

DMR ADVISORY COUNCIL MEETING
Natural Resource Service Center
December 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 **Bob Baines (presiding as Chair), Dana Temple, Jim Markos, Jr., Tim Harper, Glen Libby, with Ginny Olsen and Vincent Balzano** via telephone. Council members David Pecci, Bill Sutter, Al West (Chair), Rod Mitchell and George Harris, Jr. were unable to attend. Department staff included Commissioner George Lapointe, Deirdre Gilbert, Bruce Chamberlain, Cathy Fetterman, Col. Joe Fessenden, Claire Enterline, Togue Brawn, Pete Thayer, Seth Barker, Pat Keliher, Linda Mercer, Sarah Cotnoir and L. Churchill. Members from the public included Lee Hudson, and betsy Duncan.

1. Welcome

The meeting was called to order at 1:10 pm by Bob Baines, who was requested by Al West to preside as acting chair in his and the secretary's absence; the vice chair seat is currently vacant.

Volunteers for the Nomination Committee for the 2010 election of officers were selected. They are: Dana Temple, Bob Baines and Jim Markos.

2. Approval of minutes (see handout) Meeting – September 16, 2009

Motion: (D. Temple, J. Markos, Jr.) Motion to approve the minutes of the meeting held Sept. 16, 2009. **Discussion:** None

Motion continued: Unanimous to approve (Dana Temple, Jim Markos, Jr., Tim Harper, Glen Libby, Ginny Olsen, Vincent Balzano, Bob Baines)

3. Regulations - Action (voting) (see handouts)

Chapter 40 Smelt Regulations and Chapter 55 Gear Restrictions, sections 20, 60 and 97

Claire Enterline provided background on the proposed rulemaking explaining the concern about the decline prompted this action; research in Massachusetts and new Hampshire also confirm the decline is occurring; the multiple layers of local rules and exemptions needed to be consolidated; no walking in streams on eggs was added similar to the elver fishery restrictions; and accommodations in the regulations were made for the fishery in Washington County based on the need to avoid any by catch of Atlantic salmon smolt. Glen Libby asked about shrimp nets and the answer is that this is still ok, that rule is unaffected.

Motion: (G. Olsen, D. Temple) Motion to approve

Discussion: None

Motion continued: Unanimous to approve (Dana Temple, Jim Markos, Jr., Tim Harper, Glen Libby, Ginny Olsen, Vincent Balzano, Bob Baines)

Chapter 22 Retail Shellfish (New), & Chapter 9.01(D) Update

Bruce Chamberlain gave a briefing on the proposed rules; and Commissioner Lapointe explained that these were in response to the Legislature's request.

Motion: (G. Libby, T. Harper) Motion to approve

Discussion: G. Olsen asked about DMR inspectors. B. Chamberlain said the DMR inspectors would make a brief initial inspection but not duplicate the inspections done by the Department of Health and Human Services (DHHS) and only for shellfish.

G. Libby asked the meaning of co-mingling. B. Chamberlain explained the term is from the National Shellfish Sanitation Program (NSSP) regarding the mixing of shellstock from 2 locations or dates. J. Markos asked about the impact on inspector resources. B. Chamberlain: We're unsure; there is a potential of up to 12,000 but none have bought this license yet. Comm. Lapointe said the same question was raised during the legislative debate and they said to try it and if problems arise we might have to go back to the Legislature.

G. Olsen indicated she didn't think on inspection was enough. B. Chamberlain said they plan to monitor the situation.

Motion continued:

Affirmative: Dana Temple, Jim Markos, Jr., Tim Harper, Glen Libby, Vincent Balzano, Bob Baines

Opposed: Ginny Olsen

The motion passed by a majority of affirmative votes.

Chapter 105 Safety Regulations

Cathy Fetterman reviewed the background of this rulemaking. T. Harper asked why this was needed. Col. Fessenden explained that the Commercial Fishing Safety Council (CFSC) suggested this after evaluation the issue and recommended persons have current CPR and First Aid. These programs have been updated since the requirements first started in 1994, there are new techniques used now. Marine Patrol must retake their currencies every 2 or 3 years. C. Fetterman: Initially the CFSC wanted this for all commercial license holders. Now this is a booklet latest versus waiting for a year to take the course and a test.

Motion: (G. Olsen, V. Balzano) Motion to approve

Discussion: D. Temple asked if the CFSC looked into the issue of the booklet type course and its lack of practicality in teaching how to get a hurt diver aboard a vessel. C. Fetterman explained when the course work was first required it was a 3 day course and a reason for the shorter course is the very difficulty in just getting a course now. B. Baines: The DMR had problems getting an instructor and enough divers and tenders and a facility to hold the course. So they made this testing format with lots of information so folks could still get their license. The CPR and First Aid was initially required and folks felt that there was a need for recurrence. Regarding the question why not require all fishermen to take this, he said it was about timing and it was felt important to at least keep these folks who already had been required to have these cards to have them stay current. He said he dove for 3 years in the 1970's and it was the hardest work he had ever done and it has its risks. And yes, guys can have a heart attack aboard a boat too but this allows dealing with such circumstances with a more level head versus nothing.

Comm. Lapointe: ... You can't make everything safe; but it is true that persons who have training react better in these situations than those who do not.

Col. Fessenden: Back during the urchin gold rush CPR would have saved lives. Things happened to folks in shallow water where they could have been dragged to the shore and still used CPR. Diving is a dangerous occupation. This came from the CFSC; they put in lots of hours on this; and they had a lot to do with the lobster apprentice requirement to pass the drill instructors course.

G. Libby asked about the compromise date of implementation moved to August 1 for portions of the rule. Col. Fessenden explained that it needed to be a date prior to the beginning of the next season.

T. Harper said it was hard to make this work mid season...

B. Baines: It is a pullback from where it was because we couldn't find instructors or enough students. But the CFSC felt it was important to keep this on the books plus the cards are good for 2 years.

Motion continued:

Affirmative: Dana Temple, Jim Markos, Jr., Glen Libby, Vincent Balzano, Bob Baines, Ginny Olsen

Opposed: Tim Harper

The motion passed by a majority of affirmative votes.

Chapter 8.20(N) Landings Program, Harvester Reporting, Lobster Harvest

Deirdre Gilbert provided background the rulemaking for Sarah Cotnoir.

Motion: (D. Temple, G. Libby) Motion to approve

Discussion: None

Motion continued: Unanimous to approve (Dana Temple, Jim Markos, Jr., Tim Harper, Glen Libby, Ginny Olsen, Vincent Balzano, Bob Baines)

Chapter 25.09 Procedure for Issuing Seed Lobster Permits, and Chapter 25.90(A)(2) & (D)(2) citation correction

Deirdre Gilbert described the background and issues that resulted in the rulemaking. If the changes were not made many of the lobsters would continue to be released under a formula that skews the price upward.

The Department would instead use the actual landings program data, which is closer to reality.

Motion: (G. Olsen, J. Markos) Motion to approve

Discussion: None

Motion continued: Unanimous to approve (Dana Temple, Jim Markos, Jr., Tim Harper, Glen Libby, Ginny Olsen, Vincent Balzano, Bob Baines)

Chapter 29 Seaweed and Chapter 8 Landings Program – amend for Seaweed Buyer’s surcharge

Pete Thayer provided a brief history of the rule development and the surcharge that resulted from recent legislation.

Motion: (G. Olsen, D. Temple) Motion to approve

Discussion: B. Baines asked if the \$1.50/wet ton was paid when you renewed the license and was it based on what was harvested the previous year. P. Thayer indicated that was correct; and in 2008 ~5,000 wet tons were harvested. At this time 4 licenses have been sold and could be ~14,000 wet ton annually based on recent estimates and sources for the funds.

Motion continued: Unanimous to approve (Dana Temple, Jim Markos, Jr., Tim Harper, Glen Libby, Ginny Olsen, Vincent Balzano, Bob Baines)

Chapter 11.10(H)(1,2,8) Scallops - Technical corrections to closure line descriptions

Col. Fessenden reviewed the technical corrections to tighten these rules.

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

Discussion: None

Motion continued: Unanimous to approve (Dana Temple, Jim Markos, Jr., Tim Harper, Glen Libby, Ginny Olsen, Vincent Balzano, Bob Baines)

Chapter 1 Watercraft Excise Tax Decal

Col. Fessenden explained the background, the legislative changes and the need for the proposed updates.

Motion: (J. Markos, G. Olsen) Motion to approve

Discussion: The discussion included questions about the penalties; that persons do not typically buy these at the municipal level; enforcement at the town level versus Marine Patrol’s responsibilities; some towns enforce and others do not.

Motion continued: Unanimous to approve (Dana Temple, Jim Markos, Jr., Tim Harper, Glen Libby, Ginny Olsen, Vincent Balzano, Bob Baines)

Chapter 45.05(1)(A)(2) Shrimp Season, 2009– 2010 (regular rulemaking)

Motion: (V. Balzano, D. Temple) Motion to approve

Discussion: None

Motion continued: Unanimous to approve (Dana Temple, Jim Markos, Jr., Tim Harper, Glen Libby, Ginny Olsen, Vincent Balzano, Bob Baines)

4. Other Business

Nomination of an Advisory Council member to serve on the Commercial Fishing Safety Council

Col. Fessenden described the activities and background. Vincent Balzano has served and more recently Bob Baines who has now termed out. After a brief discussion Dana Temple volunteered to fill this vacancy for a 3 year term.

ASMFC & NEFMC Updates

Comm. Lapointe reviewed the following topics: He is no longer ASMFC Chair, striped bass, lobster, herring and its quota issues. NEFMC now has a report available after its meetings that can be sent to members [Note: check their web site at <http://www.nefmc.org/> and select the "Council Actions" or "what's New" buttons.] The November meeting council meeting included herring allowable by catch for Area 1A; scallop framework 21 adjustments; groundfish – ongoing about the use of sectors; the annual Catch Entitlement was discussed and Magnuson implications; Monkfish hearings are coming; there are 2 at large council seats available.

Legislature

Comm. Lapointe: We now have a \$400 million hole in the budget that requires a significant reduction on top of all the other cuts. Watch the upcoming release by the Governor this coming Friday.

We have 2 bills pending; a technical corrections bill and a pelagic license bill to allow monitoring. There is also a bill called the "claws and knuckles" bill for lobster dealers that came out of the lobster task force. Col. Fessenden indicated this needs oversight but it could help processors in Maine. Jim Markos asked about tails in the shell. Col. Fessenden explained the "green tail law" is a weight equivalent; we know the weight distinctions of sizes. This processing could open up several opportunities.

Comm. Lapointe: There are two hold over bills: the recreational fishing license and a scallop concept bill.

Other Updates

L. Churchill reviewed upcoming hearings.

Ginny Olsen inquired about the last round of scallop hearings and folks saying they were not heard. Comm. Lapointe explained that when issues are controversial you can have difficult dynamics. Both the chair of the Scallop Advisory Council, Dana Temple and DMR staff liaison Togue Brawn are here and hear folks that are in favor and from groups that are willing to do what needs to be done. They have ideas but not all ideas fit in the "box". Dana Temple explained that they do listen to the others who comment as well. Folks take it as unfair when their idea isn't approved. We need to look at the whole picture. We have been to all these meetings and as chair we try to find a balance. G. Olsen acknowledged it is a tough job.

Comm. Lapointe thanked all members who participated in today's meeting.

Motion: (G. Libby, D. Temple) Motion to close the meeting.

Discussion: None

Motion continued: Unanimous to approve