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MEMORANDUM

TO: Paul Diodati, Director

FROM: Dan McKiernan, Deputy Director 

DATE: November 10, 2008

SUBJECT: Summary of proposed regulatory amendments to improve and clarify management of pelagic fisheries

Introduction:

This memorandum summarizes actions and draft regulations to execute evolving regulatory changes to the management of pelagic fisheries in Massachusetts. To codify - and in some cases clarify - past DMF actions, Commission decisions, and Sub-Committee recommendations, a suite of proposed regulatory amendments will be aired at 2009 winter public hearings.

Background:

Fisheries for pelagic species (menhaden, sea herring, and mackerel) currently are prosecuted opportunistically by three principal methods: A) purse seine, B) surface gillnet C) cast net. Unlike fisheries for certain high-valued species that are intensively managed with clearly delineated regulations, the rules for the harvest of these three species by these three gears is less clear, and in need of clarifications, especially where some rules appear to conflict.

Summary of proposals: Regulatory changes are proposed separately for each gear type in the three sections to follow: A) purse seine; B) surface gillnet; and C) cast net.

A) PURSE SEINES:

The issuance of open-access purse seine permits (i.e., Coastal Access Permit – Purse Seine) will be clarified along with the application of maximum vessel size rules. Additionally, limits will be maintained on the issuance of permits for vessels seeking to participate within the Inshore Net Areas (e.g., Boston Harbor).

1) Issuance of new Coastal Access Permits for purse seine only:

This proposal clarifies permitting rules consistent with DMF's policies and actions of the past two years. Since 2007, DMF has made available new permits for purse seining called CAP – Purse Seine (322 CMR 7.05). These

permits allow the holder to only purse seine – they do not allow participation in the other activities that are under limited entry rules (e.g. otter trawling, scalloping). This single activity authorization is formalized in the regulatory language regarding the CAP permit. Proposed text is presented below in **boldfaced** font:

322 CMR 7.05 Coastal Access Permit (CAP)

(8) Moratorium. A Coastal Access Permit will be issued only to mobile gear fishermen who renew their permits in accordance with 322 CMR 7.05(6). Purse seiners fishing for sea herring, mackerel, and menhaden, ~~or tuna~~ **may apply for a Coastal Access permit exclusively for purse seining and** are exempted from the moratorium.

2) Application of maximum vessel size limits (72' & 90') to purse seine operations:

It is necessary to clarify the maximum vessel size rules and resolve discrepancies in two maximum vessel size regulations: 1) an older 90' rule (322 CMR 8.05) for all commercial vessels enacted in the early 1980's and 2) the newer 72' rule (322 CMR 7.05(13)) enacted in 1993 for mobile gear vessels (CAP holders). The first rule exempts purse seine vessels while the second was intended for CAP holders and subsequently has been applied to vessels applying for the CAP – Purse Seine permit.

There is at least one active purse seine vessel slightly larger than 72' that has fished historically in the Inshore Net Areas. This permit and vessel would be grandfathered into the fishery. Also vessels acting as "carriers" would be subject to the less restrictive (larger) 90' rule. (Note: this action would have no effect on the tuna purse seine permit holders.)

Proposed text is presented below in **boldfaced** font and text to be deleted is presented in a ~~strikethrough~~ font:

322 CMR 7.05 Coastal Access Permit (CAP)

13) Vessel Length Limit.

(a) Limit. Beginning in 1995 the issuance of a Coastal Access Permit shall be limited to those fishermen who held a Coastal Access Permit in 1994 and with vessels equal to or less than 72 feet in overall length. For those vessels determined by the Director to need verification of overall length, written certification of overall length shall be obtained by the vessel owner based on the vessel's construction plans or by a marine surveyor certified by the National Association of Marine Surveyors or accredited by the Society of American Marine Surveyors, and shall be submitted to the Director.

(b) Exceptions.

i. The maximum vessel length limit of 72 feet in overall length may be waived for vessels that were built in or prior to the year 1945 provided the mobile gear fisherman held a 1994 Coastal Access Permit for that vessel, and provided further that the mobile gear fisherman had not previously exercised his right to replace the vessel listed on his 1994 Coastal Access Permit. Replacement vessels shall meet the length and performance requirements effective at the time of transfer.

ii. The maximum vessel length limit of 72 feet in overall length may be waived for permit holders who apply for a Coastal Access Permit exclusively for purse seining provided

that the permit holder and vessel legally fished with a purse seine for menhaden, herring or mackerel in Massachusetts waters since 1995. Replacement vessels shall meet the 72 foot maximum vessel length requirement.

8.05 Vessel Length Limits

Vessels greater than 90 feet registered length may not conduct fishing activities in any waters under the jurisdiction of the Commonwealth. ~~This restriction shall not apply to purse seine vessels.~~

8.11 Prohibitions

It is unlawful for:

- (1) any vessel, ~~other than purse seine vessels,~~ greater than 90 feet in registered length to conduct fishing activities in any waters under the jurisdiction of the Commonwealth;

3) Limit on purse seine participation in Inshore Net Areas:

The Director shall continue to limit the participation of permit holders and vessels seeking to purse seine within the Inshore Net Areas to those permit holders who have held and renewed an Inshore Net Permit for purse seining in Boston Harbor and other Inshore Net Areas. This pool of vessels (approximately 10) would be allowed to fish in any and all Inshore Net Areas (including Boston Harbor) subject to all traditional permit conditions levied by DMF since 1991.

No regulations are required if this fishery continues to be managed under limited entry and Inshore Net Restricted Area permit conditions. The list of longstanding and current permit conditions is attached.

B) SURFACE GILLNETS

DMF issues nearly 300 “Inshore Net Permits” to fishermen seeking to use a net larger than 200 square feet in nearshore embayments known as the “Inshore Net Areas” defined in 322 CMR 4.02 (Note: those fishing with nets smaller than 200 square feet in these areas need no permit.) These permits are custom printed in response to each applicant’s request for various gear types and configurations in a variety of estuaries and salt ponds. Meanwhile rules for use of surface gillnets for pelagic species outside the inshore net areas are inadequate or poorly understood.

Regulations are needed to distinguish between surface (floating) and bottom (sink) gillnets, and to create gear specifications and rules governing fishing practices. The MFAC Pelagic Species Sub-committee discussed this fishery in detail with input from the Office of Environmental Law Enforcement and DMF staff (See past memo dated April 25, 2008 for more details).

Recommended changes include:

1) Reorganize regulations:

Existing regulations requiring a surface gillnet permit should be transferred from the Right Whale Conservation chapter (322 CMR 12.00) to the Permits chapter (322 CMR 7.00). Beginning in 2009, all Inshore Net Permit holders who use a surface gillnet will buy a “Surface Gillnet Permit” issued under the

existing authority of 322 CMR 12.10. Through this rulemaking we will move this permit authority over to the Permits chapter of the regulations: 322 CMR 7.00.

As we switch all the inshore net permit holders who use surface gillnets to a new Surface Gillnet Permit, then the remaining task is to create a clear set of regulations into the CMR controlling that activity. This will resolve the past administrative burden of issuing over 200 labor-intensive customized inshore net permits for surface gillnetting. We will continue to issue customized permits for the other lesser-used net gears (e.g. purse seines, beach seines, fyke nets) in the restricted areas:

Proposed text is presented below in **boldfaced** font and text to be deleted is presented in a ~~strikethrough~~ font:

322 CMR 7.01 ~~Form, Use and Content of Permits~~

(4) ~~Special Permits.~~ The following special permits may be issued by the Director for the following activities:

(g) Gillnets. A regulated fishery permit shall be required to set, fish, or harvest any species by means of a gillnet accordance with 322 CMR 7.01(4)(a).

1. Sink Gillnet Permit. Authorizes only the named individual and/or vessel to use a gillnet, anchored or otherwise, that is designed to be, capable of being, or is fished on or near the bottom in the lower third of the water column. Sink gillnet permits are limited to renewals only and are not transferable. Holders of sink gillnet permits may also fish surface gillnets under the authority of their sink gillnet permit.

2. Surface Gillnet permit Authorizes only the named individual and/or vessel to use a gillnet, anchored, drifting or otherwise, that is designed to be, capable of being, or is fished in the upper two-thirds of the water column. Exemptions: No permit shall be required for fishermen using a surface gillnet less than 200 square feet.

3. Catch Reports All sink gillnet and surface gillnet permit holders shall report their catch to the Director on forms supplied by the Division.

~~12.10 Permit for Surface or Drifting Gillnets~~

~~— It is unlawful for any fisherman to fish, store or abandon, surface or drifting gillnets in waters under the jurisdiction of the Commonwealth without a regulated fishery permit issued in accordance with 322 CMR 7.01(4)(a).~~

2) Create New Surface Gillnetting Section in Chapter 4:

This new section would create a clearer and more focused section of regulations governing surface gillnetting regarding gear specifications and fishing practices. Proposals include i) a requirement that the vessel and remain within 100 feet of the net at all times, ii) requirement to mark the gear with permit number, iii) a 200-linear ft. maximum length of net fishing at one time; iv) re-affirmation of existing area closure in Buzzards Bay and seasonal closure to protect river herring in Inshore Areas, and v) a 3 ¾" maximum mesh size.

4.14 Surface Gillnet Restrictions

(1) **Tending Requirement.** Fishermen setting or fishing surface gillnets shall remain within 100 feet of the net at all times.

(2) **Gear specifications**

- a. **Floatation.** Surface gillnets must have a headrope sufficiently buoyant to float at the surface. If any portion of a gillnet when fished is exposed at the water's surface then the net shall be considered a surface gillnet.
- b. **Marking** All nets shall be marked with the holder's permit number on all buoys and at least once every 50 feet on the headrope. Holders may burn or carve their number into floats attached to the headrope and shall measure at least ½ inch in height; alternatively if permit holders opt to mark the net with synthetic durable material, then the numbers shall be clearly visible and measure at least ¼" in height. If the net is not attached to the vessel, the net shall be marked on each end with orange bullet-shaped buoys with a size of 9 x 16 inches and clearly marked with the letters SGN and the 6-digit permit number of the holder.
- (3) **Net dimensions.** It shall be unlawful to fish more than 200 linear feet of surface gillnets at any one time.
- (4) **Mesh Size Openings.** It shall be unlawful to fish with a surface gillnet with mesh openings larger than 3 ¾" or smaller than 2 ½"
- (5) **Area and Season Closures**
In addition to area and season closures in 322 CMR 4.09(2) and 12.04(1), it is unlawful to fish surface gillnets year-round in Buzzards Bay and in any other Inshore Net Restricted Areas as defined in 322 CMR 4.02, from January 1 through May 31.
- (6) **Retained Species.** No other species except, menhaden, sea herring, or mackerel may be retained by fishermen using a surface gillnet.
- (7) **Experimental Fishery** The Director may approve the experimental use of alternative gillnet gear or gillnet fishing techniques for the purposes of fishery development and investigations.
- (8) **Prohibitions.**
- a. It shall be unlawful to set a surface gillnet in a navigation channel.

3) Clarify the striped bass regulations. Vessels using or possessing surface gillnets would be allowed to possess striped bass and not be subject to the longstanding prohibition on bass for any vessel rigged for netting or engaged in longlining. Consistent with the statute MGL Chapter 130 section 100B, striped bass may only be taken by hook and line. There is a decade-old regulation banning the possession of striped bass on vessels rigged for commercial netting or longlining. The proposed rule would replace the words "commercial netting" with those net gears expected to take striped bass: otter trawls, sink gillnets, and purse seines. It would remain unlawful to take striped bass by nets; by-catch of striped bass is not expected to occur in a tended surface gillnet.

6.07 (7) Prohibitions

(y) any vessel rigged for ~~commercial netting~~ **otter trawling, hauling sink gillnets, purse seines**, or any vessel possessing baited or unbaited longline or tub-trawl gear to possess striped bass;

C) CAST NETS:

Cast nets are circular nets thrown by hand to catch bait, are labor intensive, and the least likely to encounter by-catch of unwanted species. They are most effective at capturing small fish (juvenile sea herring, sand eels) and less effective at capturing adult pelagic species. Regulations are warranted that lessen current restrictions on this gear by exempting the use of cast nets from the Inshore Net Area requirements of 322 CMR 4.02.

Commonly used cast nets are in the 10-14 foot diameter (5-7 foot radius) size and measure less than 200 square feet so have not been subject to the regulations requiring an Inshore Net Area permit be issued. Only cast nets larger than 16 feet diameter exceed 200 square ft. (Note: a 16 ft. diameter cast net measures 201 square

feet.) The proposal would exempt all cast-netting from the requirement to obtain an Inshore Net Area permit or any other permit for other state waters.

The Sub-committee also concluded that cast nets be allowed for use in all state waters (including Buzzards Bay). Note: fishermen who use this gear to obtain bait for sale to other users would be required to hold a commercial permit and a retail bait dealer's permit. For Buzzards Bay, this action would expand the number of permitted cast netters beyond the two currently authorized and grandfathered.

Proposed text is presented below in **boldfaced** font and text to be deleted is presented in a ~~strikethrough~~ font:

4.02 (5) Exceptions

(a) Cast Net. A person may, without a special permit, use a cast net for purposes of taking bait

(b) Small Bait Net. A person may, without a special permit, use a small net of re than 200 square feet inside those inshore waters listed in 322 CMR 4.02(2) or any estuary, embayment, salt pond, tidal creek, river or other similar body of e water for the sole purpose of obtaining bait fish for personal use provided all requirements of law are met.

4.15 Use of Cast Nets for Harvest of Bait

(1) **Definitions.** For purposes of 322 CMR 4.15 the following words have the following meanings:

(a) **Cast net** means any circular net weighted along the perimeter that is operated by one person throwing the net out over the water and designed to catch bait fish beneath the net as it as it falls through the water.

(b) **Bait fish** means those species commonly used as bait and includes menhaden, sea herring, sand launce, and mackerel.

(2) **Permit.** A person may, without a special permit, use a cast net for purposes of taking bait

(3) **Prohibitions.** It shall be unlawful for:

(a) any person to use a cast net for purposes of obtaining bait for sale without possessing a commercial permit.

(b) any person to use a cast net for purposes of obtaining bait for sale to other fishermen without possessing a bait dealer permit.