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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
32 Blossom Lane, Augusta-Marquardt Building-Conference Room 118
November 6, 2019

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held on November 6, 2019 at the Marquardt Building, 32 Blossom Lane, Augusta, Maine. Council members who attended were Dan Rogde, Ron Trundy, Peter Mourmouras, Mike Murphy, Togue Brawn, Fiona DeKoning, Geoff Smith, Josh Miller, and Matt Moretti. Department staff in attendance included Commissioner Patrick Keliher, Deputy Commissioner Meredith Mendelson, Jay Carroll, Jeff Nichols, Deirdre Gilbert, Melissa Smith, Megan Ware, Kohl Kanwit, and Amanda Ellis. Others present included Sebastian Belle and Crystal Canney.

DMR AC members not present: Joe Nickerson, Tracey Sawtelle, Chris Weiner, Mike Love, Thomas Cassamassa, and Ray Swenton.

1. Welcome and Introductions

Introductions were made around the table

2. Approval of Minutes-July 9, 2019 meeting

Motion (J. Miller and D. Rogde): Motion to approve the July 9, 2019 meeting minutes

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

3. Special License Requests-Action (voting)

- Mook Sea Farms (Meredith White)

M. White presented the Mook Sea Farms Special License request, which is for exemptions for the collection of shellfish broodstock for spawning. Some broodstock would be collected from existing aquaculture lease sites, while others would be collected from wild stock. The intent of the project is to develop new seed sources for the aquaculture industry.

M. Moretti asked if Pemaquid Oyster Company was growing scallops? M. White answered that Pemaquid Oyster Company is growing scallops on their lease in Clarks Cove.

Motion (M. Moretti and F. DeKoning): Motion to approve the Special License request.

Motion unanimously passed to approve the Special License request.

- Bigelow Labs (Maura Niemesto)

M. Niemesto presented the Bigelow Labs Special License request, which is for exemptions related to the sampling of lipids in the eggs of lobsters of varied sizes. The project will investigate whether small lobsters have smaller eggs and if the larvae of smaller lobsters have different performance metrics than larger lobsters. This data will be useful for stock management as warming water drive lobsters to mature at a smaller size.

M. Smith asked what size lobsters would be harvested? M. Niemesto answered anything legal and above.

Motion (M. Murphy and J. Miller): Motion to approve the Special License request.

Motion unanimously passed to approve the Special License request.

4. Regulations-Action (voting)

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

M. Smith explained that the rule would establish the 2019-2020 scallop fishing season. Daily possession limits of 15 gallons for Zone 1 and Zone 2, and 10 gallons for Zone 3 remain unchanged. For Zone 1, a 60-day season for draggers begins on December 9, 2019 and the last day of the season is March 26, 2020. For Zone 1, a 60-day season for divers starts on November 14, 2019 and the last day of the season is April 30, 2020. For Zone 2, a 70-day season for draggers starts on December 2, 2019 and the last day of the season is March 31, 2020. For Zone 2, a 70-day season for divers starts on November 18, 2019 and the last day of the season is April 18, 2020. For Zone 3, a 50-day season for draggers begins on December 2, 2019 and the last day of the season is March 25, 2020. For Zone 3, a 50-day season for divers begins on December 5, 2019 and the last day of the season is March 28, 2020. In Zone 1, Casco Bay, Sheepscot River, Muscle Ridge, and W. Penobscot Bay Areas, as well as Whiting/Dennys Bays in Zone 3 are Limited Access Areas with reduced harvesting days. In Zone 2, territorial waters surrounding Machias Seal Island and North Rock is open to harvest all days during December 2019 in addition to open Zone 2 calendar days throughout the season. DMR would maintain the following targeted closures based on depletion, high concentrations of seed/sublegal scallops and/or the presence of spat-producing scallops: Lower Muscle Ridge, Eastern Casco Bay, Upper Sheepscot River, New Meadows River, Card Cove and Beals-Jonesport Bridge. This rule removes the drag size gear restriction in the Blue Hill Bay area (currently 8'6") allowing harvesters to utilize any drag size, provided it does not exceed the State maximum of 10' 6". Additionally, this rule amends the boundary for the Cutler Shore Rotational Area by moving the western boundary eastward to Western Head and extending south to the three nautical mile junction.

M. Smith noted that based on the public comments received the proposed amendment to the harvest start and stop time to be a set time was struck and the rule remains as in previous seasons; harvest will commence at sunrise and cease at sunset, as defined in 12 MRS 6001 45 and 46. The Zone 2 dive calendar was modified to redistribute days from April 2020 into December, 2019, January and February, 2020. The open month for Machias Seal Island and North Rock state waters was moved to December 2nd through 31st, 2019 from the proposed January 1st through 30th 2020, to accommodate the request for additional harvest opportunity in the month of December.

G. Smith asked what was the rationale for proposing start and end times initially? M. Smith explained it was based on feedback from harvesters, who were getting calls from others about when sunrise was, so a specific time was proposed to address this issue.

J. Miller asked if everything was good with the Scallop Advisory Council, because he saw the comments about ten shorter days in Zone 1. M. Smith explained that science and other data doesn't support an increase of effort in that zone.

D. Rogde asked if any proposed changes were made to owner/operator provisions. D. Gilbert explained that the requirements are set in statute and they can't be changed via regulation. The "grandfathering" provisions for non-family situations are now expired.

T. Brawn asked what was the poundage landed by divers in November of last year? M. Smith answered that she didn't have the data with her, but anecdotally it was not a large amount. The numbers could be prepared for the next Scallop Advisory Committee meeting.

Motion (J. Miller and D. Rogde): Motion to approve the Chapter 11 rule-making as presented.
Motion unanimously passed to approve the Chapter 11 rule-making as presented.

- Chapter 10: Clams and Quahogs (Kohl Kanwit)

K. Kanwit explained that the rule maintains the winter closed period for the harvest of quahogs from the New Meadows Lakes, which ended on April 1, 2019. The sunset provision has been removed from the regulation, so that the winter closed period remains in effect. Maintaining the winter closed period is intended to reduce fishing pressure on the quahog resource and to minimize mortality associated with winter fishing.

Motion (M. Murphy and R. Trundy): Motion to approve the Chapter 10 rule-making as presented.
Motion unanimously passed to approve the Chapter 10 rule-making as presented.

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

K. Kanwit explained that the rule amends Chapter 94 to specify the current version of the National Shellfish Sanitation Program Model Ordinance (Model Ordinance). The previous version of the rule specified the 2015 Model Ordinance, whereas this rule specifies the 2017 Model Ordinance, which is the most current version.

F. DeKoning asked why can't DMR just reference the most recent version rather than the year? K. Kanwit answered that adopting a document by reference requires reference to a specific document (not just the latest version of the document). G. Smith asked if DMR was still comfortable with what is in the Model Ordinance? K. Kanwit answered in the affirmative and noted that overall the Model Ordinance is a good regulatory document.

Motion (F. DeKoning and J. Miller): Motion to approve the Chapter 94 rule-making as presented.
Motion unanimously passed to approve the Chapter 94 rule-making as presented.

- Chapter 8: Landings (Deirdre Gilbert)

D. Gilbert explained that the rule updates reporting requirements for lobster license holders to replace "distance from shore" with a 10-minute square, and also requires the reporting of the number of endlines fished. It replaces references to the IVR herring permit in Chapters 8 and 36 with a herring permit. Finally, it requires individuals intending to participate in the menhaden fishery to obtain a menhaden permit on their commercial pelagic and anadromous license, to facilitate proper reporting in that fishery as required in Chapter 41.

J. Miller noted that he fills out FVTRs every month and asked is anything going to have to change? M. Ware clarified that federal reports will still suffice for state reports. M. Moretti asked is there any way of verifying the location of where someone fished? D. Gilbert explained that there currently isn't a way to do that. However, the proposed whale plan includes vessel monitoring for implementation at some future date.

Motion (J. Miller and R. Trundy): Motion to approve the Chapter 8 rule-making as presented.
Motion unanimously passed to approve the Chapter 8 rule-making as presented.

- Chapter 75: Protected Resources (Deirdre Gilbert)

D. Gilbert explained that there is an existing regulatory requirement for persons fishing lobster gear and trap/pot gear to mark their buoy lines with specific red marks in the sliver area and in federal waters. This regulation removes the requirement for the red marks and instead requires persons fishing lobster gear and trap/pot gear in all Maine coastal waters to mark their buoy line with purple marks. Inside the Exemption Area, fishermen are required to have three purple marks: a 36-inch mark in the top two fathom of their endline, and a 12-inch mark in the middle and at the bottom of their endline. Outside the Exemption Area, fishermen are required to have 4 purple marks: a 36-inch mark in the top two fathom of endline, and 3 12-inch marks at the top, middle, and bottom of their endline. Finally, all lobster gear and trap/pot gear fished outside the Exemption Area is required to have an additional green mark of a minimum of 6-inches in the top two fathom of buoy line. Lobster gear

fished inside the Exemption Area is prohibited from having a green mark. The new marking requirements are required to be in place by September 1, 2020.

D. Gilbert further explained that based on the comments received, DMR changed the requirement to mark gear inside the Exemption Area from 4 marks to 3 marks, with the requirement that the top mark be 36-inches, and located in the top two fathom of the buoy line; and the additional 6-inch green mark in the top two fathom of the buoy line was moved from within the Exemption Area to outside the Exemption Area and it was clarified that a fisherman may not maintain a green mark on gear fished inside the Exemption Area; and the implementation date was moved from April 1, 2020 to September 1, 2020.

G. Smith noted that there were a lot of comments on the difficulty in marking the line. G. Smith asked what are the different ways you could mark gear? D. Gilbert answered any method can be used, including paint, tape, splicing, tracers, and other options.

R. Trundy asked if the wire ties are needed to cover the entire 6-inches of rope. D. Gilbert answered it did not.

J. Miller felt that the Lobster Advisory Council (LAC) should have been included more in the discussion. He felt that there would be a lot of green wire ties washing up on shore. D. Gilbert noted that the DMR AC was voting on the rule in November 2019 for a September 2020 implementation date. The later implementation date is intended to give people advance notice of the change. If there are issues that need to be addressed the LAC could bring them to DMR's attention prior to the September 2020 implementation.

R. Trundy asked how Marine Patrol would enforce the regulation, because the lines are going to grass up, or colors will be bleached. R. Trundy wanted to know if there would be some leeway for fishermen? J. Carroll answered that Marine Patrol recognizes those challenges and will take them as they arise. They have experience enforcing the existing marking requirements for red marks. Marine Patrol intends to do a lot of outreach with industry about the change.

T. Brawn asked if there is definition of purple? D. Gilbert answered that it would be left to the discretion of Marine Patrol.

Motion (J. Miller and R. Trundy): Motion to approve the Chapter 75 rule-making as presented.
Motion unanimously passed to approve the Chapter 75 rule-making as presented.

- Chapter 34: Groundfish (Meredith Mendelson)

M. Mendelson explained that in order to be consistent with the National Marine Fisheries Service (NMFS) federal regulations, the Department implemented this rule change for charter, party and recreational fishing vessels operating in state waters targeting cod. For the recreational fishery, this rule eliminates the April 15 to April 30 opening for cod adopted earlier this year. The April opening was originally proposed in federal rulemaking but was not ultimately adopted.

Motion (J. Miller and P. Mourmouras): Motion to approve the Chapter 34 rule-making as presented.
Motion unanimously passed to approve the Chapter 34 rule-making as presented.

5. Upcoming Regulations

- Chapter 8: Aquaculture Reporting (Deirdre Gilbert)

D. Gilbert explained that the purpose of the proposed regulation is to include AQ reporting with the Landings Program. DMR presented the proposed change to the Aquaculture Advisory Council at their September 2019 meeting. The Landings Program currently collects dealer reports of aquacultured product, while the Aquaculture

Division collects harvest information from lease and license holders. Those two data streams are not going to the same place and when those data sets are compared there are often discrepancies and inconsistencies. We are trying to improve the data by moving the reporting requirement to the Landings Program as it is a better match for the nature of their work. The reporting elements or data fields will need to be streamlined between the two programs and individuals will be responsible for reporting to the landings program.

M. Moretti asked what would be the frequency of reporting? D. Gilbert answered monthly. M. Moretti asked if there is an online option to report. D. Gilbert answered that there is an online option and DMR is working to develop a mobile application. J. Miller asked if the Landings Program would be able to keep up with all the extra reporting. D. Gilbert answered that the Landings Program is on top of the data they are currently collecting. The Landings Program was consulted prior to development of this rule and they preferred that the rule be implemented sooner rather than later, so that they have time to work with folks prior to the lobster changes being implemented. When lobster reporting does ramp up to 100% they will need to add staff. M. Mendelson noted that funding opportunities are more heavily constrained than DMR anticipated, which may affect the timing of implementation.

F. DeKoning asked if data management systems adequate to keep up with requests for information? M. Mendelson answered that the data requests DMR receives are one of the more time-consuming things our agency deals with. Partially it is because some systems are not designed to report out what they take in. The other challenge is people want the data a certain way and in a particular format to answer the question they have. However, our data may not be available in that format. F. DeKoning asked if DMR needs attention to that area? M. Mendelson answered that DMR has committed a significant amount of resources into upgrading systems, but more work is needed. However, there are a lot competing priorities. D. Gilbert also noted that there are confidentiality parameters that govern the release of data and its format for public reporting purposes.

- Chapter 32: Elver Season and Export Events (Deirdre Gilbert)

D. Gilbert explained that the elver quotas for the 2020 season will be established. DMR will also propose to include a fee of up to \$500.00 for each export event as recently authorized by the Legislature. This fee is intended to offset the cost of having Marine Patrol Officers monitor the export event.

S. Belle asked if this would this apply to Sara Rademaker? D. Gilbert answered that it would not apply to her because she doesn't export elvers.

D. Rogde asked how many elver exporters are there in the State of Maine? D. Gilbert answered that there were six in the 2019 season.

- Chapter 34: Groundfish Compliance; Halibut Restrictions (Meredith Mendelson)

M. Mendelson explained that DMR is anticipating needing to further constrain the halibut fishery. It is likely that the SUB ACL has been exceeded, so measures may need to be taken to restrict catch in Maine. If the entire annual catch limit is exceeded it will require a complete zero possession for all federal permit holders. At the November groundfish committee meeting DMR will discuss intentions to take further actions to make a reduction in the fishery. DMR plans on engaging with industry to talk about what the reduction might look like, if necessary.

J. Miller asked if Maine has taken any steps to prove the biomass is here and demonstrate that fishermen should be allowed to catch what they are catching? M. Mendelson answered that Maine is working on the assessment pieces and would like to see that improved. DMR believes the resource is there as do the federal fishermen. In the meantime, the reality is that the federal fishery is severely constrained, and the state waters catch comes off

the top. G. Smith asked if there had been any discussion on additional catch information that could help the assessment? M. Mendelson answered that the assessment being conducted by the Maine Center for Coastal Fisheries is still in progress.

- Chapter 36: Herring (Melissa Smith)

M. Smith explained that the proposed rule will revert to the trimester system form of management. It will also include technical updates to definitions within the herring chapter. The Legislature enacted a new license for carriers, so that would be implemented into the proposed regulatory changes.

- Chapter 41: Menhaden (Melissa Smith)

M. Smith explained that an electronic harvesting reporting app is being developed. The proposed rule will move harvesters toward electronic reporting.

G. Smith asked how frequent is the reporting? M. Smith answered that DMR is still contemplating reporting frequency. Currently there is daily reporting for the state allocation and episodic fisheries, because those are quota monitored.

- Chapter 42: Striped Bass (Megan Ware)

M. Ware explained that the Commission voted for a 18% reduction in both the commercial and recreational fishery in response to the most recent stock assessment, which found that the stock is overfished and that overfishing is occurring. The Commission voted for a recreational slot limit of 28 to 35 inches, so that is something will need to be incorporated in rule-making, or a conservancy equivalency that achieves the 18% reduction.

- Chapter 40: River Herring (Megan Ware)

M. Ware explained that the Commission approved limited commercial harvest in three municipalities for river herring: Phippsburg, Arrowsic, and Penobscot. The regulations will need to be updated to allow these municipalities to harvest.

6. Other Business

- Patrol Update (Col. Jay Carroll)

J. Carroll explained that there are seven vacancies within Marine Patrol, but that four new recruits will be sent to the Academy in January. Matt Talbot was promoted to Captain of Special Services. P. Keliher explained that DMR used to have a Lieutenant for Special Services, but budget constraints would not allow DMR to carry three Lieutenants, so the Captain position is intended to be the equivalent.

F. DeKoning asked what is Special Services? J. Carroll answered that it is responsible for specialty teams, asset management and replacement, cell phones, technology efficiency, records management, etc. Basically, anything that supports Marine Patrol in their work.

- DMR Updates on Legislative Issues (Deirdre Gilbert)

The second session will start in January and there will be the same committee members and chairs for the second session. DMR is proceeding with four bills this session. One is a bill about aquaculture licensing and leasing, the composition of the Shellfish Advisory Council, technical changes for clean-ups, and we are now looking at creating a menhaden license for reporting purposes and to better deal with the participants in the fishery and their respective interests.

- DMR Updates on Federal Issues (Commissioner Keliher)

P. Keliher provided updates to DMR AC members on Commission work and federal issues. P. Keliher noted that the Commonwealth of Virginia has been found to be out of compliance with menhaden. Virginia voted itself to go out of compliance. The lack of compliance is now with the Secretary of Commerce for further action. Also there have been updates on the ecological reference points for menhaden. The final report will be given to the menhaden board in February, which will start the discussions of state-by-state allocations. The State of Maine will be working hard to try to expand menhaden quota based on bait needs, so the state is not so reliant on herring.

The herring board met at ASMFC to get an update from Commission staff on spawning protections in Georges Bank. P. Keliher updated the lobster board on right whales and the decline in landings. Staffing changes at the Commission have delayed work on the lobster stock assessment.

Two seats on the Council will become vacant, so DMR will be looking for nominees. For each seat the state needs to put forth three names. If Terry Stockwell completely retires, there will be three vacant seats. That would be a significant change as all three seats term out next year.

G. Smith: asked when would DMR need names? P. Keliher: answered that DMR will start working on that this winter.

P. Keliher briefed members on right whale work. The Take Reduction Team (TRT) goal was a 60% reduction in risk for the State of Maine, which included a 50% reduction in endlines. The state is proposing a 25% reduction in endlines and some associated risk reduction by making remaining vertical lines weaker with two weak points. There is going to be a lot of work around the weak points going forward.

There is a vocal segment of the lobster industry that would like the state to do nothing. However, doing nothing means that NOAA fisheries will determine the rules for the lobster industry. That would be problematic and create an uphill battle. Maine's plan is not perfect, but it is better than what it was in June. If the plan is not accepted, Maine will likely be entering lawsuits. There is a lot of science and data that we are putting into this plan and effort. Doing nothing puts Maine in a very bad situation.

J. Miller: What will happen to Virginia, because they overharvested on purpose? P. Keliher: Being found out of compliance can shut a fishery down. Ultimately, it will be up to the Secretary of Commerce. J. Miller: Will it be resolved by the time you set the quota again? P. Keliher: I think so, maybe this winter or spring.

Motion (J. Miller and T. Brawn): Motion to adjourn
Motion unanimously passed to adjourn at 2:30 pm