

DMR ADVISORY COUNCIL MEETING
Natural Resource Service Center
December 15, 2010 1:00 p.m.
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), Glen Libby (Vice Chair), Dana Temple (Secretary), Dave Pecci, Sean Mahoney, Virginia Olsen, and Jim Markos, Jr.** Council members Vincent Balzano, Bob Baines, Tim Harper, Rod Mitchell, Bill Sutter, and George Harris, Jr., were unable to attend. Department staff included Commissioner George Lapointe, Col. Joe Fessenden, Pat Keliher, Deirdre Gilbert, Marcy Nelson, Trisha Degraff, Togue Brawn, Donna Hall and L. Churchill (staff). Others in the audience: Larry Grimard, Karin Sanborn (Penobscot Bay Press), and Doug Jowett (Brunswick).

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.

A nomination committee for the 2011 election of officers was established: Dana Temple, Virginia Olsen and Al West.

2. Approval of minutes (see handout)

Motion: (V. Olsen, S. Mahoney) *Motion to approve the minutes of the meeting held September 15, 2010.*

Discussion: None

Motion continued: *Unanimous to approve (Al West, Glen Libby, Dana Temple, Dave Pecci, Sean Mahoney, Virginia Olsen, and Jim Markos, Jr.)*

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

Chapter 85 Saltwater Fishing Registry

Deirdre Gilbert presented background on the proposed rules for registering agents and a striped bass endorsement. The agent rules would be similar to those used by the Dept. of Inland Fisheries and Wildlife. The rules also describe in detail the exemptions in the law.

D. Pecci: Language in the Magnuson-Stevens Act only authorizes states to regulate anadromous species; terrible language.

Motion: (D. Pecci, G. Libby) *Motion to approve the proposed rulemaking in Chapter 85.*

Discussion:

D. Pecci: *The sooner the better that this is sent out to the towns.*

D. Gilbert: *The IF&W mailing to their agents included information about this.*

Motion continued: *Unanimous to approve (Al West, Glen Libby, Dana Temple, Dave Pecci, Sean Mahoney, Virginia Olsen, and Jim Markos, Jr.)*

Chapter 34.10 Maine Groundfish Management Plan – Amendment 16 compliance updates

Commissioner Lapointe reviewed the compliance issues with Amendment 16.

D. Temple: *Why are wolffish prohibited?*

Comm. Lapointe: *There is a general prohibition on the species now.*

S. Mahoney: *There was a greater percentage taken by recreational fishermen. They were not "listed" because the feds initiated these rules.*

Motion: (G. Libby, V. Olsen) *Motion to approve the proposed rulemaking in Chapter 34.*

Discussion: None

Motion continued: *Unanimous to approve (Al West, Glen Libby, Dana Temple, Dave Pecci, Sean Mahoney, Virginia Olsen, and Jim Markos, Jr.)*

Chapter 42 Striped bass

Pat Keliher introduced himself and briefed the council on the proposed rulemaking. The Department has received concerns over the last 5 years about the downward trend in the Striped bass population from 4 million to ~300,000 fish. The Department held scoping meetings last spring. The major focus was on how to reduce hooking mortality; and no movement on seasons. Circle hooks have less than 1% hooking mortality versus the 8% that the ASMFC uses. There is also a change in the number of treble hooks on a plug.

On timing: tackle shop inventory issues were raised to be able to sell off their inventory first. We added a 2 year education period to allow time to phase out the hook inventory until circle hooks would become required January 1, 2013.

On the sale of Striped bass, Maine has been known as a game fish state but we've never prohibited sale that was usually to restaurants. Now it will be clear that sale is prohibited.

D. Temple: What is done in other states?

Comm. Lapointe: Striped bass range from N. Carolina north; the Chesapeake Bay and Hudson are producer areas. We need plans to reduce fishing mortality and will discuss further under the ASMFC topic.

P. Keliher: Virginia has circle hook regulations; New York and Maryland are looking at them too. The rules provide a significant biological savings. Discard mortality was discussed;

Motion: (V. Olsen, D. Pecci) Motion to approve the proposed rulemaking in Chapter 42.

Discussion:

D. Pecci: Anything in Maine is symbolic; we have a small harvest compared to other states. Many of our associations' members supported the rules but some oppose. Most of the charter captains have lower mortalities with various hooks; it is the public that have the greater mortalities; so members are holding their nose on this for the greater good.

The 2-year phase in will help us work out the details.

S. Mahoney: What is the education?

P. Keliher: When they get a license they will get information; we have applied for \$140-150K from the Dept. of Commerce for outreach material and promotion of circle hooks.

D. Pecci: I've used circle hooks for 10 years with very little mortality. Florida uses circle hooks in all their reef fishing now. The catch ratio usually goes up. Also, the proposed immediate kill provision had full support from our members.

D. Temple: What does this mean?

D. Pecci: They will leave it on a string along the boat until they catch a larger fish; this is not allowed in fresh waters either.

V. Olsen: Cost?

D. Pecci: Circle hooks are more expense but you don't lose as many. Remember it took 10 years for folks to accept the slot limit.

Motion continued: Unanimous to approve (Al West, Glen Libby, Dana Temple, Dave Pecci, Sean Mahoney, Virginia Olsen, and Jim Markos, Jr.)

Chapter 43 Bluefish

P. Keliher explained that these rules pretty much mirror the Striped bass rules as they are fished together. We removed the high grading because they are used as live bait for tuna and has not been an issue for bluefish. Bluefish also do not have a length limit.

Motion: (V. Olsen, D. Pecci) Motion to approve the proposed rulemaking in Chapter 43.

Discussion: None

Motion continued: Unanimous to approve (Al West, Glen Libby, Dana Temple, Dave Pecci, Sean Mahoney, Virginia Olsen, and Jim Markos, Jr.)

Chapter 24.10(D)(6), Maine – Restricted area for American oyster; and Appendix A

Marcy Nelson briefed the members on the background of the proposed rules. Industry notified the Department on October 7, 2010 of MSX being found in the Damariscotta River and requested an emergency regulation. A meeting with industry was held October 20, 2010. Information from Rutgers University where they've dealt with this in other states for a long time was described. The Department is conducting a snapshot surveillance to census of what is present and where. The one change between the

emergency rule and this rule is the 3mm size was removed as the oysters can be infected when less than 3mm. A permit would be now required from this restricted area, which is the same for all restricted areas. M. Nelson answered various questions about experiences in other places, speculations as to why it is here now; and explained that in the spring we should expect to see mortalities again.

Motion: (V. Olsen, D. Temple) Motion to approve the proposed rulemaking in Chapter 24.

Discussion: None

Motion continued: Unanimous to approve (Al West, Glen Libby, Dana Temple, Dave Pecci, Sean Mahoney, Virginia Olsen, and Jim Markos, Jr.)

Comm. Lapointe: We will need to learn how to manage MSX here through the movement of shellfish. We may need to discuss the density of oysters in the Damariscotta River.

4. Other Business

ASMFC Updates

Striped bass

Comm. Lapointe: There is a proposal to allow an increase in the commercial quota coast wide for Striped bass. The information is currently based on old data for the abundance north of the cape and has decreased over the last 6-7 years. Catch was significantly down last year. A motion was made to develop restrictions on the recreational fishery to increase abundance.

D. Temple: Is the decline related to fishing pressure?

Comm. Lapointe: The amount of mortality overall is high and coupled with the Chesapeake Bay environmental issues is bad.

D. Pecci: We haven't had an above average spawn in the Chesapeake Bay for 3-4 years. This is confusing because the Hudson stock is strong. So along the Jersey shore fishing is good but tagging indicated that Maine gets fish from the Chesapeake Bay area. When they are not here we don't have clients.

Comm. Lapointe: In Montauk they can still have hot spots.

D. Pecci; And they will hammer the big strip bass off Long Island until they stop. Glad to see the rule moved forward and see if they can turn around.

S. Mahoney: Does Massachusetts have a daily limit?

P. Keliher: one fish per day.

River herring, Amendment 2 requires each state to have a sustainability plan or moratorium. States have been asked to put a plan together and it was approved. A few Maine towns have plans that the Department won't be able to approve because their numbers are down. But it is nice to see this work.

S. Mahoney: River herring will be discussed at Monday's Amendment 4 or 5 Atlantic herring committee meeting.

G. Libby: According to the latest PDT report they didn't know what to do.

Comm. Lapointe: The NMFS, ASMFC and each government committee is being sued over River herring. They are in a procedural phase now.

Northern Shrimp

The season is set for December 1 through April 15. The target take was exceeded last year. This year's target is 4000 mt so we asked for a mid season check in February on the status of the landings. The early season is going strong and the price is good. We had calls today for trap fishing and if the catch rate continues it could ruin the trap fishery opportunity. It likely won't sustain these rates though.

In mid October limited entry meetings were held; Downeast had good representation as we've had a fishery there the past few years unlike previous years.

We should get a dip in landings; we have seen more; and this is better than last year. There are a lot of 3 year olds but we will likely catch these then it will drop off.

A. West: Monitoring?

Comm. Lapointe: We're unsure how we will get the data yet; if it stays heavy we will add restrictions in February. We need to look at reporting deadlines and penalties.

G. Libby: Landing limit?

Comm. Lapointe: Not yet; we don't want to have catch wasted so we're reluctant on that.

G. Libby: We had a processor quota years ago, once the quota was caught we shared such as through a co-op and this worked.

S, Mahoney: Why the reduction?

Comm. Lapointe: Shrimp are a cyclical fishery. In colder winters they have a better fecundity. When I was first Commissioner we had a 25 or 28 day season.

NEFMC Updates

Topics: Foreign fisheries in the 1980's and by-catch monitoring is being worked on.

G. Libby: Under Magnuson-Stevens every fish has to be counted, of every species, and is why in part we have the salt water registry.

Topic: Amendment 6 to Monkfish.

Groundfish – state permits banks are in the procedural steps; Trisha DeGraff described the Departments' current place in permit bank acquisitions. Maine and Rhode Island have received federal monies to purchase federal multispecies permits; Maine received 2.7 of 2.9 million for permit acquisitions. The RFP closed in September. At this time 8 permits are being purchased with contracts to be completed by the end of January. Maine is the only permit bank as a sector and will be able to help issue permits in the coming year. These are for vessels under 45 feet.

D. Temple: Are these for later use or redistribution?

Comm. Lapointe: Redistribution with sectors and catch shares. This allows us to get some permits with catch shares back. Maine is ahead of the other states.

G. Libby: Shares are from folks who didn't have a quota; they could reactivate those who missed getting a quota.

Comm. Lapointe: This will be contentious.

S. Mahoney: Has all 2.7 million been used? Ans: 2.6 million with about \$30K left. We've proposed to remove Trisha's salary from these monies.

Comm. Lapointe: Day permits have been discussed; donate to other sectors for tax deductions versus other strategies such as permit on a shelf.

V. Olsen: Must they renew yearly? Ans: Yes, but the renewal is free; the VMS is costly.

S. Mahoney: Common pool versus sector? Ans: Both

Comm. Lapointe: I've been pleased with the process.

S. Mahoney: Are there regulations on how the quota will be leased out?

Comm. Lapointe: yes

Deirdre Gilbert: We will need additional statutory authority to allocate...

S. Mahoney: By May 1st?

D. Gilbert: Hopefully as an emergency law.

T. Brawn: Or we could give it away; by not charging no statutory authority would be necessary.

Other Updates

D. Pecci: All these sectors / catch shares are not just commercial. NOAA is looking at these for the recreational fleet and is part of their agenda, which is scary for us. Ocean zoning like Alaska and more ocean bottom for only commercial versus only for recreational is scary. Trip reporting within a few years will have daily or weekly trip reports. VMS for fly fishing boats have been nixed for now. This would be get better data from the recreational fleet just like the commercial fleet. Bruce Joule's survey program in Maine can be effective within a small margin of error but doubt we will win that battle.

V. Olsen: Regarding the Shellfish Advisory Council the FDA audit found DMR in compliance in 2009 but noted cautiously we need to keep the 3 positions funded or will be found in non-compliance again. The NSSP versus no interstate commerce is critical. The DMR did a good job with the recent FDA audit. But as always the budgets issues are tough.

D. Temple: The Scallop Advisory Council met a few days ago. It has a vision of what the resource should look like down the road. On the entry exit ratio vote the council originally felt 5:1 was best. After their discussion 2:1 was proposed based on a re-evaluation of the yearly numbers and what they've gone through in recent years. The biggest concern is latent licenses. When the closures open they could get

pounded with extra effort; such as if we lose 200 and get 350 in; so they are reserving the right to review every year. Otherwise they are satisfied with how it looks right now.

Comm. Lapointe: Has limiting effort been discussed in those areas?

D. Temple: Yes; voluntary meetings are going on to gather input. Guidelines need to be developed but everything is being proposed. They could be area specific; nothing is being excluded right now. We need area management and it won't open unless that is in place.

T. Brawn: We are pleased with the results from the meetings. No one wants the closed areas opened freely because now they want the areas protected. Before the areas are opened they support keeping them closed until the management plans are in place.

D. Temple: The transformation in the last 3-4 years has been amazing. Before they wouldn't vote and now there is good participation as partners and have a different frame of mind. I'm pleased with how this has proceeded and it should put folks back to work. It is tough to come to these decisions.

V. Olsen: There are lots of changes in Augusta right now. Everyone should call you new representatives and make you opinion known to support the current commissioner.

Next meeting: It was agreed to cancel the January meeting and hold the next meeting February 16, 2011. Since this is the case members will be sent Chapter 45 for a ballot vote.

Motion: *(D. Temple, V. Olsen) Motion to adjourn.*

Discussion: *None*

Motion continued: *Unanimous to approve (Al West, Glen Libby, Dana Temple, Dave Pecci, Sean Mahoney, Virginia Olsen, and Jim Markos, Jr.)*