

DMR ADVISORY COUNCIL MEETING
Natural Resource Service Center
September 16, 2009 1:00 p.m.
DRAFT minutes

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held on this date at the Natural Resource Service Center, 6 Beech Street, Hallowell, Maine. AC members attending this meeting included **Al West (Chair), Tim Harper, Ginny Olsen, Dana Temple, Glen Libby, Rod Mitchell and Jim Markos, Jr.** Council members David Pecci, Bill Sutter, Bob Baines, Vincent Balzano and George Harris, Jr. were unable to attend. Department staff included Deputy Commissioner David Etnier, Deirdre Gilbert, Togue Brawn, Major John Fetterman and L. Churchill. Members from the public included Sebastian Belle (Maine Aquaculture Association, Claire Bissel and Bill Trotter (Bangor Daily News).l

1. Welcome

The meeting was called to order at 1:10 pm by the Al West, secretary and acting chair who requested a round of council member introductions. Ginny Olsen was introduced and welcomed as a new member to her first meeting.

An announcement was made regarding the directive by the Attorney General's Office that no comments are allowed from the public when members are voting on rulemaking as the comment period has closed.

Discussion on the vacancy and election of the Office of Chair to fill out the 2009 term of office was conducted.

Motion: (D. Temple, R. Mitchell) *Motion to nominate and elect Al West as Chair for the remainder of 2009.* Discussion: None

Motion continued: *Unanimous to approve (Tim Harper, Ginny Olsen, Dana Temple, Glen Libby, Rod Mitchell, Jim Markos, Jr. and Al West)*

Discussion on the vacancy of secretary will be postponed until the next meeting.

Dep. Comm. Etnier listed the current council member vacancies: the aquaculture seat, public member and harvester non-lobster seat are each currently vacant.

2. Approval of minutes (see handout)

Motion: (G. Olsen, J. Markos, Jr.) *Motion to approve the minutes of the meeting held July 15, 2009.*

Discussion: None

Motion continued: *Unanimous to approve (Tim Harper, Ginny Olsen, Dana Temple, Glen Libby, Rod Mitchell, Jim Markos, Jr. and Al West)*

3. Regulations - Action (voting) (handouts)

Dep. Comm. Etnier reviewed the background and most recent results of a long process for the scallop regulations. The Scallop Advisory Council (SAC) has been actively involved since early 2008; and this includes members Dana Temple (chair) and Tim Harper. They've dealt directly with the history from last year and then went back to the drawing board. Six community meetings were held in April 2009 plus SAC meetings since then to tweak those recommendations for the biology and enforceability in hopes of turning this fishery around. The Department see's this as a good faith effort as the status quo isn't working. This has a good shot at making a difference. What remains is what we do before reopening. The first rule has a three year sunset and the rules in Cobscook Bay have a two year sunset. There is a bill before the legislature on protocols to reopen even pending now. There needs to be constraints so that it is not wiped out immediately when reopened.

Dana Temple, chair of the SAC also reviewed the background. This was brought before the fishermen and science community in open forums to discuss. Some areas were increased with Marine Patrol for

enforcement and scientifically if they were too small to do any good the size was increased and that is why some are bigger than the originals. By and large the attitudes of the fishermen made a difference and he was proud of the accomplishments. There is a sunset clause. Some want to know exactly what happens at the end. We will spend the next few years figuring out what to do. The State wants taxes but you can't get that until folks make some money at it.

Jim Markos asked about the size of the areas and what science dictates the footprint of an area. T. Brown explained that the larger the area the greater likelihood it has to succeed. D. Hart at the NE Fisheries Science Center in Woods Hole and head of the scallop resource program there indicates larger is better because the edges will be attacked and scallops have a tendency to aggregate in closures more so than in open areas. Therefore getting a per capita increase and therefore greater aggregations plus circulation patterns will matter. There is uncertainty and we've tried going back and forth on short versus long term and how they are dispersed along the coast. This is not solely science based; it also is partly based on the input from fishermen, enforcement and science.

Jim Markos: Is the size enough to succeed? D. Temple indicated he thought so. When the size was increased there are areas the fishermen felt would have good spat fall; not huge increase compared to the original design but enough. Ideally the coast should be closed but is that realistic? There is no specific formula for this. T. Brawn stated that in the 2008 survey of 6 areas, 3 had seed fall within the closures. Regarding the NE fisheries closures they are very large; or the Isle of Mann is 4 kilometers in size.

Chapter 11.09 Atlantic Sea Scallop Harvesting Season, and **Chapter 11.10(1)(H)** Closed Areas

Motion: (D. Temple, T. Harper) Motion to approve

Discussion:

G. Olsen said she had received calls on the local area closure and that it would be leased instead of being reopened in 3 years. Dep. Comm. Etnier explained that if an aquaculture lease was requested for scallop farming within a closure for scallops the closure would be taken into consideration and likely reject a lease for raising scallops. G. Libby asked if leases go through the AC and the answer is no the lease process goes through the Commissioner's office as an adjudicatory procedure as required by law. A. West said he too had received calls. In his experience after 10 years dealing with herring management plans he felt it could be bad results when you don't have science to support what to do when there is no thought ahead of time on that plan.

Motion continued: Unanimous to approve (Tim Harper, Ginny Olsen, Dana Temple, Glen Libby, Rod Mitchell, Jim Markos, Jr. and Al West)

Chapter 11.10(1)(H)(10) Closed Areas, Whiting Bay and Denny's Bay Area plus technical amendments: Chapter 11.19(1)(E) - add reference to section (H)(10); Chapter 26.19 - add reference to Chapter 11.10(1)(H)(10); and Chapter 11.20(1) – remove graphic

Dep. Comm. Etnier reviewed the background briefly again and indicated the Sea urchin Zone Council was involved in this.

Motion: (R. Mitchell, J. Markos, Jr.) Motion to approve

Discussion:

Dep. Comm. Etnier described the background for this rulemaking. A. West asked why the 2 year sunset. T. Brawn explained that due to the uniqueness of the two fisheries in Cobscook Bay a difference closure period was considered. The comfort level is higher there since they have scallops there. Dep. Comm. Etnier explained that to the greatest extent possible this is viewed as a pilot project with the possibility of trying this in other areas of the coast and for the discussion of other areas when reopening or similar circumstances.

G. Olsen asked if groups similar to Penobscot East Resource Center were involved in the discussions like they were in her area. Dep. Comm. Etnier indicated that there were similar discussion groups such as those with Will Hopkins and similar to the Soft Shell Clam committees. There is some validity to the concerns that this is not an exclusive area as the scallop fishery is a mobile fleet. There maybe some constraints but this is not available solely to local residents. We're willing to discuss incentives or the "stewardship factor" and involvement like municipal ordinances versus zones.

Motion continued: Unanimous to approve (Tim Harper, Ginny Olsen, Dana Temple, Glen Libby, Rod Mitchell, Jim Markos, Jr. and Al West)

4. Other Business

Legislature

Dep. Comm. Etnier discussed the legislative agenda being worked on for the next session. Items include a pelagic license that has implications regarding compliance with ASMFC management plans; the salt water recreational license which he reviewed the history of; and a bill for lobster dealers to be able to work with more than just whole lobster. G. Olsen asked about public health issues relate to this. Dep. Comm. Etnier explained that processors now have to meet the Maine Food Code rules, HAACP rules and meet federal FDA requirements.

Dep. Comm. Etnier continued. There is a loop hole in the landings program whereby dealers are not required to purchase from only licensed harvesters. This leaves blanks in the source information and traceability is lost and affects the validity of the data. This bill would restrict dealers to buy only from licensed harvesters.

R. Mitchell: We have a lot of people leave because of this; many people are shacking product.

G. Olsen: HAACP requires that you buy from licensed harvesters...discussion...

G. Olsen: On repeat violators it is not a civil penalty and was criminal, could the DMR propose that after the 2nd violation it become criminal? We had folks with 20 violations last year.

Dep. Comm. Etnier: We have the ability to suspend a license.

G. Olsen: Given the backlog of court cases maybe make the 3rd offense criminal then increase the fine.

Dep. Comm. Etnier continued. We would also like to clarify emergency needs like what happened on Matinicus; that we have the ability to close areas for individual's safety.

Other Updates

Budget, see handout of memo dated 8-31-09

Dep. Comm. Etnier: There is now a 30 million shortfall in the budget. The graph on page 3 shows 1988 – 2010 with the greater reliance on federal and dedicated funds. Last year 10% of the general fund cut was primarily from Marine Patrol and Public Health; we covered this with a 15% increase in license fees and an area biologist vacancy now taken away. Now we have a 70 million shortfall and indications are it is increasing. Pay attention as the consolidation of the natural resource agencies will be again considered.

Comm. Lapointe will be at the NEFMC next week

Regarding the proposed rule to remove the wholesale dealers permit for lobster for individual use G. Libby asked about counting fish. Major Fetterman discussed a meeting held 9-15-09 at the Sector Enforcement meeting; Amendment 16, Sectors and groups of fishermen determining catch entitlement and reporting back to NMFS. The VMS requirement looked quite dramatic. Without real time electronic reporting you have a very tight window in which to report. There will be a comment period on this during this winter. They want a May 1 final rule.

G. Libby: On the internal sector rules the quotas are on each species. Federal money is needed to prove what we're fishing and discards are a problem. We would be wasting quota on species someone else is bringing in. Mortality controls versus counting time at sea; various sectors were described; we have 39 permits and started out with 12 guys.

Motion: (A. West, R. Mitchell) Motion to close the meeting.

Discussion: None

Motion continued: Unanimous to approve