

Aquaculture Advisory Council Meeting

September 17, 2021, 9am - 11am

Meeting conducted remotely via Microsoft Teams

Aquaculture Advisory Council Members: Fiona de Koning, Greg Lambert, Bri Warner and Chris Davis (phone);

DMR Staff: Meredith Mendelson, Deputy Commissioner; Deirdre Gilbert, Director of State Marine Policy; Marcy Nelson, Aquaculture Division Director; Erin Wilkinson, Resource Management Coordinator; Flora Drury, Marine Scientist; Kohl Kanwit, Director, Bureau of Public Health; Jeff Nichols, Angela Hopkins.

Members of the Public: Carissa Maurin, Chris Vonderweidt, Dan Devereaux, Hannah LaClaire, and Brad [last name not provided].

Approval of minutes from June 18, 2021 meeting

Motion (Fiona de Koning): Motion to approve the June 18, 2021 meeting minutes *Motion unanimously passed to approve the June 18, 2021 meeting minutes.*

Possible Legislative Proposal (Deirdre Gilbert)

Special fees for certain Aquaculture proposals

Deirdre Gilbert provided an overview of how a proposal for special fees for certain aquaculture projects might work. The authority would allow DMR to charge additional fees for the review of certain proposals that are very complex and take significant staff time to review. The Maine Department of Environmental Protection (DEP) has a similar authority and Deirdre Gilbert has been talking with them about their process. Fiona de Koning asked if controversy of a proposal would be taken into account. Deirdre Gilbert noted that DMR would mimic DEP statute, which notes that the decision to charge special fees cannot be based solely on public controversy. Bri Warner suggested developing clear guidelines that should be adhered to to protect DMR and applicants. Bri Warner suggested implementing a set number of hours. Deirdre Gilbert explained that the process may be difficult to set certain hours but agreed that guidelines should be made as clear as possible to protect DMR and to meet criteria. Bri Warner is not personally opposed but is reluctant putting the fees in place if they are not clear and believes it could be problematic for DMR and lease holders. She indicated that people may feel that they are being treated unfairly. Fiona de Koning asked if there was specific language from DEP. Deirdre Gilbert advised they would rely on the statute to make decisions. Greg Lambert asked if it was possible to go back a few years and see what proposals would trigger these types of fees. Marcy Nelson explained that it would not be difficult to identify past proposals.

Proposed Amendment to emergency leases

Marcy Nelson provided an overview of the proposed amendment to emergency leases that would allow DMR to be the leaseholder. Meredith Mendelson explained that vibrio risks are increasing with warmer

water temperatures and although DMR has not had to issue an emergency lease in quite some time, she is worried about scenarios of leaseholders needing to move product quickly in an outbreak situation. Staff capacity would be challenged if numerous leaseholders needed emergency leases at one time. If DMR was authorized to be the lease holder, the agency could respond in a timely manner. This is critical because once a vibrio closure is in place there is no guidance on when to open again until temperatures lower. Allowing DMR to be an emergency leaseholder may be a better option for compliance. Fiona de Koning asked if DMR is revising and if there is a plan. Deirdre Gilbert explained the process to modify the current statute. Bri Warner asked if the idea of Darling Marine Center or other third parties to be leaseholders was on hold. Marcy Nelson explained that it ended up not being needed but were working through a process. Marcy Nelson explained it was a potential and they were open to the idea but had concerns and that the best approach would be for DMR to have responsibility. Meredith Mendelson stated DMR was trying to avoid leaning on a third party due to potential liability exposure.

Proposed Rulemaking: Universal marking system for aquaculture

Marcy Nelson spoke on behalf of Flora Drury, who has been coordinating discussion with industry and other stakeholders about updating marking requirements. Marcy Nelson provided an overview of concerns related to site marking. All lease sites would be marked with yellow buoys and the distance in boundary buoys would be increased from 100 yds to 200 yds. Flora Drury has spoken with the USCG and Marine Patrol and both are supportive of the proposal. A guidance document would be put together providing time for compliance in 2023. Bri Warner thought it would be a good idea for Harbor Masters and boaters. Fiona de Koning asked how DMR would get the guidance to boaters. Marcy Nelson explained that it would be posted to the DMR website and sent through GovDelivery.

Updates from DMR (Meredith Mendelson/M.Nelson)

Meredith Mendelson was pleased to announce that Marcy Nelson accepted the full time, permanent position for the Aquaculture Division Director. Marcy Nelson gave a summary of the new positions and an overview of the existing vacancies. C. Burke left the Department on September 2, 2021. A. Hopkins is helping part time until C. Burke's position is filled. The Paralegal Assistant position has already posted and will be closing at the end of the month. The goal is to also hire another part time Paralegal Assistant and to get that position posted as quickly as possible. Marcy Nelson noted there was a vacant Resource Management Coordinator position and is hopeful that the position can be hired fairly quickly. A Public Service Manager, or "business manager position" would be the next position to fill which would supervise both positions for the Paralegals. Fiona de Koning asked if the Business Manager position could be trained at the same time. Marcy Nelson thought it was a possibility, but it might be a lot in consideration of the other positions that are filled.

Marcy Nelson also indicated there was a vacant Scientist III position and an additional Resource Manager Coordinator position. Fiona de Koning asked about the Hearings Officer positions. Marcy Nelson explained that the Resource Management Coordinator is a Hearings Officer. Marcy Nelson indicated that an FJA would need to be created for the additional Resource Management Coordinator. Fiona de Koning asked how complicated it is to get through HR. Marcy Nelson indicated it was not that difficult and explained the HR process. Meredith Mendelson indicated the FJA's that have been submitted have been approved fairly quickly.

Current Applications

Marcy Nelson explained that there are a total of 80 pending applications. There were 87 at the June meeting. Since June, 17 new applications have been received. Staff have written 18-20 decisions and have performed 30 site visits. The 80 applications include proposals at the pre-app and scoping stage. Pre-app stage: 8; Draft app stage: 4; Total pending 18. Recently received 9 final applications and are mostly caught up on reviews with the exception of two proposals. Seven proposals in the hands of applicants and there are 23 proposals pending some stage of review with only 7 of those needing site visits. Marcy Nelson explained with winter quickly approaching they are trying to get as many site visits done and writing reports later. Site reports need to be done 30 days before a hearing. There are 19 hearings in que and several have been scheduled through the end of the year.

Fiona de Koning and Bri Warner asked questions regarding the renewal process and how that might be improved in rule or law as the sites already exist. Meredith Mendelson explained relevant rule and law and noted that even though the sites currently exist situations can change, especially over a 20-year period.

Marcy Nelson explained that the Emergency Order was lifted, and hearings can no longer be remote only. There have been a few in person hearings. DMR has tried hybrid models, but they can be very complex. Marcy Nelson indicated that staff would like the option to hold hearings entirely remote, but this would require a statute change and may have implications beyond DMR's authorities.

The meeting adjourned at 10:07 a.m.