

RHODE ISLAND MARINE FISHERIES COUNCIL
Minutes of Monthly Meeting
February 5, 2007
URI Narragansett Bay Campus
Corless Auditorium
South Ferry Road
Narragansett, RI

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

Chairperson: M. Gibson

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

DEM Legal Counsel: G. Powers

DEM Staff: R. Ballou

DEM Law
Enforcement: S. Hall, K. Blanchard

Public: Approximately 30 people attended

Chairman M. Gibson called the meeting to order. M. Gibson stated that there was an additional lobster advisory panel agenda to consider that would be added under (item 3d). Also under (item 3d), K. Ketcham needed to set a date for the IAC AP meeting. Under other business, B. Ballou would like to address the council on the menhaden issue. He asked if there were any other changes to the agenda. Hearing none, asked for approval to modify the agenda. **There were no objections to approving the agenda as modified.**

M. Gibson asked if there were any objections to approving the minutes of the January 8, 2007 Rhode Island Marine Fisheries Council (Council or RIMFC) meeting as submitted.

G. Allen made a motion to approve the minutes as submitted. S. Medeiros seconded the motion. There were no objections to approving the motion.

New Business

CRMC presentation on RI aquaculture policy – by D. Alves: M. Gibson stated that the Council had requested that CRMC present an overview of aquaculture lease policies, both short term and long term policies. D. Alves, CRMC Aquaculture Coordinator, gave a presentation outlining the aquaculture program providing copies of his presentation to council members and copies of the “Guide to Aquaculture Application” which covers the application process. D. Alves outlined that he would be speaking about three areas; the permitting process for submerged land leases for shellfish, a management program that addresses the protections for other users, and briefly cover the enabling legislation. D. Alves spoke about the guidelines for aquaculture within tidal waters. He stated that 3-acre leases are granted by giving an initial 2-acre lease. Subsequently, the third acre is granted when the permittee shows the initial 2-acre lease has been utilized.

K. Ketcham asked D. Alves where CRMC addresses the overall projection of what percentage of water can be covered with leases. Has the CRMC ever approached this issue?

D. Alves responded by stating that CRMC has discussed it and they are in the process of internal discussions, they know they need to add more meat to the program regarding cumulative impact. He stated that the issue has been brought up before, he gave an example of a couple of lease sites in Block Island where there were concerns for how much algae would be utilized and if enough would be available for the wild stock populations. They did some calculations and it was not found to be a concern. D. Alves stated that for now, CRMC has these stated protections in place, otherwise CRMC does not have any projections about specific percentages allowed for aquaculture.

D. Preble asked if the Bio-security Board was a standing committee or an adhoc committee.

D. Alves stated he would address this later in his presentation, but that it is a standing committee and elaborated on the make up of the committee and its function. D. Alves concluded his presentation and asked for questions.

J. King stated that he had similar questions along the same line of questions as K. Ketcham, that he wanted to know what the future plans are for aquaculture in the State of RI, he wants to know how much, how many, how big, where, and if there are any “what if” contingencies.

D. Alves said it was relatively easy to answer, CRMC does not have future plans. He stated that CRMC has not made plans to develop specific areas of the bay for aquaculture. There are too many issues to consider like various gear types used and continuous gear changes, for example, changes away from cage use to bottom use. Therefore, CRMC can not for see what the future will bring. CRMC tries to make sure there are enough protections in place by involving other agencies so that CRMC does not put leases in areas that are incompatible with general use. CRMC has no definite plans. He stated that he would prefer to keep it open and keep the same process. He feels the process when a lease is proposed in an inappropriate area worked well. The bottom line is CRMC does not have any future plans; we are proactive in our program in trying to foresee what kind of problems we have and address the problems as they arise. But we are not going to designate a specific percentage of area for aquaculture.

J. King asked if he knew how many lease sites he might allow in the state, if there was a cap.

D. Alves responded with a “no”, that he has no maximum number in mind. He knows there are a lot of areas that aquaculture will not be allowed to go into such as areas that are commercially shellfished, dragger use or lobsterman use. Except for the mapping project that CRMC has, we have not planned for that and he does not foresee it happening. D. Alves stated that last year there were three new leases and one expansion. All four were commercial fishermen that were branching out into other areas.

J. King asked about maximum sizes of leases.

D. Alves indicated that they have always thought that smaller leases were better that is why they did not mind the 3-acre lease. However, CRMC does not have a maximum limit. Alves did not think there was a situation in the bay where someone could lease a large site such as 100 acres without running in to a user group conflict.

J. King asked if there was a maximum size lease that would not be accepted in the bay for example 4-acres, 5-acres 12-acres.

Alves stated that there is no maximum size limit, just the guidelines for the northern part of the bay.

K. Ketcham stated that he was concerned about RI going in the direction of Long Island, NY, where aquaculture lease sites control large portions of the bay.

Alves indicated that in the 1950's the state legislator rescinded all the King's grants in RI that were used for large-scale bottom aquaculture.

M. Gibson asked for final questions or comments from the Council.

J. King closed by stating that he thought we should start looking toward the future and not just for today and look at future plans for aquaculture.

D. Alves stated that they are talking within the agency about cumulative impact with regard to all types of permits such as docks, etc. If you can imagine, telling someone in a cove who wants a dock when everyone else has a dock that they cannot have one. He indicated that that is where the pressure comes from, docks and marinas. He agrees that there should be a cumulative impact, but feels that the program so far has worked well with his interaction with the various agencies. He feels there is a natural limit of what we can have based on both productivity and conflicts with other users. He would like to continue with the same process until they have come up with a cumulative impact statement, but he agrees with the Council's concerns.

M. Gibson clarified the next step, which would be to get a feel for what the Council wants and provide advice back to the Director. If the Council is satisfied with Mr. Alves's presentation and the safeguards and polices that are built into it, members can leave it at that, otherwise if the Council still has some discomfort relative to the long term perspective you can go on record with expressing your concerns to the Director. M. Gibson will pass on to the Director the concerns of both K. Ketcham and J. King. **The Council would like to encourage the Director to work with CRMC counterparts to develop a plan to address cumulative impacts of aquaculture and the other issues brought to light concerning the effects on wild fisheries.**

Comments from the public:

M. McGivney stated his group has worked well with D. Alves and supports the RIMFC's interest in protecting the salt ponds since the ponds seem to have the most expansion right now. He would like the agencies to look into the cumulative effects. He has concerns about setting a maximum number because it would seem like this would be a goal that has to be achieved and a push to reach that number.

M. Marchetti commented that he liked seeing Alves's presentation. He mentioned that his group and other groups should be consulted, and has concerns about where leases are placed in the bay for impacts on lobstering and dragging, as well as, if any sites are located outside the bay.

Council recommendations on 1-25-07 public hearing items:

1) Proposed changes to the lobster effort control plan: M. Gibson stated that there are five items to discuss, the first is the proposed changes to the lobster effort control plan.

J. McNamee opened his power point presentation used at the public hearing for the council members to use as background information in reviewing the issue. He stated that the proposed

changes are to clarify and adjust the lobster effort control plan that was implemented in October 2006 to bring the State of RI in to compliance with ASMF addendum 7.

B. Ballou spoke on behalf of Director Sullivan to offer the Director's perspective on two key issues that came up at the public hearing. The use of the word "sustained" and the categorization of the reported traps fished. The Department would make a clear definition as to what is meant by the term "sustained". The Director is aware of the compliance issues. The other key issue was material incapacitation, someone who was affected due to military or medical hardship during the three-year period 2001, 2002, 2003, and as a result was unable to fish or was limited in their ability to fish. There is now recognition that showing documentation should not be the sole criteria used, that the department should be receptive to notarized affidavits from health care providers, physicians, hospitals, etc., regarding legitimate medical hardships that affected their ability to fish for those three years. The Director is leaning toward liberalizing that change and it could be as simple as changing wording from "and" to "and/or". There are two parts to the medical hardship provision and they are joined by the word "and" so that both parts of the provision would have to be met. He stated that comments from the public hearing indicated that it might be a bar set too high for individuals to meet. The last point on the AAD issue, to clarify some misconceptions, the proposal is for medical hardship appeals to be handled administratively as a first step rather than having to go to a formal appeal through the AAD immediately. This would ease the process. Therefore, the appeals process remains in place. It is not being removed.

M. Gibson added that the ASMFC has flagged the issues of using the wording of "sustained" traps deployed and any liberalization of the medical incapacitation standards as being inconsistent with the measures in addendum 7. They have not yet termed it as being noncompliant. Therefore, the council members need to give some direction to the Director.

S. Medeiros asked about the part concerning "maximum sustained number of traps fished" that this part will be fixed, but how will they know what the changes will reflect and if it will meet the requirements.

B. Ballou stated that the Departments' intent will be to clarify what the term means, it still may not satisfy some people as there still might be concerns, but it will be made clear as to how the Department intends to apply it.

K. Ketcham made a general comment about not receiving the public hearing document before it is advertised so they could make comments ahead of time.

M. Gibson had some discussion with legal council as to the Departments' requirements for notification.

J. McNamee stated that materials are available to all as soon as the documents are made public which is immediately as noticed in the Providence Journal. **It was decided that Council members should receive public hearing documents when they are first made available to the public, 30 days before a hearing.**

G. Allen stated he was uncomfortable that the Director is telling the Council the corrections that he is going to make, it seems to be backwards to how we are supposed to operate. The process is that the Council should be making comments to the Director.

D. Preble wanted clarification on the ASMFC flagging for compliance. If we change the wording “and” to “and/or” and get rid of the word “sustained” that would then generate compliance?

M. Gibson responded by stating that at the November meeting the ASMFC required that all states submit their addendum 7 implementation regulations. The plan review team looked at RI’s along with Massachusetts submitted regulations and flagged two issues from RI, they recommended that the word “**sustained**” be removed and in the material incapacitation section where the regulations speak about having adversely affected fishing performance, they recommend using the words **preventing the permit holder from fishing**. They do not see these two issues being consistent with addendum 7. ASMFC has not stated that we are out of compliance as of yet, but the red flagging of these issues is their first signal that there are issues relative to compliance with ASMFC.

The Council members had further discussion about the wording and how to come in to compliance with ASMFC. **S. Medeiros made a motion to recommend to the Director to adopt the regulation, but with the suggested changes recommended by the ASMC Lobster Board (removing the word “sustained” and using the words “preventing the permit holder from fishing”) to bring RI in to compliance with ASMFC, and under the medical hardship section adding in the words “and/or” to allow for the additional or supplemental medical documentation. J. King seconded the motion.** Comments from the public were questions on clarification of the proposed changes. **The Council voted unanimously to approve the motion.**

2) Proposed changes to the spiny dogfish state management plan: J. McNamee outlined the proposed changes, which are to increase the possession limit to 2,000 pounds from 600 pound per the federal regulation, but keeping the two seasonal periods. The basic change is the proposed daily limit change that brings us equal to Massachusetts’s possession limit of 2,000 pounds. **D. Preble made a motion to adopt the proposed change. K. Ketcham seconded the motion.**

G. Duckworth asked if there was any way in the future, they could get dogfish to be part of an aggregate program.

M. Gibson stated that there did not seem to be anything prohibiting that and this species may be a candidate for an aggregate program. Currently, an aggregate program was not part of the public notice process so the DFW may not be able to do anything immediately. There was some discussion about why this species’ possession limit had to come to a public hearing when other species we are able to changed with out having to go through this process. This is because there is no specific allocation to RI, it is a regional quota not a statewide quota, therefore RI does not have the same authority as with other species we can regulate.

J. Cavalho asked if the Department could put dogfish at the same level as other species that are regulate.

M. Gibson is not sure the DFW could do this, it would have to be looked at. **The Council voted unanimously to approve the motion.**

D. Preble requested that the Department move forward with some kind of proposal for an aggregate landing program for spiny dogfish. **The Council had no objections to this request.**

3) *Proposed changes to the scup winter 2 sub period starting possession limit:* J McNamee stated that NMFS has put out their starting possession limit for winter 2, but it will change once the rollover provision from winter 1 takes affect. The proposal was for the state of RI to mirror the federal starting possession limit once it is issued for scup in the winter 2 sub period. **S. Medeiros made a motion for the Director to implement the regulations pertaining to the winter 2 sub period. G. Allen seconded the motion. Council voted unanimously to approve the motion.**

4) *Proposed change to the black sea bass escape vent size:* J. McNamee outlined that this was a requirement from ASMFC and it increases the number of escape vents in black sea bass pots to two, specifying the parlor portion of the trap, and increases the diameter of the circular escape vents to 2 ½ inches. **D. Preble made a motion to recommend to the Director to adopt the sea bass escape vent provisions as written as required by ASMFC. S. Medeiros seconded the motion. Council voted unanimously to approve the motion.**

4) *Proposed changes to the horseshoe crab management plan:* J. McNamee stated that this proposal was an effort to update the horseshoe crab regulations with the new licensing statutes. Under the new licensing statute, there are other license types, besides multipurpose license holders, that can legally harvest horseshoe crabs. This proposal makes the horseshoe crab regulation consistent with licensing statutes. **J. King made a motion to recommend to the Director to adopt the proposal. D. Preble seconded the motion.**

P. Brodeur asked about when the season was open, if records have to be kept, and if permit renewal applications were sent out annually.

S. Olszewski addressed the questions by stating that horseshoe crab permits are normally sent out annually to those license holders who have complied with all record reporting requirements. **Council voted unanimously to approve the motion.**

Report on River Herring Workshops: J. McNamee reported that there were two river herring workshops to get public input on the river herring issue since there is no advisory panel that deals with this species. At the request of the Council, we implemented annual workshops that were held in December and January. The status of the stock is still in poor condition. There were a number of questions that came out of both workshops, one was a request for a percentage by-catch allowance for legitimate herring fishermen so they can fish without being in violation for catching a few river herring. There was a suggestion that vessels prosecuting the herring fishery in RI in the early season (December/January time frame) should be targeted for monitoring because this is the time when commercial catch could be intercepting river herring in RI. Of primary importance to the audience was the capturing of the spatial and temporal information about the river herring life cycle. Another suggestion was to do some port sampling of bait that comes into the state as a cost effective way to get some inexpensive observer coverage to get some percentages of river herring that might be included in the bait. Other developments; that river herring has been listed as a species of concern so that frees up some federal funding to do more research. In addition, there is a Northeast Division of Fish and Wildlife meeting coming up in April in Mystic, CT, with a special session on river herring to raise awareness to the species. **There was no action taken by the Council on these items.**

Approval of advisory panel agendas: N. Lazar outlined the four advisory panel agendas (summer flounder, tautog, striped bass, and lobster) prepared for Council approval. Summer flounder AP

meeting is scheduled for February 19, 2007 at 6 PM at the Government Center. The advisory panel needed to comment on ASMFC's adopted and approved a set of minimum size, season, and bag limits for summer flounder. The striped bass AP meeting is scheduled for February 27, 2007 at 6 PM at Fort Wetherill. The tautog AP meeting is scheduled for February 21, 2007 at 6 PM at the Government Center. A date has not yet been set for the lobster AP meeting.

G. Allen reminded staff that for each advisory panel meeting that is held concerning quotas and bag limit changes, the advisory panel procedure requires that DFW make their own recommendations on the proposed changes. These recommendations are included with the tautog, but not with the striped bass. He also wanted to remind staff there needs to be an advisory panel workshop scheduled at some point.

M. Gibson stated that the striped bass AP agenda would be modified to include the Divisions' recommendation on the parameters that govern the 2007 commercial striped bass fishery and also added to the AP agenda. There were no objections from the Council to add these changes.

J. McNamee stated that at the last Council meeting they discussed having the workshop sometime in May.

K. Ketcham wanted to add an item to the already approved IAC agenda, for general discussion; the recurrence of the registering of federally documented vessels to be required to have a state registration. **There were no objections from the Council to add this item to the agenda. The agendas stood approved as modified.**

Other Business

Report to Council on steamer biology: N. Lazar gave a power point presentation to the Council on the biology and status of soft shelled clams in RI. There is not a lot of research that has been conducted on soft shelled clams in RI. Steamers were part of the sector management plans for the state, however, since there is a lack of information on this fishery in this plan we had recommended status quo for 2007 with the caveat to look in to the fishery further in 2007. Based on landings in the last five years there seems to be an abundance of soft shelled clams in Narragansett Bay and the coastal ponds. However, there have been recent concerns about the intensive harvesting and repeated digging on clam survival, which is why the discussions about raising the minimum size of the clam to protect the stock and possibly reducing the possession limit were brought forward. Some members of industry are concerned about whether the current regulations are adequate to maintain a sustainable fishery. There has been an increase in effort on the fishery. Current minimum length is 1 ½ inches (38 mm), proposed length from some industry members is for 2 inches. N. Lazar went through the biology of the organism. There were a number of questions and discussion between Council members. The question before the Council is if there needs to be a recommendation to the Director for more aggressive management with this species.

Comments from the public: There were some public comments against raising the size limit. M. McGivney stated that at the Shellfish AP meeting there was a vote not to move forward with any new regulations. He also stated there is no scientific data to support any changes at this time and that we need more research to be done before we make any changes. There was a consensus among Council members that they would prefer to wait until additional information and research becomes available during 2007. **There was no action taken by the Council on this item.**

Legal opinion on transfer of license issue: DEM Legal Counsel was requested to render an opinion regarding the ability of an unlicensed person to take finfish via rod and reel and then transfer their catch to a commercially licensed fisher.

G. Powers stated that pursuant to RI General Laws 20-2.1-4 an unlicensed person is prohibited from taking finfish via rod and reel and then transferring his/her catch to a commercial licensed fisher. G. Powers went on to explain that in the case of the otter trawl, the unlicensed crew and its licensed commercial fisher are acting concurrently to employ the *same* device to accomplish the taking. In the scenario of finfish being taken by an unlicensed rod and reeler by a contrivance *independent* of the device operated by the licensed commercial fisher, this activity is prohibited by RI General Laws 20-2.1-4. **There was no action taken by the Council on this item.**

Specific proposal for recreational vs. commercial designation: M. Gibson stated that this proposal was not ready for Council discussion at this time. K. Blanchard indicated that this issue was being discussed at the Law Enforcement Advisory Panel level and he is not sure why it was brought to the Council level without the AP reviewing any language. There was some Council discussion about the status of AP discussions on the issue. **K. Ketcham made a motion for this item to go back to the Law Enforcement Advisory Panel for further discussion and have a complete proposal finalized to come forward to the Council for consideration. J. King seconded the motion. There were no objections from the Council to this course of action.**

Information on wither flounder regulatory change: M. Gibson stated that there was a request for DEM Legal Counsel to review the winter flounder regulatory language change, which the Council had recommended that the Director put in to effect.

G. Powers stated that the change in the regulation had to do with the ability to prosecute a person for “taking or possessing” as opposed to “taking and possessing”. There was a public hearing at which there was no comment or discussion concerning this issue and the modification, which was consistent with the manner in which other species are regulated, was adopted during the process. Although there were no comments, it was suggested by Enforcement, and the desire to be consistent with the regulation of other species, that it therefore be adopted in its current form. It would be impossible to enforce a regulatory requirement that would require Enforcement to demonstrate the “take and possess” unless they actually viewed the harvest at the time of the illegal taking. Therefore, winter flounder is treated in the same fashion as the other species that are subject to regulatory requirements by this body and the Department.

M. Gibson tried to clarify what had occurred by explaining that the only issue is in terms of the Director’s requirement to notify the Council when he disagrees with the Council’s recommendation. There is no impropriety in the process that was employed. The Department has not yet notified the Council as to why the Department made that adjustment in the language from what the Council had recommended. The Director will be notifying the Council, as he always provides a decision memo on items whether he endorses the Councils’ position or not. Unfortunately, this item had been overlooked in the initial decision memo due to a change in leadership at the Director level, and due to the high volume of items during this particular hearing. **There were no questions from the Council on this issue.**

F. Blount had a point of clarification, that there was public comment; he specifically asked if it only detailed southern New England winter flounder and he was told, yes. He said at that time that he would support it because he could still land his fish.

G. Powers apologized for giving the wrong impression and stated that F. Blount's comments were received at the public hearing. G. Powers clarified that his comments were directed at whether the "or" should be inserted instead of the word "and". **There was no action taken by the Council on this item.**

Changes to advisory panel membership: J. McNamee stated that a solicitation letter had been sent out to gather nominees interested in filling vacancies on various advisory panels. There were some individuals who specified which positions they were interested in, however he just realized that he had left that list back at his office. Therefore, he suggested that the Council wait for next month so that they could place individuals in the position that they wanted.

J. Cavalho indicated that members from his new organization would like to apply for advisory panels vacancies. He stated that he had just received application forms and has not been able to get them to his members yet. He requested that the Council postpone this item until the next meeting, so that they have additional names to consider.

There was some discussion among the Council that there was not any urgency to get this done tonight, that they could wait until next month. **The Council agreed to postpone this item until next month.**

Update on menhaden issue before the general assembly: B. Ballou stated that there has been a bill introduced at this year's general assembly addressing menhaden. The essence of the bill is to prohibit purse seining for menhaden in Narragansett Bay. B. Ballou was asked by a house representative to see if the Council was interested in initially reviewing this issue in the form of a workshop, and then give input back to the State House for formal consideration. He wanted to get a feel if there was any interest from the Council in looking into this issue.

D. Preble stated that he thought it was inappropriate for the Council to consider it because it was a legislative issue. He did not see the point of having the issue come before the Council.

M. Gibson stated that if they wanted to move the menhaden management to the Marine Fisheries Council, that could happen, but they would have to withdraw the bill and then send it to the Council, and they get back whatever they get back. He had concerns of how the Council and a legislative action could work in parallel on the same issue. This Council also has a statutory responsibility.

K. Ketcham stated that he would like to see the issue come before the Council and have it discussed in public and, if applicable, recommend to the Director that it go forward as a legislative act. The Director could then recommend to the appropriate legislatures that it go forward.

There was further discussion about the Council hearing the issue and that the consensus was that the Council should not be involved. **A majority of Council members were not interested in having a workshop or having the issue brought before them. There was no further action taken by the Council on this item.**

Other Business

F. Blount stated that the flounder issue was bothering him and he wanted to know if the Council was going to reconsider this when it takes the flounder regulation for this year or should he

proceed with the fact that there has been so few fish landed that it is considered an insignificant amount and therefore, the fishery can continue to be prosecuted the way it has been?

M. Gibson stated that he did not think the Council was in a position to answer that question.

F. Blount asked another question pertaining to the interpretation of the transfer of license issue. He wanted to know if he could request that the Council take some type of action. He still does not understand how a crewmember who is an employee for the purpose of assisting in the operation of a commercial vessel and its' gear is inconsistent depending on gear type. There are two conflicting statutes that need addressing.

M. Gibson suggested that his recourse would be to go to the Director for a petition for rule making.

F. Blount also stated that he had been told that when fishing in federal waters he could still have a crewmember using a rod and reel and land the fish because it was not done in the State of RI. He requested to have a copy of what was presented this evening. We do not license vessels in this state, but evidently, we do under the way the statute is written.

S. Hall stated that G. Powers' decision was based on statute, no petition to the Director is going to change statute. It would require a legislator to introduce a bill to allow the transfer of a license. New regulations would not alter G. Powers' opinion, which was based on statute.

M. Marchetti asked about the transfer of license issue, he wanted to see what G. powers had put together because this brings another issue to light, it was mentioned about otter trawlers, the herring boat issue and their practice of being able to hire people from RI aboard out of state boats so that boats can fish in state waters and catch something such as herring. He would like clarification on what is and is not legal.

M. Gibson asked if he was requesting to have this clarified by having the issue go on a future Law Enforcement AP agenda or if its' an emergency, then you would need to make a case to the Director for some type of emergence action relief.

There was no action taken by the Council.

The chairman adjourned the meeting.

Nancy E. Scarduzio, Recording Secretary