

RHODE ISLAND MARINE FISHERIES COUNCIL
Minutes of Monthly Meeting
May 2, 2005
URI Narragansett Bay Campus
Corless Auditorium
South Ferry Road
Narragansett, RI

RIMFC Members: K. Ketcham, S. Medeiros, D. Preble, G. Allen, S. Parente,
S. Macinko

Chairperson: M. Gibson

RIDEM F&W Staff: J. McNamee, M. Burnett

RIDEM Legal Counsel: G. Powers, G. McAvoy

RIDEM Staff: R. Ballou

RIDEM Law Enforcement: K. Blanchard, S. Hall

Public: 20 people attended

M. Gibson called the meeting to order. He asked if there were any agenda changes. He stated that he had received a couple prior to the meeting. The first was to add an item 5b which would be the introduction of a new advisory panel (AP) member nomination. The next would be to add an item 6 which would be a striped bass AP report. G. Allen asked to have an item 3b added which would be the authorization of a closed meeting or workshop of the RI Marine Fisheries Council (RIMFC or Council) members to discuss standard operating procedures. K. Ketcham asked to have item 5c added which would be Council authorization of an Industry Advisory Committee (IAC) meeting. **There were no objections to the agenda changes.** M. Gibson asked if there were any comments on the minutes from the March 16, 2005 RIMFC meeting. **G. Allen made a motion to approve the minutes as submitted. S. Medeiros seconded the motion. The Council unanimously approved the motion.**

New Business

Council comments on proposed aquaculture lease: J. McNamee stated that the Council had been issued an application that had been submitted by N. Papa, et al, for a new aquaculture lease in Ninigret Pond. A memo from the Division of Fish and Wildlife (DFW) had also been handed out to the Council expressing no objections to the site by the DFW. The shellfish AP was polled and only one member made a comment. The AP member did not have an outright objection to the site but had a few questions, which the DFW responded to. The applicants were in attendance to answer any questions from the Council. **G. Allen made a motion to approve the application as submitted. K. Ketcham seconded the motion. The Council voted unanimously to approve the**

motion.

Discussion on Council and advisory panel consideration of proposals prior to determination of legality and constitutionality: S. Parente had distributed a handout regarding the regulatory process the Council currently follows. He was suggesting adding in a new step where proposals have to pass legal scrutiny to make sure they are constitutionally valid before they are brought to the Council. He stated that this was an attempt to streamline the regulatory process. M. Gibson stated that he had concerns about the proposal because he felt a legal test at the beginning of the process could have a chilling effect on public participation in the regulatory process. He went on to state that there is a point when the Department of Environmental Management (DEM) legal counsel gets involved in the current structure, it occurs later in the process. G. Allen agreed with M. Gibson's comments. K. Ketcham also agreed and wanted to keep the current regulatory process in place. S. Medeiros stated that legal counsel is present at a majority of the meetings so in an informal way the step proposed by S. Parente exists, legal counsel can speak up if they think a proposal would be unconstitutional. M. Gibson asked DEM legal counsel G. Powers to comment. G. Powers echoed the comments already made by stating that inserting legal scrutiny early in the process would be an inappropriate place for it, it currently does occur later in the process during the deliberations with the Director of DEM. S. Parente asked DEM legal counsel whether they could recollect a proposal which had been stopped due to unconstitutionality prior to entering the regulatory process. G. Powers stated that he did not think this had occurred by DEM legal counsel but rather it had happened by the Council or AP members themselves. S. Parente withdrew his proposal.

Council comments on the summer flounder sector allocation workshop summary: M. Gibson stated that a meeting summary had been given to the Council to consider. It was made clear at the outset of the meeting that no regulatory changes were being considered nor was any sort of regulatory process being initiated from the workshop. The workshop was strictly an informational meeting. **G. Allen made a motion to table the proposals discussed at the workshop and defer any discussion until this issue was referred to the summer flounder AP at the next meeting. S. Medeiros seconded the motion.** D. Preble stated that he had received several requests to have this issue sent to the summer flounder AP for discussion. K. Ketcham wanted to clarify that the issue, while tabled for the time being, would be brought before the summer flounder AP. M. Gibson stated that this was how he understood the motion. There was no objection from G. Allen to this statement.

C. Brown, the originator of the sector allocation proposal, stated that they had always intended to bring this to the summer flounder AP and the reason they had asked for the workshop was to broach the subject early so there was not a lot of misunderstanding of the proposal when it made it to the AP level.

B. Mattiucci stated that the reason this had generated so much controversy is that the proposal is inherently unfair. He also wanted to state that he was quoted in the summary as stating that he would support this if they could guarantee keeping the summer season

open at 100 pounds a day in its entirety. This quotation, he stated, was erroneous. What he meant was that he felt the summer fishery should not close and did not mean to lend support to the sector allocation proposal. B. Mattiucci went on to state that the proposal sets up a situation where a small group of individuals get an inordinately large percentage of the states quota forever and this was not fair. His point was that he did not want the Council to table this, he wanted them to address the issue at the current meeting and went on further to state that he wanted them to find the proposal was unfair and reject it.

S. Medeiros stated that he supported tabling the issue because he felt all proposals deserve to at least be introduced in to the regulatory process, but he went on to state that he had received numerous emails voicing opposition to the proposal.

The Council voted unanimously to approve the motion.

Discussion on density of fish pots in near-shore areas: G. Allen stated that this issue was brought to his attention by the president of the Newport County Saltwater Fishing Club (NCSFC). The issue is that in areas along Newport where there is shoreline access for recreational fishermen, there has been a growing number of fish pots or lobster pots which have been placed in close proximity to the shore and hinder the shore recreational fishermen. G. Allen stated that the goal was to bring the issue to the Council in the hopes that this could be worked out amicably between the user groups. D. Zambrotta, president of the NCSFC, gave further detail on the situation. He also handed in a written statement to the Council. G. Allen stated that he felt the best way to proceed would be to have a commercial fishing representative from either the Council or the audience, sit down with D. Zambrotta to discuss the issue informally. **M. Gibson stated that one of the things that needs to take place is for the DEM to figure out if it has any sort of regulatory authority to regulate where fishing gear is deployed. He suggested allowing the DEM to determine its authority and report back to the Council and pending this, the user groups could perhaps get together for informal discussions on how to alleviate this problem.** I. Parente, who sets fish pots in this area, stated that he only sets 40 pots along this area and did not feel that they would be close enough together to create a problem. A second audience member stated that he and his family sets lobster pots in this area and the reason they are in close proximity to the coastline is because of the abundance of other gear throughout the bay. P. Brodeur stated that he agrees with the comments of the previous audience member, it is the smaller lobstermen who have to set their pots in closer to the shore because the larger lobster vessels set in the areas outside of this vicinity. He also stated that many of the pots that they are encountering are probably recreational lobster pots.

M. Gibson brought the discussion back to the Council and asked if there were any objections to his previous suggestion. There were none, therefore the DEM would come back to the Council with a statement on their ability to regulate where fishing gear is deployed and in the meantime, interested parties could take part in informal discussions.

Authorize Council workshop on RIMFC process: G. Allen stated that he wanted M. Gibson as Council chair to authorize a closed working session for the Council to convene

and discuss the Council operating processes. There have been new members added to the Council and they have not had the opportunity to sit and discuss this between new and veteran members. M. Gibson stated that J. McNamee would look at some possible dates and come forward at the next meeting to discuss a formal date and time. J. Low asked if this could be attended by the public. M. Gibson stated that this type of session was closed and not open to the public and because of this they could not discuss anything other than procedural Council items. He went on to state that if the Council wanted to, at a later date they could have a discussion of the workshop with the public. G. Powers stated that this type of workshop is in the prevue of the Council.

C. Brown made a statement regarding the conduct of Council member S. Parente. C. Brown and his organization felt that S. Parente has made several unethical statements to the media and general public outside of the Council process regarding the controversial proposal summarized earlier in the meeting. His group, he felt had been disadvantaged and possibly removed from a system of due process by S. Parente's actions. C. Brown hoped that this would be addressed during the Council's closed workshop. S. Parente wanted to first state that he sent a position paper to the Council on behalf of himself because he did not want to be viewed as having a hidden agenda. He added that he had requested an ethics briefing in the past and this has not happened to date. If he had made too many statements as a member of the Council, he wanted to know and he would curb those activities. The point he was trying to make is that none of his recent actions were done knowingly to disenfranchise any specific people or abuse his position on the Council. If the other Council members bring it to his attention that he was acting out of order he would refrain from this in the future.

B. Mattiucci made some comments which were deemed out of order and were stricken from the record.

Old Business

Council comments on dockside sale issue: R. Ballou stated that this issue was currently in a public hearing comment period, the hearing to be held on May 19th. He didn't know how in depth the Council wanted to get in to a discussion as he did not want to compromise the Council's ability to hear public comment and develop there own opinions. He gave a brief description of the history behind this issue. There was a brief discussion on possible comments which would come from the DFW. G. Powers suggested that the DFW should come forward at the May 19th public hearing, rather than having an in depth discussion on this during the present meeting. G. Powers and J. McNamee stated that the main purpose of this agenda item was not to discuss the topic per se but to allow the Council to refer this to an AP for advice prior to the May 19th public hearing. **G. Allen asked to have a meeting of the enforcement AP prior to the public hearing to discuss the dockside sale issue. There were no objections to this.** S. Hall asked that the lobster industry members also be notified of the meeting since they have a large stake in this issue.

Status of floating fish trap regulation compliance: M. Gibson gave a brief description of the issue. He went on to state that there was still some non compliance to the new

regulations. He stated that the DFW was going to issue notices of violation (NOV) to the non complying trap companies. G. McAvoy gave a description of the NOV process. K. Ketcham and S. Medeiros asked to have this agenda item on the next monthly Council meeting agenda, as they (the Council) had worked very hard on this and they wanted to be kept abreast of the situation. G. Allen stated that beside the trap owner requirements, there were DEM requirements as well, namely that enforcement inspect the trap locations to make sure they are set where they were supposed to be and that the trap set up is compliant and the DFW is supposed to produce a chart with trap locations. He stated that even though the process is moving slower than it should, he would still like this accomplished and reported to the Council.

Memo from the Acting Director of DEM on decisions from March 14 public hearing: The Council had been handed out both the DFW memo to the Acting Director and a response back from the Acting Director as to his actions on the public hearing items. In most cases the Director went along with the advice of the Council, the one notable exception was on the scup recreational measures. It turned out that all of the regional states adhered to the regional scup plan and RI needed to also adhere to remain in compliance. There was further discussion on this topic.

Other Business

Straw-man policy document from DFW on agenda additions: M. Gibson stated that he had handed out during the previous month a memo with some guidance on how things could be brought forward for a Council agenda. He stated that he would entertain any comments or suggestions regarding this. **S. Medeiros suggested that they bring this up at there workshop and then bring it forward at an open meeting. The Council members had no objections to this.**

Council approval of new advisory panel member: J. McNamee stated that he had passed out an AP alternate resume for Harold Hemberger, who wished to be added to the vacant recreational alternate spot on the bluefish/weakfish AP. **S. Medeiros made a motion to recommend Harold Hemberger to the bluefish/weakfish AP. G. Allen seconded the motion. The Council voted unanimously to approve the motion.**

Council authorization of IAC meeting: K. Ketcham stated that he would like the Council to authorize a meeting of the IAC to continue deliberations on licensing for 2006. He suggested June as a meeting date. M. Gibson stated that the DFW would work with K. Ketcham to set a meeting date.

Advisory Panel Reports

Striped Bass: D. Preble gave the report. The meeting had been called to discuss a proposal brought forward by J. Low representing the RI Commercial Rod and Reel Anglers Association (RICRRA). The proposal was tabled by the AP (by consensus) until the deliberations for the 2006 fishing season came forward. They felt it was too late to change the management plan for this year but would entertain the proposal for 2006. A number of different options to be discussed to extend the striped bass season for the next fishing year were listed. They also discussed the increase in quota for 2005 which is

going to be approximately 8,600 pounds as a conservation credit for the larger than required minimum size in RI. This total is different than what had been brought to the AP earlier in the year. A final topic of discussion was a discussion of the party and charter boat sector participation in the commercial fishery. No action items came from this discussion. J. Low stated that he had wanted a decision from the AP one way or the other and was disappointed that they did not. M. Gibson stated that all of the proper procedures were followed.

Post Agenda Discussion

S. Parente asked to respond to the sector allocation workshop minutes which had been handed out. M. Gibson stated that this was out of order.

P. Brodeur asked S. Parente to work with the state legislature to get the regulatory power reinstated back to the Council.

The RI Commercial Fishermen's Association thanked the Council for increasing the mesh sizes on the winter flounder fishery. This organization had been proponents of this for quite some time.

An audience member requested that the public record from the summer flounder sector allocation workshop be brought to the summer flounder AP when it is convened to discuss this topic.

The chairman adjourned the meeting.

Jason E. McNamee, Recording Secretary