

RHODE ISLAND MARINE FISHERIES COUNCIL
Minutes of Monthly Meeting
November 3, 2008 – 6:00PM
URI Narragansett Bay Campus
Corless Auditorium
South Ferry Road, Narragansett, RI

RIMFC Members Present: S. Macinko J. King, S. Parente, R. Hittinger
RIMFC Members Absent: C. Anderson, K. Ketcham, D. Preble, S. Medeiros
Chairperson: M. Gibson
RIDEM F&W Staff: N. Scarduzio, D. Erkan
DEM Staff: R. Ballou, G. Powers
Public: 13 people attended

M. Gibson called the meeting to order. M. Gibson commented that there were four Council members present and including himself there was a technical quorum. However, there were several important issues for the Council to consider this evening and he asked members present to let him know as they addressed these issues if the members wanted to tackle the issue or wait for more Council members to be present. He asked if there were any adjustment to the agenda. S. Parente had a comment for item 5c. Gibson suggested his comments could be addressed when that item came up on the agenda. Gibson asked if there were any objections to approving the agenda as written. Hearing no objections, the November 3, 2008, agenda was approved. **There were no objections to approving the agenda therefore the agenda was approved.**

The next agenda item was the approval of the Rhode Island Marine Fisheries Council (Council or RIMFC) meeting minutes from the October 6, 2008, meeting. Gibson asked if there were any objections to approving the minutes. S. Parente stated he had a comment about the minutes that he could not confirm or deny B. Ballou's comments relative to eliminating the summer flounder exemption certificate program being inserted in to the November 13, public hearing summary document. He indicated he left the last meeting with the impression that the issue would first be vetted through the advisory panels (AP) and the Council process. He stated he was uncomfortable about having that item go to public hearing with out having gone through the process first. Gibson indicated that the Department had decided to withdraw that item from the public hearing so it could be discussed further at an AP meeting. Gibson then asked if there were any objections to approving the minutes. **Hearing no objections, the minutes were approved as written.**

Public Comments

G. Tremblay asked B. Ballou if he had an update about the EEZ issue. B. Ballou indicated that the elections were currently dominating the agendas at the congressional offices and he had not heard anything new. They had received the proposal and vowed to look in to the issue, but he had no new information at this time.

R. Hopkins asked to point out a few things about the closing of Ninigret Pond for an oyster spawner sanctuary. M. Gibson indicated that the item was part of the agenda and would be taken up later in the agenda. R. Hopkins wanted to comment as a resident of South County he had watched these ponds close and then not reopened again. He gave some examples where this had happened. M. Gibson suggested this should be addressed when the item came up on the agenda. Gibson reiterated that the public comment period was for items that were not on the agenda.

Advisory Panel Reports

Shellfish AP (10/67/08) and Scheduled changes to shellfish management areas for 2008 & 2009
– J. King:

M. Gibson reminded Council members of his earlier remarks pertaining to whether the Council wanted to go forward with addressing substantive recommendations to the Director for High Banks, and the winter management opening schedule, Quonochontaug pond oyster restoration, etc. He suggested having J. King go through the report and highlight the requested actions the Council needed to take.

J. King reviewed the minutes from the SAP meeting held on October 16, 2008. There were four items on the agenda; winter management area openings, Greenwich Bay management area openings for 2009, Quonochontaug Pond oyster restoration, bay scallop dredges in spawner sanctuaries. He indicated the only thing that needed to be approved for the winter management area openings were the change of dates. The shellfishermen were requesting to change dates to address the Christmas and New Year's holidays falling on Wednesday shellfish days. King indicated this item was the more time sensitive item.

M. Gibson suggested this would be the time to decide if the Council would like to take action on the items or wait for more Council members to be present.

S. Parente stated he would like to go forward and go through the items for consideration. He was against adding these items to the December Council agenda because that agenda also would have additional public hearing items from the November public hearing. He also suggested as an alternative, to schedule another Council meeting in November.

There was consensus from the Council to move forward and go through the time sensitive items pertaining to the shellfish AP.

M. Gibson asked if there was a motion from the Council to adopt the date changes.

J. King made a motion to recommend to the Director to adopt the date changes to allow shellfishing between 8 A.M. and Noon on Monday, December 22, Tuesday, December 23, and Friday December 26, and for the period December 29, 2008 – January 2, 2009; between 8 A.M. and Noon on Monday, December 29, Tuesday, December 30, and Friday, January 2. S. Parente seconded the motion.

There was no Council discussion. M. McGivney explained why they needed to adjust the dates.

M Gibson asked for a vote. The Council voted unanimously to approve the motion to recommend to the Director to adopt the date changes to allow shellfishing between 8 A.M. and Noon on Monday, December 22, Tuesday, December 23, and Friday December 26.

Additionally, for the period December 29, 2008 – January 2, 2009, between 8 A.M. and Noon on Monday, December 29, Tuesday, December 30, and Friday, January 2.

J. King outlined the next action item on the SAP agenda which was a proposal beginning February 1, 2009, permitting shellfishing in the High Banks Management Area from Sunday through Saturday (7 days per week) from sunrise to sunset (with a three (3) bushel limit) until April 30, 2009.

M. Gibson commented he was concerned that no one from the Law Enforcement Division was present to comment on the proposal. He stated that Enforcement had concerns about extending the available shellfishing hours during the course of the day, as well as, 7 days per week because it complicated their ability to schedule enforcement coverage. He noted this was a substantive change than the last item. He asked how the Council wanted to proceed with this item.

S. Parente suggested moving this item to the December Council agenda since it was not as time sensitive as the last item and others may need to give further input.

There was consensus from the Council to wait and move this item to a future agenda until more Council members were present to participate in the discussion.

J. King reviewed the next two SAP agenda items, which were the Greenwich Bay Management Area openings for 2009, and the Quonochontaug Pond oyster restoration project.

S. Macinko suggested streamlining the items for Council consideration. He suggested voting on the time sensitive items and moving the other items to a future agenda. Since both items were not time sensitive, the Council agreed to move these items to a future Council agenda for further discussion and vote.

J. King made a motion to recommend to the Director to adopt the February 1, 2009 portion of the Greenwich Bay Management Area openings proposal, which was from February 1 to February 28, 2009 Greenwich Bay would be open for shellfishing one day per week (first available Monday through Friday based upon pollution-based closures) for 3 hours per day. S. Macinko seconded the motion.

There was brief Council discussion on the motion. M. McGivney clarified why the shellfishermen wanted this proposal approved.

M Gibson asked for a vote. The Council voted unanimously to approve the motion.

J. King reviewed the next SAP agenda item, which was the Quonochontaug Pond oyster restoration project. The SAP was not supportive of the DEM proposal. The group was in favor of a smaller spawner sanctuary area and a shorter closure period, three years instead of five years.

D. Erkan stated he recalculated the area of the proposed spawner sanctuary site using a program that was better able to calculate the area. He reported the actual area to be 14 acres not 23 acres as was originally estimated.

There was some Council and audience discussion. It was determined that January 1 was the approximate period when this item needed to be implemented. Therefore, the Council agreed to move the item to a future Council agenda for further discussion and vote.

J. King reviewed the next SAP agenda item, which was the use of bay scallop dredges in spawner sanctuaries. It was recommended to limit the harvest of bay scallops within spawner sanctuaries to dip nets only due to eelgrass and oyster restoration efforts.

J. King made a motion to recommend to the Director to prohibit the use of bay scallop dredges in spawner sanctuaries and recommended the use of dip nets only. R. Hittinger seconded the motion.

M. Gibson asked for Council discussion. There was no Council discussion. He asked for audience comments.

M. McGivney stated that the RISA and the SAP were in support of the proposal.

M Gibson asked for a vote. The Council voted unanimously to approve the motion.

New Business

Council recommendations on October 23, 2008 Public Hearing – M. Gibson/B. Ballou:

The Council members had a discussion as to whether they should consider the public hearing items or wait until more Council members were present. It was determined that because of filing constraints and the upcoming November 13 public hearing items the Council should move forward with the October 23 public hearing agenda items. **There was Council consensus to move forward.**

B. Ballou narrated a power point presentation, which included the following October 23, public hearing items: 1) DEM proposed management plans for shellfish, finfish, and crustacean sectors; and 2) Amendments to the commercial fishing licensing regulations, titled “Rules and Regulations Governing the Management of Marine Fisheries”, with the proposed Management Plans referenced above. B. Ballou went through each section and the Council took a vote after each section.

1) Shellfish Management Plan and licensing - Quahogs

S. Macinko asked for clarification on the use of retired PELs for the exit-entry ratio. He wanted to know why total retired licenses were not used (MPLs and PELs). B. Ballou read through the current licensing regulation language, then stated he had been reminded during the process that in the past the recommendations had been applied to retired PELs w/quahog endorsements. Therefore, this is how it would be defined in regulation. It was written one way and had been applied another way. The way it had been applied had been consistent with past practice.

S. Macinko indicated he continued to object to the language that was used every year when we go through the licensing process. He felt that instead of using the language “the fishery can withstand a minimal increase in effort” it was more like partial replacement or a decrease in effort because in this case these licenses were not transfers they were retired licenses. He stated he objected to the language.

M. McGivney asked to explain why the shellfishermen wanted to apply this exit-entry ratio method using only retired PELs. He explained when they came up with the program five years ago, the SAFIS program was not in place, so they had little direction and came up with the 3:1 exit-entry ratio as an acceptable ratio. He understood the confusion but they always picked the PELs because they had some activity where the MPLs may not have activity.

B. Ballou provided licensing data on activity for the retired MPLs and PELs to assist with M. McGivney explanation.

S. Macinko commented that even if there were 13 new quahog endorsements issued we still do not know if there would be an increase in effort because we do not know if they would use their license, or how successful they would be at shellfishing.

There was further discussion between S. Macinko and M. McGivney.

M. Gibson asked if there was a motion.

J. King made a motion to support the IAC recommendation and recommend that the Director adopt the 3:1 exit-entry ratio applied to PELs w/Quahog endorsements that have retired. S. Parente seconded the motion.

There was no further discussion from the Council. There were no further comments from the audience.

M Gibson asked for a vote. The Council voted unanimously to approve the motion.

2) Shellfish Management Plan and licensing – Soft-shell Clams

M. Gibson asked Council members if they had any questions or comments. There were no comments from the Council pertaining to the management plan or soft-shell clam endorsements. M. Gibson asked if there was a motion.

J. King made a motion to support the IAC recommendation and recommend that the Director adopt status quo - no new soft-shell clam endorsements. S. Parente seconded the motion.

M. Gibson asked for Council discussion on the motion. There was no Council discussion. He asked for audience comments.

S. DiPetrillo commented that there had been a decline in abundance of soft-shell clams this year and he was in favor of the motion.

M Gibson asked for a vote. The Council voted unanimously to approve the motion.

3) Finfish Management Plan and licensing

S. Macinko requested that B. Ballou review the legislative history and find out if there was any support from the 2002 restructuring bill for the notion that the exit/entry ratios be restricted to “active” licenses. His concern was that over time, there would be no one left in the industry using this formula (5:1 exit-entry ratio) and how would people get back in if the stocks rebounded. He felt it was not consistent with what the legislation had in mind.

B. Ballou responded by explaining that the General Assembly essentially stated they wanted to balance the interest of the existing fishermen with the interest of those who wanted to become fishermen. There was nothing along the lines of specifics on how to accomplish this. It was through the regulatory program that these approaches were developed. He indicated that from the industry standpoint at the IAC it mattered to them on how much effort was on the fisheries because of smaller quotas and they supported the 5:1 exit-entry ratio.

There was further discussion on the topic.

M. Gibson asked if there was a motion.

R. Hittinger made a motion to adopt the IAC recommendation and recommend that the Director adopt the 5:1 exit-entry ratio applied to active, eligible licenses that retire. S. Parente seconded the motion.

M. Gibson asked for Council discussion on the motion. There was no Council discussion. He asked for audience comments.

K. Booth had a question on the total number of licenses and wanted to know how many were active. B. Ballou was able to provide that information. He wanted to know if in the future if the fishery stocks rebounded how someone would get back in to the industry.

M. Gibson commented that it was expected at some point for these quotas to increase. However, there is intent to rebuild these fish stocks and have quotas grow.

R. Hopkins stated he was a multi-purpose license holder and he figured that most of the current holders were senior citizens, rather than younger more active people, who were less active in the industry. He suggested that the way the Department was grading people was if they were active or not. The State of RI was treating license holders as if they had to go out every day and catch every fish. He felt that if people only wanted to fish two days a week that should not jeopardize whether they could hold on to their licenses or not.

M. Gibson clarified that there was no proposal to have to show activity to retain your license. The only proposal was when a license was retired there was an evaluation of activity status in terms of giving out licenses to perspective fishermen.

There was further discussion between the Council and the audience.

S. Macinko made an amendment to the motion for a 5:1 exit/entry ratio but applying the ratio to all the licenses that retired.

R. Hittinger was opposed to the amendment, indicating the proposal had already been presented at public meetings and a public hearing and had support.

M. Gibson asked if there was a second to the amendment. There was no second to the amended motion, the motion by S. Macinko to amend failed.

M Gibson asked for a vote on the original motion made by R. Hittinger. The Council voted (3) in favor; J. King, S. Parente, R. Hittinger, (1) opposed; S. Macinko, the motion passed.

4) Crustacean Management Plan and licensing

M. Gibson reported that Addendum XII to the Commissions lobster plan, which would allow for the transferability was passed at the annual ASMFC meeting for further public comment. He anticipated RI would be able to have something in place for the June 1 fishing season.

S. Parente had a comment on the proposed status quo and the current language proposed on the power point slide “anyone who obtains a trap allocation, via the pending transfer program, will be eligible to obtain a PEL w/Lobster endorsement”. He stated that would be going from zero tolerance, no lobster license to anyone who had the money to purchase a lobster allocation. This would increase effort. He made references to Part 15 of the lobster regulations, which does not mention trap transfers. He claimed there was no mention of trap transfers in Part 15 of the Marine Fisheries Regulations at all. He felt the regulations were in conflict and he anticipated a real mess when it was time for trap transfers. He felt the only sensible way to correct the problem would be to repeal section 6.7-7.1 (Issuance of new principal effort licenses with lobster endorsements), of the licensing regulations “Rules and Regulations Governing the Management of Marine Fisheries”.

S. Parente made a motion to delete or repeal section 6.7-7.1 Issuance of new principal effort licenses with lobster endorsements, from the licensing regulations “Rules and Regulations Governing the Management of Marine Fisheries”. R. Hittinger seconded the motion.

B. Ballou read section 6.7-7.1 and explained this was a placeholder for the pending lobster trap transfer program. He indicated that taking it off the books or leaving it on the books would have no bearing.

S. Macinko indicated that he would recuse himself regarding the issue and from the vote due to a potential conflict of interest. He indicated he would not participate with this item and signed a form of such nature provided by DEM legal staff.

B. Ballou felt the Department would be comfortable supporting S. Parente’s request.

G. Power indicated that with the recusal of a Council member the Council had lost the quorum for this particular item.

There was no vote on the motion due to a lack of a quorum on this particular item.

B. Ballou explained that the Department would take the Council’s discussion on this item under consideration.

5) Other Proposed Changes to Licensing Regulations for 2009

a) Clarifying the “actively fishing/actively participating” standard

S. Parente had some concerns about how activity for dockside sales would be monitored, but other than that, he was in support of the proposed change. B. Ballou read this section of the proposed change to answer S. Parente’s concerns.

M. Gibson asked if there was a motion.

R. Hittinger made a motion to recommend that the Director adopt the proposed change to clarify the “actively fishing/actively participating” standard. J. King seconded the motion.

There was no further discussion from the Council. There were no comments from the audience.

M Gibson asked for a vote. The Council voted unanimously to approve the motion.

b) Clarifying crew member status

There was a brief Council discussion.

M. Gibson asked if there was a motion.

J. King made a motion to recommend that the Director adopt the proposed change to clarify crew member status. S. Parente seconded the motion.

There was no further discussion from the Council. There were no specific comments on this item from the audience.

M Gibson asked for a vote. The Council voted unanimously to approve the motion.

c) Minimum age for applicants seeking new licenses via lotteries

There was a brief Council discussion.

M. Gibson asked if there was a motion.

J. King made a motion to recommend that the Director adopt the proposed change that the minimum age for applicants seeking new licenses via lotteries should be 16. R. Hittinger seconded the motion.

There was no further discussion from the Council. There were no comments from the audience.

M Gibson asked for a vote. The Council voted unanimously to approve the motion.

d) Establishing a medical and military hardship clause relating to the sale of vessel and gear

There was no Council discussion.

S. Parente made a motion to recommend that the Director adopt the proposed change to establishing a medical and military hardship clause relating to the sale of vessel and gear. J. King seconded the motion.

There was no discussion from the Council. There were no comments from the audience.

M Gibson asked for a vote. The Council voted unanimously to approve the motion.

e) Establishing upgrade restrictions for new licensees who obtained their licenses as a result of the purchase a vessel and gear

R. Hittinger gave an example that if he had sold a 22-foot vessel with his license then that person could upgrade to a 100-foot trawler, but if he sold a 26-foot vessel it would only be able to be upgraded to a 30-foot vessel. He indicated that did not seem right.

B. Ballou suggested this was not the intent.

S. Parente stated there were a few things that looked to be potential problems. First, that someone who made a business decision to start with a smaller vessel then work up to larger vessels would not be able to do that with this proposal. He would only be able to move up by 10%. He also identified retroactivity as being an issue. Once a business decision was made with one set of ground rules those people should be grandfathered in when a new set of rules were put in place. He also felt there should be a more reasonable formula for growth for those who purchase a business after that date. He gave an example of a 10% increase in vessel length per year that could be banked. There should be some other provisions with this proposal. Parente suggested sending this back to the IAC for further discussion.

B. Ballou agreed that it could go back to the IAC for more discussion.

M. Gibson asked if there were any objections from the Council to sending this proposal back to the IAC for further discussion and not recommending this change to the Director at this time.

The Council was in agreement with this course for action. There was no vote taken and this item would be referred back to the IAC for further discussion.

f) Repealing provision that requires all state license holders to carry observers or samplers upon request [6.6-1(d)]

M. Gibson asked if there were any objections from the Council to repeal this provision. There were no objections from the Council.

M. Gibson stated that by Council consensus the Council recommended that the Director repeal the provision that requires all state license holders to carry observers or samplers upon request [6.6-1(d)].

g) Allowing for the downgrade of multi-purpose licenses

M. Gibson asked if there were any objections from the Council to allowing for the downgrading of multi-purpose licenses. There were no objections from the Council.

M. Gibson stated that by Council consensus the Council recommended that the Director allow for the downgrading of multi-purpose licenses.

h) Clarifying the basic harvest level for restricted finfish

M. Gibson asked if there were any objections from the Council. There were no objections from the Council.

M. Gibson stated that by Council consensus the Council recommends that the Director clarify the basic harvest level for restricted finfish.

i) Allowing all holders of finfish licenses to retain and renew their licenses regardless of a change in residency

S. Parente made a motion to recommend that the Director adopt the proposal to allow all holders of finfish licenses to retain and renew their licenses regardless of a change in residency.

There was no second to the motion. The motion failed.

S. Macinko made a motion for B. Ballou to provide the legislative language to seek clarification as to why the regulation was different for finfish as opposed to shellfish and lobster. He wanted to know what the statutory intent was.

B. Ballou suggested that we find out if there would be enough support for a bill or not. He stated that the Department was still deciding whether this was a good thing or not. The Department felt it should preserve the quota fisheries for Rhode Islanders.

B. Ballou recommended that any Council member or member of industry who wanted to pursue the issue contact him and he would try to help them find a legislative sponsor. However, he had received feedback that some legislators were opposed to the idea. Ballou suggested this would be the best way to leaving it for the time being, people could contact him and he would do his best to help.

G. Tremblay commented that it did not seem fair that Rhode Islanders were locked in; they could not leave the state and keep a license.

S. Parente agreed that pursuing the legislative route was probably the way to go.

B. Ballou stated that the Department did not feel strongly about the issue to pursue it on our own, this would be more of a wait and see if anyone was interested in pursuing the issue.

h) Technical corrections and clarifications

M. Gibson asked if there were any objections from the Council to making these technical corrections and clarifications. **There were no objections from the Council to making these corrections.**

M. Gibson stated that by Council consensus the Council recommended that the Director adopts these technical corrections and clarifications.

November 13, 2008 Public Hearing Summary Document – N. Scarduzio

M. Gibson reported that item #4 i.e. Proposal to eliminate the RI State summer flounder exemption certificate program would be deleted from the agenda and no public comments or action would be taken on this item. He indicated that the issue would go through the IAC for further discussion and back to the Council before any public hearing comments were taken.

M. Gibson asked if there were any other issues with the November hearing docket. There were no other comments from the Council.

Discussion on revised Species Advisory Panel Policy- M. Gibson:

There was consensus from the Council to postpone review of the revised Species Advisory Panel Policy until more Council members were present to give comments.

Approval of the Groundfish Advisory Panel Agenda – D. Preble/M. Gibson:

M. Gibson asked if there were any objections from the Council for approving the agenda. There were no objections from the Council therefore the agenda was approved.

Nomination to Scup/Black Sea Bass AP – N. Scarduzio/K. Ketcham:

N. Scarduzio explained that at the last Scup/Black Sea Bass AP meeting held on September 29, 2008 the Chair, K. Ketcham had requested that two individuals be appointed to that AP. However, only one of the individuals had submitted an application. There was an application from J. Grant who was applying to be the alternate to E. Baker. She indicated his application had been reviewed and cleared by the Law Enforcement Division.

J. King made a motion to appoint J. Grant as alternate to E. Baker on the Scup/Black Sea Bass Advisory Panel. R. Hittinger seconded the motion.

M. Gibson asked if there were any objections to the motion to appoint J. Grant. Hearing no objections from the Council, J. Grant was appointed.

ASMFC-NEMFC Updates – M. Gibson:

M. Gibson reviewed the meeting summary minutes from the Atlantic States Marine Fisheries Commission (ASMFC) 67th annual meeting, which was held from October 20-23, 2008. He highlighted a few items of importance: The striped bass board was considering an addendum to revisit management objectives. One of the items that was discussed was a possible increase in commercial quotas. With the summer flounder board, the TC was going to start to look at slot limits to try to discourage discards in recreational catch. There were too many fish being caught and discarded in order to catch a legal one. Winter Flounder – Gibson indicated this would end up being interesting because of the GARM III groundfish report that stated that winter flounder in Southern New England were in terrible shape. There will be an effort to try to rebuild them. American lobster board – adopted a draft Addendum XII to Amendment 3, which proposes the establishment of protocols for a trap transferability program. Spiny dogfish board – the spiny dogfish board increased the coast wide quota from roughly 8 million to 12 million pounds, there was some recognition that dogfish were more abundant then the science had suggested and are going to allow fishermen to catch more.

M. Gibson asked if there were any questions.

R. Hopkins asked if there was any information about eels.

M. Gibson stated that the eel board postponed any strong actions on eel management until the benchmark stock assessment had been completed. He indicated that the status of eels was poorly known and what information they had suggested it differed by region therefore the eel board was unwilling to go forward with any strong actions. The board would continue to study the situation.

M. Gibson asked if there were any other questions. Hearing none, the meeting was adjourned.

The Chairman adjourned the meeting.

Nancy E. Scarduzio, Recording Secretary