

**RHODE ISLAND MARINE FISHERIES COUNCIL**  
**Minutes of Monthly Meeting (as amended 1/8/07)**  
**November 6, 2006**  
**URI Narragansett Bay Campus**  
**Corless Auditorium**  
**South Ferry Road**  
**Narragansett, RI**

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

Chairperson: M. Gibson

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

DEM Legal Counsel: G. Powers

DEM Staff: R. Ballou

DEM Law  
Enforcement: S. Hall

Public: 30 people attended

Chairman M. Gibson called the meeting to order. He asked if there were any changes to the agenda. S. Parente asked to have a discussion about the summer flounder advisory panel meeting. J. McNamee asked to have a discussion about a new agenda format. M. Gibson suggested adding these as agenda items 7 a and b. **There were no objections to accepting the agenda as modified.** M. Gibson asked if there were any objections to approving the minutes of the October 18, 2006 Rhode Island Marine Fisheries Council (Council or RIMFC) meeting as submitted. **G. Allen made a motion to approve the minutes as submitted. J. King seconded the motion. There were no objections to approving the motion.**

**Advisory Panel Reports**

*Scup/black sea bass:* J. McNamee gave the report. The group met to discuss any proposals for 2007 commercial management. The group recommended status quo for both scup and black sea bass commercial management in 2007. The group also discussed a proposal brought forward by the RI Commercial Rod and Reel Anglers Association. This proposal requests that the quota be reallocated to give the general category 60% of the RI quota and the floating fish traps 40%, which is opposite of the current allocations. The panel split the vote on this proposal therefore it was not a consensus proposal.

**Other Business**

*Council action on the Western Greenwich Bay opening schedule proposal:* **[Note: Council took action on both Eastern (agenda item 4b) and Western (agenda item 4a) Greenwich Bay management areas under this agenda item]** M. Gibson gave a brief

history on the topic. The Council agreed to break the Western Greenwich Bay topic in to four separate actions. The Council also decided to take the Eastern Greenwich Bay action first. **J. King made a motion to open Eastern Greenwich Bay on a full time basis, sun-rise to sun-set clause (as opposed to the temporary opening that existed before). S. Parente seconded the motion.** J. King asked about implementation. M. Gibson stated that it would take 20 days following the Directors action. An audience request was made to have the current closure in this area added to the DEM recording. M. McGiveney stated that he supported the motion made by the Council. He went on to ask if there was any way to make the regulation take place quicker than the normal amendment process. M. Gibson stated that he would make the Director aware of both audience requests. G. Schey criticized the slow action by the Department of Environmental Management (DEM), stating that they had brought this forward back in July. M. McGiveney stated that he agreed with G. Schey's comments and felt that DEM needed to spell out exactly what was necessary to get an item on an agenda. M. Gibson stated that the chair of the Council or a Council member sets the agenda. There was further discussion on the agenda setting process. G. Powers gave the requirements set forth in the open meetings laws. M. Gibson suggested continuing the current discussion under agenda item 7b (the new agenda format discussion). **The Council voted unanimously to approve the motion.**

The Council then moved to the Western Greenwich Bay proposals, which the Council had split into several actions. The first action was the setting of the December opening schedule. **J. King made a motion to develop an annual process to develop a December schedule. S. Parente seconded the motion. J. King clarified that he was approving the December schedule process as set forth in the DEM version of the proposal.** J. King read the proposal. M. McGiveney stated that his organization supports the motion on the table. He went on to clarify that this schedule only governs Western Greenwich Bay and does not affect the other management areas. G. Allen suggested that the maker of the motion clarify that this schedule only governs Western Greenwich Bay. **J. King accepted the friendly amendment to clarify that annually the process would be to set the December schedule for Western Greenwich Bay. The second to the motion agreed to accept the friendly amendment.** An audience member asked about contingencies for vessel break down. It was explained that this was only setting the days scheduled for opening. **The Council voted unanimously to accept the motion.**

The next item was the actual schedule for the December 2006 opening schedule. **S. Medeiros made a motion to approve the December opening schedule as presented in the Western Greenwich Bay proposal. J. King seconded the motion. The Council voted unanimously to approve the motion.**

The next issue was the flexibility portion of the Western Greenwich Bay proposal in December. The process would allow missed fishing days in December due to pollution closures to be added back in to the schedule. **J. King made a motion to give the Division of Fish and Wildlife (DFW) more flexibility for the openings in Western Greenwich Bay.** A friendly amendment was suggested to recommend to the Director that he endorse the December modification provisions that are included in the proposal. **J. King accepted the friendly amendment to recommend to the Director that he**

**endorse the December modification provisions that are included in the proposal.** There was Council discussion on the how the process works. **S. Medeiros seconded the motion.** M. McGiveney wanted to make sure that the notification period was still 72 hours as he felt it was important to get the word out in a timely manner for these changes. He also stated that he supported the proposal. S. Hall of DEM Law Enforcement stated that this portion of the proposal was a problem for them because of the short notice and the assigned details for his officers. **The Council voted unanimously to approve the motion.**

The final shellfish item to take action on was the January modification portion of the proposal. The proposal shortens the amount of time the management area is open in January if a number of days are missed in December due to pollution closures. The time shortens from 4 hour openings in January to 2 hour openings. **G. Allen made a motion to adopt the January to April modification proposal as specified in the Department of Environmental Management (DEM) version of the proposal. J. King seconded the motion.** The proposal was discussed and clarified. J. King stated that this proposal was coming from the industry. S. Macinko did not feel there was any conflict with the proposal as he felt the added days in December counted in the proposal, in other words if days were lost but were added back in, this would not trigger the January modification. It was only in those cases where the days were lost and not made up to a minimum of four open days, that the January modifications would be triggered. M. Gibson stated that this was not clear to him in the proposed regulatory change. M. Sousa stated that he travels from Tiverton to access the Greenwich Bay management area and it would not be worth it to him to travel this distance for 2 hours of fishing. He was opposed to this portion of the proposal. R. Smith of RI Clam stated that he supported the other portions of the proposals, however, he did not support the January modification portion because of the reason stated by M. Sousa and he also felt the icing and weather conditions would create a dangerous situation if people were trying to rush out for a 2 hour opening. M. McGiveney stated that the proposed regulation was a direct result of the Greenwich Bay situation that occurred in 2005. There were pollution closures in December and this led to a glut of shellfish on the market in January to the point that shellfish dealers shut their doors. He stated that the proposal wasn't perfect but the proposal was an effort to keep the Greenwich Bay fishery viable. S. Depetrillo responded to M. Sousa that the other management areas would still be open on their normal schedules; this would only affect Greenwich Bay as this issue was unique to this area. G. Schey stated that due to the high number of shellfishermen and product, the dealers sometimes try to short change some of the shellfishermen considered non-regulars by giving them very low prices for there clams. He stated that this proposal was an effort to control some of that situation too. R. Koza stated that this would be like putting ankle bracelets on fishermen, therefore he did not support this part of the proposal. He went on to state that he did not think they had a legal meeting at the present time. The proposal was clarified one last time to state that if the Greenwich Bay management area did not open a minimum of four times in December, including any added in days, the first three scheduled openings in January would be for two hours each to take place from 9 to 11 o'clock in the morning. **The Council voted four to approve the motion, none opposed, none wanting to be recognized as abstaining from the vote. The motion passed.**

*Council action on the Eastern Greenwich Bay full time opening proposal: See above.*

*Council approval of draft Industry Advisory Committee and draft Enforcement advisory panel agendas:* J. McNamee stated that the Council had been provided draft agendas for both the enforcement advisory panel and the industry advisory committee. J. McNamee outlined the agenda topics and stated that the chairman had approved the draft enforcement agenda prior to submittal. G. Allen wanted it clarified that the panel was to come forward with a recommendation for the Council on the filet law issue. An audience member stated that the proposed meeting date conflicts with another meeting. The panel chair stated that they would pick another date. **The Council had no objections to approving the enforcement advisory panel agenda with the modifications suggested.**

The second draft agenda was for the industry advisory committee. The chairman for that panel was not present and he had not contacted J. McNamee to voice his approval of the draft agenda. **The Council decided to hold off on approving the draft industry advisory committee agenda until the December 4 Council meeting.**

### **Old Business**

*Council comments on 804 account spending:* M. Gibson stated that he had provided the Council with a summary of the 804 spending for 2006. The Council was tasked with reviewing this information and reporting back with any suggestions or comments that they had. G. Allen asked about a small mesh survey to find out about winter flounder bycatch. M. Gibson stated that this is not funded through the 804 account, but comes from a federal grant that does not have a state match. G. Allen requested that more funding be put towards observer coverage specifically to look at winter flounder bycatch in Narragansett Bay due to small mesh fisheries. R. Koza made a comment about matching funds. J. Low asked a question about publication of information. M. Gibson stated that this information becomes public property once the annual report has been submitted and approved by the federal government. J. Low suggested publishing the reports to the website.

### **FYI**

*Public Hearing Summary Document:* J. McNamee stated that he had provided a copy of the public hearing summary document to the Council in their packets. S. Parente asked a question about the RI Commercial Fishermen's Association (RICFA) fluke proposal. J. McNamee stated that the proposal had come forward as a verbal proposal and that he had simply codified it in to regulatory language. S. Parente questioned whether the proposal had been codified with the correct intent. M. Gibson stated that the RICFA could comment on how the proposal was noticed at the public hearing but the proposal as submitted for public comment in the public hearing summary document was the proposal that will be heard at the public hearing. S. Macinko stated that he had issue with the DEM interpretation of the public hearing rules, citing the fact that during the public hearing process a regulation can be developed that is very different than what had originally been noticed by the Department. M. Gibson stated that he did not take it lightly that in his role as chair he needed to make these types of decisions occasionally, but stated that he was

doing the best he could. F. Blount stated that he supported M. Gibson's statement, going on to say that as a chairperson you make your meeting notice as broad as possible to be able to encompass alternatives that come forward during the public process. If an individual disagreed with the ruling at the time that the notice was broad enough to encompass the alternative, this is where a legal challenge could come from. M. Gibson added that the Council could challenge a ruling by the chair at any time. R. Koza stated that he thinks all license holders should be notified by mail of proposed rules changes. M. Gibson stated that all rules pertaining to public notice are being followed by DEM.

*Review of the 10/3/06 Summer Flounder AP minutes:* S. Parente stated that the summary of the summer flounder advisory panel meeting did not adequately depict the voting numbers for the various proposals nor did it support depicting the RICFA proposal as the advisory panel approved option. He stated that the proposal by E. Baker was the only fluke proposal unanimously supported. S. Parente went through a brief description of the summer flounder advisory panel meeting, concentrating mainly on the RICFA and E. Baker proposals. He then went on to question why D. Preble had referred to the RICFA proposal as the advisory panel approved option. S. Parente stated that because the panel voted more strongly in favor of the E. Baker proposal, he thought this should go forward as the advisory panel approved option and wanted this alternative opinion to be stated in public. M. Gibson stated that all of the proposals had been individually noticed for public hearing and stated that this discussion could be reintroduced at the December 4<sup>th</sup> follow up meeting of the Council, as this was the meeting where they would be discussing their recommendations to the Director of DEM. J. Low stated that he thinks it should be a policy that all proposals brought to a panel be written. G. Allen stated that he would be willing to work up the proposed change for the policy since he had worked on the original advisory panel policy document. S. Medeiros stated that he agreed with J. Low's comments. P. Ruhle stated that there might be a legal problem with requiring something in writing. E. Baker wanted to state for the record that his proposal was unique from the RICFA proposal and did not want people to confuse the two.

*Council comments on draft agenda format change:* J. McNamee stated that the new agenda format was an attempt to solve some of the problems that the Council had been dealing with regarding open meetings laws. The agenda was in a spreadsheet format and provides an area where items from an advisory panel meeting summary can be listed, thereby getting these items specifically noticed. S. Medeiros suggested leaving some blank space for agenda modifications. G. Allen asked to have the print made larger. P. Ruhle stated that action items should be noted on the agenda. M. Gibson suggested taking the new format under advisement and coming to the next meeting with any comments or suggestions. M. Gibson stated that the DFW would go back and look in to whether this will satisfy open meetings requirements. R. Koza again suggested sending notice to all license holders. M. Gibson stated that the DFW is meeting the legal requirements for public notices. M. McGiveney made some suggestions for things he would like to see on the new format including noting voted on action items, noting items for continued discussion, and noting what would be a new discussion item for a future agenda. M. McGiveney went on to state that he was under the impression that the written proposal requirement was already in effect. G. Allen wanted to state for the record that a panel

should not expect that if they discuss something that was not specifically noticed on the advisory panel agenda that it will be brought forward for action at the following Council meeting. The topic can be forwarded to the next agenda of the panel, however.

**Post agenda discussion**

There was further discussion on public noticing. P. Ruhle asked about the river herring language that was promulgated earlier in the year. M. Gibson stated that the regulations specify anadromous herring. S. Hall stated that his enforcement officers would not be prosecuting offshore herring vessels that have a bycatch of some river herring.

The chairman adjourned the meeting.

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Jason E. McNamee, Recording Secretary