Report of Shellfish Advisory Council to Joint Standing Committee on Marine Resources concerning the use of Private Laboratories in the Maine Shellfish Program

Pursuant to LD 2038 a number of steps were taken. The following are some of the steps taken and points of information considered:

1. Discussion of the types of projects to be considered as pilots under the legislation
2. Upward classification of areas currently not meeting approved classification are often a result of poor water quality and/or lack of shoreline survey work. When it is poor water quality the initial hurtle to an upward classification is the identification and remediation of pollution sources. The work of finding and removing pollution sources is labor intensive, time consuming and involves collecting and analyzing many water samples for fecal pollution. DMR has very limited resources to conduct this work. A town may choose to do this work no its own and any sample collected for the purpose of finding the source of fecal pollution does not require the use of certified laboratories.
3. In general, there were two situations identified where pilot projects are appropriate and where there is the need for a certified laboratory.
    i. When there is a reasonable expectation that water quality has improved – the source of the water pollution has been found and removed, accelerated sampling can be conducted to accumulate enough sample results to meet the requirements of the NSSP in a shorter time frame than what would be normally used in the program.
    ii. The second case is where the cause of the poor water quality is known and predictable and can be managed around. Rainfall is generally the more common condition that can be managed around. Determining at what rainfall amount the water quality degrades requires extensive sampling following all rainfall amounts.
4. Detailed Notification to towns on two or more occasions of the opportunity to undertake a pilot project. Parameters of the types of projects were provided. As part of their proposal each municipal proposer was asked to identify the private laboratory that they intended to work with.
5. Two rounds of projects were considered, in the fall of 2008 and the spring of 2009.
6. Four applications were received for each of the two rounds.
7. A subcommittee of the Shellfish Advisory Council read, ranked, and reviewed the proposals in detail. For the first round, a physical meeting was held and proposals were debated. On the second round a conference call was held.
8. In discussions of the second round of proposals several potential projects were eliminated as the Department staff had accomplished the work, or had begun the requested task(s).
9. Two proposals from each round were selected as pilot projects.
10. Communication with two private labs, Katahdin Analytical Services, in Scarborough, and AquaMaine, in Rockport, was initiated. DMR staff spent

substantial time educating these labs regarding the requirements and process for certification.

a. Correspondence with Katahdin was through email and phone calls. Katahdin also spoke directly with Linda Chandler, FDA Laboratory Evaluation Officer, by phone regarding laboratory approval requirements.
b. DMR hosted a visit by AquaMaine to the DMR Lamoine Water Quality Laboratory in order to give the best first hand information.

11. Katahdin Labs was dissatisfied with the certification requirements and expressed concerns that the requirements were overly detailed and onerous, and further, that they felt that their reputation and laboratory certifications for other environmental programs should help in the certification process. The DMR explained that the certification requirements were the same regardless of whether the lab was government, research, private or other and went on to explain that the sample collection and statistical evaluation regimes for the National Shellfish Sanitation Program is unlike other lab testing programs in existence. Katahdin withdrew from the process stating that there were likely not enough samples associated with the pilot projects to make it worth undertaking the laboratory approval process.
12. AquaMaine attended the December 8, 2009 meeting of the Shellfish Advisory Council. They indicated that DMR staff was courteous and informative. They were satisfied with the process, but indicated that they did not believe that becoming a certified lab was, ultimately, going to be a profitable venture for them. They stated that they had carefully considered the costs and benefits of taking this step and expressed concerns about the limited volume of fee-for-service work (i.e., the market) and the time and expense of certification against the amount that could be charged for the laboratory services. They informed the council that they would not be pursuing certification.
13. Clearly, and for various reasons, there is a current lack of interest by private labs to become certified under the National Shellfish Sanitation Program.
14. The following is a generalization pertaining sample numbers. When a town is interested in pursuing a possible reclassification of a growing area, when the area is of limited size there may be 8 - 10 sample stations, each of which must be sampled a minimum of 30 times. The initial work to reclassify an area that a private lab may participate in may be limited to as few as 300 samples spread over more than one year.
15. Although the number of samples for the pilot projects was considered financially insufficient for the private laboratories, one town that submitted an approved pilot project thought otherwise. When the scope of the project was laid out and the amount of time and the number of samples required was determined the town decided the project was too expensive and labor intensive to carry out.
16. It should be noted that there is plenty of work in pollution source identification and remediation. If the town is willing to do the work and pay for the sample testing, the town can already contract with a private laboratory. This type of work does not require certification.

17. In conclusion, the Shellfish Advisory Council recognizes the potential for private labs and how they may compliment the work of the Department. The SHAC also recognizes that the amount of time the DMR staff have available for the so-called “opening” of areas will fluctuate over time as work loads, municipal needs, staffing levels, regulatory requirements and meteorological events change. The ability to utilize private labs should remain an option even if that option is not currently being utilized. Further, the Shellfish Advisory Council recommends that local shellfish committees and municipalities continue pollution abatement efforts utilizing private laboratories, in conjunction with the DMR, as appropriate.