

**DMR Advisory Council Meeting
Marquardt Building, 32 Blossom Lane, Augusta, ME
March 1, 2016 at 1:00 p.m.**

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held on March 1, 2016 at the Marquardt Building, 32 Blossom Lane, Augusta, Maine. Council members who attended were **Chris Weiner, Dan Rogde, Geoff Smith, Joe Nickerson, Josh Miller, Lewis Pinkham, Mike Murphy, Ray Swenton, Sebastian Belle, Tom Cassamassa**. Department staff in attendance included **Deputy Commissioner Meredith Mendelson, Colonel Jon Cornish, Deirdre Gilbert, Sarah Cotnoir, Trisha Cheney, and Hannah Dean**.

DMR Advisory Council members not present: **Mike Faulkingham, Mike Love**.

Meeting Commenced at 1:07 pm.

Welcome and Introductions (Lewis Pinkham, Standing in as Chair)

Introductions were made around the table for new members, including Ray Swenton and Dan Rogde, and members of the council introduced themselves by name.

Approval of Minutes - October 20, 2015 Meeting Minutes

Motion: (J. Nickerson/L. Pinkham) Motion to approve the October 20 meeting minutes.

Discussion: None

Motion unanimously passed to approve the October 20 meeting minutes.

Regulations - Action (voting)

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

Chapter 45 Shrimp Season Closure APA Rulemaking (Deirdre Gilbert, DMR)

D. Gilbert provided an overview of the proposed rule-making. There has been no shrimp season for the past several years. Typically, the Department has used the emergency rule-making procedures to close the shrimp fishery each year. This proposed rule has gone through regular rulemaking and will make the closure permanent, so as to avoid a repeal of the emergency rule after 90 days. It states that there is no season for shrimp. When the shrimp stock is able to support a fishery in the future, DMR will do another rule-making to set the season.

C. Weiner asked whether there has been any sign of improvement.

D. Gilbert responded that she had not heard of any signs of improvement and that the past year's survey was the worst in the time series.

Motion: (C. Weiner/T. Cassamassa) Motion to approve Chapter 45.05 Shrimp Season Closure Rule

Discussion: None

Motion unanimously passed to approve Chapter 45.05 Shrimp Season Closure Rule

Chapter 25.97 Management Framework for Island Limited Entry Program (Sarah Cotnoir, DMR)

S. Cotnoir gave an overview of the rulemaking and public hearing held. Originally, the rule had been proposed with an additional change to trawl limits in the Piscataqua River, based on the Department's understanding that there would be no opposition to increasing trawl limits in the winter months in a specific area of the Piscataqua. Two fishermen attended the public hearing on the rule in support of increasing trawl limits. However following the hearing, the Department received written comments expressing opposition to this rule change. These opposition comments are described in the adoption package and, based on this feedback, the trawl limit increase aspect of the package was withdrawn.

No one attended the public hearing in opposition of the removal of Chebeague Island from the Island Limited Entry Program. One written comment in support of this removal was received by the Department following the hearing, and is summarized in the rulemaking adoption package. No comments in opposition were received.

L. Pinkham asked how the striking of Chebeague from the Island Limited Entry Program will impact the individual who caused the request for the removal.

S. Cotnoir responded that the individual will be grandfathered into the license, and will be able to retain that license as long as he adheres to the requirements under the program.

Motion: (L. Pinkham/C. Weiner)

Discussion: None

Motion unanimously passed to approve the striking of Chebeague from Chapter 25.97 Management Framework for Island Limited Entry Program.

Chapter 25.45 Crab Fishing Limitations (Colonel Jon Cornish, DMR)

J. Cornish gave an overview of jonah crab discussions and science over the past year. The limit has been 200 lbs per day with a 500 lb trip limit, but there has been some discussion at ASMFC of allowing the limit to go as high as 1,000 lbs. The new rule also has a prohibition on possessing female crabs and a new size limit. Marine Patrol has ordered gauges to be able to implement those size limits. Finally, the rule includes a 50 crab recreational limit.

C. Weiner asked whether this rule is being implemented with the idea that the fishery will be growing.

J. Cornish responded that yes, it is projected that the crab fishery will be growing and that, in some areas further south, they have in fact replaced lobsters as the major catch. In areas that have seen the growth of crab catches over lobsters, crab prices have nearly doubled over the past year. There was a discussion about the appropriate size limit - 4 $\frac{3}{4}$ vs. 5 inch limit. Enforcement did not want to have a tolerance on crabs, so going with the 4 $\frac{3}{4}$ inch limit made more sense.

G. Smith asked whether the aspect of the rule aiming to prevent mutilation of crabs is a measure to eliminate the snapping of claws.

J. Cornish responded that yes, the aim is to eliminate snapping of claws so that the minimum size can be measured and enforced.

G. Smith asked whether there is already a possession limit in place.

M. Mendelson responded that there is no possession limit for crabs caught in lobster traps but there is a limit on crabs taken as bycatch in trawl gear.

R. Swenton noted that he worked with GMRI on this issue, and one concern was that there is variation between crab naming from state to state, which poses a reporting problem. If fishermen get in trouble based on this problem, that would be unfortunate. Ray noted that the marketing problem is also a concern and that Massachusetts and Rhode Island seem to have an unfair advantage.

J. Cornish confirmed that the identification of crabs does pose a reporting problem. DMR and Marine Patrol recognize there is an educational need here, and they will prepare educational materials and work with the Commissioner on providing time for this educational process to take hold.

G. Smith asked whether it is an educational problem or a naming problem.

J. Cornish clarified that it is actually an issue with confusing Jonah crabs with Rock crabs.

R. Swenton noticed that this is also being driven by markets and supermarkets who want to make sure they are selling a sustainable seafood, which is dependent on establishing a management plan that can ensure sustainability.

Motion: (R. Swenton/C. Weiner)

Discussion: None

Motion unanimously passed to approve the proposed changes to **Chapter 25.45 Crab Fishing Limitations**.

Chapter 32 Eels. Requirements for 2015 Elver Harvesting Season (Deirdre Gilbert, DMR)

D. Gilbert gave a summary of the rule-making noting that the reason there is some urgency with this regulation is because the elver season begins March 22. This is the third year that DMR is utilizing a quota system. The overall quota in 2016 is the same as it was in 2015. There is some opportunity to get increased quota in the future depending on implementing conservation measures, but no measures have yet been implemented. Last year, there was some increase to individual quotas because there were certain licenses which were suspended. This resulted in a 0.4 lbs increase to individual license holders. This year, those licenses were no longer suspended, but there were licenses that were not renewed - and so quota from those non-renewed licenses resulted in a 0.3 lb increase to individual license holders this year. When it comes to the Tribes, they determine the allocation of their quota to their license holders and then provide that information to DMR.

An additional change this year is the closure of the Cobbosseecontee stream in order to conduct a credible life cycle study, as required by the ASMFC Fisheries Management Plan. In order to conduct this study, we must prohibit the taking of elvers and eels in a productive area.

The final difference in the rulemaking will be to implement a statutory change currently going through the legislature. The new law will remove the existing prohibition on fishing for elvers using fyke nets in the St. Croix River. The proposed rule will simply remove this prohibition during this rulemaking to avoid a subsequent rulemaking procedure.

R. Swenton asked how many licenses are receiving the elver allocation.

D. Gilbert responded that there are roughly 410 state license holders at this point in time which will be sharing the quota that is allocated for state license holders.

L. Pinkham asked whether DMR tracks when a license holder passes away.

D. Gilbert responded that DMR usually becomes aware that someone has passed away when they do not renew their license and that quota is reallocated.

L. Pinkham asked whether issues with the tribes have been resolved.

D. Gilbert responded that DMR's concern about sustenance fishing is that sustenance elvers are not allowed to be sold. The swipe card system is the way that DMR tracks the elver harvest. The pending legislation will allow the Commissioner to enter into agreement with the tribes. The Passamaquoddy Tribe is interested in not making individual allocations, and simply fishing under an overall quota. However, DMR would only agree to this if the tribe does not issue sustenance licenses for the fishery, as that will then be impossible to track. Currently there is no agreement between DMR and any of the Tribes in this regard.

G. Smith asked where the law is in regards to the fyke nets.

D. Gilbert responded that the law has been voted out of Committee and DMR did not want a conflict to exist between the law as passed and the rule.

G. Smith followed up and asked what would happen if the law does not pass.

D. Gilbert responded that the fyke net prohibition in the St. Croix would remain if the law does not pass.

S. Belle asked how many fishermen currently fish in the Cobbosseecontee and how many will be displaced.

J. Cornish responded that this is an area that is fished later in the year and it is highly productive. Around 20 fishermen use this area.

G. Smith noted that this issue was brought up in the comments on the rule.

D. Gilbert confirmed that there was a request that fyke nets be allowed in the area above the bridge in Gardiner. DMR was not able to make this change in rule currently as it would require another cycle of public comment, but the Department is open to further conversation.

J. Miller asked if this is a one year life cycle study.

D. Gilbert responded that the study will last for multiple years - as it needs to track and assess the full Eel life cycle which is a complex and multi-year cycle.

Motion: (C. Weiner/T Cassamassa)

Discussion: None

Motion unanimously passed to approve the proposed changes to **Chapter 32 Eels. Requirements for 2015 Elver Harvesting Season.**

Upcoming Regulations

Atlantic Herring Rulemaking (Meredith Mendelson, DMR)

M. Mendelson gave a brief overview of anticipated rulemaking which will implement three measures for compliance with changes made by the ASMFC. The first measure changes the spawning area closure monitoring system, and also modifies the default closure dates. These changes will not require complementary federal action. Second, the fixed gear set aside included a roll over provision that allowed a rollover of unused fixed gear set-aside quota into the total Area 1A sub-ACL. The changes would remove that provision and allow the fixed gear sector to fully utilize their quota. This provision will require complementary federal action. Finally, the last change will be that vessels would be required to empty their fish holds prior to going back to sea, which would require federal adoption prior to being adopted by the state. C. Weiner added that this year, a two day window essentially created a loophole which resulted in the take of millions of pounds of lobster bait during that loophole window.

J. Miller asked what the thinking behind the fixed gear set aside was. M. Mendelson responded that she would have to follow up on this point.

Halibut Rulemaking (Meredith Mendelson, DMR)

M. Mendelson noted that she did not have significant detail, but just wanted to note that the Department will be working to clean up the Halibut Chapter.

S. Belle asked that the Department consider the aquaculture industry when the chapter is rewritten as there is at least one company planning to develop aquaculture around the species in the near future.

R. Swenton noted that this has been a huge problem for individuals bringing in halibut from Canada. Because of the possession laws in Maine, this supply bypasses Maine and goes to Massachusetts for processing. M. Mendelson noted that discussion about how to address this has been going on, but she had been under the impression that it has not been a challenge lately.

R. Swenton suggested that there be no possession restrictions in Maine. M. Mendelson noted this will be an unlikely outcome. M. Mendelson suggested that a path forward may be to create greater traceability or limit possession restrictions to the months of the Maine fishery in order minimize impact to market for product from the state waters fishery.

J. Cornish added that Marine Patrol has worked with R. Swenton on agreements to support Maine processors and dealers, and that those agreements won't go away.

J. Miller asked whether it is a size difference or a possession issue.

R. Swenton responded that the possession limit was based on size, and Canada allows the landing of a smaller minimum size fish. This resulted in dealers being in violation of Maine possession laws when they received fish from Canadian distributors. R. Swenton went on to say there was a compromise that any fish that were Maine legal size, could stay in Maine and be sold in Maine. But, as a result, Canadian fishermen had no reason to use Maine distributors because working with Maine companies meant dealing with potentially illegally sized fish. R. Swenton noted that, as a result, Canadian fishermen developed a general practice of working with Massachusetts dealers. J. Cornish tried to add some clarification to the history, noting that there was also a head on vs. head off issue with the fish coming in, which complicated the size issue. Canadians measure by head off only. T. Cassamassa noted that it seems a shame that this limitation is in place in Maine, but then we also allow Canadian fish of a smaller size to come into the U.S. and glut the market.

J. Cornish clarified that Canada has both a head on and head off measurement standard, which was based on halibut measurements on both the East and West Coast. This measurement was changed because populations on the East and West Coast actually differed. Currently, Maine has now developed a head on and head off standard.

Urchin Season Rulemaking (Trisha Cheney, DMR)

The Urchin Council has been discussing their next season and has already drafted a calendar which will be finalized on March 22, 2016, in Brewer. The Council also discussed possibly closing an area in Downeast Maine for Urchins during the next season. Usually rulemaking is starting in April with a public hearing in May, with the season starting in September. Last year, they shifted their days later in the week to avoid overlap with Scallop fishing activities. This will be a status quo season with 12 totes and 15 days for Zone 1; and 38 days and 7 totes for Zone 2. DMR will be moving ahead with swipe cards next year in order to monitor the landings.

Special License Approvals-Action (voting)

Presentation, consideration and approval of a five year renewal of a special license to allow the hauling of lobster traps on weekends during tours operated by Lulu, Inc. (Captain John Nicolai)

D. Gilbert provided some context, describing the renewal process for Special Licenses. This license is ongoing, and is out of renewals, and so needs to renew for another 5 years. His SL exempts him from Sunday haul prohibitions as he is catching for demonstration purposes and does not take the lobster. The lobstermen want to get the public excited about the fishery, and Lulu, Inc. helps to do that - so the lobstermen have been supportive of Mr. Nicolai's operations. DMR is proposing to renew his existing SL. C. Weiner added that the industry is in support of Mr. Nicolai's operations.

Motion: (T. Cassamassa/C. Weiner)

Discussion: None

Motion unanimously passed to approve renewing Lulu, Inc.'s Special License.

Presentation, consideration and approval of a new special license to allow for the collection of Whelks (Hannah Dean, DMR)

The purpose of this request is to collect organisms for doctoral thesis research. This research is funded by the National Science Foundation grant OCE 1459384 awarded to PIs Kamel (UNCW) and Grosberg (UC Davis). The executive summary of this work is available from the following link:

http://www.nsf.gov/awardsearch/showAward?AWD_ID=1459384&HistoricalAwards=false. A focal species of this research is the dogwhelk *Nucella lapillus*. *N. lapillus* is an abundant, ecologically-important predator of rocky intertidal shorelines in the North Atlantic. It primarily forages on mussels and consequently plays a key role in controlling their natural populations, which also constitute a significant dietary resource for lobsters. Because of the competitive interaction between lobster and snail predators for mussel prey, characterizing the impacts of the mating system in *N. lapillus* may ultimately help inform management efforts to conserve the ecologically-important blue mussel *Mytilus edulis*, and thus, the economically-important American lobster *Homarus americanus*, a valuable marine resource that generates millions of dollars each year for the residents of Maine.

The goal of the project is to characterize observationally and experimentally the impacts of the mating system (i.e. the degree of multiple paternity) on patterns of parental provisioning and offspring size in the dogwhelk *Nucella lapillus*. (1) quantify variation in patterns of paternity within and among capsules of individual snails as well as between sites within the same geographical region; (2) relate patterns of maternal resource allocation to patterns of paternity in natural populations of *N. lapillus*; and (3) determine experimentally how variation in the availability of males influences paternity distribution among egg capsules produced by individual females. Our methods of investigation include the following: (1) genetic analyses of offspring to determine the number of fathers contributing to a clutch, (2) counting the number of nurse eggs to determine resource allocation per clutch, and (3) lab experiments involving mating females with different numbers of males.

Motion: (R. Swenton/C. Weiner)

Discussion: None

Motion unanimously passed to approve granting a Special License to Aaron Paul Ramus at the Center for Marine Science, University of North Carolina Wilmington.

Other Business

Legislative Update (Deirdre Gilbert, DMR)

This past session, there were no Department Bills and Legislative Council rejected ~90% of the bill titles that came before the Legislature. There were only 2 new bills before the Marine Resources Committee this year. The first bill was to do with Lobster licensing. The Department was essentially trying to create a more functional entry system. In most zones, with the exception of Zone A, the movement off of the waiting list is very slow, and waiting lists are up to 60 people long - indicating that the wait for people at the bottom of the list could be 30 years or more. The testimony from the industry indicated that they don't want to use licenses to calculate new entry as it is not as good an indication of effort as tags. The committee agreed to change the entry calculation to be based on historical maximum tag counts over the course of a career. In addition the bill would amend the age cutoff of 18 for student entry program so as to give students greater flexibility in their completion of program requirements while pursuing a regular educational and extracurricular course of activities. There was some conversation about retroactivity for doing the calculation, and the Committee was concerned how many would come off the waiting list. Based on that analysis, the Committee determined that they would not apply changes to the program retroactively, but would increase the age moving forward to 20, and then give students until the age of 23 if they are actively enrolled in College courses. J. Miller attended these legislative sessions. J. Miller noted that the Committee also changed the Island Limited Entry Program to make it easier to enter the program and to waive the requirement that a fisherman apprentice in the same zone as the Island. And, changes to the program would only require a majority approval as opposed to two-thirds.

The Committee also considered an Elver Bill giving the Commissioner the authority to shut down fishing by any of the federally recognized Tribes if he feels they are fishing in a way that will cause the quota to be exceeded. This would be through Emergency Rulemaking. Mainly this was meant to address concerns about sustenance fishing which creates a loophole for fishermen to exceed quota and avoid having to report via the swipe card system. The season was extended by a week and the bill also eliminated that weekly 48 hour closed period. The purpose of eliminating the closure period is to give people flexibility of when to meet their quota depending on the weather. The gear type limitation has also been removed, so now it will also just be a numbers limitation and fishermen will be able to utilize either type of gear.

Patrol Update (John Cornish, Marine Patrol)

J. Cornish noted they are getting geared up for the Elver season. March 22 is the open of the season. Swipe cards have made the process much smoother and has noticeably lowered violations down from hundreds of violations to tens of violations.

Retention and recruitment of officers remains a problem. Five officers have been lost in a 2-3 month period, mostly in southern Maine. Restructuring of some requirements have been made in an effort to allow more flexibility in terms of geographic location of officers' residents to their patrol region. J. Cornish also noted that a lot of activity is moving further offshore, further than 12 miles. J. Nickerson suggested that offshore lobster boats be equipped with VMS in order to improve tracking and enforcement. J. Cornish noted that this has been discussed.

S. Belle noted that MLA and other organizations have testified for higher salaries for Marine Patrol and would do so again. J. Miller noted that there might be a good opportunity for increased penalties. J. Cornish agreed that in terms of improving enforcement, the most effective way is to create some example cases against fishermen and send a message to others in a fishery. L. Pinkham suggested making violations criminal rather than simply civil - as this would have a greater impact on fishermen's mindsets and would send a stronger message.

Cashes Ledge (Meredith Mendelson, DMR)

M. Mendelson noted that DMR met with Council on Environmental Quality (CEQ), in DC on the issue of the Cashes Ledge issue. This area had been under consideration for declaration as a Marine National Monument by Executive order. While there is still a push at the executive level to create monuments for the purpose of marine conservation, Cashes Ledge is currently off the table and CEQ is looking to offshore seamounts and deep water coral as a better option. DMR will continue to push back on proposals to declare Cashes Ledge off limits.

Nominating Committee (Deirdre Gilbert, DMR)

D. Gilbert called for volunteers for a Nominating Committee. C. Weiner, L. Pinkham, and S. Belle volunteered.

Motion to Adjourn: (L. Pinkham/C. Weiner)

Motion unanimously passed to adjourn at 2:36 PM.