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GOVERNOR

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

PATRICK C. KELIHER
COMMISSIONER

DMR ADVISORY COUNCIL MEETING
July 29, 2021
3:00 p.m.
Microsoft Teams

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held remotely, via Microsoft Teams, at 3:00 p.m. on July 29, 2021. Council members who attended were: Togue Brawn, Matt Moretti, Lewis Pinkham, Josh Miller, Tracey Sawtelle, James Arsenault, Curtis Haycock, Jocelyn Runnebaum, Abden Simmons, Mike Danforth, Boe Marsh, and Robbie Begin. Department staff in attendance were: Commissioner Patrick Keliher, Major Robert Beal, Megan Ware, Deirdre Gilbert, Jeff Nichols, Marcy Nelson, Melissa Smith, Erin Wilkinson, and Amanda Ellis. Others who attended were Nichole Price, Stewart Ryan, Virginia Olsen, Aaron [last name not provided], Larry Grimard, Bob Hueter, Sebastian Belle, Fred Bever, and Barry Gibson.

1. Welcome and Introductions

DMR AC members and DMR staff introduced themselves

2. Approval of Minutes-April 20, 2021 meeting

Motion (L. Pinkham and T. Sawtelle): Motion to approve the April 20, 2021 meeting minutes.

Motion passed without objection to approve the April 20, 2021 meeting minutes

3. Special License Requests-Action (voting)

Before considering and voting on each Special License request, D. Gilbert provided an overview of Special Licenses for new DMR AC members.

Bigelow Laboratory for Ocean Sciences (Nichole Price)

N. Price explained that the purpose of the project is to collect wild seaweeds for three separate research projects that explore methane mitigation, nitrogen uptake, and the development of cryopreservation techniques for Gulf of Maine seaweed species. Seaweed may also be purchased from aquaculturists.

T. Brawn asked D. Gilbert what law the applicant would need to be exempted from. D. Gilbert clarified that the applicant would need to be exempted from Chapter 29.05, which restricts the harvest of rockweed to 16 inches above the hold fast.

Motion (L. Pinkham and T. Sawtelle): Motion to approve the Bigelow Laboratory for Ocean Sciences Special License as presented by N. Price.

Motion passed without objection to approve the Special License request

Bigelow Laboratory for Ocean Sciences (Stuart Ryan)

S. Ryan explained that the purpose of the project is to document changes in kelp forest ecosystems as the Gulf of Maine continues to warm. The research also explores how species utilize kelp forest habitats and how losses to

that habitat may affect species composition. The research activities would involve sampling juvenile fish, sea urchins, and collecting kelp and algal biomass.

T. Sawtelle asked what the sea urchins would be utilized for. S. Ryan indicated that a limited number of sea urchins would be used as bait. J. Runnebaum asked how many juvenile fish may be sampled. S. Ryan answered that up to 600 fish may be sampled. The number was based on a review of the literature, but S. Ryan felt it was highly unlikely that they would encounter that many fish from which to sample. S. Ryan clarified that if the fish can be identified then they will not be terminally sampled.

Motion (L. Pinkham and J. Runnebaum): Motion to approve the Bigelow Laboratory for Ocean Sciences Special License as presented by S. Ryan.

Motion passed without objection to approve the Special License request

The Nature Conservancy-SOAR Project (Alix Laferriere)

Alix Laferriere was unable to attend the meeting, so this request was not considered by the DMR AC.

4. Regulations-Action (voting)

Chapter 5-Confidentiality of Fisheries Statistics

D. Gilbert explained that fishermen and other stakeholders may voluntarily participate in DMR lead pilot projects. DMR was interested in making sure the data collected would be considered confidential under existing laws. However, it was unclear whether existing confidentiality provisions would extend to data collected through voluntary efforts. Therefore, the rule clarifies that any statistics collected by the Department of Marine Resources from a dealer, harvester, business, person or vessel as a result of compliance with reporting requirements, or an agreement by that dealer, harvester, business, person or vessel to participate in a Department led project to develop or test new methodologies or technologies for the reporting of fisheries statistics, is confidential data as provided by 12 MRS 6173.

J. Runnebaum: Asked how the proposed rule would interact with federal regulations. Are there any potential concerns about coordination with the federal government? D. Gilbert clarified that these are state pilot projects, so the information would not be shared with the federal government. P. Keliher indicated that confidentiality provisions would keep the data confidential if it ever was reported to the federal government. B. Marsh asked for the definition of confidential and could the information be disclosed through a subpoena? D. Gilbert explained that data has to be aggregated, so there needs to be three or more submitters and that data has to be assembled in a manner that does not disclose the identity of any dealer, harvester, business, person, or vessel. Information would have to be released under a court order, not a subpoena. R. Begin commented that this regulation would make fishermen feel more comfortable participating in voluntary pilot projects.

Motion (L. Pinkham and T. Sawtelle): Motion to approve Chapter 5-Confidentiality of Fisheries Statistics.

Motion passed without objection to approve the Chapter 5 regulation

Chapter 8-Menhaden Reporting

D. Gilbert explained that Public Law 2020 Chapter 640 created a new license for the harvest of menhaden. Prior to the creation of the menhaden license, menhaden were harvested under the commercial pelagic and anadromous license. This rule updates reporting requirements for menhaden to reflect that the individuals who are required to report menhaden harvest are those that hold the menhaden license under 12 M.R.S. §6502-C. Reporting elements remain the same as in prior seasons.

There were no questions or comments from DMR AC members about this proposed rule.

Motion (T. Sawtelle and L. Pinkham): Motion to approve Chapter 8-Menhaden Reporting.
Motion passed without objection to approve the Chapter 8 regulation

Chapter 24-Importation of Live Marine Organisms

M. Nelson explained that on February 14, 2021, DMR implemented an emergency rule because routine health surveillance confirmed the presence of MSX (*Haplosporidium nelsoni*) in Quahog Bay, Harpswell, Maine. MSX is a microscopic parasite that affects the health and survival of the American oyster (*Crassostrea virginica*) resource but does not pose a risk to consumers or human health. This rule continues the American oyster restricted area within Quahog Bay and Ridley Cove in Harpswell, Maine previously adopted under the emergency rule. The movement or transfer of American oysters greater than 3 mm in size, from the restricted area to other waters of the state, is prohibited without a permit from DMR. Persons are required to obtain a permit for the movement, but not harvest, of shellfish from restricted areas to ensure a reasonable degree of certainty that the movement will not endanger the indigenous marine life or its environment in accordance with Chapter 24.05.

B. Marsh asked why American oysters below 3mm are okay to transfer. M. Nelson explained that the size reflects commercial hatchery stock. This way, commercial hatcheries would not have to get individual permits to transfer seed, because they are doing their own testing and treat the water used to cultivate seed.

Motion (T. Sawtelle and L. Pinkham): Motion to approve Chapter 24-Importation of Live Marine Organisms.
Motion passed without objection to approve the Chapter 24 regulation

Chapter 26-2021-22 Sea Urchin Season

E. Wilkinson provided a brief overview of the prior urchin season. E. Wilkinson explained that this regulation establishes open harvest days and tote limits for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 for the 2021-2022 season. For Zone 1, seasons are implemented for divers, trappers, rakers and draggers in 2021-2022, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2020-2021 season. For Zone 1, the daily tote limit is nine (9), the same as in the 2020-2021 season. For Zone 2, 40-day seasons are implemented for divers, trappers, rakers and draggers in 2021-2022, from which harvesters may only fish up to 30 days of their choosing. This rule has the same number of fishing days and opportunity days as the 2020-2021 season. For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 15-day season is implemented for Zone 2 divers, trappers, rakers and draggers in 2021-2022. For Zone 2, the daily tote limit is six (6), the same as in the 2020-2021 season.

There were no questions or comments from DMR AC members about this proposed rule.

Motion (L. Pinkham and T. Sawtelle): Motion to approve Chapter 26-2021-22 Sea Urchin Season.
Motion passed without objection to approve the Chapter 26 regulation

Chapter 42-Striped Bass

M. Ware explained that on June 1, 2021 DMR adopted an emergency rulemaking to come into compliance with the Atlantic States Marine Fisheries Commission. DMR incorporated these emergency changes via this regular rulemaking. The rulemaking implements a definition of bait as it pertains to the required use of circle hooks in the recreational striped bass fishery. It also specifies what happens if a striped bass is incidentally caught while targeting other species with a non-circle hook with bait. Further, it maintains the circle hook exemption for rubber and latex tube rigs and expands the exemption to include willow leaf spinner rigs. In addition to

incorporating changes from the emergency rule, this rule also clarifies language in Section 42.01(C). Specifically, it removes language prohibiting the use of treble hooks with bait given subsequent language supersedes this prohibition by only allowing for the use of circle hooks with bait. Based on the public comment received, DMR modified what was originally proposed to include willow leaf spinner rigs to the list of terminal tackle which are exempt from the circle hook requirement when fishing with bait.

T. Sawtelle asked what size circle hooks are permitted in regulation. M. Ware clarified that there is not a size specified in rule. J. Runnebaum asked if other species were fished with a willow leaf lure and if the exemption would need to be included in other regulations. M. Ware indicated that the willow leaf lure did not need to be incorporated into other regulations. J. Arsenault thanked DMR for talking to wormers about the bait prohibition.

Motion (L. Pinkham and T. Sawtelle): Motion to approve Chapter 42-Striped Bass.
Motion passed without objection to approve the Chapter 42 regulation

Chapter 43-Bluefish

M. Ware explained that bluefish and striped bass are two species whose recreational fisheries often overlap. Like the striped bass fishery, there is a circle hook requirement when fishing with bait in the recreational bluefish fishery. The Department has amended the striped bass regulations to provide greater clarity on the use of circle hooks in the striped bass recreational fishery. This includes providing a definition of bait. To ensure continued consistency between the circle hook requirements for the two fisheries, the Department has amended the bluefish regulations to adopt the same definition of bait as is in the striped bass regulations. The rule also cleans up regulatory language in Section 43.01(C), removing language prohibiting the use of treble hooks with bait given subsequent language supersedes this prohibition by only allowing for the use of circle hooks with bait.

R. Begin asked if there had always been a circle hook requirement for bluefish. M. Ware answered that there was an existing circle hook requirement and it had been in place for the last several years.

Motion (T. Sawtelle and R. Begin): Motion to approve Chapter 43-Bluefish.
Motion passed without objection to approve the Chapter 43 regulation

5. Upcoming Regulations

Chapter 2-Gear Marking

M. Nelson explained that the Aquaculture Division intends to update marking requirements for LPAs and leases. As the number of leases and licenses has increased there's been an interest, primarily from Harbormasters, over the last few years to update marking requirements. The proposed marking requirements would reflect conversations DMR staff have facilitated with Harbormasters, aquaculturists, and other stakeholders about gear marking requirements. An overview of possible rule changes will likely be presented to the DMR Aquaculture Advisory Council this summer or fall.

Chapter 11-2021-22 Scallop Season

M. Smith explained that the Scallop Advisory Council meeting is scheduled for August 5, 2021 in Brewer. The purpose of that meeting will be to take recommendations from the Scallop Advisory Council about the upcoming season. The proposal will include any possible closures, set the season calendars, and may include a mooring field closure in Sullivan Harbor. The DMR AC will consider the scallop season at their next meeting.

Chapter 30-River Herring

A. Ellis noted that in March 2021, DMR established (with approval by ballot from the DMR AC) a limited fishery in Walker's Brook, which runs between the Towns of Brooksville and Sedgwick. However, the March 2021 rule only listed the portion of the brook that runs through the Town of Brooksville. This proposed rule is a technical

change that adds the Town of Sedgewick to the existing regulatory language. This change is intended to provide greater clarity to the public and Marine Patrol. It does not change any elements of the existing limited fishery, which was initially adopted in March 2021.

6. Other Business

Marine Patrol Update

Major Beal provided a staffing and equipment update. Two Marine Patrol Officers (MPO) have graduated from the Criminal Justice Academy and another MPO will be going through the pre-service process. The MPOs will be assigned to Milbridge, Jonesport, and Machias. Two additional MPOs will be hired and assigned to Washington County. A new 42-foot Calvin Beal will be assigned to Boothbay Harbor. Marine Patrol is also hoping to purchase an additional 42-foot vessel for eastern Maine. Some of the older Boston Whalers are gradually being replaced. Marine Patrol was awarded a grant from Port Security, which is being used to purchase equipment and gear for MPO.

T. Sawtelle asked if there really was a shortage of MPOs in eastern Maine. Major Beal indicated that there are shortages in sections 5 and 6 with at least 5 vacancies. C. Haycock noted that MPO Royce Eaton had recently retired and noted that he was a great officer.

Requests for Rulemaking

D. Gilbert explained that DMR had received two requests for agency rulemaking. On July 1, 2021, DMR received a citizen petition for Chapter 2 (Aquaculture Regulations). D. Gilbert explained the citizen petition process, which is contemplated by the Maine Administrative Procedures Act. The petition required the creation of a task force to evaluate various elements of the leasing process. In consultation with the Attorney General's Office, DMR reviewed the petition, but felt that it was not a regulatory action as it did not meet the statutory definition of a rule. On July 20, 2021, DMR responded to the petitioner accordingly and has not received further correspondence. The second request for rulemaking was made informally by the Gulf of Maine Research Institute (GMRI), who is working on a fisheries improvement plan for the management of mussels. The request would modify Chapter 8, so that mussel harvesters must report their landings. Currently only dealers report. There are approximately 20 active mussel harvesters. DMR has consulted with Landings staff, who felt that the possible rule change would not present much additional work. However, DMR will consult with staff in the Bureau of Public Health as municipal shellfish management is under their jurisdiction. GMRI will also be submitting a letter to DMR that describes what outreach they have conducted with mussel harvesters.

DMR Updates on Legislative Issues

D. Gilbert noted that the legislative session concluded on July 19, 2021. The budget that was passed included funding for several staff positions. The Aquaculture Division will be able to hire an additional Resource Management Coordinator, a part-time paralegal, and an aquaculture administrator. The Bureau of Marine Science and Policy and Management were awarded additional resources for scientific work related to right whales, offshore wind development, and white shark research. The resources DMR received in the budget were unprecedented and will help the agency further its work. In addition to the budget there a bill was passed that gives guidance for decision-making bodies, like the DMR AC, may utilize remote proceedings moving forward. The bill requires the development of a policy for remote meetings, which DMR will be working to develop.

T. Brawn commented that being able to meet remotely would be convenient. Other DMR AC members agreed.

DMR Updates on Federal Issues

M. Ware: The Atlantic States Marine Fisheries Commission (ASMFC) will be meeting remotely the week of August 2, 2021. At that meeting, the Lobster Board will be working on a resiliency addendum and whether there should be a Jonah crab stock assessment. Other New England states have seen a dramatic increase in Jonah crab stocks. There will be continued work on Amendment 7 for striped bass, which will focus on stock rebuilding efforts, release mortality, and conservancy equivalencies. We are also expecting a report from the menhaden working group, which discussed different strategies for commercial allocation, episodic events program, and the incidental small-scale fishery. We are expecting a motion to initiate a management document to draft specific alternatives.

The New England Fishery Management Council meeting will be held the last week of September 2021. We will be swearing-in two new council members, Togue Brawn and Geoffrey Smith from The Nature Conservancy. At the meeting, we will be discussing a rebuilding plan for the Atlantic herring stock. We will also be working on federal scallop specifications including for the Northern Gulf of Maine. The quota allocation for that area was recently increased. At the end of May the biological opinion was issued for right whales with a no jeopardy finding for the lobster fishery. To get to that finding, the biological opinion outlines a 10-year conservation plan. Over that ten-year period there would be a 98% risk reduction in federal fisheries, which is very substantial.

There are opportunities to reassess the 98% risk reduction by looking at things like calving rates. We have seen higher calving rates and continuing to monitor what Canada does for their measures. However, it's clear that if the 98% reduction holds there will be significant changes for the fishery moving forward. This has been a significant focus for DMR. The final Environmental Impact Statement (EIS) was issued for the upcoming federal rules. It's not the final rule, which will be issued sometime in September or October. However, the EIS does provide an indication of what may be in the final rule. It appears that a large portion of Maine's conservancy equivalency proposal was approved, which is great news. Each of the lobster zones spent time developing measures. However, the LMA-1 offshore closure is still included in the preferred alternatives.

There were no questions concerning federal updates.

The meeting was adjourned at 4:45 p.m.