
New Jersey	173,014	173,014
Maryland	132,865	255,980
Virginia*	21,107	81,331

*Virginia harvest refers to harvest east of the COLREGS line only

**Total harvest quotas for Maryland and Virginia include crabs which are not of Delaware Bay origin.

As part of its ongoing discussions regarding how best to manage Delaware Bay-origin horseshoe crabs and in response to the Stakeholder Survey, the Board will move forward with a Horseshoe Crab Management Objectives Workshop. The Workshop will include a small group of managers, scientists, and stakeholders to explore different management objectives for the Delaware Bay-origin horseshoe crab, with a focus on multi-year specification setting and modeling approaches when selecting no female harvest. The intent would be to provide a report to the Board in time for the 2025 specification setting process next fall. For more information, please contact Caitlin Starks, Senior Fishery Management Coordinator, at cstarks@asmfc.org or 703.842.0740.

PR23-25

Meeting Summary

In addition to setting Delaware Bay-origin harvest specifications for 2024, the Board considered the results of stakeholder survey on Delaware Bay management objectives, received a report on synthetic endotoxin testing reagents, approved the Fishery Management Plan (FMP) Review for the 2022 fishing year, and appointed a new Advisory Panel member.

In May 2023 the Board formed a work group to develop a survey to be distributed to stakeholders to guide the Board in evaluating management objectives for the Delaware Bay horseshoe crab bait fishery, and whether to consider future changes to management. The survey was distributed to stakeholders from the Delaware Bay states (New Jersey, Delaware, Maryland, and Virginia) including bait harvesters and dealers, fishermen who use horseshoe crab as bait, biomedical fishery and industry participants, and environmental groups. The results of the survey suggest the harvest of female horseshoe crabs does hold value for commercial fishery, and there is interest across stakeholder groups in modifying the management program for the Delaware Bay region.

Staff provided information on the synthetic alternatives to LAL, the endotoxin testing reagent derived from horseshoe crab blood, as requested by the Board. Recently, an expert committee of the US Pharmacopeia (USP) proposed a new standard including additional techniques for bacterial endotoxin testing using non-animal derived reagents, including recombinant Factor C (rFC) and recombinant cascade reagents (rCR). It also would provide information for manufacturers of new and existing biopharmaceuticals on how to incorporate them into their quality testing. The Board requested that a subject matter expert from the USP or the Food and Drug Administration attend a future meeting to provide additional detail on the efficacy of rFC and rCR compared to LAL.

The Board approved the FMP Review and state compliance reports for horseshoe crab for the 2022 fishing year, as well as *de minimis* status for South Carolina, Georgia, and Florida. Additionally, it approved the nomination of Sam Martin, a commercial fisherman for Maryland.

For more information, please contact Caitlin Starks, Senior Fishery Management Plan Coordinator, at cstarks@asmfc.org or 703.842.0740.

Motions

Move to accept the 2024 Adaptive Resource Management harvest specifications with 500,000 males and no female harvest on Delaware Bay-origin crabs. In addition, the 2:1 offset will be added to MD's and VA's allocations due to no female harvest.

Motion made by Ms. Madsen and seconded by Mr. Pugh. Motion passes by unanimous consent.

Move to use the Stakeholder Survey Report as a basis for a Horseshoe Crab Management Objectives workshop, which would include a small group of managers, scientists, and stakeholders to explore different management objectives for the Delaware Bay-origin horseshoe crabs. This workshop should focus on multi-year specification setting and modeling approaches when selecting no female harvest. The intent would be to provide a report to the full Board in time for the 2025 specification setting process.

Motion made by Ms. Madsen and seconded by Mr. Cimino. Motion passes by unanimous consent.

Move to approve the FMP Review, state compliance reports, and *de minimis* requests for South Carolina, Georgia, and Florida for the 2022 fishing year.

Motion made by Mr. Luisi and seconded by Mr. Hasbrouck. Motion passes by unanimous consent.

Move to approve Advisory Panel nomination for Sam Martin from Maryland.

Motion made by Mr. Luisi and seconded by Ms. Madsen. Motion passes by unanimous consent.

Move to task the Adaptive Resource Management Subcommittee with preparing a response to the September 2023 review of the ARM Framework by Dr. Kevin Shoemaker.

Motion made by Mr. Hyatt and seconded by Mr. Luisi. Motion passes by unanimous consent.

SHAD & RIVER HERRING MANAGEMENT BOARD (OCTOBER 16, 2023)

Meeting Summary

The Shad and River Herring Management Board met to receive a progress update on the River Herring Benchmark Stock Assessment and consider the Fishery Management Plan (FMP) Review for the 2022 fishing year.

The Board received an update on the River Herring Benchmark Stock Assessment. The Assessment Workshop was held from August 21-25, 2023. The Stock Assessment Subcommittee determined that the current timeline was not feasible, given the remaining workload, and recommended shifting the completion of the assessment forward one meeting week cycle. Instead of being peer-reviewed in Winter 2023 for presentation to the Board in February 2024, the assessment will now be peer-reviewed in early spring 2024 and presented to the Board at the Spring Meeting in May 2024.

The Board also reviewed the FMP Review and state compliance reports for the 2022 fishing year. In 2022, river herring landings were approximately 2.82 million pounds, which was a 34% increase from 2021, including approximately 2,600 pounds in bycatch landings. However, the Plan Review Team (PRT) noted that inconsistent sources of bycatch data between states make it difficult to evaluate bycatch annually. Non-confidential American shad landings totaled an estimated 110,027 pounds, a 44% decrease from 2021. Bycatch landings decreased by 75% to represent 7.5% of the total commercial landings. Hickory shad landings amounted to an estimated 98,962 pounds, a 0.5% decrease from 2021, although bycatch landings increased by 40% to represent 3% of commercial landings. The PRT noted that a number of states could not complete the monitoring requirements of Amendments 2 and 3 due to persistent funding and staffing issues, among some other minor issues with the compliance format. However, the PRT did not consider any of the issues significant. Therefore, the Board approved the 2022 FMP Review, state compliance reports, and *de minimis* requests.

For more information contact James Boyle, Fishery Management Plan Coordinator at jboyle@asmfc.org.

Motions

Move to approve the Shad and River Herring Fishery Management Plan Review and state compliance reports, and *de minimis* requests for ME, NH, MA, and FL for American shad and NH, GA, and FL for river herring for the 2022 fishing year.

Motion made by Mr. Grout and seconded by Mr. Woodward. Motion passes by unanimous consent.

ATLANTIC COASTAL COOPERATIVE STATISTICS PROGRAM COORDINATING COUNCIL (OCTOBER 17, 2023)

Meeting Summary

The Atlantic Coastal Cooperative Statistics Program (ACCSP) Coordinating Council met to consider the FY2024 Partner and Administrative proposals and the Citizen Science SciFish Policies.

The Council voted to fund the ACCSP Administrative grant as base plus option 2 for required software platform development. The Council voted to support six maintenance proposals for FY2024 ranked and recommended by the Advisory and Operations Committees. The Council voted to fully support three new proposals and two proposals (from MAMFC and RI) at reduced scope to make the most progress with limited resources. The Council noted appreciation to the Operations and Advisors Committees for their work to rank proposals and provide thoughtful recommendations to utilize both the annual funding as well as \$250K unallocated funds from previous years.

The Council also approved the ACCSP Citizen science policies document for SciFish, allowing for creation of the SciFish Advisory panel and preparing for implementation of the SciFish application and project builder in the first half of 2024.

The Council was presented an update of ACCSP program activities, including software development timelines, updated on the Biological and Bycatch data collection program inventories now searchable in the ACCSP Data Warehouse, and the need for more Advisors to be appointed by Council members. For more information, please contact Geoff White, ACCSP Director, at Geoff.White@accsp.org.

Motions

Move to approve the FY2024 ACCSP Administrative grant as the base budget inclusive of Option 2 (\$50K) for a total of \$2,310,327.

Motion made by Mr. Carmichael and seconded by Ms. Burgess. Motion passes (19 in favor).

Move to approve the top six (6) FY2024 ACCSP Maintenance projects as recommended by the Operations Committee and Advisors, including \$65,819 of the \$250K carry-over funds.

Motion made by Ms. Salmon and seconded by Ms. Braun. Motion passes (20 in favor).

Main Motion

Move to accept the recommendations of the operations committee with the modification of funding both the MAFMC proposal “Improving Catch and Effort Data Collection from Recreational Tilefish Anglers” and the RIDEM proposal “The Economic Impact of Rhode Island’s Fishing Industry” per the agreement these two entities reached to alter their funding request to not exceed the new proposal allocation.

Motion made by Mr. McKiernan and seconded by Ms. Zobel. Motion amended.

Motion to Amend

Motion to amend to add “if Rhode Island Department of Environmental Management (RIDEM) and the Mid-Atlantic Fishery Management Council (MAFMC) are unable to reach an agreement on how to split the funds the final arbitrator would be the ACCSP Leadership Committee.”

Motion made by Ms. Burgess and seconded by Ms. Ware. Motion passes (20 in favor).

Main Motion as Amended

Move to accept the recommendations of the operations committee with the modification of funding both the MAFMC proposal “Improving Catch and Effort Data Collection from Recreational Tilefish Anglers” and the RIDEM proposal “The Economic Impact of Rhode Island’s Fishing Industry” per the agreement these two entities reached to alter their funding request to not exceed the new proposal allocation. If RIDEM and MAFMC are unable to reach an agreement on how to split the funds the final arbitrator would be the ACCSP Leadership Committee

Motion passes by unanimous consent.

Move to approve early funding option (November 2023) be used for Option 2 of the Administrative Grant (\$50,000) and for the new SC DNR project to add HMS fields to VESL (\$112,900).

Motion made by Ms. Burgess and seconded by Mr. Carmichael. Motion passes by unanimous consent.

Motion to approve the SciFish Policies and launching of the SciFish Project Builder and application.

Motion made by Mr. Carmichael and seconded by Mr. Clark. Motion passes by unanimous consent.

LAW ENFORCEMENT COMMITTEE (OCTOBER 17 & 18, 2023)

Meeting Summary

The Law Enforcement Committee (LEC) conducted a hybrid meeting during the Commission’s 81st Annual Meeting in Beaufort, NC. The committee welcomed LTC. Jeff Sabo as the new representative from the Pennsylvania Fish and Boat Commission.

Species Issues

American Lobster – The LEC discussed the status of the trigger indices under Addendum XXVII of Amendment 3 of the American Lobster Fishery Management Plan. Every October the American Lobster Management Board reviews trawl and ventless trap survey results to see if the 35% decline in the recruit abundance has occurred. If the 35% decline in the recruit abundance is reached, then the following management consideration will take effect.

- **1st Gauge Increase** – The first 1/16th of an inch gauge increase will take effect June 1st of the year after a determination by the Board that a 35% decline in recruitment abundance has occurred.
- **2nd Gauge Increase** – On June 1st, three years after the Board’s determination, the second 1/16th of an inch gauge increase for LMA1 harvesters will take effect.
- **Escape Vent Increase** – On June 1st, four years after the Board’s determination, lobster trap escape vent size increases will take effect.

The Committee was updated on the actions of the American Lobster Management Board in extending Addendum XXVII Implementation date to January 1, 2025.

Atlantic Striped Bass – Toni Kerns updated the LEC on the status of Draft Addendum II to Amendment 7 of the Atlantic Striped Bass ISFMP. Specific discussion was on the proposed compliance measures found in Section 3.0 of the Draft Addendum. The LEC looks forward to providing comments at the appropriate time on the specific management options.

Tautog Tagging Study – The LEC was briefed by staff on the status of the Tautog Tagging Study being conducted by the Technical Committee and the State of New York. The study will assess the varied types of tags in different environments. This study is to be completed in late 2023 with recommendations to the Tautog Management Board in 2024. The goal behind this study is to identify a tag for use that will not damage a fish in the live market and hold the appropriate information necessary for tracking within the fishery.

Spiny Dogfish – Staff provided information on actions taken by the Mid-Atlantic and New England Fishery Management Councils to reduce sturgeon bycatch in the several federal large mesh gillnet fisheries. The LEC discussed the following topics:

- In response to the 2021 Biological Opinion and 2022 Action Plan to Reduce Atlantic Sturgeon Bycatch in Federal Large Mesh Gillnet Fisheries, a joint FMAT/PDT of the New England and Mid-Atlantic Fisheries Management Councils formed to develop a range of alternatives to reduce sturgeon bycatch in the monkfish and spiny dogfish fisheries.
- Review Progress and Timeline Updates on the Mid-Atlantic and New England Fishery Management Councils' Joint Action on the Spiny Dogfish Fishery to Reduce Atlantic Sturgeon Bycatch.

Other issues

Members reviewed the current ASMFC document *Guidelines for Resource Managers on the Enforceability of Fishery Management Measures* (August 2015). This document has not been updated since 2015. With the always evolving strategies to address the development of fishery management plans, the LEC wished to keep this document relevant for the fishery managers of today. The LEC assigned a subcommittee in the Spring 2023. This subcommittee conducted three meetings over the summer months and has prepared a draft document for review and consideration by the full LEC. The next step will be to score and prioritize the management measures contained in the document. This will occur in late 2023, with a goal of this Boards approval in early 2024.

A presentation of the second phase of the NACLELA/ICCA Wildlife Officer Exchange Program was offered. In this phase the US agency representative travelled to the foreign nation to learn about their respective program. This program is of interest as the Chair of the LEC, Deputy Chief Jason Snellbaker (NJ) was invited by the organizers to participate in this program in his role as a state officer and a NACLELA graduate. This exchange was with an ICCA graduate from the Fisheries Compliance and Enforcement agency of Belize. Deputy Chief Jason Snellbaker shared his experience of traveling to Belize and learning about their fishery enforcement program. This shared experience helped to increase international collaboration and individual capacity to address wildlife crime globally.

The Committee also discussed how best to utilize the [Interstate Wildlife Violators Compact](#). Specifically, how best to share license sanctions among participating jurisdictions. For example, if the

State of Maine were to issue a license sanction for a violation of their regulations; the State of New Hampshire or Massachusetts or any compact partnered state with like regulation, can also revoke the privilege of this same fisher in their state. This would be based on the Maine suspension. For our member state agencies, this is an unused resource that could help protect our marine fisheries and offer a deterrent.

A closed session of our meeting was afforded to openly discuss new and emerging law enforcement issues. Respective agencies were provided time to highlight their agencies and offer current enforcement efforts. For more information, please contact Kurt Blanchard, LEC Coordinator, at kurt.blanchard@verizon.net.

ATLANTIC MENHADEN MANAGEMENT BOARD (OCTOBER 17, 2023)

Meeting Summary

The Atlantic Menhaden Management Board met to receive an update on the ecological reference point (ERP) benchmark stock assessment, review the Virginia Chesapeake Bay Menhaden Study Design Report, and consider approval of the 2022 Fishery Management Plan (FMP) Review.

The Board received an update on the ERP Benchmark Stock Assessment. The ERP Workgroup met in October to conduct a Data and Methods Workshop to review new data sources; discuss high priority updates to the ecosystem models, including identifying potential new predators to add to the model; and discuss ongoing ecosystem indicator work in Maryland and Virginia. The ERP Benchmark Stock Assessment is scheduled to be presented to the Board at the 2025 Annual Meeting.

The Board reviewed the Virginia Chesapeake Bay Menhaden Study Design Report from the Virginia Institute of Marine Science (VIMS). In response to public concerns about the impacts of Atlantic menhaden commercial fishing in Chesapeake Bay, the Virginia General Assembly passed legislation that directed VIMS to develop a plan for studying Atlantic menhaden in Virginia waters. The Report outlines priority research recommendations, including methodologies, appropriate research agencies, collaborative stakeholders, timelines, and costs associated with those recommendations.

The Board approved the FMP Review for the 2022 fishing year, as well *de minimis* requests from Pennsylvania, South Carolina, Georgia, and Florida. The coastwide total allowable catch (TAC) for the 2022 fishing year was 194,400 mt. According to state compliance reports, total catch in 2022 including directed, incidental/small-scale fishery (IC/SSF), and episodic event set aside (EESA) landings was approximately 195,387 mt. IC/SSF landings, which did not count towards the coastwide TAC, amounted to an estimated 8,156 mt representing a 46% increase from 2021. Therefore, non-incidentals landings in 2022 totaled 187,231 mt, which is approximately 96% of the coastwide TAC and a 1% decrease from 2021. While bait landings increased from 2021, reduction landings decreased by 2%.

The Plan Review Team questioned whether the current 10-fish biological sampling requirement is sufficient to categorize the impact of the commercial gear types on the menhaden population and whether it is appropriate for states to substitute fishery-independent data. Staff reported that

these issues will be evaluated as part of the 2025 Atlantic Menhaden Single-Species Stock Assessment Update. For more information contact James Boyle, Fishery Management Plan Coordinator at jboyle@asmfc.org.

Motions

Move to approve the Fishery Management Plan Review, state compliance reports, and *de minimis* requests for PA, SC, GA, and FL for Atlantic menhaden for the 2022 fishing year.

Motion made by Mr. Hasbrouck and seconded by Mr. Miller. Motion passes by unanimous consent.

COASTAL PELAGICS MANAGEMENT BOARD (OCTOBER 17, 2023)

Meeting Summary

The Coastal Pelagics Management Board met to receive an update on the 2025 SouthEast Data, Assessment, and Review (SEDAR) stock assessment for Atlantic cobia; set state waters recreational management measures for Atlantic cobia for the 2024 fishing year; receive a Cobia Technical Committee (TC) report regarding reallocation of recreational quota; and receive an update from the South Atlantic Fishery Management Council (SAFMC) regarding Framework Amendment 13 to the Coastal Migratory Pelagics (CMP) Fishery Management Plan (FMP) and upcoming mackerel port meetings.

The Board received a presentation on the status of the upcoming stock assessment for Atlantic cobia, which is scheduled to be peer reviewed in 2025 through the SEDAR process. The 2025 cobia assessment will function differently from SEDAR 58, the previous assessment for the species. Significant participation from the Commission and state staff will require the Board to establish an Atlantic Cobia Stock Assessment Subcommittee (SAS). The assessment will face a number of challenges including, but not limited to, the loss of the sole abundance index for the species and the need to consider new data sources and modeling frameworks. Additionally, as part of the stock assessment, the Cobia TC has expressed interest in reexamining the management boundary for Atlantic cobia which currently sits at the Florida Georgia state line. The 2025 stock assessment for Atlantic cobia is expected to be presented to the Board in early 2026.

Next, the Board received a TC report and recommendation for setting state waters recreational management measures in 2024. Typically, the TC would determine state management measure changes through comparing each state's recent harvest to state harvest targets. However, this year, in addition to harvest target evaluations, the Board also tasked the TC with reviewing the impacts of status quo recreational management measures. Ultimately, the Board agreed with the TC recommendation, and chose to maintain status quo state waters recreational management measures for the 2024 fishing season.

The second TC report to the Board focused on recent trends in state and regional cobia landings compared to harvest targets. The TC noted current recreational allocations are calculated based on states' percentages of coastwide landings through 2015. However, harvest patterns since 2015 appear to have changed such that a majority of cobia harvest now occurs outside of the Southeast region. The TC recommended the Board consider taking action to address recreational quota reallocation of Atlantic cobia, but noted the timing of Board action should consider upcoming

changes to the Marine Recreational Information Program Fishing Effort Survey and the potential for a stock boundary reexamination alongside the next stock assessment. After receiving the TC report and recommendation, the Board initiated an addendum to address recreational Atlantic cobia quota reallocation. The Board recommended the Plan Development Team (PDT) explore options to consider the seasonality of the species in various regions, reevaluate what a soft target is, and if state-by-state soft targets are appropriate for managing pulse fisheries like Atlantic cobia. The Board will form a PDT following the Commission's Annual Meeting, and will receive an update from the PDT and better define addendum alternatives at the Commission's next meeting in January.

Lastly, the Board received an update from SAFMC regarding upcoming mackerel port meetings and CMP Framework Amendment 13. CMP Framework Amendment 13 will adopt the new acceptable biological catch (ABC) level for Spanish mackerel and is expected to be approved in June 2024. Mackerel port meetings are expected to start in Spring 2024, and will serve as pre-scoping for an upcoming SAFMC plan amendment addressing management of Atlantic Spanish mackerel.

For more information, please contact Chelsea Tuohy, Fishery Management Plan Coordinator, at ctuohy@asmfc.org.

Motions

Move to maintain status quo state waters recreational management measures for Atlantic cobia for the 2024 fishing season.

Motion made by Ms. Madsen and seconded by Mr. Woodward. Motion passes by unanimous consent (Roll call: In favor – RI, NY, DE, MD, PRFC, VA, NC, SAFMC; Abstentions – FL, NOAA Fisheries; Null – GA, SC).

Move to initiate an addendum addressing recreational Atlantic cobia quota reallocation. The Board recommends that the Plan Development Team explore options outside of the current state-by-state quota allocation system, specifically a coastwide soft target with regional management measures designed to meet the coastwide soft target while considering the need for fishing opportunity based on the seasonality of the species in various regions.

Motion made by Ms. Madsen and seconded by Mr. Batsavage. Motion passes (9 in favor, 2 null, 2 abstentions).

Move to elect Mr. Spud Woodward from Georgia as the Vice Chair of the Coastal Pelagics Management Board.

Motion made by Mr. Batsavage and seconded by Dr. Rhodes. Motion passes by unanimous consent.

COASTAL SHARKS MANAGEMENT BOARD (OCTOBER 17, 2023)

Meeting Summary

The Coastal Sharks Management Board met to consider a process to set 2024 specifications. NOAA Fisheries Highly Migratory Species Division published the proposed 2024 Atlantic shark specifications in August. The proposed rule includes a start date of January 1 for all shark management groups, with quota levels and possession limits remaining unchanged from 2023. The proposed initial 2024 possession limit for the aggregate large coastal sharks (LCS) other than sandbar is 55 sharks per vessel trip, and the initial possession limit for blacknose sharks is eight

sharks per vessel trip. NOAA Fisheries may reduce the retention limits as needed to ensure the quotas are not exceeded. The proposed rule also considers options for the 2024 and future fishing years to automatically open the commercial fishing year on January 1 of each year under the base quotas and default retention limits, and to increase the default commercial retention limit for the LCS fisheries. Upon the release of NOAA's final rule later this year, the Board will set the 2024 coastal shark specifications via an email vote.

Additionally, the Board elected Mike Luisi as Vice-Chair. For more information, please contact Caitlin Starks, Senior Fishery Management Plan Coordinator at cstarks@asmfc.org.

Motions

Move to approve the 2024 coastal sharks specifications via an email vote after NOAA Fisheries publishes the final rule for the 2024 Atlantic Shark Commercial Fishing season.

Motion made by Mr. Clark and seconded by Mr. Luisi. Motion approved by unanimous consent.

Move to nominate Mike Luisi as Vice Chair of the Coastal Sharks Board.

Motion made by Mr. Clark and seconded by Ms. Meserve. Motion approved by unanimous consent.

EXECUTIVE COMMITTEE (OCTOBER 18, 2023)

Meeting Summary

The Executive Committee (EC) met to discuss several issues, including the FY23 Audit, an increase to the per diem allowance; an update on Consolidated Appropriations Act (CAA) and a Legislative Committee update. The following action items resulted from the Committee's discussions:

- The FY23 Audit was reviewed by the Administrative Oversight Committee (AOC) and forwarded to the Executive Committee with a recommendation for approval. The motion to approved unanimously.
- Staff presented a report on the potential for an increase in Per Diem rates for Commission meetings. The increase would be from Commission General and Administrative (G&A) funds, not federal funds. Staff presented an analysis of the impact this increase would have on the Commission budget and it was determined to be less than \$15,000 annually. A motion was made to implement this change and it passed.
- Staff presented the Executive Committee with multiple legislative updates per the recommendation of the Legislative Committee. Topics included: the speakership battle and its potential impacts on the budget, the Recovering America's Wildlife Act, the FISHES Act, unconfirmed upcoming priorities for Congress, and updates on internal Commission planning documents.
- Staff gave an update on the Consolidated Appropriations Act (CAA) funds. CAA has approximately \$7 million remaining and the states are expected to disburse it all by July 31, 2024.
- Mr. Keliher presented an overview of the American Unagi aquaculture facility in Hancock County, Maine. The facility is highly effective in growing out glass eels to supply the domestic unagi market.

For more information, please contact Laura Leach, Director of Finance & Administration, at lleach@asmfc.org.

Motions

On behalf of the Administrative Oversight Committee, move acceptance of the FY23 Audit.

Motion made by Joe Cimino. Motion passes unanimously.

Move the Commission approve a 30% increase to the per diem allowance which will come from G&A, not federal funds.

Motion made by Mr. Abbott and seconded by Mr. Miller. Motion passes (14 in favor, 1 opposed, 1 abstention).

BUSINESS SESSION OF THE COMMISSION (OCTOBER 18, 2023)

Press Release

Joseph Cimino Elected ASMFC Chair

Beaufort, NC – Yesterday, member states of the Atlantic States Marine Fisheries Commission (Commission) thanked Spud Woodward of Georgia for an effective two-year term as Chair and elected Joseph Cimino of New Jersey to succeed him.

“I’m honored to be chosen by my fellow Commissioners to lead our efforts for the next two years. One of my priorities will be to work with my colleagues in the states and federal agencies to seek resources to fund fundamental fisheries data collection and science activities to support our management programs. Other topics that will be the focus over the next two years will be our ability to adapt to climate-induced changes in fisheries and how best to respond to the possible recalibration of recreational fishing effort and harvest data from the Marine Recreational Information Program Fishing Effort Survey,” said Mr. Cimino.

Mr. Cimino continued, “I want to thank outgoing Chair, Spud Woodward for his commitment to updating our foundational guidance documents on our Appeals Process, *De Minimis* Policy, and Conservation Equivalency Guidelines. These clearly articulated guidelines and processes are fundamentally important to ensuring that we treat each other fairly and without undue burden in the management process. Newly elected Vice-chair Dan McKiernan and I will strive to emulate his success by working with our stakeholders, state, federal, and academic partners, Congress, and especially Bob Beal and the outstanding staff to ensure *Cooperative and Sustainable Management of Atlantic Coastal Fisheries* is not just a vision statement but a reality.”

Under Mr. Woodward’s leadership, the Commission made important strides in furthering its strategic goals. Management accomplishments over the past two years include decisive action to initiate rebuilding of Atlantic striped bass; the adoption of a new amendment for summer flounder, scup and black sea bass to address the reallocation of the resource between commercial and recreational



sectors; approved changes to the management of recreational fisheries for bluefish, summer flounder, scup and black sea bass through adoption of recreational measures setting process; and the approval of new addenda for American lobster, Atlantic menhaden, and horseshoe crab – all with the shared goal of providing the states and their stakeholders fair access to these resources while ensuring the species' health and long-term sustainability. An outstanding number of benchmark stock assessments and assessment updates were completed, including American eel, Atlantic menhaden, Atlantic striped bass, black drum, bluefish, Jonah crab, winter flounder, and revision to the Adaptive Resource Management Framework.

Working with the three East Coast Regional Fishery Management Councils and NOAA Fisheries, significant progress was also made on how fisheries managers can best address changing fish stock availability or distribution caused by climate change with the development of potential governance and management actions that could help prepare fishery management organizations for future challenges related to climate change.

Further, advances in habitat conservation were made by the Atlantic Coastal Fish Habitat Partnership (ACFHP) through its funding of seven on-the-ground projects, which will open over 40 river miles and conserve over 300 acres of fish habitat. These include dam removal and fishway projects in New Jersey and Massachusetts, as well as saltmarsh and seagrass restoration projects in North Carolina and Florida. ACFHP also partnered with the Southeast Aquatic Resources Partnership and The Nature Conservancy to spatially prioritize fish habitat conservation sites through GIS mapping and analyses for the Atlantic region of the U.S. from Maine to Florida.

From a data collection and management perspective, the Atlantic Coastal Cooperative Statistics Program (ACCSP) also made progress under Mr. Woodward's leadership. ACCSP supported 27 partner agency data collection projects, and expanded the scope and security of the ACCSP Data Warehouse. ACCSP established citizen science policies and data collection systems including SciFish; supported implementation of the SouthEast For-Hire Integrated Electronic Reporting system; completed the Atlantic Regional Recreational Data Needs Implementation plan; and made progress on a methodology to more fully use for-hire logbooks in Marine Recreational Information Program's catch statistics.

Mr. Cimino directs the New Jersey Department of Environmental Protection's (NJDEP) Marine Resources Administration, which includes the bureaus of marine fisheries and marine habitat and shellfisheries. He represents the NJDEP at various inter- and intra-state meetings, including the New Jersey Marine Fisheries Council and the Delaware Bay and Atlantic Shellfisheries Councils, the Mid-Atlantic Fishery Management Council, and the Atlantic States Marine Fisheries Commission, where he has represented the State of New Jersey since 2019 and prior to that the Commonwealth of Virginia from 2015-2018. Mr. Cimino directs the research and monitoring programs of the Administration to ensure they provide the information necessary for sound management of marine and shellfish resources. He started his marine fisheries career as a seasonal technician for New York State Department of Environmental Conservation's Hudson River Fisheries Unit, he then spent two years with North Carolina's Division of Marine Fisheries. During his 14 years with the Virginia Marine Resources Commission, he held various roles, ultimately finishing his time there as the Deputy Chief of Fisheries. Mr. Cimino has degrees from SUNY Cobleskill and Plattsburgh in Fisheries and Wildlife Technology and Environmental Science, respectively.

The Commission also elected Dan McKiernan, Director of Massachusetts Division of Marine Fisheries, as its Vice-Chair.

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PR23-27

Meeting Summary

In addition to electing new leadership, the Commission reviewed and approved the 2024 Action Plan, which guides the Commission’s activities over the next year. It also received a brief overview of the Draft 2024-2028 Strategic Plan, which will be considered for final action in January at the Commission’s Winter Meeting. For more information, please contact Robert Beal, Executive Director, at rbeal@asmfc.org.

Motions

Motion to approve the 2024 Action Plan.

Motion made by Mr. Keliher and seconded by Mr. Clark. Motion carries without objection.

On behalf of the nomination committee, move to elect Joe Cimino as ASMFC Chair.

Motion made by Mr. Keliher. Motion unanimously approved.

On behalf of the nomination committee, move to elect Dan McKiernan as ASMFC Vice-Chair.

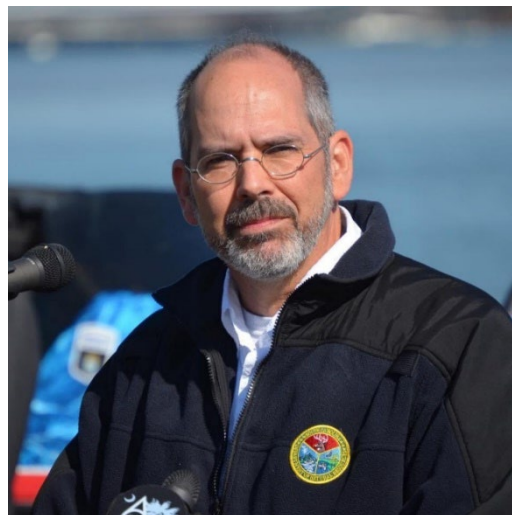
Motion made by Mr. Keliher. Motion unanimously approved.

CAPTAIN DAVID H. HART AWARD (OCTOBER 18, 2023)

Press Release

Robert H. Boyles, Jr. Named 2023 Captain David H. Hart Award Recipient

Beaufort, NC – At its 81st Annual Meeting in Beaufort, North Carolina, the Atlantic States Marine Fisheries Commission presented Robert H. Boyles, Jr., Director of the South Carolina Department of Natural Resources, the Captain David H. Hart Award for 2023 for his longstanding contributions to and exceptional leadership towards the sustainable management of marine resources along the Eastern seaboard. The Commission instituted the Hart Award in 1991 to recognize individuals who have made outstanding efforts to improve Atlantic coast marine fisheries. The Hart Award is named for one of the Commission’s longest serving members, who dedicated himself to the advancement and protection of marine fishery resources, Captain David H. Hart, from the State of New Jersey.



For nearly three decades, Mr. Boyles has dedicated his career to the conservation and management of marine resources within his home state of South Carolina, within the South Atlantic region through his longstanding participation on the South Atlantic Fishery Management Council, and along the entire

Atlantic coast as Commissioner and past Chair and Vice-chair of the Atlantic States Marine Fisheries Commission (ASMFC). Robert was an ASMFC Commissioner from 2004 – 2020. Over that time, he was a thoughtful contributor to our process; chairing management boards for Atlantic menhaden, horseshoe crab, and South Atlantic species, as well as the Atlantic Coastal Cooperative Statistics Program Coordinating Council.

Over the five years that he served as Commission Chair and Vice-chair, he exemplified leadership through his innate ability to understand and facilitate the cooperative nature of the Commission’s Compact. He quickly became and will always be considered the senior statesman of the Commission, with a knack for poignantly quoting one of the nation’s founding members to refocus commissioners on addressing the fundamental question at hand. Mr. Boyles was an advocate for transparent decision making; a great supporter of the Commission, respecting the opinions of both senior veterans and new commissioners alike; and a promoter of unity among states, especially during difficult and contentious deliberations.

Mr. Boyles’ notable accomplishments include greater protection of shad and river herring, with the closure of state waters in the absence of approved sustainability management plans. He also advanced the Commission’s first multispecies approaches to management through the development of the horseshoe crab Adaptive Resource Management Framework and the inclusion of data on predator demands in the Atlantic menhaden stock assessment, setting us on the course for the current management of Atlantic menhaden through the use of ecological reference points.

Although his appointment as Director of the South Carolina Department of Natural Resources precluded his continued service to the Commission, Mr. Boyles continues to advocate for the protection of South Carolina’s Marine Resources through his directorship of the Department as well as serving on multiple national boards, including Chair of the Southeastern Association of Fish and Wildlife Agencies, Vice-Chair of the South Carolina Sea Grant Consortium, and Chair of the National Fish Habitat Board.

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PR23-26

SPINY DOGFISH MANAGEMENT BOARD (OCTOBER 18, 2023)

Meeting Summary

The Spiny Dogfish Management Board met to review an update on the joint action of the Mid-Atlantic and New England Fishery Management Councils (Councils) to reduce sturgeon bycatch and to consider the Fishery Management Plan (FMP) Review for the 2022/2023 fishing year.

The Board received an update on the Councils’ joint action to reduce sturgeon bycatch in the monkfish and spiny dogfish fisheries. The Board reviewed the range of alternatives that were recently approved by both Councils. Final action on the alternatives is planned for April 2024. Accordingly, the Board will plan to review the final action and consider complementary action for state waters at the Spring Meeting in May 2024.

The Board was presented the FMP Review for the 2022/2023 fishing year. Commercial landings increased by 28% from 2021-2022 and were approximately 43% of the coastwide quota. Recreational harvest decreased by 41%, but dead discards increased by 8%, from the previous fishing year. The Board approved the FMP Review, state compliance, and *de minimis* requests from New York and Delaware. For more information, please contact James Boyle, FMP Coordinator, at jboyle@asmfc.org.

Motions

Move to approve the Fishery Management Plan Review, state compliance reports, and *de minimis* requests for DE and NY for the 2022-2023 fishing year.

Motion made by Mr. Kane and seconded by Mr. Clark. Motion approved by unanimous consent.

HABITAT COMMITTEE (OCTOBER 18 & 19, 2023)

Meeting Summary

The Commission's Habitat Committee met on October 18 & 19, following a field trip to the North River Wetlands Preserve that was hosted by Todd Miller from the North Carolina Coastal Federation. During the meeting, the Committee addressed the *Habitat Hotline Atlantic*; status of the current Acoustics Impacts Habitat Management Series document; and welcomed guest speakers, Bill Crowell and Judd Kenworthy from the Albemarle-Pamlico National Estuary Partnership. The discussion surrounding the next issue of the *Habitat Hotline Atlantic* focused on format, topics, and the necessity for following up with Commissioners and the broader audience in order to include the most relevant content. Notably, the Committee made progress in designating Fish Habitats of Concern (FHOC) for all Commission-only managed species. These designations were based on the ecological importance of the habitats, sensitivity to human-induced environmental degradation, potential stress from development activities, and habitat rarity. The FHOC document was approved by the ISFMP Policy Board. For more information, please contact Simen Kaalstad, ACFHP Director, at skaalstad@asmfc.org.

ATLANTIC STRIPED BASS MANAGEMENT BOARD (OCTOBER 18, 2023)

Press Release

Atlantic Striped Bass Board Approves Draft Addendum II for Public Comment to Consider Measures to Reduce Fishing Mortality in 2024

Beaufort, NC – The Commission's Atlantic Striped Bass Management Board approved for public comment Draft Addendum II to Amendment 7 to the Interstate Fishery Management Plan (FMP) for Atlantic Striped Bass. The Draft Addendum considers management measures designed to support stock rebuilding by reducing fishing mortality to the target in 2024.

The Board initiated the Draft Addendum in response to the low probability of meeting the 2029 stock rebuilding deadline if the unexpectedly high 2022 fishing mortality rate continues. The Draft Addendum builds upon the 2023 emergency action by considering management measures intended to reduce fishing mortality to the target level in 2024. Projections indicate that a 14.5% reduction in total removals relative to 2022 is needed to have a 50% chance of being at or below the fishing

mortality target in 2024. For the recreational fishery, the Draft Addendum proposes recreational bag and size limit options for the ocean and Chesapeake Bay regions, including options with different limits for the for-hire modes. To address concerns about recreational filleting allowances and compliance with recreational size limits, the Draft Addendum includes an option that would establish minimum requirements for states that authorize at-sea/shore-side filleting of striped bass (e.g., racks must be retained). For the commercial fishery, the Draft Addendum proposes a quota reduction option that would reduce commercial quotas by up to 14.5%, with the final percent reduction to be determined by the Board.

For measures beyond 2024, the Board will consider the results of the upcoming 2024 stock assessment update to inform subsequent management action. To enable an expedited management response to the 2024 stock assessment update, the Draft Addendum proposes an option that would enable the Board to respond to the results of the stock assessment updates more quickly, via Board action, if the stock is not projected to rebuild by 2029.

The Draft Addendum will be posted to the website no later than October 31st at <https://asmfc.org/about-us/public-input>. A subsequent press release will provide the details on the public hearing schedule and how to submit written comments. The Board will meet to review submitted comments and consider final action on the addendum in January 2024 at the Commission's Winter Meeting in Arlington, VA. For more information, please contact Emilie Franke, Fishery Management Plan Coordinator, at efranke@asmfc.org or 703.842.0740.

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PR23-27

Meeting Summary

In addition to approving Draft Addendum II for public comment, the Atlantic Striped Bass Management Board received an update on management of the Albemarle Sound-Roanoke River striped bass stock.

The Albemarle Sound-Roanoke River (A/R) striped bass stock is assessed and managed by North Carolina (NC) under the auspices of the Commission. NC provides regular updates to the Board regarding A/R stock assessments and management changes. The 2020 and 2022 A/R striped bass stock assessments determined the stock was overfished and experiencing overfishing, and abundance indices indicate continued stock decline. In particular, juvenile recruitment has been very low for several consecutive years. The resulting total allowable landings (TAL) level needed to reduce fishing mortality to its target is effectively too low to manage. For this reason and due to continued concern about stock decline and low recruitment, NC is implementing a harvest moratorium in the [Albemarle Sound Management Area](#) starting in 2024 via the adaptive management framework under Amendment 2 of the NC Estuarine Striped Bass FMP. In addition, the 2023 fall recreational and commercial seasons in the Albemarle Sound will not open because there is little quota remaining and because of stock status concerns. It is currently unknown if a harvest moratorium will be implemented in the Roanoke River Management Area.

Finally, the Board recognized outgoing Board Chair Marty Gary, New York's Administrative Commissioner and formerly with the Potomac River Fisheries Commission, for completing his two-year term as Board Chair. Vice-Chair Megan Ware, Maine's Administrative Proxy, will assume the Chair role at the January 2024 Board meeting. For more information, please contact Emilie Franke, Fishery Management Plan Coordinator, at efranke@asmfc.org.

Motions

Move to delete "come from a period of high availability" from the closed period guidance of the document. The new sentence would read: Any closed period must include at least two consecutive weekend periods (Friday, Saturday and Sunday).

Motion made by Dr. Davis and seconded by Mr. Haymans. Motion passes by unanimous consent.

Main Motion

Move to approve the 4th option for inclusion in the document for when CE is not allowed.

Motion made by Dr. McNamee and seconded by Mr. Clark. Motion amended.

Motion to Amend

Move to amend to replace the 4th with 3rd option.

Motion made by Mr. Batsavage and seconded by Ms. Madsen. Motion passes (12 in favor, 5 opposed).

Main Motion as Amended

Move to approve the 3rd option for inclusion in the document for when CE is not allowed.

Motion to Amend

Motion to amend to add "depleted."

Motion made by Dr. Davis and seconded by Mr. Kane. Motion passes with one opposition.

Main Motion as Amended

Move to approve the 3rd option for inclusion in the document for when CE is not allowed. The new Option 3 reads: CE is not permitted if the stock is overfished or depleted, unless allowed by board via 2/3 majority vote (the rules on voting in Article II. Section 1. apply)

Motion passes.

Main Motion

Move to approve Option 1 for non-quantifiable measures.

Motion made by Mr. Grout and seconded by Dr. McNamee.

Move to substitute for Option 2

Motion made by Ms. Burgess and seconded by Mr. Dyar. Motion fails (6 in favor, 11 opposed).

Main Motion

Move to approve Option 1 for non-quantifiable measures.

Motion made by Mr. Grout and seconded by Dr. McNamee. Motion passes with one opposition.

Move to approve the Conservation Equivalency: Policy and Technical Guidance Document as modified today.

Motion made by Ms. Fegley and seconded by Ms. Braun. Motion carries by unanimous consent.

Move to approve the Fish Habitats of Concern Document.

Motion made by Mr. Clark and seconded by Dr. Rhodes. Motion carries by unanimous consent.

Move that the Commission supports the New England and Mid-Atlantic Fisheries Management Council's request for information on an industry-based survey and the Commission send a similar letter requesting the NEFSC completes a white paper by January 12, 2024 outlining an industry-based survey that is complementary to the Spring and Autumn bottom trawl survey for the Commission and Councils.

Motion made by Mr. Reid and seconded by Mr. Kane. Motion passes by unanimous consent.

AMERICAN EEL MANAGEMENT BOARD (OCTOBER 19, 2023)

Meeting Summary

The American Eel Management Board met to consider progress in the development of two Draft Addenda to address the coastwide commercial quota for yellow eel and Maine's glass eel commercial quota for the 2025 fishing year and beyond, and a report from the Advisory Panel.

In August, the Board initiated two addenda. The first considers reducing the yellow eel commercial catch cap in response to the recent stock assessment finding that the coastwide stock is depleted. Specifically, the draft addendum will consider options for setting the coastwide cap using a new tool proposed in the assessment called *I_{TARGET}*. *I_{TARGET}* uses abundance indices and catch to recommend harvest levels aiming to achieve increases in stock abundance. The Plan Development Team (PDT) has met twice, and recommends that the addendum include an option using the configuration of *I_{TARGET}* recommended in the assessment, and another using a more recent time series (1988-1999) as a reference period. The Board provided guidance to the PDT to add additional options, and provide clear rationales for each in the document.

The PDT working on the development of the draft addendum addressing Maine's glass eel quota has met once to discuss potential management options, including status quo and a reduced quota. The PDT will provide recommended management options to the Board at its next meeting.

The Board also received a report from the Advisory Panel (AP). The AP met in September to review the recent benchmark stock assessment, receive an update on ongoing management actions, and provide comments on the fishery. Only three advisors were in attendance on the call, and they expressed concern about reduced participation in the AP.

For more information, please contact Caitlin Starks, Senior Fishery Management Plan Coordinator, at cstarks@asmfc.org.

Motions

No motions made.

INTERSTATE FISHERIES MANAGEMENT PROGRAM POLICY BOARD (OCTOBER 19, 2023)

Meeting Summary

The Interstate Fisheries Management Program (ISFMP) Policy Board met to receive an update from the Executive Committee (see Executive Committee Summary); consider changes to the Conservation Equivalency Guidance document; receive an update from NOAA Fisheries on Inflation Reduction Act funds for North Atlantic Right whales; review reports from the Assessment Science Committee, Law Enforcement Committee (see Law Enforcement meeting summary), Atlantic Coastal Fish Habitat Partnership (see ACFHP meeting summary) and the Habitat Committee (see Habitat Committee meeting summary); and consider approval of Fish Habitats of Concern document, and other business.

Conservation Equivalency Guidance Document

The Commission has been working to update the Conservation Equivalency (CE) Policy and Technical Guidance Document to reflect current use of CE and change the policy have more requirements verses recommendations. The new policy will not allow the use of CE programs if the stock is overfished or depleted unless the species board votes, via 2/3 majority, to allow for its use. The revised policy has guidance for when CE is not allowed, standards for state proposals, how the review process is conducted, and information on coordination with federal partners. The Policy Board approved the revised document, which will be available on the Commission website under [Guiding Documents](#) by the end of October.

North Atlantic Right Whale Funding from the Inflation Reduction Act

The Department of Commerce and NOAA Fisheries announced next steps to conserve and recover endangered North Atlantic right whales (NARW) with [\\$82 million in funding](#). This funding will support the application of existing technologies (e.g., PAMs) and the development and implementation of technologies to enable vessels to detect and avoid NARW and other large whales. NOAA Fisheries will continue to develop and evaluate new technologies — such as those that use high-resolution satellite information — to enhance NARW monitoring and improve understanding of the whales' distribution and habitat use. NOAA Fisheries will invest in four major areas over the next three years to include monitoring and computer modeling of whale distribution, vessel strike risk reduction, on-demand fishing gear, and enforcement efforts.

Assessment Science Committee Report

The river herring assessment, originally scheduled to be presented to the Shad and River Herring Management Board in February 2024, has now been moved to May. Following the Assessment Workshop in August, the Stock Assessment Subcommittee decided that it needed more time. The spot and croaker benchmark assessments, which are usually conducted together have been uncoupled. The assessment for Atlantic croaker will be completed in 2024, while spot assessment has been moved to 2025. The shift in completion of the spot assessment was made because the stock synthesis lead moved on to a new job and there is no one to immediately replace them. Additionally, there is a project being conducted on spot at the University of Maryland that follows a concurrent timeline as the new spot assessment schedule which could prove useful. The Policy Board approved the revised Commission assessment schedule.

The Board reviewed and approved the Fish Habitats of Concern Document prepared by the Habitat Committee. The document describes the regulatory and policy context for habitat descriptions in interstate fishery management plans. It also provides descriptions of fish habitats of concern for species managed only by the Commission.

Other Business

The Policy Board discussed recent actions by the New England and Mid-Atlantic Fishery Management Councils (Councils) requesting information on an industry-based survey from the Northeast Fisheries Science Center (NEFSC). The Commission supported the Councils' concerns that the Center's survey may have continued difficulties in gathering the necessary data to support the activities of the Councils' and Commission. The Commission agreed to send a letter to the NEFSC requesting the Center complete a white paper by January 12, 2024 outlining an industry-based survey that is complementary to the Spring and Autumn Bottom Trawl Surveys.

Staff will solicit information from the states in order to quantify pot fisheries that use horseshoe crab as bait along the coast. This information will be presented to the Horseshoe Crab Management Board at its next meeting.

Lastly, staff updated the Board on a [webinar the MAFMC](#) will conduct on November 1, from 2-5 p.m., to solicit stakeholder input on several summer flounder regulations related to commercial minimum mesh sizes and their exemptions. For more information, please contact Toni Kerns, Fisheries Policy Director, at tkerns@asmfc.org.

Motions

Move to delete “come from a period of high availability” from the closed period guidance of the document. The new sentence would read: Any closed period must include at least two consecutive weekend periods (Friday, Saturday and Sunday).

Motion made by Dr. Davis and seconded by Mr. Haymans. Motion passes by unanimous consent.

Main Motion

Move to approve the 4th option for inclusion in the document for when CE is not allowed.

Motion made by Dr. McNamee and seconded by Mr. Clark. Motion amended.

Motion to Amend

Move to amend to replace the 4th with 3rd option.

Motion made by Mr. Batsavage and seconded by Ms. Madsen. Motion passes (12 in favor, 5 opposed).

Main Motion as Amended

Move to approve the 3rd option for inclusion in the document for when CE is not allowed.

Motion to Amend

Motion to amend to add “depleted.”

Motion made by Dr. Davis and seconded by Mr. Kane. Motion passes with one opposition.

Main Motion as Amended

Move to approve the 3rd option for inclusion in the document for when CE is not allowed. The new Option 3 reads: CE is not permitted if the stock is overfished or depleted, unless allowed by board via 2/3 majority vote (the rules on voting in Article II. Section 1. apply)

Motion passes.

Main Motion

Move to approve Option 1 for non-quantifiable measures.

Motion made by Mr. Grout and seconded by Dr. McNamee.

Move to substitute for Option 2

Motion made by Ms. Burgess and seconded by Mr. Dyar. Motion fails (6 in favor, 11 opposed).

Main Motion

Move to approve Option 1 for non-quantifiable measures.

Motion made by Mr. Grout and seconded by Dr. McNamee. Motion passes with one opposition.

Move to approve the Conservation Equivalency: Policy and Technical Guidance Document as modified today.

Motion made by Ms. Fegley and seconded by Ms. Braun. Motion carries by unanimous consent.

Move to approve the Fish Habitats of Concern Document.

Motion made by Mr. Clark and seconded by Dr. Rhodes. Motion carries by unanimous consent.

Move that the Commission supports the New England and Mid-Atlantic Fisheries Management Council's request for information on an industry-based survey and the Commission send a similar letter requesting the NEFSC completes a white paper by January 12, 2024 outlining an industry-based survey that is complementary to the Spring and Autumn bottom trawl survey for the Commission and Councils.

Motion made by Mr. Reid and seconded by Mr. Kane. Motion passes by unanimous consent.

SCIAENIDS MANAGEMENT BOARD (OCTOBER 19, 2023)

Meeting Summary

The Sciaenids Management Board met to consider several items: update of the black drum indicators; Fishery Management Plan Reviews and state compliance reports for red drum, Atlantic croaker, and spotted seatrout; and an update on the ongoing benchmark stock assessments for red drum, spot, and Atlantic croaker.

The Board received a presentation from the Chair of the Black Drum Technical Committee (TC) on the results of an update to the black drum indicators of stock abundance and stock and fishery characteristics developed during the 2023 benchmark stock assessment, as well as recommendations from the TC based on the results of the update. This update incorporated two additional years of data (2021 and 2022). Overall, the indicators showed mixed signs of stability and declines since the assessment. However, the updated indicator values did not deviate outside the historical range of

observed values. The TC did not express concern at this time and recommended no changes to the current black drum stock assessment schedule, but to continue to closely monitor the indicators. The Board agreed with the TC's recommendations.

The Board reviewed and approved the 2022 Fishing Year FMP Reviews and state compliance reports for red drum, Atlantic croaker, and spotted seatrout. *De minimis* status was approved for New Jersey's and Delaware's 2024 red drum fisheries. For Atlantic croaker, *de minimis* status was approved for New Jersey (commercial and recreational), Delaware (commercial and recreational), South Carolina (commercial), and Georgia (commercial). For spotted seatrout, *de minimis* status was approved for New Jersey and Delaware.

The Board received an update on the ongoing red drum, spot, and Atlantic croaker benchmark stock assessments. The Red Drum Stock Assessment Subcommittee (SAS) has met several times since the assessment was initiated in late 2022, and has an in-person Assessment Workshop planned for November 6-9, 2023, in Charleston, SC. The red drum assessment is scheduled for completion in fall 2024. The Atlantic Croaker and Spot SAS has met several times as well, most recently for an assessment workshop in September. After losing a lead modeler of the assessments, the Atlantic Croaker and Spot SAS also met in August to discuss potential changes to the assessment timeline for both species. The Atlantic Croaker and Spot SAS recommend decoupling the spot and croaker assessments, and focusing on the Atlantic croaker assessment first, to be peer reviewed in 2024. Work on the spot benchmark stock assessment would follow, to be peer reviewed in 2025. In addition, the Board approved a nomination of Trey Mace to the Spot and Atlantic Croaker SAS.

For more information, please contact Tracey Bauer, Fishery Management Plan Coordinator, at tbauer@asmfc.org.

Motions

Move to approve the Red Drum FMP Review for the 2022 fishing year, state compliance reports, and *de minimis* status for New Jersey and Delaware.

Motion made by Ms. Fegley and seconded by Ms. Burgess. Motion passes by unanimous consent.

Move to approve the Atlantic Croaker FMP Review for the 2022 fishing year, state compliance reports, and *de minimis* status for New Jersey, Delaware, South Carolina, and Georgia commercial fisheries and New Jersey and Delaware recreational fisheries.

Motion made by Ms. Madsen and seconded by Mr. Miller. Motion passes by unanimous consent.

Move to approve the Spotted Seatrout FMP Review for the 2022 fishing year, state compliance reports, and *de minimis* status for New Jersey and Delaware.

Motion made by Ms. Braun and seconded by Mr. Clark. Motion passes by unanimous consent.

Move to approve the nomination of Trey Mace to the Spot and Atlantic Croaker Stock Assessment Subcommittee.

Motion made by Ms. Fegley and seconded by Dr. Rhodes. Motion passes by unanimous consent.

ASMFC Fisheries Management Updates

October 16-19, 2023 Meeting (Beaufort, NC)

Marine Fisheries
Advisory Commission
November 17, 2023

Massachusetts Division
of Marine Fisheries



American Lobster Addendum XXVII Measures

- Addendum XXVII Implementation Schedule Update

When change(s) will be implemented	What change will be implemented		
	LCMA 1	LCMA 3	Outer Cape Cod
January 1, 2025	Trap tags issuance limited to harvester allocation		v-notch definition: $\frac{1}{8}$ " with or without setal hairs; Maximum gauge size: $6 \frac{3}{4}$ "
January 1, 2025	Minimum gauge size: $3 \frac{5}{16}$ "		
January 1, 2027	Minimum gauge size: $3 \frac{3}{8}$ "		
January 1, 2028	Escape vent size: $2 \times 5 \frac{3}{4}$ " rectangular; $2 \frac{5}{8}$ " circular		
January 1, 2029		Maximum gauge size: $6 \frac{1}{2}$ "	Maximum gauge size: $6 \frac{1}{2}$ "

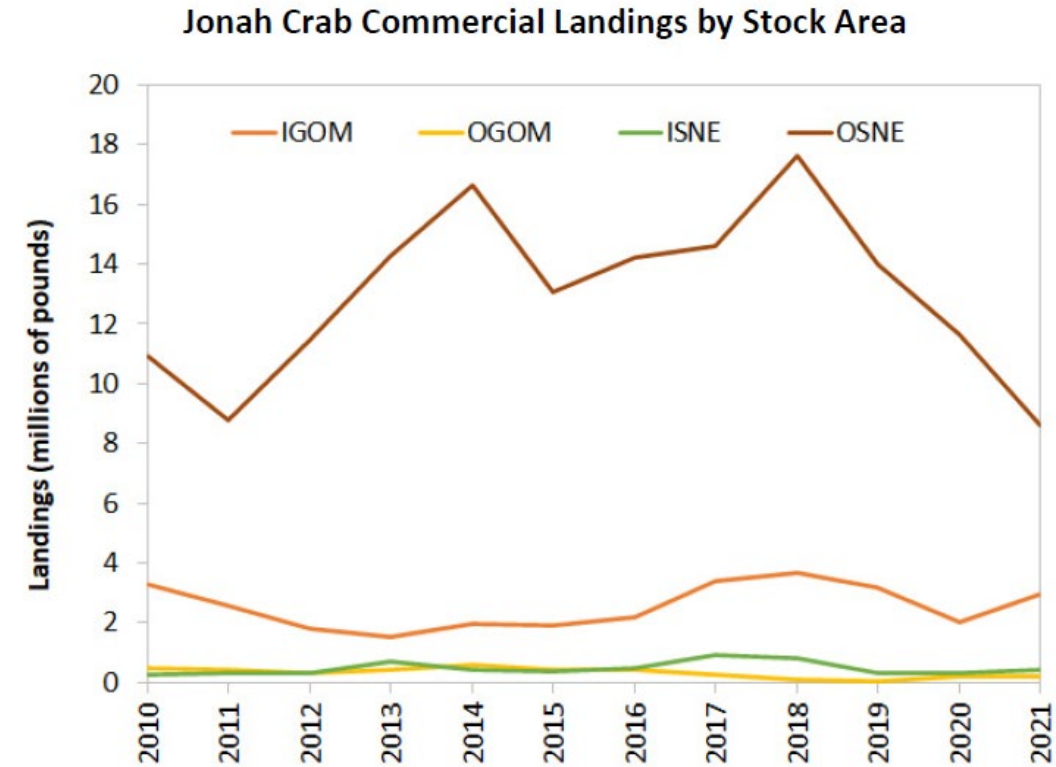
Already required;
1-year delay

Trigger met; 6-month delay



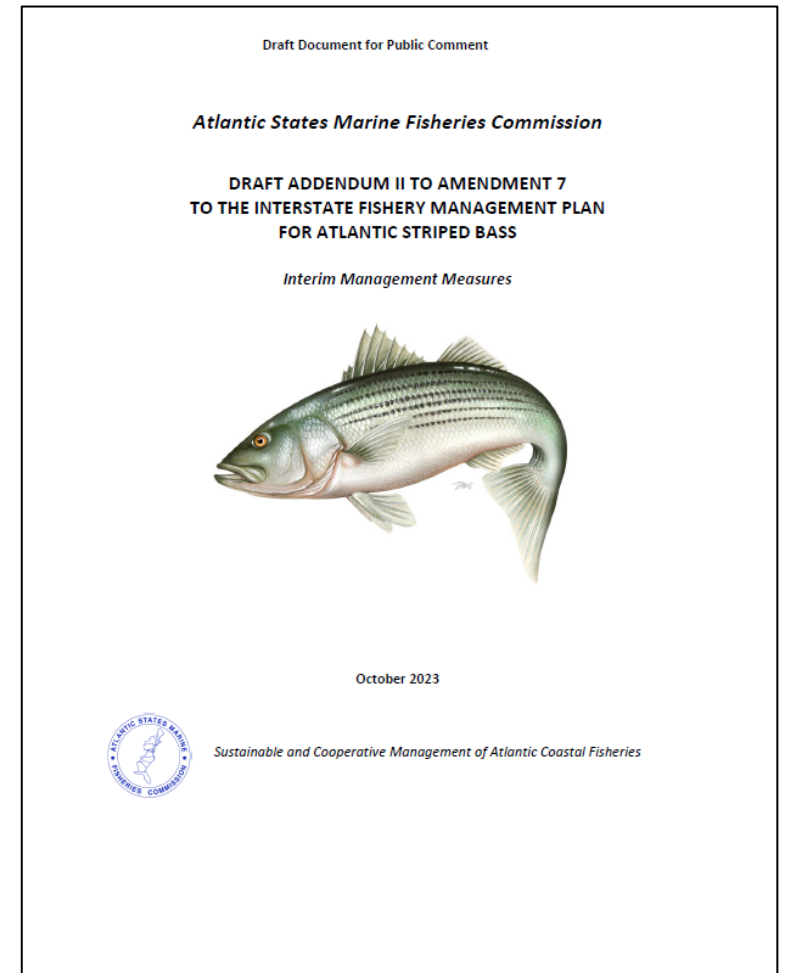
Jonah Crab Benchmark Stock Assessment

- First-ever assessment
- Regional approach
- Data poor; rely on indices (trawl surveys problematic)
- Neutral or positive stock indicators compared to historical period for all but IGOM (no reliable indicators)
- But recent sharp commercial landings decline, evidence of declining commercial CPUE, and indicators less optimistic relative to last 10 years only
- Comparison made to Canadian fishery collapse
- Capacity for growth in fishery
- Annual monitoring recommended
- TC tasked with evaluating possible management responses



Striped Bass Draft Addendum II Approved for Comment

- Objective: establish measures to reduce removals to achieve F target
 - Estimated needed reduction of 14.5% in total removals
- Coastwide public hearings to be held November/December
 - Mass Maritime Academy: December 5
 - DMF Gloucester Office: December 19
 - At least 3 other hybrid meetings in other states
 - Online recording of presentation: www.asmfc.org
 - Comment deadline: December 22
- Final action at ASMFC Winter Meeting (Jan 23-25)



Striped Bass Draft Addendum II Approved for Comment

- Ocean Recreational Measures: Change in the Slot Limit
 - After removing most options in August (no seasons), added 2 for wider range of alternatives

Ocean Option*	Removals	Harvest	Dead Disc.
Status Quo: 1 fish at 28 - < 35", or approved CEs.			
28 – 31" (all modes)	-14.1%	-49.9%	+2.0%
28 – 31" private vessel/shore angler & 28 – 33" for-hire mode**	-14.0%	-49.5%	+2.0%
30 – 33" (all modes)	-12.8%	-45.0%	+1.8%
30 – 33" private vessel/shore angler & 28 – 33" for-hire mode**	-12.8%	-45.0%	+1.8%

* The selected ocean option would also apply to 2-week Ches. Bay spring trophy fishery, currently 35" min (note that MD said planning to close the fishery).

** Sub-option for whether for-hire limit applies to patrons only during a for-hire trip

- Option to set minimum standards for states allowing filleting: racks retained, skin intact, no more than 2 fillets per legal fish.



Striped Bass Draft Addendum II Approved for Comment

- Chesapeake Bay Recreational Measures: Change in Min Size, Max Size, and/or Bag
 - Narrowed the new range of alternatives requested in August

Chesapeake Bay Option	Removals	Harvest	Dead Disc.
Status Quo: 1 fish at 18" min & 2017 seasons or approved CEs.*			
19 – 23", 1 fish (all modes), 2022 seasons	-22.4%	-38.4%	+6.7%
19 – 24", 1 fish (all modes), 2022 seasons	-15.9%	-27.5%	+4.8%
19 – 25", 1 fish (all modes), 2022 seasons	-12.1%	-21.1%	+3.7%
19 – 26", 1 fish (all modes), 2022 seasons	-10.3%	-18.1%	+3.2%
19 – 23", 1 fish P/S & 2 fish FH**, 2022 seasons	-17.9%	-31.4%	+4.9%
19 – 24", 1 fish P/S & 2 fish FH**, 2022 seasons	-11.0%	-19.3%	+3.0%

* Current Bay measures vary widely among jurisdictions

- 1 fish, 2 fish, or mode split
- 18", 19" or 20" min size
- 2-week, 6-week or 15-week summer closures

** Sub-option for whether for-hire limit applies to patrons only during a for-hire trip

- Option to set minimum standards for states allowing filleting



Striped Bass Draft Addendum II Approved for Comment

- Ocean & Chesapeake Bay Commercial Measures: Up to a 14.5% reduction in quota from 2022 level
 - Removed maximum size limit options; too much uncertainty for conservation neutral measure
- Response to Stock Assessment Option: If an assessment indicates not going to rebuild by 2029 with probability >50%, can use Board action (i.e., a vote at a single meeting) rather than addendum process to change measures.

	Option A. Status Quo (Amendment 7 quotas and size limits; CE's not shown but may continue)		Option B. Up to a 14.5% Reduction from the 2022 Quotas with the 2022 Size Limits			2022 Commercial Harvest for Reference
	Quota	Size Limit	Maximum Quota (-0% from 2022)	Minimum Quota (-14.5% from 2022)	Size Limit	
ME	154	N/A (28" min)	154	131	N/A (28" min)	0
NH	3,537	N/A (28" min)	3,537	3,024	N/A (28" min)	0
MA	713,247	34"	735,240	628,630	35" min	770,101
RI	148,889	26" min FFT; 34" min GC	148,889	127,300	26" min FFT; 34" min GC	162,434
CT	14,607	N/A (28")	14,607	12,488	N/A (28" min)	0
NY	652,552	28 – 38"	640,718	547,813	26 – 38"	623,304
NJ*	197,877	N/A (28")	215,912	184,604	bonus program 24 – <28"	rec bonus program: 36,807
DE	118,970	28", except 20" for gill nets in DE Bay/River 2.15-5.31	142,474	121,815	28", except 20" for gill nets in DE Bay/River 2.15-5.31	139,221
MD	74,396	24" min	89,094	76,175	24" min	88,069
VA	113,685	28" min	125,034	106,904	28" min	121,723
NC	295,495	28" min	295,495	252,648	28" min	0
MD Ches Bay	2,588,603	18 - 36"	3,001,648	2,566,409	18 - 36"	2,483,438
PRFC		18" min, 36" max during 2.15-3.25			18" min, 36" max during 2.15-3.25	
VA Ches Bay		18" min, 28" max during 3.15-6.15			18" min, 28" max during 3.15-6.15	

Tautog

- Additional testing of alternative tag types, tagging locations, etc. expected
- Board refuse NY request to suspend the tagging program while testing occurs
- Changes in holding conditions/practices where tags problematic may be warranted

Menhaden

- Virginia Institute of Marine Science report to legislature on methods/costs to study menhaden fishery impacts in Chesapeake Bay. Will any be funded?

Horseshoe Crab

- Delaware Bay states took conservative approach to 2024 limits allowing no female crab harvest

Administration

- Joe Cimino (NJ) and Dan McKiernan (MA) elected chair and vice-chair of ASMFC for next two-years



Questions?



Back Up



Recreational Fluke, Scup, & Black Sea Bass Outlook

- Recreational Catch Accounting indicates overages for Scup and Black Sea Bass
 - 3-year average catch compared to 3-year average ACL (2020-22)
 - Scup: 126% overage
 - BSB: 64% overage
- Because stocks above target, no pound-for-pound payback, but a requirement that recreational measures be adjusted for a single year, taking into account the performance of measures and the conditions that precipitated the overage.
 - GARFO determined that not needed because of recent management changes and high biomass levels.

Table 2: Summer Flounder Three-Year Average Recreational Catch vs. Recreational ACL (2020-2022), in mt

Fishing Year	Landings	Discards ³	Total Catch	ACL	MRIP
2020	4,565	1,141	5,706	5,218	FES
2021	3,091	997	4,088	5,662	FES
2022	3,916	1,336	5,252	6,639	FES
		Average	5,015	5,840	

Table 3: Scup Three-Year Average Recreational Catch vs. Recreational ACL (2020-2022), in mt

Fishing Year	Landings	Discards	Total Catch	ACL	MRIP
2020	5,858	541	6,399	3,570	FES
2021	7,539	653	8,192	3,474	FES
2022	7,875	738	8,613	3,205	FES
		Average	7,735	3,416	

Table 4: Black Sea Bass Three-Year Average Recreational Catch vs. Recreational ACL (2020-2022), in mt

Fishing Year	Landings	Discards	Total	ACL	MRIP
2020	4,103	1,569	5,672	3,668	FES
2021	5,428	1,903	7,330	3,596	FES
2022	3,782	1,627	5,409	3,972	FES
		Average	6,137	3,745	



Recreational Fluke, Scup, & Black Sea Bass Outlook

- f



OVERVIEW: NEFMC Meeting – September 25-28, 2023

The New England Fishery Management Council (NEFMC) met in Plymouth, MA. Below are highlights on discussion topics and actions taken. **Council motions denoted in bold** (by consensus unless tallied).

- First meeting for Exec. Director Cate O’Keefe & new Council member Jackie Odell (MA)
- [Election of 2023-2024 Council Officers](#) as Chair Eric Reid (RI); Vice Chair Rick Bellevance (RI); Executive Committee: Melanie Griffin (MA), John Pappalardo (MA), & Megan Ware (ME)
- Next meeting in Newport, RI on December 5-7, 2023

COUNCIL ACTIONS & DISCUSSION

ATLANTIC HERRING – The Council refined an action to revisit the Amendment 8 inshore midwater trawl exclusion zone ([problem statement](#) adopted in June). First, the Council agreed **to change the title to “an action to minimize user conflicts related to the Atlantic herring fishery.”** To formalize its progress, the Council then moved **to develop Amendment 10 to address spatial and temporal allocation and management of Atlantic herring at the management unit level to minimize user conflicts, contribute to optimum yield, and support rebuilding of the resource (12/2/2).** The Council **tasked the Herring committee and technical team to develop a 1) scoping document, and a 2) public hearing schedule, by the January Council meeting,** to solicit broad public input and incorporate A8 prior analyses/comments. Separately, a 2025 Atlantic herring research track assessment is underway.

ATLANTIC SEA SCALLOP – Perceptions of the scallop resource in the Georges Bank, Mid-Atlantic, and Gulf of Maine regions from 2023 [surveys](#) and landings data were overviewed. High fishing effort was observed (via VMS) along management borders in FY2022 & 2023 coincident with high-biomass areas. In response, the Council agreed **to add a 2023 work priority to develop management measures that consider increasing VMS ping rates for the scallop fishery for FY2024 (in Framework 38) to improve fishery enforcement.** Final action on FW38 for FY2024 specifications/FY2025 defaults is expected in December. The Council also agreed **to adopt Scallop Survey Guiding Principles to inform survey-related decision-making, RSA priorities and program adaptations, and future science and management efforts and advice.** NOAA Fisheries adopted the survey Principles in March 2023.

NORTHERN EDGE ACTION – The Council received an update on the action to develop a scallop rotational harvest program within the Closed Area II Habitat Closure Area on the Northern Edge of Georges Bank, being developed jointly by Habitat & Scallop teams. Due to complexity of the action, the timeline for final action is now Sep/Dec 2024 (e.g., will not be in place for FY2025). The Council **tasked the Scallop & Habitat PDTs to analyze four specific areas in the development of access areas for the Northern Edge FW; analyses should include estimates of biomass, % disturbance from fishing effects model, and consider possible impacts to other fisheries resources,** in accordance with the action’s objectives.

DEEP SEA RED CRAB – MSY and OFL are undetermined for the data-poor deep sea red crab stock. The fishery is trap-based, landing males only, and limited to five vessels. Consistent with the SSC’s status quo recommendation, the Council **took final action on red crab specifications, approving an Acceptable Biological Catch (ABC)/Total Allowable Landings (TAL) of 2,000 mt for FY2024-2027.**

NEFSC FISHERY INDEPENDENT RESOURCE SURVEYS – Extensive challenges to completion of federal fishery surveys have occurred in recent years, with additional impacts expected as vessels are unable to tow in offshore wind areas. NEFSC leadership reviewed short- and long-term contingency plans for the bottom trawl and scallop survey, and new technologies/approaches under consideration. The Council **requested that the NEFSC develop a white paper outlining an industry-based survey that is complimentary to the spring and autumn Bottom Trawl Survey, due to the NEFMC by January 12.**

U.S./CANADA SHARED RESOURCES ON GEORGES BANK – The 2023 Transboundary Resources Assessment Committee (TRAC) catch advice for FY2024 for Eastern Georges Bank cod was 520 mt; EGB haddock was 7,960-12,280 mt; and Georges Bank yellowtail flounder was 168 mt. The Scientific and Statistical Committee (SSC) [recommended](#) a GB yellowtail flounder ABC of 168 mt for FY2024-2025. The Council **approved the TMGC’s recommendations for US/Canada total allowable catches (TACs) for 2024, as: EGB cod TAC of 520 mt; EGB haddock TAC of 10,000 mt; and GB yellowtail flounder TAC of 168 mt.**

GROUNDFISH/NORTHEAST MULTISPECIES – The Council considered modifications to Framework 66 specifications and management measures. With the low GB yellowtail flounder catch advice (above) and probable low sub-ACL for the scallop fishery, the Council agreed to **add a management alternative [for catch in FY2024 & 2025 only] that would change the sea scallop fishery accountability measure (AM) such that the AM for GB yellowtail flounder would only be implemented if the scallop fishery exceeds its sub-ACL and the overall ACL for the stock is also exceeded.** Separately, the Council requested that the SSC develop recommendations for possible ABCs for Gulf of Maine haddock for FYs 2024 & 2025 up to 100% F_{MSY} in FW66 taking into consideration the Council’s Risk Policy (including projections at 85%, 90%, and 100%, in addition to 75% already included).

REVISION OF GROUNDFISH ABC CONTROL RULES – The Council discussed findings of a facilitated discussion held in August on possible directions for Framework 68, an action to revise groundfish ABC Control Rules. The Council agreed that **the overarching goal of the action is to modify/replace the existing groundfish ABC control rules to better address the NE Multispecies FMP’s goals and objectives, considering increasing uncertainty/variability in stock assessments, changing environmental conditions, and NS Guidelines.** The Council agreed to **an objective of FW68: to develop a tiered groundfish ABC control rule which considers (but is not limited to): 1) stock status, including unknown and rebuilt; 2) stock assessment model type and sources/levels of uncertainty; and 3) productivity regime.**

HABITAT – NEFMC and MAFMC’s technical teams are partnering to revise Essential Fish Habitat (EFH) designations, as is required every 5 years. Regarding OSW development, Vineyard Wind 1 has installed 12 monopiles out of 62 planned; South Fork has installed foundations for its 12 turbines. BOEM to publish Gulf of Maine WEA in Oct/Nov, with a significant reduction in the Call Area expected. Blue Water Fisheries offshore aquaculture project involving Atlantic salmon is undergoing siting revisions; a NOI is expected in 2024.

ATLANTIC COD RESEARCH TRACK ASSESSMENT (RTA) – The August 2023 Atlantic cod RTA peer review was overviewed, including approval of the transition to use the **WHAM** assessment model for all four stocks/units. Resulting status determinations for the stocks were: WGOM - overfished, overfishing occurring; GB - overfished, overfishing not occurring; EGOM - overfished, overfishing occurring; and SNE - overfished, overfishing occurring. The review panel emphasized the strength of the Working Group’s assessment work. Dr. Micah Dean (WG member) and several MADMF datasets were integral. High priority research needs identified for cod include estimation of cod discards in the lobster fishery, development of an LPUE index for SNE, and understanding SNE recreational catch. A June cod Management Track assessment will apply the new approaches to determine FY2025 catch advice.

JUNE 2023 MANAGEMENT TRACK STOCK ASSESSMENTS – An overview of assessments reviewed in June, including summer flounder, scup, bluefish, longfin inshore squid, deep sea red crab stocks, was provided; a final report was published in September.

RISK POLICY – The Risk Policy Working Group provided a progress update on work to revise the Council’s existing Policy Statement (2014) and Roadmap (2016). The WG meets next in Gloucester on Nov. 7th.

REDUCING ATLANTIC STURGEON BYCATCH – For the Draft Joint Framework action to reduce Atlantic sturgeon bycatch in the Spiny Dogfish and Monkfish gillnet fisheries by 2024, the Council **narrowed the range of alternatives to be analyzed given the action timeline, while maintaining different types of measures.** It considered but **did not approve the addition of VMS as an enforcement tool for monkfish or dogfish alternatives.** The Council then **approved the range of alternatives for both fisheries, including specific gear restrictions and time/area closure ranges for monkfish (SNE & NJ hotspots) and dogfish (NJ & DE/MD/VA hotspots).** This action was necessitated through a **2021 Biological Opinion.** Due to recent exceedance of the 2021 ITS for gillnet gears, the Opinion was re-initiated in September. The Council’s current action will serve as basis for the new consultation.

MONKFISH - RSA WORKING GROUP – The Council **accepted the Monkfish Research Set-Aside Working Group’s final report recommending program improvements.** Recommendations will be considered when setting 2024 Council work priorities. The Council also **agreed to send a letter to GARFO to encourage uptake of the recommended communication improvements under their purview.**

ON-DEMAND FISHING GEAR CONFLICT WORKING GROUP – The On-Demand Gear Conflict WG met July 18th to finalize its Terms of Reference. The Council **accepted the WG Terms of Reference, striking the word liability in TOR 4**. The Council indicated that although aspects of liability should be further explored, the complexities are beyond the scope of the WG.

MSA SECTION 304(F) “NOAA GOVERNANCE POLICY” – This NOAA directive considers how/when changes are made to Council assignments for fisheries occurring within the geographic area of more than one Council, and is intended to account for climate influence on stock distributions and changes occurring in effort, port of landing, etc. The Council **agreed to sign onto a comment letter from the CCC and to develop regionally-specific comments in response to the Draft Procedural Directive on using MSA §304(f) authority**. The Council emphasized coordination with implementation of the ECCC initiative’s actions.

DRAFT TECHNICAL GUIDANCE FOR NATIONAL STANDARD 1 – In response to the draft NOAA Tech. Guidance document on MSA National Standard 1, **the Council approved a comment letter for submission to NOAA**. Comments address the need for additional specificity on topics including stock recruitment relationships, future conditions, actionable strategies, and follow-up with a thematic research track.

EAST COAST CLIMATE CHANGE (ECCC) SCENARIO PLANNING – The Council prioritized next-steps to be discussed by the ECCC Coordination Group, selected from the ECCC’s ‘potential action menu’; the Coordination Group meets Nov. 7th in Gloucester. Actions address governance, management, data, and partnerships identified in the February Summit report.

REGIONAL EEJ STRATEGY – The Council offered thoughts on how to better engage underserved communities in the Council process, in response to NOAA Fisheries’ draft Equity and Environmental Justice (EEJ) Strategy for the Greater Atlantic region.

WHITING – The Council received the FY2020-2022 Small-mesh Multispecies Stock Assessment and Fishery Evaluation (SAFE) report, which will be used to support development of FY2024-2026 fishery specifications for northern silver hake, southern whiting, and northern and southern red hake stocks. Final action expected in December.

NORTHEAST SKATE COMPLEX – The Council received an update on Framework 12 for FY2024-2025 skate specifications and changes to possession limits for barndoor and smooth skates. A 2023 Skate Management Track Stock Assessment and Peer Review took place in September; results will be used to inform FW12 final action anticipated in December.

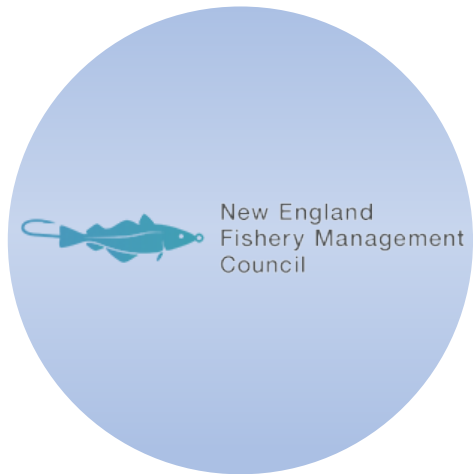
ECOSYSTEM-BASED FISHERY MANAGEMENT (EBFM) – The Council debated possible near-term and future directions for EBFM and offered suggestions on deep-dive stakeholder workshop topics. Deep dives workshops will occur this winter/spring and are intended to inform decisions on full-MSE development.

NORTH ATLANTIC RIGHT WHALE – A status update on Atlantic Large Whale Take Reduction Plan (ALWTRP) activities was given, including on the proposed rule to make the “wedge” area seasonal closure a permanent one, future modifications to gillnet and trap/pot requirements (2025), ALWTRP Toolbox, and on-demand/ropeless gear developments.

2024 COUNCIL PRIORITIES – The Council made several additions to its initial list of 2024 Council work priorities. Council members will now individually rank the listed items (high, low, don’t do this) considering staff resources, Inflation Reduction Act funding priorities, protected species developments, and other tradeoffs. The final list of 2024 Council work priorities will be approved in December.

AGENCY REPORTS – Council Executive Director, GARFO, NEFSC, MAFMC, ASMFC, US Coast Guard, NOAA Enforcement, Northeast Trawl Advisory Panel (NTAP), NAFO, SBNMS, HMS Advisory Panel

New England Regional Fishery Updates



- September Summary
- December Agenda

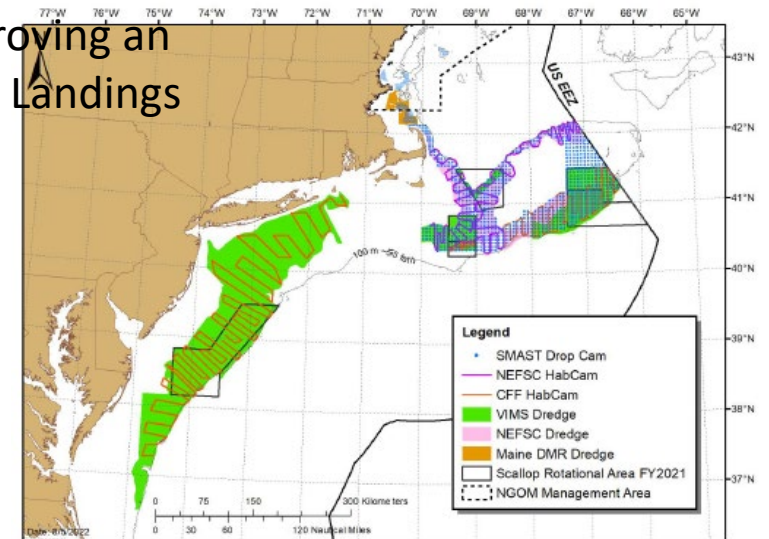
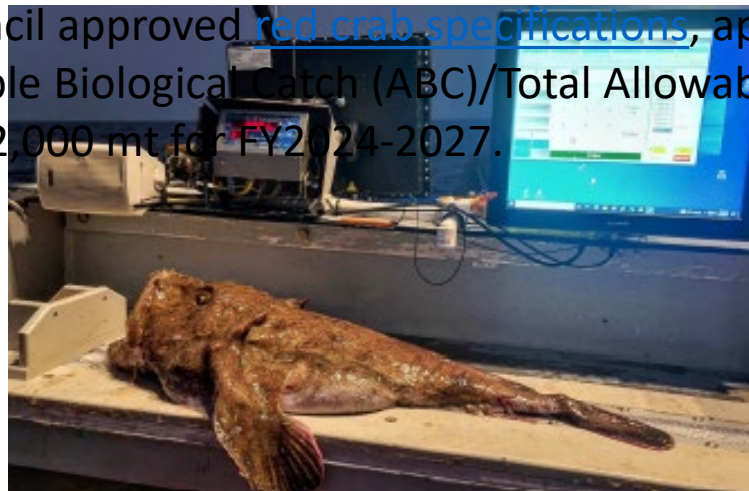


September Summary

- Red crab specs
- Monkfish RSA
- Scallop Survey Guiding Principles



- the Council approved [red crab specifications](#), approving an Acceptable Biological Catch (ABC)/Total Allowable Landings (TAL) of 2,000 mt for FY2024-2027.



December Agenda

- Priorities
- Specifications
skate, whiting, scallops and groundfish

Councils IRA Funding Overview

- \$20M in total funding from FY2023 to FY2026.
- Proposals **must** be focused on fishery management and governance topics.
- Actions funded under IRA will contribute to the following overarching goals:
 - Implementation of fishery management measures necessary to advance climate ready fisheries by improving climate resiliency and responsiveness to climate impacts; and
 - Development and advancement of climate-related fisheries management planning and implementation efforts in support of underserved communities.



U.S. Department of Commerce | National Oceanic and Atmospheric Administration | National Marine Fisheries Service



Massachusetts Division
of Marine Fisheries



Questions?



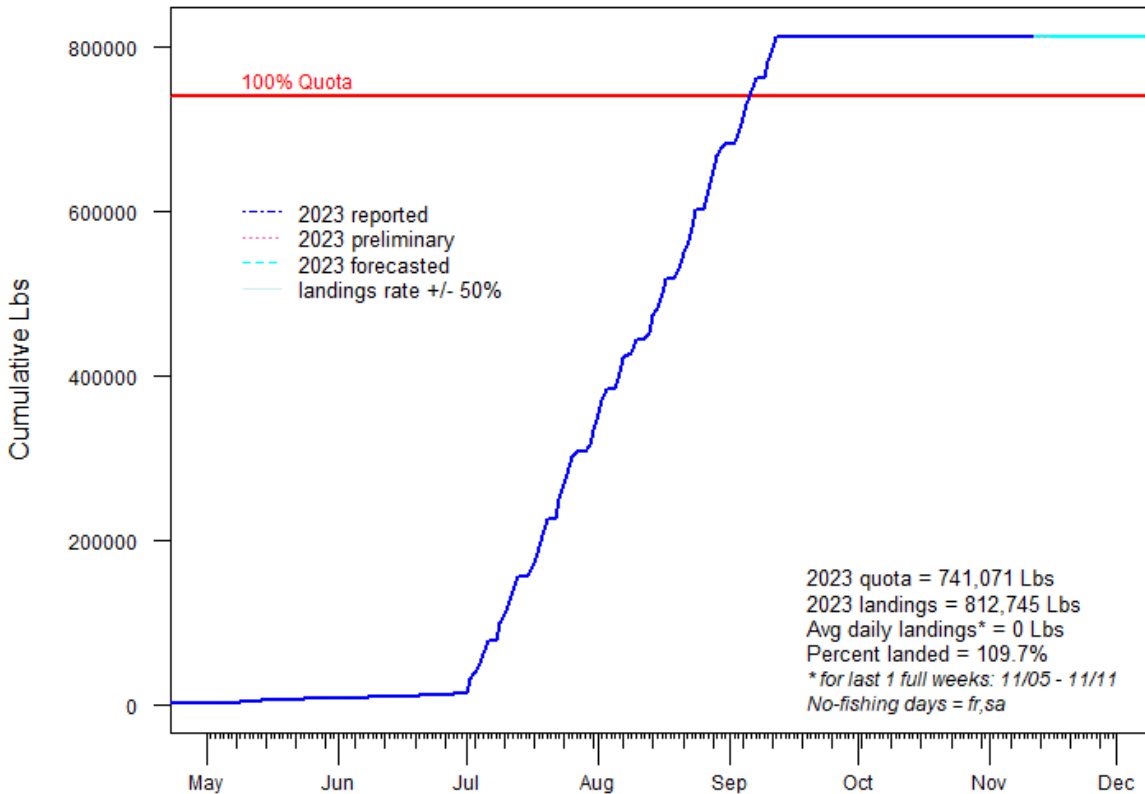
Quota Monitored Species Update

Data shown through week ending 11/11/23; as of 11/15/23 and subject to change. Data Source: SAFIS eDR

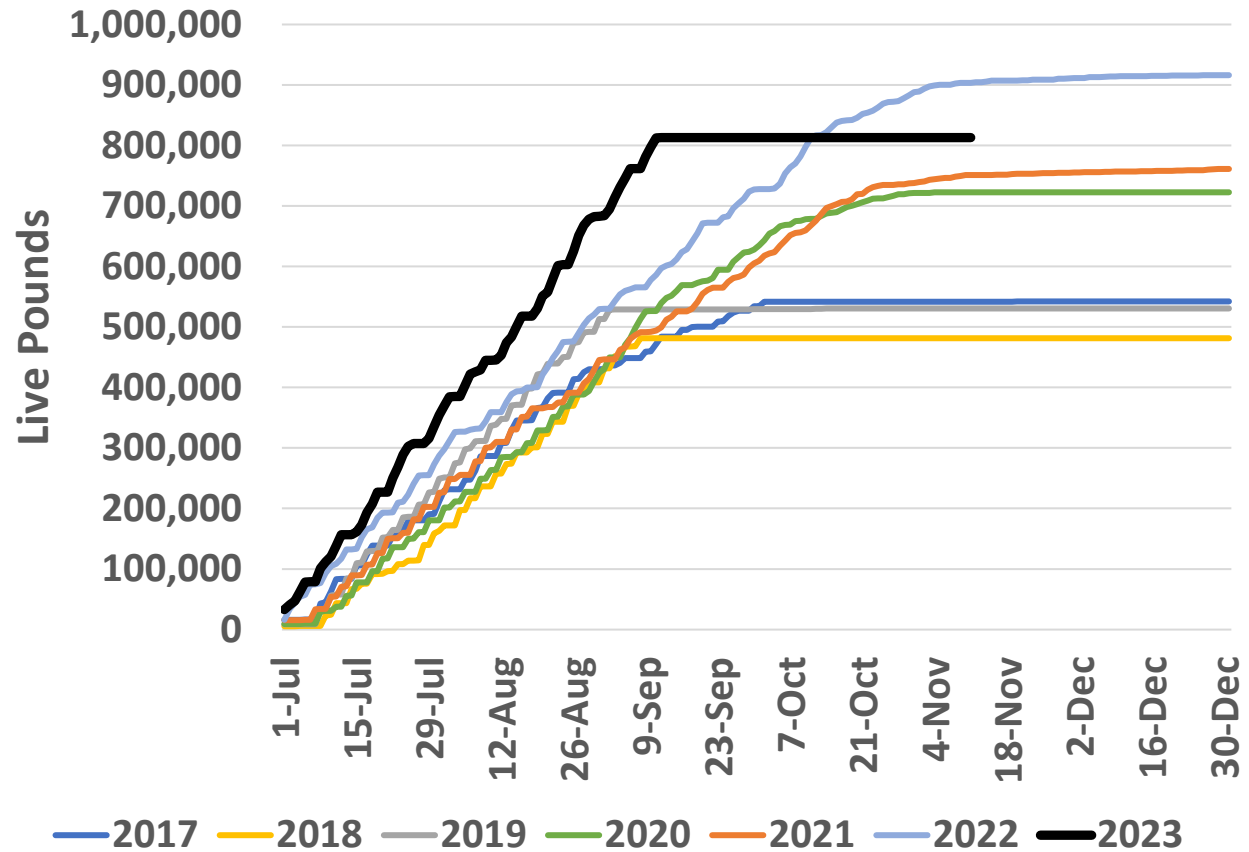
MFAC meeting, 11/17/23

Black Sea Bass – Closed as of September 13, 2023

2023 BASS, BLACK SEA Quota Monitoring
as of November 15, 2023 02:07 PM



Annual Running Totals of Landings:
Black Sea Bass

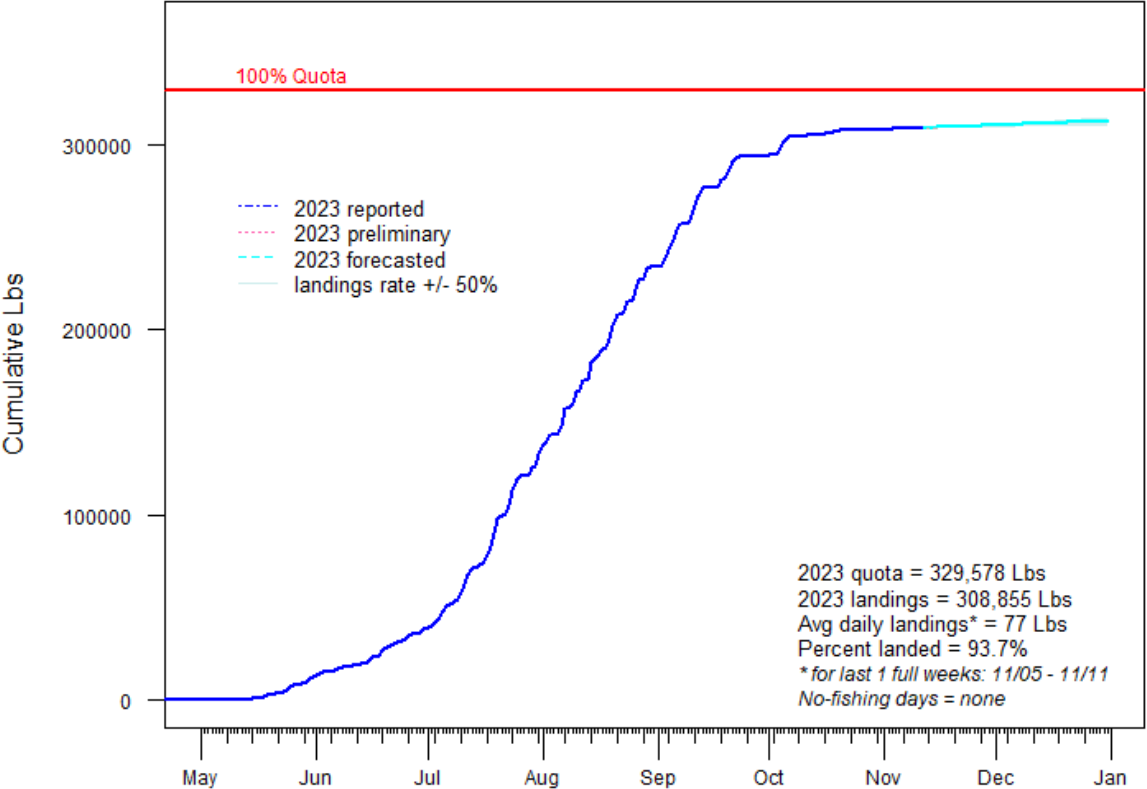


Quota significantly increased in 2020 and again in 2022, decreased in 2023

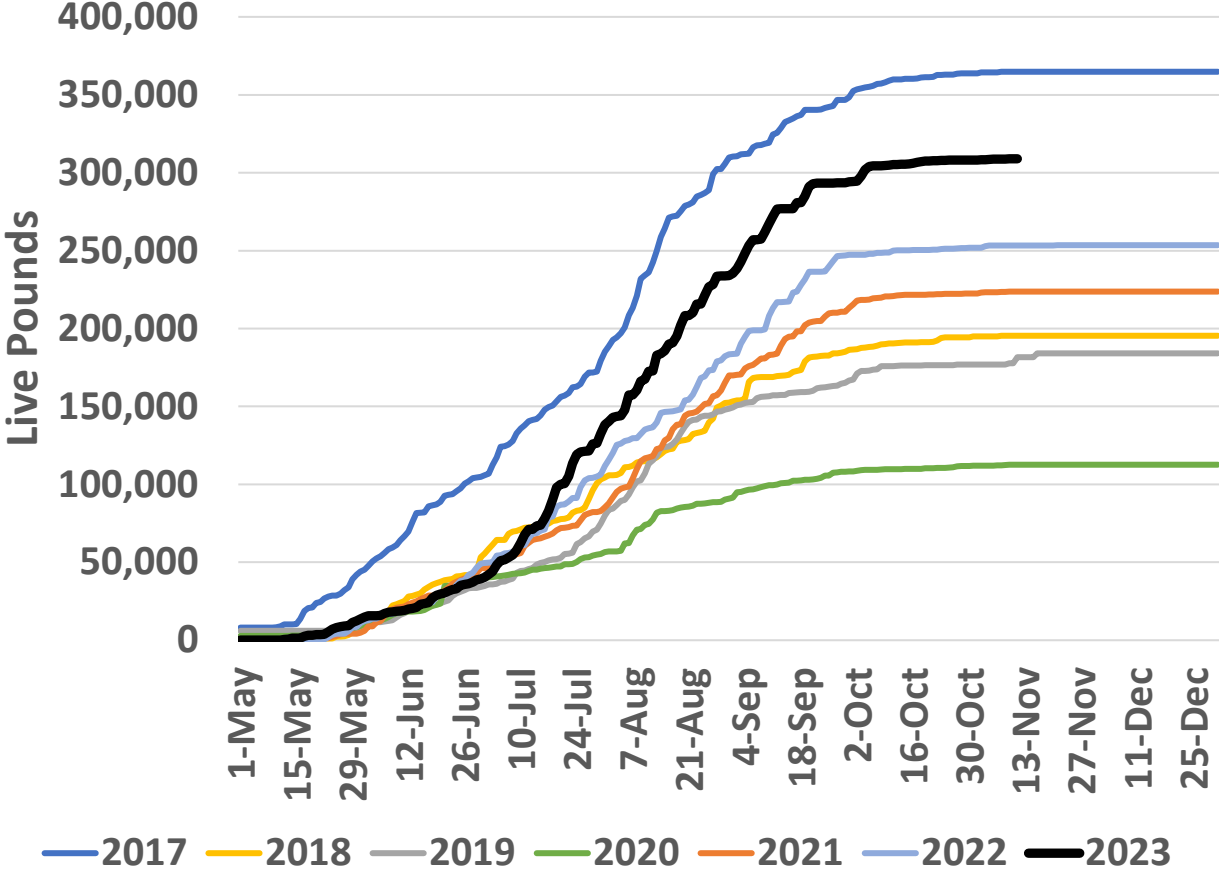
Bluefish

2023 BLUEFISH Quota Monitoring

as of November 15, 2023 02:08 PM



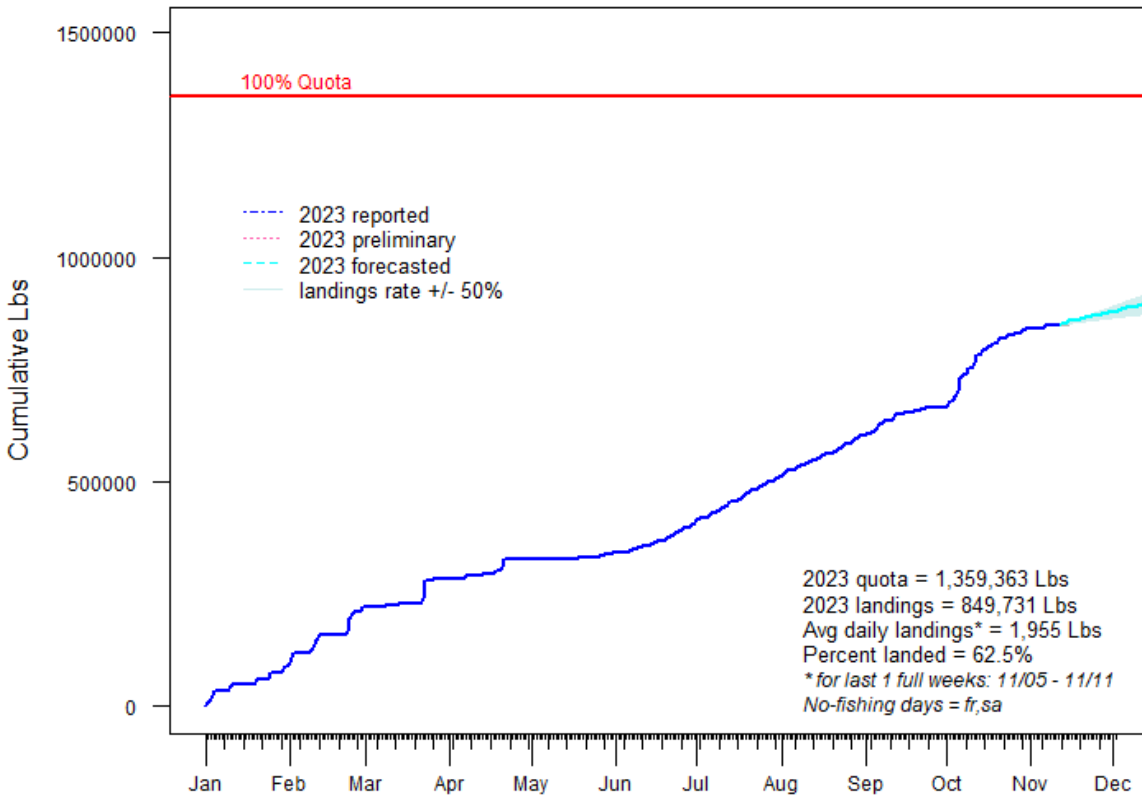
Annual Running Totals of Landings: Bluefish



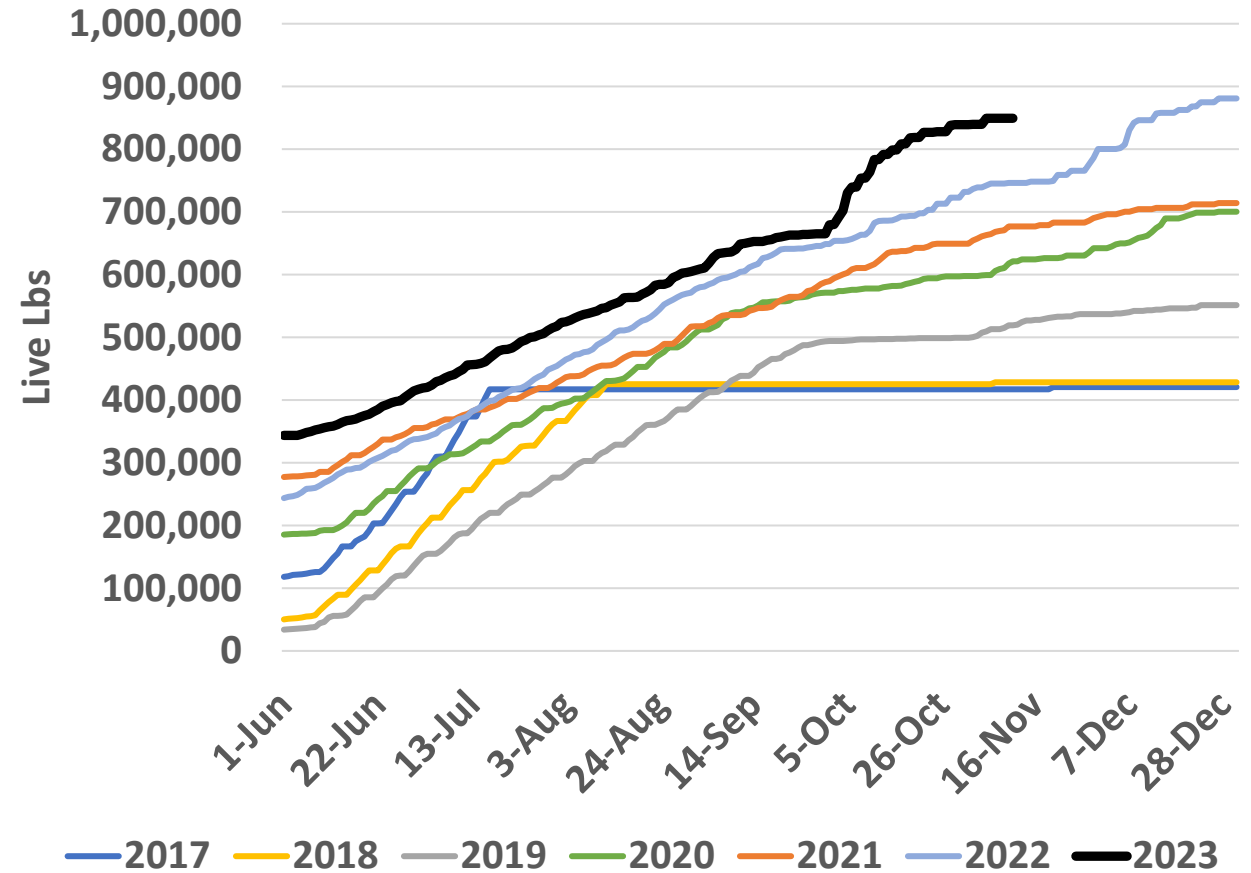
Quota significantly decreased in 2020, increased in 2023

Summer Flounder (Fluke)

2023 FLOUNDER, SUMMER Quota Monitoring
as of November 15, 2023 02:09 PM



Annual Running Total of Landings: Fluke

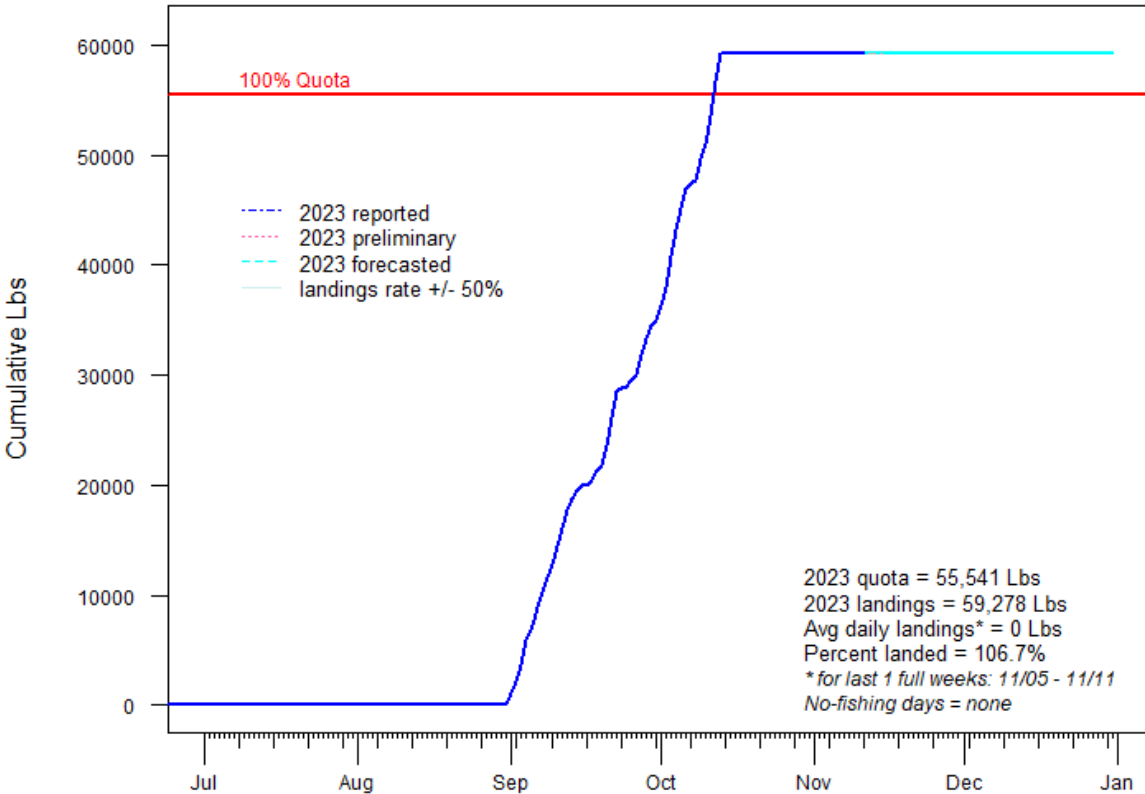


Quota increased almost 100% between 2018 & 2021 with further increases in 2022

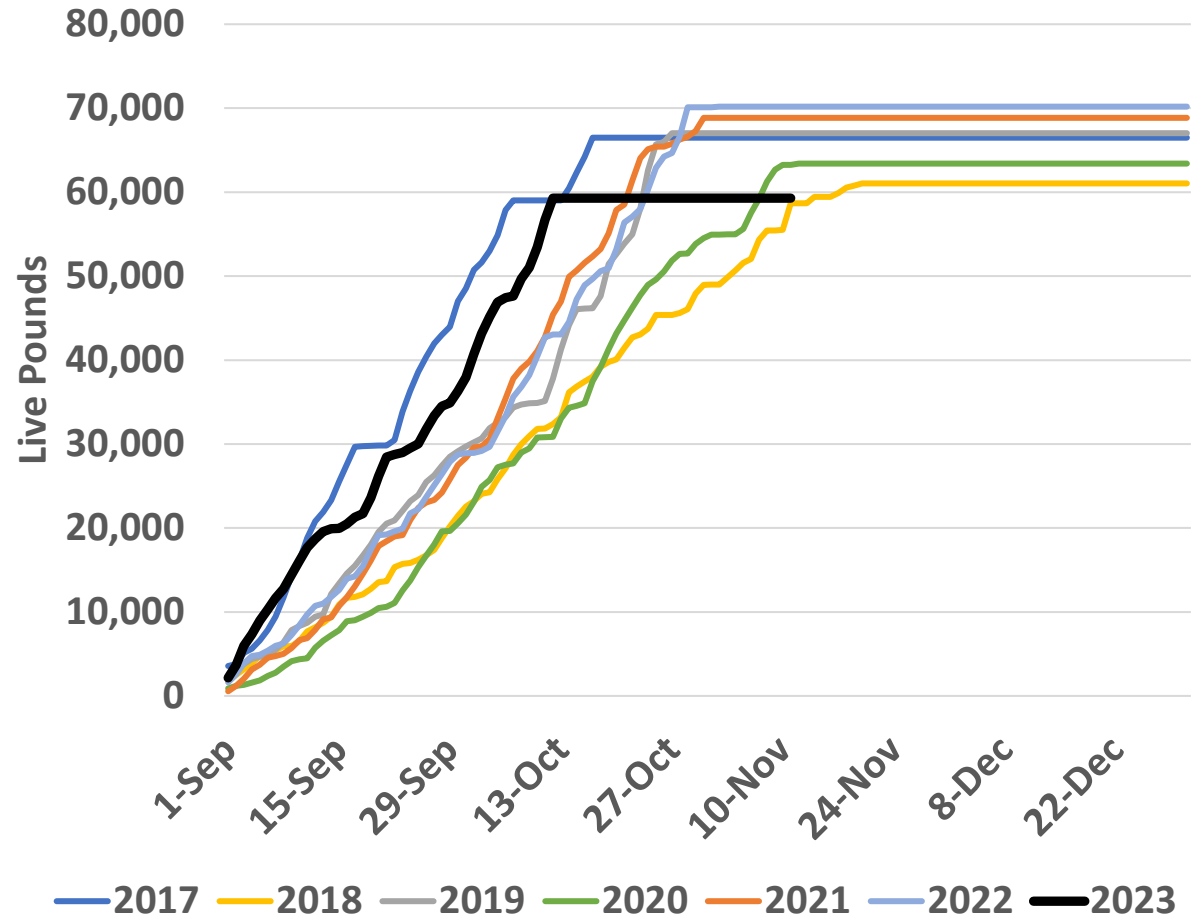
Tautog – Closed as of October 14, 2023

2023 TAUTOG Quota Monitoring

as of November 15, 2023 02:10 PM



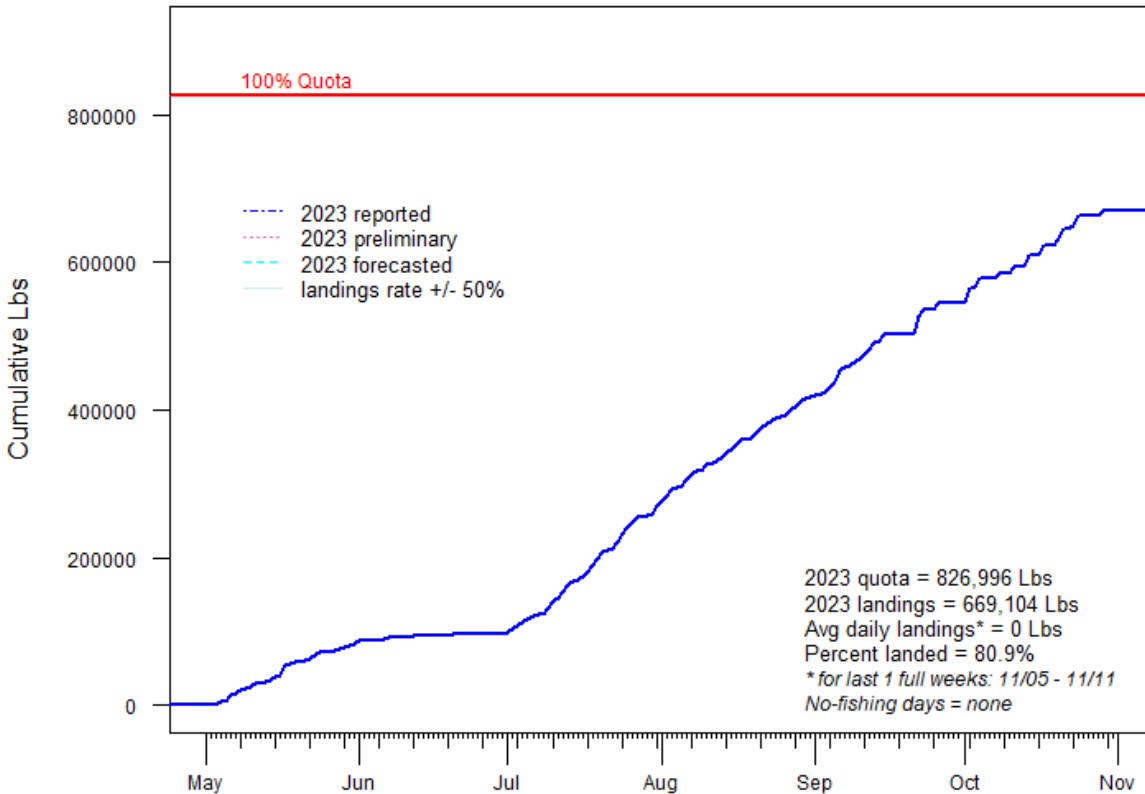
Annual Running Totals of Landings: Tautog



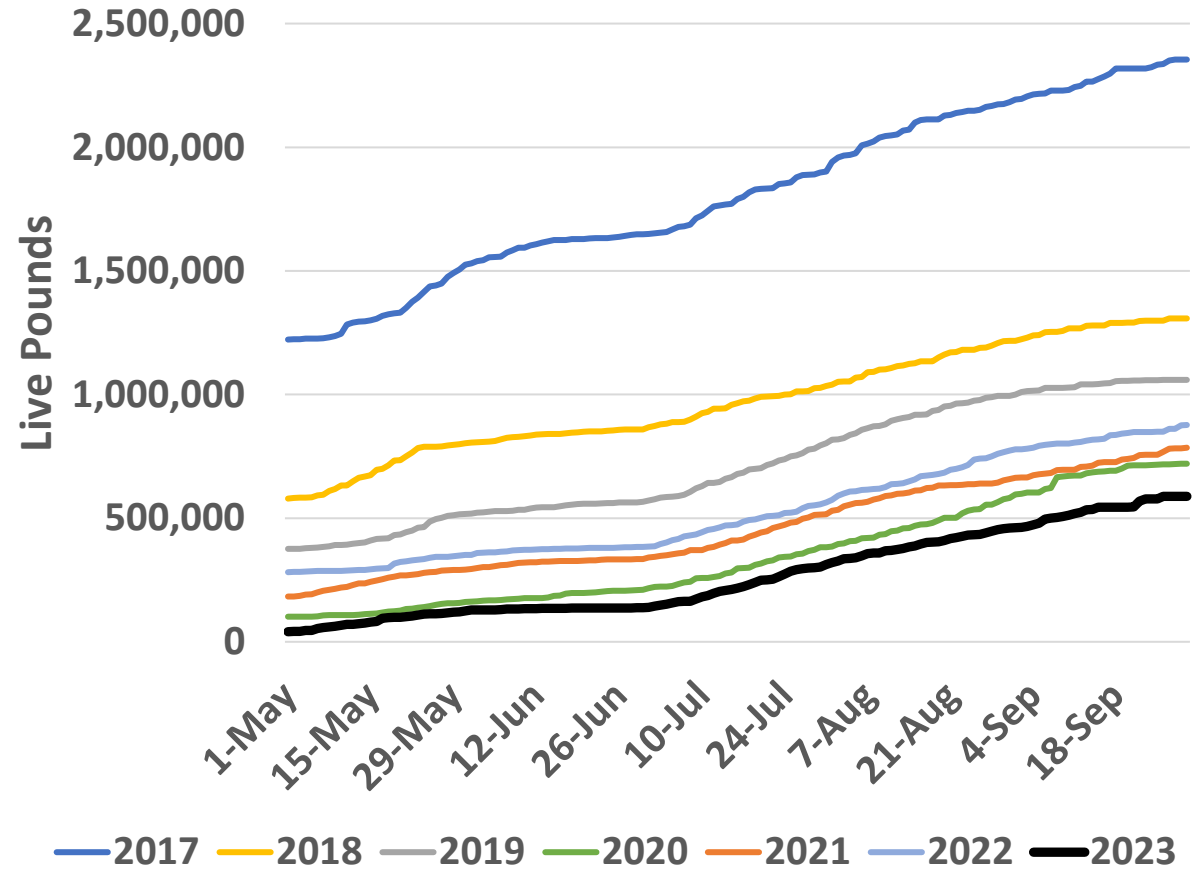
No change in base quota over time series

Summer Period Scup

2023 SCUP Quota Monitoring
as of November 15, 2023 02:10 PM

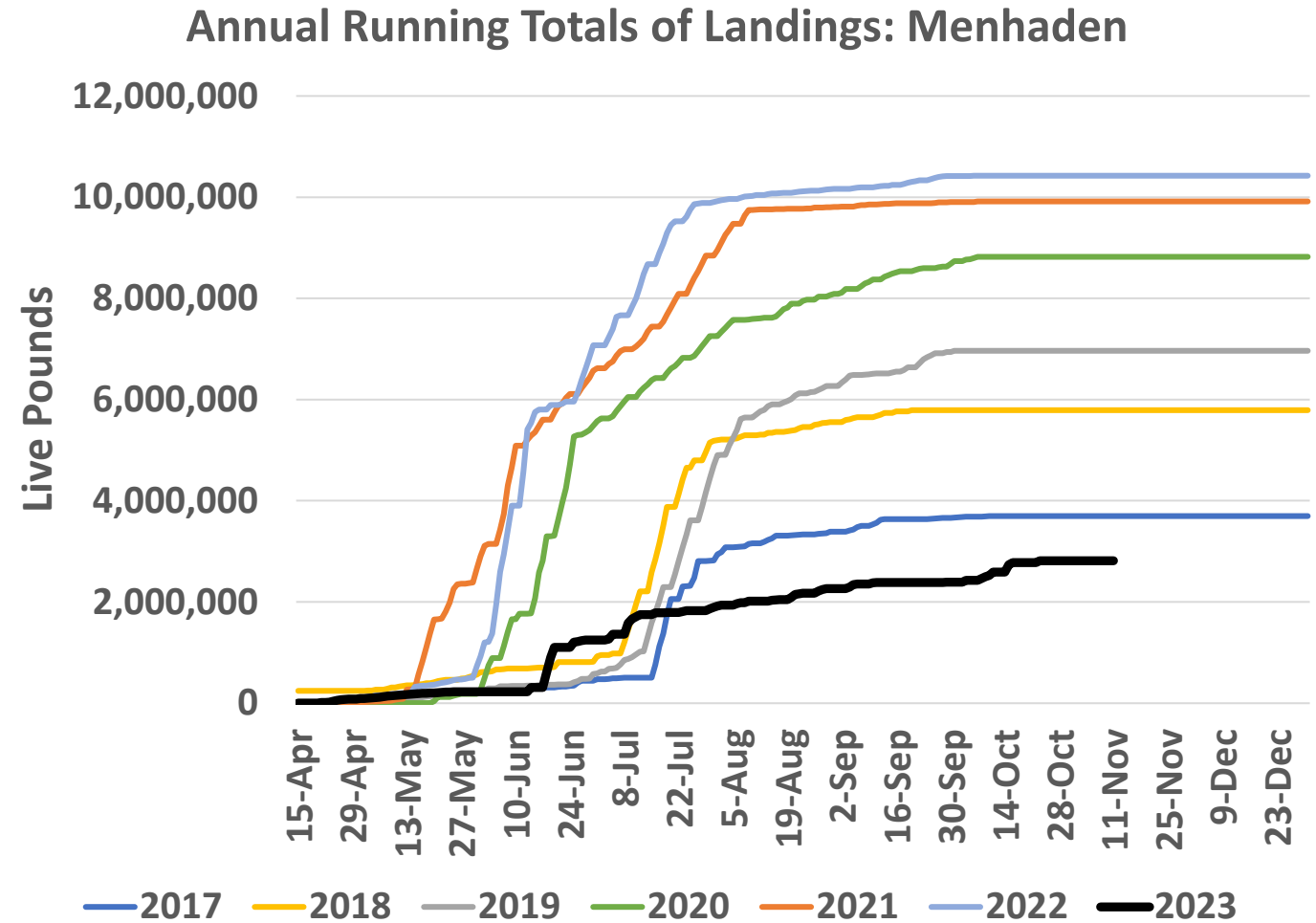


Annual Running Totals of Landings: Scup



Menhaden

- 2023 Periods
 - Quota I: ongoing



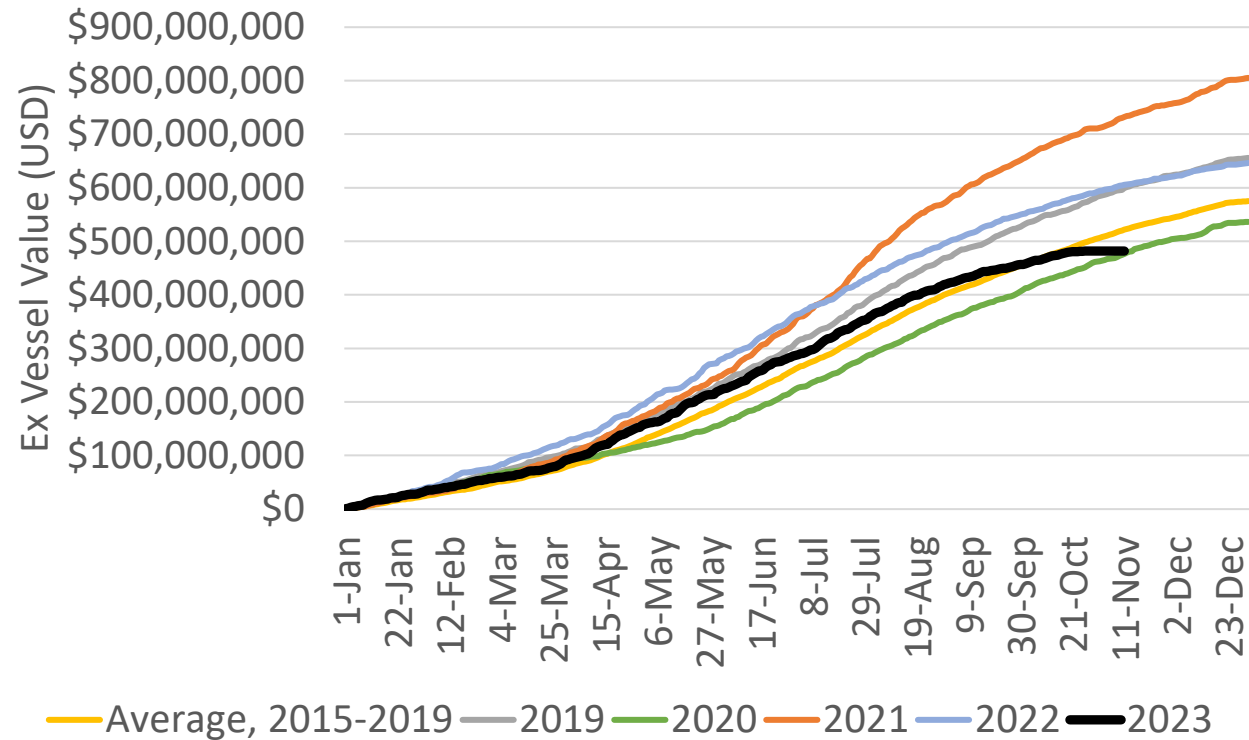
Opted into EESA for the first time in 2021

2023 Ex-Vessel Value Overview

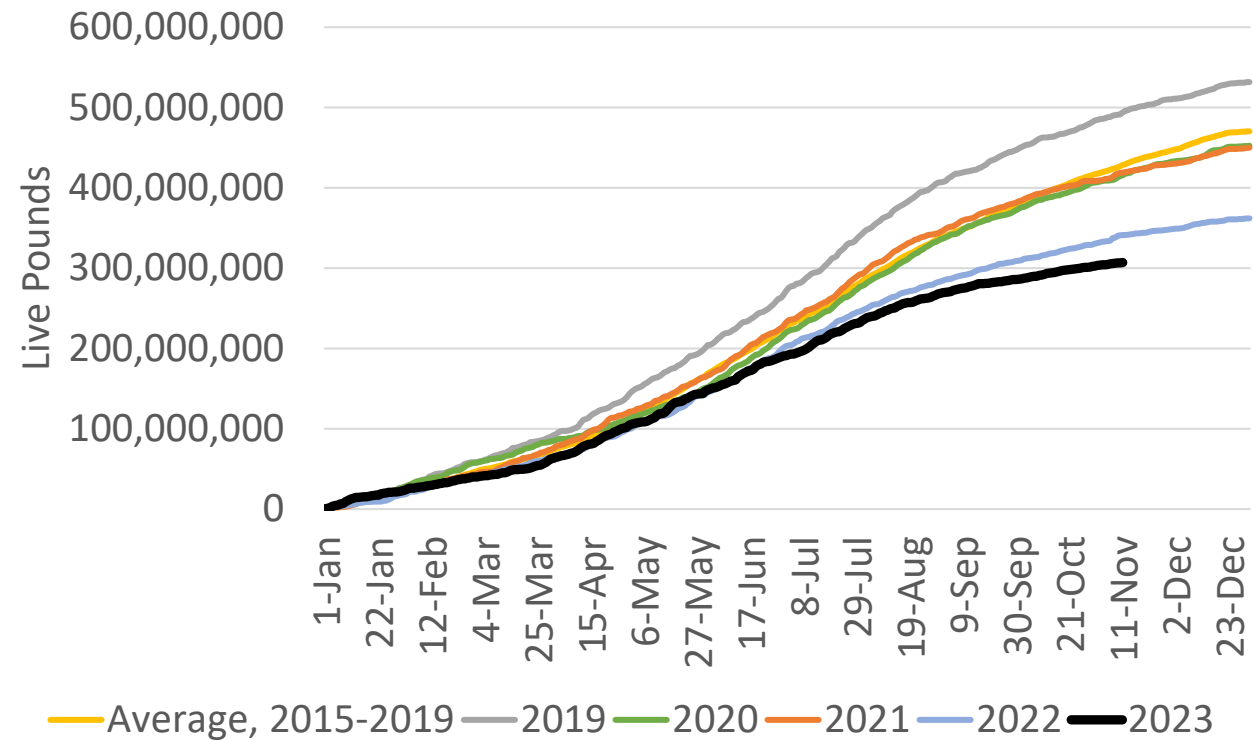
Comparison to 2019, 2020, 2021, 2022 and the average value for 2015-2019

Running Total of Ex-Vessel Value & Landings Across All Species*

Running Total of Ex-Vessel Value Across All Species



Running Total of Live Pounds Landed Across All Species



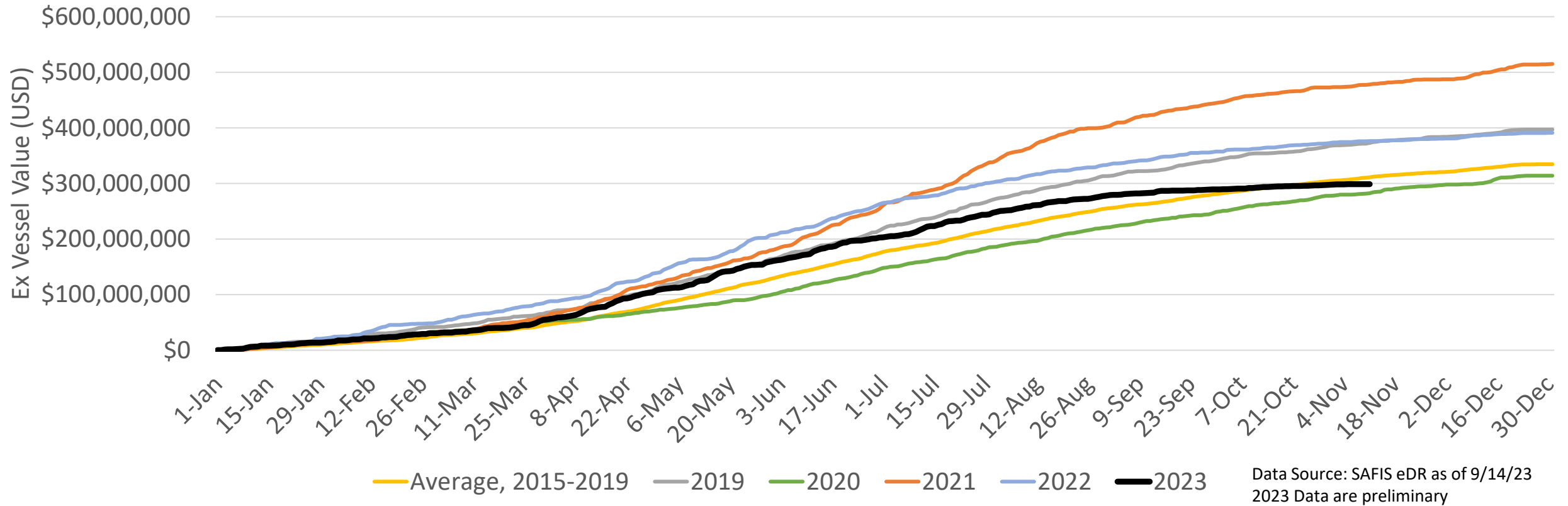
Data Source: SAFIS eDR as of 9/14/23
2023 Data are preliminary

*Excludes surf clams and ocean quahogs



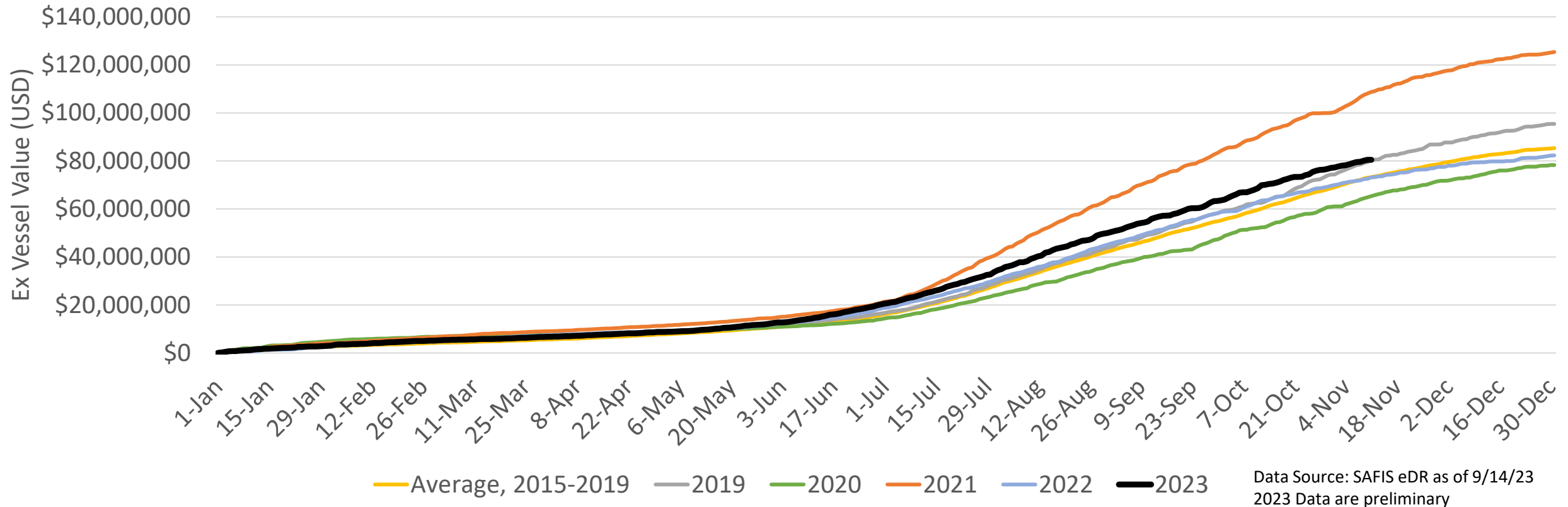
Running Total of Ex-Vessel Value: Sea Scallops

Running Total of Ex-Vessel Value: Sea Scallops



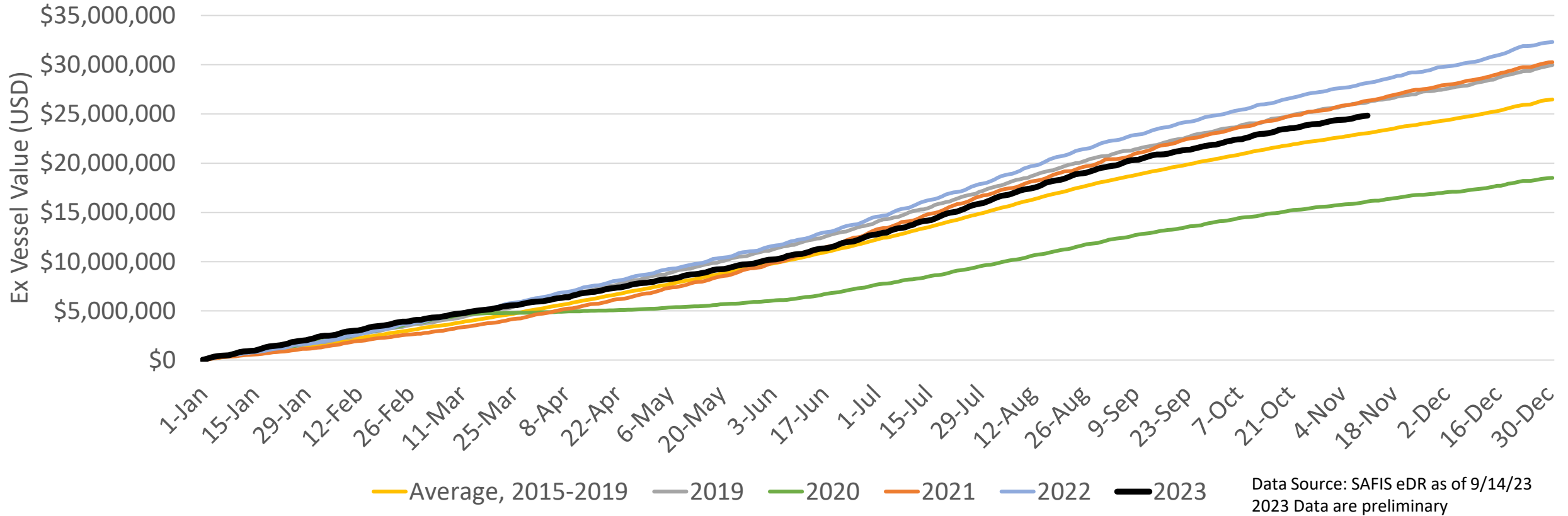
Running Total of Ex-Vessel Value: Lobster

Running Total of Ex-Vessel Value: Lobster



Running Total of Ex-Vessel Value: Oyster

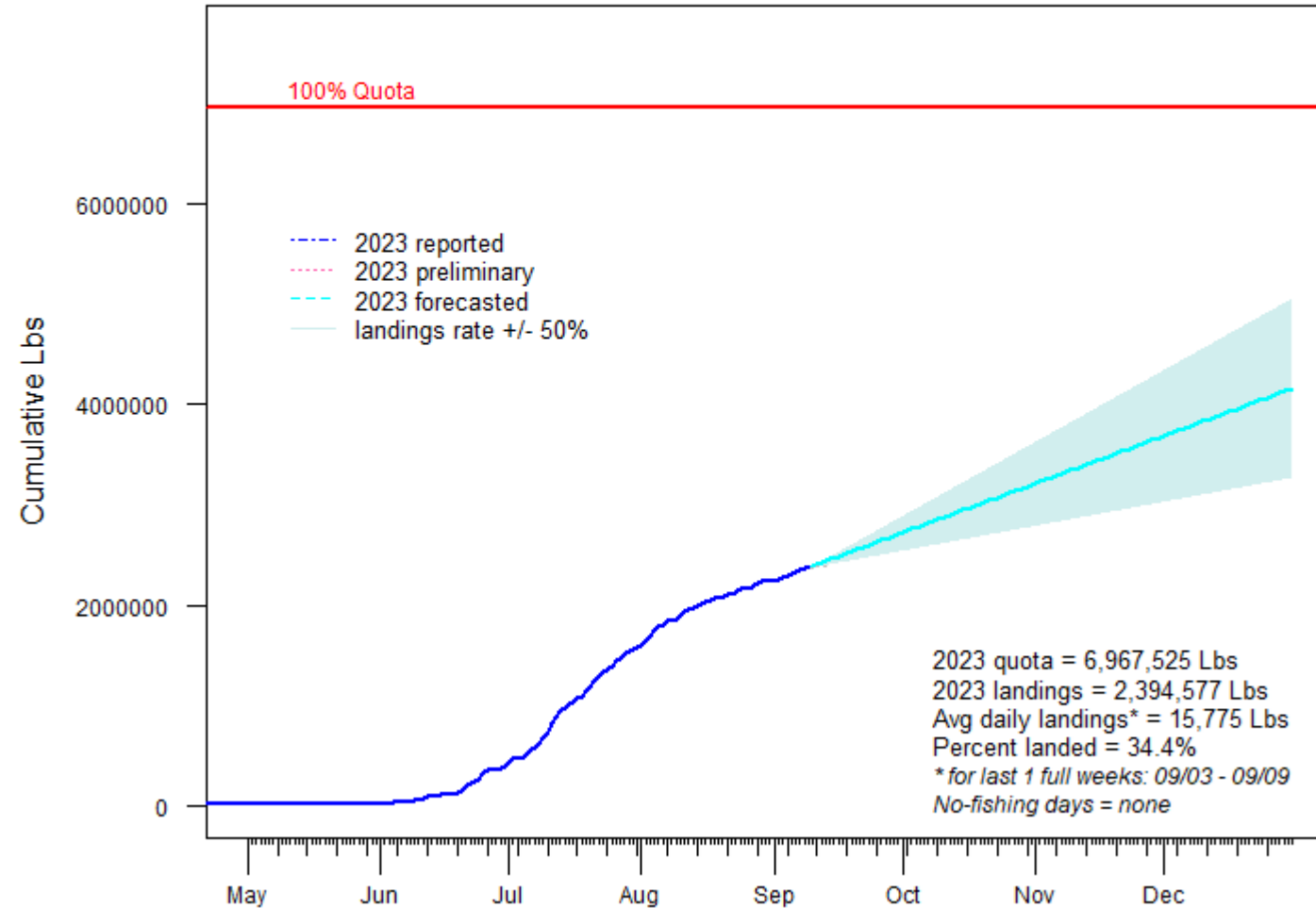
Running Total of Ex-Vessel Value: Eastern Oyster



Spiny Dogfish

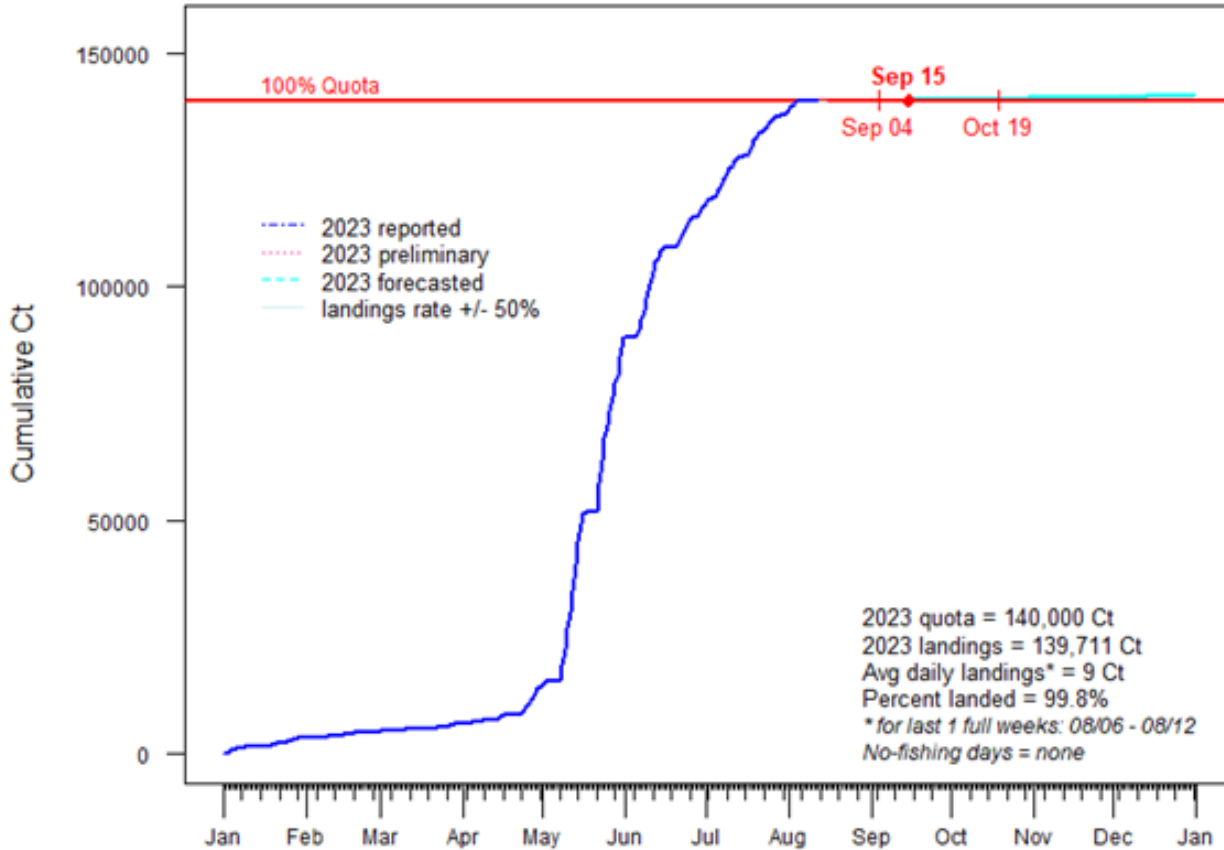
2023 SHARK, DOGFISH, SPINY Quota Monitoring

as of September 13, 2023 11:20 AM

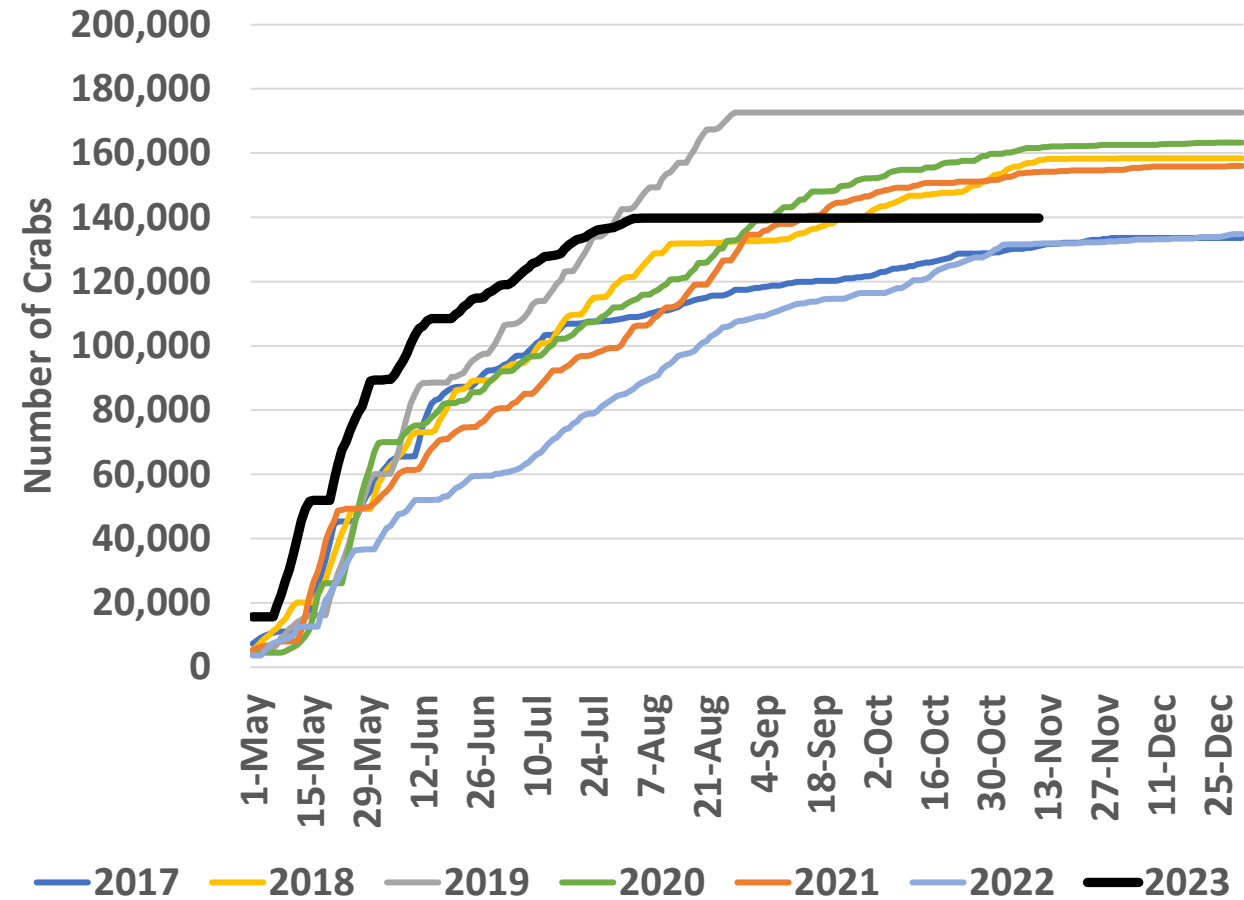


Bait Horseshoe Crab – Closed as of August 6, 2023

2023 CRAB, HORSESHOE Quota Monitoring
as of August 16, 2023 09:09 AM



Running Total of Bait Landings: Horseshoe Crab

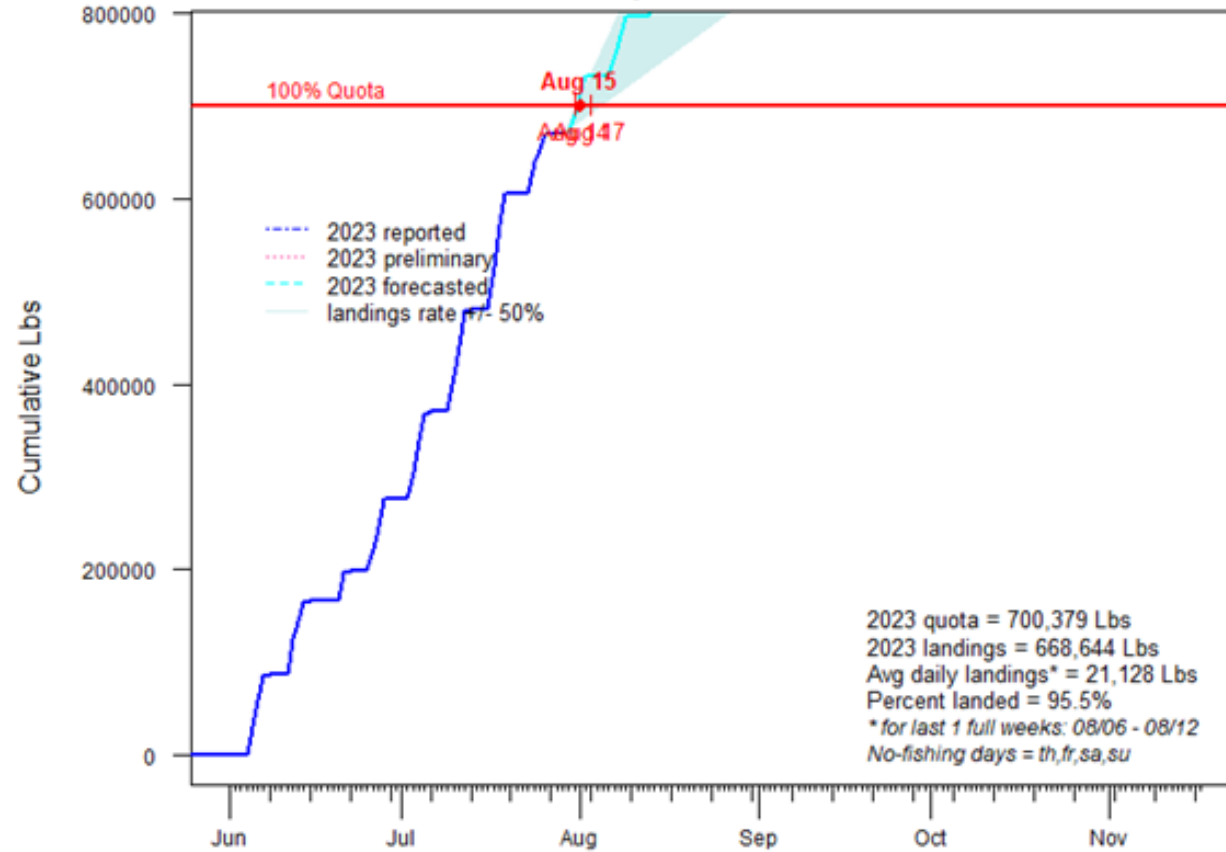


Bait Quota reduced from 165,000 to 140,000 in 2023

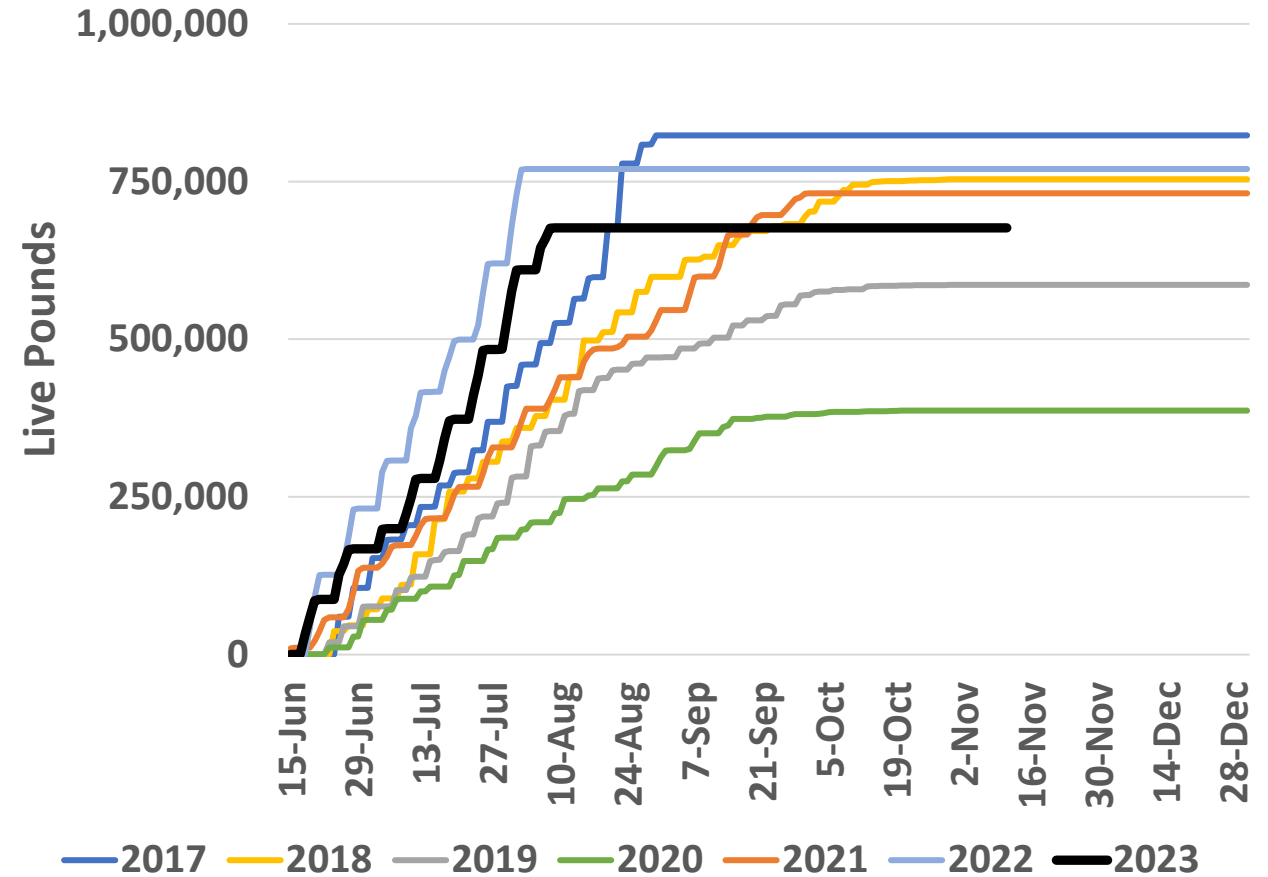
Striped Bass – Closed as of August 11, 2023

2023 BASS, STRIPED Quota Monitoring

as of August 16, 2023 09:09 AM



Annual Running Totals of Landings: Striped Bass



Quota decreased ~15% in 2020

Note: X-axis scale on the left figure is off by about two weeks. However, projection dates are accurate.



The Commonwealth of Massachusetts

Division of Marine Fisheries



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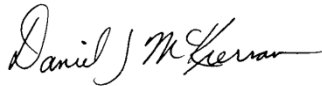
REBECCA L. TEPPER
Secretary

THOMAS O'SHEA
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
Massachusetts Shellfish Advisory Panel (SAP)

FROM: Daniel J. McKiernan, DMF Director 

DATE: November 9, 2023

SUBJECT: **Status of Surf Clam Dredging Activities Subject to Municipal Control Under the Wetlands Protection Act**

Introduction

In 2007, the Town of Provincetown, through its Conservation Commission (“ConCom”) promulgated regulations prohibiting hydraulic dredging for surf clams pursuant to its authority under the Wetlands Protection Act (G.L. c. 131, §40). Since that time, I have been involved in internal and external discussions concerning the ongoing challenges where state regulated commercial fishing activities—particularly hydraulic surf clam dredge fishing—are and may be constrained by the Wetlands Protection Act (WPA) and local ConComs. This memorandum serves to provide the SAP and MFAC with background information on the management of surf clams in Massachusetts; an overview of the application of the WPA to commercial fisheries; an update on a Notice of Intent¹ (NOI) filed by a DMF-permitted surf clam dredge vessel to fish in Provincetown waters in 2022; as well as my thoughts on how to move forward.

Background on State Management of Surf Clam Fishery

State law (G.L. c. 130) establishes an extensive shellfish management program involving both state and local authorities. Under G.L. c. 130, §52 municipalities serve as the primary management authority for most shellfish fisheries (“home rule”). Home rule allows for each town and city to craft a shellfish management program that best reflects the character of the community and suits the community’s shellfish resources and fishing interests. The state’s role is principally focused on shellfish growing area classification, public health, veterinary health, and technical assistance.

In 1982, the Massachusetts legislature amended G.L. c. 130, §52² to constrain home rule over the management of commercial surf clam (or sea clam) and ocean quahog fisheries. Instead, management

¹ A Notice of Intent is submitted by an applicant who seeks permission to dredge, fill, or alter a wetland. The Notice of Intent Application provides the Conservation Commission and MassDEP with a complete and accurate description of the: (1) site including the type and boundaries of resource areas under the Wetlands Protection Act, and (2) proposed work including all measures and designs proposed to meet the performance standards described in the Wetlands Protection Act Regulations, 310 CMR10.00, for each applicable resource area.

² G.L. c. 130, §52 provides, in relevant part, “For the purposes of this section and section fifty-four, the term shellfish shall not include the commercial harvest of those species known as sea clams (*Spilosa solidissima*) and ocean quahogs (*Artica islandica*); provided however, the director may authorize the commercial management of sea clams and ocean quahogs by regional management of cities and towns, if in his opinion regional management will be in the best interest of the Commonwealth.

authority over these shellfish species was bestowed on DMF and its MFAC³, with an allowance for municipal involvement through the development of regional management plans among municipalities approved by DMF. This action was taken in response to the perceived negative impacts of municipalities developing discrete commercial surf clam and ocean quahog management programs. The commercial surf clam and ocean quahog fishery is conducted predominantly by industrial scale vessels using hydraulic dredge gear and moving from area to area to exploit the available resource. The balkanized management approach—with each municipality potentially regulating and permitting the fishing activity—made it unduly onerous to participate in this mobile commercial fishery occurring state-wide and in adjacent federal waters. The legislature preferred a more streamlined approach and determined it was in the best interest of the Commonwealth to provide management authority over the commercial surf clam and ocean quahog fishery to DMF to allow for a state-wide management program.

Consequently, in the early 1980s DMF and the MFAC developed and implemented new commercial surf clam and ocean quahog management regulations (322 CMR 6.08) and established regulated fishery permit endorsements for the use of surf clam and ocean quahog dredge gear (both hydraulic and dry dredges)⁴. These regulations focus on size and catch limits for surf clams and ocean quahogs; constraints on contaminated harvest of surf clams and ocean quahogs; restrictions on the use of surf clam and ocean quahog dredge gear; and time area closures affecting the use of dredge fishing gear to ameliorate user group conflicts and environmental concerns, including closures in some nearshore waters that protect areas where eel grass and juvenile fish habitat may occur⁵. These regulations have been amended over time on an as-needed basis to address emerging management challenges.

Application of Wetlands Protection Act to Commercial Fisheries

Under current case law interpreting the WPA, the state's Department of Environmental Protection (MassDEP) or local ConComs may regulate by issuing orders of conditions to control the use of hydraulic surf clam and ocean quahog dredge gear in wetland resource areas⁶. In *Aqua King Fishery, LLC v. Conservation Commission of Provincetown*, 91 Mass. App. Ct. 712, 714 (2017), the appeals court held that a local regulation⁷ prohibiting hydraulic dredging without filing an NOI with the local ConCom was invalid because it purported to regulate the commercial management of sea clams, contrary to G.L. c. 130,

Regional management shall be based upon a regional plan developed by the cities and town concerned and approved by the director. The director is authorized to promulgate rules and regulations for the development, approval, and implementation of all regional plans.”

³ In summary, G.L. c. 130, §17A authorizes the MFAC to approve or reject all regulatory proposals of DMF affecting the manner of taking fish; sizes of fish to be taken; seasons and hours for fishing; quantities of fish to be taken; and the opening and closing of areas to the taking of fish.

⁴ This regulated fishery permit endorsement has been limited entry since 1993. This means no new permits are issued and permits are only available through the renewal or transfer of an existing permit. All transfers are subject to the transferability regulations established at 322 CMR 7.06 and any relevant DMF permit transfer policies.

⁵ 322 CMR 6.08(2)(a) and (b) prohibit hydraulic dredging from November 1 through April 30 inside the 12' depth contour and from May 1 through October 31 inside the 20' depth contour.

⁶ Under 310 CMR 10.25(2), the jurisdiction of the Conservation Commission extends into the Nearshore Areas of Land under the Ocean, defined as “that land extending from the mean low water line to the seaward limit of a municipality's jurisdiction, but in no case beyond the point where the land is 80 feet below the level of the ocean at mean low water. However, the nearshore area shall extend seaward only to that point where the land is 30 feet below the level of the ocean at mean low water for municipalities bordering Buzzard's Bay and Vineyard Sound (west of a line between West Chop, Martha's Vineyard and Nobska Point, Falmouth), 40 feet below the level of the ocean at mean low water for Provincetown's land in Cape Cod Bay, and 50 feet below the level of the ocean at mean low water for Truro's and Wellfleet's land in Cape Cod Bay.”

⁷ Provincetown's by-laws include its Wetlands Protection Bylaw, at Chapter 12. In particular, Chapter 12-2 provides, “[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to . . . dredge . . . the following resource areas: . . . lands under water bodies . . .” Chapter 12-8 directs the ConCom to promulgate regulations to effectuate the by-law. Those regulations were promulgated by the ConCom in 2007 and include Article 8.1, which provides, “[n]o hydraulic dredging shall occur within the waters under the jurisdiction of the Provincetown Conservation Commission without a proper filing before the Conservation Commission.” The “by-law” at issue in *Aqua King* appears to be this regulation. Despite the appeals court holding that the by-law (*i.e.*, the regulation) was invalid, the regulation appears to be still on the books.

§ 52. The court went on to hold that even though DMF regulates commercial sea clamming, nothing prohibited further regulation by other authorities. *Id.* at 715-16. Because commercial fishing is not an exemption in the WPA, and because the activity at issue fell within MassDEP’s definition of the term “dredge,” (*i.e.*, it was “a slight temporary deepening of the ocean floor”) these commercial fishers continue to face local control over the use of DMF-permitted hydraulic dredge fishing gear in Provincetown waters. *See, id.* at 716.⁸

To the best of my knowledge, Provincetown is the only municipality to date that asserted its jurisdiction over the use of fishing gear pursuant to the WPA. However, it is conceivable that other municipalities could follow suit. Again, to the best of my knowledge, MassDEP has never asserted its management authority under the WPA to establish an overarching order of conditions to regulate fishing activity. Rather, MassDEP has historically left the permitting, regulation, and management of fishing gear to DMF.

From the fishing industry’s perspective, the term “hydraulic dredging” in both marine excavation projects and fisheries management seems incongruent. In the marine construction setting, hydraulic dredging is generally understood to be a process used to excavate trenches to lay cables; dig out channels and then refill them; and alter sediment for infrastructure projects. Whereas hydraulic dredge fishing gear is understood as a gear type that mechanically pumps pressurized water into the sediment to liquify top layer sediments to effectively extract target species buried just below the surface. While this fishing activity undoubtedly results in the furrowing and repositioning of sediment, the scale and purpose of the fishing activity is far different than those hydraulic dredging activities that have been historically subject to WPA oversight and regulation.

Status of Recent Filing of a Notice of Intent

In August of 2022, Michelle Letts (a surf clam vessel owner), submitted a NOI to the Provincetown ConCom seeking to lawfully fish for surf clams using hydraulic dredge gear in Provincetown waters off Herring Cove Beach.⁹ The application was submitted in good faith to avoid violating any state or municipal laws and regulations. The filing of this NOI cost the applicant in excess of \$1,400 paid to the Town of Provincetown and MassDEP. The ConCom did not hold a hearing on the NOI, and the applicant withdrew the NOI application and the filing fees from both entities were reimbursed. The purpose of the withdrawal was to provide state regulators (DMF & MassDEP) with an opportunity to create a more deliberate solution to address jurisdictional issues related to the use of dredge gear in wetland resource areas.

Concerns Moving Forward

Listed below are several broad concerns that I have regarding the precedent, the process, and the potential for unintended outcomes related to state and local control of fishing gear and fishing activity under the WPA. At present, the commercial surf clam fleet has largely avoided fishing in Provincetown waters. However, if the ConCom were to issue an Order of Conditions on an NOI, a precedent would be set requiring every vessel seeking to fish with hydraulic dredge fishing gear in Provincetown waters to submit and file a separate NOI with the local ConCom. There are about 36 permit holders authorized to fish for surf clams and ocean quahogs with dredge fishing gear and about 10 active vessels involved in the state waters fishery during any given year. Given Provincetown is a productive resource area, a sizeable proportion of the active fleet would likely move forward to file an NOI. Accordingly, the municipality would need to make decisions on Orders of Conditions for each applicant permit holder.

⁸ As noted by the court, neither DMF nor DEP participated in the court proceedings. *Aqua King*, 91 Mass. App. Ct. at 715, n. 7.

⁹ These waters are within the jurisdiction of the ConCom. *See*, n. 5 above.

This in turn could set a precedent requiring commercial fishers to file a NOI and obtain an Order of Conditions from all municipalities where they intend to deploy hydraulic dredge fishing gear within wetland resource areas, even if the municipality does not actively apply its WPA authority to the use of this gear. This would effectively return the fishery back to the balkanized management program the legislature sought to end when it amended G.L. c. 130, §52 in 1982. In sum, this would create a costly¹⁰ and onerous barrier for commercial fishers to prosecute a fishery they are permitted by DMF to participate in. This may constrain fishing effort in many areas resulting in substantial adverse negative economic impacts on the state's commercial surf clam and ocean quahog fishery. Additionally, it would create a substantial administrative burden on those state and local government bodies involved in the administration of the WPA, including MassDEP and local ConComs.

To date, WPA case law has focused on the management of hydraulic dredge fishing gear. However, it is conceivable that a local ConCom could expand upon existing precedent and apply its WPA authority to other bottom-tending fishing gears. MassDEP Wetlands Protection Act Regulations¹¹ and Water Quality Certification Regulations¹² broadly define the term dredging, and in the broadest reading, dredging could refer to any activity that temporarily deepens or widens a furrow or repositions sediment. Therefore, the potential exists for the WPA to apply to many other non-hydraulic bottom-tending fishing gears. Foremost, this includes other fishing gears that have been colloquially given the name “dredge.” These gears scour the sea floor to collect shellfish and invertebrate species and impact the top layer of sediment and result in sediment repositioning and suspension. These gears encompass both “dry” dredges and “drags”. Dry dredges use teeth or a blade to penetrate the sediment and extract target shellfish species (e.g., bay quahog dredge), whereas drags are pulled across the sea floor to capture those shellfish and invertebrates that reside above the sediment (e.g., sea scallop dredge, bay scallop dredge, oyster dredge, sea urchin dredge). While drags have less of an impact on the sea floor than penetrating dredge gear, they create sediment repositioning and suspension making them potentially vulnerable to WPA regulation.

Conclusions and Potential Solutions

DMF understands the need for MassDEP oversight of coastal alteration projects under the WPA. However, eight years ago legal precedent was set confirming that the WPA's authority extends to the use of certain fishing gears. Yet, there has been no progress to address the jurisdictional challenges this creates and the impacts these challenges have on the commercial fishing industry. Rather, we remain at an impasse. MassDEP has not asserted its oversight authority under the WPA and any coastal ConCom can use their WPA authority to control the use of certain shellfish fishing gears in their wetlands resource areas and thereby manage and permit commercial shellfish fishing activities already regulated and permitted by DMF. While only one community has enacted such regulations, I expect others may follow suit. This requires a resolution.

It is my understanding that MassDEP could issue a Positive Determination of Applicability to every DMF permit holder seeking to fish “dredge gear” in any town exercising its WPA authority over the use of this commercial fishing activities. This would entail industry having to incur significant annual fees and then await a list of conditions that the municipality or MassDEP could place on the activity. This would impose a substantial burden on MassDEP staff and shift fisheries management issues away from DMF

¹⁰ Letts paid in excess of \$1,400 in state and local fees for her NOI submitted to in the Provincetown ConCom. If NOIs were to be required in other municipalities, fees could conceivably be in the tens-of-thousands of dollars for each permit holder. Compare this to the \$225 annual permit fee Letts pays to DMF to participate in the state-wide commercial surf clam and ocean quahog hydraulic dredge fishery.

¹¹ At 310 CMR 10.04, MassDEP defines the term dredging to mean, “to deepen, widen or excavate, either temporarily or permanently, land below the mean high tide line in coastal waters and below the high water mark for inland waters. The term dredge shall not include activities in Bordering or isolated vegetated wetlands.”

¹² At 314 CMR 9.02, MassDEP further defines the term dredging as, “the removal or reposition of sediment or other material from below the mean high tide line for coastal waters...”

and the Marine Fisheries Advisory Commission even though there is clear legislative authority at G.L. c. 130, §§17A and 52 to manage the commercial fishing activity. Moreover, I am uncertain about how this would interface with shellfish dredge fisheries primarily managed by municipalities under their home rule authority.

It is my view that a solution cannot be achieved through policy or regulation, particularly as MassDEP cannot create a regulatory exemption in the absence of a statutory exemption. Therefore, a statutory exemption is warranted. This can be accomplished through two mechanisms. The WPA could be amended to exempt the lawful use of DMF-permitted fishing gears—the WPA already exempts certain activities from its oversight including mosquito control, cranberry bog flooding and drainage, and other agricultural and aquacultural uses¹³. Alternatively, DMF’s enabling statute at G.L. c. 130, § 1A, could be amended to expressly state in that DMF has the sole and exclusive authority to regulate the harvest of marine fish and the effect of such activity on marine fish species and marine fisheries resources, and that fishers engaged in such DMF-permitted activities are not required to file a notice of intent, obtain a Chapter 91 license, or obtain a water quality certification. In my opinion, the latter fix may be the ideal resolution.

Modernizing DMF’s Management Plan

On August 21, I convened DMF-permitted surf clam and ocean quahog dredge fishers and MFAC leadership to discuss the potential for substantial changes to surf clam fishery management in state waters. The seasonal closure of nearshore waters to the use of surf clam dredge fishing gears through the application of depth contours is outdated and difficult to enforce. My strong preference is to modernize these rules through the incorporation of modern geospatial vessel monitoring technologies. Using these technologies, DMF can create well-defined management area closures that are readily monitored and enforceable to ensure that dredge fishing gear is not conducted in closed areas, particularly sensitive marine habitats (*e.g.*, eel grass).

The owners of three surf clam vessels have volunteered to participate in a pilot program to test the utility of these technologies and management strategy. DMF has provided these three vessels with geospatial monitoring devices and is working with them to develop test polygons. DMF is also soliciting the surf clam dredge fleet for additional pilot program participants and I expect several more vessels to participate. If viable, I will work to develop draft regulations through a public rule-making process that would incorporate input from industry, the MFAC and SAP, MassDEP, local shellfish constables, ConComs, conservation groups, recreational fishers, and other interested stakeholders. I am hopeful that such a transparent process will help assuage environmental and conservation concerns regarding the use of this fishing gear.

Additionally, we have yet to receive the final report of a controlled fishing study performed in 2017 by the Provincetown Center for Coastal Studies regarding the impacts of hydraulic dredge fishing gear on the sediment and benthic communities in waters off Herring Cove. Preliminary results have been shared with DMF informally and many of the tested hypotheses were inconclusive. However, one conclusive finding from the study was that the Herring Cove area was determined not to be an area of high energy (waves and currents), and the dredge tracks detected from past fishing were more persistent than expected. These findings (once published and peer reviewed) could be included in discussions on how DMF should best manage the fishery.

¹³ In relevant part, G.L. c. 131, §40 states, “the provisions of this section shall not apply to any mosquito control work done under the provisions of clause (36) of section five of chapter forty, of chapter two hundred and fifty-two or of any special act; to maintenance of drainage and flooding systems of cranberry bogs, to work performed for normal maintenance or improvement of land in agricultural use or in aquacultural use; or to any project authorized by special act prior to January first, nineteen hundred and seventy-three.” It should also be noted here that the Provincetown By-Laws, at Chapter 12-3-2 exempt agricultural uses from this by-law.



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DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

THRU: Daniel J. McKiernan, Director 

FROM: Jared A. Silva, Policy Analyst

DATE: November 9, 2023

SUBJECT: **Summary of MFAC Law Enforcement Focus Group Meeting**

The MFAC's Law Enforcement Focus Group (LEFG) met on November 7, 2023. In attendance were Raymond Kane and Kalil Boghdan from the MFAC; Dan McKiernan, Robert Glenn, Story Reed, Mike Armstrong, Jared Silva, Chrissy Petitpas, Nichola Meserve, and Julia Kaplan from DMF; and Lt. Col Patrick Moran, Major Chris Baker, Lt. Matt Bass, and Ofc. Joe Gray from the Massachusetts Environmental Police. The purpose of this memorandum is to briefly summarize the meeting, raise items for discussion by the full MFAC, and forecast deliverables moving forward.

Interstate Wildlife Violators Compact

DMF's [August 11, 2023 memorandum](#) to the MFAC describes the Interstate Wildlife Violators Compact (IWVC). This interstate agreement creates reciprocity between states for the enforcement of wildlife violations, including administrative actions to sanction permits. Massachusetts entered into the compact in 2022 (see [G.L. c. 131B](#)) and is now in the process of developing implementing regulations for 2024.

During 2023, there were several law enforcement incidents that raised concerns about potential shortcomings regarding efficacy of the IWVC in marine fisheries enforcement and compliance. To address this Major Chris Baker raised these issues with the Atlantic States Marine Fisheries Commission's Law Enforcement Sub-Committee at their recent October meeting. He reported back that it is not uncommon for states to use the IWVC in marine fisheries enforcement and it is generally viewed as a useful tool in instances where there are similar violations among the states. For instance, New Hampshire successfully used the IWVC this year to sanction New Hampshire recreational anglers who were found violating Massachusetts recreational striped bass size limits and bag limits (this violation occurred on a Sunday evening during the commercial fishing season with the intention to sell this fish into market on Monday, the next open fishing day).

In recent years, however, Rhode Island's Division of Law Enforcement have observed Rhode Island violations of the state's recreational fishing limits by Rhode Island anglers who also hold commercial striped bass fishing permits in Massachusetts. It is my view that this unlawfully caught fish was ultimately destined for sale in the Commonwealth. However, as the enforcement incident occurs before the fish reach Massachusetts, there is limited ability for DMF to take an administrative action against the commercial fishing permit. Moreover, there are concerns about the IWVC's usefulness in addressing this

because in most instances the violators do not hold a Rhode Island commercial fishing permit or are not charged with violations of Rhode Island's commercial fishing rules. DMF intends to continue to consult legal counsel to determine how best to close this potential loophole. One solution identified would be to amend the striped bass commercial regulations to explicitly prohibit taking fish in another jurisdiction for purposes of sale in the Commonwealth. Additionally, greater cross jurisdiction collaboration is likely warranted.

Sale of Seized Non-Conforming Fish

When MEP seizes non-conforming fish, the fish may either be sold into market or donated (e.g., food pantry). In some instances, selling the fish is preferred because it allows them to put a dollar value on the illegal harvest or because the quantity of non-conforming fish is too substantial for a local fish house to process or to donate to charity. DMF, working through the Atlantic Coastal Cooperative Statistics Program, will provide MEP with guidance on how dealers should enter this fish into SAFIS dealer reports and how the dealer should handle non-conforming sized fish.

Commercial Striped Bass Management

MEP raised several issues regarding enforcement and compliance in the commercial striped bass fishery. The discussion focused on the open/closed fishing day schedule and the practice of dropping fish off at an unstaffed dealer facility. Issues identified for future deliberation include: (1) frontloading of fish prior to open fishing days; (2) the ability to enforce trip limits on a consecutive open fishing day schedule; (3) refining the definition of primary purchase to more clearly specify that any fish in the dealers' custody or at their premises are to be tagged; (4) requiring dealers create records that tie tag numbers to specific harvesters; and (5) public health concerns regarding the temperature abuse of product dropped off at an unstaffed dealer facility. DMF will raise these issues with the MFAC's Commercial Striped Bass Focus Group next month and will consider them when drafting potential regulatory changes for the 2024 fishing year. Lastly, the public health issues will be discussed at an upcoming routine meeting between DMF, MEP, and the Department of Public Health.

Menhaden Fishery Management and User Group Conflicts

One of the primary management challenges with the menhaden fishery is balancing conflicts between the commercial harvesters who want to extract the fish for bait markets and recreational anglers (and others) who want the fish to remain in the water as forage. In recent years, Boston Harbor has been the center of some of these conflicts. In certain instances, when there are verifiable and obvious observations of a seiner violating permit conditions requiring they avoid concentrations of recreational fishers, DMF has taken action to limit that seiner's access to the area. (DMF also prohibited the use of carrier vessels in Boston Harbor to control the scale of the commercial fishery in the area.) In other instances, DMF has determined that certain reports of conflicts have intentionally attempted to misconstrue or mischaracterize interactions between recreational and commercial fishing vessels to encourage DMF to constrain commercial fishing activity. DMF will continue to diligently investigate reports when we receive them, attempt to separate the wheat from the chaff, and take administrative actions against fishers who are violating state rules when appropriate.

MEP also raised concerns regarding certain volumetric standards commonly used in the menhaden fishery. For instance, during the large-scale commercial fishery vats are often used as a proxy for 1,800 pounds of menhaden, but after weighing the contents of the vats, MEP argues the contrivances can hold between 2,250 to 2,400 pounds of menhaden. This discrepancy may be resulting in some overharvesting of menhaden on a daily basis and more substantially when scaled out over the season. DMF intends to raise this issue with our neighboring states to determine if they have observed similar discrepancies and determine if there is a collaborative, cross-jurisdictional solution. Additionally, DMF will have to consider discrepancies between volumetric standards and the actual weight of fish when assessing the efficacy of the new fish hold marking and certification requirement going into effect in 2024.

Trap Gear Issues

DMF and MEP discussed ongoing issues related to compliance with buoy line and trap tag rules. Additionally, DMF indicated the agency would once again be contracting third party vessels to haul buoyed gear left in the Massachusetts Trap Gear Seasonal Closure.

Shellfish Management

DMF discussed pending draft regulations affecting shellfish tagging, icing, and night closures. These draft regulatory proposals are described in the November 9, 2023 memo to the MFAC. Additionally, DMF discussed its ongoing pilot program with the surf clam fishery to improve spatial management as well as interest from certain members of the aquaculture industry to better accommodate bulk tagging of aquaculture reared shellfish.

Attachment

November 7, 2023 MFAC LEFG Agenda



**MARINE FISHERIES ADVISORY COMMISSION
BUSINESS MEETING AGENDA**

9:00AM

November 7, 2023

Via Zoom: <https://us02web.zoom.us/j/86332968461>

Call In: 1-305-224-1968

Meeting ID: 863 3296 8461

1. Call to Order and Announcements
2. Interstate Wildlife Violators Compact
3. Sale of Seized Non-Conforming Fish
4. Striped Bass
 - a. Sunday Fishing
 - b. Dealer Drop Off and Primary Transactions
5. Menhaden User Group Conflicts
6. Trap Fisheries
 - a. Buoy Line Inspections
 - b. Trap Tag and Trap Allocation Issues
 - c. Update on Gear Removal and Trap Closure Efforts
7. Shellfish Management
 - a. Shellfish Tagging
 - b. Shellfish Icing
 - c. Night Closures
8. Other Business
9. Adjourn