



MASSACHUSETTS Division of Marine Fisheries

PAUL J. DIDDATI, DIRECTOR



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DMF NEWS

Volume 18 Third Quarter

July - September 1998

DMF NEWS is Published quarterly by the Massachusetts Division of Marine Fisheries to inform and educate its constituents on matters relating to the conservation and sustainable use of the Commonwealth's marine resources

Volume 18 Third Quarter July - September 1998

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Governor Cellucci Signs New Law to Protect Egg-Bearing Lobsters

With the stroke of his pen, Governor Argeo Paul Cellucci helped preserve one of the Commonwealth's most important resources by imposing stiffer penalties on fishermen who blatantly violate state laws protecting egg-bearing lobsters. On June 19 with the DMF Martha's Vineyard Lobster Hatchery as a backdrop, the Governor signed into law House 90 thereby increasing fines for taking or possessing egg-bearing lobsters.

With this major increase in penalties, it is no longer cost effective to violate the law. Fines for taking an egg-bearing lobster were increased from \$50-100 to \$150-

\$500 per lobster for the first offense. For subsequent offenses, the penalty will be \$500-\$1000 per lobster or imprisonment from 60 days to 6 months, or both. The even more egregious crime of removing eggs from female lobsters carries a heftier penalty of \$250-\$1000 per lobster for the first offense and \$100-\$2000 per lobster or by imprisonment from 90 days to one year, or both for any subsequent offense.

To safeguard the lobster resource and to deter violators, the Administration filed the bill in January of 1997 on behalf of DMF. *"This law will give the Division of Law Enforcement the teeth it needs to apprehend violators,"* exclaimed Commissioner John Phillips at the signing ceremony. *"This new law and the test developed by DMF [see below] are two important law enforcement tools which will ensure that violators are 'caught in the act' and are punished for their crime against our natural resources"*

The new law has extra impact because it provides authority for Environmental Police Officers (EPOs) to use a test designed to detect when eggs have been removed from female lobsters. DLE and DMF reported that in recent years, violators have abandoned the practice of "scrubbing" lobster eggs from the abdomen of female lobsters with a brush or high-pressure water hose. Instead, violators have adopted the practice of "dipping" lobsters in chemicals or substances capable of removing eggs.

"Dipping" is a cleaner procedure, leaving no trace of eggs or glue on swimmerets; therefore, violators think they can avoid detection. Fortunately, Michael Syslo, Director of the Lobster Hatchery, and Dr. Robert Bullis, Woods Hole Marine Biological Laboratory, have developed and perfected a test for law enforcement to use to determine whether lobsters have been "dipped." They have trained state and federal law enforcement personnel to use the test with proven results. Under the new law, EPOs may take a small part of a lobster in order to test for chemical substances. Evidence of a "positive" result is prima facie evidence of a violation.

Many thanks to the legislators who helped gain passage of this bill in various stages, including Natural Resource Committee members: Senators Lois Pines (Chair) and Robert Antonioni (Vice Chair) and Representatives Douglas Petersen (Chair), George Peterson, Anthony Verga, and Robert DeLeo.

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High-tech tags reveal tuna travels

It has been argued that the Atlantic bluefin tuna fishery presents the most difficult challenge to U.S. fishery managers. Regardless of which fishery lays claim to that dubious title, the tough ones often share the common obstacles of international agreements, competing domestic interests, and high economic value for a species with extensive migrations. The Atlantic bluefin tuna fishery displays all these traits to an excess and is further characterized by uncertainty over many basic aspects of tuna life history.

Atlantic bluefin tuna are presently managed under an international agreement recognizing two Atlantic stocks separated into management zones by the 45degrees west longitude line. Western Atlantic fisheries have been under strict quota management since 1982. However, eastern Atlantic fisheries, now enjoying record catches, only recently have imposed quotas.

Population assessments assume mixing does not occur between the two stocks and indicate serious reductions in both spawning stocks during the last 20 years. More information on stock structure and movements is clearly needed. Some bluefin do cross the Atlantic, and concern is high over the potential for action (or inaction) in

one management zone to influence resources and fisheries in the other.

Due to their large size and highly migratory behavior, bluefin are hard to handle and difficult to study. Unanswered questions remain concerning their ocean-wide movements, stock structure and stock mixing, and reproductive biology. Fortunately, new applications in tagging technology are developing at an exciting rate and soon should provide a wealth of information on giant bluefin habits in the Atlantic.

Dr. Frank Mather of Woods Hole Oceanographic Institute (WHOI) began putting conventional tags on bluefin over 40 years ago. Since then, recapture data from collective efforts have provided the basis for much of what we know about bluefin wide-scale movements and growth rates. Hydroacoustic tags have been applied to fish for the last 25 years to allow fine-scale tracking of bluefin movements.

These efforts also have provided revelations on bluefin physiology, including Frank Carey's (also of WHOI) discovery that bluefin have an ability to retain metabolic heat, an ability unmatched among bony fish in the ocean.

DMF biologists have contributed to this field in recent years through their participation in the tracking of 15 bluefin during experiments on stress physiology and fine-scale movements. These experiments involved two new tag types that combine the data logging capacity of micro-processors with the tried and true approach of "tag and release."

The first tag type is the archival tag, which can store data such as location, water temperature, body temperature, and depth for several years. These data only can be retrieved when the tuna is caught again and the tag is returned by fishermen. The second type is the pop-up satellite tag which presently has limited data logging capacity. The tag transmits data to an ARGOS satellite once it electronically disengages from the tuna and floats to the surface at a predetermined time. Pop-up tags have an external dart attachment while archival tags are implanted internally into the body cavity with a sensor protruding outside the stomach.

The real prize will come with development of an archival tag that pops up and transmits all data to a satellite. This marriage is expected soon and will depend on enhanced battery capacity to send data to the satellite. The satellite will, in turn, send all this valuable data to scientists' desk computers by e-mail.

Atlantic bluefin tuna studies using high technology tags began in 1996 with archival and satellite tag deployment off Cape Hatteras by a Stanford University and NMFS team. In 1997, a team of scientists and fishermen deployed 20 pop-up satellite tags off Massachusetts. This New England project was a cooperative effort headed by Molly Lutcavage of the New England Aquarium and included biologists from DMF and the University of Hawaii, the East Coast Tuna Association and expert tuna fishermen. The two essential ingredients to this project were the tag itself, developed by Paul Howey of Microwave Telemetry, Maryland, and the fishermen whose combined years of experience put bluefin in good condition alongside tagging boats and at a rate scientists could never hope to achieve by themselves.

Twenty pop-up satellite tags were deployed last fall by this cooperative team working off Gloucester and Cape Cod. Bluefin were caught, outfitted with tags, and released by the purse seine vessel, White Dove Too, and rod and reel boats, Cookie Too and Low Bid. Tags were designed to pop-up from the fish in groups of 5 tags at 5.5, 7.5, 8.5, and 9.5 month intervals. These pop-up times were selected to reveal locations of bluefin around spring and early summer spawning periods for the west and east Atlantic.

As of late July, 17 tags have communicated successfully to satellites, revealing their locations and a record of water temperatures along the migration. All pop-up locations were well east of the U.S. continental shelf, and 4 tags popped-up east of the 45 degree west boundary line.

Surprisingly, none of the 17 recoveries occurred in the Gulf of Mexico, the presumed spawning grounds for the western Atlantic bluefin. One of the more vital issues that these new tags can provide is spawning site fidelity. Do bluefin return to spawn at locations where they originated or is there mixing among spawning sites in the Atlantic? Are there other spawning locations?

This cooperative effort will continue in 1998 with deployment of more pop-up tags designed to answer other questions on seasonal movements. There will be new partnerships with more U.S. fishermen and with NMFS and Canada's Department of Fisheries and Oceans.

Each successful pop-up provides an enlightening trail of data on individual bluefin. These data retrieved from the New England project and other studies in different locations will provide a fascinating view of behavior and movements of giant bluefin and will set the stage for essential decisions on managing Atlantic bluefin throughout their range.

You can be sure that technology available for tagging experiments is not going to stop here. Imagine what the next millenium will bring.

By Brad Chase and Greg Skomal.

For more information contact the authors or any of the collaborators:

East Coast Tuna Assoc. (603) 898-8862

New England Aquarium (617) 973-5451

National Marine Fisheries Service 1-800-437-3936

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Entangled right whale freed in Cape Cod Bay

A six-year old male northern right whale, entangled in lines for at least a year, was freed in southern Cape Cod Bay on Friday July 24. This whale was last seen in August and September of 1997 entangled in the Bay of Fundy (Canada), carrying lines wrapped tightly around its fluke. This rescue was an accomplishment for the state's Conservation Plan supporting the federal Large Whale Take Reduction Plan.

Right whales are the most endangered large whale with a population of only 300-350 animals. They use Cape Cod Bay during winter and early spring for feeding, socializing, and possibly mating. During January-April of 1998, DMF's aerial (and ship-board) surveillance and monitoring program under contract to the Center for Coastal Studies (CCS) in Provincetown, identified at least 95 individual right whales in Cape Cod Bay. Predictably, whales departed Cape Cod Bay by the end of April for other plankton-rich feeding grounds (presumably) in the Bay of Fundy and off Nova Scotia. However, every year there are occasional summertime reports of right whales that appear to be transiting state waters and other areas of the Gulf of Maine. Previous studies of satellite-tagged right whales have documented these long distance wanderings.

DMF's Conservation Plan attempts to document all right whale sightings year-round to determine if it is entangled in fishing gear. Researchers use photographs to identify individual whales through the New England Aquarium's Right Whale Catalog. They can track individual whale's life history to determine if it ever was entangled or injured for other reasons (e.g. ship strike).

On Friday morning, July 24, beach goers reported a large black whale swimming near the Dennis shoreline in southern Cape Cod Bay. Dennis Harbormaster, Ed Goggins, investigated and called CCS on his cellular phone. He remained on-scene while CCS researchers steamed from Provincetown to investigate. State Environmental Police also were sent to the scene in a patrol vessel. Lower Cape Cod Bay during summer is known for its recreational vessel traffic and density of lobster pots.

Fortuitously, the U.S. Coast Guard was also flying a fisheries enforcement mission over state waters with State Environmental Police officer, Lt. Peter Hanlon aboard. The Coast Guard agreed to divert the flight to the scene for support. "Eagle eye" Hanlon saw not one but two right whales and photographed them. He noticed the larger of the two whales had lines wrapped around its fluke. There was constant communication between the helicopter, the CCS vessel, and Harbormaster Goggins. Researchers were assisted at CCS's request by some recreational boaters who helped spot the whales after long dives.

The Center's federally-contracted Disentanglement Team arrived on scene with the support of a Coast Guard cutter from Cape Cod Canal Station along with DMF officials and Environmental Police. The team felt the entanglement would eventually be life-threatening for the whale. Within 3 hours, the Disentanglement Team of Stormy Mayo, David Mattila, and Ed Lyman, working from their inflatable boat, succeeded in cutting all lines wrapped around the fluke. Their time-tested technique involves tiring the animal by adding large floats and sea anchors to existing lines on the whale. Once the whale became fatigued, they cut the lines wrapped on the fluke. The whale thrashed for about 30 seconds pulling the lines through the wounds and free of the tail.

Center scientists consulted New England Aquarium researchers and identified the whale as #2212 in the right whale catalog. They compared photographs taken last year during the Aquarium's summertime Bay of Fundy research program that showed the whale was entangled in the same black and red rope wrapped around the fluke. The year-long entanglement had cut deeply into the whale's tail with obvious swelling and scar tissue.

The whale swam off at high speed and surfaced about one half mile away. Right whale #2212 is expected to survive the injuries because researchers re-sighted it in the Bay of Fundy in mid-August. Surveillance teams will be on the lookout to determine its long-term fate. The second whale was watched by Harbormaster Goggins for a few hours until it swam away from the entrance of Sesuit Harbor.

Fishermen and regulators were relieved that this was not a new entanglement. Rather, it was a resolved former entanglement that provides evidence of the time and distance right whales are capable of carrying gear. For example, in June 1997, the Disentanglement Team rescued an 8 year-old male right whale off Chatham from gear that federal officials believe was set 100 miles offshore.

There was another entangled whale (#2027) seen last summer in the Bay of Fundy that was photographed gear-free in Cape Cod Bay on January 4. Also, DMF's surveillance flights "resurrected" two right whales presumed dead since they had not been seen in more than five years. Documenting these whales are significant accomplishments for the state's Conservation Program that attempts to fully document all right whale sightings.

Meanwhile DMF's Conservation Engineering Program continues to work with National Marine Fisheries Service colleagues and private researchers to find ways to reduce the risk of harm from fishing gear for all large whales.

This event demonstrated extraordinary cooperation among citizens, researchers, and all levels of government: town, state, and federal agencies. Congratulations to all involved.

By Dan McKiernan

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Fresh Fish Display Auctions Key to Massachusetts' Seafood Future

The Executive Office of Environmental Affairs and the Department of Fisheries,

Wildlife, and Environmental Law Enforcement have released a report entitled: *The Massachusetts Fresh Marine Fish Marketplace, A Blueprint for Growth and Stability*. This report was completed by a consulting firm at the request of the Massachusetts Seaport Advisory Council.

The focus of this report is fresh fish display auctions: the exchange of fresh fish from harvesters to buyers. The Massachusetts seafood industry employs over 24,000 people and generates about \$4 billion of economic activity. Harvesting, seafood processing, distribution, and retail industries account for the majority of these jobs.

Seafood display auctions, such as those in New Bedford and Gloucester, are vital links to allow the Massachusetts seafood industry to increase revenues, improve fish quality, and re-position the state as a leading provider and purveyor of seafood products to the world.

Display auctions unload fishing vessels, sort catches, and display seafood in a large refrigerated room for buyers to inspect prior to purchasing their supplies at an open auction. Most auctions operate five days a week, and an early morning auction sells the catch landed during the night at the facility.

In the past, most seafood in Massachusetts was purchased sight unseen by the buyer. Display auctions promote higher quality and less uncertainty by increasing the information available to both buyers and sellers and providing a fair, more open, and efficient market for seafood. These auctions ensure a common venue where buyers and sellers can easily find each other and where the price is set through a fair auction process.

The report concludes that the two display auctions in Gloucester and New Bedford and one "trip" style auction in Boston are operating and selling fish, but functioning well below their potential to serve more of the Massachusetts industry.

Declining fish stocks and stringent state and federal regulations to restore fish populations have dramatically disrupted the fresh fish marketplace for Massachusetts fishermen and processors. Today, fishermen must navigate through layers of rules to earn a living: closed areas, catch limits, limits on days-at-sea, and gear restrictions, to name a few. Processors have replaced domestic supplies with imported fish to keep their plants operating. Some stocks are rebounding, but by necessity, restricted fishing will be a permanent way of life for fishermen; higher quality will be the key to preserving revenues in the future. The report identifies display auctions as the most effective place to facilitate open, "transparent" trades where quality is verified and demands a higher price.

Through an examination of display auction successes throughout Europe and in Portland, New Bedford, and Gloucester, the Commonwealth seeks to protect and secure this vital link in our seafood marketplace. The report presents a blueprint for state government's role in overseeing all seafood auctions in the Commonwealth; as an impartial arbiter of standards; and as a partner at the table with industry to promote display auctions and our seafood economy.

Plans for a state of the art market information system are complete and ready for implementation. This central source for marketplace information will improve information flow in the marketplace and will be a very powerful business tool for the seafood industry. Imagine accessing supply forecasts, real-time auctions, and auction results or price trends from all of the auctions in Massachusetts and New England through one source over the Internet.

The Commonwealth and the industry have an opportunity to focus the world's attention on fresh seafood landed and processed in Massachusetts. This important work will continue with the industry to implement a comprehensive seafood auction system and achieve the goals of stability and growth in this valuable piece of the Massachusetts economy.

By David McCarron

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Shellfish monitoring improved for Boston Harbor Cleanup

Many federal, state, and local agencies have worked with the Massachusetts Water Resources Authority (MWRA) on the nationally known "Boston Harbor Cleanup Project." DMF has devoted many hours to this cleanup effort by offering expertise on diverse species from the Northern Right Whale to the microscopic zooplankton that feed it. Possibly the most common marine animals affected by the Boston Harbor Cleanup are soft shell clams, blue mussels, scallops, and surf clams found in Boston Harbor and Massachusetts Bay.

DMF's Shellfish Sanitation and Management Program has monitored water quality for shellfish areas in and around Boston Harbor since 1988. Based on amounts of rainfall and operation of area wastewater treatment plants, Shellfish Program biologists manage shellfish harvesting in the Harbor and all shellfish are transported to DMF's depuration plant in Newburyport before being marketed.

Areas are opened and closed in compliance with the National Shellfish Sanitation Program (NSSP), a federal/state cooperative program recognized by the U.S. Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish produced and sold for human consumption. NSSP requires an agreement between the shellfish control agency (DMF) and operators of any wastewater treatment facility that may impact shellfish areas.

MWRA operates the largest wastewater treatment plant in Boston Harbor and the second largest in the country. The newly renovated and expanded Deer Island facility provides primary and secondary treatment of wastewater from 43 Boston area communities. DMF is notified weekly of the plant's daily operation by MWRA personnel as part of an existing written Memorandum of Understanding (MOU). This provides DMF with up-to-date information needed to ensure that sewage effluent is not adversely affecting the overlying water quality of shellfish beds.

DMF is notified within 24 hours (usually almost immediately) when there are high effluent flows or plant malfunctions. Shellfish bed closures are immediately imposed, if needed, to protect public health. This working relationship has allowed DMF's Shellfish Program to effectively manage Boston Harbor shellfish beds.

MWRA's \$5 billion effort to upgrade its regional sewage treatment facilities has reduced the discharge of inadequately treated sewage effluent and sludge into shallow waters of Boston Harbor. One of the final components of this effort has been the construction of a new 9.5 mile outfall with a 24' diameter deep rock tunnel ending at a depth of 100' in Massachusetts Bay. When the effluent is discharged, it will flow through 55 diffuser heads spaced over the final 1 1/4 miles of the outfall tunnel. MWRA computer modeling predicts the highest concentrations of contaminants will shift to offshore thereby improving shellfishing opportunities in Boston Harbor while having *"...very limited impacts near the outfall in Massachusetts Bay, and virtually no effect on Cape Cod Bay."*

The moving of the Boston Harbor outfall to Massachusetts Bay has required changes to the MOU between DMF and MWRA. In addition, as a part of the U.S. EPA's National Pollutant Discharge Elimination System (NPDES) program, a new discharge permit must be issued to MWRA for the upgraded treatment plant and outfall. The new MOU with an outfall monitoring plan will be included in that permit.

DMF shellfish biologists worked with MWRA to expand overlying water quality monitoring throughout Massachusetts Bay to include fecal coliform testing. The monitoring program will provide DMF with data to assist a correct classification of

shellfish areas adjacent to the outfall in Massachusetts Bay in compliance with NSSP requirements. The NSSP mandates a "Prohibited" area adjacent to each sewage treatment plant outfall or a combination of "Prohibited" and "Conditional" areas depending upon actual volume of flow, performance of the treatment plant, water quality, dispersion and dilution, time of transport of effluent to shellfish resources and time required to notify DMF of problems and for DMF to effect closures. "Conditional" areas can be harvested under certain conditions.

Three different types of sampling surveys - assisted by DMF - have been established: Conditional Area monitoring, transect, and plume tracking surveys. Stations were selected to provide information about the effluent plume and its impact on Massachusetts Bay.

DMF chose 12 Conditional Area monitoring stations from existing MWRA near field and far field monitoring stations. In addition to fecal coliform levels, the stations provide monthly profiles of physical, chemical, and biological water column characteristics as well as the identification of seasonal cycles and effects of high effluent flows and/or heavy rainfall. The conditional area monitoring survey will be ongoing and is scheduled to begin this fall.

Four transect sample runs have been set up for the following locations to gauge the effluent plumes's impact on coastal shellfish resources: Devereaux Beach in Marblehead, the eastern tip of Nahant, Nantasket Beach in Hull, and Cohasset Harbor. DMF established 19 stations over the four transects. These stations will be sampled 8 times over two years, once a season before and after the outfall goes on line.

Information collected from this sampling will include the same water quality parameters as conditional area monitoring. DMF shellfish biologists will use fecal coliform loading at the diffusers and fecal coliform counts found along the transects at set distances from the outfall to calculate field-verified dilution profiles. These profiles will be used to determine time of travel of contaminants from the outfall to shellfish resources along the coast. Transect surveys also will provide baseline fecal coliform levels for Massachusetts Bay.

Once the outfall is on line, plume tracking surveys will be conducted at least once per season to determine the effluent plume location and dilution profile. Sample stations will be set during the tracking surveys based on actual movement of the effluent plume. Water samples will be collected for laboratory analysis of fecal coliform levels. Sampling will also include salinity, temperature, dissolved oxygen, and suspended solids. Conditional area monitoring stations may be revised or added to as a result of these Plume Tracking surveys. It is the consensus of DMF and MWRA that DMF's current PSP (red tide) and phytoplankton monitoring in shellfish and water samples coupled with data supplied by MWRA from offshore phytoplankton sampling provides DMF with sufficient information at the present time to adequately protect public health.

The working relationship between DMF and MWRA has grown and evolved along with the demands of meeting the needs of the Boston Harbor Cleanup. The two agencies have worked together to develop monitoring plans and notification agreements to assure that the marine environment and public health are protected. The monitoring plans established in this cooperative effort will allow a greater understanding of the marine environment in Massachusetts Bay in the years to come.

By Stephanie Cunningham

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Sportfish Program Guide Available

DMF has successfully produced a new full-color magazine that describes work being

accomplished by our Sport Fish Program. We are extremely proud to present this first edition of our ***Sport Fish Program Guide***. It is a companion piece to our ever popular, ***Saltwater Fishing Guide***. Both guides are available free of charge at most Massachusetts coastal bait and tackle shops. It can also be obtained at any of the Division's five office locations.

The Sport Fish Program, as is the cost of these Guides, is supported by Federal Aid in Sport Fish Restoration. Commonly called the Wallop-Breaux Program. If you area recreational angler or boater, chances are you have already contributed to this very successful program which is fueled by excise taxes placed on fishing tackle and related equipment.

Enjoy these publications. Learn and obey the laws which govern your sport, returned undersized or unwanted catch back to the water, and do not misuse beach or marine habitat HappyFishing

By Paul Diodati

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DMF NEWS

EDITORS: Dan McKiernan & David Pierce

GRAPHICS: David Gabriel

DMF receives state and federal funds to conduct research, management and development of the Commonwealth's marine fishery resources. Information in this publication in alternative formats is available.

Philip G. Coates, Director, DMF
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Argeo Paul Celucci, Governor

Comments and suggestions for the newsletter are welcome. Please contact the Editors at (617) 727-3193, or write to DMF, 100 Cambridge St., Boston, MA 02202.

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Division of Marine Fisheries

Rules UPDATE

Public Hearings / Regulations / Legislation

Volume 8 Number 3

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Notice of Public Hearings

Notice of Public Hearings

Recodification of Massachusetts Fisheries Regulations (322 CMR)

Division of Marine Fisheries

Scheduled for October 14 1998, at 9:00 a.m.

Under provisions of G.L. C. 30A and pursuant to authority found in G.L. c 130 ss. 17A, 17(10), 80, and 104, the Division of Marine Fisheries (DMF) and the Marine Fisheries Commission (MFC) have scheduled a hearing to solicit public comment on a reorganization of the Massachusetts marine fisheries regulations, 322 CMR. The recodification maintains the current regulatory regime for marine fisheries regulations but reorganizes 322 CMR into a more logical and concise order. This action also satisfies part of Executive Order #384 for state agencies to reduce unnecessary regulatory burden.

One public hearing has been scheduled: 100 Cambridge St, Room 210, Boston

Bluefish Amendment #1

Mid-Atlantic Fishery Management Council

& Atlantic States Marine Fisheries Commission

Hearings held from August 24 - September 3, 1998

Hearings have been held to solicit public comments on proposed management measures regarding Bluefish Management Plan Amendment 1. **Comments on these proposals will be accepted through September 15.** This amendment addresses rebuilding of bluefish over a 9-year schedule. The most notable issues concerning Massachusetts fishermen are mechanisms for establishing individual state's commercial quotas, a 12" minimum size limit for recreational and commercial fishermen, and mandatory permitting and reporting by all commercial fishermen harvesting bluefish as well as charter and party boats. For more detailed information on the proposals contact David Pierce at DMF, the Mid-Atlantic Fishery Management Council at 302-674-2331, or ASMFC at 202-289-6400.

Whiting and Red Hake

New England Fishery Management Council

Scheduled for September 21-October 2, 1998

Federal hearings will be held in September and October to solicit public comments about proposed management measures for Amendment 11 to the Multispecies FMP. This amendment addresses the management of whiting, offshore hake, and red hake. Anyone interested can obtain copies of the public hearing documents from the Council. Public comments will be taken at the public hearings or through written comments up until mid-October. Most whiting and red hake are caught in federal waters. However the rules would affect all holders of federal multispecies permits even if the vessel is fishing in state waters. These proposals will affect DMF's ongoing management of whiting and hake fisheries, conducted as experimental fisheries in state and federal waters deploying a raised footrope trawl. Issues such as permit moratoriums, permit eligibility (based on historical landings), gear restrictions, and others will be discussed at the meeting. Any action taken by the Council likely will likely in effect by summer of 1999. For more information, contact Lori V. LeFevre at the New England Fishery Management Council Suntaug Office Park- 5 Broadway Saugus, MA 01906 (781) 231-0422

Seven hearings have been scheduled:

1. **Portland, Maine:** Monday, Sept. 21 at 6:00 p.m., Holiday Inn by the Bay, 88 Spring Street
2. **Provincetown, Massachusetts:** Tuesday, Sept 22 at 6:00 p.m., Provincetown Town Hall
3. **Gloucester, Massachusetts:** Wednesday, September 23 at 6:00 p.m. (after Council meeting) The Tavern on the Harbor, 30 Western Avenue
4. **Tom's River, New Jersey:** Monday, September 28 at 7:30 p.m., Holiday Inn
5. **Riverhead, New York:** Tuesday, September 29 at 7:30 p.m., Ramada Inn 1830 Route 25
6. **Narragansett, Rhode Island:** Wednesday, September 30 at 4:00 p.m., Narragansett Town Hall
7. **Virginia Beach, Virginia:** Friday, October 2 at 5:00 p.m. Virginia Marine Resources Commission

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Regulatory UPDATE

During the period May - July, 1998, the following decisions were made by DMF and the Massachusetts Marine Fisheries Commission:

1998 Squid trawler season lengthened an extra 2 weeks through June 14.

Squid trawling (using small-mesh nets in Nantucket Sound, Vineyard Sound, and state waters around the islands) was allowed through June 14. DMF granted this 2-week extension for draggersmen who hoped catches would improve in early June after they experienced dismal catches throughout May when catches usually peak. Preliminary landings figures suggest 1998 will result in the lowest catches in 21 years from Nantucket and Vineyard Sound. DMF and fishermen had hoped the inshore migration of squid was delayed by weather or other oceanographic factors. Sea sampling and reports from dealers and fishermen showed squid size composition never shifted to predominately small squid, and by-catch of other species remained minimal.

DMF has taken strong steps to manage this fishery conservatively during the 1990's, including a shortened season, by-catch limits, and a contentious exclusion of large (larger than 72 ft.) trawlers. This past season was especially frustrating since DMF had planned with gear experts and cooperating draggersmen to study fish and squid behavior in the trawls to improve bycatch reduction. The scarcity of squid and many finfish species has hindered this work's progress. This research may prove critical for the long term management and conservation of scup since fishery scientists have identified discards in the offshore small-mesh trawl fishery as a primary source of mortality that will prevent stock recovery. Squid are managed in federal waters by the Mid-Atlantic Fishery Management Council.

Summer Flounder (fluke): With draggersmen frustrated by dismal squid catches, **DMF opened the fluke fishery (when the trip limit increased from 100 to 300 lbs.) early** on June 24, instead of the previously scheduled July 6 date.

The MFC denied a petition (aired at May hearings) to amend the summer/fall fluke (summer flounder) fishery. This petition, submitted by the Massachusetts Inshore Commercial Fishermen's Association, called for increases in the summer possession limit for fluke from 300 to 400 lbs./day and the creation of two no-fishing days per week.

Also a second petition was "tabled" that would have created different license categories and trip limits for commercial fishermen catching fluke with hook and

line. MFC requested DMF staff convene a meeting with handliners and draggersmen to discuss these issues.

Finally, the **fluke fishery was closed for the season on July 23**. This brief summer fishery (29 days) constituted the shortest summer fishery for vessels targeting fluke since quotas were established in 1993. Fluke were extremely abundant this season evidenced by many draggers reaching their daily limit in just a few hours of towing.

Striped bass commercial fishery was closed on August 9. Like fluke, this fishery also saw its annual quota being taken earlier (just 28 days of fishing) than any previous year due to reported high catch rates and suspected increased fishing effort. Commercial fishery catch and effort statistics will be examined this winter to detect any trends. DMF has convened a striped bass advisory group to discuss bass in-state management for both the recreational and commercial sectors. Any recommendations from the group will be considered by the MFC and DMF for public hearings prior to the 1999 fishing season.

MFC approved a DMF proposal to require all commercial fishermen licensed by DMF to accommodate sea samplers for the purpose of observing and acquiring information about fishing operations and sampling catches for biological information. Previously only trawlers fishing in state waters (with Coastal Access Permits) were required to accommodate sea samplers, but now all licensed commercial fishermen, whether they are fishing in state or federal waters, will be required to accommodate DMF's observers. Regulations will be filed this fall.

New regulations were enacted regarding the wholesale processing and possession of frozen shell-on lobster tails by permitted dealers. These rules permit processing this product for distribution and sale outside the Commonwealth. Contact DMF's Jim Fair for copies of the new regulations. The rules were also published in last quarter's RULES UPDATE.

New regulations expected this fall requiring trap tags on all traps set by commercial lobstermen, fish, and conch pot fishermen. These tags will be available this fall and will be required to be placed on all gear during 1999. These actions are designed to improve compliance and the enforceability of trap limits. Upcoming federal and state lobster trap limit regulations that vary by region have complicated and delayed the development of this program. All commercial lobstermen, fish, and conch pot fishermen will receive a detailed letter in the weeks ahead about the program and its requirements.

MFC approved final regulations that further restricted the taking of juvenile eels (elvers). These rules had been filed as emergency actions during the winter months when elvers were migrating through Massachusetts coastal creeks.

(1) Minimum Size. It shall be unlawful for any person to fish for, take, or have in possession American eels measuring less than 4 inches total length (elvers) unless authorized by a special permit issued by the Director.

(2) Prohibited Fishing Gear. During the period February 15 through June 15, inclusive, it shall be unlawful for any person, while in or on the waters of or upon the banks of streams or rivers within the coastal waters, to possess or have under his/her control any device with mesh or openings measuring less than 1/8 inch, including, but not limited to

dip nets, set nets, and traps adapted for the taking of elvers, or to leave any such gear in said areas during the closed season.

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Legislative UPDATE

In July, Governor Cellucci signed H91, An act relative to the transfer of certain fishing licenses. This new law allows DMF to create regulations governing the transfer of some limited access fishery permits. DMF already has regulations governing transfer of lobster and mobile gear (dragging) permits. This law will enable DMF to devise new regulations allowing permit transfers for other fisheries are limited-entry: fish potting, conch potting, gillnetting, surfclam and ocean quahog dredging, and other future limited-entry fisheries.

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Scup UPDATE: Judge's decision explained, industry fights for its fishery, and ASMFC votes Massachusetts "out of compliance"

Our last issue of the DMF NEWS announced that Chief U.S. District Judge Tauro ruled in favor of DMF's scup lawsuit against the Secretary of Commerce and the National Marine Fisheries Service (NMFS). On April 27, 1998 Chief U.S. District Judge Tauro:

1. voided that portion of the 1997 regulatory amendment establishing a state-by-state allocation of the summer commercial scup fishing quota;
2. forbade enforcement of the voided portion of the regulatory amendment, including the calculation and enforcement of "overages"; and
3. ordered the Secretary of Commerce to promulgate, in due course, a regulation which sets forth state-by-state quotas in compliance with National Standard #4 of the Magnuson-Stevens Act.

The reasons for the Judge's decision were provided in his June 24 written opinion. He stated:

- *...the Secretary...ignored existing data when he approved the 1997 regulatory amendment. More fundamentally, in ignoring that data, the Secretary promulgated a regulation that he knew, or should have known, would allocate fishing privileges in an inequitable manner.*
- *...by relying on its incomplete database, NMFS discriminated against Massachusetts fishermen.*
- *Note that the court does not think that the mechanism provided in the regulation for seeking an adjustment to a state's quota is a sufficient remedy. A state may only seek to have its quota amended on the basis of 1983-1992 data, much of which no longer exists...*
- *In sum, although NMFS had no "affirmative obligation" to collect data on the inshore fishery...and although selecting the data on which to rely in developing a regulation is within the Secretary's discretion..., the Secretary cannot choose to use data that he knows is seriously flawed. This is particularly true when doing so will have a discriminatory effect. Such a choice, the court finds, was arbitrary and capricious.*
- *...the court finds that NMFS abused its discretion, but only in developing the state-by-state allocation of the summer commercial scup fishing quota and, accordingly, voids only that portion of the regulation. As ordered on April 27,*

1998, the Secretary shall not seek to enforce the voided portion of the regulatory amendment , including the calculation of "overages," and shall, in due course, promulgate a new regulation that is consistent with National Standard #4.

We must highlight that the Commonwealth owes a debt of gratitude to the Southeastern Massachusetts Inshore Fishermen's Alliance that spent significant time and money to intervene in the scup lawsuit by arguing that the Regulatory Amendment "*will cause severe and irreparable injury to applicants [SEMIFA] who fish commercially in the coastal waters off the coast of Massachusetts...*" SEMIFA members are mostly owners/operators and crew of small commercial fishing boats fishing in Massachusetts waters and inshore waters of the EEZ and owners/operators of shoreside support businesses. From May through early fall SEMIFA members fish for scup and other species with weirs, floating traps, fish pots, and hand-held hook-and-line gear.

In addition to SEMIFA, individual fishermen and a dealer intervened: Ernest Eldredge, Robert French, Paul Girard, Kevin Medeiros, Eric Rodegast, Mark Simonitsch, and Robert Davies. Although not an intervener, another dealer, Norberto DeMello of New Bedford, played a major role by providing his 1986-1996 scup purchase records to the court.

The willingness of these fishermen and dealers to fight to protect their fishery is a testament to the Regulatory Amendment's inequitable and unfair treatment of the Commonwealth, as recognized by Judge Tauro.

Unfortunately, this inequitable and unfair treatment still is not recognized by the Atlantic States Marine Fisheries Commission, the Council's partner in scup management. Not a defendant in the Commonwealth's lawsuit, ASMFC's Scup Management Board is unconvinced by DMF's arguments and refuses to be guided by the Judge's decision. At its August 5 meeting the Scup Board ruled Massachusetts out-of-compliance with the ASMFC version of the Scup Plan because we exceeded our Council/ASMFC scup 1997 quota [voided by the federal judge], yet we allowed our 1998 commercial scup fishery to take place even though our quota was zero.

The Management Board has recommended that the Policy Board of ASMFC at its annual meeting in October agree with the Board's decision and notify the Secretary of Commerce that Massachusetts is out-of-compliance. Ordinarily, the consequence would be a moratorium on commercial and recreational fishing for scup in Massachusetts waters provided for by the Atlantic Coastal Fisheries Cooperative Management Act. However, there's Judge Tauro's decision ordering the Secretary "*to promulgate, in due course, a regulation which sets forth state-by-state quotas in compliance with National Standard #4 of the Magnuson-Stevens Act.*" It seems that the Secretary might be placed in the awkward position of receiving an ASMFC request for Secretarial action counter to the Judge's order. Time will tell.

By David Pierce

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