

RHODE ISLAND MARINE FISHERIES COUNCIL
Minutes of Monthly Meeting
December 4, 2006
URI Narragansett Bay Campus
Corless Auditorium
South Ferry Road
Narragansett, RI

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

Chairperson: M. Gibson

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

DEM Legal Counsel: G. Powers

DEM Staff: M. Sullivan (Director), R. Ballou

DEM Law
Enforcement: S. Hall

Public: 38 people attended

Chairman M. Gibson called the meeting to order. He asked if there were any changes to the agenda. **There were no objections to approving the agenda as submitted.** M. Gibson asked if there were any objections to approving the minutes of the November 6, 2006 Rhode Island Marine Fisheries Council (Council or RIMFC) meeting as submitted. J. King asked to have 2nd line down on page two read “sun-rise to sun-set” and to have it noted that the Council discussed all of the Greenwich Bay changes under the agenda topic “Council action on the Western Greenwich Bay opening schedule proposal”. **S. Medeiros made a motion to approve the minutes with the modifications as requested. J. King seconded the motion. There were no objections to approving the motion.**

Advisory Panel Reports

Lobster: J. King gave the report. The first items the panel discussed were about membership. J. King suggested adding S. Parente as his vice chair because K. Castro was leaving that position. The rest of the membership issues will be discussed at a future meeting, as the most up to date member list was not available for the meeting. The panel went on to discuss maximum gauge sizes. Different max gauge sizes were discussed and the panel noted that the max gauge size would need to go through the area 2 LCMT for implementation by the Atlantic States Marine Fisheries Commission (ASMFC). The panel discussed the pros and cons of a maximum gauge size and decided to continue discussion at a future meeting. The panel went on to discuss the upcoming ASMFC actions including addendum 7, 11, and 12, the 2008 stock assessment, and issues concerning gear conflicts with whales.

T. Angel wanted to note that because K. Castro was leaving, the lobster advisory panel would need a new scientific advisor. L. Dellinger stated that there is a set policy for the operation of the Council's advisory panels and the vice chair is to be elected by the advisory panel, not appointed by the Council. He went on to state that he felt J. Gates should be considered since he was K. Castro's existing alternate. S. Medeiros commented that there is a distinction between a vice chair and a co-chair. A co-chair is usually a Council member while a vice chair is an elected person from the panel. K. Ketcham stated that the Council had discussed this previously and they had all agreed that it would be inappropriate for a member of an advisory panel to run a meeting this is why they have appointed co-chairs in some cases. He felt that if J. King wanted to appoint S. Parente as his co-chair, it was his prerogative. D. Preble clarified why the Council decided a vice chair running a meeting was inappropriate by stating that this would remove a voting member from the panel as the chair could not vote. J. King mentioned that the Council had recently had discussions about new Council members being brought on to advisory panels as co-chairs in order to acclimate them to the process. **The Council had no objections to appointing S. Parente to be the co-chair on the lobster advisory panel.** The Council also decided to have the lobster advisory panel discuss the vice chair position at there next meeting.

Shellfish: J. King gave the report. The shellfish advisory panel decided to continue the discussion on whelk regulations in the forum of a whelk workshop. They decided to do this so that the Division of Fish and Wildlife (DFW) and industry representatives could work out one set of regulations to bring back to the advisory panel for review. There currently were two competing sets of regulations being discussed. The panel went on to discuss membership in the panel. The agenda item to discuss steamer regulations was reviewed by the panel, but due to the makers of the proposal being unable to attend the meeting the panel wished to have further discussion on the topic moved to a future agenda. The panel reviewed aquaculture application 2006-10-013. The panel recommended approving the application.

The Council had a discussion about the proposed whelk regulation workshop. It was clarified that any regulatory proposal that comes out of the workshop would be brought back before the shellfish advisory panel. M. Gibson went on to discuss the topic of action items for advisory panels in general. He stated that he has instructed DFW staff to notify him in cases where an action item came up during the meeting. He felt the onus should also be on the advisory panel chairmen to do this also. This will help to avoid the open meeting problems that they have had in the past.

New Business

Council comments on aquaculture application 2006-10-013: N. Scarduzio introduced the application and stated that both D. Alves of the Coastal Resource Conservation Commission (CRMC) and the applicant were in attendance to answer any questions. There was discussion on disease certification for imported shellfish. D. Alves stated that if any shellfish products were to come in from outside of Pt Judith Pond or if any of the hatchery products were brought to any area other than Pt Judith Pond, a disease

certification would have to be obtained. **D. Preble made a motion to approve the aquaculture application 2006-10-013. J. King seconded the motion.** C. Brown asked about the chlorination process. D. Alves stated that the water would be dechlorinated prior to discharge. J. Carvalho also mentioned that the water flow for this facility would be very low. **The Council voted unanimously to approve the motion.**

While D. Alves was present, J. King asked if there was any indication of when the aquaculture policy in RI presentation could take place. D. Alves stated that whenever a date is chosen he will be happy to attend and give a presentation.

Council comments on 11/20/06 public hearing items: M. Gibson introduced the topic and J. McNamee went through the presentation that had been given at the public hearing.

- *Summer flounder quota management proposals*

The first public hearing item was summer flounder quota management for 2007. S. Parente stated that he could approve the RI Commercial Fishermen's Association (RICFA) proposal with the exclusion of the summer aggregate landing program. He felt this program would increase effort in the summer, which is the last thing the fishery needed in 2007 due to the impending quota decrease. **S. Parente made a motion to recommend to the Director that he adopt the RICFA proposal with the caveat that the sub paragraphs a-h of 7.7.1-2, those pertaining to the summer aggregate program, be removed. S. Medeiros seconded the motion.** He went on to state that aggregate landings in the winter were necessary but did not see the same need in the summer.

K. Ketcham stated that the whole program as developed by the RICFA was designed around a 50% reduction in quota in 2007. He felt that the statement that an aggregate program would increase effort in the summer was baloney. He stated that the aggregate program allows the summer time fishermen to be efficient and conservation minded by only having to go out once or twice to get there weekly possession allowance. K. Ketcham stated that he wanted to stick with the entire RICFA proposal as presented.

C. Brown stated that their proposal was an effort to scrape by through the next few years of rebuilding. He went on to say that they sought the guidance of the national standards in putting the proposal together and the aggregate program in the summer was an effort to promote the national standards, citing safety, economics, and bycatch as factors. The aggregate in the summer, he stated, would be available to anyone, and then added that he did not think an overwhelming majority of fishermen would be interested.

J. Low stated that an aggregate plan gives the advantage to one class of fishermen, the trawlers. He felt that everyone should feel the pain of the upcoming quota decreases equally. His group did not support having an aggregate landing program at this point.

An audience member stated that he agreed with C. Brown's statements and stated that the best conservation measure was a boat tied to the dock; the aggregate program would allow for this.

L. Dellinger stated that he agrees that an aggregate program would have the greatest economic and conservation benefit for fluke.

F. Blount stated that the Council should be cognizant of the fact that if ASMFC does not go along with the National Marine Fisheries Service recommendation, it could change the dynamics of the fishery.

A. Conti stated that just because a boat catches it's limit of fluke for the week does not mean they will tie up for the rest of the week, they will still be fishing for other species.

D. Preble stated that the issue of the EEZ as noted by F. Blount concerned him. He thought that if this situation did happen, the Council should restructure their recommendation. M. Gibson gave background on the process as it pertains to quota setting.

J. King asked if they could put the decision off until the final quota decision had been made. The Council discussed this but could not reshuffle the scheduling for another meeting prior to the start of the fishing year.

S. Parente stated that in his opinion the vessels would not tie up after catching their limit of fluke for the week, which would lead to increased bycatch. He finished by stating that this plan would increase fishing pressure from mobile gear.

K. Ketcham stated that anyone who is any kind of a fishermen should know that once they have caught there limit of fluke for the week, they should stay away from the fluke grounds for the rest of the week in order to avoid bycatch. He went on to state that if the situation occurs where the federal fishery closes, this would not have any effect on what the Council votes on this evening as federal boats will not be able to participate.

D. Preble made a motion to amend the original motion. His amended motion was to recommend that the Director accept the RICFA proposal as submitted with no changes. K. Ketcham seconded the amended motion. There was further discussion on the implications of a closure in the EEZ. **The motion to amend vote was 4 to approve the amended motion (K. Ketcham, J. King, D. Preble, G. Allen) and 2 to oppose (S. Parente, S. Medeiros). The motion to amend was approved. The amended motion now became the final motion.**

The final motion was to recommend to the Director that he approve the RICFA proposal as submitted, made by D. Preble and seconded by K. Ketcham. E. Baker asked if gillnets would have to be removed from the water during the Friday/Saturday closed days. M. Gibson stated that the regulation was silent on gillnets. E. Baker wanted to clarify his proposal by stating that his proposal was not a part of the RICFA proposal as stated by D. Preble. It was a separate proposal. A. Conti stated that the only unanimously approved proposal from the advisory panel was E. Baker's proposal. P. Ruhle stated that he appreciated the fact that the Council was taking steps to approve a

plan that addressed the discard problem with fluke. There was further discussion on gillnets. There was discussion about the exemption certificate requirement; J. McNamee stated that it was included in the proposed language, however C. Brown stated that a fishermen could take two days at 150 pounds and not violate exemption certificate regulations. D. Preble stated that he did not want people to forget how bad things were during the previous summer. He felt they should try something new this year to try and alleviate those problems in 2007. S. Parente stated that once you set the precedent of aggregate landings inshore, the program will never go away and what would happen if and when the quota goes back up? **The Council voted 4 to approve the motion (K. Ketcham, J. King, D. Preble, G. Allen) and 2 to oppose (S. Parente, S. Medeiros). The motion passed.**

- *Summer flounder exemption certificate transfer proposal*

The next item was changes to the summer flounder exemption certificate program. These changes were proposed to allow fishermen to transfer their exemption certificates as they could their federal permits. **D. Preble made a motion to recommend to the Director that he adopt the changes as submitted. J. King seconded the motion.** P. Ruhle stated that due to changes in technology the increase in horsepower provision would eventually need to be addressed. **The Council voted unanimously to approve the motion.**

- *Scup quota management proposals*

The next item was regarding scup quota management proposals. **K. Ketcham made a motion to recommend to the Director that he approve the floating fish trap proposal for scup (increased the June set aside amount for floating fish traps to 12%). S. Medeiros seconded the motion.** J. Low stated that eight people in the state of RI get 60% of the scup under the current plan, this is why his organization proposed the change in allocation between the sectors. **The Council voted 5 to approve the motion (K. Ketcham, J. King, G. Allen, D. Preble, S. Medeiros) and 1 to oppose (S. Parente). The motion passed.**

- *Black sea bass quota management proposals*

The next item was black sea bass quota management proposals. The Council took no action on the item therefore the Council's position was to stay at status quo.

- *Lobster v-notch definition proposal*

The next item was regarding the lobster v-notch definition. J. King stated that he would like to see a zero tolerance provision for the stock and the recruitment. He went on to state that in many of the documents he read, the stock indicators all pointed to a stock that was in bad shape. He continued by stating there are different proposals being put forward including the 1/8", 1/16", 1/4", and zero tolerance. Zero tolerance was the one that gives you 100% of the benefit of the program. He went on to discuss funding for data collection and analysis and further stated that a mandatory v-notch program should be implemented. He concluded his comments by reading a letter from ASMFC, which in summary stated that adoption of a zero tolerance v-notch definition would be the responsible action to take to help conserve Southern New England's lobster stocks.

M. Gibson stated that the Council had been give some supplementary information including a letter from Councilman S. Macinko and some data on lobster observations from the DFW.

S. Parente stated that since the v-notch program was a voluntary program at this point, industry buy-in was essential. He went on to state that zero tolerance would diminish this industry buy-in, therefore he supported the 1/8" definition.

K. Ketcham made a motion to recommend to the Director that he adopt full time the 1/8" v-notch definition with the caveat of one change to the language that currently reads "v-shaped notch or remnant of any healed v shaped notch". This should be changed to the Massachusetts language which reads "any female lobster that bears a notch or indentation". D. Preble seconded the motion.

J. King made a motion to amend. His amended motion was to go to 1/16" instead of 1/8", add in no mutilation language, and add in a mandatory v-notching provision. M. Gibson stated that the mandatory v-notching program would be out of order because it was beyond the scope of the notice. **J. King removed the mandatory v-notching language from his amended motion. There was no second to the amended motion; therefore the original motion was still on the table.**

D. Preble stated that he agreed with J. King on his zero tolerance comments, however, because the ASMFC lobster board had not made a formal recommendation, because our neighboring states were currently at the 1/8" definition, and because there was overwhelming industry support for the 1/8" definition, he felt we should go with the 1/8" definition until a ruling is made by the ASMFC. J. King commented that Connecticut was not at 1/8" yet.

S. Medeiros stated that this was an extremely difficult decision for him, and he almost always votes for the fish first, however, in this case he was inclined to go with the 1/8" definition.

J. Jordan stated that the difference between the two definitions was negligible but if RI went with a zero tolerance definition they would put RI fishermen at a disadvantage to its neighboring state. He went on to say that Maine lands the most lobsters but this did not mean they have the healthiest resource. He concluded that there was no way to enforce mandatory v-notching.

R. Fuca stated that he did not think there was overwhelming industry support for the 1/8" definition, he stated that this was false. The RI Lobstermen's Association supported the 1/8" definition, however, they represent less than 10% of the entire industry. He went on to state that 2% doesn't seem like a lot but if he could have 2% of a lottery jackpot in the millions he would not turn it down because it's a large number. He felt that J. King did his due diligence and no one else had, therefore he felt that J. King's opinion should hold more weight in the Council's decision. He concluded by stating that zero tolerance gives you the greatest benefit and is the easiest to enforce.

J. Carvalho stated that the original v-notch program was supported with money. He did not think it was unreasonable to now go to a zero tolerance definition since those fishermen who originally v-notched lobsters were compensated for it. He felt that they should try to get the best bang for their buck with a zero tolerance definition.

L. Dellinger stated that industry was under no mandate to do this, it was a voluntary conservation measure brought forward by them. He stated that they had brought forward data that suggests that you do not receive any more benefit from a zero tolerance definition. The only difference is that with a specified measurement he will know that what he is bringing in is legal. He felt that zero tolerance was ambiguous. He supported the 1/8" definition

An audience member stated that the most important part of this decision was to get industry to buy in to it. This would only happen if the Council supported the 1/8" definition. A second audience member supported these comments as well as L. Dellinger's comments.

E. Kordowski stated that industry from Maine to New Jersey supported the 1/8" definition and if the Council took that away, they would lose industry support.

The Council restated the current motion on the table. **K. Ketcham's motion was to recommend to the Director that he adopt full time the 1/8" v-notch definition with the caveat of one change to the language that currently reads "v-shaped notch or remnant of any healed v shaped notch". This should be changed to the Massachusetts language, which reads "any female lobster that bears a notch or indentation". D. Preble had seconded this motion. The Council voted 3 to approve the motion (K. Ketcham, S. Parente, D. Preble) and 3 to oppose (S. Medeiros, G. Allen, J. King). The motion did not pass.**

J. King made a motion to recommend to the Director that he adopt a zero tolerance v-notch definition. S. Medeiros seconded the motion. The Council voted 3 to approve the motion (S. Medeiros, G. Allen, J. King) and 3 to oppose (K. Ketcham, S. Parente, D. Preble). The motion did not pass.

Council appointment of a representative to handle the newly enacted Greenwich Bay December modification provision: M. Gibson stated that some of the new Greenwich Bay management plan had been implemented and part of the requirements were for the Council to appoint a contact person to bring any schedule modification requests forward. He also reviewed the changes that had been filed. **D. Preble made a motion to appoint J. King as the Council appointed contact person regarding schedule modifications to Greenwich Bay. K. Ketcham seconded the motion. The Council had no objections to appointing J. King as the contact person and the motion passed.** M. Gibson wanted to reiterate that it was now J. Kings responsibility to bring schedule modification requests forward on behalf of the shellfishing industry. S. Hall stated that modifying the schedule for Greenwich Bay was going to make enforcement of the management area rules

difficult for his division as they set their officer duty locations prior to the management area openings.

Information to the Council on the anonymous letters regarding the federal consistency public hearing items: M. Gibson gave some background on the issue stating that they weren't going to say too much about it; the matter was being investigated by the state police. The Director added that at this point the federal authorities have also been included in the investigation as there may be instances of mail fraud involved with the case. The police are being asked to prosecute to the fullest extent of the law possible.

Other Business

Council approval of draft Industry Advisory Committee, Scup/Black sea bass, Tautog, and Shellfish advisory panel agendas: J. McNamee stated that the Council had been provided draft agendas for the four panels noted for this agenda topic. K. Ketcham asked to schedule the scup meeting for a December date but asked to have the IAC meeting in February. He was OK with the agenda items as submitted. **The Council had no objections to approving the IAC and scup/black sea bass agendas as submitted with the dates to be scheduled as discussed.**

G. Allen asked to change the tautog agenda to follow the following topics: give the AP the assessment of the 2006 fishery, give the AP a review of the ASMFC addendum 4 that is out for public comment now, give a review of the RI stock assessment, and then give the DFW regulatory options for all the user groups, to be followed by the recreational and commercial fishery proposal discussions with the AP. J. McNamee asked G. Allen about the date. G. Allen stated that he did not object to having the meeting in February to occur after the ASMFC's decision on addendum 4. G. Allen suggested having the tautog workshop prior to the advisory panel meeting. **The Council had no objections to approving the tautog advisory panel agenda as modified by G. Allen.**

N. Scarduzio stated that an aquaculture application had been added to the shellfish AP agenda and due to this the date had been pushed up in to December. **The Council had no objections to approving the shellfish advisory panel agenda as modified.**

T. Mulvey indicated that he would like to be added to the notification list for the tautog advisory panel meetings. M. Gibson stated that the DFW would add his name to that list.

Council review of 2007 schedule: J. McNamee stated that he had provided the Council with a calendar that followed a meeting schedule of the first Monday of each month for the Council meetings. This could be looked at and thought about but J. McNamee requested that the Council pick a date for their January meeting so that he could make arrangements. S. Medeiros stated that he liked the first Monday schedule and thought it was important to stick with that so the public knows when the meetings are. The Council did not object to having the meeting on January 8.

Council review of advisory panel members: J. McNamee stated that M. Leblanc had resigned his positions on the fluke and scup/black sea bass panels. He also suggested that

E. Baker be appointed to replace him. M. Gibson suggested holding off on the replacement until a full solicitation had been processed. S. Medeiros stated that alternates should be given first shot at any primary openings. There were discussions about how alternates are appointed. It was decided that the policy states that primary members may pick their own alternates but not their replacements. **The Council requested that the DFW solicit the public for nominations to the various advisory panel vacancies.**

Council review of public hearing items: M. Gibson stated that the Council had been issued a memo that outlined the items for the next public hearing. **The Council had no comments on the public hearing items.**

Old Business

Council discussion of new agenda format: J. McNamee stated that the Council had been given a draft agenda format at the last meeting and asked for any comments they had on it, including whether they wanted him to start using the new format. **The Council had no objections to using this new format for the January meeting.**

Proposed change to the advisory panel operating policy: G. Allen stated that the Council had the advisory panel policy before them. He then went through some suggested modifications to the policy to address the concerns that had been brought forward by an audience member at the last meeting regarding the submission of proposals. In sub paragraph 5 under tasking procedures, G. Allen suggested the following modification occur before the word thereafter, “When an advisory panel member has a proposal for consideration by the panel that contains numerous options, the proposal should be printed out with copies for each panel member”. **D. Preble made a motion to adopt the change as suggested by G. Allen. J. King seconded the motion.** T. Mulvey asked if his letter was a sufficient way to submit a proposal. M. Gibson stated as chair of the Council that it was and the Director noted that he had responded to T. Mulveys letter. F. Blount was concerned that this may hinder the advisory panel from developing new proposals while at the meeting where it would not be written down. The intent of the Council is not to prohibit the interactive nature of the advisory panel. **The Council unanimously approved the motion.**

G. Allen suggested that the Council have a workshop where they sit down to discuss the advisory panel procedures and make any further modifications as necessary. K. Ketcham stated that Sea Grant would be hosting a workshop on relevant issues to the Council and he wanted to make the other Council members aware of this, it would be a good workshop for them to attend. S. Medeiros thought it was a good idea to have a workshop and questioned how they could proceed, in a public meeting or a private meeting. M. Gibson stated that he thought it would have to be done in an open public meeting. **The Council did not object to holding a workshop.** L. Dellinger stated that once the Council sets their policy they should stick to it, otherwise they lose legitimacy with the public.

Post agenda discussion

J. King stated that the DEM recording still stated that the Eastern Greenwich Bay area was open. S. Hall stated that the recording J. King was referring to was regarding

pollution closures, not management areas. J. King wanted to clarify that all of Greenwich Bay was currently closed until December 11, 2006. This was indeed the case.

C. Brown asked that the Council look at winter flounder regulations for the state. He felt that there may be some misinterpretation of what was currently legal with regard to this fishery, therefore the regulations should be modernized. G. Allen agreed that they needed to take up a number of winter flounder issues and requested that a draft winter flounder advisory panel agenda be brought to the January RIMFC meeting.

The chairman adjourned the meeting.

Jason E. McNamee, Recording Secretary