RHODE ISLAND MARINE FISHERIES COUNCIL

Minutes of Monthly Meeting
May 4, 2009 – 6:00PM
URI Narragansett Bay Campus
Corless Auditorium
South Ferry Road, Narragansett, RI

RIMFC Members Present: S. Macinko, R. Hittinger, C. Anderson, J. King, K Ketcham,

D. Preble, S. Medeiros, S. Parente

RIMFC Member(s) Absent: M. Gibson

Chairperson: R. Ballou

RIDEM F&W Staff: J. McNamee, N. Scarduzio, T. Angell, D. Costa

DEM Staff: G. Powers, L. Mouradjian

DEM Enforcement: Chief S. Hall

Public: 34 people attended

B. Ballou, Assistant to the DEM Director, called the meeting to order. He stated he was filling in for M. Gibson, who normally chairs these meetings. Gibson was attending an ASMFC meeting and could not be present. Ballou indicated that the vice chair, S. Medeiros, declined chairing the meeting in order to participate as an active Council member. Ballou stated that the next Council meeting may not be scheduled until October, and for future meetings the Director has designated L. Mouradjian to act as chair on his behalf. Ballou indicated this would allow M. Gibson to act in a more technical role to the Council. B. Ballou offered one change to the agenda. He stated that item 8a would be moved up to just after item 4c so he could give an update on the sector allocation pilot program before the Council gave recommendations to the Director on this issue. He asked if there were any other modifications to the agenda. There were no further modifications.

The next agenda item was the approval of the Rhode Island Marine Fisheries Council (Council or RIMFC) meeting minutes from the March 2, 2009, meeting. B. Ballou asked if there were any objections to approving the minutes. S. Medeiros made a motion to approve the minutes as written. Both J. King and D. Preble seconded the motion. B. Ballou asked for a vote to approve the minutes. The Council voted unanimously to approve the minutes from the March 2, 2009 Council meeting as written.

Public Comments

G. Tremblay asked if there was any new information on the EEZ transiting issue, in particular, if it would be changed by this summer. B. Ballou stated that the Director had a meeting scheduled with the US Coast Guard on May 12, 2009 to review the issue. The Director will discuss the issue with them at that time to see where they are in terms of their enforcement policies. K. Booth asked about the December 31, 2009 control date with in the sector allocation regulations,

pointing out there was not clarity of what that meant or what the Department's plans were. He asked the Council to provide that information because it had the potential to impact many fishermen. He stated that after reviewing the sector allocation regulations there are a number of fishermen who would not be eligible to form a sector and he wanted to know what the impact would be. He felt it was important for people to know what they were facing. G. Schay stated that his group had been requesting to have a Shellfish AP (SAP) meeting since January 2009 to discuss this issue, he wanted an explanation as to why shellfishermen were not able to get into High Banks for the seven days instead of the five days. He indicated he was told it was because of landings that showed too many were being harvested, but he wanted the Council to schedule a SAP meeting so they could discuss the issue.

Advisory Panel Reports

Lobster AP meeting (3/4/2009) – J. King:

J. King summarized the meeting, indicating there were three items on the agenda. The first item was the proposed change to regulation 15.12 "Buoying of Pots – Escape Vents". The Lobster Advisory Panel (LAP) decided to table this issue until a later date. No recommendations were made to the RIMFC on this issue at that time. The second item was the ASMFC Lobster Addendum XII – Transferability, the LAP recommended and requested that the draft Transferability regulations (15.14.2-4) be added to the next available RIMFC public hearing agenda. The third item was a request from S. Macinko regarding a licensing issue. The LAP recommended that the Director review this case as a hardship case and issue a "lobster trap only" (CFL or PEL license with some type of restriction) license that would allow S. Macinko to fish his lobster trap allocation in RI state waters, as well as in federal waters of Area 2.

Summer Flounder AP (3/17/09) – D. Preble:

D. Preble summarized the meeting since the proposals had already been presented at the last public hearing. He indicated that the recreational fluke fishery had gone over the target in 2008 and therefore RI had to take a reduction in the 2009 recreational fishery. He stated that the reduction would have been around 54% but there was a change in a stock assessment model and due to the improved stock status, RI only had to take a 41% stock reduction. He commented that J. McNamee indicated that findings showed season closures were by far the most effective in obtaining management goals. Manipulating bag limits and minimum sizes were not as effective. He concluded by stating that several proposals came forward from the AP for the 2009 recreational fluke management plan, were presented at the last public hearing, and would be presented this evening for Council recommendations.

Scup/Black Sea Bass AP (3/18/09) – K. Ketcham:

K. Ketcham stated they did not have a quorum however there were pertinent issues that needed to be discussed so they held the meeting. No votes were taken and all proposals that came forward were referred to the Council. They reviewed scup recreational measures and were told that regionally the scup recreational target had been exceeded. The group developed several proposals for the 2009 recreational scup season, which all went forward to the Council. He stated the group did not come up with any recommendations for back sea bass.

Update on Sector Allocation Pilot Program – B. Ballou:

B. Ballou stated that the Department had adopted regulations pertaining to the Sector Allocation Pilot Program in December 2008. Since then, one application had been received, which was submitted February 22, 2009. The application was reviewed and approved by the Department with a letter of authorization issued on March 26, 2009, with an allowable start date of April 12,

2009. The approved sector involved eight vessels. All owners and vessels have entered into a fully executed contract, which binds them to all the terms and conditions of their operations plan. B. Ballou indicated that the Department had established a link to the DEM website where documentation pertaining to the program was posted along with catch and landings data. B. Ballou also stated that the Department had also partnered with URI Fisheries Institute to develop and implement an observer plan for the program. The plan would target a minimum of 200 trips with the possibility of more trips pending the potential use of federal stimulus money. The observer program is expected to be implemented within the next few weeks. Ballou also indicated that to date, no other groups have applied to participate in the pilot program but the regulations allow others to join. The last issue he noted was an issue involving one of the vessels in the sector, F/V Restless, which does not have a federal permit as required. DEM has determined that this renders the vessel ineligible to participate in the program pursuant to the terms of the regulations.

R. Hittering asked if the total quota allocated to the sector vessels would be reduced since the one vessel was not eligible to participate. B. Ballou indicated that at this time, the permit for that vessel has been revoked and upon final adjudication, there would be a recalculation of the poundage.

G. Carvalho stated that the sector contract indicates that if one vessel was in violation all the members of that program are liable. B. Ballou pointed out that there was no violation yet; there was an enforcement action that had been initiated. He explained the Departments stand and the process.

New Business

Council recommendations on April 22, 2009 Public hearing – J. McNamee:

In a power point presentation to Council members, J. McNamee summarized public hearing items:

1) Proposed amendments to the commercial striped bass management plan:

J. McNamee noted that one proposal went forward to public hearing. The proposal was to shift the 2009 fall season by two weeks, changing the start date from September 1 to September 13. The change was proposed to off set the opening of the Massachusetts season. There were four public comments made at the public hearing. One in support, one asking for a per person possession limit instead of a vessel possession limit, one asking for more clarity in the language about Friday and Saturday closures that those days only pertained to fishers and not dealers, and a written comment requesting to allow striped bass harvest by gillnets. He stated the Division did not have any comments or objections to the proposal.

C. Anderson made a motion to recommend to the Director to adopt the proposed change for the 2009 commercial striped bass quota management plan with adoption of language that would further clarify the intent of no possession or sale of striped bass on Friday and Saturday pertaining to fishers only and not pertaining to dealers. D. Preble seconded the motion. There were no comments from the Council and no comments from the audience. The Council voted unanimously to approve the motion.

2) Proposed amendments to the recreational striped bass management plan:

J. McNamee introduced the item. He noted there was only a technical change, which inserted specific wording that clarified that the section pertains to the recreational striped bass fishery.

Otherwise, it would remain at status quo. There were no public comments made at the public hearing. He stated the Division had no comments or objections.

J. King made a motion to recommend to the Director to remain at status quo for the 2009 recreational striped bass management plan and adopt the proposed language change, which inserts specific wording that clarifies that this section pertains to the recreational striped bass fishery. S. Parente seconded the motion. There were no comments from the Council and no comments from the audience. The Council voted unanimously to approve the motion.

3) Proposed amendments to the recreational summer flounder management plan:

- J. McNamee introduced the item. He noted that six proposals went forward to public hearing. Options 1, 2 & 3 were options that would be compliant with the ASMFC guidelines. The fourth option needed a minor adjustment to the start date to be fully compliant with ASMFC guidelines, the date would need to be changed from June 13 to June 17. Options 5 & 6 were spilt modes and needed approval by ASMFC Summer Flounder Management Board. J. McNamee stated that the majority of the public hearing comments, 18 out of 29, were in support of option 4. There were five comments in support of the spilt mode options, and the rest of the comments included; lowering the size limit and adjusting the season and bag limit as needed to compensate for the lower minimum size. J. McNamee stated the Division concurred with the recommendation of option 4 with a modification to the start date to begin on June 17.
- **D.** Preble made a motion to recommend to the Director option 4 with the amended start date of June 17 for the 2009 recreational summer flounder management plan. R. Hittinger seconded the motion. D. Preble indicated that since the Fluke AP meeting he received feedback about having meetings occur earlier in the year and at the very least we should have a split mode, but that would be impossible to achieve time wise because it would be too late to get these options approved by ASMFC. He stated that the management strategy for the fluke fishery needed to be revamped because it was not working well for this fishery. There was discussion among Council members about various alternatives, but members realized alternatives would have to gain approval by ASMFC and time did not permit that to occur.
- K. Court stated that he was in favor of option 5 but realized a split mode option would have to go before ASMFC and there was not time to get this option approved by ASMFC. He respectfully requested that the Council petition ASMFC to look into the possibility of splitting modes for the future. He indicated for that to be done, the motion would have to come from one of the two committee members. D. Preble stated that he intended to make that motion as soon as the Council dispensed with the motion before them. F. Blount also supported a spilt mode option and voiced similar concerns.

The Council voted unanimously to approve the motion for option 4-21 inch minimum size limit, 6 fish bag limit, and the modified season of June 17 through December 31 for the 2009 recreational summer management plan.

D. Preble addressed the split mode issue. **D. Preble made a motion that the Council recommend that the Director request the ASMFC investigate the feasibility of splitting the modes in the recreational summer flounder fishery. K. Ketcham seconded the motion. The Council voted unanimously to approve the motion.**

4) Proposed amendments to the summer flounder sector allocation pilot program:

J. McNamee introduced the item. There were proposed amendments made to sections 7.7.11–Research Set Aside, 7.7.11-5g, and 7.7.11-5i, which inserted specific wording, which further clarifies the intent of each requirement. Under the Terms and Conditions of Program Implementation, the amended language addresses the terms and conditions of the sector if the summer sub-period quota becomes fully harvested, and closes early. The proposal also addressed consistency issues regard the phasing "damaged and unsellable fish". J. McNamee stated that at the public hearing three comments were made in support of the changes. There were two comments made opposed to any of the changes, as well as, written comments opposed to any of the changes. Several comments were made about observer coverage, requesting 100 percent coverage. There were also several comments made about damaged and unsellable fish. He went through a couple of slides explaining the proposed changes.

At this point, B. Ballou indicated that Council member K. Ketcham had recused himself from the sector allocation discussion. K. Ketcham had signed a recusal form and moved to take a seat with the audience. B. Ballou stated that K. Ketcham would not be participating in any deliberations on this issue as a Council member.

- B. Ballou stated that it might be helpful to separate the two issues. He separated out the summer sub-period issue to discuss first. There were no objections from the Council.
- **J. King made a motion to go forward with the proposed changes to the summer sub-period TAC. D. Preble seconded the motion.** There was Council discussion on the motion. R. Hittinger stated that he was opposed to the proposed language as written. S. Parente read a statement that he had been opposed to the sector program from the beginning due to the privatization of a public resource. K. Ketcham, as an audience member, addressed R. Hittinger comments and indicated that the sector would not be opposed to changing the date to close prior to September 15 instead of October 31. R. Hittinger stated if the proposal could have language that stated, "under no circumstances shall the winter quota be open for sector boats prior to September 15" then he could support it. There was audience and Council discussion trying to understand and work through the proposed language and the intent. S. Macinko pointed out there were potential issues pertaining to commercial vs. commercial and commercial vs. recreational.
- J. King modified his motion to include R. Hittinger's amendment which was "in no case would the summer sub-period TAC be absolved prior to September 15". D. Preble who seconded the motion agreed to the amendment. The Council voted on the amended motion, 5 in favor (C. Anderson, S. Medeiros, D. Preble, J. King, and R. Hittinger), 1 opposed (S. Parente), and 1 abstained (S. Macinko). The motion passed.
- J. McNamee introduced the second part of the sector issue, which addressed the wording "unless damaged and unsellable". He indicated there were several comments made about damaged and unsellable fish at the public hearing. The Division's response to comments made at the public hearing would be to re-characterize the category as fish that are in a degraded condition upon harvest. Define what would be a degraded condition upon harvest. Require retention of all degraded fish and allow for dockside verification. Following verification, allow for use as bait or discard. Provide that the degraded fish shall not be counted against the sector allocation. Finally, include the proposed language addressing the wording "unless damaged and unsellable".

D. Preble commented that he thought this was a lot to do about nothing. There would not be a significant amount of damaged fish nor were damaged fish part of the original proposal. S. Parente agreed with D. Preble that this was becoming a big deal over a small amount of fish.

D. Preble made a motion to recommend to the Director to adopt the recommendations proposed by the Division. S. Medeiros seconded the motion.

There were comments from sector participants that confirmed the amount of damaged and unsellable fish would be minimal, one to two fish per week possibly. There were repeated comments from audience members requesting observer coverage and with out that coverage the discards would just be dumped over board. It was a waist of time to implement these changes. S. Macinko commented that he would abstain from the vote and he did not like the fact that the Council was helping the Director perfect his regulatory agenda. He also indicated that this just seemed odd and unenforceable, that the language seemed loose and meaningless. S. Medeiros also agreed, he stated if there was a minimal amount of damaged fish and if they were that sparse then this was a waist the time and withdrew his second to the motion. He did not want to make things more complicated than they needed to be.

B. Ballou stated there was no second to the motion therefore no motion. B. Ballou stated that we were back to status quo. Since there is no motion the Council will not need to vote and the Department would take that as support for status quo.

J. King had a question about the language pertaining to "fishing commercially with gear that is capable of catching summer flounder". He wanted to know what the gear was. J. McNamee stated the Division interprets that language to mean that the sector will not be fishing within that mile with gear that would be targeting fluke. G. Carvalho pointed out there was a difference between gear that was targeting fluke and gear that was catching fluke and a difference in the language. He pointed out that this was not addressed in the sector regulations. He also wanted to state there was a great inequality when everyone else is shut off in the summer and the sector boats still get to fish. He stated that impartiality breeds resentment, and hostility. It was not an example of good leadership. He felt this program would have the commercial fishermen turning against one another.

5) Proposed amendments to the recreational scup management plan:

J. McNamee noted that six proposals went forward to public hearing. He explained that the first option (status quo) would be the only workable option, and the other options would put RI out of compliance. Public hearing comments included; modifications to the current season, one comment suggested decreasing the 45 fish bag limit, and starting the season later to extend the season. He stated that the Division concurred with remaining at status quo for 2009, option 1.

S. Medeiros made a motion to recommend option 2 to the Director. D. Preble seconded the motion. There were no comments from the Council and no comments from the audience.

J. McNamee commented that option 2 would be non-compliant with ASMFC. Status quo would be the only compliant option. There was Council discussion on how to proceed.

S. Medeiros made a new motion to recommend option 1 to the Director for the 2009 recreational scup management plan. R. Hittinger seconded the motion.

Audience comments supported option 1 because it was the only compliant option, not that it was what they really wanted.

The Council voted on the motion to recommend that the Director approve option 1 for the 2009 recreational scup management plan; 5 in favor (C. Anderson, S. Medeiros, S. Parente, K. Ketcham, and R. Hittinger), 3 opposed (J. King, D. Preble, S. Macinko). The motion passed.

6) Proposed amendments to the commercial scup management plan:

J. McNamee noted that three proposals went forward to public hearing. The first proposal was to alter the possession limits in each of the sub-periods associated with the aggregate landing program. The second proposal was to eliminate the aggregate landing program and just maintain a daily possession limit for each sub-period. The last proposal was for status quo management in 2009. J. McNamee stated that public comments requested that the first sub-period possession limit be lowered and the Division had already implemented this by reducing the possession limit to 1,000 pounds/week from 2,500 pounds/week. There were two public comments that supported going back to a daily possession limit. The rest of the comments supported going to higher weekly limits.

C. Anderson made a motion to recommend option 1 with a 1,000 pound/week possession limit for the May-June 30 sub-period for the 2009 commercial scup management plan. J. King seconded the motion.

C. Brown asked that the quota be monitored more closely. Several audience members were in favor of option 1 with the lowered possession limit. G. Carvalho stated that he was in favor of option 2 with the daily possession limits.

The Council voted unanimously to approve the motion as modified for the 2009 commercial summer management plan.

7) Proposed amendments to the recreational black sea bass management plan:

J. McNamee introduced the item. He explained this was another species where the assessment changed and advice from the board was to remain at status quo. No proposals came forward to change from status quo therefore status quo was being proposed for the 2009 management season. There were no public comments. Status quo would be compliant with ASMFC. The Division concurs with status quo.

Since it was recommended to stay at status quo and the Division concurred with status quo, the Council did not see the need to take a vote. The Council was in support of status quo therefore no action was necessary. There were no objections from the Council.

- 8) Proposed adoption of a lobster trap transferability program in to the RI lobster management plan: J. McNamee introduced the item. He explained that proposed language and definitions were brought forward to public hearing to allow for the adoption of a lobster trap transferability program. The language sets forth the conditions by which trap allocations can be transferred between entities, and applies exclusively to Area 2 RI state water trap allocations. J. McNamee indicated that T. Angell was in the audience and he would be available to address any questions.
- C. Anderson made a motion to recommend that the Director adopt the lobster trap transferability program with the exception of allowing anyone purchasing a trap allocation to receive a license. He asked to separate out the licensing portion from the transferability program and to split the issues. J. King seconded the motion.

C. Anderson explained his intent for separating the licensing issue out. He stated if the motion passed and the Council did not pass any other motion, then transferability would be permitted among people who are already licensed to harvest lobsters. For purposes of discussion, the transferability program provides the opportunity to reduce the amount of capacity in this fishery, deal with latent effort, and provide businesses more flexibility with respect to some of the allocation cuts they took in the initial allocation. They need the transferability program to do that and if we want to use this program to manage the existing body of licensed lobstermen that is what his motion was intended to do. We can then treat separately whether we want to use the transferability program as a way to increase the number of people who are licensed to lobster in RI.

G. Carvalho and G. Tremblay both stated they were in support of C. Anderson's motion. An audience member and member of the lobster AP stated that he was in favor of allowing new licenses because this was a way for younger individuals to be able to get into this fishery. Councilman S. Parente stated he fundamentally opposes the entire program of privatization. He also stated that he was in support of the motion to separate both issues because there were many currently licensed people who were disenfranchised when their lobster traps were taken away from them. S. Macinko stated that transferability would increase effort; particularly because this was not a poundage-based program, this is using an effort measurement. He then raised the question whether the Department had general regulatory authority or if they had statutory authority for transferability. There was further discussion by Council members and audience members.

The Council voted on the motion to recommend that the Director adopt the lobster trap transferability program in to the RI lobster management plan, with the exception of allowing anyone purchasing a trap allocation to receive a license; 7 in favor (C. Anderson, S. Medeiros, S. Parente, K. Ketcham, J. King, D. Preble, and R. Hittinger), 1 opposed (S. Macinko). The motion passed.

- 9) Proposed changes to the RI Marine Fisheries Licensing Regulations to allow for endorsement changes relating to the RI lobster trap transferability program:
- J. McNamee introduced the item. He noted that proposed language was brought forward to public hearing to set forth conditions, which would allow for the issuance of a PEL w/ Lobster Trap Endorsement if a lobster trap allocation was purchased per Part 15 regulations.
- S. Parente made a motion to delete all the language pertaining to the allowance of a lobster trap license and endorsement to anyone that purchases a lobster trap allocation. S. Medeiros seconded the motion for discussion purposes. S. Parente explained his concerns about issuing new licenses; he felt the people who had lost their allocations should be the first people allowed to make themselves whole again. He also felt that the licensing issue should be vetted through the Industry Advisory Committee (IAC). There was Council and audience discussion about the motion. The Council voted on the motion to recommend to the Director the deletion of all the language pertaining to the allowance of a lobster trap license and endorsement to anyone that purchases a lobster trap allocation; 3 in favor (S. Parente, S. Medeiros, R. Hittinger), 4 opposed (C. Anderson, S. Macinko, K. Ketcham, and J. King,). The motion failed.

K. Ketcham made a motion to recommend that the Director adopt the proposed changes to the RI Marine Fisheries Licensing Regulations to allow for endorsement changes relating to the RI lobster trap transferability program, except that he did not like the license to be issued automatically he suggested a review process. J. King seconded the motion.

C. Anderson stated he would like to make a friendly amendment to the motion. That the license should be valid only for as long as the person holds lobster traps. Both K. Ketcham and J. King accepted the amendment.

Chief S. Hall addressed K. Ketcham's concerns by commenting that the Department does not scrutinize license holders for their records except in some of the enhanced programs like sector allocation, or the fluke aggregate program. He did not feel that a review process would be necessary. He added that not too many individuals would have a record if they did not have a license.

There was some discussion between audience members and the Council on the motion.

The Council voted on the motion to recommend that the Director adopt the proposed changes to the RI Marine Fisheries Licensing Regulations to allow for endorsement changes relating to the RI lobster trap transferability program, with some type of background check for new license applicants, as well as, if traps are sold the license would become invalid. The vote was; 4 in favor (C. Anderson, K. Ketcham, D. Preble, S. Medeiros,), 3 opposed (S. Parente, J. King, R. Hittinger), 1 abstained (S. Macinko). The motion passed.

Old Business

Update on marine fisheries legislation- B. Ballou

B. Ballou stated there were two bills before this session of the RI General Assembly involving marine fisheries. The first involved a recommendation to change the structure of the RI Marine Fisheries Council (RIMFC). It was a senate bill, which already had a hearing and passed by committee on April 29, 2009. There was a revised bill, which was on the senate calendar and would be voted by the full senate on May 5, 2009. The bill has a nine-member council and takes the DEM Director out of the chair position. The ninth position is now a position for someone who would have the skill, knowledge, and experience in seafood sales. The term limit is also clarified, still two four-year terms for a total of eight years, but members appointed to serve the remainder of an existing member's term shall be eligible to serve two subsequent full terms of four years each. B. Ballou stated that the Council's opposition to the bill was reflected in a letter sent to the senator dated April 13, 2009.

The second bill was the Department's bill that would do three things, shift the time line for the reporting on the status of RI's marine fisheries resources, allow landings data to be used for enforcement purposes, and repeal the commercial fishing license review board. B. Ballou indicated this was a House bill and it had a hearing on April 2, 2009. He stated that the bill was held for further study.

Other Business

Appointment of new members to the Scup/Black Sea Bass AP- K. Ketcham:

K. Ketcham stated that there were three applications for two available seats. He recommended that J. Grant who was an alternate be moved into the primary slot, noting that Grant had a good

attendance record. He stated the other two applicants were T. Baker and G. Mataronas. S. Parente made a recommendation to appoint T. Baker. C. Anderson stated as a point of order that the primary person gets to nominate his alternate. K. Ketcham made a motion to appoint J. Grant to the alternate position. J. King seconded the motion. The Council voted unanimously to approve the motion to appoint J. Grant to the primary position. B. Ballou stated that J. Grant would nominate an alternate for Council approval and he may want to consider the two other applicants.

FYI

Update on Marine Recreational License/Registry Study Group – B. Ballou:

B. Ballou stated that he and S. Medeiros were co-chairs of this study group. He stated that a proposal from the group had been submitted to the Director to recommend the establishment of a saltwater registry program that would be straightforward and simple. The Director wanted the group to work through issues involving administrative costs, and support for additional funding needs. The group will be meeting again to discuss these issues and to come to a consensus and report to the Director.

Status of RIMFC nominations for D. Preble's seat:

B. Ballou stated that D. Preble had submitted a letter of resignation however; he would remain onboard until a replacement was selected. Ballou stated there were two candidates who will be interviewed by the Director next week. A recommendation from the Director would then be submitted to the Governor for approval. The Governor will make the appointment and the senate will confirm the appointment.

B. Ballou asked it there was any other business to come before the Council. Hearing none, the Chairman adjourned the meeting.

Nancy E. Scarduzio, Recording Secretary