

RHODE ISLAND MARINE FISHERIES COUNCIL
Minutes of Monthly Meeting
January 5, 2004
URI Narragansett Bay Campus
Corless Auditorium
South Ferry Road
Narragansett, RI

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

Chairperson: D. Borden

RIDEM F&W Staff: M. Gibson, J. McNamee

DEM Enforcement: S. Hall

Legal Counsel: G. Powers, G. McAvoy

Public: approximately 25 people attended

D. Borden called the meeting to order. He asked for any agenda changes from the members of the Rhode Island Marine Fisheries Council (RIMFC or Council). There were no additions to the agenda. **D. Borden asked if there were any objections to approving the agenda as submitted. There were none. The agenda was approved.**

D. Borden asked if there were any corrections to the minutes which had been included in the Council packet (12/8/03). There were none. **D. Borden asked if there were any objections to approving the minutes as submitted. There were no objections. The minutes of 12/8/03 were approved.**

M. Gibson asked to have a discussion about future committee meetings.

New Business

Request for authorization to convene menhaden advisory panel: S. Medeiros stated that it had been suggested to him to have a discussion at the advisory panel level about menhaden and its use as a filter feeder, especially due to the Greenwich Bay fish kill of the previous year, and a proposal was given to him to present to the Council. The proposal suggests having a prohibition on the harvesting of menhaden in areas which paralleled the polluted shellfish closure areas in Rhode Island. The Council had also been given a report regarding a similar issue which is occurring in the Chesapeake Bay. D. Borden asked M. Gibson what the Division of Fish and Wildlife (DFW) stance on this issue was. M. Gibson stated that this had been discussed internally and the DFW was prepared to discuss the merits of there proposal with the menhaden advisory panel (AP) if the Council chose to authorize convening this panel. D. Borden stated that the second report that S. Medeiros was referring to was a petition by the National Coalition for

Marine Conservation to the Atlantic States Marine Fisheries Commission (ASMFC) regarding the protection of menhaden from overharvesting in the Chesapeake due to their role as food to predators and also their role as filter feeders in the Chesapeake. This issue came up at the ASMFC board meeting and it was referred back to the ASMFC menhaden technical committee. D. Borden suggested waiting for the outcome of the ASMFC menhaden technical committee on the National Coalition for Marine Conservation petition before moving forward with a menhaden AP meeting. D. Borden asked M. Gibson to compile a report from the DFW on this proposal and also the report which would be forthcoming from the ASMFC menhaden technical committee for the menhaden AP meeting. S. Medeiros asked how long it would take for the technical committee to respond with a report. D. Borden stated that it would probably be a couple of months, if it takes longer then we would move forward with only the DFW recommendations. S. Medeiros asked to put this on the March agenda.

Request for authorization to convene scup and summer flounder advisory panels to discuss recreational management plans for 2004: M. Gibson stated that the DFW was hoping to convene these advisory panels to discuss the recreational measures for the coming year. As of this point in time, Rhode Island appears to be right on schedule with the recreational landings for the year, therefore there wouldn't need to be any major changes for 2004 but that does not preclude the AP members from developing new management plans as long as they remain within the framework of what ASMFC requires. There is also an addendum to the ASMFC scup recreational management plan which is going out to public hearing on January 14 (at 6:00 in the Corless Auditorium, URI Bay Campus). The DFW was hoping to convene these panels during the third or fourth week in January in order to allow time to get proposals together for the public hearing notice which will go out during the last week in January and also allow AP members a chance to attend the ASMFC public hearing on scup. D. Borden stated that there was no action necessary unless a Council member had an objection to convening the APs. There were no objections from the Council. M. Gibson stated that the DFW needed to have proposals finalized by January 27th at which point the public hearing notice would go out.

Other Business

Discussion about fluke regulations: K. Ketcham stated that the allocation changes for the year of 2004 were brought up at the previous meeting. He stated that he would like to revisit this because the Council members were unaware that this would change the allocation percentages and he would also like to discuss the DFW's hybrid proposal where all of the pounds do not end up in the summer 1 period but only a percentage of it does. D. Borden gave a brief overview of what had happened with this issue up to this point in time. He went on to state that if the Council wanted to change the allocations for 2004, it would have to go back through the public process. D. Borden stated that he hoped the discussion would focus on a few points. The first would be, did the DFW do something technically wrong, in other words did they file something that wasn't intended by the Director. The second point would be, if the Council wanted to reconsider what had transpired they would have to authorize developing a proposal and send it to public

hearing.

D. Borden asked M. Gibson about what had been filed and why. M. Gibson stated that the Council had voted on two proposals. The first was a tie vote which the Director declined to break and the second was the DFW proposal to put all of the additional poundage of fluke for 2004 into summer 1. This vote passed at the Council level. The Director sided with the Council's decision and this is how the regulation was drafted and filed. By adopting this option it changed the percentage allocations for the management plan. S. Medeiros stated that when the Council voted on this issue they had not intended to change the historical percentages, they only wanted to solve the overage problem which has been an ongoing problem from year to year. S. Medeiros made a suggestion to take the predicted increase for the following year (2005) and agree to put this entire amount into the Winter 1 period to compensate them for this year. M. Gibson stated that the issue of management plans has to go through the public process every year and this would be the case next year also. Next year, the Council could decide to do what S. Medeiros suggested and if the Director concurs the percentages would be adjusted accordingly and filed.

D. Borden restated what M. Gibson said. He then went on to ask the Council what their original intent was. G. Allen stated that there was never any intent, when he voted, to change the historical percentages. He did want the additional pounds for the next year to go into summer 1 but he was under the impression that this would be a one time addition and that the percentages were not going to change. G. Allen restated that he supported the suggestion made by S. Medeiros earlier. He went on to state that if an increase of 400,000 pounds was realized for the year 2005, none of this should go into the summer period and if an increase of 400,000 pounds was not forthcoming in 2005 then the extra pounds that went into summer 1 this year, should be redistributed equally to all sub periods. D. Preble stated that he also did not see it as the intent of the Council to reallocate the percentages on any more than a one time basis. He went on to say that as far as the scenarios discussed by G. Allen and S. Medeiros, he did not understand what they were referring to as far as the reallocation. D. Borden stated that if that was what their intent had been, the next time we went to file the regulation we would reestablish the historic allocation percentages and at the same time add that for one year there would be an increase in poundage for the summer 1 period. D. Preble tried to clarify what D. Borden meant by stating that next year when this goes back to public hearing, the Council could choose to reestablish the historic percentage scenario and all of the additional pounds would be allocated according to those percentages. D. Borden stated that he was not advocating any particular scenario, he was just trying to facilitate the discussion. S. Macinko stated that in his mind he did not vote to change the historic percentages on a permanent basis. He went on to state that he thought a good way to do this would be to specify poundages instead of percentages for this one year.

K. Ketcham stated that the percentages which were filed were incorrect because the winter allocation lost 90,000 pounds. D. Borden asked M. Gibson if there was an overage in 2002. M. Gibson stated that he was not sure, but he would check and if an error occurred due to an overage adjustment, we could enact a technical revision to fix those

percentages. D. Borden stated that the DFW would review the numbers and if an error was made, a technical revision would be made.

J. King stated that he concurs with the rest of the Council that their intent was to only add these pounds in for one year to summer 1 and not change the historical allocations. D. Borden stated that in this case what needed to be done was to change the percentages back to the historical allocations and specify that the additional pounds were to be added to the summer 1 period for this year only. G. Allen asked K. Ketcham if he was comfortable with the scenario brought up by him and S. Medeiros earlier in the discussion. D. Borden stated that this was not an option because this whole issue would be back up for modification the following year and at that point all of the quota would be back on the table for reallocation. The decision on how to reallocate the quota next year could not be made at this meeting.

D. Preble asked K. Ketcham to clarify where he wanted this issue to go. K. Ketcham stated that the winter fishermen did not want to lose the historical percentages, they wanted those reinstated. He felt the 480,000 pounds was a lost cause at this point so they wanted to focus on reestablishing the historic percentages. D. Borden stated that listening to the Council this evening, their intent was to add the pounds to the summer 1 period on a one time basis and not alter the historical percentages. He asked if any of the Council members disagreed with this. There were no disagreements. D. Borden then went to the audience for comment.

B. Mattiucci stated that the Council members were well aware that they would be changing the percentages because this was how the DFW had presented their proposal on several occasions. He accused the Council of being intimidated by the group who wanted the historical allocations reestablished and now they were trying to save face and say that they had not intended to vote the way that they had. He went on to state that this issue was not about historical allocations but about an early closure during the summer months when a majority of users were participating in the fishery which occurs year to year. The Council voted to solve this problem and now they were trying to backtrack away from this decision because they were being intimidated.

R. Boragine stated that he had reviewed the record and with all of the vocabulary used and the discussions which were had, he felt the Council clearly did not intend to alter the historical allocations. He felt the way to remedy the situation is to go back and make a technical revision which would turn the percentages into pounds which would be the same as the 2003 allocations, and then add a fifth paragraph stating that the additional pounds over the 2003 quota would be allocated into the summer 1 period for the year of 2004.

S. Ouellette stated that the percentages which were filed were wrong and should be amended. He went on to state that the only reference he had seen to what was actually needed to keep the summer 1 period open was in a memo generated on October 28th by M. Gibson. In this memo the amount of fish needed to keep the summer 1 fishery open was less than that which was finally allocated to this period. In essence by doing this an

inequitable fishery was established. These fishermen who had worked hard to conserve the summer flounder resource, were finally seeing the rewards of their efforts, but were being shut out of reaping these benefits. He advocated reopening the rule making process by reestablishing the historical percentages, take 150,000 pounds off the top before distributing the pounds to the sub periods, and add this 150,000 pounds to summer 1, thus giving summer 1 the 260,000 pounds (the increase in quota combined with the extra 150,000 pounds add up to 260,000) which was the amount of fish which was quantified in the memo by M. Gibson as the amount needed to keep summer 1 open.

D. Fox stated that they had waited a long time to get this quota increase and it was wrong that they were not able to catch any of these fish. He went on to state that the Council had talked about a second increase for the following year, but what if the quota went down? This was a rhetorical question. He commented on the proposal made by the Council earlier to put all of a forthcoming increase all into winter 1. This still alters the percentages, it does not bring them back to the historical allocation. He concluded that he wanted this fixed now, not in a year and that the summer quota would last if they made a realistic daily possession limit.

C. Brown stated that the Director made his decision as a punitive action against the fishing industry due to extenuating circumstances. He stated that there was a three to three tie and if K. Ketcham had been present to vote, he would have broken the tie vote and the problems they were now involved in would never have occurred.

K. Kyle, an attorney for the commercial rod and reel group, stated that the three to three tie which occurred during the Council meeting did occur but it was a vote on the commercial rod and reel sectors plan to combine summer 1 and summer 2, but keep the historical percentages intact. He stated that several different proposals had been put forward to try and rectify the current situation but regardless of what was decided on this evening, there was no way to change what had occurred without going back through the public process. What was filed was now law and could not be changed without due process.

S. Medeiros asked B. Mattiucci why his group would be opposed to reestablishing the historical percentages because his attorney had stated that the proposal they had advocated had the same percentages, it just combined summer 1 and summer 2. B. Mattiucci stated that the problem is not a historical landing problem, they never intended to change the historical landings with their proposal, but they do have an issue with the summer 1 period, it does not receive enough fish. If the Council were to decide to go back to historical landings and combine summer 1 and summer 2, they would receive no objections from his group.

G. Carvahlo stated that this all boils down to money, who will end up with the majority of the fish in their sub period and therefore who will end up with the majority of the money. He felt that the historical landings were enacted by the state out of convenience and for no other reason. This issue was not going to go away and is not unique to fluke. The same problem comes up with every species managed with a quota. His group

advocates 100 pounds a day all year long.

D. Fox stated that two individuals had brought up 100 pounds a day possession limits. He felt that no one is guaranteed an amount of fish during the winter, therefore no one should be guaranteed an amount of fish at any other time of the year. Fishermen need to deal with the fact that they are living off of species which are managed under a quota system.

D. Borden brought the discussion back to the Council and asked them what they preferred to do. Just for clarification, he stated that even if the Council decided to send this back out to public hearing, it was still the final decision of the Director on whether or not this issue gets reopened. J. King asked if they could change what they had done. D. Borden stated that a substantial change would have to back through the public hearing process. He then asked the DFW legal council present to comment. G. Powers stated that the regulation which was adopted was done by the Director of the Department of Environmental Management (DEM) with the advice of the RIMFC. Therefore regardless of what the RIMFC decided it would still be the discretion of the Director to make the final decision, the RIMFC is an advisory body. If the Director finds that the regulations which were filed were not consistent with the wishes of the Director at that time, then a change would be considered a technical change. D. Preble wanted to clarify what would be a technical change. D. Borden stated that only an unsubstantial change would be considered a technical change, in other words if they wanted to change the proposal to reflect a different allocation scheme which changed the pounds which go into each sub period, a public hearing would be needed.

G. Allen asked if the proposal voiced by R. Boragine earlier in the discussion would constitute a technical change. G. Powers stated that he did not think that would constitute a technical change. G. Allen felt that the whole issue should be brought back to public hearing because he now felt he would tend more towards the option presented by M. Gibson in which not all of the additional pounds end up in summer 1 but only a portion of it. He felt this would reach the true intent of the Council, to keep summer 1 open.

D. Preble made a motion to recommend to the Director that the Council would like to initiate a public hearing on all of the alternatives that the Council had considered before. K. Ketcham seconded the motion. S. Macinko asked that an amendment to the motion be added, the amendment being that the Director go back and look into whether it would be a technical change to alter the regulations to express the allocations as pounds rather than percentages.

S. Ouellette stated that he did not advocate changing the percentages to absolute numbers as suggested by S. Macinko because this will bring them further away from the historical percentages in the long run. He re-advocated the position he had stated earlier in the discussion.

S. Medeiros asked D. Borden to clarify the motion. D. Borden stated the motion that was on the table was to recommend to the Director that the Council would like to initiate a public hearing on all of the alternatives that the Council had considered before. This

would include the option from the October 28th memo which allocates a smaller percentage of the additional fish to summer 1. G. Allen asked about S. Macinko's amendment. D. Borden stated that this would be considered by expressing it as a one year poundage. **The Council voted to unanimously to approve the motion.**

R. Boragine wanted to discuss the fluke aggregate landing program. He stated that what the DFW had filed as the fluke aggregate landing rules had stripped the industry proposal of all of the caveats it had included to make the program work. One of the key issues being permitting dealers and the other issue was only allowing people with fluke exemption certificates to participate. D. Borden gave a brief synopsis of the issue R. Boragine was speaking about and went on to state that there was a provision in the regulation that was promulgated which only allowed vessels with exemption certificates to participate. D. Borden stated that there were still many concerns over these programs, especially from an enforcement perspective, and one of the mandates from the Director was to convene a workshop in order to go over a more generalized aggregate landing proposal with all interested parties including industry, DFW, and DEM Law Enforcement. There was a discussion about the requirements of the program which was in place which includes dealer reporting requirements which have always existed. D. Borden also made a comment that all of the existing fluke regulations still exist and fishermen need to adhere to those.

Old Business

Review calendar and set RIMFC meetings for the year: J. McNamee stated that he had updated the calendar with all of the holidays and meetings which could create conflict and developed a schedule of Council meetings for the year. He wanted to know if the Council agreed with the proposed schedule. **D. Borden asked for any questions or comments on the proposed dates. There were none. He went on to ask if there were any objections to the dates proposed. There were none. The schedule was adopted by the Council.**

Review proposed nominees for the Commercial Fishermen's Committee: M. Gibson stated that in the packet the statute which required the formation of the Commercial Fishermen's Committee (Committee) was included as well as a list of proposed candidates which may be appointed to the various user groups which had been identified by the Council at a previous meeting. The DFW has not solicited appointment from any of these people, they had just developed a list as requested by the Council. It was the decision of the Council as to whether they wanted the DFW to solicit appointment from these individuals or if they wanted us to send out a general solicitation letter to the mailing list. **K. Ketcham made a motion to solicit names by sending out a letter to the entire mailing list. G. Allen seconded the motion.** R. Boragine suggested soliciting from the groups who were on the licensing board with the addition of the RI Inshore Fishermen's Association and the RI Commercial Rod and Reel Fishermen's Association to nominate 1 or 2 people from their organizations. He stated that this would be a better way to make up this group than to have individuals who represent a specific gear type. This group should be concerned with the regulations of tomorrow, not the regulations of

today. S. Medeiros stated that the law as he reads it does not prohibit any person from being on the Committee, therefore to go along with what R. Boragine proposes prohibits people who do not belong to those particular organizations from participating in the Committee. G. Allen, after making sure that all of the user groups were represented by the organizations, made a suggestion to the Council that they alter their motion to reflect the suggestion made by R. Boragine. K. Ketcham stated that he agreed as long as the dealers who may or may not belong to an organization were solicited. R. Boragine stated that the dealers were cover by the RI Seafood Council. K. Ketcham stated that he understands this but he wants to include independent dealers who don't belong to any particular association. D. Borden asked whether the Council wanted to amend the motion as suggested by G. Allen. There were no comments, therefore D. Borden took a vote on the original motion. **The Council voted unanimously to approve the motion.**

Nominations to the enforcement AP: S. Medeiros had presented two people for inclusion on the Enforcement AP. The Council had been provided resumes for the two individuals. Specifically the individuals were John Sanford as the primary Diver representative and Henry Cugno as his alternate. S. Medeiros asked whether the DFW had received any interest from commercial representatives, as he knew they had sent out letters soliciting nominations. J. McNamee reported that he had not received any nominations at this point. **G. Allen made a motion to approve the two nominations presented by S. Medeiros. J. King seconded the motion. The Council voted to approve the motion unanimously.**

Added agenda items

Discussion about panel meetings: D. Borden stated that there were some winter flounder changes coming out of the ASMFC therefore the DFW wanted to request that the winter flounder AP meet to discuss these issues. G. Allen asked what the specific tasks were for the winter flounder AP. D. Borden stated they would be tasked with looking at the regional restrictions which are required and compare them to the state regulations to try and devise a way to make the two compatible. **There were no objections from the Council about convening this panel.**

D. Borden stated that he would advise convening a workshop or meeting to discuss aggregate landing programs. At this meeting the group, composed of all interested individuals, would discuss all of the pros and cons of these types of programs.

D. Borden asked about a meeting of the floating fish trap AP to discuss marking requirements. G. Allen stated that they had a meeting scheduled for January 19th, but he did not think this topic would be covered at the meeting. This topic would be discussed at a subsequent meeting and G. Allen had already enlisted the help of the Coast Guard to go over these requirements at this meeting.

D. Borden asked K. Ketcham if he was correct in stating that there had been two meetings of the Scup/Black Sea Bass AP and that no recommendations specific to the floating fish trap regulations had come out of these meetings. K. Ketcham stated that this

was correct. D. Borden when on to state that for the public hearing the DFW would notice the existing regulations regarding floating fish traps and scup while including some alternatives regarding the roll over date specified in the regulations and the set aside specified in the regulations.

J. McNamee stated that he had handed out a suggested regulation change to some lobster regulations. These had been approved by the Lobster AP but he wasn't sure if the Council had authorized sending these to public hearing, therefore he was presenting it this evening for that purpose. **S. Medeiros moved to include these items on the public hearing docket. G. Allen seconded the motion. The motion was unanimously approved by the Council.**

J. McNamee stated that the next meeting was February 2nd at 6:00 at the Corless Auditorium, URI Bay Campus. **The chairman made a motion to adjourn the meeting. There were no objections.**

Jason E. McNamee, Recording Secretary