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MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
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BOARD OF PESTICIDES CONTROL

December 16, 2016

**Room 118
Marquardt Building
32 Blossom Lane, Augusta, Maine**

DRAFT MINUTES

9:00 AM

Present: Bohlen, Flewelling, Granger, Jemison, Morrill, Stevenson

1. Introductions of Board and Staff

- The Board, Staff, and AAG Mark Randlett introduced themselves
- Staff Present: Chamberlain, Connors, Couture, Hicks, Patterson, Pietroski, Tomlinson

Department Update on the Status of the Board Director Position

Presentation By: Ann Gibbs
Director, Animal and Plant Health

- Gibbs announced that Henry Jennings recently accepted a position as Director of the Maine Harness Racing Commission, but he is continuing to work with the BPC to help with the transition. The department is actively seeking to fill his position, but the state is currently in a Governor-ordered hiring freeze, so the process is going much more slowly than desired and a different set of requirements must be fulfilled before filling the position. Gibbs explained that approval from the Governor is required, and was requested several weeks ago, but an answer has not yet been received. Once the department receives approval the position will be filled with someone in an acting capacity and the position will be advertised. An interview committee needs to be set up and Board members should contact Gibbs if they would like to serve on it.
- Gibbs expressed that there was some confusion about the statute, specifically where it states that the Commissioner shall appoint a Director with approval of the Board. Gibbs clarified this does not mean the Commissioner can just appoint anyone. This is a union position and has to go through the entire hiring process. The Commissioner does have approval on any position, but that is after the hiring process.
- Jemison asked about the size of the hiring committee. Gibbs replied it is usually four people.

- Morrill asked if there had been any discussion with the Governor about the position and if there was an estimate for when it may be approved for hiring. Gibbs stated there had been discussion, but she did not have an estimated approval date.
- Morrill stated it would be helpful to have a Board member on the hiring committee, and recommended Granger. Granger stated he would be happy to assist if it is the wish of the Board.
- There was a discussion about finding a replacement Board member to fill Eckert’s position. Gibbs told the Board to please let her know if they have suggestions. Anyone from the medical community can be considered. Gibbs stated Ron Dyer received suggestions for potential candidates. Gibbs added that if Board members know an individual who is really interested, ask that individual to put together a brief resume to send to the Commissioner and Governor.

2. Minutes of the November 4, 2016 Board Meeting

Presentation By: Megan Patterson
 Manager of Pesticide Programs

Action Needed: Amend and/or Approve

- **Flewelling/Stevenson: Moved and seconded to approve**
- **In Favor: Unanimous**

3. Presentation on Gulf of Maine Coastal Pesticide Study Update for 2015

In February 2014, the Environmental Risk Advisory Committee (ERAC) was convened to “examine whether current pesticide residues have the potential to affect the lobster industry in Maine directly or via impact on other marine organisms.” Concurrent with the formation of the ERAC, the Board initiated sampling of stormwater and sediment. Results from the 2014 sampling season were reviewed by the Board. Monitoring for the 2015 sampling season was completed in October 2015. The Board will now review the data presented.

Presentation By: Mary Tomlinson
 Pesticide Registrar and Water Quality Specialist

Action Needed: Determine Next Steps

- Tomlinson discussed the results of the 2015 stormwater and sediment sampling season. In 2014 only sediment was sampled; in 2015 both stormwater and sediment were sampled. The sediment sampling was focused around Casco Bay, both islands and coastal regions on the mainland. Habitats where juvenile lobsters were likely to be found were the top priority. Stormwater sampling was conducted over one storm event at 20 sites ranging from Kittery to Whiting.
- Tomlinson explained that sediment samples were analyzed for 21 pyrethroids, piperonyl butoxide (PBO), and methoprene. The samples were sent to both Montana Analytical Lab and Southwest Research institute. For sediment, the Southwest Research results were obtained from dry weight and the Montana Analytical Lab results were derived from wet weight, so the quantitative results cannot be compared between the two labs.
- Tomlinson summarized the info in Table 1 and 2 for the Board. Bifenthrin was detected in sediment from seven sites and esfenvalerate from one site. Twenty pesticides, including 2,4-D, and bifenthrin, as well as fipronil degradates, were detected in the stormwater. In some cases,

the bifenthrin detected in the stormwater were above the chronic limit for the aquatic life benchmark.

- Tomlinson thanked the groups, including Friends of Casco Bay and DEP, which assisted BPC staff collecting stormwater samples.
- Jemison asked for explanation of the data in the ‘Reporting Limits’ and ‘Concentration Range’ columns in Table 2. Bohlen also questioned the two columns, which appeared to have the same data. Tomlinson agreed with Jemison and Bohlen and said she would check on it and get back to them.
- Flewelling asked if the Board were the first to see these sampling results. Tomlinson replied that she had presented a draft of the tables in Portland last fall, but this is the first time she has shared the sampling results in a completed report.
- Morrill asked if the full report will be presented to the legislature in January and if the Board will have the full report by the next Board meeting. Hicks replied that it would be more of a status report. Hicks also discussed how using acute data points for chronic results is not feasible. Bohlen added that a measurement of one storm event is not representative of what is happening, and to use this data in terms of a risk assessment we would need to look at what is dissolved in the sediment. He also explained that bioavailability is also an issue, because if pesticides are in the sediment and water, we do not know how much, if any, is bioavailable to the lobster larvae. Bohlen asked Hicks for a copy of the pyrethroid risk assessment, which she stated she would provide to him.
- Granger indicated the ‘budgetary constraints’ mentioned in the second paragraph of the sampling update memo, and stated that the Board has heard this from staff on several occasions. He asked if staff could provide the Board with figures detailing how much money would be required to conduct the study with adequate sampling. Granger added that the Board should consider the tasks being undertaken, if the budget is a constraint, and then determine priorities. Patterson replied that funding for sampling comes from the federal grant. Patterson added that the federal contribution may be decreasing. Tomlinson stated that approximately \$45-50k was spent on sediment and water sampling in 2015.
- Bohlen noted that analyzing one of these samples costs several hundred dollars, and when designing these studies tough choices need to be made about where to sample, the kind of results desired, and whether money is being allocated wisely. Sending the samples to two different labs added more costs, but needed to be done initially to ensure accurate and consistent results. Bohlen suggested stopping the double-testing now that we know the labs are giving accurate results. Patterson commented that there were large shipping costs associated with each sample because both labs were out of state and the packages containing water samples in glass jars were fairly heavy.
- Granger stated the goal is to examine whether current pesticide residues have the potential to affect lobster. We need an answer to this and need to take a hard look at allocating the money to get an answer.
- Stevenson asked staff about the budget forecast and when the Board will see it. Morrill remarked that it would be helpful. Granger stated that the Board supports many positions and maybe they should take a look at the Board’s priorities if there is insufficient funding. Granger suggested the Board be more involved in the budget than previously to make sure their priorities are covered. Morrill added that annual preparation of a budget was discussed last year and he would like to start by looking at that.

4. Discussion of the Current Environmental Risk Assessment Committee (ERAC) Membership Update

The ERAC has experienced recent vacancies, the environmental toxicologist and the environmental chemist, and the Maine Department of Marine Resources has hired a new lobster

biologist. To compensate for these changes, the addition of two new members is proposed. The Board will now discuss these proposed membership changes.

Presentation By: Lebelle Hicks
Pesticide Toxicologist

Action Needed: Accept/Reject the Proposed Additions to the ERAC

- Bohlen discussed the difference between sediment index with vacuum sampling versus sampling in the near shore environment, which may be more relevant to exposure to toxins.
- Hicks proposed appointing Kathleen Reardon and Lawrence Mayer to fill the vacancies on the ERAC. Reardon is the lobster biologist for the Maine Department of Natural Resources, and Lawrence Mayer is the geophysical chemist from the University of Maine's Darling Center.
- Morrill added it would be great to have an individual from DMR on the committee and thanked Hicks for all her work on this.
 - **Jemison/Bohlen: Moved and seconded to accept Hicks' proposal to appoint Kathleen Reardon and Lawrence Mayer to the ERAC**
 - **In Favor: Unanimous**

5. Discussion of Board Approved Products for Control of Browntail Moth within 250 feet of Marine Waters

On January 25, 2008, the Board adopted Section 5 of Chapter 29 which regulates the use of insecticides used to control browntail moth within 250 feet of marine waters. Section 5 limits insecticide active ingredients to those approved by the Board. Since that time, a number of newer chemistries have been registered for use and far more data is available on the efficacy of many products. On November 4, 2016 the Board discussed browntail moth, the available products and the definition of "biological" pesticides. Subsequently, the staff was instructed to update the list of approved products for browntail moth control and propose an interpretation of biological. The Board will now consider the list and the definition of biological pesticide.

Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: Amend or Approve the List of Products for Browntail Moth Control

- Morrill stated this was a continuation of the discussion begun at last month's Board meeting surrounding products approved for use on browntail moth in the 50'-250' zone and how to define 'biological'.
- Hicks remarked if we tried to decide this issue with an ERAC review we would need to run an ERAC concurrent with the lobster review or somehow expand the scope of the current lobster ERAC. Hicks suggested, due to the time constraints, using EPA's most recent risk assessment review together with label use rates to guide us, rather than going through another full review.
- Jemison asked about the population increase in browntail moth, and if most humans respond the same way to the hairs or if there are degrees of response. Hicks stated the hairs cause a rash similar to a contact dermatitis and a small amount of individuals have a respiratory response. Donahue added that people become more sensitive to the hairs over time; Bowdoinham is inundated at this time and many people are having reactions. She has been contacted by people who are cutting all their trees and selling their homes.

- Jemison asked how and when browntail moth is treated. Donahue stated that browntail moth emerge as tiny caterpillars in spring and do most of their feeding then, so most treatments are being done in May. She added that August is another possible treatment time, but it has not been tried in Maine much. Donahue further explained that traditionally the hard part was figuring out which trees the caterpillars inhabited in August, but that has been easier lately because they are so numerous they are stripping entire trees.
- Flewelling asked about the geographic area currently affected. Donahue stated she mapped about 63,000 acres with browntail moth last year. That was only what could be seen from the air, and normally this kind of damage would not be visible from the air. The area included pretty much all of Sagadahoc County and spread out from there.
- Jemison asked about problems with treating from the ground. Flewelling asked if the browntail moth could be accessed from the ground. Donahue replied it is difficult to reach from a truck and that aerial application would be the best way to reach it, but there are other issues with that. Hicks added that we will not be able to eradicate it, but are hoping to cut down on the amount of hairs people come in contact with and protect peoples' yards.
- Hicks suggested removing the word 'biological' because something should not be given our approval just because it is biological. Randlett stated we could define 'biological' via policy for the short term, but we would need to go through rulemaking to remove it. Donahue interjected that she had concerns about removing 'biological' because if we discover *Bt* is a good resource we would not be able to then use it, and we often see browntail very close to the water. Bohlen commented that *Bt* is unique because it is so specific and the other products are wider spectrum and suggested rewording the policy so that only *Bt* can be used from 0'-50'. He also suggested defining 'biologicals' as *Bt*-based products with demonstrated efficacy. Hicks suggested changing the definition of 'biological' to products specific to and efficacious on Lepidoptera species. Hicks also added that *Bt* does not affect lobsters because it requires a gut pH around 8 and a lobster's gut pH is 4.5 pH, so if we had an effective *Bt* product it could be used without risk of harm to lobsters. Morrill suggested drafting something stating that when this section was written it was intended to refer to *Bt*.
- Randlett restated that the Board can use policy to redefine 'biological', but to remove it requires rulemaking. He added that eventually we would want to add the definition to rule.
- Morrill stated there are currently products other than *Bt* which could be said to fit the Board's definition of 'biological' and our concerns with those products are that they may have side effects we are not okay with. The Board should give themselves the power to add other products to the list, as appropriate, until the policy can be put into rule.
- In regards to the list for the products allowed within the 50'-250' zone, Morrill stated that if Hicks can use the most recent EPA toxicology data set and the label use rates to come up with a list, he would be comfortable with that and would like to see it at the January meeting to review and approve. Morrill added it would need to be amended from time to time to keep up with current chemistries. Bohlen stated that we do not have much time, and we need to protect the marine environment and need to find a path to get us info to do this in two months' time. Morrill remarked that this issue needs to be finalized by the February meeting to be in time for applicators and if we can come up with a list to offer them this season we can then go back and discuss and polish the list for the next year.
- Hicks asked Patrice McCarron, (Director of the Maine Lobstermen's Association) how she thought the lobstermen would respond to the suggestion of using the use rates to help create a list. Patrice stated she thought people would understand and she would be willing to carry this message for the Board. McCarron added that she is happy with how proactive the board is trying to be in dealing with this outbreak.

6. Consideration of Consent Agreement with Jasper Wyman & Son, Milbridge, Maine

The Board's Enforcement Protocol authorizes staff to work with the Attorney General and negotiate consent agreements in advance on matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine to resolve the matter. This case involves the unauthorized application of pesticides.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

- Connors stated this case originated with a call from Jeff Bridges, who subleased property on which to grow blueberries from Jasper Wyman & Son from February 2012 to December 2018. Bridges stated Wyman & Son hired an individual to mow and make applications of Sinbar and Callisto on the property that was sub-leased to Bridges.
- Connors sent a consent agreement to Wyman & Son, which they agreed to with a 'no admit' clause.
- Darin Hammond, senior farm manager from Wyman & Son stated that, in response to multiple calls from the landowner to maintain her property, Wyman hired Terry Bell to mow and make the applications. Hammond added that the land has not been maintained for blueberry production since the lease was signed and Wyman & Son is currently in litigation with Bridges. Bridges did not live up to his contractual obligation.
- Morrill asked Hammond if the owner gave them permission to make a pesticide application. Hammond answered that she had asked them multiple times to do so. Hammond added they are currently in litigation with Bridges and just want to get the consent agreement issue behind them and asked that it not be taken into consideration for any possible future consent agreements. Randlett stated the Board cannot make that kind of promise.
- Stevenson asked why a consent agreement was issued if the lease was in dispute and Wyman & Son had the owner's permission to spray. Connors stated because there was a binding sublease signed by both Wymans and Bridges and the spraying that took place at that time was unauthorized because Bridges was the tenant and he had management rights to the land. Randlett agreed that Bridges was the legal occupant of the property at the time of the spraying and that was why it was a violation.
- Hammond asked the Board to agree to the consent agreement so Wyman & Son can put it behind them.

- **Flewelling/Granger: Moved and seconded to approve consent agreement**
- **In Favor: Unanimous**

7. Other Old or New Business

- a. Legislative Report re LD 1678
- b. Update on Homeowner Education Activities
 - Patterson summarized the efforts taken by staff since the last Board meeting to further homeowner outreach. She stated that staff will be making presentations at all active master gardener programs. Patterson presented at a master gardener class last week and has multiple other presentations scheduled.

- On April 20, 2017, Patterson will attend and speak at a televised meeting with the Rockport Conservation Commission.
- Patterson has been in communication with MELNA and discussed presentations at the upcoming Portland Flower Show. Bangor's flower show has not yet been advertised, but staff will sign up for it as soon as possible. Both of these events are multiple days and will take substantial staff hours to cover.
- Patterson has worked to get GovDelivery up and running and used it to send out the Board packet for this meeting. The homeowner component of GovDelivery will be available soon.
- Staff has been working to arrange 4-5 meeting spaces to give presentations in February that will focus on browntail moth, and also cover ticks and mosquitoes.
- The YardScaping site is in the process of being updated. There were multiple broken links. Since the master gardener folks rely on this site for information, keeping it current is important.
- Bohlen offered Patterson the assistance of his staff to assist in homeowner outreach efforts.

8. Schedule of Future Meetings

January 11, 2017; February 17, 2017; March 31, 2017; and May 12, 2017 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

9. Adjourn

- **Bohlen/Granger: Moved and seconded to adjourn**
- **In Favor: Unanimous**