

**DMR Advisory Council Meeting
Department of Marine Resources
32 Blossom Lane, Augusta – Marquardt Building – Conference Room #118
March 9, 2018 – 1:00 pm**

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held on March 9, 2018 at the Marquardt Building, 32 Blossom Lane, Augusta, Maine. Council members who attended were Lewis Pinkham, Matt Moretti, Mike Murphy, Togue Brawn, Josh Miller, Peter Mourmouras, Tracey Sawtelle, Dan Rogde, Joe Nickerson, Mike Love and Ray Swenton. Department staff in attendance included Commissioner Patrick Keliher, Major Rene Cloutier, Deirdre Gilbert, Jon Lewis, Sarah Cotnoir, Melissa Smith and Amanda Ellis. Others present were: Jennie Bichrest, Emily Morse and Sebastian Belle.

DMR Advisory Council members not present: Thomas Casamassa, Geoffrey Smith and Chris Weiner.

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

Introductions were made around the table for new members, including Matt Moretti and Peter Mourmouras, and members of the Council introduced themselves by name.

2. Approval of Minutes – November 8, 2017 Meeting Minutes

Motion: (T. Brawn and J. Miller) Motion to approve the November 8, 2017 meeting minutes.

Motion unanimously passed to approve the November 8, 2017 meeting minutes.

3. Regulations – Action (voting)

Chapter 2: Changes to the Limited Purpose Aquaculture (LPA) License Program (Jon Lewis, DMR)

This rulemaking proposes a number of changes to the Limited Purpose Aquaculture License (LPA). It deletes a number of references to other chapters of regulation to reduce redundancy. It proposes several changes to reduce risk to public health, and would prohibit siting LPAs for shellfish in prohibited, restricted and conditionally restricted areas with certain exceptions. It would prohibit siting of marine algae or shellfish seed LPAs within the 300:1 dilution zone around wastewater treatment outfalls and prohibit the use of MOU or biotoxin monitoring protocols on LPAs. It would limit the dimensions of LPAs to no longer than 4x100 feet, square or rectangular. It would require LPA license holders to complete an educational program prior to renewal of their license in 2019 and future years. It would amend gear marking requirements, so that each individual piece would no longer need to be marked and require buoys to be marked with the LPA identification number. The proposal would allow an individual to have three helpers, but limit an individual to being listed on no more than four LPAs as an assistant. The proposal clarifies the riparian landowner density exemption, notice to municipalities, site identification on the application, and who must sign the application. The proposal would also limit the allowable mid-year amendments to source of stock, species, mooring type/layout, assistants, and contact information.

M. Moretti had a question about the prohibition of LPAs within the 300:1 dilution zone around wastewater treatment outfalls. He wanted confirmation that the maps wouldn't be available until September for those LPAs being considered. He expressed that he thought this was scary and premature to make this rule for a grower if they can't reference this beforehand. DMR will work with growers interested in areas near WWTPs to generate the information that they will need.

M. Moretti supported increasing the fee for the LPA. It shows that they are more invested in the process. It could help support the DMR for monitoring work. It would be great if that could be done later with the Legislature.

L. Pinkham asked if there will be a requirement for a supervisor out of a polluted area. It was answered that for shellfish, there would be a requirement for a supervisor. The National Shellfish Association allows you to grow seed that is 1 inch or less in size. You don't need a supervisor, but you do need a permit. If it is over 1 inch, you need a relay supervisor. That language is already in place now.

L. Pinkham asked if that was the case for leases or if they were two separate things. J. Lewis said they were two separate rules.

T. Sawtelle asked how it affected other people that don't have an LPA. J. Lewis said in theory, it shouldn't affect you at all. For leases, DMR dives the site, contacts Marine Patrol and the harbor master. In this case, there is a sign-off piece for the harbor master that it will not affect fishing and shorefront access. To be sure, we depend on the harbor master. These are 1-year licenses and anybody can comment.

T. Sawtelle asked about LPAs above the mean low water mark. J. Lewis responded that permission from the intertidal landowner and the shellfish committee would be required.

P. Mourmouras asked if DMR would grandfather people that are helpers or assistants on LPAs. The Department will provide a three-year phase-in period in which to come into compliance. Effective immediately, no new LPAs will be issued where a person is listed as an assistant on more than 8 LPAs. An individual may still only be listed as a licensee on four LPAs giving them a combined potential of 12 LPAs through the end of 2020.

Motion: (J. Miller and D. Rogde) Motion to approve the proposed Chapter 2 changes to the Limited Purpose Aquaculture (LPA) Program as written.

Motion unanimously passed to approve the proposed Chapter 2 changes as written.

Chapter 32: Elver Quota System for the 2018 season (Deirdre Gilbert, DMR)

This rule establishes the elver quota allocations for the 2018 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. 2018 allocations for individuals who held a license in 2017 will be the same as their 2017 allocations, less any quota that was associated with licenses suspended for the 2017 season, plus any quota associated with licenses not renewed in 2017, or licenses suspended for the duration of the 2018 season, which will be distributed evenly to all license holders. Individuals who become eligible to purchase an elver license in the 2018 elver license lottery will receive a quota of 4 lbs. The rulemaking also deletes language that has been moved to Chapter 55.

D. Gilbert explained that the overall quota is the same. The only number that changes is the number of participants.

Last year, 70 pounds was deducted from the amount of quota allocated to the Passamaquoddy Tribe for 2017 for the overage in their 2016 quota. That was added back into their quota with this proposed rule.

We originally proposed that individuals that already had 50 pounds or more of quota would not receive additional quota with the redistribution of quota. This limitation had been suggested by representatives of the Maine Elver Harvesters Association. We got a lot of negative comments through the rulemaking process and therefore we removed the proposed limitation. Under the rule as

adopted, every license holder will be eligible for any redistribution of quota, regardless of the amount of their existing allocation.

To ensure Maine doesn't exceed the quota, we clarified the allocation formula to deduct quota that was allocated in 2017 that is associated with licenses that were suspended in 2017, but which will be returning to the fishery in 2018.

We held an elver license lottery this year. We were able to give out 11 new licenses. Each individual will start out with 4 pounds each of quota.

M. Moretti asked if the overall fishery was healthy. Commissioner Keliher said that the interim assessment shows that the eel stock is still depleted. Most of the work has been done on the juvenile stage. Some areas were up and some areas were down. The Technical Committee was going to say that it was in worse shape. If you level it out, the whole population is stable, but at a low level.

Motion: (J. Nickerson and R. Swenton) Motion to approve the proposed Chapter 32 Elver Quota System 2018 as written.

Motion unanimously passed to approve the proposed Chapter 32 Elver Quota System 2018 as written.

Chapter 41: Menhaden (Melissa Smith, DMR)

This rulemaking establishes 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. The state allocated fishery will operate under the quota assigned to Maine by the Atlantic Menhaden Management Board of the Atlantic States Marine Fisheries Commission (ASMFC) until such time that the quota is near to or is achieved. Notification will then be given that this fishery is closed. The episodic event fishery may be subsequently opened by notice to license holders, provided there is sufficient evidence of substantial resource remaining in territorial waters. Both the state allocation fishery and the episodic event fishery will operate under a daily landing limit of 120,000 pounds and a weekly landing limit of 160,000 pounds with one landing per day allowed for both catcher and carrier vessels. Additionally, for both state allocation and episodic event fisheries, vessels may only fish for and land menhaden from territorial waters Monday through Thursday. Daily reporting of Atlantic menhaden landings will be required for both the state allocated and the episodic event fisheries. An incidental catch and small scale fishery will commence after the closure of the state allocated fishery, or a subsequent episodic event fishery, with a daily landing limit of 6,000 pounds under gear restrictions. All fish must be immediately stored in barrels or totes upon harvest. For both the state allocation and episodic event fisheries, a transfer at sea to a vessel utilizing menhaden as bait is considered a landing event. No transfer of fish at sea will be allowed under the incidental catch and small scale fishery.

M. Smith gave an ASMFC update on Atlantic Menhaden. ASMFC has been working on Amendment 3 to the Fishery Management Plan for Menhaden, which was approved in November 2017. The Board set the total allowable catch for the 2018 and 2019 fishing seasons at 216,000 metric tons. The Amendment allocated 0.52% for the State of Maine. Last year, Maine's state allocated menhaden quota was 176,000 pounds. This year, Maine's quota is 2.4 million pounds.

Following the closure of the directed fishery, there will also be 4.7 million pounds for the episodic set aside to share between Maine, Rhode Island and New York.

After the episodic quota is used up, there is an incidental/small-scale fishery. Individuals can catch up to 6,000 pounds per day 7 days a week. Upon immediate possession of menhaden, they must be brought on board and stored in a barrel or tote. With the small-scale fishery, there are no transfers at sea. Everything must be landed. Monthly reporting is required. This proposed rule defines the gear types and nets that can be used.

This rule proposes to have both the state allocation and episodic event fishery operate Monday through Thursday under a daily landing limit of 120,000 pounds and a weekly landing limit of 160,000 pounds with one landing day per day allowed for both catcher and carrier vessels. Daily reporting of menhaden landings will be required via email for both the state allocated and episodic event fisheries.

About 25 people either attended the public hearing and/or provided written comments. There were only 3 verbal comments, all of which were opposed to the proposed rule. There were 10 written comments in opposition and 1 neutral written comment. The original language was changed in accordance with the public comment. Other comments that came in were the concept of allowing smaller vessels to use a dory, allowing a catcher vessel to use a non-mechanized vessel to transport to shore.

Because of Amendment 3, other states have acquired more quota. Should we use up our state quota, we could get a bump up from a neighboring state or from a state that doesn't want or use their quota.

Commissioner Keliher reminded people that in order to use the episodic quota, we have to use the first 2.4 million pounds of the state allocation first. We could get quota from a neighboring state or apply for an episodic event.

Motion: (T. Brawn and M. Moretti) Motion to approve the proposed Chapter 41 rulemaking, along with the Department changes based on the public hearing comments.

Discussion:

M. Love said that the menhaden should be required to be immediately put into totes or barrels. Some might want to use Xactics. Commissioner Keliher said that most people we are seeing are using barrels or totes.

R. Swenton stated that wharf totes, bait totes, etc. needs to be defined.

Major Cloutier stated that how we got to where we are now is because this is hard to enforce. You would have to run fish across the scale. Three and one-third trays equals a barrel and is about where we'll end up. It has to be stackable. Sometimes it will be a combination of barrels and trays. 6,000 pounds is 6,000 pounds.

J. Nickerson asked if there was any concern of how many fish are going to be dumped. Major Cloutier said that slippage is always a concern. There's no doubt it could happen, but we haven't had a lot of reported dumps of pogies.

Amended Motion: (T. Brawn and T. Sawtelle) Motion to approve Chapter 41, with a further amendment to require that during the small-scale/incidental catch fishery, menhaden must be immediately contained in barrels or totes in order to ensure proper enforcement of the 6,000-pound daily limit. DMR must provide a definition for tote that will determine how many totes are equal to the 6,000-pound daily limit.

Motion unanimously passed to approve the proposed Chapter 41 language, with the proposed amendments.

4. Upcoming Regulations

Chapter 26: Sea Urchin Regulations: 2018-19 Season (Melissa Smith, DMR)

M. Smith stated that on March 22, there will be a Sea Urchin Zone Council (SUZC) season-setting meeting and a research meeting. At the season-setting meeting, there will be a discussion about the different gear types (divers and draggers), their calendars and the season.

From that March meeting, the SUZC will provide recommendations that will be incorporated into the proposed rule scheduled for May and bring that back to this Council in July.

Chapter 36: Herring Management Plan (Melissa Smith, DMR)

M. Smith explained that last year there were changes to herring at the ASMFC level, which will affect how we are going to start this June 1st season with effort controls. Because we had this new info, we did an emergency rule last May along with a concurrent rule.

There is a "Days Out" Meeting set for April 25th to discuss projections for the 2018 Trimester 2 fishery and consider days out and weekly landings limits starting June 1st. Category "A" permits will need to declare in by April 15th to be ready for June 1st. There will be other possible options at the ASMFC level, such as how we calibrate sampling. We will be able to enact an emergency rule for the June 1st start.

Chapter 11: Scallops (Melissa Smith, DMR)

Commissioner Keliher said there will be a Scallop Advisory Council Meeting at the end of the season. If any recommendations come out of that meeting, they will likely be at the November DMR Advisory Council Meeting.

M. Smith said she will be meeting with Marine Patrol on April 5th to ensure the legal text in the rule aligns with the charts. It is also a chance to have a post-season meeting with patrol.

Public Health Regulation by Reference to the Model Ordinance (Deirdre Gilbert, DMR)

D. Gilbert reported that Public Health didn't get the proposed rulemaking text developed yet. Kohl Kanwit has gone through the exercise to find the places where we deviate from the ordinance. As a reminder, the notion is that we would rather do this than go through the 10 chapters we have. This would make it so there would be just one place to find the information. That should be in front of this Advisory Council in July.

At the last Shellfish Advisory Council Meeting, it was proposed to adopt a minimum size of 2-1/2" for wild American oysters.

S. Belle asked if this was going to go to rulemaking. D. Gilbert replied that it was. S. Belle asked if there would be any interaction or outreach before going to rulemaking. He followed up by asking if there was a significant difference of what's on the books and what the ordinance states. D. Gilbert stated that it was her understanding that Kohl was trying to go from one model to another without substantive changes. Commissioner Keliher reminded people that this was with input from both the Shellfish Advisory Council and the Aquaculture Advisory Council.

Chapter 40: Smelts (Deirdre Gilbert, DMR)

Several years ago, we did some extensive rulemaking for smelts. We zoned the state into three different zones, representative of the health of the zones. The Kennebec River was categorized into Zone One being the least healthy resource. In Zone One, it is illegal to fish for, take or possess any smelts except by hook and line through the ice, while ice is present.

After this was put into rule, we started to get some calls from the Thomaston area about people who fished for smelts with a bamboo pole. Major Cloutier said there's a half dozen people doing this. Marine Patrol is counting smelts at night and a big night would be to get 25 smelts. D. Gilbert said

that based on those calls, we were going to propose that type of fishery to take place in the fall. Commissioner Keliher said that there are other places where this is more of a snag fishery, but they would still be subject to the limit.

5. Special License Requests – Action (voting)

Bigelow Laboratory for Ocean Sciences, eel passage study (Amanda Ellis, DMR)

A. Ellis explained Bigelow Lab's special license request for their eel passage study. They are proposing to take 50 elvers to work on the Dept. of Energy grant. They are looking to see how eels move through dams.

DMR staff in Boothbay Harbor would be supplying the elvers from West Harbor Pond.

Motion: (T. Brawn and J. Nickerson) Motion to approve the special license for the eel passage study.

Motion unanimously passed to approve the special license for the eel passage study.

U.S. Geological Survey, assessment of American shad (*Alosa sapidissima*) spawning (Amanda Ellis, DMR)

A. Ellis explained US Geological Survey's special license request for their assessment of the American Shad spawning study. This would involve electrofishing in the Penobscot River to capture up to 200 adult shad and sacrifice up to 40 sampled fish over the season. This project seeks to assess the spawning movements of adult shad to determine the amount of time juveniles spend in fresh, brackish and marine water habitats.

Motion: (J. Miller and T. Sawtelle) Motion to approve the special license for the shad spawning study.

Motion unanimously passed to approve the special license for the shad spawning study.

Dartmouth College, renewal request (Amanda Ellis, DMR)

The goal of this study is to examine the fate of mercury and other contaminants in estuarine and marine systems.

Motion: (J. Nickerson and R. Swenton) Motion to approve the Dartmouth College special license renewal request.

Motion unanimously passed to approve the Dartmouth College special license renewal request as written.

Camden Harbor Cruises, Education Tours (Amanda Ellis, DMR)

Camden Harbor Cruises is proposing to give narrated tours to the public. They are proposing to be in possession of certain shellfish (e.g., periwinkles, mussels, scallops, etc.) without the required harvesting license. The captain is a non-commercial lobster license holder. They will educate people on the cruise and release the product back to the ocean. Most of the organisms will be what comes up in the trap, but they have also indicated there will be some scuba diving.

R. Swenton asked if they would be selling any of the organisms. A. Ellis replied that they will be not selling any of the organisms.

Motion: (T. Brawn and J. Miller) Motion to approve the special license for Camden Harbor Cruises as written.

Motion unanimously passed to approve the special license for Camden Harbor Cruises as written.

Hurricane Island Foundation, scallop settlement studies (Amanda Ellis, DMR)

Caitlin Cleaver of the Hurricane Island Foundation is applying for a special license for their scallop settlement studies. They are proposing to take spat from a prohibited area. This special license would allow this. This project is a collaboration between Hurricane Island and the Maine Aquaculture Co-op.

M. Moretti asked if this interacted with other scallop special licenses. A. Ellis explained that it was separate from Dana Morse's. It is the same principal, but with different applicants. M. Moretti asked if anybody could apply for this type of project, which A. Ellis responded yes.

T. Brawn stated that Nate Perry is selling spat through Dana's license. T. Brawn asked if these people were allowed to sell this spat. D. Gilbert explained that you can't sell spat outside the State of Maine, but you can sell scallop spat under a certain size.

A. Ellis reminded the Council that whoever is involved with the project must be listed on the special license application.

Commissioner Keliher asked if the collection areas were different. D. Gilbert said that some of these people were also on Dana's license. Dana's license has been in existence for 15 years. The long-term goal is so the Department can create a spat collection license. M. Moretti asked if the Department had a timeframe on when the Department would have a spat collection license. D. Gilbert responded hopefully in November.

T. Sawtelle commented that it would be good if everybody could collect spat, but where would you put it.

M. Moretti asked if this was just in spat bags. A. Ellis replied that what they were proposing is in bags.

R. Swenton asked if anyone could go out and collect spat. A. Ellis clarified that you could collect spat with your own special license or an aquaculture lease/license site. We intend to promulgate regulations for a spat collection license soon.

Commissioner Keliher explained that the Department had a mussel grower who would put nets around the mussels. It was approaching aquaculture. The Department had to develop a license to address this.

T. Brawn said that 5 years ago, there were guys that were concerned about this. Is this robbing from the wild fishery? Probably not. If there are spat bags, you are giving something for it to attach to. It's mostly likely helping. The grow-out times are 3 years.

S. Belle asked who was listed on this permit. The names are Caitlin Cleaver, Merritt Carey and Peter Miller.

Motion: (T. Brawn and R. Swenton) Motion to approve the special license for the scallop settlement studies.

Motion unanimously passed to approve the special license for the scallop settlement studies as written.

6. Other Business

Patrol Update (Major Rene Cloutier, DMR)

There are 3 officers at the academy right now.

There is a new boat captain in the process of being hired.

The 3 new officers will be going to Port Clyde, Harpswell and Owls Head.

The bids are in for the Wesmac boat. The bid should be awarded in 2 or 3 weeks.

The elver season starts in a couple weeks. We are hearing that the prices could be upwards of 10,000 dollars per pound.

As far as the scallop season, there were more and more closures. There were some violations, but nothing real big. We were looking at 2-3 gallons over the limit and we are addressing those.

The new boat that is being built to go to Stonington is not coming along very fast.

J. Miller asked if there were any problems with enforcing the recreational scallop fishery. Major Cloutier said there hadn't been any issues. Most people recreationally fishing can't even get a gallon of scallops.

J. Nickerson asked if there was a restriction on the recreational drag size. Major Cloutier answered yes, there is a drag configuration. The recreational component is figured into it.

T. Sawtelle mentioned complaints of diving after the season.

Legislative Update (Deirdre Gilbert, DMR)

Shrimp

D. Gilbert said that the Department had one bill pertaining to shrimp licenses. Because shrimp is not a limited entry fishery, anybody can purchase a license. We needed to come up with a method to limit participation in some fashion in years when the TAC is low (less than 2500 mt). Commissioner Keliher added that this would be done annually. This issue is brought up every year how Maine would control effort, if we were allowed to have a fishery.

MLMC

D. Gilbert stated that a public hearing was held to address the Maine Lobster Marketing Collaborative (MLMC) reauthorization. Everyone who testified was in favor, but with some tweaks. There was a Majority Report out of the Committee to continue it for another 3 years. Their amendment to the law was to formalize an Executive Committee. The Department has to report back in a year to revisit the fee structure for the dealers, particularly for the small-scale dealers. There was a Minority Report out of the Committee by two legislators to make the MLMC voluntary.

Intertidal

There were two carryover bills. One of the bills was "An Act To Define the Intertidal Zone for the Management and Enforcement of Shellfish Conservation Ordinances". The Committee ended up with a divided report. The Majority Report was Ought Not to Pass and the Minority Report was Ought to Pass as Amended. The Minority Report passed 134-10 in the House. It still has to go to the Senate.

Marine Debris

The second carryover bill was "An Act To Address Marine Debris Resulting from Commercial Activities". This was also a divided report. This concept bill has now turned into a commission.

M. Moretti asked if it was any particular sort of marine debris. D. Gilbert answered that this is for everything, not just derelict fishing gear.

DMR Updates on Federal Issues (Commissioner Pat Keliher, DMR)

Whales

Commissioner Keliher explained that the biggest federal issue right now is the Right Whale situation.

17 right whales died between the US and Canada in 2017. 12 of those 17 were in Canada linked to the snow crab fishery and ship strikes.

Two law suits have been filed against NOAA. One law suit is targeting the lobster fishery. We are working with our Attorney General to write an amicus brief. We would like to do this as a multiple state document.

They are suing under the auspices of jeopardy of the Endangered Species Act. This triggered the National Marine Fisheries Service (NMFS) to conduct a Biological Opinion on whether the proposed activity will jeopardize the continued existence of a listed species. The Biological Opinion work is well underway. If the Service makes a jeopardy determination, NMFS has several options. Emergency action could take place; they could close the lobster fishery, etc.

There is very little linked to Maine gear. There are a lot of pieces to the puzzle though.

The Marine Mammal Protection Act has the Take Reduction Team (TRT), which is about rope.

There is a big push from the environmental community for ropeless fishing. Maine is nowhere near ready for that. To date, other countries that use ropeless fishing aren't using it to protect the whales. They use it to not be seen by their competitors.

NMFS created two working groups to determine feasibility of other measures to reduce the entanglement risk to whales. One group is to look at ropeless fishing and one group is to look at weak vertical lines. DMR has staff on both of these working groups. The recommendations from these two groups will be reported back to the Take Reduction Team. NMFS doesn't have to do what the TRT says.

R. Swenton asked if there were any whales that have been entangled here in Maine. Commissioner Keliher confirmed that there have been entanglements here in Maine.

M. Love said that a lot of problem might be the Canadians. Commissioner Keliher said the measures in Canada are limited. Even their definition of a "take" is different than ours.

Commissioner Keliher said there's a question of whether something is going on with why the calving rates are so low. There were zero calves born this year.

Eels – ASMFC

There is an Addendum coming out soon regarding eels. ASMFC public hearings will be held early this summer. There is potential to increase Maine's elver quota, but it will be an uphill battle for this to pass.

Lobster Reporting – ASMFC

The ASMFC American Lobster Board recently approved Addendum XXVI which will require 100% electronic reporting in 5 years. It will be status quo with 10% reporting for now, except for in 2019,

there will be 10-minute square reporting. It is the Department's expectation that ACCSP and the federal service will pay for this.

There will be a subcommittee for the tracking component. It will be similar to a VMS, but ping more frequently. Those units are further down the road than 5 years.

Resiliency – ASMFC

Last fall, the ASMFC American Lobster Board initiated an Addendum to increase resiliency of the Gulf of Maine/Georges Bank stock. Some of the measures they are looking at would be consistency for v-notches and gauges in the different management areas. There is no emergency to get this done. It will likely be reviewed at a winter meeting.

Herring - ASMFC

In April, the Atlantic Herring Section members from Maine, New Hampshire, and Massachusetts will be setting the effort control measures (Days Out) for the 2018 Area 1A Trimester 2 (June 1 - September 30) fishery.

New England Fishery Management Council

There isn't a lot of activity with the Council right now. The coral discussion has ended. Most of the impact was offshore.

The most comprehensive issue at the Council now is Amendment 8 for the Herring Plan. Bycatch and the creation of the management strategies ensure that there is a biomass of bait out there--a multispecies approach.

Motion to adjourn 2:40 pm.