

DMR Advisory Council Meeting
Department of Marine Resources
90 Blossom Lane, Augusta – Deering Building – Conference Room #106
July 9, 2019

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held on July 9, 2019 at the Deering Building, 90 Blossom Lane, Augusta, Maine. Council members who attended were Togue Brawn, Matt Moretti, Fiona DeKoning, Tracey Sawtelle, Mike Murphy, Ron Trundy, Dan Rogde, and Joe Nickerson (participated via phone). Department staff in attendance included Commissioner Patrick Keliher, Meredith Mendelson, Deirdre Gilbert, Megan Ware, Melissa Smith, Maggie Hunter, Robert Russell, Jeff Nichols, and Amanda Ellis. Others present were Marsden Brewer, Ethel Wilkerson (Manomet), Sebastian Belle, Dan Devereaux, Doug Niven, Nathen Cloutier, and Brandon Bezio.

DMR Advisory Council members not present: Peter Mourmouras, Mike Love, Ray Swenton, Geoff Smith, Chris Weiner, Josh Miller, and Thomas Cassamassa

1. Welcome and Introductions

Introductions were made around the table.

2. Approval of Minutes-March 6, 2019 meeting

Council unanimously approved the March 6, 2019 meeting minutes.

3. Special License Requests-Action (voting)

- Manomet Sea Bass Sampling Project (Ethel Wilkerson)

E. Wilkerson presented the Manomet Special License request, which is for certain exemptions that would allow Manomet to quantify the degree of black sea bass range expansion, describe the ecology of sea bass in its newly expanded range, and assess the impact of range expansion on benthic community structure throughout the coastal waters of the Gulf of Maine.

The DMR Advisory Council voted unanimously to approve the Special License as presented.

- Manomet Quahog Project (Ethel Wilkerson)

E. Wilkerson presented the Manomet Special License request, which is for certain exemptions that would allow the organization to assess the feasibility of quahog aquaculture in Maine.

The DMR Advisory Council voted unanimously to approve the Special License as presented.

- Bigelow Labs

Bigelow Labs did not send a representative to the meeting, so there was no vote on this Special License request.

- Marsden Brewer

M. Brewer presented his Special License request, which is for certain exemptions that would allow M. Brewer to possess, transport, and/or sell aquacultured whole or roe on scallops. The purpose of the exemption is to explore the commercial feasibility of selling aquacultured whole or roe on scallops.

D. Gilbert: Clarified that Marsden currently needs a Special License and a MOU to cover biotoxin monitoring. If DMR finds it is a workable system, DMR would likely change the law so that aquacultured whole or roe-on could be sold with just an MOU, but until then M. Brewer needs a Special License and a MOU.

The DMR Advisory Council voted unanimously to approve the Special License as presented.

- Brandon Bezio

B. Bezio presented the Special License request, which is for certain exemptions that would allow him to deploy and haul five to ten lobster traps during the summer months (June 15-September 30) in the Monhegan Conservation Zone for educational purposes only.

T. Brawn: I am assuming you would want to do up to ten? B. Bezio Yes, up to ten. M. Moretti: You won't keep the lobsters? B. Bezio. No. I won't retain anything. J. Nickerson: Is this going to lead to more businesses doing this and hauling on Sundays? D. Gilbert: Clarified that demonstration license holders are exempted from Sunday closed periods, so they can haul on Sundays. They can't keep anything, but they can show people how lobstering works. The rationale for this exemption is that Maine has a relatively short tourist season and DMR wants people to be able to learn about the lobstering industry. It didn't make sense to not allow them to do these tours on Sunday for educational purposes.

The DMR Advisory Council voted unanimously to approve the Special License as presented.

4. Regulations-Action (voting)

- Chapter 25-Lobster and Crab Fishing (Deirdre Gilbert)

D. Gilbert explained that during the past legislative session Representative Tuell brought forth a bill to address concerns from Zone A Fishermen who fish in the gray zone. The fishermen wanted to expand nighttime lobster fishing within the zone. The Legislature passed a resolve allowing Zone A lobstermen to haul at night within the gray zone during September and October. The resolve also required DMR to define the gray zone in regulation. Therefore, the proposed regulation defines the area in the Bay of Fundy referred to as the "gray zone" that encompasses approximately 210 square miles around Machias Seal Island where there are overlapping claims of sovereignty by the United States and Canada. DMR did not hold a public hearing on the proposal, but it did accept written comments. No comments were received. DMR will report back to the Legislature to let them know how this experience went and the Legislature could pass a law to make this a permanent exemption or they could terminate it after a year.

T. Sawtelle: Does this mean the rule will sunset after a year? D. Gilbert: It's the definition of an area, so the rule does not sunset. M. Murphy: No one uses latitude and longitude anymore, but I guess I am all set with this.

The DMR Advisory Council voted unanimously to approve the Chapter 25 rule-making as presented.

- Chapter 26-Sea urchin 2019-20 Season (Melissa Smith and Maggie Hunter)

M. Smith explained that for the 2019-20 season, DMR presented two options for Zone 1. Option 1 included a daily tote limit of 9 totes and more opportunity days. Option 2 included a daily tote limit of 10 with the same number of opportunity days (20) as previous seasons. The proposed options did not differ for Zone 2. However, there is a reduction in totes for divers, going from 7 totes to 6 totes and there are reductions in opportunity days. In the previous season there were 45 opportunity days with 38 harvest days. Now there are 40 opportunity days with 30 harvest or landing days. For the drag portion of Zone 2 the number of totes is reduced from 7 to 6 and the harvest days are reduced from 38 last season to 30 this season. Public comment from the dive sector was mixed some supported the change, some didn't. There was the most support for Option 1, which is what DMR is advancing for adoption. From the drag sector, all the comments were in opposition to the proposed changes and they were not supported by the industry. M. Hunter explained that the changes are based on feedback received at March and April Sea Urchin Zone Council (SUZC) meetings and survey data. At the SUZC meetings industry members (about 7-9) spoke out (or voted) publicly for the need for a substantial urchin fishery reduction; this corroborated with the survey data DMR had in hand and the even more worrying 2019 survey data DMR has received since those

meetings. Specifically, in Zone 2 the average sea urchin abundance has declined every year since 2014, reaching time series lows in 2018 and 2019.

T. Sawtelle: I would like to say that I am opposed to this and I keep hearing how it's the same fishery between divers and draggers. Yet, divers are coming up with all these figures and not the draggers. Diving and dragging are different. There are many differences between dive and drag fisheries. Draggers wanted to keep with the status quo and we were told there wouldn't be any asks for reductions. There was one diver who spoke up at a meeting and asked for reductions. There were draggers who were opposed to that.

T. Brawn: You are objecting to the process? T. Sawtelle: Yeah. A lot of people go to the season setting meeting and pick the calendar. Then at the next meeting there are hardly any people there and we are thrown this reduction. The divers shouldn't make decisions for draggers.

T. Brawn: As much as people might be opposed to this, the survey indicates that the resource is declining. I think we need to decide as a Council on the comments we received and the information that is presented here. I am going to make a motion to approve.

Motion (M. Murphy; T. Brawn): Motion to approve Chapter 26 rule-making as presented.

Only T. Sawtelle was opposed. Motion passed to approve the Chapter 26 rule-making as presented.

- Chapter 36- Herring 2019 Harvest Rules (Melissa Smith)

M. Smith explained that the rule amends the existing seasonal spawning closures in accordance with the recently approved Addendum II of Amendment 3 to the Interstate Fishery Management Plan for Atlantic herring: the initial closure period is extended from 28 days to 42 days; the default closure date for both the Western Closure and the Massachusetts/New Hampshire Closure has been modified from October 4 to September 23; and, the re-closure protocol may be initiated with a lower percentage of spawning fish present in the population, from 25% to 20%. This rule amends the start date for the mobile Atlantic herring fishery to commence on Sunday, July 14, 2019 and sets harvest parameters for the Atlantic Herring fishery as determined at the Days Out meeting held April 3, 2019. The Days Out Commissioners designated zero landing days for Period 1 (June 2019). The Days Out Commissioners designated four consecutive landing days, beginning at 6:00 p.m. Sunday to 6:00 p.m. Thursday for vessels issued an Atlantic Herring Limited Access Category A Permit for Period 2 (July – August 2019). These vessels are limited to landing 160,000 lbs (4 trucks) weekly). The Days Out Commissioners designated five consecutive landing days, beginning at 6:00 p.m. Sunday to 6:00 p.m. Friday for vessels issued an Atlantic Herring Limited Access Category C Permit. Limited access harvester vessels may transfer Atlantic herring at-sea to other limited access harvester vessels. All harvester vessels are prohibited from at-sea transfers of Atlantic herring to carrier vessels. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). No one attended the public hearing or submitted written comments.

R. Trundy: Is there still no transfer between seiners? M. Smith: For herring you can transfer at sea. There is catcher to catcher transfer assuming both harvesters are federally permitted.

Motion (R. Trundy; M. Murphy): Motion to approve Chapter 36 rule-making as presented.

Motion unanimously passed to approve the Chapter 36 rule-making as presented.

- Chapter 34 Groundfish (Meredith Mendelson)

M. Mendelson explained that this rule making was initiated to be compliant with proposed federal measures. The rule allows harvesters to take or possess one cod per day in state waters. Cod may not be possessed on board a charter, party or recreational fishing vessel from October 1 through April 14 inclusive, and May 1 through September 14 inclusive. For cod, a minimum size limit of 21" (53.3 cm) is established. The rule also implements increased recreational possession limits for haddock from 12 to 15 fish. Finally, seasonal restrictions on recreational haddock possession are reduced, so that haddock may not be possessed on board a recreational

fishing only from March 1 through April 14. However, the federal shutdown meant that the issuance of a final federal rule was delayed. The final federal rule did not include the April cod season. NOAA decided to reject the April Cod season based on the comments they received from anglers and status of the stock. DMR recommends adopting the regulation as proposed including the April season. In the fall, DMR will initiate rule-making to strike the April provision, so it is consistent with the final federal rule.

T. Sawtelle: This only goes to recreational? M. Mendelson: Yes.

Motion (M. Murphy; D. Rogde): Motion to approve Chapter 34 rule-making as presented.

Motion unanimously passed to approve the Chapter 34 rule-making as presented.

5. Upcoming Regulations

Chapter 11: 2019-2020 Scallop Season (Melissa Smith)

M. Smith explained that recommendations for the 2019-2020 scallop season will be discussed at the July 15, 2019 Scallop Advisory Committee meeting. M. Smith also noted that there may be possible changes to Chapter 55 that could affect bait gill nets.

Chapter 10: Clams and Quahogs-New Meadows Lakes (Deirdre Gilbert)

D. Gilbert explained that the winter closure sunset last spring. Kohl Kanwit is doing surveys to determine if the winter closure needs to stay in place. If the determination is made that the winter closure needs to stay in place, it will likely be presented at the November meeting.

F. DeKoning: The weekend closure would stay in place? D. Gilbert: Yes, that never had a sunset.

Chapter 8: Landings (Deirdre Gilbert)

D. Gilbert explained that this summer DMR will be discussing possible changes to the landings chapter. Any landings changes should be presented at the upcoming November meeting, so they are in place for next year. DMR plans on clarifying reporting requirements for herring and menhaden. There is also the potential for improving aquaculture reporting, which will be brought before the DMR Aquaculture Advisory Council.

Chapter 75: Protected Resources (Deirdre Gilbert)

D. Gilbert explained that DMR is exploring a possible Maine only gear mark for 2020. The intent of the unique gear mark is to distinguish Maine gear from gear deployed in other states. P. Keliher further explained that issues around rope and endlines continue to impact conversations about right whale entanglements. Some right whales have been found with red endline marks, which are associated with multiple fisheries beyond Maine. If Maine has its own gear mark, then fishermen can demonstrate that the Maine fleet is not part of the problem. The unique gear mark coupled with other measures will also provide better data for the Maine fleet. If there was a problem, DMR would have much better information and could take more targeted actions. Purple was chosen because after a review of east coast fisheries as it was the only color available.

6. Other Business

- Chapter 2 Update (Deirdre Gilbert)

D. Gilbert explained that DMR received a citizen petition to go to rule-making. When a petition is submitted by 150 or more registers votes of the State, an agency must begin rule-making proceedings. At the end of March DMR received a petition with approximately 189 signatures and undertook rulemaking. DMR held a public hearing on the proposed rule in Augusta on May 22, 2019. DMR received a lot of comments and the hearing lasted about two

hours. DMR also received a lot of written comments on the proposal the as well. The proposed rule was proposing to add an additional criterion, which would require DMR to consider whether there are other locations near a proposed lease site that could accommodate the proposed activities while interfering less with existing and surrounding uses of an area. The petitioners provided this language to be added to the regulation and in addition they requested the proposed rule be applied retroactively, so that it would extend to a pending lease application in Maquoit Bay, and that moratorium on all pending lease applications that are greater than ten acres in size be implemented. DMR considered all the comments we received. After considering and responding to comments, DMR has the authority to decide whether to advance the proposal to rule adoption. If we were advancing the rule, we would put it before the DMR Advisory Council for their vote. We are not bringing it to you to vote today. There are several reasons why we decided not to advance the proposal, which are included in the summary of comments. Essentially, the Legislature has given DMR the criteria it utilizes when evaluating a lease proposal. The regulations flesh out the decision criteria as they exist in statute. DMR did not feel it was appropriate to adopt a new criterion in regulation that is not contemplated in statute. We received conflicting comments on the legality of that. However, setting aside any legal arguments, DMR considered the merits of the proposal and determined that it would not improve the aquaculture leasing process.

The role of the Department is to evaluate the proposed site against the decision criteria provided in statute and further described in regulation, to ensure that the site does not unreasonably interfere with the listed considerations. Should a proposed lease site be determined to unreasonably interfere with the one or more of the decision criteria, the Department may deny the granting of the lease, or grant only that portion of the area that was included in the application that meets the criteria specified in law. Either of these options successfully implements the legislative intent of the statute, that the Department evaluate proposals against criteria but not proactively participate in the process of siting a lease. It is not realistic to expect the Department to evaluate all other potential lease sites in an undefined “vicinity” for several reasons, including but not limited to, the resources that would be required to dive on and develop a site report for every possible alternative, and to assess every other possible alternative location and configuration against the statutory criteria. Further, such an exercise could result in the perverse outcome of the selection of a site that does not unreasonably interfere with any existing uses but is unsuitable for the proposed aquaculture activity. Finally, consideration of alternate lease sites could have impacts on people who previously believed they would not be impacted, thus creating different notice and scoping issues.

We are not advancing the proposal, which makes applying the proposed rule retroactively moot. DMR considered the request to impose a moratorium on any lease applications of greater than 10 acres but does not see a basis to do so. The Legislature has limited the size of any single lease to no more than 100 acres. Leases of greater than 10 acres may be appropriate and suitable in some areas and for certain aquaculture activities, just as leases of less than 10 acres would be required in others. DMR can adequately deal with the size of a lease requested under the current lease decision criteria.

- Patrol Update (Col. Jay Carroll)

Patrol currently has nine vacancies and is short staffed primarily in the Cobscook and Harpswell/Freeport area. There are currently three individuals in the hiring process with more individuals likely being hired in the coming months. Two vacancies were caused by retirement of Colonel Jon Cornish and Major Rene Cloutier. DMR has made some leadership transitions. Robert Beal has been promoted to Major and Troy Dow is now Lieutenant of Division II. Two new vessels have been added to the fleet. One is the Moxie, which is based out of Stonington and the other is the Sargent, which is based out of MDI.

- DMR Updates on Legislative Issues (Deirdre Gilbert)

D. Gilbert briefed DMR AC members on the Legislative session. DMR passed a bill, which creates a new license to be a carrier in the herring and menhaden fisheries. Prior to passing this bill, individuals who were acting in that capacity were instructed to purchase a wholesale seafood dealer license. This really wasn't a good fit for the

activity. The harvester license is to possess fish you have taken, and the dealer license is to purchase fish from a harvester. The carriers really were not doing either of those things. With the expansion of menhaden in Maine, DMR felt the license was necessary to better monitor that season. DMR also passed a bill that addresses aspects of the elver fishery, including penalties for violating the swipe card system. Basically, if harvesters or dealers do not use the swipe card system they can lose their license. There was also general cleanup and DMR specified that Patrol has the authority to seize currency as part of the libel process. There were four bills this past session that attempted to clarify issues related to rockweed court case, which decided that rockweed belongs to the upland owner. None of the legislative remedies passed, so DMR is left with the court decision.

P. Keliher briefed DMR AC members on the outcome of budget negotiations. This year, DMR received nearly everything the agency requested. This means that DMR will now be able to fully fund Marine Patrol without having to rely on the Opportunity Fund, DMR will also be able to make necessary capital improvements to the laboratory in Boothbay Harbor and structures in Lamoine. DMR still needs to shore up some areas including the aquaculture program, but budgets are stable.

- DMR Updates on Federal Issues (Commissioner Keliher)

P. Keliher introduced Megan Ware, who replaced Terry Stockwell as Director of External Affairs. Megan will primarily focus on groundfish and commission work. DMR has six people working nearly fulltime on whale issues. DMR is in the process of hiring a lobbyist in Washington DC to work with Commerce on whale issues. DMR is also reevaluating data associated with entanglements. There is a lot of data to suggest we don't need to go as far as NOAA is suggesting. The council will continue to work on groundfish with additional work on scallops forthcoming. The Commission work is focused on striped bass, which from the Commission's perspective is overfished. It is likely there will be a reduction coastwide. Over 100 ppl have declared into the menhaden fishery, which has created a bigger challenge than we were expecting. The fleet caught the 2.4 million and an additional million in overage in about a week and a half. We are delaying the opening of the episodic to this Monday, because freezers and coolers are full. We've tried to slow it down. Determinations will be made about the opening of the herring fishery soon.

R. Trundy: What's the deal with carp? P. Keliher: We allow carp from Kentucky Lake, so we have a small amount coming in from that area. The focus right now is on carp from the Illinois River. We've broadly said no to carp from the Illinois, because we have had one suspect test. They are being tested right now at a time of year when you wouldn't expect to see VHSV. We may entertain a small pilot project to see if we can put testing protocols in place to see if that area could be opened. If we do see anything it would happen towards fall and at a very low level.

Motion (M. Murphy and D. Rogde): Motion to adjourn.

Motion unanimously passes to adjourn at 2:30pm