

DMR Advisory Council Meeting
Department of Marine Resources
32 Blossom Lane, Augusta – Marquardt Building – Conference Room #118
March 6, 2019

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held on March 6, 2019 at the Marquardt Building, 32 Blossom Lane, Augusta, Maine. Council members who attended were Togue Brawn, Matt Moretti, Fiona DeKoning, Tracey Sawtelle, Chris Weiner, Josh Miller, Peter Mourmouras, Mike Love, Joe Nickerson, Geoff Smith and Ray Swenton. Department staff in attendance included Commissioner Patrick Keliher, Deirdre Gilbert, Melissa Smith, Nick Popoff, Colonel Jon Cornish, and Amanda Ellis. Others present were Lori Howell (Spinney Creek Shellfish), Jason Goldstein (Wells Reserve), Pierce Howell, Luis Tirado, Mary-Beth Tooly, John-Paul Bilodeau, Doug Jowett, Sam Fuller, Stephen Wood, and Crystal Canney.

DMR Advisory Council members not present: Thomas Casamassa, Ron Trundy, Dan Rogde and Mike Murphy.

1. Welcome and Introductions

Introductions were made around the table.

2. Approval of Minutes-November 8, 2018 meeting

Motion (J. Miller and J. Nickerson): Motion to approve the November 8, 2018 meeting minutes
Motion unanimously passed to approve the November 8, 2018 meeting minutes.

3. Special License Requests-Action (voting)

- Application Review, Spinney Creek Shellfish (Lori Howell)

L. Howell presented the Spinney Creek Shellfish Special License request, which is for three exceptions to existing limitations on Limited Purpose Aquaculture licenses (LPAs). Spinney Creek is in the process of applying for an experimental lease, but issues have been raised regarding whether the impounded area should be considered subtidal or intertidal. This is the first time this question has been raised, and while it is addressed, Spinney Creek requires these exceptions to keep their business operational. The exceptions are to the density standard, the placement of LPAs in a restricted area, and the limitation on the number of licenses on which an individual could be a helper.

F. DeKoning asked whether the LPAs are needed if the lease is granted? L. Howell explained that they need either the LPAs or the lease, but if the lease is granted they will not need both. G. Smith asked if there is a prohibition on leases in restricted areas. M. Mendelson explained that there is not. M. Moretti said he would support this Special License because this is a unique situation. F. DeKoning asked if the Department is worried about setting a precedent. M. Mendelson said that DMR has considered that but feels that this is truly a unique situation. G. Smith said he has a similar opinion and would support the request for that reason. M. Mendelson affirmed this is just a stop gap solution meant to bridge a limited period of time.

Motion (M. Love and F. DeKoning): Motion to approve the Special License request submitted by Spinney Creek Shellfish

Motion unanimously passed to approve the Special License request submitted by Spinney Creek Shellfish

- Application Review, Wells Reserve (Jason Goldstein)

Wells Reserve has requested renewal of an existing Special License. There are three continuing projects, including a decade long ichthyoplankton survey, a rainbow smelt genetic project using eDNA, and a population study of

European green crabs. They are also adding a new project that will require the collection of a small number (10) of egg bearing lobsters for research in conjunction with Canada's Department of Fisheries and Oceans and Massachusetts. They need healthy lobsters with eggs to study egg quality and egg chemistry. They will get the small number they need by fishing traps in their area at the mouth of the estuary. They will be taking a subsample of eggs and releasing the lobster.

Motion (C. Weiner and M. Love): Motion to approve the Special License request submitted by Wells Reserve
Motion unanimously passed to approve the Special License request submitted by Wells Reserve

3. Regulations-Action (voting)

- Chapter 2-AQ Lease Regulations (Meredith Mendelson)

M. Mendelson explained that it has been some time since Chapter 2 has been opened, beyond the recent changes made to LPAs. This rule-making was done to address a variety of issues, including significant clean up of the chapter.

As proposed for adoption, the rule clarifies the aquaculture leasing regulations, including the elimination of language from 12 M.R.S.A. §6072, 6072-A, which already exists in Maine Administrative Procedures Act. It also eliminates duplicative references to the National Shellfish Sanitation Program (NSSP) Model Ordinance, and adds or modifies provisions based on the NSSP including maintenance of a lease operation plan, preventing the accumulation of animal waste on structures, proper disposal of human waste, and the activities that an authorized representative of an aquaculture license holder, in accordance with 12 M.R.S.A. §6810-B, may engage in. It makes several changes to the leasing procedures for standard and limited-purpose aquaculture leases, including the adjustment of the timing for the scoping session, the information required to be submitted regarding an applicant's financial capability, and a prohibition on the siting of leases within the 300:1 dilution zone around a wastewater treatment plant. It enacts lease expansion application procedures in accordance with 12 M.R.S.A. §6072(12-C). The rule restricts the number of pending limited-purpose lease applications any one applicant could have in process to two applications. It clarifies that an emergency lease could be utilized when the safety of the consumer is threatened, as well as that of the shellfish or animal. The rule also clarifies and establishes additional minimum lease maintenance standards.

R. Swenton asked why there is a density standard for LPAs. P. Keliher said LPAs should not be utilized to avoid going through the lease process. G. Smith asked when riparian land owner permission is needed. M. Mendelson said that riparian land owner permission is needed only when the area used by the lease is owned by the riparian. F. DeKoning commended the Department on the responses to the comments received.

Motion (R. Swenton and F. DeKoning): Motion to approve the Chapter 2 rule-making as presented.
Motion unanimously passed to approve the Chapter 2 rule-making as presented.

- Chapter 36-Herring 2019 Season (Melissa Smith)

M. Smith explained that there were nine comments received on the proposed rule and many were opposed to the proposed daily limit of 6600 lbs for state waters only fishermen and requested a weekly limit instead of a daily limit. In response, DMR amended the rule to allow 4 days of harvesting with a weekly limit of 40,000 lbs.

C. Weiner said that there are catastrophic cuts coming in herring and that every pound counts. His members have made tremendous investments in boats and permits. This is an expanding state water fishery. This is supposed to be a small scale fishery – that should be 6600 lb. If everyone is taking a cut – why are they being kept whole? Does DMR plan to shut the state fishery down if it approaches what they landed last year? Guys are rigging up and

the price is going to go up – what is DMR’s vision for this fishery? How will this play out, how will DMR monitor, etc? He is afraid this is going to get out of control.

P. Keliher said that C. Weiner is correct – the quota has been cut drastically. The 300,000 lbs that was caught last year in state waters is about 7 trucks. DMR wants to avoid slippage as much as possible and allowing a weekly limit with fewer days should help with that. C. Weiner is also correct about likely increases in effort. But a pogie seine is not as effective on herring as pogies. Nonetheless, it is likely herring activity will increase. DMR will be making a clear statement that we will monitor these landings closely and will take emergency action as needed.

G. Smith asked when the 6600 lbs was proposed, if there was a weekly limit. There was not. C. Weiner said he is worried about the investment this could create – with opportunity for 40,000 lbs per week, you are tempting people to get in. Also, once people have made that investment, it will be hard to shut them down after just a few weeks.

T. Brawn proposed 12,000 bs/day with a weekly limit of 36,000 lbs. C. Weiner said he would be more comfortable with 3-4 days and a smaller daily limit. R. Swenton said small limits work for smaller boats, unless there is opportunity for a one time trip. If I own a larger vessel – can I catch it all in one day? Can we limit the opportunity to the guys from last few year(s)? No, we cannot do that by regulation. M. Smith said last year there were only 4 state waters only herring fishermen.

J. Nickerson said there is going to be slippage no matter what. The guys that are good at seining will set around big sets. We need to take that incentive away from everyone that wants to come into the state fishery and exploit the resource that is in trouble right now. G. Smith said he would rather explore a weekly limit. If there is a cap on the state waters fishery, that should be known to people before they make investments.

C. Weiner suggested 6600 lbs per day for 3 days per week, or a total of 19,800 lbs. P. Keliher explained that from Patrol’s perspective, a daily limit is easier to enforce. We will need to check daily landings. It is also difficult to measure less than a truck.

Motion (C. Weiner and R. Swenton): Motion to approve Chapter 36 rule-making, further amended to limit state water only fishing to 4 days per week (6 pm Sunday to 6 pm Thursday) with a weekly limit of 25,000 lbs (no daily limit).

Motion unanimously passed to approve the Chapter36 rule-making with the proposed amendment.

R. Swenton asked how long the fishery lasts. P. Keliher explained that there is no defined season, it is based on the availability of fish. It can also be impacted by river herring bycatch. G. Smith asked the Department to make clear in communications about the season that an emergency closure is possible.

- Chapter 41-Menhaden 2019 Season (Melissa Smith)

M. Smith explained that this rule-making clarifies the reporting requirements for all Atlantic menhaden fishery operations. Components of the fishery that are quota managed (state and episodic) require daily reporting, while the incidental/small scale fishery requires monthly reporting. This rulemaking updates the management framework for the Atlantic menhaden fishery in territorial waters, including the state allocated fishery, the episodic event fishery, and an incidental catch/small scale fishery by separating out the restrictions placed on the fixed gear sector. Fixed gear harvesting may occur seven days a week in both the state allocated fishery and the episodic event fishery; however, the fixed gear fishery will maintain the same daily and weekly landing limits as previously set for the mobile fishery. Finally, the rule re-instates a personal use regulation for hook and line harvest. Recreational harvest by hook and line for 25 fish per day is permitted seven days a week.

M. Smith noted that many of the comments received were based on changing the weekly and daily limit, which were not proposed to be changed by this rule. R. Swenton asked if the menhaden resource is still in good shape? Yes, the resource is in good shape. Maine wouldn't see the fish unless their range was expanding. R. Swenton asked if menhaden crowding out herring? They are not because they are feeding on different things. R. Swenton asked if menhaden are increasing, why aren't we increasing what we can go after? Maine's quota is established by the Atlantic States Marine Fisheries Commission (ASMFC). J. Nickerson said there may be merit in slowing down the take to better coincide with the needs of the lobster fishery. J. Miller asked if there is a risk to slowing it down? It is true that the faster that we move through the state quota, the faster that we get into the episodic fishery, which is shared among states. During the episodic fishery, Maine can attempt to get quota transferred from other states.

Motion (C. Weiner and T. Sawtelle): Motion to approve Chapter 41 rule-making as presented.

Motion unanimously passed to approve the Chapter 41 rule-making as presented.

- Chapter 32-Elver Season (Nick Popoff)

N. Popoff presented the proposed changes for the 2019 elver season. This rule establishes the elver quota allocations for the 2019 season for individuals licensed under §§6505-A and 6302-A, and the method of calculating individual elver quota allocations for individuals licensed under 6505-A. 2019 allocations for individuals who held a license in 2018 will be the same as their 2018 allocations, plus any quota associated with licenses not renewed in 2018, or licenses suspended for the duration of the 2019 season, which will be distributed evenly to all license holders. This rule also prohibits more than one elver dealer from engaging in the licensed activities at the same physical address, and requires that transfers from vehicles to permanent facilities include all the contents of the vehicle. Finally, the rule establishes a process by which Maine Marine Patrol will monitor and seal the packing of elvers for export.

T. Brawn asked if last season there were many places where there was more than one dealer operating? There were not many, but it makes monitoring very confusing when there are. G. Smith asked whether Marine Patrol has the capacity to enforce the exporting requirements. Last season there were roughly 60 export events. Patrol will devote the necessary resources to monitor those, because this is a priority to keep this fishery. In the future, there may be a fee established for each export event (this will require legislation). J. Miller asked what happened to the harvesters and dealers who violated the swipe card system last year. There have been 3 summonses written, and there is an ongoing investigation. The Department's elver bill this session proposes license revocation for the first offense of buying or selling elvers outside the swipe card system.

Motion (J. Miller and P. Mourmouras): Motion to approve Chapter 32 rule-making as presented.

Motion unanimously passed to approve the Chapter 32 rule-making as presented.

- Chapter 34.07-Atlantic Halibut Filet Rule (Nick Popoff)

N. Popoff presented the proposed changes to the halibut regulation. This rule allows charter and party boat operators to fillet Atlantic halibut at sea. Possession for Atlantic halibut is limited to one fish per boat. This rule ensures the fish can be measured and is greater than the minimum size limit of 41 inches total length or 32 inches from the pectoral fin if the head is removed. This rule allows charter/party boat captains to fillet Atlantic halibut at sea if the halibut carcass (rack) remains in their possession until all customers have landed on shore. This rule allows a single Atlantic halibut to be shared with several fishing customers instead of one customer retaining the entire fish. Marine patrol officers will be able to measure Atlantic halibut carcasses (racks) to ensure fish of legal sizes are possessed.

J. Nickerson asked if there are any requirements for these captains to report that they are going to do this? There is a VTR requirement.

Motion (J. Miller and F. DeKoning): Motion to approve Chapter 34 rule-making as presented.

Motion unanimously passed to approve the Chapter 34 rule-making as presented.

- Chapter 8-Landings Program (Amanda Ellis)

A. Ellis presented the proposed changes to Chapter 8. This rule updates reporting requirements for halibut, shrimp, and scallop harvesters to remove outdated references to Loran stations and bearings as options for reporting harvesting locations. It requires halibut harvesters to report landings numbers rather than license numbers, and would add a new component to the halibut harvester reporting requirements to include total number of hooks fished.

Motion (J. Miller and C. Weiner): Motion to approve Chapter 8 rule-making as presented.

Motion unanimously passed to approve the Chapter 8 rule-making as presented

- Chapter 115-Vibrio parahaemolyticus Control Plan (Amanda Ellis)

A. Ellis presented the proposed changes to Chapter 115. This rule incorporates the Sheepscot River, north of Route 1, into the existing Vibrio parahaemolyticus (Vp) control plan. The addition of the Sheepscot River is intended to reduce the likelihood that American and European oysters (*Crassostrea virginica* and *Ostrea edulis*) and hard clams (*Mercenaria mercenaria*) harvested from the Sheepscot River will cause Vp infections in consumers. In 2018, DMR received an illness report of a laboratory confirmed case of Vp that implicated oysters from the Sheepscot River as the sole source. The Maine Department of Marine Resources recognizes that the portion of the Sheepscot River north of Route 1 has the environmental characteristics (primarily water and air temperature and salinity) that potentially pose a threat to public health with regard to Vp infections. Research indicates that the most reliable way to minimize potential Vp illnesses is to utilize time and temperature controls.

Motion (C. Weiner and J. Miller): Motion to approve Chapter 115 rule-making as presented.

Motion unanimously passed to approve the Chapter 115 rule-making as presented

- Chapter 25.04-Lobster Trawl Limits Hancock County (Sarah Cotnoir)

S. Cotnoir presented the proposed changes to Chapter 25. In October 2018, a new trawl limit area was established at the request of the Zone B Council. DMR was aware that there was potential to refine the area described by the new trawl limit to better meet the needs of Zone B and Zone C fishermen fishing there. The Department held meetings with fishermen from Zone B and Zone C to determine what changes to the area were advisable. At their January 2019 meeting, the Zone B Council supported the Department's proposal to amend this area in accordance with the changes proposed through the meetings that were held. The rule represents the amended area and eliminates the sunset on the original area.

S. Cotnoir distributed a chart showing the amended area. C. Weiner said this made sense, based on his knowledge of the area.

Motion (R. Swenton and J. Miller): Motion to approve Chapter 25 rule-making as presented.

Motion unanimously passed to approve the Chapter 25 rule-making as presented

4. Upcoming Regulations

DMR staff presented potential upcoming regulations:

Chapter 26-2019-20 Urchin Season (Nick Popoff): Annual season setting rule-making

Chapter 34-Groundfish (Deirdre Gilbert): Annual compliance with any federal changes

Chapter 115- *Vibrio parahaemolyticus* Control Plan (Deirdre Gilbert): Possibility of recreational harvest in areas with *Vibrio* Control Plans (currently prohibited)

5. Other Business

Voting for DMR AC officers (Amanda Ellis)

The nominations committee has submitted the following nominations for DMR AC Officers:

Togue Brawn – Chair

Geoff Smith – Vice Chair

Matt Moretti – Secretary

Motion to approve the slate of officers.

Unanimous

Patrol Update (Col. Jon Cornish)

Colonel Cornish told the Council that Marine Patrol will be launching a new vessel next week. It will be located on MDI. Patrol recently lost an officer. They are gearing up for elver season. The Colonel will be retiring in early April.

R. Swenton moved that the Council recognize Colonel Cornish for his service.

F. DeKoning asked why are we losing Marine Patrol Officers? DMR tried to address some of the disparities with a pay raise in 2016, but we still have competition from municipalities. They are not 24 hours on call, and they still have higher pay.

DMR Updates on Legislative Issues (Deirdre Gilbert)

D. Gilbert provided an update on bills before the Joint Standing Committee on Marine Resources this session and Department bills. Commissioner Keliher provided an update on budget discussions.

DMR Updates on Federal Issues (Commissioner Keliher)

Commissioner Keliher said that there has been significant work around herring at the Council and Commission, as discussed earlier in the meeting. Right whales will also be a focus of work in the next 6 months, including at the Commission. DMR will be having meetings with the lobster industry. Megan Ware, previously at ASMFC will be joining DMR at the Director of External Affairs.

Motion (M. Love and J. Miller): Motion to adjourn.

Motion unanimously passed to adjourn at 3:45 pm.