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# Archives Advisory Board Meeting Minutes- June 18, 2009

Archives Advisory Board

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ARCHIVES ADVISORY BOARD  
Minutes  
June 18, 2009  
Secretary of State Conference Room – Nash School  
Augusta, Maine

Board present: Sumner Webber (Chair), Susan Bulay, Twila Lycette, Elaine Stanley  
Staff present: David Cheever, Jeffrey Brown, Barry Marshall, Nina Osier, Matthew Revitt  
(volunteer)  
Guests: Linda Mercer, Heidi Bray; Dept. of Marine Resources

Chairman Webber called the meeting to order at 10:02 a.m. Susan Bulay moved to accept the minutes for January 15, 2009. Elaine Stanley seconded, and the motion was approved.

Linda Mercer explained that the Landing Statistics for the Dept. of Marine Resources contain information designated confidential by DMR statute, and that DMR does not want these records accessioned by the Maine State Archives. DMR is willing, instead, to provide a summary of non-confidential landings data. The Department seeks clarification from the Archives Advisory Board as to what such a summary must contain. Mercer said that the report DMR provided includes all non-confidential information. She said that DMR remains concerned that confidential information in the original records at the Archives could be released by accident. DMR understands that its confidentiality statute over-rides the 50-year rule of the Archives and Records Management Law. That protection should keep researchers from viewing the records without written permission from DMR. Nevertheless, DMR wishes to withdraw those Landing Statistics already accessioned, and be freed from sending any more of these records to the Archives.

Elaine Stanley noted that the Maine State Archives has other confidential records in its holdings. Jeffrey Brown gave several examples of record series that cannot be opened to researchers without the creating agency's permission despite the 50-year rule. Heidi Bray stated that Federal confidentiality law applies, in addition to DMR's statute.

Ms. Mercer said that sending Landing Statistics to the Archives is redundant; that Maine collects is only partial data. Complete data is available only from the National Marine Fisheries Service, a Federal agency. She said that some dealers are assigned to report to DMR, while others are assigned to report to the Federal agency, and that the complete data set exists only in electronic form because some dealers do not use paper reporting. The Atlantic states and the National Marine Fisheries Service share the electronic data.

Twila Lycette asked if any material was removed from the boxes that the Archives loaned back to DMR. Ms. Mercer said that she did not remove any confidential data. Mr. Marshall said that the boxes returned emptier than when they left. Ms. Mercer replied that if anything was removed, it would have been scientific journals of no official record status. Some publications might have been taken out, but she did not remember doing so.

At its March 13, 2008 meeting, the Board approved amendment of Schedule 1619, Series 22, 23, 24, 25 and 26 from disposition of Archives to disposition of Destroy, provided that DMR would supply summary reports of all non-confidential data from these series. The data from these records is held in a database, which Susan Bulay suggested might be designated archival instead of accessioning the paper. David Cheever said that in the State of Maine's current technological environment, there is no way to assure preservation of a database. Ms. Stanley asked why the data's physical location was an issue, since it must be treated as confidential no matter where it might reside. Ms. Mercer answered that the information in its entirety is not available to researchers anywhere, and cannot be opened. Only reports limited to non-confidential information can be provided in response to researcher requests.

Jeffrey Brown explained the process used by the Maine State Archives to provide access, with the creating agency's written permission, to records held confidential despite the 50-year rule. Ms. Bray asked why the Archives would want to accession incomplete records, and Ms. Stanley stated that the Archives deals with records as they are, without attempting to instruct agencies in how to create them.

Mr. Cheever asked how the data in the records could be made useful, and Ms. Mercer said that it must be combined with the national data. Nina Osier explained that the creating agency recommends whether its records in a particular series should be scheduled for accession (Archives) or for destruction, and that Archives staff may support that recommendation or present reasons for disagreeing with it. The State Archivist and the Archives Advisory Board, however, hold the only legal authority for making a final determination. The State Archivist may choose to accession records, regardless of whether the creating agency agrees that they have archival value. If the Archivist does not choose to accession certain records, the Archives Advisory Board must give its approval for those records to be destroyed. If the Board does not approve a disposition of destroy, the records must be accessioned, no matter what the creating agency, the Archivist, and the Archives staff may have recommended.

Ms. Bulay suggested that the original disposition of Archives be left in place for Schedule 1619, Series 22, 23, 24, 25 and 26. Mr. Marshall suggested increasing the retention period before accession to 100 years, and Ms. Osier reminded the Board that retention period lengths are an administrative decision. Mr. Brown said that Archives staff members find "snippets" useful despite lack of completeness, and cited two years' worth of wolf bounties as an example of a fragmentary record series that retains value.

Ms. Bulay moved that Schedule 1619, Series 22, 23, 24, 25 and 26 revert to a disposition of Archives. Ms. Stanley seconded. The motion was approved. The Board thanked Ms. Mercer and Ms. Bray for their assistance.

Ms. Stanley moved to approve the minutes of the March 13, 2008 meeting. Ms. Bulay seconded. The motion was approved.

Mr. Cheever briefed the Board on Maine State Archives activities and concerns. A copy of his notes is attached to these minutes.

Ms. Osier asked that the Board respond to a proposal from the law firm of Brann & Isaacson, suggesting a change in Chapter 10: Rules for Disposition of Local Government Records. The firm asked that the Board allow alternative repositories to accept confidential as well as non-confidential local government records. Ms. Osier explained that the Lewiston School Department wishes to transfer its older records to the Muskie Archives and Special Collections Library at Bates College. Board members expressed concerns that while the Muskie Archives has staff able to administer confidentiality policies on behalf of the Lewiston School Department, that capacity might not hold true for all other approved alternative repositories.

Ms. Bulay moved that the Board reject the proposed language in the current rulemaking draft, and Ms. Stanley seconded. This motion was approved. The Board directed Ms. Osier to report the decision to Brann & Isaacson and to inform the firm that the Board would like to explore ways to allow records transfers in cases where the alternative repository could provide reasonable assurance of its ability to maintain required confidentiality.

Ms. Osier pointed out additions to the current draft of Chapter 10: Rules for Disposition of Local Government Records of language clarifying that licensing reports to Inland Fisheries and Wildlife take the same retention period as the licenses those reports summarize. Ms. Osier then asked the Board to review suggested drafts of Disposition Schedule A and Disposition Schedule L supplied by the law firm Drummond Woodsum on behalf of its client, the Maine School Management Association. The Board discussed the two documents provided by Drummond Woodsum, and Ms. Bulay expressed concern about Schedule L informing schools that they need no longer follow Schedule A. Ms. Bulay also requested that the descriptions from the current Schedule L be included in any new version, and that an explanation be supplied of all actual retention period changes.

Ms. Bulay moved that the draft of Chapter 10 presented at a public hearing on October 23, 2008, be retained, except for additional language clarifying the retention and disposition of licensing reports to the Dept. of Inland Fisheries and Wildlife, and that this draft be put out for a reopened 30-day comment period. Ms. Lycette seconded, and the motion was approved.

Ms. Osier was instructed to submit the necessary rulemaking documents, and to communicate the Board's actions to Drummond Woodsum. She was also asked to have Drummond Woodsum suggest several school districts that might serve as test sites for any future changes to Disposition Schedule L, since that effort was being postponed rather than abandoned. The Board noted that other changes to Chapter 10 have been delayed while Drummond Woodsum's proposal was considered, and that its action would allow those other changes to be implemented without additional delay.

The Board approved all state agency schedules as presented in the agenda, after reviewing the proposed series dispositions with Mr. Brown. The motion to approve was made by Ms. Lycette and seconded by Ms. Stanley.

Chairman Webber asked for any other business, and Ms. Stanley expressed her concern about the number of Board vacancies and the lack of timely re-appointments of members now serving.

Mr. Cheever said that he knows of several applications to serve on the Board that have been filed with the Governor's Office.

Mr. Webber noted that he has attended two meetings of the Cultural Affairs Council, and did not find it a productive use of his time.

The Board tentatively scheduled its next meeting for 10 a.m. on October 6, 2009. Adjournment took place at 2 p.m.

Respectfully submitted,

Nina M. Osier, Records Management Services Division Director