

**DMR Advisory Council Meeting
Department of Marine Resources
32 Blossom Lane, Augusta – Marquardt Building – Conference Room#118
August 14, 2018**

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held on August 14, 2018 at the Marquardt Building, 32 Blossom Lane, Augusta, Maine. Council members who attended were Lewis Pinkham, Matt Moretti, Mike Murphy, Togue Brawn, Peter Mourmouras, Tracey Sawtelle, Ron Trundy, Joe Nickerson, Mike Love and Ray Swenton. Department staff in attendance included Commissioner Patrick Keliher, Major Rene Cloutier, Deirdre Gilbert, Marcy Nelson, Kohl Kanwit, Melissa Smith and Amanda Ellis. Others present were: Andrea Maker, and Heather Cronin (GMRI).

DMR Advisory Council members not present: Thomas Casamassa, Geoffrey Smith, Chris Weiner, Josh Miller, and Dan Rogde

1. Welcome and Introductions (Lewis Pinkham)

Introductions were made around the table.

2. Approval of Minutes – March 9, 2018 Meeting Minutes

Motion: (T. Brawn and J. Nickerson) Motion to approve the March 9, 2018 meeting minutes.
Motion unanimously passed to approve the March 9, 2018 meeting minutes.

3. Regulations-Action (voting)

- Chapter 24-Importation of Live Marine Organisms (Marcy Nelson)

M. Nelson presented the proposed rule-making for Chapter 24. It amends Chapter 24 to make clarifying changes, including improving and creating definitions, using consistent terminology, and providing updates throughout the chapter. The rule-making also allows the Commissioner, in consultation with the Aquatic Animal Health Technical Committee (AAHTC), to issue permits to an approved quarantine facility from facilities that do not otherwise meet the regulation requirements, under certain limited circumstances. Transfer from a quarantine facility would be permitted only if post-import testing provides satisfactory evidence of freedom from pathogens of regulatory concern for which evidence of disease freedom of the import was not satisfied. The proposed rule allows for consideration of evidence other than direct testing of lots to provide evidence of disease freedom from Ceratomyxosis, Whirling disease, and PKD if importation will be only in the form of embryos that have been iodine disinfected before and immediately after import, prior to the time of introduction to the waters of the receiving facility.

M. Moretti asked whether every time there is an import, would it need to go to the AAHTC? M. Nelson explained that if it did not meet the requirements of Chapter 24, DMR could consider allowing the importation under quarantine, but it would need to go through the AAHTC.

T. Brawn asked if the AAHTC exists because DMR no longer has a pathologist? M. Nelson answered that the AAHTC existed even when DMR had a pathologist. They are convened when their expertise is needed, often as a conference call. M. Moretti asked if documents from the AAHTC are public records. M. Nelson said they are. M. Moretti asked if the AAHTC provided any input on the proposed rule. M. Nelson said they were notified of the proposed rule but no members put comments on the record. Some members did contact M. Nelson to say that the proposed changes looked good.

Motion: (T. Brawn and R. Trundy) Motion to approve the Chapter 24 rule-making as presented.
Motion unanimously passed to approve the Chapter 24 rule-making as presented.

- Chapter 7-Requirements for Municipalities having Shellfish Conservation Programs (Kohl Kanwit)

K. Kanwit presented the proposed changes to Chapter 7. This rule-making clarifies the existing requirements for municipalities having shellfish conservation programs by reorganizing sections to be more understandable and improving the wording of the regulation throughout the chapter. It also provides greater consistency throughout the chapter with regard to the establishment of various deadlines, using “days” throughout rather than “business days”. Finally, it amends the components of municipal shellfish management plans to be consistent with what the law allows.

R. Trundy said that he has heard from individuals who were concerned about the impacts that these changes would have on costs for the towns. K. Kanwit explained that there was confusion between what was proposed in this rule-making, and changes that were made in 2014. This current proposed rule-making does not have impact on costs for towns. L. Pinkham said that he had gone over this rule-making with individuals who had concerns and there were no issues. It helps to straighten out confusion over the issuance of licenses.

Motion: (R. Trundy and R. Swenton) Motion to approve the Chapter 7 rule-making as presented.
Motion unanimously passed to approve the Chapter 7 rule-making as presented.

- Chapter 14-Oysters (Kohl Kanwit)

K. Kanwit presented the proposed changes to Chapter 14. This rule-making creates a minimum size (2.5 inches) for American oysters, with a 10% tolerance. An exception is provided for aquaculturists who take or possess undersize oysters from their lease or license sites. The proposed rule also establishes a 10% tolerance for European oysters, which already have a minimum size of 3 inches.

This proposal was advanced by the Shellfish Advisory Council. R. Swenton was concerned that the regulation was not sufficiently clear that aquaculturists are not allowed to take oysters that are under the minimum size that don't come from their lease area or license site. The proposal was tabled until Patrol could be consulted. Major Cloutier indicated he was comfortable that it was clear that the exemption only applied to oysters from the lease or license site.

Motion: (R. Swenton and T. Sawtelle) Motion to approve the Chapter 14 rule-making as presented.
Motion unanimously passed to approve the Chapter 14 rule-making as presented.

- Chapter 94-Sanitary Control of Molluscan Shellfish (Kohl Kanwit)

K. Kanwit presented the proposal for a new chapter (94) of regulation. The rulemaking repeals certain existing chapters of regulation pertaining to the sanitary control of molluscan shellfish (15, 16, 17, 18, 19, 20, 21, and 23) and replaces them with a single chapter (94) that adopts the National Shellfish Sanitation Program Model Ordinance (NSSP MO) by reference. Existing Department requirements for the retail trade and various permits that are not currently included in the NSSP MO, have been incorporated in this proposed chapter. Some of these existing requirements have been modified to provide technical clarity.

The proposed rule had included repealing Chapter 9, but based on concerns from Marine Patrol, that Chapter has been retained. R. Swenton asked where the shellstock time temperature controls could be found. The link to the ISSC website is provided in the regulation.

Motion: (T. Brawn and R. Trundy) Motion to approve the Chapter 94 rule-making as presented.
Motion unanimously passed to approve the Chapter 94 rule-making as presented.

- Chapter 25-Lobster Tail Weights (Deirdre Gilbert)

D. Gilbert presented the proposed changes to Chapter 25. The rulemaking provides minimum (2.7 oz) and maximum (14 oz) weights for legal lobster tails in the shell for sale in Maine. Previously, the only measurement provided was the legal length of tail meat that had been removed from the shell. Providing a weight for tails in the shell ensures that all retail and wholesale establishments are buying and selling only tails that are from lobsters that are of legal size in Maine.

This rulemaking was initiated based on questions Patrol had received from retail establishments. DMR held meetings with the lobster dealers and processors to determine appropriate weights. No comments were received on the proposed rule.

Motion: (T. Brawn and R. Trundy) Motion to approve the Chapter 25 rule-making as presented.
Motion unanimously passed to approve the Chapter 25 rule-making as presented.

- Chapter 26-Sea Urchins (Melissa Smith)

M. Smith presented the proposed changes to Chapter 26. The regulation establishes open harvest days for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 for the 2018-2019 season. For Zone 1, 20-day seasons are established for divers, trappers, rakers and draggers in 2018-2019, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2017-2018 season. For Zone 2, 45-day seasons are established for divers, trappers, rakers and draggers in 2018-2019, from which harvesters may only fish up to 38 days of their choosing, the same number of days allowed during the 2017-2018 season. For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 15-day season is established for Zone 2 divers, trappers, rakers and draggers in 2018-2019. This regulation also modifies the spatial closure of Cat Ledges Area and removes the sunset provision. The regulation clarifies the daily reporting requirement and substitutes the term "reporting device" for "transaction card" to allow for the use of more inexpensive technologies should they become available.

Based on comments received during the public hearing, the proposed rule was modified to amend the boundaries of the Cat Ledges closure.

Motion: (M. Murphy and R. Swenton) Motion to approve the Chapter 26 rule-making as presented.
Motion unanimously passed (one abstention) to approve the Chapter 26 rule-making as presented.

- Chapter 34.07-Atlantic Halibut (Amanda Ellis)

A. Ellis presented the proposed changes to Chapter 34. In order to remain within the State Waters Sub Annual Catch Limit, and to prevent the Allowable Biological Catch from being exceeded and Accountability Measures being triggered, the rule reduces catch in the state waters halibut fishery by the following measures: 1) reducing the length of the state waters halibut season by ten days at each end of the season (resulting in a season of May 11-June 20); 2) reducing the number of hooks from 450 to 250; and 3) imposing a prohibition on possession of halibut by those license holders who have been issued state commercial halibut tags when operating seaward of the territorial waters boundary. These limitations were adopted for the 2018 season through an emergency rule-making effective April 23, 2018.

Motion: (J. Nickerson and T. Brawn) Motion to approve the Chapter 34 rule-making as presented.
Motion unanimously passed to approve the Chapter 34 rule-making as presented.

- Chapter 40-Smelt Regulations (Deirdre Gilbert)

D. Gilbert presented the proposed changes to Chapter 40. The rule amends the smelt regulations for Zone One (1), which is the area from the New Hampshire border to Owl's Head Light. The rule allows

individuals to fish for smelt by hook and line between October 1 and December 31, or by hook and line through the ice when ice is present. Prior to this rule change, the taking of smelt in Zone One (1) was allowed only by hook and line through the ice. The existing four-quart limit applies.

Motion: (T. Brawn and T. Sawtelle) Motion to approve the Chapter 40 rule-making as presented.
Motion unanimously passed (one abstention) to approve the Chapter 40 rule-making as presented.

4. Upcoming Regulations:

The Council was briefed on the following proposed rule-makings that are likely to come before the DMR AC at either their November 2018 meeting, or March 2019 meeting:

- Chapter 2 AQ Leasing Regulations: updates for consistency with the statute
- Chapter 11 Scallop Season: annual season setting regulation
- Chapter 37 Brown Trout Maximum Length: consistency with
- Chapter 42 Striped Bass
- Chapter 110 Marine Harvesting Demonstration License
- Chapter 115 Recreational Harvest during Vibrio Control Months
- Chapter TBD Spat Collection License

5. Special Licenses

The Council considered a request by Jason Jamieson to allow the take of lobster by scuba diving under his marine demonstration license. All lobsters will be released at the same location where they were collected. The Council expressed concern about demonstrating a nontraditional method of take. D. Gilbert explained that others have been permitted to do so through a Special License (e.g. Ed Monet).

Motion: (T. Brawn and M. Murphy) Motion to approve the Special License for J. Jamieson, as long as it is clear that no lobsters may be landed.
Motion unanimously passed.

The Council considered a request from the Gulf of Maine Research Institute for their "Maximum Retention" project.

Motion: (M. Moretti and R. Swenton) Motion to approve the Special License for GMRI.
Motion unanimously passed.

6. Advisory Council Officers

This is the last meeting for L. Pinkham, who has finished his term on the Shellfish Advisory Council. M. Moretti nominated T. Brawn as interim chair. R. Swenton seconded, and the motion unanimously passed. A nominating committee was formed of M. Murphy, T. Brawn and M. Moretti.

7. Patrol update

Colonel Cornish provided the Patrol update. He noted that there are currently a lot of young officers. Last year at this time there were 7 openings, today there are only 2. Currently, the vacancies are to the east. There have been several good cases recently, including short lobster cases, striped bass, and several halibut cases. In general, activity has been pushed more and more offshore.

Patrol is currently in the process of obtaining 2 new boats. The Moxie is a 25 ft lobster style vessel designed to work gear inshore, and is going to Stonington where it will be run by two young officers. There is another new boat being built and will be placed where it is most needed. It is being built by Wesmac and anticipated to be done in December. The Challenge has been sold.

8. Federal updates

Commissioner Keliher provided the update on federal issues. ASMFC met last week and much of the focus was on elvers. Maine did not get an increase in the elver quota, due to the illegal activity last season. Maine did get approved for 200 lbs of aquaculture quota for Sara Rademaker.

For menhaden, VA is out of compliance, but hasn't been voted out of compliance yet. They have the majority (80%) of the menhaden quota.

The Council meeting will be held in September and the focus will be on herring. The 2018 harvest level has been reduced to the 2017 catch level of 52,000 mt, contingent on approval of the benchmark and peer review. GARFO will come out with a rule lower than the motion Commissioner Keliher made at council. They will lower it so that there is less than 50% chance we will be overfishing.

A8 will be determined in September – the biggest piece is the harvest control rule. Now that we need to choose final action, we just got the new stock assessment. There is a significant reduction expected in 2019 – it will cause a bait shortage. This will create pressure to review new baits.

R. Trundy said the Stonington co-op is down 1/3 on the herring they have used, because of pogies. There are schools of menhaden everywhere around Stonington. People haven't seen that many for 25 years. They seem to be working east still.

Commissioner Keliher thanked Lewis Pinkham for all his work on the Council and particularly as Chair.

Motion: (R. Swenton and T. Brawn) Motion to adjourn.
Motion unanimously passed.