

Ellsworth, October 14, 2008

Opposed (O)

Fiona DeKoning, Bar Harbor, Acadia Aqua Farms, LLC

My husband and I mussel grow; we opposed the proposed rule change to Chapter 7 as written. Although Theo and I are committed to supporting and actively engaging in efforts to coordinate the needs of mussel farming and other resource users there are parts of the wording of this rule which would have a negative impact on our business. The following are listed some questions and points of concern relating to the proposed changes to Chapter 7.

Section 1 Municipal responsibilities: Would the proposed municipal mussel management plan be available to mussel harvesters or growers for comments before the Commissioner approves it? Is there an appeal process if it appears a municipality is using this rule in an exclusionary manner? What are the criteria for approval of a municipal mussel management plan? And the big one for us: The 45 day allowance for the municipality to provide a response is far too long. Our company has a best Management Practice protocol to harvest mussel seed predominantly in the fall and winter months to minimize gear conflict with the lobster fishery. Also, for cautions sake, we assume that there may be some clam resources under a mussel seed bed (although in practice we have not yet seen clams under a dense seed bed), and as such, harvest in the winter takes into account that clams are deeper in the mud in the winter, and therefore less susceptible to any disturbance. The mussels could be lost or degraded as a result of a storm or ice action after 45 days waiting in the winter. We have seen this happen in Gouldsboro when in our participation in the then pilot project, it took so long to arrange, that the ice had turned the seed mussels blue and therefore commercially useless to us. The experience with the shellfish committee in Gouldsboro has been very positive and we are committed to working with municipalities to manage the various resources as efficiently as possible. However, I would suggest a time line for municipal response of 14 days maximum and preferable within a week. Another questions on that was if given, for how long is the permit valid?

Section 2 Intertidal mussel harvesting permits: What happens if communications prove difficult to establish? Does the "shall obtain the municipal recommendation in writing" mean that the municipality is mandated to consult and discuss the application with the Harvester? How would the department handle applications from multiple harvesters for a given intertidal resource? I would request that the DMR gives its decision on the application, within 7 days.

Section 3 Compliance: There should, in fairness, be reciprocal penalties for the municipalities for non-compliance with the permit application process, not just the harvesters.

I would like to thank-you for the opportunity to testify and for taking our position and concerns into your deliberations.

I would also like to thank Denis Nault for his positive and helpful approach in trying to solve some of the communication problems between mussel and clam harvesters. The goal of improved communications to allow for a more effective science based resource management is one that we endorse and to which we are committed. Thank-you.

Ralph Smith, Jonesport, Moosabec Mussels owner and President of the Maine Mussel Harvesters Association

I am opposed to this as written. There is clam conservation going on. Clam seeding in these municipalities right now by all means everybody in the mussel industry is concerned about. We do not want to be in those areas. We've requested those areas numerous times and for years, and I have yet to see the first chart of an actual clam seeded area. Some of this problem could be avoided if we had that. So we don't want to be dragging in those areas.

Also, the municipal conservation management program involves more than just the seeding of clams. It also involves opening and closing of flats. I'm familiar with that because I'm involved in the Jonesport shellfish, which means we can, we do close a big portion of our clam flats for summer harvesting. Then in the winter we open those clam flats and we open other flats for the winter harvesting. The question is what [is] the municipality going to do with those flats during that time if there are clams in there?

Also, they're managing the clams and this is going to require them to manage the mussels, in my thinking. By managing I'm talking about conservation and what not, record keeping, the municipality's responsibility for these mussels. So, I think management...I'm opposing this as it is. I'm looking at the management because I'm in the opposed category right now; I think the shellfish conservation at least in our

community on the clam side of it is a good thing. I think exposing those seeded areas to not just mussel draggers but all harvesters, mussels, wrinkling, scalloping, or whatever is a plus. I do think that if you close flats to protect those flats because of weather for a later date and it comes under the umbrella of conservation but it is not the conservation that we're concerned about, not the conservation that we're concerned about people actually planting in clams and what not. I'm saying it could be abused. Then I'm also suggesting that the way I see the regulation of a shellfish ordinance that if they are going to take this on that they, the municipality, is going to have to take on the management of musseling, harvesting and they've got to do the management of that harvesting. There is going to be a lot of responsibility for them, which can be done but I'm just saying this is going to be required, I believe.

So, it is going to be awful hard to enforce low water marks if we don't have charts to go by because we're not going to know which flat, cove is actually closed or not closed so it is almost going to be in my thinking on the honor system to stay out of there. Or how is the warden going to know where that line is when he's on land? Obviously if we're in there and we're up in over there dragging it is pretty obvious. But I'm talking about if we're inching it that is going to be awfully hard to enforce. But with charts we can stay out of those areas.

I think the mechanism for the towns having a big input in this management is a plus. But I'm on the opposition stuff now. I don't want to make it sound all bad. As such as it is I think it could be very much abused.

Denis Nault: To answer a couple of Ralph's questions: Municipalities are not required to manage for mussels. That is, if they choose to get into managing specific areas for limits on dragging. So Jonesport might not want to, so they might not even apply to deal with mussel management of dragging. Some of the other municipalities, if they choose to, they must specify, specific areas where they want to limit dragging. They might be in conjunction or should be in conjunction with having their conservation areas. Some of them are seeded areas. We didn't want to specifically have seeded areas only because what would stop a town from going out and broadcasting seed on every flat and saying, there I've seeded every flat. We didn't want to have that. There are certain towns have areas that set and grow well naturally. They will rotate and close those flats off; I know Mason's Bay is closed off on a regular basis because of the unique characteristics. So they want to have that closed at certain time periods of the year, it runs and runs very naturally. We're not requiring all municipalities to do this. If a town chooses to they must specify those coves or those areas. When they are specified then that gets in that permitting process. No, we do not want the municipalities; they can only manage for clam specific species. Mussels they cannot manage for. The process as you know, we've had a problem with gentlemen's agreements. Here is a process to be able to sit down and formalize something. The permit is physically written by the Commissioner not by the municipality, so there is still some over riding authority by the DMR for those specified. I repeat, specified managed areas, not all areas will be specified. They must come up with a reason why and what they are doing for conservation. We very much view the mussel harvesters should be handling and dealing with the mussel management. I want my municipalities to target and look at only managing their clams. When they have some mussels in there, there is where hopefully you guys become a service provider to be able to remove those mussels from those flats at certain time periods. What works out well for different coves; it might be summer or winter. Whatever works out well for both parties. I don't want municipalities to have added work, which they can't handle which is mussels. That is something we want mussel harvesters to be looking at the mussel management in those communities.

Ralph Smith: You just echoed what I was trying to bring out that a clam conservation which is under shellfish conservation just can't manage the mussels unless they meet some criteria.

Matthew Beal

I've been a mussel fisherman; have been for 13-14 years now. I'm opposed to this for many reasons. It's been well stated here already by Fiona and Ralph so I'm in agreement with what they have said tonight. But I do oppose this proposed rule.

In Favor (S for support)

Sherman Merchant, Gouldsboro Shellfish Committee clam conservation

I was chairman of the committee for 5 years in a row. Now we have a new chairman, a young fella and he's been doing very good job, he's name is John Renwick. On this rulemaking, and to comment to Ralph's saying there was no way you can manage it or anything. We have it all set up with GPS bearings and everything and big yellow markers from one point to another. Down in our town office if they want to, we have

maps all made up of our closed areas, of our conservation areas, of our reseeding areas, of our surveying areas, that we've already done. Mr. Cathcart back there he was on the warden part of it and he done a lot of it too, he and Wayne Hodgkins. So if anybody wants to know where our areas are all they have to do is stop at our town office and you can pick them up. I'm in favor of this.

Virginia Olsen, Stonington

Also, in favor of the rulemaking and I agree that most municipalities have exactly where their resources are located, what seeding areas they have redone and their locations. It is a lot easier for the 36 licensed mussel harvesters to contact the shellfish committees than for us to track down them. I do have with me today as chairman for the Stonington - Deer Isle shellfish committee a letter that they have asked me to bring pertaining to Chapter 7.70 Intertidal mussel harvesting or dragging and dredge regulation.

We come before you **on behalf of the Deer Isle Stonington Shellfish Committee**. We are in favor of the 7.7 Intertidal Mussel Harvesting by drag or dredge. The shellfish committee would like to thank the department for all of their efforts bringing this proposed rule forward.

The harvesters from Deer Isle and Stonington have watched without any recourse as mussel draggers and dredgers have come into an area they have just put hours of conservation time into, and are also harvesting big numbers from, tow through it all. Destroying conservation work, and cutting their daily catch into half or a quarter of the harvester that were bringing in. Not to mention the change and effect on the bottom. A large majority of our harvesters are hand harvesters, using only a thin glove for digging. Once a mussel boat has been in and dragging an area taking the top mud from the bottom and washing shells back into the area it's not suitable for hand digging.

For the 36 mussel boats to the 86 harvesters just in Deer Isle and Stonington it does not make common sense for our volunteer conservation based industry to stand by and watch an industry that has done literally no conservation work destroy ours.

Having said this we have a few questions or comments with this proposal:

If the municipality is going to enforce the new provisions to our ordinance it will be a substantial increase to budgets of many programs. Towns need some form of licensing fee or permit to off set the cost of enforcement.

If DMR wants to issue permits after municipal recommendations the towns could work with Marine Patrol but have the ultimate jurisdiction fall under Marine Patrol.

But we had concerns with number 3. The compliance sounds more like a gentlemen's agreement. Does this statement mean that there is no enforcing the parameters of the law? We all know that gentleman's agreements don't work. We wouldn't be here if they did. Dragger's can say they would stay away if they knew were conservation work had been done, but bottom line is they don't. They make no effort to try and find out, we've have been involved with the mussel industry, and chairman of, volunteering myself with the Deer Isle – Stonington, we've been working with the Shellfish Committee for the past 10 years and not once have we had a dragger, even from the island, come and ask anything of us, where our conservation areas are or not. And I'm out there at many different meetings, so there is pretty much no excuse; it's easy for them to contact us. Our Area Biologist has offered contact information many times.

If a violation is committed and DMR is going to refuse a free permit what stops the draggers from continuing to drag? Taking their catch, to fill market orders and not the set bushel number? Using certain types of gear etc?

We think this is a fundamentally good proposal that needs some changes to make it work properly. If a permit violation is committed a penalty should follow. Using the same fee structure we use for shellfish violations at least. Who ever is issuing the permits should be charged for enforcement or the municipality should have the right to sell a license for monetary support towards enforcement after the state has issued its permit. We hope you will give these few suggestions additional thought so these rules will truly have the impact they were intended to have.

Thank you for the opportunity to address these proposed rules; we appreciate your stop here in Ellsworth.

Herbert Carter, Stonington

I'm in favor; as far as I'm concerned I'm in favor of doing away with mussel dragging on the intertidal zone. We have in our town now from when I first bought a clam license 51 years ago, we have about 13% of the clam flats today we had then. The mussel draggers have removed in places 20 inches of soil from the top of mussel beds. One of the major ones is Great Eastern Mussel Farm. They don't drag; they have hydraulic arms with a quahog dredge. We have places in our town now there is no such thing as a mussel bed. It is not

even there. We have people that tell me where they come into a place where they go clamming where they step out of the skiff where it used to be mud bottom and now it is mud silt about 2.5 – 3 feet of it. The Reach is one of the major ones. One of our major clamming areas is gone. The whole southern piece of the Reach is done. There is no clams, it just mud silt, like 3 feet deep or just soft dead mud. There is no product left there at all. I don't see how people think this mussel dragging is right. We have a Clean Water Act, and you tell me you stay behind a mussel dragger for a day and you find some clean water. We don't have fish come in our brooks. We have nothing [that] happens on the intertidal zone. They just rip it up. There is no maintenance to what they do. The state has offered Great Eastern thousands of dollars if we have a red tide they give Great Eastern all the money. The clam diggers get nothing. Where we are we don't get one anyhow, they call it fresh water drain off, they don't call it red tide. We have, actually it doesn't come in to Stonington. But the whole dragging thing on the intertidal zone, what your license said in 1946, there was zero dragging in intertidal zones, you are not allowed to have a clam in a drag, not one. You can call the state that's the first thing they say to you, zero. There's not one of them that can tell me they've never seen one. Because they all claim they see a lot of them. The warden's in our town have never been aboard a mussel boat. I don't know if they think they're the most honest person in the world of what but our scallop industry is depleted because the mud silt, the mussel bed is right above where the scallops were. When I was a kid you could go pick [scallops] off the side of the mussel beds. Today there's no such thing. Nothing. They blamed it on the divers and the draggers but the mussel draggers are the number one problem we have in the intertidal zone. Number one. In our place we could take care of a lot more people if they just got out of it. I think it is time for the state to take care of what we've got not what they want.

Mabel Robbins, Deer Isle Stonington Shellfish Committee member

We're for the proposed rule regulations and read the following letter:

The harvesters of Deer Isle and Stonington are FOR Proposed Rule Requirements for Municipalities having 7.7 Intertidal Mussel Harvesting as an enforceable activity.

It has been a long time coming that we have something to help us protect the flats we harvest. There are 36 licensed mussel draggers in the state and 86 licensed diggers on Deer Isle and Stonington. There are areas that draggers have changed the bottom so much. Freezes Island, in Deer Isle was rejected as a lease site but it has been dragged so at the opening of the cove that the tide comes in quicker than it ever did before. This costs us time, and the harvest practices the draggers are using cost us the use of valuable hand digging area. Not to mention our landings drop considerably when a mussel boat is in the area. The mussel industry will argue that none of this is scientifically substantiated information and that may be true. But some of the best science obtained today is from fisherman in the industry. When it hurts your wallet you pay attention and figure out what the problem is.

We have some questions pertaining to the rule.

If this is added to the municipal ordinance does it fall under there enforcement?

If so, wouldn't the town be able to sell licenses to help offset the additional cost for enforcement? Or is Marine Patrol doing the enforcement?

What does the compliance section really mean?

Does it prevent enforcement?

What stops a dragger from staying off designated intertidal flats?

We just want to make sure after all of the work that has been done that this regulation actually does what it's intended to do and not be another gentleman's agreement. To finally get this far and to not give the municipalities the tools they need to implement the rule would be equally disappointing.

Blaine Olsen, clam digger, shellfish dealer, and member of the Deer Isle Stonington Shellfish Committee

I feel there needs to be some sort of restrictions on mussel harvesting. Especially gear. I feel that dredge designed for dredging quahogs shouldn't be used in the clam flats. I don't think any drags should be used in the clam flats but, something needs to be done because I've lost thousands of dollars in this year alone from mussel draggers. I agree with everything everybody else has said and I am definitely for some sort of regulations happening.

Terry Daggett, Sedgwick

I dig in Deer Isle Stonington. I'm for it. There's got to be a happy medium there somewhere but like they say, they drag stuff up. I've seen it years ago when I used to go out and dig and they dragged and I go try to make a catch for the day and there wouldn't be nothing there, it would just be gone. You might see a hole there or there but you'd see the drag going. There's got to be something done with it. They've got to make a living. We got to make a living. And where they wash them, a place that used to be soft digging, I'd go dig and its like all I'd find was dead clam shells, but there's a lot of debris from where they wash up. I don't know if it's right off of where they drag and they wash it and it floats in, sink in the mud but it's not soft anymore. It is all hard. Something has to be done. Thank-you.

Neutral

Jim Cathcart, Gouldsboro

Up until July I was the [shellfish] warden for Gouldsboro. I submitted comments to the Marine Resources committee when the legislation was put forward by Senator Raye. I helped write the Gouldsboro proposal that they've been working on for quite a while. I've got two basic ideas.

One is the that the town should get something, if there's any fees, if the DMR charges any fees for permitting the town should get something. Marine Resources Committee, DMR, Marine Patrol, Denis, everybody made it quite clear that the towns are going to pay for it if they want to do it. The towns have to pay for all apportionment. If the state is going to take permit money to do this I think they should give some back to the towns to help offset some of that enforcement. Even if the towns get fine money from it, you still have to put money up front to enforce it. It still costs money to have a warden out there running around looking to make sure things don't happen. That's the easy one.

The second one, I've heard comments, when Senator Raye submitted his bill last year from various public hearings I've heard comments from various people that well of course, most draggers [said], we wouldn't go in places that you've reseeded. We wouldn't go in your places, your conservation reseeded areas. I keep hearing reseeded, I keep hearing areas that are reseeded, areas that are seeded; it shouldn't be areas that are seeded. It should be conservation areas. DMR's annual review has check marks on it; conservation, measures you've taken in conservation and has a whole checklist. Reseeding is one consideration. Limiting the harvest times, limiting the number of harvesters, limiting poundage, there are all kinds of ways to have conservation in a shellfish area. The basic problem is clam areas aren't compatible with mussel areas and I just keep seeing things coming back to, "If we knew you'd reseeded right there we wouldn't have done anything", there's more to it than reseeded. So the focus should be on conservation areas, not on seeded areas.

These are comments on thing I've heard. Any competent warden can enforce this; knows exactly where the lines are. [He] knows what to enforce. Any competent warden in the state knows what he's enforcing. That's not a problem. The whole enforcement process, it's not difficult, it takes time, takes some effort, takes a little bit of training, takes some common sense but it is not difficult at all.

The concern from the mussel draggers about municipalities shutting down an area for their harvesting, I don't think that's valid. Shellfish Committees don't work in a vacuum. There's all kinds of oversight. DMR has the oversight of the shellfish committees. Shellfish committees can't do anything with out the Town's selectmen's approval. They don't do things in a vacuum. You can't do it arbitrarily.

On the good side; I keep saying it's not difficult. The de Koning's called up Gouldsboro 6-8 months ago and said this area is open we want to get seed out of it. We want to drag for mussels in this area; and they didn't have to [ask]. They'd been working with the Town of Gouldsboro for quite a while. They didn't have to, there's no regulation making them do this. The clam digger says, "Well, our clams are here and here and don't run your drag through them please" and they didn't. They went and go their seed, they didn't mess up the clam areas, it works, and it's not that difficult. The areas aren't seeded. At last count, anyone who's got the money invested in mussel boat or mussel equipment, I think it is disingenuous at best for a mussel dragger to say I didn't know where I was dragging. If you're dragging in the intertidal zone with under 10 feet under your keel and rocks and everything else, you know exactly where you area, you know exactly what you're doing.

Ralph Smith, Jonesport, cont.

I know how to make the neutral comment but I'd like to make the comment. I'd already stated as such as it was written that I was opposed. Now I do feel that if this was written in a similar manner but a different manner that, you know, we had a meeting in Milbridge over a year ago now, and we discussed these same issues. The way we was going to do this, going to try to do this, is the municipalities was going to be more

accountable, to provide the information, to Denis and the DMR was going to be more accountable to get that information where these actual seeded flats are or even if they have flats that they was trying, because they knew there was small clams there, not just a blanket closure, but if they was actually working a particular flat, if those areas were on the web site, ok, then the municipality can control this, manage this, manage their clam flats, ok, without managing the mussel industry, but yet hey would be managing their clam flats where the mussel industry was involved. OK, but on this seeded and on the growing areas I'm talking about and if that stuff was all visible to everybody I'd think it would be a lot easier to work together.

Senator Dennis Damon, Trenton

As Senator I serve District 28 – southern portion of Hancock County and the Island of Isle-au-Haut in Knox County. I also serve as the senate chair of the Marine Resources Committee and recall hearing this bill as it became before us in the last session of the Maine Legislature. I also sponsored a bill which dealt with this intertidal zone dragging. We decided, Senator Raye and myself that we would move his bill forward.

We have the classic case of two fisheries competing and what we have heard tonight and what I heard in the testimony that came before the committee was that we can do this. We can have areas where clam harvesters have traditionally harvested and still harvest and can be able to keep that harvest. And we can have areas where the mussel harvesters can harvest and have regular harvest or seed mussels. It isn't too difficult in my mind to enforce. From the testimony here tonight there area communities with varying levels of enforcement capabilities or interest. The clam conservation program within community A is much better than it is with community B and it might be entirely lacking in community C. So for that reason I would suggest to you that if there are any, if you adjust this so that there are any monetary fines that become part of the mix that at least a portion of that fine money go to the municipalities that have demonstrated an interest and an ability in managing their clam flats. And that also ought to go in my mind to marking very clearly those coves and bays that are in conservation or banned to mussel harvest, marking it clearly and to enforcing that. I think that can be done relatively easily with today's navigational equipment, etc. If they don't, if the communities aren't interested in managing their clam flats, first of all shame on them because there are numerous people who get their living from harvesting those flats. But if they don't have that kind of interested and there are monetary fines that are mandated because of some infraction then that money ought to go to DMR because we both know that they can use it.

But we can't exclude, for me at least, we can't exclude either of the fisheries from their opportunity to make a living if we set down in a rational way I don't think anyone would want to do that. There are people who would believe that one of the practices might be a detriment to the other. I don't have the science to know if that is true. I know a lot of anecdotal and there are a lot of people here who have certainly been on the flats [tape turned]...[more than] I ever have; and could be able to demonstrate at least through observation that those kinds of practices are detrimental. If we ever got enough money at the DMR to conduct those kinds of scientific studies so that we would have that certified evidence I think that would be great but until such time this I think is the best alternative we have. Recognition that there are two fisheries that need to work together and that their communities should help them and I think this bill will help them as well.

[Denis Nault: Clarify a few aspects on the enforcement aspects. As soon as a municipality designates and has specified areas and that is the key word(s), areas that are specified and designated by a plan that has been approved by the Commissioner. In those area that are specified for limited mussel harvest then it does fall on whether there is a permit or not, if there is no permit in that area for a mussel harvester to go into that designated closed area Marine Patrol does have the ability to write a citation for harvesting in a closed area outside of your mussel dragging permit. When that permit is written by the Commissioner for dragging or managing in those specified areas, that the municipality has specified under the conditions, go through the application process and the Commissioner physically writes that permit, that is when the enforcement does fall 100% on the municipality. The municipality because its within the 6671 in the law you do have the ability, your warden to write a local citation for that failure to that permit, which that fine money does go to the municipality at that point in time. So it is a double handed end, part of it is controlled enforcement on that state level, but once those permits are written your specified areas and there is dragging activity it does fall 100% on the municipality. The municipality does get the fine money for that. As of now there are no fees because it is not designated in rules for the cost for a permit and I don't think the Commissioner has a plan for it. There is no cost for the application or permitting process at this point in time on the mussel end. Where the money is available on either side is through the enforcement on the municipality end. Because you're enforcing your managed areas, not for mussels, but for your conservation or shellfish managed areas that you're specifying that are unique to a specific end. You cannot designate and specify all areas within the municipality. That

would not be an approved plan by the Commissioner. It is where your areas that you are designating that have unique conservation or shellfish seeded areas. Those areas would fall under this permitting process.

John Renwick, Gouldsboro Shellfish Committee

I'd like to say I have friends that are clam diggers. I also have friends that are mussel draggers. If there hadn't been conflicts we wouldn't be here tonight discussing this. We need a place to start so that everybody can benefit from the resources that we do have. So that everybody doesn't feel like the mussel don't feel like they're being excluded and the clam diggers don't feel like their work is[not] being taken care of. I feel like this is a good place to start.

Sherman Merchant, Gouldsboro Shellfish Committee cont.

About conservation is what I want to talk about. 12-14 years ago in the town of Gouldsboro you could go down clamming and the best you could do was probably 1-3 pecks and that was about it. If you was an extra good clam digger. Through our conservation program that we have now and what we started back then we do have clams coming back in the town of Gouldsboro and they're coming back real good. What we've done was, we shut areas off for two years. Two areas, one over this way and one over this way; but we did one for summer and one for winter. Then after we opened them up we went on 6 [month] closures for this one and 6 closures for this one, 6 open for this one and you know vice versa. Right now we have areas down there we've closed for conservation. I asked mussel draggers that was to our meeting in Gouldsboro, our Wednesday night clam committee meeting, I said please don't go in there. But I said if you want mussels go up the other side the island and drag down through them mussels there and clean them up if you want them. You was there that night when I talked about that. What did they do? Two days later they were dragging right straight through our conservation areas and right up in where there was no mussels at all they dragged. I don't call that right. I'm one of these people that says don't destroy that fella's living just cause you want to make your living. You' got one hand feeds the other and one hand is going to have to take care of you. That is why we've got to get together and compromise on this whole works. I'll put it this way, there is bad clam diggers in clamming. There is bad mussel draggers in mussel dragging. Not all mussel draggers are bad. Cause I know some of them and they're real good friends of mine. One of them is sitting right there....The de Konings and him will abide by the rules of the town on the conservation plan. But all these other ones that I don't know of and some that I have seen of does not abide by the rules of the conservation plan.

Written comments:

The Harvesters from Deer Isle and Stonington

Chapter 7.7 Intertidal Mussel Harvesting by drag or dredge

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The Deer Isle-Stonington Shellfish Committee

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If the municipality is going to enforce the new provisions to its ordinance it will be a substantial increase to budgets of many programs. Towns need some form of licensing fee or permit to off set the cost of enforcement.

If DMR wants to issue permits after municipal recommendations the towns could work with Marine Patrol but have the ultimate jurisdiction fall under Marine Patrol.

But... number 3. Compliance sounds more like a gentlemen's agreement. Does this statement mean that there is no enforcing the parameters of the law? We all know that gentleman's agreements don't work. We wouldn't be here if they did. Dragger's can say they would stay away if they knew where conservation work had been done, but bottom line is they don't. They make no effort to try and find out. I have been involved with the mussel industry, and chairman of, or volunteering with the Deer Isle - Stonington Shellfish Committee for the past 10 years and not once has a dragger come and asked anything of us, and I'm out there, no excuses, it's easy for them to contact us. Our Area Biologist has offered contacts many times.

If a violation is committed and DMR is going to refuse a free permit what stops the draggers from continuing to drag? Taking their catch, to fill markets order and not the set bushel number? Using certain types of gear etc?

We think this is a fundamentally good proposal that needs some changes to make it work properly. If a permit violation is committed a penalty should follow. Using the same fee structure we use for shellfish violations at least. Who ever is issuing the permits should be in charge of enforcement or the municipality should have the right to sell a license for monetary support towards enforcement after the state has issued its permit. We hope you will give these few suggestions additional thought so these rules will truly have the impact they were intended to have.

Thank you for the opportunity to address these proposed rules; we appreciate your stop here in Ellsworth.

Fiona and Theo de Koning, Acadia Aqua Farms, LLC, Bar Harbor

My name is Fiona de Koning and my husband Theo and I are mussel growers. We oppose the proposed rule change to Chapter 7 as written. Although Theo and I are committed to supporting and actively engaging in efforts to coordinate the needs of mussel farming and other resource users, there are parts of the wording of this rule, which would have a negative impact on running our business.

Following are listed some questions and points of concern relating to the proposed changes to;

Chapter 7.70 Intertidal mussel harvesting by drag or dredge

With reference to:

1 Municipal responsibilities.

- Would the proposed municipal mussel management plan be available to mussel harvesters /growers for comment before the Commissioner approve it?
- Is there an appeal process if it appears that a municipality is using this rule in an exclusionary manner?
- What are the criteria for approval of a municipal mussel management plan?
- The 45-day allowance for the municipality to provide a response is far too long. Our company has a BMP protocol to harvest mussel seed predominantly in the fall and winter months to minimize gear conflict with the lobster fishery. Also, for cautions sake, we assume that there may be some clam resource under a mussel seed bed (although in practice we have not seen clams under a dense seed bed), and as such, harvest in the winter takes into account that clams are deeper in the mud in the winter, and therefore less susceptible to any disturbance. The mussels could be lost or degraded as a result of storm or ice action after 45 days waiting in the winter. We have seen this happen in Gouldsborough when in our participation in the then pilot project, it took so long to arrange, that the ice had turned the seed mussels blue and therefore ~~less~~ commercially useless to us. The experience with the shellfish committee in Gouldsborough has been very positive and we are committed to working with municipalities to manage the various resources as efficiently as possible. However, I would suggest a time line for municipal response of 14 days maximum and preferably within a week.
- If given, for how long is the permit valid?

2. Intertidal mussel harvesting permits.

- What happens if communications prove difficult to establish? Does the "shall obtain the municipal recommendation in writing" mean that the municipality is mandated to consult and discuss the application with die Harvester?
- How would the Department handle applications from multiple harvesters for a given intertidal resource?
- I would request that the DMR gives It's decision on die application, within 7 days.

3. Compliance

- There should be, in fairness, reciprocal penalties for the municipalities for non-compliance with the permit application process.

I would like to thank you for the opportunity to testify and for taking our position and concerns into your deliberations.

I would also like to thank Dennis Nault for his positive and helpful approach in trying to solve some of the communication problems between mussel and clam harvesters. The goal of improved communications to allow for a more effective science based resource management is one that we endorse and to which we are committed.

Maine Aquaculture Association, Sebastian M. Belle, Executive Director

Thank you for the opportunity to comment on the proposed rules on Intertidal Mussel Harvesting by Drag or Dredge. As always, our comments are presented in the spirit of constructive criticism and I hope that they will be received as such. The MAA represents Maine's aquatic farmers and infrastructure companies that provide goods and services to our producers. The Maine Aquaculture Association and its member growers are deeply committed to the sustainable use and stewardship of Maine's aquatic resources. As aquatic farmers, we have a strong vested interest in healthy aquatic ecosystems, high water quality and a clean environment.

As the Department is aware, the MAA testified in opposition to LD 2006. (See, attached testimony.) Our comments on the proposed rule stem from these original, concerns and remain a major concern to our existing constituents. We also believe that the proposed rules will provide a significant barrier to any future development in the mussel farming sector. This sector is one of the most promising portions of the economic development associated with aquaculture along our coasts. Given the challenges that our traditional fisheries are facing, any barriers to the development of the aquaculture sector in Maine's coastal communities have serious implications for the future viability of Maine's working waterfronts. In general terms, we are concerned about a lack of balance between resource users that the proposed rules establish. For example, there is no requirement that municipalities before they restrict intertidal mussel harvesting map the intertidal mussel and clam resources and determine what areas can be sustainably harvested for mussels. Instead, the emphasis of the rule is on determining areas in which mussel harvests cannot occur and establishing a procedure by which mussel harvests will be restricted. Furthermore, there is no requirement that municipalities demonstrate or that DMR verify that conservation work by the shellfish committees is actually occurring. While MAA recognizes that DMR has the authority to reject a municipal shellfish management plan, the Department has rarely done so. What assurances does the aquaculture sector have that municipalities do not just declare wide areas as no

mussel harvest zones without any basis in clam population assessment or conservation. The current proposed rule requires nothing other than municipalities declaring no harvest zones and telling mussel harvest-applicants where they are.

1. Municipal responsibilities

The rule goes on to suggest that these areas are synonymous with a municipal mussel harvest management plan. MAA would respectfully suggest that a real management plan should specifically designate both areas that are limited and areas that are prioritized for mussel harvest. If a municipality is not required to overtly identify harvest areas, then a municipality which is using the proposed rule has a way to exclude mussel harvest will not be required to present a balanced management plan. The proposed rule should require that any municipality wishing to declare areas as no harvest zones should declare, at a minimum, an equal area where mussel seed resources have been identified and prioritized for harvest. MAA indicated during its testimony before the legislature that our members were seriously concerned that the statute and any proposed rules would effectively become an exclusionary tool by local shellfish committees to prevent the harvest of mussel seed. In that testimony, we indicated that local shellfish committees have little or no representation of mussel harvesters. Indeed, they are typically composed of local clam harvesters who may have a vested interest in excluding mussel seed harvesters whether they are local or not. The lack of mussel harvester representation on local shellfish committees is a fundamental flaw in any fairness or balance that should be a central component of the management of these resources. MAA indicated during the initial testimony in opposition to the original statutes that if the proposed rules were used as an exclusionary tool by local special interests, we would pursue legislative redress in order to protect the interests of our members. Although we understand that the Department is seeking to balance competing interests, we already have significant anecdotal evidence that suggests that local municipal shellfish committees and special interests are seeking to use the rule to discriminate against intertidal mussel harvesters. Nothing in the proposed rule gives MAA any increased confidence that the interests of municipal shellfish harvesters and intertidal mussel harvesters will be balanced fairly.

2. Response Time

The rule proposes that municipalities have 45 days in order to respond to mussel harvest permit applications. MAA believes this is excessively long and unworkable given when mussel seed harvests typically occurs (Fall) and the risk that this resource will be damaged by ice. If a municipality has already gone through a mapping exercise and determines where harvests should not occur, then it should only take a matter of days to review the application and give the applicant a response.

While there is a requirement that the municipality respond to an applicant with 45 days, there is no limit on the time that DMR has to review and issue a harvest permit after a municipality has given their recommendation. While MAA recognizes that the Department is reluctant to impose a time standard on itself, the lack of a Department response time limit means that there is effectively no time limit within which a permit must be reviewed and approved. MAA recognizes that the Department staff will work hard to minimize this time period, but respectfully suggests that if a municipality has the authority to determine harvest areas, the Department review should essentially be administrative and should be able to be accomplished within a couple of days.

Ralph L Smith, President Moosabec Mussels, President Maine Mussel Harvesters Association

In reference to the PUBLIC HEARINGS: October 14, 2008, 6:00pm, Ellsworth City Hall (Auditorium), One City Hall Plaza, Ellsworth: 7.70 Intertidal mussel harvesting by drag or dredge

1. Municipal responsibilities

A municipality with an approved municipal shellfish conservation program may, specify intertidal areas to be limited for mussel harvesting by drag, in accordance with 12 M.R.S.A. §6671. The municipality's Intertidal Mussel Management Plan and procedures for enforcement shall be submitted to Commissioner for approval as part of their shellfish conservation program. Once these "specified" areas are approved, these defined areas will be posted online at <http://www.maine.gov/dmr/crd/smd/index.htm> or may be obtained by writing the Department of Marine Resources (DMR), attn: Area Biologist Supervisor, SHS 21, Hallowell, Maine 04333-0021. Upon receipt of an application presented in accordance with Chapter 7.70(2), the municipality shall provide its recommendations to the applicant within 45 days of the date of the applications' receipt by the municipality.

I feel that the wait time of 45 day wait period is way too long.

Staff Question:

In the proposed language for the intertidal mussel harvesting the contact information listed in the rule is for the Area Biologist Supervisor in Hallowell. The phone # is for the Licensing Division, and the fax # is for a machine in Hallowell. Who is going to be doing these permits?