

RHODE ISLAND MARINE FISHERIES COUNCIL
Summary of Meeting Minutes
July 12, 2010 – 6:00PM
URI Narragansett Bay Campus
Corless Auditorium
South Ferry Road, Narragansett, RI

RIMFC Members Present: J. King, R. Hittinger, S. Medeiros, S. Parente, R. Bellavance
RIMFC Members Absent: K Ketcham, C. Anderson, S. Macinko
Chairperson: B. Ballou
RIDEM F&W Staff: N. Scarduzio, D. Erkan, J. McNamee, N. Lazar, M. Gibson,
DEM Staff: G. Powers, L. Mouradjian,
DEM Law Enforcement: M. Lawton

Public: Approximately 48 people attended

B. Ballou called the meeting to order. He suggested a modification to the agenda, to consider both 4(a) the Lobster AP report and 7(c) a special ASMFC Lobster Board meeting to be held on July 22, 2010. He stated that M. Gibson would be speaking on both these issues. He asked if any Council members had any other modifications to the agenda. **B. Ballou asked if there were any objections to approving the agenda as amended. Hearing none, the amended July 12, 2010 agenda was approved.**

The next agenda item was the approval of the Rhode Island Marine Fisheries Council (Council or RIMFC) meeting minutes from the June 2, 2010, Council meeting. B. Ballou asked if there were any objections to approving the minutes. **S. Medeiros made a motion to approve the June 12, 2010 Council meeting minutes. J. King seconded the motion. The minutes from the June 12, 2010, Council meeting were approved.**

Public Comments

There were no comments from the public.

Advisory Panel Reports

Lobster AP (6/8/2010) – J. King:

J. King deferred to M. Gibson to speak about the upcoming special ASMFC Lobster Board meeting to be held in Warwick on July 22, 2010.

M. Gibson stated the purpose of the RIMFC Lobster AP meeting was to brief panel members on the status of lobster management at the Commission level. He noted that the ASMFC Lobster Technical Committee made a recommendation for a moratorium on the lobster fishery for five years in the New England stock area, due to the population being in recruitment failure. He outlined some of the concerns of the Commission.

Gibson stated that given the situation the Lobster Management Board had decided to call a special meeting in the Southern New England Area. The Board will have to consider where to go from this point, whether to convene an Addendum into the plan or consider the Technical Committee's recommendation as well as other alternatives.

Gibson also noted that the ASMFC Area 2 LCMT meeting that was scheduled for Tuesday, July 15, 2010 had been cancelled., noting they did not think there was a need for a meeting until after the July 22, ASMFC Lobster Management Board meeting.

Shellfish AP (6/23/2010) – J. King:

J. King reviewed the minutes from the meeting stating they wanted to have an early meeting to start discussions on the 2010 winter management area opening schedule and other proposals. He noted there was a correction to the dates recorded in the minutes, that they also wanted December 21 & 22 opened.

King stated that the RI Shellfishermen's Association (RISA) proposed that the western part of Greenwich Bay be divided into two separate sections for 2010. They also proposed the need for managing access to the new area(s) and a variety of proposals, all of which the Division of Fish and Wildlife, and the Division of Enforcement would need time to conduct dredge surveys and time to consider each proposal.

J. King noted the RISA also proposed that harvest within Potowomut Shellfish Management Area "A" be changed from seasonal access to year-round access (no closed season, sunrise to sunset, 3 bushel possession limit. RISA also proposed that the boundary between Potowomut "A" and High Banks Shellfish Management Area be changed. Finally, it was proposed starting February 1, 2010 that High Banks, Bissel Cove, and Bristol Shellfish Management Area be open to shellfishing from sunrise to sunset, seven days a week until April 30, 2011.

King commented that all proposals would need further review by DEM Fish & Wildlife and DEM Law Enforcement before consideration by the RIMFC.

New Business

Sebring Aquaculture lease application review – J. King/D. Erkan:

B. Ballou stated that D. Beutel from CRMC was present along with the applicant. Ballou gave an overview of where we were in the review process indicating that the RIMFC Shellfish Advisory Panel (SAP) had already met and reviewed the application and recommended that the RIMFC oppose the lease proposal. Ballou commented that DEM staff had no intent to offer any objection to the proposed lease. It was now before the Council for consideration. He reminded that the Council's role was to determine whether the proposed activities are consistent with competing uses engaged in the exploitation of the marine fisheries and offer recommendations to the CRMC based on that standard.

D. Beutel pointed out that this had not been under any previous viability permit. This has received a preliminary determination and a subsequent full application. He explained the lease would be for three acres for surface aquaculture of oysters. Once the report had been completed it would then go before the CRMC.

J. King stated that most of the opposition from the SAP meeting was from individuals who claimed to shellfish in the area. He explained it was an area of low density of shellfish.

Attorney T. Scott stated he was representing the Nanaquaket Neighborhood Association. He pointed out that the RIMFC SAP voted against the lease proposal. He asked a number of shellfishermen to attend tonight to tell the Council how they use the area and how it would affect them. He felt this would greatly affect them.

M. Souza, commercial shellfisherman and resident of Tiverton, spoke in opposition to the aquaculture lease proposal. He commented that when areas were closed to shellfishing due to pollution he shellfishes in Nanaquaket pond in the area where the lease is being proposed. M. Souza stated he does not work there all the time but he does work there, especially during the months of April and November, the windy months. He stated he was not in favor of the lease at all.

C. Rose stated he lived in Tiverton his whole life and grew up working in the pond. He agreed with M. Souza, and stated that the density comes and goes and sometimes shellfishing is really good and sometimes it is slow. He mentioned there were many people present tonight who have dug in that pond and have made a good living from the pond. He was concerned about putting a number of shellfishermen out of business for one aquaculture business. He was opposed to the proposed lease application.

R. Pudula, shellfisherman and Tiverton resident, stated he was in agreement with the other two shellfishermen and that he had grew up shellfishing in the area. He was opposed to the lease application.

S. Medeiros asked for clarification and wanted to know if the 3-acre lease would in effect remove three acres from everyone else use. D. Beutel confirmed that would be the case.

B. Ballou asked if there was a motion.

J. King made a motion to recommend that the Director advise CRMC to approve the Sebring Aquaculture lease application. S. Parente second the motion.

R. Hittinger stated he was incline to consider the vote by the SAP which was to oppose the lease application. He normally prefers to follow the advice of the AP and was not comfortable not following their advice.

J. King explained that the lease was for only 3 acres and the pond was about 200 acres so that was about 1% of the pond. Additionally, the lease would become a brood stock for the area.

For the record, N. Lazar noted that the Council had been supplied with approximately 18 letters of objection, also a letter of objection from the Town of Tiverton.

B. Ballou asked for a vote. **The motion to recommend that the Director advise CRMC to approve the Sebring Aquaculture lease application failed (2 in favor; J. King and S. Parente) to (3 opposed; R. Hittinger, S. Medeiros, and R. Bellavance).**

For clarification purposes, B. Ballou asked if any of the three would like to make a motion to not approve the lease. **S. Medeiros made a motion to recommend that the Director advise CRMC not approve the Sebring Aquaculture lease application. R. Hittinger, second the motion.**

B. Ballou asked for a vote. **The motion to recommend that the Director advise CRMC not approve the Sebring Aquaculture lease application passed (3 in favor; R. Hittinger, S. Medeiros, and R. Bellavance) to (2 opposed; J. King and S. Parente).**

Review of RI Oyster Restoration Initiative – N. Lazar:

Proposed Spawner Sanctuary & Oyster Harvest Moratorium – Quonochontaug Pond:

Proposed Spawner Sanctuary – Potter Pond/Sycamore Cove:

Oyster Harvest Moratorium – Bissel Cove/Fox Island

B. Ballou explained that the next four items were all related and would be outlined by N. Lazar. These are proposed Spawner Sanctuaries or Moratoria that are being proposed for adoption by DEM.

N. Lazar explained that by statute DEM is required to provide the citizens of the state an oyster restoration program. He gave the history of the program and some background, which was also presented to Council members in their packets. DEM was responsible to find areas where oysters could be placed. Two ways to do this was to establish spawner sanctuaries and to have a moratorium on oyster harvest only. DEM has seeded the last couple of years starting with 2.4 million in 2008, and 8.9 million oysters seeded in 2009. We anticipate having about 9 million for 2010. He indicated as we grow the program we need to establish spawner sanctuaries. There are three areas being proposed; establishing a moratorium in Quonochontaug Pond and a spawner sanctuary, which the Council already reviewed and voted on. The second one is Sycamore Cove in Potter Pond, which has gone through the SAP process with an agreement with the Division to reduce the size by one-half. The third proposal is the moratorium for oyster harvest in Bissel Cove.

B. Ballou pointed out that the moratorium for Quonochontaug Pond would be for three years instead of the original proposal for five years. B. Ballou asked if there were any other questions. He commented that all three items needed action and if the Council wanted to address them individually or as a group.

J. King made a motion to recommend that the Director adopt all three measures as presented; to move forward with establishing a spawner sanctuary and a moratorium in Quonochontaug Pond, establish a spawner sanctuary in Sycamore Cove of Potter Pond, and establish a moratorium on oyster harvest in Bissel Cove/Fox Island. R. Bellavance second the motion.

S. Parente made a comment relative to Sycamore Cove of Potter Pond stating the Division made a very reasonable compromise by reducing the area to half of the original size. He felt this would enhance the quality of the pond going forward.

B. Ballou asked for a vote. **The motion passed unanimously to recommend that the Director adopt all three measures as presented; to move forward with establishing a spawner sanctuary and a moratorium in Quonochontaug Pond, establish a spawner sanctuary in Sycamore Cove of Potter Pond, and establish a moratorium on oyster harvest in Bissel Cove/Fox Island.**

Discussion on make-up of Industry Advisory Committee (IAC) – B. Ballou:

B. Ballou pointed out that R. Bellavance who had served on the committee in the commercial fishing license representative slot, was now a RIMF Council member and would need to be replaced.

Ballou also asked the Council to decide if they were comfortable with the current make up of the committee, whether there were any suggested changes, or additions, and in particular, if anyone had any thoughts or suggestions for a replacement for R. Bellavance.

R. Bellavance stated he got involved with the IAC when he held a non-restrictive finfish license.

S. Parente then clarified by asking if they would then be looking for someone who held a CFL.

R. Bellavance stated he had put a few calls out to some people to see if anyone was interested in filling the seat, but had no response yet. B. Ballou stated that the Division would also send out a letter of solicitation to find some interested candidates.

G. Allen commented that he felt there should be a recreational member on the committee, because there are times when issues are considered by the IAC that also affects recreational fishermen.

G. Powers stated that it is not an exclusive committee and if the Council members were of a mine to include a recreational member it could be consistent with the statutory mandate.

There was Council discussion about possibly allowing for a recreational slot on the IAC.

B. Ballou suggested that we send out a solicitation that sort three new positions on the IAC; one would be a replacement for R. Bellavance, a CFL holder or someone that does not hold a restrictive finfish endorsement, a recreational representative, and a charter/party boat representative.

There was Council discussion about making sure people understood that attendance was mandatory for these meetings since a quorum was needed in order to conduct business.

Charter/Party Boat and Commercial Rod & Reel Issues – J. King:

B. Ballou read a hand out that he had prepared pertaining to policies governing recreational & commercial fishing operations and went through each section. He noted that the handout was formulated from various meetings during the past year including IAC meetings. The intent was to clarify and formalize the status quo with regard to these issues and rationalize some of the current provisions. We are now hoping to get the Council's input and support on the policy framework. The next step would be for DEM to link these provisions to specific regulations and ultimately convert the entire framework into a proposed regulatory framework. Then pursue adoption of the framework through a standard regulatory hearing process. He explained that the last item would require legislative involvement. Therefore, the point of the meeting tonight was to go through the document and come up with a package that everyone supports then move forward from there.

In the section for Vessels Fishing Recreationally and Commercially (policy #3A) it was pointed out that there could be a conflict with the Highly Migratory Species Fisheries Management Plan.

P. Capauldi, recreational fisherman, stated he had concerns about proposed policy #3C pointing out that if he, as a recreational fisherman, happened to be on a boat that had a commercial license he should still be able to fish recreationally off that boat. He noted that if you blanket that you have to have a commercial license in order to fish on a commercially licensed boat then what would happen to the recreational person that applied for a recreational license and was lucky enough to get a ride on a commercial boat to fish our waters. B. Ballou stated that the proposed changes would not eliminate that provision which was allowed under current regulation. P. Capauldi stated that he did not feel that was how the proposed policy read and just wanted to make sure this would be allowed.

There was Council and audience discussion on this proposed policy.

A. DeAngelis stated he was in support of the new proposed policies.

R. King suggested that the Department license vessels instead.

In the section for Vessels Fishing Commercially & Reel (policy #4) J. King wanted it clarified that this pertained only to the finfish fishery not to the shellfish fishery.

B. Ballou explained that the last section "Vessels Fishing Commercially Using Rod & Reel" (policy #5) would require a statutory change and a bill to go before the General Assembly to change.

J. King brought up some issues about diving for shellfish where two people were licensed on the boat but only one person was actually “harvesting”. B. Ballou stated he would have to look into the issue he was not prepared to address shellfish concerns.

S. Medeiros stated that proposed policy #5C has been argued for years and he was on board to get it straighten out.

S. Parente stated he concurred with the proposed policy changes and the recommendations that the Division was bring forward. R. Bellavance also stated he was in agreement with the comments made by S. Parente and was in favor of the proposed policy changes.

J. King requested the reference to shellfish made in proposed policy #5C be removed. He wanted it to be clear that the proposed changes did not have anything to do with shellfish and were only directed at finfish licenses.

K. Booth, representing the RI Commercial Rod & Reel Association, stated his organization was in support of the proposed policy changes, which would clarify the regulations especially those pertaining to charter/party boat. He also commented about a commercial fisherman’s ability to keep fish for personal use. He expressed concern when a commercial fisherman comes back with 50 pounds of sub 19 ½ inch fluke and claims it all for personal use, there should be a provision that there has to be a sale for that personal use to be able to take effect. If he is not selling anything then he is recreationally fishing and it should be over 19 ½ inches for fluke.

There was some audience discussion about this concern. B. Ballou felt this was a valid concern and would consider the comments moving forward. A. DeAngelis stated he was in support of proposed policy #5C.

J. Renone expressed concerns about divers, stating that four and five divers are catching four and five striped bass each and then selling them, this proposed policy (#5C) change does not address divers at all. He felt to limit this to just commercial rod and reel was a problem. He suggested including diving and spear fishing.

B. Ballou stated that he got the feeling from Council comments that there was recognition and support with moving forward with the clarification of these proposed policies and developing them in to regulation. He clearly stated this does not make any changes to current regulation, there would first need to be a formal public hearing process.

Approval of Summer Flounder AP Agenda – R. Hittinger:

R. Hittinger stated the meeting date had not been determined yet but would be either late August or early September. He reviewed agenda items and noted if anyone had any proposals for the 2011 commercial fishery to bring them to the meeting. There were no objections by the Council to approving the agenda therefore the agenda was approved.

Approval of Scup/Black Sea Bass AP Agenda – K. Ketcham:

Since K. Ketcham was not present, B. Ballou reviewed the items on the agenda. There were no objections by the Council to approving the agenda therefore the agenda was approved.

Approval of Industry Advisory Committee (IAC) Agenda – K. Ketcham:

Since K. Ketcham was not present, B. Ballou reviewed the agenda, stating this was in the Council packet and needed approval in case another IAC meeting was necessary in August.

Approval of Shellfish AP Agenda – J. King:

The SAP meeting was scheduled for July 21, 2010 at 4:30 PM. J. King stated he was disappointed with the outcome of the last public hearing pertaining to the soft-shell clam fishery. He felt everyone from the Director, Water Quality, Fish & Wildlife, Law Enforcement, RIMFC, himself, the shellfishermen to the Dealer's had dropped the ball with this issue. He wanted to know why the Division of Fish & Wildlife waited until May to do something when they knew about the pollution closure lines back in January. He felt everything was rushed so no one fully understood the potential problems and made hasty decisions. King explained to revisit the issue now was too late the soft-shell clam fishery had already been ruined. The price was too low now. Had the fishery been managed with the proposed regulations in place the resource and higher price would have lasted longer. Since the proposed regulations did not go into effect, over harvesting had occurred. King pointed out that fishermen do not ask for increases in minimum sizes, or decreases in bushel limits unless they see a problem. He felt what happened was devastating to the fishery, and should not have happen. He felt having another Shellfish AP meeting on the same issue was too late, the resource had already been depleted. He noted that two months had been wasted and two months of clams had been wasted. J. King stated that the price for clams was as low as 50 cents per pound. King also expressed frustration with the area openings due to improved water quality indicating he received calls from Water Quality the night before the area was due to open and sometimes just before a holiday. He pointed out what are the dealers going to do, they had already filled all their coolers up with the hope of selling out over the weekend. Then thinking the area would open for the following week and they could purchase more product. He explained the Dealers could not take more product so they dropped the price or reduced the number of bushels they took, and even requested a 2 inch size limit in order to ship the product out of state. He noted that the Dealers ended up doing exactly what the shellfishermen had asked the Department to do. King also stated he observed some shellfishermen taking three possession limits in one day. He asked whether one person could harvest the limit of two licensed individuals, noting there were two licensed people on the boat but only one is doing the actual harvesting.

J. King outlined what he would like to have addressed at the SAP meeting; revisit soft-shell clam bushel limits, revisit Conimicut Point as a special management area, soft-shell clam harvesting methods, and address soft-shell clam undersized to be changed from piece to quarts. He also wanted to let the Director have the flexibility in the special management area to be able to make changes easily without having to go through a series of meetings and public hearings.

B. Ballou explained that the Director took no action since the June 2, 2010 public hearing therefore the issue remains alive and suitable for revisiting. Had the Director enacted any regulations and if this was a discussion about changing those regulations this would be a more difficult exercise. He noted the challenge would be to have a Council meeting following the SAP meeting in a timely manner. Ballou encouraged Council members to attend the July 21, 2010 SAP meeting so they could hear the discussions first hand. He also noted that it would be challenging for staff to pull all the information together for a Council meeting slated for July 29, 2010.

G. Powers stated that the pending SAP meeting cannot be used to request or suggest that the Director take action, rather the Director can act given that no action has been taken yet. However, the Director would be limited to the record that was before him at the close of the public hearing. If you wish to supplement the record, it would require that the issue be put out to public notice again.

There was discussion on how to proceed. G. Powers pointed out that the Council had already given their recommendation to the Director, and it would muddy the waters if they voted for reconsideration of that vote. He commented that the record was complete enough for the Director to take a course of action that might be deemed necessary, but it cannot be supplemented.

B. Ballou stated there were two courses of action; one to rest on the Director's opportunity to make a decision based on the record, which remains viable, the other is to reinstate an entire new AP process but that would be a two to three month long process.

N. Lazar pointed out that the public hearing did include three items; to increase the minimum legal size of soft-shell clams, the bushel limit, and to establish Conimicut Point as a management area. He reviewed the Council votes which were to increase the minimum legal size of soft-shell clams to 1 ¾ inches, and they did not take action or give a recommendation on the other two items.

G. Powers pointed out that the Director can consider the Council's actions, and can still act accordingly, he would just need to provide reasons for doing so.

B. Ballou explained the question was whether to hold a SAP meeting for further discussion, and if there was subsequent information that comes out of the meeting, then move forward with another public hearing.

D. Erkan suggested that both occur. To see if the Director would consider the initial proposals, and run the process to consider the new information then determine if there needed to be any regulatory changes.

Both B. Ballou and J. King agreed with D. Erkan's suggestion. J. King thanked D. Erkan for making the suggestion.

J. King again voiced his frustrations with what occurred with the recent soft-shell clam fishery.

L. Mouradjian stated the options that were discussed at the public hearing were viable control measures that the Director has for consideration so we are still in the game the only issue that we will not be able to address is method of harvest. That may be something the SAP may want to consider.

B. Ballou asked the Council, and in particular J. King, if there should be a July 21 SAP meeting.

J. King felt there should be one and they should proceed as D. Erkan had suggested.

The Council was in agreement with that course of action; there were no objections from the Council, the July 21 SAP agenda was approved.

Appointment of new member to Advisory Panels and AP member changes – N. Scarduzio:

N. Scarduzio stated there were two applications received for two positions on the SAP. The first application was from M. Souza who was applying to be the alternate for D. Brayton in the East Bay slot. His application had been reviewed by DEM Law Enforcement. G. Renzulli applied to be the alternate for J. Schey. His application had also been reviewed by DEM Law Enforcement and had cleared the process. **J. King made a motion to appointment both applicants. Second by R. Hittinger.** B. Ballou asked for a vote. **The motion passed unanimously to appointment both M. Souza and G. Renzulli to the SAP.**

N. Scarduzio also updated Council members on two member changes pertaining to the Striped Bass AP and the Menhaden AP. She noted that J. Fuscaldo would be moving therefore, his alternate, R. Jobin would move up to the Primary slot on the Striped Bass AP and he would then select his own alternate. Additionally, J. Fuscaldo, who served as R. Jobin alternate on the Menhaden AP would leave this slot and R. Jobin would then select another alternate to fill his vacancy.

ASMFC – NEFMC Updates

B. Ballou informed Council members that the updates were in their packets and they could look them over on their own.

FYI

Proposed upcoming Council meeting schedule, proposed fall public hearing schedule, and docket items:

B. Ballou stated there was a memo dated June 30 outlining the proposed public hearing schedule, docket items for each hearing, and RIMFC meetings. He noted that the key issue was the July 29, 2010 public hearing regarding Recreational black sea bass and tautog with a suggestion to immediately follow with a Council meeting. He explained that the other option, if members do not want to meet right after the hearing, was August 10, 2010. He noted that the agenda would be short.

The Council agreed to hold the Council meeting right after the July 21 public hearing, and not have an August Council meeting.

N. Scarduzio noted that the charter/party boat and commercial rod & reel issues was slated for a November public hearing. R. Bellavance requested that the Division try to work toward keeping the issue on the November public hearing docket. S. Parente supported R. Bellavance request stating he would be out of town in January.

Regional Tautog Fishery Issue Paper:

B. Ballou informed Council members that this information was in their packets which was related to the July 29 public hearing and they could look it over on their own. R. Hittinger stated the paper would be discussed at the July 22 Tautog AP meeting and encouraged anyone interested to come to the meeting.

Special ASMFC Lobster Board meeting in RI on July 22, 2010:

B. Ballou informed Council members that a notice of the meeting was in their packets. This item had been considered under item 4(a) the Lobster AP report.

ASMFC Public Hearing on Striped Bass Draft Addendum II, on August 17, 2010 meeting:

B. Ballou informed Council members that a notice of the hearing was in their packets.

Revised IAC agenda for July 20, 2010 meeting:

B. Ballou stated this was an FYI item to let Council members know we added two items to the agenda.

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

Nancy E. Scarduzio, Recording Secretary