

RHODE ISLAND MARINE FISHERIES COUNCIL
Minutes of Monthly Meeting
November 1, 2004
URI Narragansett Bay Campus
Corless Auditorium
South Ferry Road
Narragansett, RI

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

Chairperson: M. Gibson

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

DEM Legal Counsel: G. Powers

RIDEM Law Enforcement: S. Hall

Public: 8 people attended

Chairman M. Gibson called the meeting to order. He asked if there were any changes to the agenda. There was a suggestion to move agenda item 4d (status of licensing regulations) to the second item of discussion after item 3a (aquaculture lease comments). The Council had no objections to this. G. Allen suggested deferring the Rhode Island Marine Fisheries Council (Council or RIMFC) briefing from the Department of Environmental Management (DEM) on conflict of interest issues due to the fact that not all of the Council members were present nor was DEM legal counsel present at that point. M. Gibson suggested they wait until the item came up for discussion to decide pending late arrivals of Council members and DEM legal counsel. M. Gibson then asked if there were any objections to approving the October 12, 2004 meeting minutes as submitted. There were none. **G. Allen made a motion to approve the October 12, 2004 minutes as submitted. The motion was seconded by J. King. The motion was unanimously approved.**

New Business

Council comments on proposed aquaculture application: M. Boucher gave a brief overview of his application including site location and how the operation would be run. He stated that he had submitted a full application to the Coastal Resource Management Council (CRMC) and also had approval from the Town of North Kingstown Harbor Commission and the Town of North Kingstown Conservation Commission.

J. King stated that the RI Shellfishermen's Association had concerns about the current location. He stated that the site was located in an area with a wild stock of shellfish and was in water shallow enough for use by commercial shellfishermen. They don't normally use this location but in the case of a catastrophic closure, this area should be available to

commercial shellfishermen. He went on to state that the larger clams which are located in this area are currently at a high market value. He suggested moving the site out in to deeper water. M. Boucher stated that at the preliminary determination meeting this same thing was suggested and he proposed a site further out to the east. This was in about 20 feet of water and it would be difficult for him to maintain the operation at this spot. He went on to state that the bottom type in the area he originally proposed was very hard and he did not think this would be a good bottom for bullraking.

J. King asked how close the proposed site was to the other existing aquaculture sites in the area. M. Boucher stated that they were within 1500 feet, stating that his site would not stick out any further in to the bay than they do. B. Rheault was asked how deep his site was and he stated that they are in about 12 to 20 feet of water.

N. Lazar stated that the Division of Fish and Wildlife (DFW) had made a site visit and had found an above average density of clams in the proposed area. They suggested the applicant move his site east from the original location. The applicant proposed a second site to the east. The DFW made a second site visit to the new location and again found naturally occurring clams in the area, albeit at a lower density. The DFW then suggested the applicant align his site with the two existing sites to avoid conflicts with commercial shellfishermen. N. Lazar suggested that the shellfish advisory panel (AP) get an opportunity to weigh in on this application to resolve potential problems with the commercial shellfishing industry.

B. Rheault wanted to make a few comments. He stated that M. Boucher had approached him for some advice. The applicant then put in his application for the initial site. There were no objections from commercial shellfishermen at this point. The DFW voiced their concerns about the density of clams existing in the area. The applicant then put in an application with the secondary location to the east. The DFW again came forward with some concerns with the new location, and B. Rheault was under the impression that the new concerns involved a discussion about a spawner sanctuary. B. Rheault stated that since the DFW had problems with both locations, he advised the applicant to pick the site which worked best for him and make that his proposed site location. He went on to state that the scientific validity of the spawner sanctuary hypothesis was suspect at best, it is not supported in the current body of scientific literature. B. Rheault also stated that the commercial fishing industry and aquaculturists had conferred a while back and they (aquaculturists) were told that the area off Rome Point was a good area for them to set up their sites. He stated that the amount of clams in this area amounted to about 1500 dollars worth of clams. This, he felt, was not an adequate amount of clams to support very many people for very long.

K. Ketcham suggested moving the site to the north to get the site off of the 10 foot depth contour which seemed to be the area of contention. M. Boucher stated that the site was already outside of the 10 foot contour, even though the chart suggested otherwise. He had checked it on numerous occasions at mean low tide to confirm this.

J. King reiterated that in the case of a catastrophic closure, this site location is an area that

could be used by shellfishermen. K. Ketcham again stated that if he moves the site north/northwest, he will still be in the lee and it would move the site out of the shallower area which may be used by the commercial shellfishermen. M. Boucher stated that the bottom type in the area suggested by K. Ketcham is not conducive to aquaculture, it is a soft muddy bottom.

J. King suggested sending this to the shellfish AP. M. Gibson asked the applicant what this delay would mean to his timeline. D. Alves suggested that this might not be a problem because approval was still pending from the Town of North Kingstown, as long as the meeting was convened by November 20th. M. Gibson stated that they could call a meeting within the next week or two but the report from the shellfish AP meeting would have to come back before the Council for endorsement. D. Alves suggested that this was probably not a big deal because the season was over at this point. The applicant agreed that this would not be a problem.

M. Boucher asked N. Lazar what the density of clams was in the second site he had proposed. The density was 1.25 clams/m². M. Boucher stated that this site was also over suitable bottom and was out in deeper water so it would be out of the commercial shellfishermen's way, but he was told that this site was also deemed unsuitable by the DFW. J. King suggested that he bring this alternate site location with him to the AP meeting. N. Lazar stated that the DFW has no intention of making this area a spawner sanctuary and it was simply the conflict with commercial fishermen which was creating the problem.

J. King made a motion to send this issue to the shellfish AP. K. Ketcham seconded the motion. B. Rheault suggested that in the future these applications should be sent directly to the shellfish AP to avoid this type of delay. D. Alves stated that as long as the site agreed to by the shellfish AP was not too different from that in the application, the application process would not need to be restarted. J. King suggested that D. Alves attend the meeting if he wanted to. D. Alves stated that he would. **The Council voted unanimously to approve the motion.**

Other Business

Status of licensing regulations: B. Ballou gave the report. He had passed out a handout noting the various changes to the licensing regulations which the Director of DEM had decided on after looking at all of the public testimony and advice from the Council. The first item dealt with student shellfish licenses. Under the current regulations, once a student shellfish license holder reaches the age of 23, he/she would be dropped from the program. The new changes to the regulations would allow these individuals to receive a basic commercial license with quahog endorsement with the future ability to upgrade to a principle effort license with quahog endorsement. The next item dealt with new entrants in to the quahog fishery that were not student shellfish license holders, as well as entrants in to the other sectors including restricted finfish and lobster. The Director supported no new lobster endorsements due to the status of the fishery. For the other sectors, the Director endorsed a 5:1 exit:entry ratio in the restricted finfish sector and a 3:1 ratio in

the quahog sector. This creates 13 new restricted finfish endorsements and 48 new quahog endorsements. Next, the Director addressed the nature of these new finfish endorsements. B. Ballou stated that the public discussion focused on entry at the full principle effort level for these two sectors, but it was felt that the intent of the original legislation was to first allow new entrants in at a basic commercial license level which would be less than the principle effort endorsement with the ability to upgrade over time. The Director decided to allow new entrants in at a basic commercial license level. The basic level was already set up for the quahog endorsement, but not for the restricted finfish endorsement. The Director decided to set the basic commercial harvest level for restricted finfish at half of the current possession limit at the time. He stated that the prioritization scheme had already been set forth in regulation and was not discussed during the public hearing process so the Director felt that these should not be changed at the current time, aside from a few minor changes such as removing student license holders from the list because the new regulations automatically brought student shellfishermen in to the basic commercial quahog endorsement level.

J. King asked what the status was of the student shellfish licenses which were going to become invalid under the old regulations this year. B. Ballou stated that they would be upgraded to basic commercial licenses with quahog endorsements. J. King stated that this basic harvest level is the same amount that they were able to harvest as a student shellfishermen and he stated several of these guys were not going to be able to make it if they remained at this level. B. Ballou stated that the Director understands this predicament but it came down to the fact that the prioritization which already existed in regulation and was not discussed in depth during the public hearing process would have to be changed to accommodate this one group. He was not comfortable doing that for this year. This very issue was deliberated at length, but in the end, the Director felt that there had not been adequate public comment to change the prioritization list. This should be at the forefront of discussion for the 2006 fishing year.

M. Gibson stated that the Commercial Fishermen's Committee needs to tackle this in a better fashion than what occurred for this year. He went on to state that this was the first year of the process including this committee and felt that they would know how to proceed better next year.

K. Ketcham asked who will be responsible for reviewing applications and determining who receives these new licenses. B. Ballou stated that DEM would be responsible for this. K. Ketcham stated that he had a problem with the whole process. He said that the Council did not support any new restricted finfish endorsements so the Director took it upon himself to create new restricted finfish endorsements and then made up a set of new rules governing them which had not been discussed at all during the process. Further, they had discussed and endorsed upgrading student shellfish licenses to full harvest level and the Director did not do this. He felt the way the finfish licenses were being set up favored the rod and reel sector of the finfish fishery and felt that the whole licensing program was being set up as a money making endeavor for DEM. He was very discouraged by what he felt was a complete disregard of the Councils recommendations. B. Ballou stated that the Director does not disregard the Councils recommendations, they

weigh very heavily in the decisions he makes.

S. Macinko wanted to know why individuals who were participating in the process were not given better notice about this prioritization issue. It seemed to him that most of the attention had been placed on the exit/entry ratio aspect. He also felt that the changes which had been made to the existing prioritization scheme were substantive changes even though they were referred to as un-substantive. B. Ballou stated that they would have considered going back out to public hearing if changes were made which were significantly different from what had come through the public process. The Director and DEM legal counsel felt that the changes that had been made did not warrant this.

Two audience comments were made, one asking how you take half a possession limit when the possession limit is 3 striped bass and the second individual stated that he wished the Director went with the Councils recommendation on this.

New Business

Council action on weekly landing programs for scup and summer flounder: J. McNamee gave the report. The Council had received the language for the aggregate landing programs at the beginning of the meeting. He briefly went through and pointed out the changes which were different from what the Council had seen previously. These changes consisted of using an application process and a change to the penalty section.

K. Ketcham asked J. McNamee where the section was dealing with both the owner and operator signing in to the program. This was one of the items discussed during the creation of the program. J. McNamee stated that this was going to be included on the actual application and did not need to be included in the regulatory language. The Council was given the option of putting off action until the December meeting if they wanted, the regulation could still be filed in time.

G. Allen made a motion that the Council recommend to the Director of DEM that he accept the language for the aggregate landing program as submitted. The motion was seconded by S. Macinko. The Council unanimously approved the motion.

Other Business

Briefing from DEM Legal Counsel on conflict of interest issues: G. Allen stated he had hoped to have a briefing from DEM legal counsel on what the regulations say regarding conflict of interest issues and Council members. K. Ketcham stated that when the regulations were drafted, the Council had regulatory authority. He felt that these issues probably are not relevant to the current structure of the Council as an advisory body. M. Gibson suggested that the best course of action may be to ask DEM legal counsel whether the change in authority of the Council has changed the relevance of the existing conflict of interest regulations. The Council agreed to this course of action. G. Powers stated that he would be happy to report back.

Discussion of modifications to advisory panel membership lists: J. McNamee stated that there had been a number of changes to recreational memberships on various advisory panels. He had not heard anything from any of the commercial sector members yet.

G. Allen gave several changes to the recreational members of various advisory panels. On the enforcement AP, B. Wagner has resigned. His nominated replacement will be S. Segerson. S. Parente nominated J. Low as the hook and line alternate to B. Mattiucci. **The Council voted unanimously to approve these appointments.**

For the winter flounder AP, D. MacPherson, B. Sosnicki, B. Wagner, and B. Randall have all resigned. G. Allen also made note of several other vacancies including a commercial hook and line principle and alternate, offshore trawl alternate, pot principle, trap alternate, gillnet principle and alternate. He asked that these positions be solicited through a mailing. On the recreational side S. Trivisono is the nominee to replace D. MacPherson, and B. Hines will replace B. Sosnicki. This leaves 3 alternate positions to be filled. **The Council voted unanimously to approve these appointments.**

For the floating fish trap AP, E. Cook would like to be nominated as J. White's alternate. D. MacPherson has resigned from this panel and his nominated replacement will be S. Segerson. **The Council voted unanimously to approve these appointments.**

For the Striped Bass AP both D. MacPherson and S. Cohen have resigned. D. Sanford has been nominated to replace D. MacPherson.

J. Low asked if new categories could be added to AP lists. M. Gibson suggested that this could be done but should be handled on a different night as it had not been noticed on the agenda.

For the tautog AP, D. Zambrotta and M. Keiron have resigned. G. Oakley has been nominated to take D. Zambrotta's place; he is currently the alternate for that position. B. Oakley has been nominated to fill the alternate position vacated by G. Oakley. There is a hook and line principle and alternate vacancy, a vacancy for a pot alternate, and a gillnet bay principle and alternate vacancy. He would like these solicited through a mailing. J. Low stated that he would take the hook and line principle vacancy, the Council already had his resume. **The Council voted unanimously to approve these appointments.**

J. McNamee stated that there had also been a Council resignation. A. Tate has moved to North Carolina and would be unable to continue serving on the Council. M. Gibson stated that the DFW would begin to solicit individuals for this position if the Council agreed.

K. Ketcham asked what the specific requirements were for the scientific advisor position. Numerous individuals stated that the definition was pretty broad so if K. Ketcham had someone in mind he should contact J. McNamee and he will send the person a letter. This held for all of the Council members, if they had suggestions, they were asked to please forward them to J. McNamee.

G. Allen asked to go back to the AP lists before the Council moved on in the agenda. He told K. Ketcham that there was a member on the scup/black sea bass panel who had passed away, Y. Dhulkifl, and M. Lanni would like to be nominated for this position. **The Council voted unanimously to approve this appointment.**

S. Parente asked what, if any, was the rule for attendance at the AP meetings. G. Allen answered that if a member misses 2 consecutive meetings, they can be dropped from the panel. He went on to ask that J. McNamee send S. Parente a copy of the AP policies.

J. McNamee asked the Council whether they wanted him to solicit individuals for the vacancies on the various APs in addition to the specific vacancies that G. Allen mentioned. K. Ketcham stated that he wanted J. McNamee to hold off, he was currently working on filling several positions. J. McNamee stated that he would only solicit for the vacancies mentioned by G. Allen.

Solicit 804 spending advice from the Council: M. Gibson stated that the DFW had a statutory obligation to solicit comments from the Council on the spending plans pertaining to the 804 restricted receipt account expenditures. The Council had been given a summary of these expenditures. He stated that the Council did not have to respond that evening, but asked them to look over the summary and come forward at the December hearing with any comments.

K. Ketcham asked whether money was still removed from this account and put in the general fund. M. Gibson stated that it was not.

G. Allen asked why the expenditure amount jumps up for the year 2005 and drops back down for 2006. M. Gibson stated that he would get back to G. Allen on this at the December meeting because he was not sure.

The chairman adjourned the meeting.

Jason E. McNamee, Recording Secretary