

RHODE ISLAND MARINE FISHERIES COUNCIL
Minutes of Monthly Meeting
July 2, 2007
URI Narragansett Bay Campus
Corless Auditorium
South Ferry Road
Narragansett, RI

RIMFC Members: G. Allen, J. King, S. Parente, D. Preble, S. Medeiros, S. Macinko, C. Anderson

Chairperson: M. Gibson

RIDEM F&W Staff: N. Lazar, N. Scarduzio, D. Erkan,

DEM Legal Counsel: G. Powers

DEM Staff: L. Mouradjan

DEM Law
Enforcement: D. Lees

Public: 13 people attended

Chairman M. Gibson called the meeting to order. M. Gibson stated that there were two adjustments to the agenda. Under New Business, agenda item #4 (e) he noted that the memo to the Council regarding the next public hearing included the whelk regulations. He stated that a set of draft whelk regulations were passed out to each Council member for their review. Under FYI, item #7 he added (d) a letter from the DFW regarding the spring floating fish trap survey. Gibson asked if there were any other amendments to the agenda from Council members. Hearing none, he asked if there were any objections to approving the agenda as modified. **There were no objections to approving the agenda as modified therefore the agenda was approved as modified.**

The next agenda item was the approval of the Rhode Island Marine Fisheries Council (Council or RIMFC) meeting minutes from April 16, 2007, May 14, 2007, and June 4, 2007. M. Gibson stated that it was his understanding that Council members had worked with Division staff to amend the April 16, 2007 minutes to the satisfaction of the Council and that they were ready for approval. Gibson asked J. King if he was satisfied with the amendments per his request. King stated he was satisfied. Gibson asked for a motion to approve all three sets of minutes, unless there was an objection from the Council. **S. Parente made a motion to approve all three sets of minutes as amended. J. King seconded the motion. Gibson asked Council members if there were any objections to approving the April 16, 2007, May 14, 2007, and June 4, 2007 meeting minutes. There were no objections all minutes were approved.**

Advisory Panel Reports:

Shellfish Advisory Panel: J. King stated that the Shellfish Advisory Panel (SAP) met on June 20, 2007, with thirty (30) people in attendance. There were 12 voting members present. The panel reviewed three aquaculture lease proposals, two lease expansions for Point Judith Pond and one

expansion lease in Potter Pond. King stated that the RIMFC had requested that the SAP review each lease application and base comments on individual merits and issues relative to each separate lease.

The first application discussed was CRMC # 2004-05-024 (SPATCO, LTD – R. Rheault) for Point Judith Pond. King reviewed the meeting minutes and stated that R. Rheault outlined his existing business and explained that he needed more space to grow out his stock. King stated that commercial shellfishermen had concerns of not being able to harvest wild stock in lease areas. King stated that the applicant was requesting an additional 7.5 acres. He also stated that SAP members had concerns about the two leases abutting each other (Rheault and Roebuck leases). King indicated that shellfishermen would prefer a buffer zone between each lease. King continued to read the SAP minutes and stated that wild stock shellfishermen actively fished these areas and that there were shellfish around the lease. SAP members were also concerned about the potential for future expansions in this area. However, King stated that the applicant claimed that future expansion is limited. King noted that individuals from the Narragansett Harbor Commission were present and that the Town of Narragansett does not support any additional aquaculture expansions until guidelines are in place.

The second application discussed was CRMC # 2002-05-034 (P. Raso) in Potter Pond. King outlined similar comments that came up during the discussion of this lease expansion. King stated that P. Raso explained his lease proposal for cage, bag, and bottom culture. Raso was currently leasing 3.8 acres and is proposing to utilize another 3.1 acres for a total of 6.9 acres. King stated that members identified recreational harvest issues despite low shellfish densities. A couple of SAP members noted high recreational use and concerns for displacements of recreational shellfishing and impacts to public trust.

The third application discussed was CRMC # 200-10-038 (D. Roebuck) for Point Judith Pond. King stated that Roebuck outlined the proposed bottom culture lease expansion and discussed lease efficiency and benefits. King stated that SAP members voiced similar concerns raised by the Rheault lease expansion and concerns about the combined effects these leases and others would have on the pond.

M. Gibson asked if there were any comments or questions for J. King regarding the three aquaculture lease expansions. There was none.

New Business:

Update on meetings regarding comprehensive aquaculture plan (6/21/07): M. Gibson recapped what the Council had requested from the working group at the last meeting, which was a plan outline, date of implementation, timeline and interim benchmarks, and making recommendations using the usable bottom instead of the total bottom. Gibson stated that the Council would need to make a decision as to whether the working group had met the Council conditions and if not, the Council may not be in a position to consider the aquaculture applications.

D. Alves gave the update to the Council for the June 21, 2007 working group meeting. Alves stated that he wanted to thank S. Parente for attending the meeting on behalf of K. Ketcham. Alves also stated that J. King, N. Lazar, and D. Erkan were also present. Alves informed members that on July 12, 2007, at 7:00 PM in Corless auditorium there would be a presentation on public trust issues. Alves stated that what he had handed out to Council members was a draft of a plan. D. Alves reviewed the handout that he gave each Council member.

M. Gibson asked for Council questions. D. Preble stated that this was good information and it was what he was looking for. Preble stated that after reviewing the SAP meeting minutes he noticed that there were comments from the Town of Narragansett. He wanted to know if there was town involvement or opportunity for the towns to be involved. Preble noted that there were no town officials named in the working group membership. Alves stated that when they get to the socioeconomics portion they hope to have town involvement.

D. Preble asked if there were any procedures developed for amending the comprehensive aquaculture plan and if they would be incorporated into the plan. D. Alves indicated that they would have to do something like that. Preble stated that there should be some means to make corrections or changes if something in the plan does not work. It should be built into the plan.

N. Lazar mentioned that the working group struggled with the regulatory issue that once the plan was developed, who would have the authority, would it be guidelines for CRMC or be part of the aquaculture regulation. Lazar indicated that this needed to be developed further and for this Council to think about it as well.

M. Gibson asked Council members if they were comfortable that the working group had adequately address the conditions, and was the Council prepared to move forward on the aquaculture applications currently on the agenda.

S. Parente stated that as a group participant he felt that the working group had met three of the conditions in good faith. Parente stated that the percent of usable bottom concept is a very important piece of the plan and requires more research and thought. This aspect of the plan was a work in progress and should not be rushed.

D. Alves stated that they did speak about this topic at the last meeting and there was agreement that there should be some limits, but the group did not know what the limits should be and it depends on what the subgroups determine.

G. Allen stated that what has been put together so far is fine. He thought this was a good start and his concerns are with the public trust. G. Allen proposed that any further discussion on the three aquaculture lease applications be deferred until the Council members attend the public trust meeting on July 12, 2007.

J. King stated that he did not want to see these three applicants go under because of a month of waiting. J. King stated that he had a suggestion for all five aquaculture lease applications.

M. Gibson stated that the Council could only take action on the three lease applications that were on the current agenda. Gibson commented further that if the Council changed their policy tonight and moved to consider these three applications then the other two would have to come back to the table in a posted agenda. Gibson stated that he would have to find out what the parliamentary procedure would be to get those applications back for reconsideration.

J. King stated that the working group had completed three out of the four conditions that the Council asked for. King stated that the applicants had waited long enough to get their expansions. King stated that he would like to see the plan completed however, these individuals need to work, and we cannot stop them. They have already purchased product that they cannot put out on their leases. King suggested giving conditional approvals. If the amount of acreage

were over that determined by the working group, then leaseholders would have to give back a portion of their lease.

M. Gibson asked D. Alves what the working group thought about setting conditions on leases until a plan was in place. Gibson stated that the Council could not attach any conditions but they could recommend to CRMC that they make leases conditional or that they be careful what is done in the interim because no one knows how the percent of usable bottom will play out.

M. Gibson stated that the Council could advise CRMC in any way they wished. If the Council would like to make those recommendations, they can. What CRMC can do with those recommendations legally and policy wise is up to CRMC.

R. Vaughn stated that these decisions affect all the men that work on the pond in the mean time.

M. Gibson asked Council members how they wanted to proceed, if they want to act on these three leases at this time or not.

D. Preble stated that he would be opposed to putting conditions on leases that were more stringent than those that were set by CRMC policy. He stated that it would be unfair to manufacture a short-term or different term than the normal 15-year lease. Preble stated that the decision that the Council has to make is if the Council approves these and it turns out that they are over the benchmark that comes out of the process then what would happen. He stated that most likely, these leases would be grandfathered in and we would stop any further leases. He could not see how the Council could do anything different.

M. Gibson asked the Council if there was a consensus that the working group had met the task. There were no objections from Council members that the working group had met the task.

M. Gibson asked the Council how they wanted to proceed with the three applications before them. He asked for a motion one way or the other. He stated that the Council needed to take a position on them or not do anything.

D. Preble made a motion to recommend approval of all three aquaculture lease applications.

S. Macinko stated that it would be helpful in formulating a motion to hear comments from the public first then think about the comments then make a motion.

M. Gibson stated that the Chairman's position is that there should only be comments from the public when there is a specific action.

S. Medeiros seconded the motion made by D. Preble in order to prompt Council discussion and public comments.

M. Gibson asked for Council discussion. There was no Council discussion. Gibson then asked for public comments.

R. Vaughn stated that he was a member of the Shellfish Advisory Panel and that he was concerned about the use of the coastal ponds. He stated that this past winter, there were several

commercial shellfishermen that made a good living working around the two aquaculture leases in Point Judith Pond. They harvested quahaugs and oysters. Vaughn stated that he did not want these expansions approved and that he objects to both lease applications.

P. Raso stated that the suction sampling conducted by DFW indicated that there were very low densities of shellfish in all three aquaculture lease sites.

J. West from Moonstone Oyster company, stated that one of the shellfishermen that R. Vaughn spoke about had been caught digging in the lease site on a number of occasions. West explained that the dredge method that they use spills oysters outside the lease site. He stated that these oysters are from their lease site and are not wild stock.

D. Alves stated that he recalled that there were no oysters found in the surveys conducted by DFW. N. Lazar referred Council members to the information in their packets and explained that three divers from DFW conducted the survey. He stated that the divers also surveyed the outside edges of the lease sites. There was some brief discussion and comments made about winter flounder spawning.

S. Medeiros stated that the working group had come forward with what the Council had requested. The Council is now at the juncture where either we decide that we are not going to approve any more aquaculture plans until a comprehensive plan is completed, or trust that this plan would be worked on legitimately and we go ahead and let things go with the presented timetable. He stated that he was in favor of letting things proceed until the plan reaches its deadline. Then the Council could take action at that time if it was not completed.

G. Allen stated he agreed with S. Medeiros. He indicated that the percent of usable bottom is a critical part of the plan as is the public trust. These are the two important parts for him. He thought the Council should go ahead and approve these three leases but would not like to see any more lease applications come forward until a plan had been completed.

J. King stated that one of the issues of concern that came up during the SAP meeting was the abutting of leases. He explained that with the two leases in Point Judith Pond there would be a total of 40 acres being taken up by aquaculture. He stated that no one would have access to this area, no public access, etc. King stated that in past years the SAP members were opposed to creating leases that abutted each other. He did not feel that the leases needed to be put together and was opposed to having these leases abut each other.

S. Macinko asked if the Division had changed its opinion in any way since the initial writing of the February letter.

M. Gibson stated that the Division had not changed its opinion. He stated that the biological impacts were now in the hands of the working group.

J. King stated that R. Rheault had been around for a number of years and he had expanded his lease in the same manner as J. Gardner. The lease expansions have been small incremental expansions. King stated that it was the larger expansions that came in that brought attention to the issue. King also stated that P. Raso was another example of someone who had grown in small increments. King stated that regarding D. Roebuck's lease, it was the sudden rapid growth that concerned commercial shellfishermen.

M. Gibson asked if the Council was ready for a vote.

J. King made a friendly amendment to the motion on the table to split the question and separate the three applications to vote on each application separately. D. Preble accepted the friendly amendment.

M. Gibson asked if there were any further discussion on the individual leases. He asked if the Council was ready to vote on each application.

S. Parente wanted to know how many acres P. Raso currently leased, and how many additional acres he was seeking.

M. Gibson asked if there were any other questions regarding the Raso application. Hearing none, he called a vote. Six in favor (G. Allen, D. Preble, C. Anderson, S. Medeiros, J. King, and S. Parente), none opposed, one abstention (S. Macinko), and the motion passed to recommend approval to CRMC for P. Raso aquaculture lease application.

M. Gibson asked for Council discussion on the next lease application, D. Roebuck.

S. Parente wanted to know how many acres D. Roebuck currently leased and how many he was adding. D. Roebuck stated that he currently had 16 acres and wanted to add 5 acres for a total of 21 acres.

S. Medeiros asked if it would be 40 acres total. D. Alves stated that it would be 40 acres total for the combination of both lease sites, D. Roebuck and R. Rheault, which were abutting leases.

C. Anderson asked for clarification on the issue pertaining to abutting leases.

R. Vaughn asked why the audience was not able to speak and give comments on the proposed aquaculture lease applications.

Another audience member also asked why the audience was not able to speak and give comments on the proposed aquaculture lease applications. She stated that she did not think it was right that the applicants were able to utilize that much area in Point Judith Pond, which she nor the public would be able to use. She stated that it was her pond too that she was the public, and that she paid taxes to use it. She stated that she was supportive of aquaculture but that the applicants did not need 20 acres each.

C. Anderson stated that he would like to hear J. King's concerns regarding abutting leases and the concerns of CRMC.

J. King stated that the shellfishermen had past discussions about aquaculture and industry asked that there be no abutting of leases. He stated that he was opposed to allowing abutting leases, and the RI Shellfishermen Association had opposed abutting leases. He stated that wild harvesters would not be able get into the area and if disease were introduced it would wipe out the abutting leases and potentially wild stock.

D. Alves stated that CRMC has a biosecurity board. He explained that the seed coming into RI is certified disease free. Most of the diseases are coming from the wild population. Separating

leases by 20 feet or 50 feet, from a disease point of view makes no difference. There is water movement around the whole pond so the disease would be moved around the pond.

D. Roebuck stated that they wanted the leases to be abutting to protect their investments. To have shellfishermen fish in the middle is harder to control encroachment onto the leases. He stated that they had established their own buffer zone between each lease. He stated that he employed commercial shellfishermen to harvest his oysters.

R. Rheault stated that from a biological standpoint there is no legitimate reason why there should be a space in between. This size is not significant. It is more of an enforcement issue.

M. Gibson asked Council members if they were ready to vote on the D. Roebuck lease application.

D. Alves stated that if the working group decides that having buffer zones is a good idea then that would be worked into the plan.

S. Medeiros stated that he respects the work of CRMC and J. King but he stated that he would abstain from voting.

M. Gibson asked for a vote on the D. Roebuck lease application. Two in favor (G. Allen, S. Parente), one objection (J. King), and four abstentions (S. Medeiros, S. Macinko, D. Preble, and C. Anderson) the motion was approved 2 to 1 to recommend approval to CRMC for D. Roebuck's aquaculture lease application.

M. Gibson asked for Council discussion on the R. Rheault aquaculture lease application. Gibson asked Council members if they had any questions for the applicant.

S. Parente asked what the current acreage was for the existing lease. R. Rheault stated that the current lease is approximately 10 acres plus, and he also stated that he has another smaller lease further up the pond that was about 3 acres. Rheault stated that he was adding 7.5 more acres.

M. Gibson asked if there were any other questions or discussion from the Council. Hearing none, He asked Council members to vote on the approval of the R. Rheault aquaculture lease application. There were three in favor (J. King, G. Allen, S. Parente) no objections, and four abstentions (S. Macinko, D. Preble, S. Medeiros, C. Anderson) the motion passed to recommend approval to CRMC for R. Rheault 's aquaculture lease application.

M. Gibson suggested that the other two leases (Gardner and Krause) that the Council did not take any action on should be brought back before the Council at the next meeting so the Council can have a discussion on each of those applications and see if they want to change their position. He stated that in the meantime he would consult with legal council on the parliamentary procedures needed in order for the Council to reconsider these applications. Gibson stated that the Council had taken a position on those leases however, the Council's position has changed since the time they took that position, and they may want to reconsider them under the new standards.

D. Preble stated that to move things forward he wanted to make a motion to bring the two aquaculture lease applications back for Council consideration. He stated that the Council might need a motion to bring them back.

M. Gibson stated that the two applications were not on the agenda for this meeting so he did not want to accept a motion pertaining to them at this time to avoid any problems with taking an action on an item that was not on the agenda. **D. Preble agreed and withdrew his motion.**

M. Gibson stated he would research the past actions made by the Council and figure out how to bring the applications back for consideration.

D. Alves stated that he wanted to thank everyone for attending the working group meetings. He also extending an open invitation for any other Council members that wanted to attend the meetings or be part of any of the sub-groups.

Report on Tautog Workshop: G. Allen stated that a petition started by M. Bucko, a bait shop owner, precipitated the workshop. The petition was generated due to concerns regarding decisions made by the Tautog AP and the Council to support the June spawning closure in the upper bay. He stated that the concerns were that it takes away from the shore fishing user group's key time when they caught tautog. G. Allen stated that the AP had worked out a solution for next year however, the Director wanted to put together a workshop so all aspects could be discussed. G. Allen outlined the tautog workshop contents that included, tautog biology, life history, RI trawl survey findings, tagging data, tautog regulations, etc. G. Allen stated that J. McNamee, T. Lynch, and N. Calabrese did a great job putting the workshop together.

M. Gibson asked for Council comments or questions.

D. Preble asked if there was a difference in fecundity for tautog, as they got older. N. Lazar indicated that there was a difference in the size of eggs. As fish get older, there are more eggs produced.

A member from the audience stated that there was a bill introduced into Congress in the last week or two that would ban the sale of tautog countrywide.

S. Parente stated that he attended the tautog workshop and that he thought it was an outstanding presentation and that he got a lot out of it. He commended the Marine Fisheries staff for a job well done.

G. Allen reminded the Chair that he had asked for a similar workshop to be put together for winter flounder and hoped that this could be accomplished.

M. Gibson asked Council members if the format used to prepare the tautog workshop would be acceptable to use for a winter flounder workshop. Council members agreed.

Approval of Industry Advisory Committee Agenda: M. Gibson stated that there was only one item on the agenda. This was the annual need to address commercial licensing for 2008 for the following sectors: shellfish, finfish, and crustacean. Gibson stated that he had received word from J. Low to put the gillnet regulations back on the IAC agenda. Gibson told Low that the IAC had already made a recommendation on that issue and the gillnet changes would be presented at the next public hearing in August. **M. Gibson asked Council members if the agenda was acceptable as written. There were no objections to the agenda as written.** B. Murphy will contact K. Ketcham to set a date for the IAC meeting.

Memo to the Council on the next public hearing schedule and items: N. Lazar reviewed the items slated for the August 6, 2007, public hearing: draft whelk regulations and new gillnet regulation proposals. Gibson stated that the maximum lobster gauge size would not be presented at this public hearing. Gibson stated that implementation requirement from the Commission for this item were not until July 2008 and there maybe other issues that the lobster AP may want to address. The item would be postponed until a subsequent public hearing, which would include other lobster items that may come up.

N. Scarduzio reminded the Chair that there was a Council meeting scheduled for August 6, 2007 the same date as the public hearing. She requested that Council members decide if they wanted to hold the Council meeting after the public hearing or reschedule to another date.

M. Gibson solicited Council members as to what they wanted to do. G. Allen stated August 9 would be good for him. S. Medeiros preferred to have the Council meeting after the public hearing. C. Anderson stated he had some conflicts but could possibly make August 9.

Gibson stated that it would largely depend on the complexity of items slated for the August Council meeting. Gibson suggested that he would consult with staff then give a recommendation. The consensus was to not schedule a public hearing on a regular Council meeting date in the future.

M. Gibson suggested that the Council hold the regularly scheduled Council meeting on August 6 and take care of the business they need to take care of and select a different date later in August for the public hearing. The findings from the public hearing could then be presented to the Council at the September Council meeting. Gibson suggested leaving August 6 for the regularly scheduled Council meeting. Gibson asked for objections. Hearing none, he stated that he would let Council members know when the public hearing would be held, but it would definitely be held in August.

Old Business:

Update on proposed groundfish advisory panel and appointment of chairperson: M. Gibson updated Council members on the status of the new AP. He stated that solicitation letters were sent out and staff had received a few applications so far. Gibson indicated that a chair for the AP needed to be selected. Gibson stated that he had some discussions with D. Preble about chairing the groundfish AP because of his involvement with the New England Council. Gibson stated that the purpose for this panel is to deal with species for which there are federal management programs and potentially missing elements in terms of state regulatory schemes. He thought Preble would be a good candidate for this AP; however, it may overburden him because he would be in a position of chairing three advisory panels.

D. Preble stated that he was interested in becoming the chair for the groundfish AP. He nominated C. Anderson to take on his role as chair of the striped bass AP. M. Gibson asked if C. Anderson was amenable to becoming the chair for the striped bass AP.

C. Anderson stated he was. Anderson inquired if it would be possible to appoint a co-chair because he was on sabbatical and out of town frequently between now and December. G. Allen volunteered to be co-chair for the striped bass AP.

M. Gibson recapped indicating that D. Preble would assume the responsibilities for the evolving groundfish AP, and he would maintain his chair on the fluke AP. Dr. Anderson would become the chairman for the striped bass AP assisted by G. Allen as co-chairman. Gibson asked if there were any objections from Council members or any alternative nominations for the striped bass AP. Seeing none, these changes would go into effect.

M. Gibson stated that as staff gathers all the nominations they would be given to the Division of Law Enforcement for review and background checks. Viable candidates from this process would be presented to the Council for consideration as per the revised Council policy.

FYI:

Letter from ASMFC regarding fluke: M. Gibson stated that this letter is a response to the letter Gibson wrote on behalf of the Council expressing the Council's concerns for summer flounder management. That there were narrow ranges of options presented to the state, which did not allow for customization of states. Gibson relayed that the letter stated that ASMFC understands our situation but little could be done until the stock increased in size.

A member from the audience stated that there was a Mid Atlantic advisory panel and fluke meeting on July 25, 2007, for comments on the upcoming amendment. Anyone interested should attend.

Letter from RIMFC to Director regarding position: M. Gibson stated that he simply summarized what the Council had discussed regarding aquaculture and relayed the Council's position to the Director. Gibson stated that he had spoken to the Director and that the Director was supportive of the Council's position on aquaculture. He stated that the Director wanted to encourage continued participation by Council members in this process. He also encouraged the Council to make sure they get the results and plan that they want out of this process.

Approved advisory panel policy: M. Gibson stated this was the revised advisory panel policy containing the Council's changes. G. Allen stated that the second page was missing. G. Allen requested that an entire package be submitted at the next Council meeting so that all members have a complete copy. M. Gibson stated that staff would provide a complete package to include standard operating procedures and policies.

Floating Fish Trap Survey: M. Gibson indicated that staff had provided information, which was in each Council member's packet regarding the floating fish trap survey. Gibson stated that B. Murphy worked with staff from Enforcement and checked trap sites.

G. Allen stated that adding the high flyers had been very beneficial. People now knew where the traps were located. People could visually see the flyers and now go around the traps.

M. Gibson asked if there was any other business to come before the Council. Hearing none, the meeting was adjourned.

The Chairman adjourned the meeting.

Nancy E. Scarduzio, Recording Secretary