

**DMR ADVISORY COUNCIL MEETING**  
**Natural Resource Service Center**  
**April 25, 2011 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. Council members who attended this meeting were **Al West (Chair), Dana Temple (Secretary), Jim Markos, Jr., Sean Mahoney, Dave Pecci, Tim Harper and Bill Sutter**. Council members Rod Mitchell, Virginia Olsen, Glen Libby (Vice Chair), Bob Baines, Vincent Balzano and George Harris, Jr. were unable to attend. Department staff included Commissioner Norman Olsen, Acting Deputy Commissioner Pat Keliher, Col. Joe Fessenden, Linda Mercer, Deirdre Gilbert, Mike Brown and L. Churchill. Others in the audience: Doug Jowett, Brunswick, Peter Colson, Prospect Harbor, Carla Guenther and Holly Eaton from the Penobscot East Resource Center.

**1. Welcome**

The meeting was called to order at 1:10 pm by the Chair, Al West.

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.

**2. Approval of minutes** (see handout)

**Motion:** (D. Pecci, D. Temple) *Motion to approve the minutes of the meeting held February 16, 2011.*

**Discussion:** Commissioner Olsen highlighted the rationale concerning the shrimp issue on page 3, otherwise the minutes were ok.

**Motion continued:** *Unanimous to approve: Al West, Dana Temple, Jim Markos, Jr., Sean Mahoney, Dave Pecci, Tim Harper and Bill Sutter*

**3. Regulations - Action (voting)** (see handout)

**Chapter 42.03 Striped Bass – Closed Area and Closed Season (Kennebec River and Sheepscot river areas)**

Pat Keliher, Acting Deputy Commissioner, described the background of the rulemaking. The department initiated the rulemaking as requested by the Recreational Fishing Alliance (RFA). The RFA requested the use of circle hooks during May and June in the closed period for bait. Two meetings ago the department approved new rules for circle hooks in 2013 coast wide. The RFA thought that this could be used in the closed area of the Kennebec now. During the hearings folks indicated using bait would increase access. The Kennebec River native population of Striped bass have been stocked and worked on over the years. The exact size is not known but we see evidence with beach seines sampling, etc.

The overall population of Striped bass is down coast wide, having dropped in 5 years from over 4 million to less than ½ million in just Maine. After we went to rulemaking the Atlantic States Marine Fisheries Commission (ASMFC) moved to start the addendum process to reduce the Striped bass mortality by 40%, supported by the Northeast States. We believe there will be changes down the road on this. We may have to go back out to address a 40% reduction therefore, the department does not wish to move forward on this matter at this time.

A. West: Any suggestions on what the ASMFC changes might be?

P. Keliher: Size, bags limits, not likely season and will be a recreational and a commercial component.

B. Sutter: This is just May and June. The future is across the board. Will we come up with the recommendation or ASMFC?

P. Keliher: ASMFC will set the criteria. Right now the recreational take is 2 fish at 28 inches and what States can do is use conservation equivalencies, so Maine had the slot limits of 20-28 and over 40 inches; we can have 1 fish over 40 inches.

B. Sutter: Will it be based on how much we can take? P. Keliher: Yes

B. Sutter: Will we need to further reduce by percentage points? P. Keliher: The circle hooks should help.

B. Sutter: Two things from reading the materials: the circle hook statistics are 0.8 – 3% and overall hook mortality of 8%. P. Keliher: All hook types area averaged out.

B. Sutter: [If] it is 0.8 – 3% versus 8% mortality then you need 70-90% range to reduce circle hook mortality. Rather than accept it, tweak the rules for May and June.

P. Keliher: That would be a substantive change from the proposed rule and require additional rulemaking. Remember we pushed the rules back to 2013 for retailers to reduce inventory and that delay allows for an educational component.

We still need to look at the protected area in the Kennebec River. The rest eventually will be circle hooks like the rest of the coast.

B. Sutter: On the research of overwintering, what years was that?

M. Brown: Late 70's, early 80's we found offspring of the early stocking efforts in November in the Kennebec River.

B. Sutter: When Maine Yankee was operating the fish would overwinter there in the warmer water.

P. Keliher: Seven-Tree Pond, St. George has reports of anglers catching Striped bass through the ice and the smelt shacks. They were 600-700 caught in fyke nets in the main stem of the Kennebec River, indicating they are in the lower areas of the river. All spawning activity is above the "Chops".

D. Pecci: About catch and release, that 80% is Maine to South Carolina. The rate in Maine is lower due to lower water temperatures. The fish are hardy when less than 75 degrees versus the seals getting them when at higher temperatures.

B. Sutter: So the mortality would be lower.

**Motion:** (D. Pecci, S. Mahoney) Motion to accept the Findings of Fact as written and not approve the proposed rulemaking in Chapter 42.03.

**Discussion:**

B. Sutter: The motion should be based on the ASMFC outcome so this should be tabled until after their decision. My reason for not approving is based on the ASMFC issues. WE can withdraw the rulemaking then vote on this.

P. Keliher explained the ASMFC review process and if voted on it would be in opposition to the DMR. If it is endorsed as proposed then we would have to go to ASMFC for a review that it was not detrimental to spawning stocks.

B. Sutter to Dave Pecci: on the 0.8 – 3% and cold waters we get lower mortality anyway so will that increase the fishing pressure in the Kennebec River?

D. Pecci: Given the economy and quality off here, it's diminished, and could be popular in May and June.

B. Sutter: So why not use all circle hooks, the rule as written is ok and is about fairness and less about mortality on stocks. So I opposed this. Go ahead with the rule and address this after the ASMFC decision.

P. Keliher: In 2013 we will have all circle hooks. So yes, proponents saw it as a fairness issue but we see increase in catch rate success, increased participation, and it could impact native fish and migrating populations.

S. Mahoney: The rule would also increase the area open to baited j-hooks not circle hooks.

P. Keliher: Not just catch and release it also removes the Sheepscot River and two beaches and drew the line across at Popham and the Westport Bridge.

B. Sutter: I wanted the Sheepscot opened.

P. Keliher: There is historic evidence for overwintering of Striped bass in the Sheepscot River.

B. Sutter: If this is passed by the motion made the Sheepscot stay closed.

P. Keliher: We will be back here due to the ASMFC review.

B. Sutter: On the May 1<sup>st</sup> start a lot has to do with the economies of clients. I don't feel this will make an impact on the overwintering population. We could let it go due to the ASMFC and withdraw the rule.

D. Pecci: On the fairness issue, there has been a lot of banter on the flyfish versus joe six-pack issue but in late May to June and early July if you bait a Striped bass they will strike. It's not impossible. It is easy to fish Striped bass with artificial lures, I've proven it for 20 years. There's no huge advantage for bait.

D. Temple asked for the motion to be repeated to clarify what was stated.

P. Keliher to A. West: To Bill's point we will be back on this and the likelihood is very high. They will do something. We need to get through the ASMFC process first then work on this.

B. Sutter: If they can't fish with bait then can fish with artificial lures? D. Pecci: Right.

**Motion continued:**

*Affirmative: Al West, Dana Temple, Jim Markos, Jr., Sean Mahoney, Dave Pecci, Tim Harper*

*Non-Affirmative:*

*Opposed: Bill Sutter*

*Abstained: None*

#### 4. Other Business

##### **Annual Research Report – (see handout)**

Linda Mercer, Ph.D., Director, Bureau of Resource Management, presented the report to the council. The next step is to send the report from the DMR Advisory Council to the Legislature's Marine Resources Committee (MRC) via letter from the chair and orally by Pat Keliher. Consider this a living document to be modified over time as new issues arise. This report describes how our research program stands at this time.

B. Sutter asked about funding.

L. Mercer: All is funded that is contained in the report. Page 21 lists those items that do not have funds to support. We would either have to shift funds or pick up later. There may be species that are not being surveyed well or not at all. Others may need to be extended such as the inshore trawl survey, species specific surveys, the restoration work Pat handles, gear work with the lobster trap vertical lines, etc. All that is in here is driven by requirements.

B. Sutter: Clams flats are mandatory versus research.

L. Mercer: They stay open provided they meet FDA standards. We had started to open more restricted areas but that position is not empty.

B. Sutter: Are there other areas in the research plan that would lead to greater economic activity? What are the number of dollars you have and what is the figure if you could do all you wanted to do?

L. Mercer: All of this is uncertain.

B. Sutter: We have a wish list for everything and have an actual list of what we can do with the funding we have. The emphasis should be to spend money on items that keep people working such as on clam flats and here is another way that could be of benefit but no funding for it.

A. West to Council: What action shall we take?

L. Mercer: In the past it has been a letter.

B. Sutter: Due to the budget squeeze in the past biennium what have we reduced? There are consequences on what we can't do.

L. Mercer: our federal funding is in jeopardy over the next few years. Plus enforcement may see significant reductions in a few years.

B. Sutter: So when those dry up, what?

P. Keliher: those reasons are why there will be a top to bottom review of the agency with the declining budgets in mind and how best to position staff.

A. West: There is a general consensus among the members to send a letter to the MRC. [Linda Mercer and Al West will coordinate this.]

##### **Scallop limited Entry status**

Commissioner Norman Olsen indicated that this will be a discussion item at the next meeting. He is opposed to transferability via a lottery with no basis in merit or proper allocation.

B. Sutter: If the number of fishermen matched to available resources is ~200 active fishermen and there is a total of 687 license holders then 687 is higher than it should be, so latent licenses are important. Is the limited entry system like the lobster industry or matching the resource? Or are we taking the 200 fishermen, replacing the rest with active fishermen and increasing effort over time?

D. Temple: The Scallop Advisory Council (SAC) discussed 2:1 limited entry, then 10 then 5 and we've had 40 leave recently and now it's at ~200 active fishermen.

B. Sutter: The ones left in didn't fish last year.

D. Temple: I fear that the latent license pool could have an impact. The Commissioner feels it needs more work. I thought the 10:1 or 5:1 similar to the lobster system would go but the guys preferred this. We tried discussing at the SAC, some said yes and some said no. They've done too much work to let this implode.

Comm. Olsen: I want transferability where they are free to come in, lease and come back. The latent licenses are one issue. The fishermen should be able to adjust their patterns to target different fisheries versus a single fishery.

T. Harper: But we're locked in.

Comm. Olsen: There is a lot of hardship with waiting lists. You can't build a year or decade long living and if you leave for a few years you should be able to come back to work.

#### **Legislature**

Pat Keliher provided a handout that he reviewed with the council members. Topics included scallop bills, tribal issues, budget, etc.

D. Pecci: ACCSP has now broken their funding up for maintaining program and new programs. This should be good news. About 75% issued to fund maintaining existing programs.

P. Keliher: But making the matching funds is becoming more and more difficult. In kind is available yes but it is not so easy to come up with actual funds. You can't use other federal monies for match.

### **ASMFC & NEFMC Updates**

See handout provided by Terry Stockwell.

### **Other Updates**

B. Sutter: Regarding **shrimp and the Public Information Document (PID)** does the department have a position on options for control of catch over time, such as limited-entry, or daily catch limits?

Comm. Olsen: There is no position yet that is whole purpose of the PID. Many options sound appealing but there are drawbacks. Limited-entry may be a possibility. Some folks Downeast want zones but the implications are tough. Regarding limited-entry I won't support it without transferability.

D. Pecci: On the subject of **Striped bass** and FYI, for those fishermen in the Kennebec River regarding viability of the Kennebec River population it is not a research priority but there are private monies available to do restoration on the Kennebec River. But we need the research first for a bench mark to move this forward. The research would cost  $\frac{1}{2}$  -  $\frac{3}{4}$  million. Orvis for example has monies available for restoration. If anyone has any ideas on how to get the research done we could get support from industry.

Col. Joe Fessenden noted that the **elver season** has started this year and it is a huge market. They are getting \$950/lb this year. We only have 250 license holders left. Offices are working extra enforcement as there is a lot of cash involved.

B. Sutter: On the **research plan** we need to review the mission statement and resources. If you do this again would you include the fishermen?

Comm. Olsen: I will take my guidance from the statutes.

P. Keliher: The research review is in statute; it is not in the mission statement.

**Motion:** *(T. Harper, D. Temple) Motion to adjourn.*

**Discussion:** None

**Motion continued:** *Unanimous to approve: Al West, Dana Temple, Jim Markos, Jr., Sean Mahoney, Dave Pecci, Tim Harper and Bill Sutter*