

**MAINE DEPARTMENT OF MARINE RESOURCES
ADVISORY COUNCIL MEETING
Marquardt Building, Augusta
October 20, 2015 2:00 P.M.**

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held on October 20, 2015 at the Marquardt Building, 32 Blossom Lane, Augusta, Maine. Council members who attended were **Joe Leask, Joe Nickerson, Tom Casamassa, Mike Love, Geoff Smith, Jim Markos, Mike Faulkingham, Josh Miller, Mike Murphy, Albert Carver, Lewis Pinkham**. Department staff in attendance included **Commissioner Patrick Kelliher, Deputy Commissioner Meredith Mendelson, Maj. Rene Cloutier, Deirdre Gilbert, Carl Wilson, Kohl Kanwit, Sarah Cotnoir, Trisha Cheney, and Hannah Dean**.

DMR Advisory Council members not present: **Sebastian Belle, Angelo Ciocca, Chris Weiner, Jennie Bichrest**.

Meeting commenced at 2:08 pm.

Welcome and Introductions (Jim Markos, DMR AC Chair)

Introductions were made by Commissioner for new staff member H. Dean, and members of council introduced themselves by name.

Approval of Minutes – July 30, 2015 meeting

Motion: (L. Pinkham/M. Faulkingham) Motion to approve the July 30 meeting minutes.

Discussion: None

Motion unanimously passes to approve the July 30 meeting minutes.

Regulations - Action (voting)

(Rule change documents for the following can be found at www.maine.gov/dmr/index.htm)

Chapter 115 Vibrio Control Plan – (Kohl Kanwit, DMR)

K. Kanwit provided information on the proposed Vibrio Control Plan. Rather than developing a voluntary approach, the aquaculture industry requested development of an enforceable, regulatory response plan in compliance with national standards. The plan protects public health first and foremost. K. Kanwit emphasized that the plan will only impact oysters and hard shell clams, not soft shell clams. This is protective of public health, but also of the industry.

J. Markos asked K. Kanwit to explain the nature of Vibrio, asking whether it is unique to the Damariscotta River.

K. Kanwit explained that there are many strains of Vibrio, and the one that could cause problems in the Damariscotta would cause gastrointestinal problems in healthy individuals, but could cause real threat

to those with compromised immune systems. Warming waters may be behind the expansion of Vibrio – so cold Maine waters may be preventing the further development of this threat.

M. Faulkingham asked whether there was an effort to reach out to wild harvesters and/or towns.

K. Kanwit responded that DMR did reach out to towns and made sure they were aware of the new plan and new approach. K. Kanwit added that this approach may be expanded beyond Damariscotta in the future.

J. Leask suggested that most of this seems to be common sense and suggested that some kind of warning be posted in order to enforce best practices for the handling of harvests.

Motion: (L. Pinkham/M. Faulkingham) Motion to approve the Chapter 115 Vibrio Control Plan.

Discussion: None

Motion unanimously passes to approve Chapter 115 Vibrio Control Plan as proposed.

Chapter 26 Sea Urchin Regulations and Targeted Closures - (Trisha Cheney, DMR)

T. Cheney gave a summary of the proposed regulation to create a targeted closure for sea urchins. This regulation is for the Cat Ledges closure and also amends mesh size requirements. The conservation closure off of Southport Island used to be a lucrative spot for the urchin fishery but there has been very little activity there recently. The area is close to the DMR lab and has good tidal flow, as well as a history of high urchin populations. Harvesters were involved regularly in discussions, and the Advisory Council has held discussions about the closure during previous meetings. The closure will be accompanied by an industry led Pilot Sea Urchin Restoration Project in the area, and the proposed closure will expire on May 1, 2018. The goal of the project will be to evaluate the success of transplanting wild sea urchins and the out planting of hatchery raised juvenile sea urchins as a means of re-establishing a commercially viable urchin colony in an area that once supported wild harvests. Zone 2 divers are now required to release undersized urchins (cull) on bottom, negating the need to regulate mesh sizes.

T. Cheney noted that there were comments from members of the industry about the size of the area being large compared to the actual study area. The reason behind the size of the closure was to ensure it can be easily enforced by Marine Patrol. DMR also addressed incoming comments on the failure of previous attempts. DMR notes that lessons have been learned from previous failures, including not to transport urchins over a long distance, ensure that transport occurs at a time when air and sea temperatures are approximately the same, and to take into consideration prey populations during seeding.

Motion: (L. Pinkham/T. Casamassa) Motion to approve the Chapter 26 Sea Urchin Regulations and Targeted Closures.

Discussion: None

Motion unanimously passes to approve Chapter 26 Sea Urchin Regulations and Targeted Closures as proposed.

Chapter 11 Atlantic Sea Scallop Regulations and 2015-2016 Season (Trisha Cheney, DMR)

T. Cheney described the proposed Scallop Regulations for the 2015-2016 Season. This year, DMR allocated resources to survey the western portion of the state, where a survey had not been done since 2011. Based on this new survey data, DMR found that in Zone 1 biomass levels in bays and rivers have significantly decreased. A number of changes have happened resulting in patchiness of the resource, and a number of reactivated licenses have amplified the problem, resulting in a failure to meet rebuilding targets in Zone 1. Zone 2 (which is using a rotational management approach) and Zone 3 have been more on track in terms of rebuilding targets. After a debate over the condition of Zone 1, DMR decided to propose decreasing the fishing season by 10 days. The season would start on December 15th, thereby reducing the season by 10 days.

G. Smith asked about the seasonal emergency actions and what source(s) of information DMR uses to trigger those emergency actions.

T. Cheney responded that surveys are done prior to each season to develop a baseline and then port sampling is done after the season starts. DMR has also started to do in-season sampling over the course of a season to track the changes in abundance. DMR also gathers data on how long it takes boats to catch their limit. DMR considered simply reducing the number of days in a season, but industry indicated they would rather have emergency closures throughout the season, rather than a reduction in days up front.

J. Markos asked what DMR's general sense of how this current management approach is going.

T. Cheney responded that back in 2005, daily limit and ring size was implemented, then spatial closures in 2008. The bottom line metric used to measure success of management programs is the dollar. In 2015, the industry was worth 7.7 million dollars, which was an 18 year high, and currently the fishery is employing more people (an additional 270 people have joined fishery). In 2015, more people are benefiting from the fishery and landings have gone up. Over 600,000 lbs are being landed, which is a record high since 2000, and the value of the product has gone up as demand has been high. T. Cheney noted that this fishery in particular can go through boom and bust cycles, but this spatial and emergency closure approach to the management has allowed the state to take advantage of natural cycles and provide the greatest access to the resource while still imposing measures aimed to sustain the fishery overall.

Motion: (L. Pinkham/T. Casamassa) Motion to approve the Chapter 11 Atlantic Sea Scallop Regulations and 2015-2016 Season.

Discussion: None

Motion unanimously passes to approve Chapter 11 Atlantic Sea Scallop Regulations and 2015-2016 Season as proposed.

Upcoming Regulations

Chapter 25 Lobster Island Limited Entry and Trawl limits – (Sarah Cotnoir, DMR)

S. Cotnoir summarized upcoming proposed changes in the Island Limited Entry system, and trawl limits in Kittery.

Islands with approved Island Limited Entry programs include Chebeague Island, Cliff Island, Cranberry Isles, Monhegan Island, and Frenchboro. The way the program currently works, when one license goes off the island, another license can be established, but you must live on the island, and there are certain residency requirements under 25.97 that must be fulfilled including voter eligibility, driver's license, and a physical abode. In past years, there has been concern about what residency actually means. Chebeague Island is currently seeking to terminate membership in the program. A referendum was held last fall and a high percentage of those voting approved termination.

G. Smith asked whether there have been any attempts or discussions within DMR about simply trying to close the loophole in residency so as to prevent this kind of conflict.

S. Cotnoir noted that DMR tried to make residency requirements as detailed as possible, and there are no current ideas on how to make these requirements tighter so as to avoid the loophole. D. Gilbert added that one possible approach that has been considered involves determining if the individual is mooring their vessel on the island. However, Maj. Cloutier noted that a problem with the mooring approach is that it places additional burdens on Marine Patrol in terms of documenting and tracking where the boat is. D. Gilbert followed up by saying that DMR is open to receiving suggestions on how to resolve the loophole problem.

A. Carver added that Islands have historically been able to take care of these issues themselves.

S. Cotnoir added that licenses already issued would be grandfathered in even if program is terminated on a particular island, provided that the individual fulfills requirements of residency. And, if the residency requirements are then maintained for 8 years, the license could then be transferred off the island. She also noted that Swans Island will be holding a referendum in order to consider the program as well.

S. Cotnoir described upcoming changes to Chapter 75 for compliance with the Federal Whale Rules:

- 1) Folding in a few additional islands where fishermen will be allowed to fish single traps within a ¼ mile buffer from the island.

- a. Islands

- Currently Monhegan, Matinicus and Ragged (Criehaven) – need to update the Matinicus Island Group to also include (Metinic, Small Green, Large Green, Seal and Wooden Ball) and Isles of Shoals Island Group (Duck, Appledore, Cedar and Smuttynose).

- 2) New gear marking requirements on the lobster buoy lines for three areas; Jordan Basin, Jeffreys Ledge and singles around Isles of Shoals.

Those fishing single traps in the Isles of Shoals buffer area need to uniquely mark their gear with **Red and Orange, Effective July 1, 2015**

****Red and Purple for Jordan Basin**

****Red and Green for Jeffreys Ledge
Effective September 1, 2015**

- 3) In the 3-6 mile region of the Hancock County Trawl Limit area in our rule, we had a maximum of three traps on a trawl, and the whale rules require a minimum of three traps on a trawl. After talking with industry, there was greater support to keep it as a triples maximum and minimum in that area.

J. Nickerson fishes Jeffreys and noted that this new rule would require that marking colors need to be changed as fishermen cross boundaries, which is essentially impossible. Maj. R. Cloutier acknowledged this challenge and noted that Marine Patrol will provide flexibility in those instances

Special License requests (voting)

University of Vermont: Request to collect sea urchins for physiology and genetic studies (Deirdre Gilbert, DMR)

D. Gilbert provided the University of Vermont's Request to collect sea urchins for physiology and genetic studies. The request is for a small collection of 20-50 sea urchins from 9 sites, and the samples would be collected by hand. The request is similar to one made and approved during the last AC meeting which provided permission for collection of urchins for the Cat Ledges Project. The researchers need an exemption from obtaining a license and also possibly from gathering during closed days, and they will share the results of their work with DMR.

Commissioner P. Keliher asked whether the collection will be done by a small group of researchers or by divers. D. Gilbert responded that yes, a small group will be collecting from shore, and the group has not mentioned the use of a vessel, though they may not have great success if they do not use a vessel.

Motion: (L. Pinkham/M.Love) Motion to approve the University of Vermont: Request to collect sea urchins for physiology and genetic studies.

Discussion: None

Motion unanimously passes to approve University of Vermont: Request to collect sea urchins for physiology and genetic studies as proposed.

GMRI: Acoustic Survey of Shrimp (Deirdre Gilbert, DMR)

The Gulf of Maine Research Institute received funding to do an acoustic survey of shrimp and it will be similar to the special license for acoustic work on herring that they have done in the past. GMRI will be using the same equipment. In addition to acoustic surveys, they will also be doing tows in order to ground truth the data and trapping in order to verify the catch. Maggie Hunter has suggested that the mesh size that GMRI is planning on using may be too large to capture the target species. GMRI was standing by the phone in case the AC members had any questions.

C. Wilson was asked by the Commissioner whether the survey will have management implications. C. Wilson noted that Dan Schick did a similar survey in 2005.¹ The 2005 project was a partnership between Maine DMR, GMRI, and the boat F/V Tenacious. The 2005 survey was not successful in that no acoustic signal could be identified as belonging to shrimp, even though shrimp were known to be present based on trawl samples. However, GMRI has been successful in using acoustics to identify biomass and schools of fish.²

Commissioner P. Keliher noted that there was no need for a motion and that the license can be amended. No objections were made.

Finally, D. Gilbert added that DMR has a backlog of regulations that have been waiting for a committed Regulations Officer, including some submitted by Marine Patrol, so these may be brought up for vote during the next AC meeting.

Other Business

Patrol Update (Major Rene Cloutier, Marine Patrol)

Maj. R. Cloutier provided an update from Marine Patrol. Because clam prices have remained high, they are continuing to mediate conflicts between clam diggers and worm diggers, especially in mid-coast Maine.

Patrol is currently in the middle of the hiring process for a boat captain in Portland, ME. Maj. R. Cloutier noted that Patrol is having trouble attracting applicants – it used to be that they would receive hundreds of applicants to choose from – now they receive around twenty or less for positions and it is not guaranteed that individuals within that pool will be qualified for the position. He noted this may be because some candidates are more attracted to the lucrative fisheries, but noted that Patrol is an excellent lifetime career opportunity.

L. Pinkham asked whether recruitment is a problem across law enforcement agencies in Maine. Maj. R. Cloutier responded that it may be. Marine Patrol works hard to integrate into the community and work with community members in order to facilitate adherence to regulations.

The State is currently in negotiations with Maine Tribes over upcoming elver season, in an attempt to ensure a safe and successful elver season for all license holders.

Herring closures are in place in New Hampshire and Massachusetts. Herring have moved offshore indicating there may be gear conflicts in Area 1A. Commissioner P. Keliher noted that the quota is usually used up by mid-October. Usually, midwater boats go out to Area 3, but right now there are

¹ See, *Exploring the addition of an acoustic survey to the summer Gulf of Maine shrimp Survey*, Grant #NEC 04-863, at http://northeastconsortium.org/ProjectFileDownload.pm?report_id=392&table=project_report (last visited 10/23/2015).

² See, *Assessing Herring Bait Availability in Inshore Maine Waters*, at <http://www.gmri.org/our-work/research/projects/assessing-herring-bait-availability-inshore-maine-waters/analysis> (last visited 10/23/2015).

Haddock in Area 3, and once they meet the quota in Area 3 due to bycatch, this will likely impact the bait fishery.

L. Pinkham asked whether DMR is going to provide support to Hancock and Washington Counties in order to respond to the DA's recent refusal to prosecute municipal shellfish violations.

Commissioner P. Keliher responded that the issue is being worked on and that DA Foster has sent a recent response exploring the issue further. Apparently the DA has felt vulnerable as they do not believe they are supposed to take cases on behalf of municipalities but only on behalf of the State. L. Pinkham noted that the concern there is that the money from the fines would go into the general state funds, rather than being fed back to the municipalities if the DA brings these cases on behalf of the State.

L. Pinkham noted that this is moving towards becoming a budgetary matter if the Attorney General does not agree to prosecute violations of this kind. Maj. R. Cloutier noted that the Marine Patrol is having similar problems enforcing closures when they are treated as civil violations.

J. Nickerson asked for clarification on the four foot "buoy stick" rule in place for marine mammal protection – asking for Marine Patrol to clarify the length of a buoy stick and the starting point for measuring a buoy stick. He noted that some fishermen are measuring from the bottom of the buoy rather than from the top, which is problematic and drastically reduces visibility. Maj. R. Cloutier responded that he would define the buoy stick as starting at and measured from the top of the buoy.

J. Nickerson also asked about how long Marine Patrol allows for corrections on gear violations after tagging the gear. Maj. R. Cloutier responded that Patrol will reach out to the fishermen, and will provide, generally, two weeks for corrections. J. Nickerson added that two months is too long a period to wait for enforcement and that there are fishermen who need to be reminded more aggressively by Patrol that the rules are being enforced – in large part because of safety issues.

Commissioner P. Keliher suggested that the buoy stick measurement could be clarified when Chapter 25 is opened back up for amendment. Currently, under Maine DMR Law §6439-B, each trawl in certain areas is required to be "marked on each end with at least one buoy *with* a buoy stick of at least four feet in length" (emphasis added). This would indicate that the length of the buoy is a measurement separate from the length of the buoy stick. However, further clarification or emphasis of could be provided in the Chapter 25.

DMR Updates on Federal Issues (Meredith Mendelson, DMR)

M. Mendelson gave an update on groundfish disaster relief funds distribution. Of the \$75 million appropriated by Congress nationwide for fisheries disaster relief, \$32.8 million was allotted for the New England groundfish fishery and this was divided equally into three bins: 1) Direct aid; 2) allocation to States; and 3) for investigation and possible subsidy of an industry-funded buyback.^[1] Currently the

^[1] See, Letter, *Re: Distribution of Bin 2 groundfish disaster relief funds* (October 7, 2014), at <https://www1.maine.gov/dmr/news/2014/bin2groundfishfunds.pdf> (last visited 10/22/2015). See also, *NOAA*

State is in the midst of distributing bin 2 funds, and bin 3 will be coming soon. Because consensus could not be reached on development of a buyout or buyback program, the states agreed to use bin 3 for different purposes tailored to their fishing community needs and to mitigate future disaster impacts. However, the State is still determining how best to use Bin 3 funds. Maine DMR will allocate funds for purposes which may include the following:

1. Purchase of permits to increase Potential Sector Contribution to the sector and available harvest opportunity
2. Offset lease costs of Gulf of Maine cod Annual Catch Entitlement to enable continued fishing, or establishment of a revolving loan fund to provide access to capital prior early in the fishing season
3. Sector management costs
4. Electronic monitoring equipment

M. Mendelson then turned to discuss a new rule being issued under the Marine Mammal Protection Act. The rule would aim to level the playing field at the international scale by requiring nations exporting fish and fish products to the U.S. to demonstrate that they are meeting similar standards as the U.S. has in regards to marine mammal protection.^[2] However, M. Mendelson noted that the new rule may pose some problems to Maine fisheries, especially the lobster industry. DMR has been actively working with the Maine Lobster Dealers' Association in order to understand concerns and challenges posed by possible implementation of the rule.

M. Mendelson then went on to discuss the potential designation of a National Marine Monument in the North Atlantic by the President. The current Cashes Ledge groundfish closure, as well as an area encompassing offshore seamounts and deepwater coral canyons off of Georges Bank have also been under consideration for declaration as marine monuments, with proponents including Conservation Law Foundation (CLF). M. Mendelson suggested that AC members should provide their opinions on this declaration. Governor LePage sent a letter on August 28, 2015 to the President in which he openly opposed the proposal and requested more information from the Administration regarding the public procedure being followed in order to make an informed decision about the designation.^[3] In addition, Commissioner P. Keliher has submitted comments to NOAA on this issue. M. Faulkingham asked

Fisheries Announces Disbursement of Groundfish Disaster Funds (Bin 3), NOAA Fisheries Website (October 1, 2015), available at https://www.greateratlantic.fisheries.noaa.gov/stories/2015/october/01_noaa_fisheries_announces_disbursement_of_groundfish_disaster_funds_bin_3.html (last visited 10/22/2015).

^[2] See, **Public comment period opens for NOAA's proposed rule to protect marine mammals in international fisheries**, NOAA Fisheries Website (site contains contact information and general description of the Rule), at http://www.nmfs.noaa.gov/mediacenter/2015/08/10_08_mmpa_bycatch.html (last visited 10/22/2015); See also, **Fish and Fish Product Import Provisions of the Marine Mammal Protection Act: A Proposed Rule by the National Oceanic and Atmospheric Administration on 08/11/2015**, available at <https://www.federalregister.gov/articles/2015/08/11/2015-19231/fish-and-fish-product-import-provisions-of-the-marine-mammal-protection-act> (last visited 10/22/2015) (Note: This document has a comment period that ends in 18 days (11/09/2015)).

^[3] See, **Letter from Governor Paul R. LePage to President Barack Obama** (August 28, 2015), available at <http://www.maine.gov/tools/whatsnew/attach.php?id=654638&an=2> (last visited 10/22/2015).

whether a declaration in these areas would mean that fishing would be entirely prohibited. M. Mendelson responded that the restrictions are up to the President but it is assumed that commercial fishing would be entirely prohibited and recreational fishing could potentially be prohibited.

M. Mendelson then went on to discuss Regional Marine Spatial planning. The product from the Northeast Regional Planning Body will ultimately be more of a guidance document on uses in the ocean, including habitat, marine life, and activities, and will provide guidance on how data can be used in the regulatory process in order to provide stakeholders a better way to engage. Ideally this process will improve the lines of communications between federal and state agencies, tribes and stakeholders. The next meeting will be held November 16-17 at the Westin Portland Harborview Hotel.^[4]

Commissioner P. Keliher noted that US Fish and Wildlife Service decided not to list eels as endangered which is good news, as the designation would have closed all eel fisheries down and would have had a real impact on hydropower and other industries that use waterways. He added that the lower quota this year for eel had nothing to do with this process. He also added that the New England Fisheries Council will be considering designation of deep water coral habitat. This amendment may ultimately have impacts on fishing areas in the Gulf of Maine which overlap with deep water coral habitat. During the Council meeting on Sept. 23, the agenda included a 2014 report on coral habitats in the Gulf of Maine and a draft NEFMC coral amendment.^[5]

Other Business?

J. Leask asked whether there was any word from USFWS in terms of the urchin inspection process. The Commissioner noted that the CITES designation, which includes sea cucumbers, would make it difficult to export the product and all agencies are poised to oppose listing for that species. Comments are being accepted through October 26, 2015.³ The rule encompassed multiple species for consideration and over 30,000 comments were received in total. However, only 9 comments were received regarding the listing of sea cucumbers. State agencies such as the Washington State Department of Fish and Wildlife, were not in favor of a listing. The Center for Biological Diversity favor listing of sea cucumbers under Appendix II of CITES. One of the issues with listing the sea cucumber is that many countries import and export, and have fisheries that include both sea cucumber and sea urchins.

J. Miller asked Marine Patrol whether safety inspections for boats will be occurring. Maj. R. Cloutier responded yes, but there are not enough inspectors to complete the inspections in a timely manner. J. Miller noted that in terms of the life raft requirement, there are not enough products for all the boats having to make this upgrade. M. Love and J. Nickerson noted that fishermen may be under the

^[4] Registration and details on the RPB Meeting can be found at the following website:

<http://neoceanplanning.org/events/november-2015-rpb-meeting/> (last visited 10/23/2015).

^[5] For links to these documents, please visit the Sept. 23 Habitat Committee Meeting website, at <http://www.nefmc.org/calendar/sept.-23-habitat-committee-meeting> (last visited 10/23/2015).

³ See, *Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Seventeenth Regular Meeting: Request for Information and Recommendations on Taxa to be Considered for Amendments to the CITES Appendices*, Docket Folder Summary, at <http://www.regulations.gov/#!docketDetail;D=FWS-HQ-IA-2014-0018> (last visited 10/23/2015).

impression that if they have a safety sticker, they can be grandfathered in and will not need an additional inspection. This was based on an article in a publication, but is not the case. The Commissioner asked that the letter from the inspectors be sent back out to AC members for clarification and to correct this misinformation.

Motion to adjourn at 3:40pm (L. Pinkham/M. Faulkingham)

Discussion: None

Motion unanimously passes to adjourn.