

RHODE ISLAND MARINE FISHERIES COUNCIL
Minutes of Monthly Meeting
December 8, 2003
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: N. Lazar, M. Gibson, J. McNamee, D. Erkan

DEM Enforcement: D. Lees

Legal Counsel: G. Powers, G. McAvoy

Public: approximately 30 people attended

D. Borden introduced himself as the chairman of the Rhode Island Marine Fisheries Council (RIMFC or Council) and called the meeting to order. He asked for any agenda changes. G. Allen stated that he had an alternate for the fish trap advisory panel which he would like to introduce to the Council under old business. J. King stated that he had two advisory panel resumes for the shell fish advisory panel which he wished to present to the Council. K. Ketcham asked to have a fluke allocation discussion. J. McNamee stated that he had provided a calendar of the year 2004 so that the Council could plan out it's meetings for the next year if they wanted to. J. King also asked to discuss the Greenwich Bay shellfish management area opening. D. Borden asked him to report on his issues during the shellfish AP minutes agenda item. D. Borden added a couple of items including setting up of the RIMFC informal workshop and appointing new chairmen to the lobster, fluke, and tautog advisory panels. M. Gibson stated that there was a request to move agenda item 6a to the beginning of the agenda. D. Borden asked if there were any objections to doing all of the shellfish related items after the shellfish advisory panel report. There were no objections from the Council. D. Borden asked to have agenda additions in to either himself or M. Gibson at least one week in advance of the meeting.

D. Borden asked if there were any corrections to the two sets of minutes which had been included in the Council packet (9/8/03 and 10/20/03). There were none. D. Borden asked if there were any objections to approving the minutes as submitted. There were no objections. The minutes of 9/8/03 and 10/20/03 were approved.

Advisory Panel Reports

Shellfish Advisory Panel Report: J. King gave the report. He stated that the Council had referred the North Cape Oil Spill restoration project to the advisory panel. The Rhode

Island Shellfisherman's Association gave a final proposal to the advisory panel to open the High Banks management area up yearly rather than every two years which is the current schedule for that area. In exchange for this opening the R.I. Shellfisherman's Association proposes a new spawner sanctuary (as defined in the shellfish advisory panel minutes). The Rhode Island Division of Fish and Wildlife (DFW) will evaluate this proposal.

J. King then presented the two proposed new shellfish advisory panel members, R. Vaughn and D. Brayton.

J. King went on to state that an advisory panel meeting had been held on December 8th. This meeting was held to discuss the openings of the shellfish management areas. M. McGivney, chairman of the shellfish advisory panel discussed the meeting further. He stated that due to a large amount of shellfish currently on the market, the opening of the Greenwich Bay shellfish management area could potentially lead dealers to stop taking new shellfish. This situation constitutes a health hazard. The bad weather of the previous weeks and forecasted bad weather have changed this situation so the shellfish advisory panel decided to keep the Greenwich Bay management area opening on schedule but said that the situation would be monitored and if dealers stopped taking new shellfish, the shellfish advisory panel asked that an emergency action be filed to close the Greenwich Bay management area in order to avoid a public health hazard. D. Borden asked if there was anything else. **J. King made a motion to approve both D. Brayton (East Bay Shellfisherman) and R. Vaughn (Diver) as full members of the shellfish advisory panel. D. Preble seconded the motion. There was no further discussion. The motion carried unanimously.**

J. King brought up a second order of business that the advisory panel discussed. He stated that the advisory panel voted to oppose the proposal to close a 63 acre portion of Point Judith Pond and Potter's Cove in Prudence Island. They approved, however, a 100 by 100 foot remote set closure within the larger 63 acre proposed area. **J. King made a motion for the Council to accept both the rejection of the 63 acre closure and the approval of the smaller 100 by 100 foot section of Point Judith Pond in the Smelt Brook Cove area as well as a 100 by 100 foot section in Potter's Cove, Prudence Island and to then pass these recommendations on to the Director of the Department of Environmental Management (DEM). S. Medeiros seconded the motion.** There was further discussion on the exact location of the closure lines (see shellfish advisory panel minutes 10/28/03 for exact lines). S. Medeiros asked the DFW if they had a position on the motion. N. Lazar stated that the DFW did not have any issues with what was proposed by the shellfish advisory panel. **The motion carried unanimously.**

New Business

Discussion about the Commercial Fishermen's Committee: M. Gibson stated that a memo had been included in the Council packet regarding this issue. It was reminding the Council that statute states that this committee should be formed to address commercial

issues which affect various user groups. The memo goes on to lay out a potential user group make up for the committee and possible ways in which the Commercial Fishermen's Committee (Committee) could be used. M. Gibson stated that the memo had been drafted as a template for the Council to use but the ultimate decision had to be made by the Council. D Borden asked M. Gibson if the user groups in the memo would be just one individual or if it was supposed to include an alternate member also. M. Gibson stated that he had not considered alternates but it was up to the Council to decide. S. Medeiros stated that the user groups in the memo was fine but if the members decided at there first meeting that they should include other user groups or more members, this should be revisited. S. Parente from the Rhode Island Commercial Rod and Reeler's asked for further explanation on the Committee. M. Gibson responded by stating that he could not provide too much more in the way of what the Council could be used for because that was up to the Council, but he did offer what he thought the Committee could be useful for. He stated that the DFW often has to make possession limit adjustments during the course of a season and he felt this committee could be useful as a way to get industry input on these adjustments. R. Boragine stated that a coastal trawler group should also be included as one of the user groups. M. McGiveney stated that this idea had come out of the licensing restructuring discussions and that the Committee was supposed to be convened to discuss commercial licensing issues as well as potentially some of the issues mentioned by M. Gibson. D. Borden asked if there were any objections from the Council to the DFW bringing forward recommendations on individuals to fill the user group positions on this committee. There were no objections from the Council. R. Boragine stated that the Committee should be tasked with what it was originally developed for, long term licensing and marine fisheries regulations discussions. Other day to day fisheries management discussions should be kept separate. M. Gibson asked, based on R. Boragine's comments, what the DFW should do about its frequently criticized possession limit adjustment process. D. Borden stated that this function is not precluded from the functions of the Committee by law and therefore it would be up to the Council as to whether or not they would like this to be a part of the Committee's duties. G. Allen asked for the statute to be presented to the Council at the next meeting. S. Medeiros stated that he felt the Committee should be convened and their first task should be to iron out what there duties should be as well as who should be on the Committee. An audience member asked if this statute or any information on this issue was available to the public. D. Borden stated that he would address this as well as the larger issue of criticism about the Council notification process. He stated that a monthly notice would be sent out with all of the meetings for the coming month and it would also be published electronically.

Other Business

Discussion about tautog spawning areas and 2004 management plan: M. Gibson stated that a report was mailed out outlining an analysis of the issue of lines demarcating closed areas in order to protect tautog spawning areas. This was done at the request of G. Allen. In summary the report indicated that a line farther south than the line proposed by the tautog advisory panel would be more protective of spawning tautog based on adult and juvenile abundance data. M. Gibson suggested that the Council authorize sending the

proposals with the advisory panel line, the proposal of the bridges as a closure line, and the DFW's original proposal of a closure in all state waters to public hearing. D. Borden asked to have the options clarified. This was done by J. McNamee. The DFW proposal was for a closure in all state waters until July 1, the advisory panel preferred option was a closure line in the upper bay (see DFW report for specific location) meaning no tautog fishing north of this line until July 1, and the third option which also came from the advisory panel was a closure line demarcated by the Newport and Jamestown bridges (see DFW report for specific location) meaning no tautog fishing north of this line until July 1. J. McNamee also mentioned that a fourth option would be to remain at status quo. **G. Allen made a motion to send these four options to public hearing. J. King seconded the motion.** S. Medeiros asked for clarification on the lines. G. Allen asked if the bridges line was the new DFW position. M. Gibson stated that it was not, rather it was a non-preferred option which came out of the advisory panel. The DFW still recommended a closure in all state waters.

G. Carvahlo asked why, if the stock was doing well was a spawning closure line needed. M. Gibson answered by first letting the Council know that he had passed out a current stock update to the Council before the meeting and this report indicates that in fact G. Carvahlo is correct, the stock is rebuilding. However, due to the long lived nature and its susceptibility to exploitation, the DFW feels that being conservative with tautog management is still warranted. There is also indication that the length composition in the population is not back to historical levels.

B. Morris asked if the DFW had looked at the slot limit proposal. M. Gibson stated that there is currently no option to do this because of the approved management measures from the Atlantic States Marine Fisheries Commission (ASMFC). This option may be analyzed for the following year, however. There was no further discussion.

The Council approved the motion unanimously. G. Allen asked that the tautog stock report be provided at the public hearing. G. Allen went on to ask M. Gibson a question about the 1000 ton estimate given in the stock report. He wondered what the geographic area was for this estimate. M. Gibson stated that it was an estimate from all areas that tautog are caught by commercial and recreational fishermen, therefore it was predominately state waters. G. Allen stated that he feels an analysis should be done to estimate how many fish can be removed from this 1000 tons and still rebuild the stock. M. Gibson stated that this was the next step in the process coupled with developing an allocation plan between both commercial and recreational fishermen.

Council comments on 804 spending proposals: D. Borden stated that the Council had been given information on the 804 spending for the last fiscal year as well as proposals for what the DFW intends to do with the additional funds for the following year. M. Gibson elaborated on this stating that the DFW was seeking comments because it is a requirement. There were no comments from the Council. M. Marchetti stated that the lobstermen in the state would like to submit a couple of proposals for projects. Specifically they would like to develop a trap study and also would like to have the T.J. Wright re-rigged to perform a lobster trap and possibly a gillnet study. M. McGiveney

asked whether there was transplant funding in the 804 spending proposals. D. Borden stated that it was. D. Borden asked M. Marchetti to provide a cost estimate to M. Gibson. M. Marchetti stated that \$20,000 for each project would be more than adequate.

Fluke aggregate landing proposal: M. Gibson stated that he had provided a memo to the Council which he would like to speak to. He started by stating that the DFW is interested in developing an aggregate landings program but as stated in the memo, he felt that developing a program which would encompass all of the quota managed species would be desirable so that we don't end up with a myriad of piecemeal permit programs which are confusing to fishermen and are unenforceable. M. Gibson stated that a working group should be developed with parties from enforcement, industry, and DFW involved to develop a generic aggregate landing program which could be used for all quota managed species. K. Ketcham stated that there was already a prototype plan referring to the scup weekly landing program and wondered if the generic program could be developed by using this. M. Gibson stated the scup program could definitely be used as a strawman document to work from. K. Ketcham stated that he felt this should move forward quickly because there are safety issues involved.

S. Medeiros asked what the time table would be for developing this generic program. M. Gibson stated that it would be impossible to get this done by the beginning of January. He went on to state that the DFW could put something together but he was unsure about how the program would work which is why the DFW wanted to develop something through a public process with lots of input from different user groups that may be impacted in different ways.

D. Preble asked whether a winter program could be developed, using the scup program as a template and enacted through an emergency regulation to take effect by January 1. S. Medeiros said no one is jumping up to stop this from happening which leads him to believe people are generally in agreement with D. Preble's idea of a winter only weekly landing proposal for fluke. He went on to state that developing the winter program was a good idea and in the meantime, a generic aggregate landing proposal should be developed.

There was discussion about the timing aspect of new regulations taking effect. It was decided that the only way this could be done in time for January 1 would be through emergency regulations. **D. Preble made a motion to recommend an emergency rule to initiate a winter sub period only aggregate quota with a possession limit per vessel of 700 pounds/day or 3,000 pounds/week. The week will run from Sunday to Saturday. K. Ketcham seconded the motion.**

R. Boragine stated that the Council should follow the fluke proposal submitted by industry as the template for the aggregate landing program, not the scup or dogfish programs because of the problems inherent in those programs. The main problems stem from the dealer reporting aspect of these programs and he felt industry's fluke proposal deals with this problem.

D. Borden asked D. Preble to clarify his motion. **D. Preble stated his motion was from the industry proposal and he was only making a motion to recommend the changes to the winter I sub period, nothing else.**

J. O'Grady asked whether the rest of the proposal was going to be worked on through the working group for eventual consideration. D. Borden stated he did not hear any objection to this. G. Carvahlo stated that there is a number of changes in the industry fluke aggregate landing proposal, some of which he felt should not be enacted through an emergency regulation, but he did not object to establishing the aggregate landing program for the winter 1 period only. He wanted only the possession limit changes, not the other changes such as to which sub periods an underage would be distributed. D. Preble modified his motion based on G. Carvahlo's statement. **D. Preble made a motion to include the language from the proposal but to strike out the language dealing with the underage.** There was further discussion on the specific language. D. Preble decided to modify his motion again. **D. Preble made a motion that for the winter 1 sub period alone, that through emergency action the fluke possession limit be changed to 700 pounds per day or 3,000 pounds per week. S. Macinko added that a specific week period, from Sunday to Saturday, be added. D. Preble agreed to include this in his motion. The Council voted unanimously to approve the motion.**

D. Borden stated that the next issue to deal with was the longer term development of the aggregate landing program. S. Medeiros asked if this was an issue that could perhaps be dealt with by the new Committee discussed earlier in the meeting. M. Gibson stated that this might be an ideal situation in which to use this Committee. D. Borden stated that at the next meeting M. Gibson will put forward the nominees for the Committee and the Council, upon approving the nominees, will charge the Committee with discussing this issue. S. Macinko asked if this would slow the process down. M. Gibson stated that it may only because it may take a while to develop the Committee. There was further discussion on the timing of this issue in conjunction with the timing of the next public hearing. D. Borden suggested allowing the DFW to send out a notice to the entire mailing list regarding a meeting about aggregate landings, and then develop a report of what happened with the meeting to present to the Council as well as a list of nominees for the next Council meeting. M. Gibson stated that it would not be possible to get all of this done in time for the end of January which is when the notice would be going out for the next public hearing. D. Borden stated that this was not an easy subject to tackle, there are numerous issues which need to be dealt with. C. Brown stated that the people who worked on the industry proposal went through all of the issues cited by D. Borden and they felt they had addressed those concerns in their proposal. He wanted their proposal to get a shot at being used in its current form.

S. Macinko asked for clarification on what was and was not going to be used as a template to work off of when the group was convened to discuss the generalized aggregate landing proposal. He felt that the DFW had asked for a proposal dealing with fluke, which is what they received, and now they want to move forward with a generalized aggregate program which they do not have a proposal for. C. Brown stated that many of the attributes of the industry proposal, while specific to fluke would lend

themselves to other species as well.

R. Boragine stated that he did not think it was possible to develop a program which would encompass all species due to the different nuances of the different fisheries. P. Rhule echoed this sentiment. M. Gibson stated that he did not intend for this generalized program to be specific, with specific possession limits which would encompass all species, but rather to develop a consistent framework from species to species.

K. Ketcham wanted to point out that the proposal states some very specific reporting requirements for dealers and this facet of the proposal is very important to make the whole program work.

M. Leblanc asked whether this was going to be the way the process worked from now on because he felt they were skipping over the advisory panel level of the process by what they were proposing. D. Borden stated that they were not intending to skip the advisory panel process, once a proposal was hashed out between industry, enforcement, and DFW the proposal would then be brought to the various advisory panels. S. Parente stated that all industry people should have access to these proposals so that they had time to review them, perhaps even post them on the internet. D. Borden stated that the notice for the initial meeting would go out to the entire mailing list.

Old Business

Shellfish AP comments on proposal to close a section of Point Judith Pond: See shellfish advisory panel report section above.

Election of a new vice chairman for the Council: D. Borden declared the floor open for nominations. S. Medeiros nominated G. Allen. There were no other nominations. **D. Preble moved to close the nominations and thereby elect G. Allen as vice chairman. J. King seconded the motion.** There was no further discussion. **The Council voted unanimously to approve the motion.**

Added agenda items

Calendar: J. McNamee stated that he had provided a calendar in order to allow the Council to plan out their meeting schedule for the year. The Council stated they would like to stay with the first Monday format for their meetings. J. McNamee stated that he would add holidays to the calendar and develop the revised calendar to present to the Council in January. G. Allen asked to have the calendar updated and republished each month. D. Borden asked that if anybody had a scheduled meeting please report it to J. McNamee so that he could add it to the calendar.

Informal workshop: D. Borden stated that an informal workshop had been scheduled but had been postponed. He asked when the Council would like to reschedule it. They decided to do this beginning at 4:00 on January 5th, the night of the scheduled Council meeting. They will meet at the Corless Auditorium. D. Borden stated that anyone that

would like to attend could attend, but it was just an informal discussion of the Council to talk about procedural issues.

Appoint new chairmen to tautog, fluke, and lobster advisory panels: D. Borden opened the floor to nominations. **G. Allen nominated D. Preble to the fluke advisory panel. There were no other nominations and no objections to D. Preble's nomination. D. Preble was appointed as chairman of the fluke advisory panel. D. Borden nominated G. Allen to the tautog advisory panel. There were no other nominations and no objections to G. Allen's nomination. G. Allen was appointed as chairman of the tautog advisory panel. D. Preble nominated S. Macinko to the lobster advisory panel. S. Macinko declined the nomination. G. Allen nominated J. King to the lobster advisory panel. There were no other nominations and no objections to J. King's nomination. J. King was appointed as chairman of the lobster advisory panel.**

D. Borden stated that there were two Council vacancies. A. Tate was recommended for the scientific advisor Council position and was awaiting senate confirmation and the DFW would be soliciting nominations for R. Boragine's vacated position.

M. Marchetti asked if he could bring his two proposals mentioned earlier in the meeting to the lobster advisory panel. D. Borden asked if there were any objections from the Council to tasking the lobster advisory panel to meet and discuss the two proposals mentioned by M. Marchetti. There were no objections. D. Borden stated that the Council would revisit the advisory panel appointments once a full suite of members was appointed to the Council.

Summer flounder allocation discussion: K. Ketcham, who stated he had been absent at the meeting where the vote was taken on the fluke allocation issue, mentioned that there had been a second option given to the director by M. Gibson that instead of allocating all of the quota increase to summer 1, only allocated a portion of it but was still able to keep the summer period open. M. Gibson stated that K. Ketcham was correct, in a memo to the director he stated that the DFW still supported allocating all of the quota increase to summer 1 to decisively deal with the closure problem during that sub period, however, based on past effort the problem may be solved by only allocating between 250 – 260 thousand pounds into summer 1 and then prorate the remaining increased quota into the remaining sub periods. The director decided to not overrule the Council who had decided, after splitting the original vote to remain at status quo (historical landing allocations), to go with the entire increase going into the summer 1 sub period. D. Borden went on to state that the process had been finalized and that the regulations had been filed. He went on to say that in order to change those regulations the same process would have to be followed, meaning going back through the public hearing process. He stated that K. Ketcham had already requested to place this on the agenda for the January meeting and if he wished for the subject to be reentered into the public hearing process he could request that the Council vote on this at that time. The DFW staff had put together a packet of the entire process which was followed and all documentation of that process for the Council to review.

G. Allen asked where this hybrid allocation scenario had come from and why wasn't it presented. M. Gibson stated that it had been presented and that the DFW still supported its original proposal, but was asked to develop a proposal based on past catch rates. This is where the hybrid proposal came from.

S. Macinko asked whether the regulations were made available to the Council. J. McNamee stated that he had circulated a memo and that the regulations were always available online on the Secretary of States website. S. Macinko then asked whether the regulations read in poundage or percentages. K. Ketcham stated that the percentages changed and wanted to know if the Council had been aware that their actions would change the percentages. M. Gibson stated that it was noted that way to the Council.

An audience member stated that the allocation of fluke needed to be set and kept the same forever. He felt that every year this subject is revisited and has the potential to be changed and this should not be the case. M. Gibson stated that the way the public process works is that every year the management plans are reestablished, so the audience member was correct, fishermen have the option of changing the regulations each year and at the same time they have the option of keeping them the same.

C. Brown said that this process was unique because the director was harboring a grudge towards the commercial fishing industry and his decision was made as a punitive action. He stated that during the advisory panel process no industry user groups had suggested violating the traditional allocation scenario for fluke and this is what occurred with the director's decision. This decision doesn't impact only next year's fishery but the fishery for generations to come.

J. O'Grady stated that he is on the fluke advisory panel and the way the DFW option was presented was that this was a one time lump sum of fluke into the summer 1 sub period. No one at the advisory panel meeting wanted this option. He went on to say that there was not full representation at the meeting where the decision was made and this is why the allocations should be revisited. D. Borden asked staff to look at the documentation again to make sure that the changes were represented as percentage changes.

Advisory panel nominations: **G. Allen nominated S. Segerson as an alternate for B. Getchel on the floating fish trap advisory panel.** He had passed out resumes to the Council members. **D. Borden asked if there were any objections from the Council. There were no objections therefore the nomination was approved.** **S. Medeiros nominated J. Redman as an alternate for B. Wagner on the enforcement advisory panel.** He had passed out resumes to the Council members. **D. Borden asked if there were any objections from the Council. There were no objections therefore the nomination was approved.** S. Medeiros asked if any of the other enforcement advisory panel positions had been solicited. They were supposed to have been solicited by a Council member who no longer was on the Council, therefore D. Borden asked staff to solicit nominations for the remaining vacancies on the enforcement advisory panel.

There had also been a few letters included in the Council packet as an FYI which D. Borden mentioned to the Council. One of the letters was a letter from V. O'Shea of ASMFC which was a response to a letter drafted by the former director on behalf of the Council. The letter stated that the ASMFC was focusing on area 2 because this was where the stock declines had been seen. M. Gibson stated that this situation was still being discussed at the ASMFC level.

The chairman made a motion to adjourn the meeting. There were no objections.

Jason E. McNamee, Recording Secretary