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GOVERNOR

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

PATRICK C. KELIHER
COMMISSIONER

DMR ADVISORY COUNCIL MEETING
October 25, 2021
1:00 p.m.
Microsoft Teams

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held remotely, via Microsoft Teams, at 1:00 p.m. on October 25, 2021. Council members who attended: Togue Brawn, Lewis Pinkham, Tracey Sawtelle, Mike Danforth, Boe Marsh, James Arsenault, Jocelyn Runnebaum, Curtis Haycock, Matthew Moretti, and Peter Mourmouras. DMR Staff in attendance were: Commissioner Patrick Keliher, Lt. Daniel White, Megan Ware, Deirdre Gilbert, Melissa Smith, Lorraine Morris, Jeff Nichols, and Amanda Ellis. Others who attended: Tom Johnson, Sebastian Belle, Everett Rzeszowski, Kyle Foley, and Adam Baukus.

1. Welcome and Introductions

DMR AC members and DMR staff introduced themselves

2. Approval of Minutes- July 29, 2021 meeting

Council unanimously approved the July 29, 2021 meeting minutes.

3. Special License Requests-Action (voting)

The Darling Marine Center (Everett Rzeszowski)

E. Rzeszowski explained that the purpose of the research is to determine the before and after impact of a floating wind turbine installation on commercial American lobster catch and lobster abundance and movement through a range of size classes at the University of Maine deep-water offshore wind test site. Objectives will be completed through sampling of paired ventless and vented traps and a mark-recapture study.

J. Runnebaum and T. Sawtelle asked clarifying questions about temperature data collected as part of the study.

Motion (L. Pinkham and M. Moretti): Motion to approve the Darling Marine Center Special License as presented by E. Rzeszowski.

Motion passed without objection to approve the Special License request

4. Regulations-Action (voting)

Chapter 8-Mussel Harvester Reporting (Deirdre Gilbert)

D. Gilbert explained that DMR received a request from the Maine Mussel Fishery Improvement Project to implement harvester reporting for the wild mussel fishery as a means of providing information to better monitor the health of the mussel resource and fishery. The collection of effort and location information from harvesters is a standard practice to provide information necessary for fisheries management. The rule establishes mandatory monthly trip-level harvester reporting for individuals who hold a mussel boat license or a hand-raking mussel license.

B. Marsh asked if the tags that are written are only for sanitation purposes. D. Gilbert clarified that the tag information is used by Public Health in the event they need to trace product. The tags are not given to landings. B. Marsh asked if the rule would just require the reporting of harvest effort to Landings. D. Gilbert explained that the rule would require trip level harvest reporting for applicable license holders. B. Marsh asked if this would help provide information about the mussel fishery. D. Gilbert noted that DMR currently does not get location or effort information regarding harvesting, so the rule would require the reporting of that information.

J. Runnebaum asked if an index-based method would be used to assess the fishery and what the long-term plan is for stock assessment. D. Gilbert explained that representatives from the Maine Mussel Fishery Improvement Project would be better suited to answer questions related to long term assessment plans. However, this action was presented to DMR as an initial first step in the absence of any information. Overall, DMR feels that the collection of this information would be useful, and it does not present a lot of additional work for the agency. J. Runnebaum noted that fisheries improvement projects are generally implemented to improve market access. She asked if that was the purpose of this project. K. Foley [Maine Mussel Fishery Improvement Project-Gulf of Maine Research Institute] clarified that market access is an impetus for the project and the group would eventually like to see a stock assessment occur in the future, but is working in the near term on collecting more information.

T. Sawtelle asked if the mussel fishery or DMR proposed the rule. D. Gilbert clarified that the initial request for the rule came from the Maine Mussel Fishery Improvement Project, which is made up of industry members and businesses. T. Sawtelle wanted to make sure everyone can participate in the mussel fishery. T. Brawn clarified that this rule was specific to harvester reporting in the mussel fishery. T. Sawtelle indicated he was okay with the proposal.

Motion (L. Pinkham and T. Sawtelle): Motion to approve Chapter 8 mussel harvester reporting.
Motion passed without objection to approve Chapter 8

Chapter 11-2021-22 Scallop Season (Melissa Smith)

M. Smith explained that the rule establishes the 2021-2022 scallop fishing season. Daily possession limits of 15 gallons for Zone 1 and Zone 2, and 10 gallons for Zone 3 remain unchanged. For Zone 1, a 60-day season for draggers begins on December 6, 2021 and the last day of the season is March 17, 2022. For Zone 1, a 60-day season for divers starts on November 16, 2021 and the last day of the season is April 29, 2022. For Zone 2, a 70-day season for draggers starts on December 1, 2021 and the last day of the season is March 31, 2022. For Zone 2, a 70-day season for divers starts on November 19, 2021 and the last day of the season is March 26, 2022. For Zone 3, a 50-day season for draggers begins on December 1, 2021 and the last day of the season is March 28, 2022. For Zone 3, a 50-day season for divers begins on December 2, 2021 and the last day of the season is March 26, 2022.

New limited access areas for the 2021-2022 season: Western Casco Bay and Sheepscot River in Zone 1; and, Gouldsboro/Dyers Bay and West Moosabec Reach in Zone 2. Targeted seed closures are re-

established in Eastern Casco Bay and Damariscotta River in Zone 1. In Zone 3, St. Croix River is established as a new targeted seed closure. In Zone 2, territorial waters surrounding Machias Seal Island and North Rock are open to harvest all days beginning December 1, 2021 through March 31, 2022.

A new mooring closure is implemented for Sullivan Harbor. The Limited entry system is updated to allow entry to either the scallop dragging license lottery or the scallop hand harvest lottery but individuals may not enter both lotteries.

DMR is maintaining the following Limited Access Areas: Western Penobscot Bay, Muscle Ridge, Whiting and Denny's Bays. Additionally, the following existing targeted closures based on depletion, high concentrations of seed/sublegal scallops and/or the presence of spat-producing scallops are maintained: Lower Muscle Ridge, Back River, New Meadows River, Card Cove and Beals-Jonesport Bridge.

L. Pinkham asked why DMR is not addressing the concerns related to the St. Croix River, which some commenters provided feedback about. Specially, L. Pinkham wanted to know what steps DMR could take to protect that area from Canadian fishing effort. P. Keliher clarified that this is an enforcement issue. If DMR receives reports of vessels in the area they would investigate and follow-up with Canadian authorities.

C. Haycock indicated that he talked to Paul Cox about this issue and Paul felt it was not a big problem. P. Keliher indicated that individuals report seeing Canadian vessels in Maine waters, but DMR does not know how big of an issue it is. Marine Patrol follows up on those reports, but by the time they respond the vessels have left the area.

T. Sawtelle noted that people go over the line all the time on both sides. T. Sawtelle was frustrated that Canadian vessels can fish at whatever time they want, and that the size of scallops they can take are less restrictive than Maine's rules. T. Sawtelle also indicated that he has seen Canadian vessels fishing in areas that are closed by the state. T. Sawtelle asked if there had been any outreach about the Pembroke mooring closure as he was unaware it was closed. He also felt the area of that closure line should be changed, so the amount of area closed is reduced. M. Smith clarified that the closure was put in-place during the 2017-18 season. M. Smith indicated that DMR regularly revisits the closure with Pembroke but given the moorings and sunken ships in the area that closure line remains unchanged. T. Sawtelle noted that it is open for dragging to the urchin fishery. T. Brawn clarified that she thought DMR did not have the authority to implement such a closure for the urchin fishery and the Pembroke Harbormaster had specifically requested the closure for scallop dragging. M. Smith confirmed that was the case. T. Sawtelle felt that scallop fishermen need to be made aware that Pembroke is closed to scallop dragging. P. Keliher noted that information about the closure would have been shared with industry in 2017-18 when the rule and associated closure was processed. M. Smith also noted that the Pembroke closure is included on all the area maps, which are available online and in print.

J. Runnebaum asked if Casco Bay was being opened after being closed for quite a while. M. Smith clarified that the area opened in this season was closed last year for the first time in nine years. M. Smith noted it is a very small limited access area in Casco Bay, but with reduced catch rates it was closed last year, and a different area was opened. J. Runnebaum asked if openings are determined based on survey data, or something else. M. Smith noted that limited survey work is conducted in Zone 1, so harvester feedback helps inform management. J. Runnebaum asked if there was a way to close an area during the

season. M. Smith clarified that closures can be implemented during the season via emergency rulemaking.

Motion (L. Pinkham and T. Sawtelle): Motion to approve Chapter 11, 2021-22 scallop season.
Motion passed without objection to approve Chapter 11

Chapter 30-River Herring (Amanda Ellis)

A. Ellis explained that in March 2021, DMR established a limited fishery in Walker's Brook, which runs between the Towns of Brooksville and Sedgwick. However, the March 2021 rule only listed the portion of the brook that runs through the Town of Brooksville. This rule is a technical change that adds the Town of Sedgwick to the existing regulatory language. This change is intended to provide greater clarity to the public and Marine Patrol. It does not change any elements of the existing limited fishery, which was initially adopted in March 2021.

There were no questions about the rule.

Motion (L. Pinkham and T. Sawtelle): Motion to approve Chapter 30, river herring regulations.
Motion passed without objection to approve Chapter 30

5. Upcoming Regulations

Chapters 25 and 75-Gear modifications in compliance with federal rules (Deirdre Gilbert)

D. Gilbert noted these rules are required to comply with federal whale regulations. There are several things that need to be changed. The first is minimum trawl requirements which are different for each zone and vary based on distance from shore, there are also new gear marking requirements which are different from the markings adopted a few years ago. The weak points and federal closure would also need to be adopted. In Chapter 25 there are several geographical areas where different zones have adopted trawl maximums, which are smaller than the proposed minimums. Those will need to be adjusted so that they do not conflict with the new minimums. Based on the nature of the changes, this will be a complex package to put together. Except for the closure, the federal rule is expected to go into effect on May 1, 2022, so the changes to Chapters 25 and 75 will need to be adopted before then.

Chapter 32-2022 Elver season (Deirdre Gilbert)

D. Gilbert explained that during the past two elver seasons, an emergency order was in-place, which allowed some laws and rules to be waived to mitigate risks associated with COVID-19. As part of that emergency order, DMR allowed elver harvesters to harvest for other licensed individuals to help limit exposure to COVID-19. The emergency order has been lifted, so harvesters will no longer be able to harvest for other licensed individuals. The Atlantic States Marine Fisheries Commission approved the existing elver quota for the next three years, so DMR does not anticipate making any changes to how quota is calculated.

Chapter 100-Grievance Procedures for Persons with Disabilities (Deirdre Gilbert)

D. Gilbert explained that Public Law 2021, Chapter 348, section 58 was enacted. This provision directs all state agencies to discontinue the use of the terms "Handicap, Handicapped, and Hearing Impaired" in all laws, rules, and official documents. In compliance with the law, DMR undertook a review of laws, regulations, and official documents under its jurisdiction. Chapter 100 of DMR's regulations is titled "Grievance Procedures for the Handicapped," which was adopted in 1984 and needs to be updated in

compliance with the recently enacted law and is generally out of date. However, in the years following DMR's implementation of Chapter 100, the State of Maine adopted a disability-related Nondiscrimination Policy and Grievance Procedure, which applies to all agencies. The state's Nondiscrimination Policy and Grievance Procedure is codified in Chapter 50 of the Maine Department of Labor's regulations. Therefore, DMR anticipates repealing Chapter 100 and following the state's Nondiscrimination Policy and Grievance Procedure rather than maintaining and updating a separate regulation.

Chapter 41-Menhaden (Melissa Smith)

M. Smith explained that there will likely be a check-in with industry and pending that meeting there could be updates to menhaden regulations.

6. Other Business

Patrol Update (Lieutenant White)

Lt. White noted that more Marine Patrol officers have been hired and stationed downeast. A new patrol vessel has been added to the fleet and is based out of Bar Harbor.

DMR Updates on Legislative Issues (Deirdre Gilbert)

D. Gilbert explained that the Legislature is currently between sessions. DMR is preparing four potential bills and there are less than ten titles that were submitted to the Marine Resources Committee. Those titles are currently being reviewed and will be finalized in November and the Legislature will convene in January. At this point, the Legislature appears to be exploring a hybrid model for the upcoming session.

J. Runnebaum asked what the four DMR bills pertain to. D. Gilbert clarified that one bill is to help ensure compliance with the ASMFC lobster management plan, so that if the federal plan changes vent or gauge sizes which are currently set in state statute, DMR would have the flexibility to make those changes through rule. Another bill would allow DMR to charge special fees for the review of certain aquaculture lease applications. These would be for projects that are outside the scope of what DMR would typically review. The Maine Department of Environmental Protection has a similar authority and they charge staff time when a proposal is received that is outside the scope of what they would normally review. There's also a bill to create a halibut license, which would allow DMR to better monitor participation in that fishery. The final bill would limit participation in the menhaden commercial fishery. This is a quota managed fishery that is currently open access on the commercial side and there's been an enormous amount of participation in the commercial fishery.

DMR Updates on Federal Issues (Commissioner Keliher and Megan Ware)

P. Keliher updated members on right whale issues including federal regulations. The federal government did accept the trawling up scenarios. Gear marking has been frustrating as DMR was proactive in updating its marking requirements, but the federal government advanced additional requirements. Transitioning to these new requirements is going to be very challenging, especially given the time of year and possible supply issues. DMR is asking the federal government to delay implementation from May 1 to July 1. The closure was very problematic and there is a lot at play with this issue as it relates to the Endangered Species Act and Marine Mammal Protection Act. The State of Maine has hired outside counsel to assist with the legal elements of this issue. Maine's Congressional Delegation is also working hard and trying to help industry.

B. Marsh asked what Canada is doing about this issue. P. Keliher noted that federal government has begun to work with Canada, but there's not much to report on those efforts at this time.

J. Runnebaum asked if there was a timeframe for a decision on a possible closure of the fishery. P. Keliher noted that the closure is 6% of the overall risk reduction, so it seems unlikely it could cause the closure of the entire fishery. However, it may change the legal approach and could impact the state's request to delay implementation of the federal regulation.

M. Ware noted that the council is working on an allocation document for menhaden and there should be a more complete draft in January. Amendment 7 for striped bass is being developed and that includes conservation equivalency, release mortalities, and rebuilding among other considerations. Hopefully, a draft document will be available in January. There is rebuilding plan for herring that follows harvest control rules, so unless biomass increases it is likely that low quotas will continue. For scallops, biomass in the Northern Gulf of Maine will be available for the next fishing year. There's not a lot of scallop recruitment in the mid-Atlantic so for those who have a permit this is not great news. Georges Bank and Gulf of Maine cod quotas are being set this fall. At this juncture, it is unclear what the quota recommendation will be. There's work being done on a rebuilding plan for Gulf of Maine cod.

T. Sawtelle has heard people have been catching more and larger cod in their traps. Cobscook Bay is full of herring from September through November, so he recommended looking in that area to get a sense of herring numbers.

M. Ware indicated that there was some suggestion about creating an eastern Maine cod stock area, but there is not a lot of data. M. Ware hoped that the reports of herring would lead to more recruitment and that stock would start rebuilding.

Motion (L. Pinkham and T. Sawtelle): Motion to adjourn the meeting.
Motion passed without objection to adjourn the meeting at 2:30 p.m.