

RHODE ISLAND MARINE FISHERIES COUNCIL
September 9, 2013
URI Narragansett Bay Campus
Corless Auditorium, South Ferry Road, Narragansett, RI

MEETING MINUTES

Chairperson: B. Ballou

RIMFC Members Present: K. Booth, R. Hittinger, D. Monti, W. Mackintosh, J. Grant, C. Rein, M. Rice

RIMFC Members Absent: R. Bellavance

DEM: L. Mouradjian, M. Gibson, G. Powers, J. McNamee, N. Lengyel, K. Smith, J. Lake, P. Duhamel, Sgt. Dan White.

Public: Approximately 10 people attended the meeting.

B. Ballou called the meeting to order and offered introductions to the two new RIMFC members, M. Rice and C. Rein.

1. **Approval of the agenda:** *B. Ballou* inquired as to any suggested changes to the agenda. *M. Rice* moved to re-order the agenda such that the AP reports align with new business items based on species. *B. Ballou* then offered to combine items 5a, 5b, 5d. (portion thereof – IAC report of 7/8/13) and 5e. (AP reports) with 6a. (public hearing items); as well as item 5c. (SAP report) with 6e. (Aquaculture applications). The IAC report of 8/14/13 would therefore remain as the sole item under new business item 5. Requesting if there were any additional modifications on the agenda, and hearing none, the revised agenda was approved.

2. **Approval of RIMFC meeting minutes from June 3, 2013:** *B. Ballou* inquired as to any modifications to the minutes or any objections to approving the minutes. Hearing none, the minutes of the June 3, 2013 RIMFC meeting were approved.

3. **Other matters not on agenda:** *B. Ballou* inquired to the Council and then the public as to any matters not on the agenda. *R. Hittinger* offered an announcement on behalf of the SBA regarding a meeting by the office of the National Ombudsman on regulatory fairness for small business, with a particular emphasis on fisheries, on September 16 in Portland, Maine. No comments from the public were received.

4. **IAC meeting report from August 14, 2013 regarding licensing:** *J. Lake* provided a summary of the meeting, which is also reflected in the IAC meeting minutes. *B. Ballou* then offered that these matters would be brought before the Council in October after the public hearing on September 18. *K. Booth* inquired as to the overall goals with regards to licensing and was concerned about making licensing changes without the broader understanding of these goals. *B. Ballou* then asked for objections to accepting the minutes. Hearing none, the minutes were accepted.

5. **Public Hearing item #1 - Adoption and amendments of regulations regarding Pot/Trap definitions and Pot/Trap gear regulations (Part I - Legislative Findings; Part X -**

Equipment Restrictions; Part XI - Commercial Fisheries; Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs):

M. Gibson offered that the Division strongly supported the proposed definitions for defining the types of gear so that pot/trap fisheries and gear types could be understood better; but offered that such changes could not be implemented for 2014, as it involved new programmatic requirements, including determining number of tags needed, finding a funding source to purchase the tags, and procuring a vendor to produce the tags. He suggested that it would be possible to move forward with the new definitions as proposed and work to understand the fishing activity and programmatic requirements and work towards program implementation for 2015.

W. Macintosh asked about the extent of the types of traps and tags. *M. Gibson* offered that research was needed to determine types and quantities of traps being fished and subsequent number of trap tags needed. He offered that some fisheries are probably minor but others are potentially important and there was a need for data to understand this. *W. Macintosh* offered that there were several trap fisheries that should be considered for a tag requirement as these fisheries have the potential to be heavily fished, and therefore required management. *M. Gibson* offered that this tagging program would be different than the established lobster trap tag program in that the tags would not be obtained by the fishermen directly from the tag vendor; that the tags would be available to the fishermen directly from the Licensing office at the time of license renewal, and that there is a need for information in order to determine number of tags needed. The lobster trap tag program could therefore not be used as a model for a pot tagging program. *W. Macintosh* offered that the only way to understand the extent of the activity for each trap fishery was to tag each trap. *R. Hittinger* offered that the proposal was not requiring tags for green crab or eel traps, to which *W. Macintosh* asked why there wouldn't be, as there is a need to understand fishing activity. *K. Booth* questioned the practicality of requiring trap tags for small bait traps. *D. Monti* asked about the proposed change from 100 lobster/day by-catch to 20 for non-lobster pot fisheries. *M. Gibson* replied that the original intent was to allow for a 100-lobster by-catch only for other gear types (otter trawls and gillnets) but has since been interpreted to allow for the 100 count by-catch limit for all gear other than lobster pots. This loophole creates difficulty for Enforcement and was not the original intent of the regulation. He said the proposed language is to clarify the exact number of lobsters allowed for each gear/trap type and to close this loophole. *J. Grant* offered that the current 100-lobster by-catch allowance results in a directed fishery for lobster with non-lobster pots. He also offered that there should be an exclusion for the tag requirements for small traps, perhaps based on size or volume of trap; that small traps should not be part of the proposed tagging program.

B. Ballou clarified the Division's position that a program could not commence until 2015. ***D. Monti* made a motion to recommend adoption of the proposed regulatory changes; 2nd by *M. Rice***, with a caveat that implementation of the trap tag program occur for 2015 rather than 2014. *K. Booth* asked that small bait traps be excluded from the trap tag requirements; the specifics about the size or use type to be determined later. *M. Gibson* offered that green crab and eel traps tags are not included as part of this proposed program. *B. Ballou* offered an amendment to the motion to include a definition of small bait traps and that such traps be excluded from the tagging requirement; the specifics of the size to be determined. He offered that there is plenty of time until 2015 to clarify this. *G. Powers* offered that it was acceptable to recommend adoption of the proposed regulations with a delayed implementation date (2015) for the tagging program and to determine a definition for small traps to be excluded from the tagging requirement. *S.*

Parente restated that small bait traps should be excluded from the trap tag rule. **The motion passed with a vote of 7 – 0.**

6. Public Hearing item #2 - amendments to regulations regarding the management of Conch (Whelk)(Part IV - Shellfish):

M. Gibson offered that the Division was in support with the proposed amendments; and that the Division is actively researching the Conch fishery and biology and has been finding symptoms of over-fishing. He added that mortality rates are escalating, abundance is decreasing, and the minimum size is much too low relative to the size at full maturity; therefore, fishing is occurring on immature females. *R. Hittinger* asked why there was no limit in number of traps or minimum size proposed. *M. Gibson* responded that there still more information being sought to determine size of females at full maturity; and also to review data from the stock assessment to determine fishing mortality. ***D. Monti* offered a motion to recommend adoption of this proposed amendment; 2nd by *J. Grant*,** with a friendly amendment to delete the Conch endorsement moratorium as part of this motion as it will be addressed in subsequent public hearing and Council meeting. **The motion passed with a vote of 7 - 0.**

7. Approval of the meeting minutes of the Winter Flounder AP meeting on June 11, 2013 and Public Hearing item #3 - amendments to the regulations regarding the management of Winter Flounder (Part VII - Minimum Sizes of Fish/Shellfish):

J. Lake provided a summary of the AP meeting. *B. Ballou* then asked for any objections for receiving and filing the meeting minutes. Hearing none, the meeting minutes were accepted.

B. Ballou then summarized the public hearing item regarding Winter Flounder. He noted that two comments were received at the public hearing – both opposed to the proposed amendment. *M. Gibson* offered that the Division was in support of the proposed language as there was no rationale to deny federal fishermen access to federal fishing opportunities or the resulting economic benefit to RI. ***J. Grant* offered a motion to recommend adoption of the option 1, but with a proposed change to replace “south of the Colregs line” with “in open portion of state waters” and also to recommend adoption of commercial option 2 and the Recreational Transit language; 2nd by *M. Rice*.** (note: the “two” options as presented for commercial transiting were incorrectly presented as two separate “options” at the public hearing; in actuality they are not separate options but two parts of a single option. This was addressed and corrected at the public hearing). *J. Grant* offered a clarification that Option 1 dealt with state waters only. *J. Lake* offered clarification that option 1 was to allow state boats to transit closed portions of state waters (e.g., Pt. Judith Pond) and federal boats to transit state waters, and that the language before the Council and presented at the public hearing was therefore a single option comprising 3 sections. **The motion passed with a vote of 7 - 0.**

8. Approval of the meeting minutes of the Groundfish AP meeting on June 11, 2013 and Public Hearing item hearing item #4 - amendments to the regulations regarding the management of Cod (Part VII - Minimum Sizes of Fish/Shellfish).

K. Booth provided a summary of the AP meeting. *B. Ballou* asked if there were questions regarding this meeting. Hearing none, **the minutes were received and placed on file.** *E. Schneider* provided a summary of the public hearing item. *M. Gibson* offered that the Division was in support of the transiting and fishing year language, and clarification of the language regarding the state quota. He offered that the proposed language reducing the minimum size was

a controversial issue and that a number of the states, industry, and members of the Fisheries Science Center have all raised concerns about this. He offered that there is discussion as to which management/fishing controls (e.g., minimum size, reduced mesh size) would best result in a reduced amount of smaller dead discards. He then offered that a one year sunset clause is being considered in order to revert to previous minimum sizes if it is determined that desired outcome has not been. *K. Booth* asked about the date of the sunset clause. *M. Gibson* offered that it would either be one year from the date of filing, or perhaps either January 1st, 2014 to coincide with the state fishing year or March 1st, 2014 to coincide with the federal fishing year. He asked for Council input on this matter. He said at minimum one year of data would be needed to properly evaluate the effect of the regulation. *R. Hittinger* offered that recreational fishing of Cod, once vibrant, is now very small. He offered that it seemed illogical to reduce a minimum size for a fishery experiencing such difficulty. *C. Rein* inquired as to the criteria needed to determine if the proposed changes, if adopted, were resulting in the desired outcome. *M. Gibson* offered that it was only one possible option. *W. Macintosh* offered that the proposed language may be the best way to reduce the number of dead discards, as opposed to reducing mesh size, and favored the amendment. *M. Gibson* offered that the reduction to 19" from 22" would result in sexually immature fish being caught; but that the goal to limit the number of dead fish for this size class may be better achieved through harvesting rather than as dead discards. ***J. Grant* offered a motion to recommend adoption of the proposed amendments, with a minimum size sunset clause of April 30, 2015; 2nd by *M. Rice*.** *R. Hittinger* offered that while he was strongly in favor of reducing dead discards, he thought the proposal was the wrong way to accomplish it. He offered that he thought the correct measure would be to increase mesh size. *W. Macintosh* agreed but thought the proposed measure was a good compromise. *J. Grant* also offered that the proposal was a necessary compromise. *D. Monti* offered that a compromise; allowing transiting with smaller fish but keeping the 22" minimum size, might be a possible amendment. *J. Grant* asked if a 19" minimum size could be applied only to federal fish and 22" applied to state boats. *M. Rice* offered that the proposal is an experiment, and the sunset clause offers a safety net to reverse the regulation should the experiment fail. **The motion passed with a vote of 5 – 2; *R. Hittinger* and *D. Monti* voting against the motion.**

9. Public Hearing item #5 - amendments to the regulations regarding the management of Monkfish (Part VII - Minimum Sizes of Fish/Shellfish):

E. Schneider provided a summary of the public hearing item. *W. Macintosh* offered two different possession limits for federal and state waters would be a problem in that it would be difficult/impossible for DEM Enforcement to determine if the extra federal catch was properly caught in federal waters or caught in state waters. This would result in fishermen falsifying landings reports for the illegally caught fish and also result in faulty landings data, which would create difficulty with managing the fishery. ***W. Macintosh* offered a motion to recommend adoption of option 1 (adopt the 1,601 lb possession limit), and the corresponding recreational language (146 lbs); 2nd by *M. Rice*.** *E. Schneider* then offered that the federal possession limit was in reality inconsequential as federal boats are bound by the most-restrictive rule, so with either option as presented, federal boats would be bound by the lesser limit. **The motion passed with a vote of 6 – 0; *D. Monti* abstaining.**

10. Public Hearing item #6 - amendments to the regulations regarding the management of American Shad (to prohibit recreational harvesting in marine waters)(Part VII - Minimum Sizes of Fish/Shellfish).

M. Gibson offered a brief summary of the proposed amendment and offered the Division recommendation in support of the amendment. *M. Rice* offered a motion to recommend adoption of the proposed amendment; 2nd by *R. Hittinger*. The motion passed with a vote of 7 – 0.

11. Hearing item #7 - amendments to the regulations regarding minimum sizes for American Plaice (Dab), Haddock, Pollock, Witch Flounder (Grey Sole), and Yellowtail Flounder (Part VII - Minimum Sizes of Fish/Shellfish).

M. Gibson offered a brief summary of the proposed amendment and offered the Division recommendation in support of the amendment. *K. Booth* offered that fishermen present at the Groundfish AP meeting were not in support of this amendment. *M. Gibson* offered that it was his understanding that fishermen in general are in favor of minimum mesh sizes rather than minimum fish sizes. *J. Grant* offered a motion to recommend adoption of the proposed amendment; 2nd by *W. Macintosh*, with the caveat that it be recommended to adopt the same approach that is to be taken with Cod with regard to the sunset clause of April 30, 2015. The motion passed with a vote of 5 – 2; *R. Hittinger* and *D. Monti* voting against the motion.

12. Public Hearing item #9 - amendments to the regulations regarding gillnet gear regulations (Part XIII - Gillnet Regulations).

J. Lake provided a brief summary of the 8/7/13 IAC meeting in which this topic was discussed. *W. Macintosh* offered a motion to recommend adoption of the proposed amendment; 2nd by *J. Grant*. *K. Booth* inquired as to the marking requirements for federal waters and if there was practicality with adoption such measures for state waters. *R. Hittinger* offered that gillnets are a problem for rod and reel fishermen in that it is difficult for the fishermen to know the location of the gillnet due to markers required only on each end of the gillnet, which could be more than a mile in length. He suggested that the proposed language would result in the gillnet being less visible. No other Council members voted in favor of the motion; the motion failed with a vote of 2 – 5. *B. Ballou* inquired as to an alternative motion, to which none was made.

13. Public Hearing item #10 - amendments to the regulations regarding the management of Horseshoe Crab (Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs)(concerning Emergency regulations that were filed March 22, 2013).

M. Gibson offered a brief summary and the Division's support for the proposed amendment. *R. Hittinger* offered a motion to recommend adoption of the amendment; 2nd by *K. Booth*. The motion passed with a vote of 7 – 0.

14. Hearing item #11 - amendments to the regulations regarding the management of Menhaden (Part XVI - Menhaden Regulations)(concerning emergency regulations that were filed June 20, 2013).

D. Monti provided a brief summary of the AP meeting, in which there was concern about the quota for RI and a set-aside amount for the small vessel/bait fishery. *M. Gibson* offered Division support for the amendment but could not support the AP proposals at this time as they were not currently fully understood; but that it could be re-visited at a later date. *C. Rein* inquired if it was the Council's prerogative to offer recommendations for alternatives based on the

recommendations of the AP. *B. Ballou* offered clarification that if the Council were to recommend adoption of additional language per the AP recommendations, namely that of a set-aside quota for the small vessel fishery, that it would prohibit the state from entering into an Episodic Event Set Aside Program as the quota wouldn't be exhausted. ***R. Hittinger* offered a motion to recommend adoption of the amendment, with the addition of a 13% set-aside quota for small vessels; 2nd by *M. Rice*. The motion passed with a vote of 6 – 0; *J. Grant* abstaining.**

15. Approval of the meeting minutes of the Shellfish AP meeting on June 12, 2013 and aquaculture application for Robert Morvillo.

J. Grant offered a brief summary of the AP meeting; namely the aquaculture applications for *R. Morvillo* and *A. Silkes*, that were not recommended for approval at the AP meeting. *B. Ballou* offered a reminder to the Council regarding the Council's statutory obligation with the review criteria and process regarding aquaculture. *M. Rice* asked about the nature of the Shellfish AP objections and the use conflicts, to which *J. Grant* responded that the area is within the Conimicut Point Management Area for steamer clams. He offered that steamer abundance is currently very low, due to unknown factors, but that the hope was that sets would return. He also provided that an objection was received from whelk fishermen who fished the area. *R. Hittinger* asked how the lease would interfere with recreational wild shellfish harvest. *D. Beutel* answered that the area of the lease would be off limits to other uses. It was discussed that the size of the lease in relationship to the Management Area is very small. *D. Beutel* offered that the length of the lease was 15 years. *J. King* provided an objection to the proposed lease based on the lack of broader management plan regarding aquaculture. He offered that maps were previously developed portraying areas suitable for aquaculture and that this proposed lease location was not a suitable area based on those maps. He offered that the Warwick Harbor Commission objected to the application, mainly due to loss of harvest area for recreational and commercial shellfishing. He offered that the area is closed due to water quality approximately 60% of the time, which would make the site unusable as a lease site. *M. Rice* offered that the site had been populated with oysters in the past, and that it was not the Council's purview to discuss water quality closure and how this would impact the use as a lease site. *J. Grant* again offered that the proposed lease is in conflict with the areas use for wild shellfish harvest. He offered that a significant conflict may not be currently occurring due to low shellfish densities, but that such conflict will occur when the sets come back and harvest resumes. ***J. Grant* offered a motion to recommend to the CRMC denial of the application based on conflict with wild shellfish (i.e., steamers) harvest and whelk fishing; 2nd by *R. Hittinger*. *W. Macintosh* offered that the Council should object based on the objection from the Warwick Harbor Commission. *C. Rein* asked whether there was conflict with the whelk fishery as whelk are mobile. **The motion passed with a vote of 5 -1; *M. Rice* voting against the motion (note: *K. Booth* no longer present).****

16. Aquaculture application for Adam Silkes.

Mr. Silkes provided a summary of his lease application. He offered that he had received 2 objections: from pot fishermen and a current oyster lease holder. He offered that part of his lease had been previously used for an aquaculture lease and that the spacing between his longlines allowed for pot fishing. He offered that the motion to object to the lease at the Shellfish AP was made by the brother of the objector, and thought this was unfair, and that a letter from *D. Leavitt* countered this objection. *D. Beutel* offered that Mr. Silkes had tried other locations through the

CRMC Preliminary Determination process. He offered that objectors for his other locations recommended that he should move south of the Jamestown bridge but are now still objecting. D. Beutel offered that the total size of the proposed lease is 8 acres, and that 4.8 acres was a former lease. M. Rice offered that he thought that the main objection was about excessive mussel larvae generated at the site; and that this would negatively impact nearby oyster farms. He offered that such an objection is unfounded based on the larvae lifecycle and tide cycles and that the mussel larvae at the lease should pose no threat to nearby oyster farms. J Grant offered that he was in favor of the lease due to Mr. Silkes working with local fishermen to find the site. He said there is already an excessive amount of mussels in the area. **J. Grant offered a motion to recommend approval of the application to the CRMC based on minimal conflict with wild fisheries; 2nd by D. Monti. The motion passed with a vote of 6 – 0.**

17. **Proposed extension of the Oyster Moratorium in Quonochontaug Pond.**

M. Gibson provided a summary of the issue. E. Schneider offered that the current harvestable oyster densities in the pond are very low but that it is hoped that continuation of on-going restoration efforts will ultimately restore the fishery and sustainable harvest. M. Rice asked about DEM efforts to reduce nitrogen into the pond, as this could be the limiting factor for successful restoration. L. Mouradjian offered that there were several efforts addressing nitrogen inputs into the pond. **J. Grant offered a motion to recommend adoption of the proposed amendment; 2nd by M. Rice. The motion passed with a vote of 6 – 0.**

18. **Proposed AP meetings.**

R. Hittinger asked that the issue of Sectors be added to the Summer Flounder AP agenda as soon as possible to avoid any perception of the item being snuck in at the last minute. J. McNamee offered an addition to the Scup/BSB agenda to add a brief introduction to the Division's ventless pot survey in order to solicit feedback from the AP. E. Schneider offered that there is probably not a need for a Groundfish AP meeting for coastal sharks, and that K. Booth had concurred. The Council decided that there was no need for a Groundfish AP meeting, and that it would be sufficient for any proposed regulation regarding coastal sharks to go directly to public hearing. **R. Hittinger offered a motion to approve the three AP meetings; 2nd by D. Monti. The motion passed with a vote of 6 - 0.**

Meeting adjourned at approximately 9:50 PM.

Prepared by P. Duhamel