

RHODE ISLAND MARINE FISHERIES COUNCIL
Minutes of Monthly Meeting
August 4, 2003
URI Narragansett Bay Campus
Corless Auditorium
South Ferry Road
Narragansett, RI

RIMFC Members: R. Boragine, J. King, G. Allen, K. Ketcham, S. Macinko

Chairperson: M. Gibson

RIDEM F&W Staff: N. Lazar, J. McNamee

DEM: R. Ballou

Legal Counsel: G. Powers

DEM Enforcement: K. Blanchard, D. Lees

Public: approximately 60 people attended

M. Gibson started the meeting and introduced himself as the Rhode Island Marine Fisheries Council (RIMFC or Council) chairperson in the absence of the normal chairman, J. Reitsma. He started with several agenda adjustments. The first issue was to defer item 6a from the current agenda to the next meeting. The next request was to add in an agenda item discussing the potential user groups to be appointed to the floating fish trap advisory panel. Another request was to move item 4a from the current agenda to the beginning of the agenda. The final request was to expedite item 5b from the current agenda by placing it as the second agenda item because this was the issue that the majority of the attendees were there to listen to. There were no objections to any of the proposed agenda changes. M. Gibson asked the Council whether there were any changes or corrections to be made to the minutes from the July 7 2003 RIMFC meeting. **R. Boragine made a motion to approve with a correction to the misspelled acronym on page 4. G. Allen seconded the motion. The July 7, 2003 RIMFC minutes were unanimously approved with the one correction mentioned above.**

New Business

Proposal for new aquaculture operation: N. Lazar introduced the aquaculture application and stated that D. Alves (Coastal Resource Management Council (CRMC)) was present to speak to the application which was submitted by Block Island Upweller, LLC. D. Alves gave a brief overview of the application and solicited questions from the Council. R. Boragine asked who Block Island Upweller LLC was. D. Alves stated that the principal was C. Warful. N. Lazar gave the Division of Fish and Wildlife (DFW) comments on the proposed site which were submitted in written form to the Council,

stating that the DFW approves the site for the aquaculture operation proposed in the application. There was no further discussion from the audience or the Council. **R. Boragine made a motion to approve the application. G. Allen seconded the motion. The motion to approve the application was unanimously approved.** M. Gibson then brought the Division of Fish and Wildlife's (DFWs) draft aquaculture form to the Council's attention. He stated that this was included in the packet due to criticism from the Council that the DFWs current aquaculture site evaluation which they submit to the Council was inadequate. The Council was asked to comment on the form and then take an action to approve or reject the form which will be used by the DFW in the future for site evaluations. **R. Boragine made a motion to approve the form. This motion was seconded by K. Ketcham and J. King. The motion was unanimously approved by the Council.**

Old Business

Status of the dockside sale of marine species policy document: M. Gibson stated that the document had been mailed out prior to the meeting. He then passed the discussion over to B. Ballou. B. Ballou gave a brief overview of the dockside sale of marine species issue stating that the document that had been passed out prior to the meeting had been developed in conjunction with several groups including the Department of Health (DOH) and the Department of Environmental Management (DEM). B. Ballou stated that he will entertain any public comments or questions and stated that this was the first public presentation of this draft policy, therefore any comments would be taken back to the director of DEM for consideration. M. Gibson stated that he would first like to get questions and comments from the Council and would then turn it over to the public for comments. At this point more copies were passed out to the public in attendance. R. Boragine stated that simply requiring everyone to get a seafood dealers license would devalue the seafood dealers license therefore the policy of requiring everyone who wanted to sell marine species at the docks to get a seafood dealers license should not go into practice. He went on to state that if they wanted some sort of license for dockside sales, a peddlers license or something of this nature should be created for this purpose. K. Ketcham stated that some lobster fishermen have stated that the commercial lobster license entitled them to also sell lobsters at the dock and he asked B. Ballou if this was the case. B. Ballou stated that this was the popular interpretation but to his knowledge this was not the case. M. Gibson solicited further comments from the Council but did not receive any.

An audience member asked where in the regulations did it state that lobstermen must sell there product to licensed seafood dealers. B. Ballou stated that the laws that give the authority are referenced for each section of the policy.

A person identifying himself as an attorney for the Rhode Island Lobstermens Association (RILA) took issue with the sections reference by B. Ballou in his last statement. He stated that these sections of statute and regulation do not specify who a commercially licensed lobsterman can sell to and he went on to site several statutes and regulations to make his point. The attorney had drafted a document which contained all

of the citations which he had referred to and would hand it in if the Council or DEM wished. M. Gibson asked DEM legal council to better articulate how they had arrived at their interpretation of the various statutes and regulations that deal with these issues. G. Powers stated that the citations referred to by the attorney for RILA fail to read the statutes and regulations in context. The context of the statutes and regulations are what was used to arrive at the DEM interpretation.

An audience member asked why, if the DEM interpretation was “iron clad”, do we need a new policy that changes the language from what already existed. B. Ballou stated that nothing was being changed, they were just putting forth a policy document to clarify what was already written in regulation. The audience member disagreed, stating that it does change the language and he was not sure what the motivation was behind this new policy. B. Ballou stated that the sole motivation was to clarify a question that was put forward by a segment of the charter boat industry.

Another audience member made a distinction between live animals and dead animals, stating that this was the important distinction, not the distinction between lobster and finfish. He felt the distinction between live and dead animals was what the DEM should focus on along with the distinction between federally licensed and state licensed vessels because they have different rules to follow.

An audience member stated that the practice of selling live lobsters at the dock was a practice that had been done for over 25 years and he did not understand why DEM was putting this policy forward. He felt the only explanation was that DEM was devising a way to grab more money from the lobster industry.

An audience member asked if this issue had come up in the past and if so how did DEM enforcement deal with it. K. Blanchard responded stating that this practice has been going on for a long time, the regulation has been in place since the early nineties, but DEM enforcement had not enforced the regulation due to a lack of complaints. Once the complaint alluded to earlier in the discussion came forward, DEM had to come up with a policy stating how this issue was going to be enforced so that everyone understands their rights.

An audience member asked where the bait policy came from and why it was being lumped in with the rest of this policy. K. Blanchard stated that it was his understanding that this came from DOH to make sure there was a clear delineation between bait and products that were to be consumed.

An audience member asked if there was an end date as to when this policy was going to go into practice. B. Ballou stated that this could take as long as it needs to take to be resolved. The audience member suggested going over this policy in a workshop setting with industry.

An audience member asked a question about 4C and D on the policy, stating that this represented a problem to the industry because the way it is written, if he sells bait to a

dealer, he will not be able to then purchase bait from the same dealer. B. Ballou stated that bait wasn't a big concern during the development of this policy and he felt that bait selling should be status quo therefore if these sections of the policy do not allow for status quo then they should be changed. B. Ballou stated that it was never the intention of DEM to change any of the practices which were occurring but when they were asked to look and see if this was a legal practice they had to say that it currently was not. The policy was then put forward to legitimize the practice of selling marine species dockside, the problem arose when it was realized that a dealers license was needed to fully legitimize the practice.

An audience member wanted to make it clear that the dockside sale of lobster was providing a market for a product that was being rejected by dealers, so before this policy was finalized this should be made clear to everyone.

M. Marchetti said it was alleged that one member of DEM enforcement was enforcing the policy as it is currently written and a member of the lobster fishing industry went up to Providence to purchase a dealers license because of this, he felt that DEM enforcement was jumping the gun with this alleged action. He went on to emphasize that he too believes that the regulations as written do not specify who the lobsterman can sell his product to as stated earlier in the discussion. He stated that this was analogous to a farmers market and the policy of the state at this point is to encourage markets such as the farmers market. He went on to emphasize what had been stated previously, that the lobsters that were being sold at the dock were product that was rejected by the dealers, therefore if the lobstermen were not able to sell this product at the dock it would go to waste and in a lot of ways this extra money brought in at the dock is what kept many of the crew members around. He felt that most of the lobster being sold dockside were accounted for and concluded that the state should look back in to issuing a peddlers license, issuing more dealers licenses devalues that license.

An audience member commented that the way to solve the problem without this policy would be to include an endorsement to the existing regulations which allows the practice of selling dockside to continue. A second audience member supported this comment namely for lobsters because these don't pose a health risk.

An audience member identifying himself as a deckhand stated that if the dockside sale of lobsters is discontinued he will not be able to continue working for the person that he is currently working for, deckhands depend on this dockside sale money to supplement their income.

M. Gibson asked the Council to make a recommendation on how the DEM should proceed on this issue. R. Boragine stated that he thinks DEM should just get rid of the policy all together, there are too many problems with what was put forward. G. Allen suggested having a workshop to go over the policy with all effected entities. J. King stated that this policy should be addressed quickly, it is creating financial hardship on all people involved. M. Gibson asked B. Ballou about the possibility of a workshop on this issue. B. Ballou stated he was willing to continue dialog whether it be at Council

meetings or at a workshop. K. Ketcham asked if there was a way that B. Ballou could look in to just amending the existing regulations to alleviate this problem instead of issuing this policy. B. Ballou said he would do this. S. Macinko requested that the next iteration of this policy be issued along with a white paper to explain the reasoning behind the various policy statements. The current policy gives no explanation of why the various provisions are necessary. R. Boragine stated that he concurs with the issuance of a white paper and this white paper should be released prior to the meeting so that people have a chance to look it over before the meeting. B. Ballou agreed to this proposal. K. Ketcham wanted to reiterate a statement made by R. Boragine, stating that if they make all lobster fishermen into dealers, from a data collecting standpoint this will create a huge problem for DEM who already are collecting more data than they can handle. M. Gibson stated that what he understood from the Council was that they wanted to revisit this issue again at the next meeting but they would like to have a white paper included to better understand the interpretations being used in the policy document. He asked if the Council agreed to this. G. Allen stated he agreed to this if the white paper is developed with industry input. R. Boragine stated that the white paper should be done by DEM first so that industry can see where DEM is coming from with their policy and then have a discussion on how to change it. After some discussion, G. Allen agreed to this with the stipulation that this white paper be made available to the public prior to the meeting. S. Macinko stated that DEM should hold this policy in abeyance until this policy is finalized. M. Gibson stated he would look into this but could not give a definitive answer at this time.

Advisory Panel Reports

Shellfish Advisory Panel Report: R. Boragine was not at the meeting due to a scheduling conflict. He also stated that the minutes were included in the packet, but these minutes as they were written were inadequate because they were too brief. A reader of these minutes would be unable to figure out what went on at the meeting and therefore R. Boragine stated that he could not give the report. M. Gibson gave the report since he had attended the meeting. He stated that the industry has a proposal on the table to make modifications to the shellfish management area plan, specifically to the High Banks management area. M. Gibson stated that the DFWs response to the proposal was to evaluate the proposal and report back during the next advisory panel meeting.

Lobster Advisory Panel Report: S. Cobb was not present at the meeting nor was T. Angel therefore M. Gibson asked if there were any advisory panel members in the audience who would like to speak to the Lobster Advisory Panel meeting. Minutes were included in the packet. An audience member, who was a lobster advisory panel member and at the meeting, stated that a control date was the main topic discussed at the meeting. He thought that the advisory panel had supported a control date, but they could check the minutes to be sure. M. Marchetti stated that no action had been taken on a control date and he felt that a control date would only be necessary if a buyout program for the lobster industry became a reality. R. Boragine stated that if a control date was to be put into effect it has to have some sort of proposal behind it. **R. Boragine made a motion that DEM attempt to put together for next meeting an outline indicating what's**

necessary in order to initiate a control date for the management of lobster. The motion was seconded by G. Allen. M. Marchetti stated that deciding on a control date was approved by the advisory panel but they approved it begrudgingly. M. Gibson stated that he also attended the meeting and at the meeting he updated the advisory panel on the emergency action being taken by ASMFC.

Tautog Advisory Panel Report: R. Boragine gave a report on the tautog advisory panel meeting. He stated that this initial meeting was for information gathering. One of the topics of discussion was what exactly a tagging program will accomplish. Another topic of discussion was the differences between the two trawl surveys used for analysis, both the DFWs and also URIs. One of the panel members offered the DFW access to tautog caught in his floating fish trap for tagging purposes. There was discussion about a spawning closure line, this is yet to be determined. A topic of concern which came up at the meeting was timely reporting by dealers, the panel members suggested a permit program requiring dealers to report on time with some sort of repercussions if they did not. The next meeting is scheduled for August 19, 5:00 at Narragansett Town Hall. M. Gibson asked if there were any questions. G. Allen suggested that R. Boragine get rid of some of his advisory panel duties because he has quite a few and he has had numerous conflicts where he can't attend one or the other. R. Boragine stated that he would like to relinquish some, namely the shellfish advisory panel and once J. King was ready he was hoping he would take over that advisory panel. M. Gibson asked if there were any specific follow up questions that the DFW needs to address. R. Boragine stated that there were several follow up items but it was tasked to specific members of the advisory panel. An audience member stated that he has seen more fish in recent years than he has ever seen. He thinks this fishery should be open year round at some level.

Summer Flounder Advisory Panel Report: R. Boragine gave a report on the summer flounder advisory panel. He stated that this meeting had a similar purpose to the tautog meeting as far as the initial meeting would be for data gathering and the next meeting, to be held at 6:00 at the Narragansett Town Hall, would be for deciding on management measures for next year. The feeling at the meeting was that this next year, more quota was going to be added to the yearly allocation of summer flounder due to the health of the stock. The DFW presented a plan which would take this supplement and add it all to the summer I sub period. This was supported by some of the panel members but some of the offshore representatives wanted the supplement to be added in the current percentages as written in the regulations. There was discussion about the increase in new user groups such as gill nets in the summer flounder fishery. The advisory panel was tasked to come back with specific plans written down for the next meeting. M. Gibson asked the Council if there were any questions. Hearing none he then asked the audience if they had any questions. B. Mattiucci stated that he was at the meeting and had a different interpretation of what transpired than R. Boragine. He stated that he strongly supported the DFWs proposal and he felt that R. Boragine did not make this point clear to the Council. He went on to say that he felt R. Boragine's chairmanship of the summer flounder advisory panel was inappropriate because R. Boragine was biased and did not run the panel meetings fairly. R. Boragine then went back and read the minutes verbatim to make sure B. Mattiucci was comfortable with what the Council heard.

New Business

Division of Fish and Wildlife policy on lobster escape vents: M. Gibson introduced this topic stating that it came about from discussion at a lobster advisory panel. He presented the DFWs proposed regulation change which changes the existing regulation to correspond with what is actually practiced in the industry, basically that you only need escape vents in the terminal parlor of the trap. M. Gibson asked that the Council make a recommendation to the Director to adjust the regulation so that the industry practices and the regulations correspond to each other for this particular issue. K. Blanchard stated that changing the regulation may put the state regulations out of conformance with federal regulations as well as regulations with other states in our vicinity. He also brought up concerns about removing escape vents from the middle parlor and the consequences this causes if someone ties off the funnel which leads to the end parlor, in essence making the middle parlor the end parlor. N. Lazar stated that regulations from Connecticut and Massachusetts allow for escape vents being only in the outermost parlor section. K. Blanchard stated that the interpretation of the regulation that N. Lazar was reading from as told to him by a Connecticut official, was that they require escape vents in each of the compartments of the lobster pot. M. Gibson stated that what he thinks has happened is that the regulation existed and was written when lobster pot technology was different. Lobster pot technology has changed and now the regulations need to be altered to keep pace with the new technology which is in use. M. Marchetti supported this statement and went on to say that he had tried to put an escape vent in this middle parlor and his pot builder refused to do this stating it would weaken the pot. He also stated that to block the middle funnel in an inline lobster pot would not be a common practice because it would make the lobster pot useless, the middle section is not meant to be the catch compartment. This sentiment was echoed by other lobstermen in attendance, they spend extra money to get these longer lobster pots, and to tie it shut so that it becomes smaller would be counterintuitive. M. Gibson asked the Council to make a recommendation based on what they had heard. S. Macinko stated that we needed clarification on what the federal regulations are. **R. Boragine made a motion to task the lobster advisory panel to work with DEM enforcement and DFW to construct a proposal for new escape vent regulations. The motion was seconded by K. Ketcham.** An audience member stated that the advisory panel had been over this already and did not need another meeting to come up a new proposal. Another audience member suggested including a definition to take care of the issue of tying off the middle funnel by using the term terminal end as a definition, therefore a person tying off the funnel would be in violation because the middle parlor would now be the terminal end. **R. Boragine withdrew his motion. K. Ketcham agreed with the withdrawal. S. Macinko made a motion to release the lobster escape vent language for the public hearing provided that the DFW adds a definition section to the regulation and makes sure the regulation will be consistent with federal regulations. R. Boragine seconded the motion. The Council voted unanimously to approve the motion.**

Draft letter from RIMFC to CRMC opposing proposal for wind/wave power generating plant in Point Judith: M. Gibson introduced the topic stating that the letter had been

passed out prior to the meeting. A question about whether the letter had been sent already was asked by the Council. B. Ballou stated he thought the letter had been sent already. G. Allen stated that the request had been for DEM to draft a letter and bring it before the Council for comments before sending it. He added that he did like the letter and was alright with the fact that it had been sent already. An audience member asked a question about why the Council was opposed to the wind wave energy generating plant, it seemed like a good idea to him considering the harm that traditional power plants (namely Brighton Point) create. The Council told the audience member that it was not wind/wave generated power that they were opposed to, it was the proposed location for the plant that they were opposed to. There had been other proposals for things in this same area which had been denied due to conflicts with fishing user groups.

2003 RI Fisheries Management Report: N. Lazar introduced this document, stating that it was a draft document and was presented to solicit comment from the Council. M. Gibson gave an overview of the timing that needs to occur for the next few meetings. The next RIMFC meeting will be before the announcement for a public hearing is sent to the Providence Journal, therefore they can make their recommendations on management plans and other comments which they would like presented at the public hearing at the September meeting. The public hearing will then be held on October 14. He suggested that the Council should recommend changing the October meeting (currently scheduled for October 6th) until after the public hearing so that they may make their final recommendations to the Director based on all comments. The Council agreed to this and set the October meeting date as Monday, October 20th.

Old Business

Draft of the groundfish relief fund survey: M. Gibson introduced this topic and handed the discussion over to B. Ballou. B. Ballou stated that the Council requested that DEM draft a groundfish relief fund survey and bring it back before the Council and the public before sending it out. R. Boragine stated he made some editorial changes which he will hand in to the DEM. Most of his changes were to the final page where it describes the two main options. He went on to say that he thinks that item 2 on the ballot should read “I prefer the funds be paid directly to qualified groundfishermen and groundfish communities that may have been impacted” for the sake of clarifying that not everyone with a permit is eligible for money. B. Ballou stated that he feels the survey does a good job qualifying individuals as written. K. Ketcham stated that he does not like the qualifying questions at the beginning of the document. He said that he qualifies for money but can not produce some of the documentation asked for in the qualification questions, therefore it is not an accurate way to qualify people. He thinks these questions should be removed from the survey and that they should just use logbook data for this purpose and also that the survey should only be sent to individuals who qualify in the first place. B. Ballou stated that these questions were simply put in to differentiate between permittees. An audience member stated his disapproval for even having a survey because it is unjust. A legitimate process had already taken place to decide what to do with the money. B. Ballou stated that this decision to conduct a survey had come down from Senator Jack Reed. An audience member asked about the original survey that had been

sent out from the industry. M. Gibson stated that the survey was sent outside of the DFW to be summarized and any questions about this survey would have to be directed to the survey originators because it was not a DFW survey. K. Ketcham stated that question 2 in the qualification questions should be stricken from the survey.

Other Business

Membership to the floating fish trap advisory panel: G. Allen introduced this topic and stated that the floating fish trap advisory panel was being created to address 3 issues: 1. safe navigation, 2. marking of fish traps, and 3. management plans. G. Allen and K. Ketcham will be the co-chairs of the panel and they had gotten together to discuss the user groups that will be included in the advisory panel. The panel will consist of 2 recreational members, a charter boat member, a member from the Marine Trades Association, 2 large trap operators, and two small trap operators. G. Allen recommended that the Council approve this. R. Boragine stated that having a Marine Trades Association member on this panel creates a conflict of interest. He went on to suggest that the Marine Trades Association representative be removed from the panel and a yacht club representative be added. J. King asked about adding in a representative from an inshore trap company to the panel. G. Allen stated that he did not think there was any inshore floating fish traps of consequence within Narragansett Bay. The Council agreed to the advisory panel membership.

Post Agenda Discussion

G. Allen and K. Ketcham asked J. McNamee to send them advisory panel member applications so that they could begin to fill the floating fish trap advisory panel membership list for formal approval by the council.

Jason E. McNamee
Recording Secretary