



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES  
21 STATE HOUSE STATION  
AUGUSTA, MAINE  
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PATRICK C. KELIHER  
COMMISSIONER

**DMR Advisory Council Meeting Minutes  
March 9, 2020  
1:00 p.m.**

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held on March 9, 2020 at the Marquardt Building, 32 Blossom Lane, Augusta, Maine. Council members who attended were Matt Moretti, Ron Trundy, Mike Murphy, Togue Brawn, Geoff Smith, Lewis Pinkham, Ray Swenton, and Chris Weiner. DMR staff in attendance were Commissioner Patrick Keliher, Deirdre Gilbert, Melissa Smith, Jeff Nichols, Megan Ware, Major Rob Beal, Rob Watts, and Amanda Ellis. Others present were Peter Fallon, Sebastian Belle, Dianne Tilton, Brian Beal, and Robbie Begin.

**1. Welcome and Introductions**

Introductions were made around the table.

**2. Upcoming Regulations**

**Chapter 75-Protected Resources, Exemption to Gear Marking (Deirdre Gilbert)**

D. Gilbert explained that in November 2019, the DMR AC had approved new gear marking requirements for the lobster fishery. DMR then conducted education and outreach with industry about the implementation of the new requirements, which are required to be in place by September 1, 2020. In conducting outreach, DMR received a lot of feedback from lobstermen who fish in shallow waters or rivers. These fishermen felt that the new marking requirements were too onerous given the depths where their gear is deployed and the unlikelihood of encountering right whales at such depths. D. Gilbert explained that DMR is currently processing a rule change, which proposes to create an exception to current requirements to mark the buoy lines for trap/pot gear with either three or four purple marks, depending on where the gear is fished. Buoy lines of 100 feet or less in length would be required to have only two purple marks, one of 36 inches in the top two fathoms of the line, and one of 12 inches at the bottom of the line. D. Gilbert noted that the comment period on the proposed regulation ends on March 20, 2020. Once the proposed rule is finalized for adoption, DMR AC members will need to vote on the proposal via ballot.

**Chapter 26-2020-21 Urchin Season (Melissa Smith)**

M. Smith explained that data from the previous season will be compiled by DMR and then shared with the Sea Urchin Zone Council for their consideration in developing the 2021-21 season. Over the last few years, there have been some comments about closures in Cobscook Bay and Goose Island. M. Smith indicated the Sea Urchin Zone Council may take up the possibility of those closures at their next meeting.

**Chapter 41-Menhaden (Melissa Smith)**

M. Smith explained that in May 2020 there will be an Atlantic States Marine Fisheries Commission meeting and there may be information from that meeting that requires DMR's regulations to be updated.

## **Chapter XX – Land Based Aquaculture Regulations (Deirdre Gilbert)**

D. Gilbert explained that DMR previously had permitting authority over land-based aquaculture, but that a few years ago the permitting authority was transferred to the Maine Department of Agriculture, Conservation, and Forestry (DACF), who started working on regulations. However, the authority was recently transferred back to DMR, who will develop a new chapter of regulations related to land-based aquaculture operations. DMR will need a new chapter of regulation for land-based aquaculture operations. The regulations will layout the fees and how the permits will be reviewed. DMR is reviewing the draft regulations initially started by DACF. DMR hopes to have something prepared for July or November.

M. Moretti: What's the plan for outreach on this before you develop the rules?

D. Gilbert: Regulated groups are not asked to review proposed rules prior to their development. The rule-making process is intended to collect industry feedback in a public and transparent way. We're balancing that goal with also getting the information we need to create an informed proposal.

M. Moretti: It's a new industry, so I would just advocate for as much collaboration as possible on the regulations.

D. Gilbert: It's DMR's intention to set-up a meeting to gather more information.

L. Pinkham: The rules you are using now are the ones you had before it went to DACF?

D. Gilbert: No, DMR never had regulations developed, because historically this was a very minor activity. DMR currently has a draft of the rules that DACF developed and is reviewing those.

G. Smith: Does freshwater aquaculture in Millinocket fall under DMR, or would it go to the Department of Environmental Protection?

P. Keliher: If it discharges into fresh water that would go to Maine Inland Fisheries and Wildlife (IF&W).

D. Gilbert: DMR has land-based marine authority and IF&W has fresh water authority.

### **3. Approval of Minutes-Action (voting)**

Motion (L. Pinkham; R. Swenton): Motion to approve minutes from November 9, 2019 meeting.

*Motion unanimously passed to approve the November 9, 2019 meeting minutes.*

### **4. Special License Requests-Action (voting)**

#### **Downeast Institute, Clam Recruitment Research (Brian Beal)**

B. Beal explained that wooden recruitment boxes (1'x2') will be positioned on two different flats in nine communities. The goal of the project is to monitor the impacts of predation on clam recruitment in coastal regions throughout Maine. DEI will need an exemption from laws and regulations governing the minimum size of clams and closed areas due to pollution and toxins.

T. Brawn: How do you determine where you put them?

B. Beal: In this case we would put them in the mid and low tide area, so the location is not a factor that varies between each site.

R. Swenton: Where does your data go?

B. Beal: We publish the data and share the data at the Fishermen's Forum.

L. Pinkham: Brian usually updates the Shellfish Advisory Council on these results.

M. Moretti: Where do the clams go after they get counted?

B. Beal: It depends. Sometimes the clams are frozen, and other times they are overwintered by communities, which is covered by other permits.

Motion (L. Pinkham; M. Murphy): Motion to approve the Special License request.

*Motion unanimously passed to approve the Special License request.*

### **Downeast Institute, Artic Surf Clam Request (Brian Beal)**

B. Beal explained that this request would allow DEI to culture Artic surf clams on Limited Purpose Aquaculture (LPA) licenses issued to DEI by DMR for research purposes only. The goal is to assess the feasibility of grow-out on an aquaculture site.

T. Brawn: Surf clams already exist in Maine waters, they aren't invasive, correct?

B. Beal: Yes, they are not an invasive species. They're in the Gulf of Maine and have historically been harvested in Eastport.

T. Brawn: With warming waters do you think they will be able to grow here?

B. Beal: Yes.

Motion (L. Pinkham; M. Moretti): Motion to approve the Special License request.

*Motion unanimously passed to approve the Special License request.*

### **Pine Point Oyster (Nate Perry)**

A. Ellis presented this request as N. Perry was unable to attend the meeting. A. Ellis explained that N. Perry is seeking an exemption from Chapter 2.90(5)(C), so that he can take whole sea scallops from his Limited Purpose Aquaculture (LPA) licenses for biotoxin research. The goal of the research, conducted in partnership with UMaine Sea Grant, is to better understand biotoxin retention in scallops. The exemption would be for research purposes only, not commercial sale.

Motion (L. Pinkham; M. Moretti): Motion to approve the Special License request.

*Motion unanimously passed to approve the Special License request.*

### **Herring Set Aside (David Bethoney)**

D. Bethoney explained that this Special License is a renewal request, which would continue to allow for the landing of Atlantic herring, which is part of the Research Set Aside quota in accordance with federal exempted fishing permit for the project "Maintaining and expanding bycatch avoidance strategies in the mid-water trawl Atlantic herring fishery." (Project #19-HERR-01). The results of the project, such as catch rates and the size and maturity of river herring caught near state waters, could help marine resource management decisions regarding interactions between the Atlantic herring fishery and river herring. A maximum of 348 metric tons of Atlantic herring may be landed. The vessels will use standard paired or single mid-water trawl gear.

P. Keliher: Is this the complete list of vessels that will be landing?

D. Bethoney: These are the vessels that have been allocated RSA.

M. Smith: If landings are occurring in Maine, we do have a 24-hour reporting period. I would suggest that when vessels are landing RSA pounds, they clarify that in their reporting. Also, please designate which vessels are more likely to land in Maine.

D. Bethoney: I will make sure vessels know that and will call into Marine Patrol. The Providian, Starlight, or Sunlight are the vessels we anticipate landing in Maine, either in Portland or Rockland.

G. Smith: Where will fishing occur?

D. Bethoney: For the Starlight and Sunlight it could happen in state or federal waters. Providian will be in offshore.

L. Pinkham: Should this license be conditioned to address some of things mentioned?

P. Keliher: Not at this time.

Motion (L. Pinkham; R. Trundy): Motion to approve the Special License request.

*Motion unanimously passed to approve the Special License request.*

## 5. Regulations-Action (voting)

### Chapter 8-Landings, Aquaculture Reporting (Deirdre Gilbert)

D. Gilbert explained that effective January 1, 2021, this rule will create a monthly reporting requirement for persons holding an aquaculture license and growing any species other than finfish on an aquaculture lease or license site. Currently these individuals report annually to the DMR Aquaculture Program. This rule changes this reporting requirement to a standardized monthly report to the DMR Landings Program, consistent with harvester reporting in other Maine fisheries. The data elements for the monthly reporting requirement are specified in the rule. D. Gilbert noted that based on the comments received at public hearings and during the written comment period, DMR made several changes to what was originally proposed. These changes included removing crew and gear from the reporting requirements, changed the trip level reporting to one monthly report, and delayed the implementation of the rule to 2021. Finfish reporting is more extensive, so that will stay with the Aquaculture Division.

M. Moretti: We have crew that goes out and does the work and they have harvester licenses, but they are not the lease holder. Based on what I read here, they will need to report.

D. Gilbert: Those persons would have to report that they did not fish, because they don't have a lease. If they don't have an LPA or lease, they should not be reporting. Currently, there isn't a linkage between the harvest license holder and the holder of an LPA or lease site.

R. Swenton: Should we table this until our next meeting to address this?

D. Gilbert: No, because there is nothing in the rule that needs to change to address these issues.

M. Moretti: What's the rationale for including the landing number of the dealer the product is being sold to?

R. Watts: Part of it has to do with confidentiality in reporting, or if we ever had an issue with product, we could better track it by knowing the dealer it went to.

M. Moretti: I am assuming there is a protocol for recall, is that not adequate?

P. Keliher: That's managed by Public Health.

M. Moretti: A lot of this stuff seems duplicative. Including the dealer number, what format would you want that?

R. Watts: You could report electronically through LEEDS or on paper. It would be a simple tally. For example, how many pounds you sold to each dealer.

M. Moretti: So now it's quantity per dealer, not just a list?

R. Watts: Yes.

M. Moretti: But it doesn't say that specifically in the regulation. This is going to be a lot of paperwork.

D. Gilbert: What we're struggling with is we believe we are collecting that information from annual reports.

M. Moretti: Well, you're not getting dealer information from the annual reports, but you should get information from dealers.

D. Gilbert: We are trying to match up that information, so we are not missing anything. In the commercial fisheries, we are making harvesters report the dealer information and then we look at the dealer information to verify.

M. Moretti: What if you have multiple species on a site?

R. Watts: We track by license, not species. If you didn't do anything that month, that's when you report no fishing. The only time you do a negative report is when you don't harvest anything.

M. Moretti: I do think this is going to be a lot of work, because we have six sites.

R. Watts: The problem we have is that we don't have harvester data, and we can't provide people with the information they need.

D. Gilbert: We do appreciate that this is more work for the industry, but this sector is under a lot of scrutiny. This is the exclusive use of a public resource. We believe this will be in the best interest of the industry, because there will be better data to demonstrate value.

M. Moretti: I support gathering more data and getting more information on our sector.

R. Watts: We are delaying implementation to give time to share information.

Motion (L. Pinkham; R. Swenton): Motion to approve this regulation.

*Motion unanimously passed to approve the Chapter 8 Landings, Aquaculture Reporting regulation.*

### **Chapter 32-Elver Season (Deirdre Gilbert)**

D. Gilbert explained that this proposed rulemaking establishes the elver quota allocations for the 2020 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. 2020 allocations for individuals who held a license in 2019 will be the same as their 2019 allocations, plus any quota associated with licenses not renewed in 2019, or licenses suspended for the duration of the 2020 season, in excess of that which is allocated to new license holders, which will be distributed evenly to all existing license holders. Finally, the proposed rule establishes a \$500 fee for the inspection of elver export events by Maine Marine Patrol.

T. Brawn: So, if someone couldn't attend the dealer meeting, would you make other arrangements?

D. Gilbert: Yes. However, we didn't feel a meeting was necessary for this season.

L. Pinkham: If they don't pay, what happens? Is that a law violation?

D. Gilbert: It could be civil violation, if they don't pay.

P. Keliher: And we wouldn't authorize the export.

Motion (L. Pinkham; M. Murphy): Motion to approve this regulation.

*Motion unanimously passed to approve the Chapter 32 regulation.*

### **Chapter 30-River Herring (Deirdre Gilbert)**

D. Gilbert explained that this rule adds an exemption to the existing prohibition on the taking, possession, harvest and sale of river herring to include three ponds that were approved for a pilot project by the Atlantic States Marine Fisheries Commission Shad and River Herring Management Board in October 2019. Specific harvest limitations will be established in the authorization provided by the Commissioner. The exemption will expire in December 2025, because within a five-year period, the municipal ponds selected for inclusion must meet the established sustainability criteria for harvest to continue under the sustainable fisheries management plan.

Motion (L. Pinkham; R. Trundy): Motion to approve this regulation.

*Motion unanimously passed to approve the Chapter 30 regulation.*

### **Chapter 40-Smelt Regulations (Deirdre Gilbert)**

D. Gilbert explained that this rule is a reorganization of daily limits in the smelt regulation, for improved clarity regarding daily limits in specific zones during different times of year. The rule does not change any existing limits. The rule also removes a repealed statutory reference.

Motion (L. Pinkham; M. Murphy): Motion to approve this regulation.

*Motion unanimously passed to approve the Chapter 40 regulation.*

### **Chapter 8-Bait (Melissa Smith)**

M. Smith explained that this rule updates reporting requirements for herring and menhaden. The Primary Buyer Permit reporting elements for herring are expanded and are required weekly. The Herring Harvester Permit

reporting requirements are expanded and are required daily. The Menhaden Harvester Permit is implemented, and reporting is required daily during the quota fisheries and weekly during the small-scale fishery.

Motion (L. Pinkham; C. Weiner): Motion to approve this regulation.  
*Motion unanimously passed to approve the Chapter 8 regulation.*

### **Chapter 36-Atlantic Herring (Melissa Smith)**

M. Smith explained that this regulation reorganizes the Atlantic herring fishery allocation into trimesters, as previously used. Updated definitions for landing, and carrier vessel are enclosed. The Fixed Gear Set Aside has been reduced from 39 mt to 30 mt to comply with 2020 specifications.

C. Weiner: There's an addendum going on that will hopefully be out by May. What will happen then?

M. Smith: Addendum III speaks to adding more tools in the tool box for allocations to be divvied up through the season. This may not be the final time you will see this document. There will be a days-out meeting that sets the information related to harvest. DMR will likely need to do an emergency action to maintain compliance with the federal process and then do a concurrent regular rule-making.

Motion (R. Swenton; L. Pinkham): Motion to approve this regulation.  
*Motion unanimously passed to approve the Chapter 36 regulation.*

### **Chapter 41-Menhaden 2020 Season (Melissa Smith)**

M. Smith explained that this rulemaking amends the reporting of menhaden landings; reporting through an approved electronic option will be required. State and episodic fisheries remain at daily reporting. The Incidental and Small-Scale fishery is amended to a weekly reporting requirement. This rulemaking introduces a personal use bait permit that will allow harvesters to use a bait gillnet to take three barrels of menhaden daily, separate from all other menhaden fishery activity. The harvest schedule has been modified; open harvest days are Monday, Tuesday, Thursday, and Friday during the quota allocation fishery programs. Harvester vessels may make multiple transfers of menhaden to no more than two carrier vessels per calendar day. Carrier vessels are defined and effort restrictions for their activity have been described. Carrier vessels are prohibited from making transfers at sea. Carrier vessels are prohibited from participating in the Incidental and Small-Scale fishery.

R. Trundy: How much for the personal use exemption and where did that number come from?

M. Smith: It's 3 barrels per day, 7 days a week. The limit was based on landings data and feedback from industry. This is our starting point for the personal use exemption.

G. Smith: What was the concern raised by selling to multiple carriers?

M. Smith: As activity was increasing, if you weren't the harvester, we struggled with what license you needed. It was primarily related to overharvesting, wanting a better way to license, and over capacity.

Motion (L. Pinkham; R. Trundy): Motion to approve this regulation.  
*Motion unanimously passed to approve the Chapter 41 regulation.*

### **Chapter 55-Gear Restrictions (Melissa Smith)**

M. Smith explained that this rule strikes the requirement to seek a permit authorized by the Commissioner of Marine Resources to use purse seine gear targeting Atlantic menhaden in the Damariscotta and Saint George Rivers.

Motion (R. Swenton; C. Weiner): Motion to approve this regulation.  
*Motion unanimously passed to approve the Chapter 55 regulation.*

## **Chapter 42-Striped Bass (Megan Ware)**

M. Ware explained that it is currently unlawful for any person to take or possess striped bass which are less than 28 inches in total length. This rule modifies the existing regulatory requirement by adding a maximum size limit, such that it is also unlawful for any person to take or possess striped bass which are 35 inches in total length or longer. This rule is needed to come into compliance with the Atlantic States Marine Fisheries Commission's Addendum VI to Amendment 6 to the Atlantic Striped Bass Interstate Fishery Management Plan, which is intended to address the overfishing status of the stock.

G. Smith is the reduction based on numbers or pounds?

M. Ware: I believe it is based on numbers.

Motion (L. Pinkham; C. Weiner): Motion to approve this regulation.

*Motion unanimously passed to approve the Chapter 55 regulation.*

## **6. Other Business**

### **Patrol Update (Major Robert Beal)**

R. Beal noted that Marine Patrol has been conducting outreach about the lobster gear marking requirements. Patrol is working to fill staffing vacancies and there are currently four officers at the Maine Criminal Justice Academy. Due to an electrical issue one of the 35s burned at the dock in Boothbay. Patrol is looking to have a new vessel be built, possibly a 42-foot Calvin and is looking to purchase a couple of 25s.

C. Weiner: Are vacancies related to salary issues?

R. Beal: Not so much salary but being on-call. We are trying to address that through labor management discussions. We're trying to find creative ways to address these issues.

L. Pinkham: That issue is not exclusive to Marine Patrol.

### **DMR Updates on Legislative Issues (Deirdre Gilbert)**

D. Gilbert explained that on March 17th the legislature will hold confirmation hearings for some DMR AC seats. There are 8 members who are beyond the length of their term, but who have continued to serve. T. Cassamassa will be replaced by Dan Harrington; C. Weiner will be replaced by Robbie Begin; T. Brawn has served one term and will continue to serve another; M. Love will be replaced by Dana Hammond; R. Swenton has completed a term, but due to a change in status is no longer eligible for reappointment. Therefore, he will be replaced by Bo Marsh; and M. Murphy will be replaced by Curtis Haycock. J. Nickerson has passed away, so Abden Simmons will take his seat; D. Rodge did not want to serve another term, so Mike Danforth has agreed to take Dan's seat.

D. Gilbert noted that Legislature has mostly completed their work on bills. The Marine Debris bill is now a report back to DMR regarding the federal marine debris action plan. A bill passed that makes non-commercial lobster, crab, and scallop licenses available for free to disabled veterans. There was also a Department bill to change the composition of the DMR Shellfish Advisory Council using recommendations from the Shellfish Advisory Council. Most of those recommendations were accepted as part of the bill.

The menhaden license was enacted, which is separate from the commercial anadromous and pelagic license. Under the menhaden license someone will then be able to choose a commercial or non-commercial type of license. A technical changes bill clarified language around how DMR will determine if someone has exceeded their elver quota. LD28 was a carry over from last session and it would have allowed anyone who was on a lobster license waiting list for more than 10 years to automatically get their license. That bill did not pass, but the

committee asked DMR to report back on the topic next year. An aquaculture bill passed with some minor amendments. The most significant change from the aquaculture bill pertains to the LPA program. The holder of an LPA would be required to provide direct supervision to their helpers with some limited exceptions that the Commissioner can grant. That change wouldn't go into effect until 2023 to give people time to starting transitioning to leases, if necessary.

Outside of the committee there is a bill in front of judiciary that would make significant changes to tribal provisions around hunting and fishing on and off tribal lands. DMR has been participating in those discussions. The supplemental budget has some provisions for aquaculture funding.

There are two bills that Senator Jackson has put titles in for, which pertain to the lobster industry. It's very late in the session, so it's not clear if those bills will be printed. P. Keliher indicated that one of those bills may pertain to the labeling of tubed lobsters that come into the state.

#### **DMR Updates on Federal Issues (Commissioner Keliher)**

P. Keliher explained that DMR is waiting for the new lobster assessment to be completed, but that has been delayed due to whales. DMR has spent time in Washington working with the congressional delegation on the whale issue. The state has submitted a proposal and it was accepted and given high marks. However, it was also indicated that the proposal doesn't go far enough. DMR intends to hold seven more zone council meetings in April to get feedback on what could work at an equivalent level. Work will also begin on federal appropriations.

#### **Update on Scallop Rotational Management (Melissa Smith)**

M. Smith explained that DMR just finished season 8 of a 10-season management plan in Zone 2. There are two seasons left with the final season being 2021-22. As the end of the 10-year management plan approaches, DMR is starting to have conversations with industry about moving forward. Industry has a lot of different ideas both regionally and locally. In November DMR hired a new scallop biologist, who will continue to assess the data. The information and preliminary results will be presented to industry for their consideration and input. More information will be provided at the Scallop Advisory Council.

M. Murphy: So, you have a feeling that there might not be rotational management anymore?

M. Smith: No. I think there will be rotational management, but it might look different.

Motion (L. Pinkham; R. Swenton): Motion to adjourn the meeting.

*Motion unanimously passed to adjourn the meeting at 3:34 p.m.*