

Fall 2002

Development of the "Commerical Fishing Licenses Act of 2002" - A New Approach

Margaret E. Petruny-Parker

University of Rhode Island

Kenneth F. Payne

Senate Policy Office, State of Rhode Island

Robert Ballou

Rhode Island Department of Environmental Management

Follow this and additional works at: http://docs.rwu.edu/rwu_LR

Recommended Citation

Petruny-Parker, Margaret E.; Payne, Kenneth F.; and Ballou, Robert (2002) "Development of the "Commerical Fishing Licenses Act of 2002" - A New Approach," *Roger Williams University Law Review*: Vol. 8: Iss. 1, Article 6.

Available at: http://docs.rwu.edu/rwu_LR/vol8/iss1/6

This Symposia is brought to you for free and open access by the Journals at DOCS@RWU. It has been accepted for inclusion in Roger Williams University Law Review by an authorized administrator of DOCS@RWU. For more information, please contact mwu@rwu.edu.

Development of the “Commercial Fishing Licenses Act of 2002” – A New Approach

Margaret E. Petruny-Parker*

Kenneth F. Payne**

Robert Ballou***

INTRODUCTION

This Article describes a unique, innovative approach used in Rhode Island in 2001-2002 to resolve long-standing, controversial issues connected with the restructuring of the state’s commercial marine fishing licensure system. The approach encompassed an effective partnership between the Rhode Island Department of Environmental Management (RIDEM),¹ the Intergovernmental Working Group on Fisheries Management (IWG),² the Coastal Institute at the University of Rhode Island,³ and affected stakehold-

* Senior Fellow, Coastal Institute. Fisheries Outreach Specialist, Rhode Island Sea Grant Program, University of Rhode Island. I would like to gratefully acknowledge and thank the Rhode Island Sea Grant Program for its support during the writing of this Article.

** Senior Policy Advisor, Senate Policy Office, State of Rhode Island.

*** Chief of Staff, Rhode Island Department of Environmental Management (RIDEM).

1. The lead regulatory agency was the RIDEM.

2. The Intergovernmental Working Group on Fisheries Management (IWG), originally named the Joint Advisory Working Group on Fisheries Management, was created in April 2001 to serve as an intermediary group between participants in the public Coastal Institute initiative and the State Legislature. The IWG was comprised of a total of nine members with three each representing the State Senate, the State House of Representatives, and the Governor’s Office. The primary function of the group was to review the input received during the public participation process and to draft the legislation. *See* Letters from Lincoln Almond, Governor, State of Rhode Island to William Irons, Senate Majority Leader, R.I. Gen. Assem., and John Harwood, House Speaker, R.I. Gen. Assem., (Apr. 11, 2001) (on file with author).

3. The Coastal Institute, with its administrative headquarters housed at the Coastal Institute Building at the University of Rhode Island’s Bay Campus, was

ers. The combination of an open, structured, participatory process based at the Coastal Institute with a constitutionally and statutorily established legislative process, enabled stakeholders to have direct involvement in the development of law, which has implications for problem solving in a representative democracy. Also, given the high degree of controversy involved in this fisheries management issue, the approach may be valuable as a general model for resolution of complex and difficult issues.⁴

Over the course of an eighteen-month period, and under a pause in the issuance of new licenses provided for by a moratorium, members of the fishing industry, managers, scientists, economists, environmentalists, and interested individuals engaged in a series of meetings and discussions aimed at reexamining the effects of the state's open access licensing policy and its existing multi-purpose license category. Central to the restructuring were the questions of how to better coordinate licensing with data collection needs and whether or not management options should be expanded to include controlled entry into the state's fishing sectors. The reform initiative focused on the development and establishment, through legislative enactment, of a license structure that would be adaptable to changing conditions and circumstances in the fisheries, provide better information to managers on fishing ef-

formally established in 1998 as a means of fostering collaborative work among coastal researchers and managers at the University, state government, and federal agencies. The concept of the Coastal Institute evolved from discussions among faculty, staff, and administrators of the University between 1987 and 1994. The Coastal Institute, through its fellowship network, draws upon the expertise of faculty and staff involved in marine research and service throughout the various university colleges, schools, and divisions, and works in partnership with RIDEM, Rhode Island Coastal Resources Management Council, United States Environmental Protection Agency, National Oceanic and Atmospheric Administration, the National Park Service, and the United States Geological Survey Biological Resources Division. The general mission of the Coastal Institute is to advance knowledge and develop solutions to environmental problems in coastal ecosystems. For more details, see the Coastal Institute web site at <http://www.ci.uri.edu>. See also Letter from Robert L. Carothers, President, University of Rhode Island, to Stephen T. Hulbert, Commissioner of the Office of Higher Education (Mar. 10, 1998) (regarding a proposal to establish a Coastal Institute at the University of Rhode Island) (on file with author).

4. See generally JOHN FORESTER, *PLANNING IN THE FACE OF POWER* (1989) (analyzing the theory and practice of participatory mechanisms for public decision-making and planning); WILLIAM N. ESKERIDGE ET AL., *CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY* (3d ed. 2001) (reviewing the theories of legislation from a legal perspective).

fort, and move past the short-term response of imposing moratoriums on new licenses.

This Article traces the development of the licensing reform legislation, focusing on the inclusive process that was employed. Part I begins by examining the need for change. Part II examines the process for developing the new licensure system. Part III addresses the major policy issues connected with the development of a new licensure system, and Part IV summarizes the legislation that was ultimately crafted. Part V analyzes the effectiveness of the initiative, including an evaluation of why the process was successful along with its shortcomings.

I. THE NEED FOR CHANGE IN RHODE ISLAND MARINE FISHERIES LICENSING

Rhode Island's marine fisheries, like many fisheries elsewhere, have been under stress. The available amount of commercially valuable species has been declining due to a variety of factors, including natural disease, habitat loss, pollution events, changes in predator/prey relationships, and overfishing.⁵ Federal, regional, and state management measures have increasingly restricted fishing activity in an effort to rebuild stocks.⁶ At the same time, rising capital investments, a race among fishermen to catch what is perceived to be a fair and economically sustaining share of the total allowable catch, and a traditional open access approach to

5. See APRIL K. VALLIERE & BRIAN R. MURPHY, R.I. DEP'T OF ENVTL. MGMT., REPORT ON THE STATUS OF MARINE FISHERIES STOCKS AND FISHERIES MANAGEMENT ISSUES IN RHODE ISLAND 8 (2001), available at http://www.ci.uri.edu/Projects/rifish/documents/RIDEM_FW_Rpt.pdf [hereinafter REPORT ON MARINE FISHERIES] (on file with author).

6. For summaries of fishery management plans for multi-species (groundfish) fishery, sea scallop fishery, monkfish fishery and the accompanying amendments developed by the New England Fisheries Management Council, see the council's web site at <http://www.nefmc.org> found under plans and reports (last visited Dec. 18, 2002). Other examples include the management plan for the American Lobster and the fact sheets for scup and summer flounder developed by the Atlantic States Marine Fisheries Commission, at <http://www.asmfmc.org/serv02.htm> (last visited Dec. 18, 2002). See also REPORT ON MARINE FISHERIES *supra*, note 5 (reporting on proposed modifications and alternatives for fisheries licensing); R.I. DEP'T OF ENVTL. MGMT., DIV. OF FISH & WILDLIFE, RULES AND REGULATIONS GOVERNING THE MANAGEMENT OF MARINE FISHERIES (2002), available at <http://www.state.ri.us/dem/pubs/regs/regs/fishwild/licensing.pdf> (promulgating rules and regulations for fisheries management) (on file with author).

licensing, have contributed to high levels of fishing effort.⁷ Within this climate of increasing competition for a limited amount of available resource, the State was faced with the dilemma of trying to maintain an open access policy to commercial fishing licensing while also providing for sustainable fisheries, both in terms of sustainable fish stocks and economic viability of the existing fishing industry.

Rhode Island has maintained a long tradition of allowing open access to the state's marine fisheries resources for its residents, and at the time of the most recent licensing reform initiative, it was one of only two coastal states nationwide to continue to do so.⁸ Other states, in response to stock declines, increasingly complex and restrictive regional and federal management measures, and high levels of fishing effort, had moved in the 1980s and 1990s to restructure their licensing frameworks to accommodate limited entry schemes.⁹ Although Rhode Island faced similar issues, there was a continued reluctance to adopt controlled entry.

This reluctance stemmed in part from Rhode Island's colonial history and resultant debates over various interpretations of historical and legal issues. Proponents of the open access approach often cited language in the Charter granted to Rhode Island by King Charles in 1663¹⁰ and language in Article 1, Section 17 of the State Constitution,¹¹ which they interpreted as guaranteeing rights for all residents to the state's fisheries resources.¹² Exami-

7. See REPORT ON MARINE FISHERIES, *supra* note 5, at 5.

8. See JACKIE ODELL, SHELLFISH LICENSE REQUIREMENTS IN SELECTED ATLANTIC STATES, at http://www.ci.uri.edu/Projects/rifish/Documents/Odell_study.pdf (Nov. 2001) (on file with author).

9. See REPORT ON MARINE FISHERIES, *supra* note 5, at 42-45.

10. See Rhode Island Charter of 1663, available at <http://www.sec.state.ri.us/rihist/richart.htm> (last visited Dec. 18, 2002).

11. See R.I. CONST. art. I, § 17, available at <http://www.sec.state.ri.us/rihist/riconst.htm> (last visited Dec. 18, 2002).

12. See generally GEORGE McDONALD, CONSTITUTIONAL ISSUES RELATING TO REGULATING THE RHODE ISLAND FISHERIES, at http://www.ci.uri.edu/projects/rifish/Online_resources.htm (last visited Jan. 9, 2003) (discussing the enactment of fisheries regulations that would not be contrary to fishery rights granted by the R.I. Constitution) (on file with author). See also COMMENTS ON THE RHODE ISLAND CHARTER OF 1663, at <http://www.ci.uri.edu/projects/rifish> under Phase I On-Line Resources (last visited Dec. 18, 2002) (arguing that the Charter establishes a right to open access fishing) (on file with author).

nation of state and federal case law on fisheries matters led others to disagree.¹³

During the better part of the last decade, as Rhode Island struggled to resolve the open access debate, two important factors came into effect. First, there was a decline in fisheries stocks that resulted in stress on the economic viability of invested fishermen.¹⁴ Second, regional and federal regulatory entities began developing increasingly restrictive management measures that broadly restricted the amount of resource available for harvesting while leaving the complex and contentious allocation decisions to the state.¹⁵

In response to these conditions, moratoriums on the issuance of new licenses were enacted as a means of controlling fishing effort. In the mid-1990s, leaders in the commercial fishing industry approached members of the Rhode Island General Assembly (General Assembly) and requested that a moratorium on new licenses be instituted, while the state worked on restructuring its licensing system to provide for controlled entry. RIDEM supported this request, and the first moratorium, issued in July 1995, remained in effect for three years.¹⁶ During that time, RIDEM, in conjunction with the Rhode Island Marine Fisheries Council (RIMFC), reviewed licensing practices. In 1997, licensing reform legislation

13. See generally DENNIS NIXON, THE LEGAL AND REGULATORY ENVIRONMENT OF FISHERIES IN RHODE ISLAND, at <http://www.ci.uri.edu/Projects/rifish/Documents/DNixon.pdf> (Feb. 8, 2001) (explaining that fisheries regulations cannot reflect purely local concerns) (on file with author).

14. During this time period the lobster resource, a commercially valuable species within the state, was in serious decline. Likewise, most of the state's commercially valuable finfish species came under restrictive federal and regional quota management measures in efforts to rebuild stocks. Biologists were reporting that the quahog resource, the mainstay of the state's inshore shellfishing sector, was reaching levels of over-harvesting. See MARK GIBSON, A REVIEW OF THE STATUS OF MARINE FISHERY RESOURCES IN R.I., Slide 17, at <http://www.ci.uri.edu/Projects/rifish/Meetings/Feb801/Mark%20Gibson/index.htm> (Feb. 8, 2001) (on file with author); see also MARGARET PETRUNY-PARKER, JAMES BOYD & PETER AUGUST, COMMERCIAL FISHING LICENSE REFORM INITIATIVE – PHASE II – A REPORT SUBMITTED TO THE INTERGOVERNMENTAL WORKING GROUP ON FISHERIES MANAGEMENT at 20-21, app. 4 at 36-42, at http://www.ci.uri.edu/projects/rifish/Documents/P2_Final_Rpt/P2_Final_Rpt.htm (Nov. 20, 2001) [hereinafter PHASE II REPORT] (discussing concerns regarding the potential over-harvesting of quahog resource and the decline in availability of commercially valuable lobster resource) (on file with author); REPORT ON MARINE FISHERIES, *supra* note 5, at 15-16, 23-24 (discussing declining availability of quahog and certain finfish species).

15. See PHASE II REPORT, *supra* note 14, at 37-38.

16. 1995 R.I. Pub. Laws 228.

was introduced to the General Assembly but was not enacted. This was followed by a request in 1998 to extend the licensing moratorium.¹⁷ This bill failed and the moratorium lapsed in July 1998, resulting in the issuance of 1,090 additional fishing licenses.¹⁸ In 2000, RIDEM appealed to the General Assembly seeking a two-year moratorium. In July 2000, the General Assembly responded by passing a second moratorium that would remain in effect for one year, and signaled that unless meaningful progress was made toward gaining community support for reform, there was little likelihood that additional extensions of the moratorium would be granted.¹⁹

While the moratoriums on the issuance of new licenses provided temporary control over fishing effort while deliberations on a new licensing structure took place, they also essentially froze the flow of entry and exit from the fisheries, and generated a surge in new license applications when the first moratorium lapsed.²⁰ Since licenses could only be transferred to immediate family members upon approval by the Director of RIDEM, new entrants did not have the means to get in, and current fishermen had difficulty getting out.²¹ In addition, the issuance of a blanket moratorium on new licenses²² cut off access to unrestricted fisheries as well as restricted fisheries.²³

17. An Act Relating to Fish and Wildlife, S. 2751, 1998 Gen. Assem., Jan. Sess. (R.I. 1998) (unenacted), at <http://www.rilin.state.ri.us/BillText98/S2751.htm> (last visited Dec. 18, 2002) (on file with author).

18. REPORT ON MARINE FISHERIES, *supra* note 5, at 7.

19. See 2000 R.I. Pub. Laws 102 (codified as amended at R.I. GEN. LAWS § 20-2-1.1 (2000)).

20. At the time of the license moratoriums issued in 1995 and 2000, the existing licensing system encompassed thirty-five different types of licenses. The category that caused the most concern was the multi-species license category that allowed the license holder to fish in any of the major fishing sectors: lobster, fin-fish, and shellfish. This license category, coupled with a data collection system that did not track landings with individual licenses, made it difficult for managers to assess true fishing effort in the various fishing sectors. It also did not allow managers to control entry into major fishing sectors. See REPORT ON MARINE FISHERIES, *supra* note 5, at 40-42.

21. See 2000 R.I. Pub. Laws 102.

22. *Id.*

23. Restricted fisheries are those fisheries with management measures in place that are aimed at curtailing fishing pressure and protecting the breeding stock. Such measures include quotas, minimum size limits, area closures, seasonal closures, limits on entry, regulation of gear, etc. Examples of heavily restricted fisheries include lobster, groundfish (summer flounder, cod, monkfish),

Ultimately, a general consensus emerged that the state should abandon the short-term response of instituting moratoriums to limit fishing effort, and instead develop a long-term licensing framework to allow for entry and exit of the fisheries in a manner responsive to changing conditions of the resource. However, existing resource conditions, increasingly restrictive federal and regional management measures, and the desire to incorporate the interests of both the current, invested participants and those wanting the opportunity to fish commercially made the task of developing a new licensing framework challenging.

II. PROCESS FOR DEVELOPING THE NEW LICENSING SYSTEM

In December 2000, Governor Lincoln Almond requested that the Coastal Institute at the University of Rhode Island serve as a forum to identify and discuss a range of options for reforming the commercial fishing licensing system in Rhode Island. As the Governor stated in his request to University of Rhode Island President, Robert Carothers:

Given the diverse nature of the commercial fishing industry, and the range, complexity, and sensitivity of the issues that need to be addressed . . . it is important to employ an investigatory and deliberative process that is fair, unbiased, and inclusive . . . it is important to enact a process that can achieve meaningful results in a relatively short timeframe, with broad political support.²⁴

In order to carry out the Governor's mandate, three entities – the Coastal Institute, RIDEM, and the IWG, came together in a collective effort to enact meaningful legislation. The Coastal Institute, as a neutral party, was responsible for structuring, facilitating, and documenting the process.²⁵ This was achieved through a series of plenary and subcommittee meetings in which participants proposed, discussed, and evaluated options for reform.²⁶ RIDEM, the regulatory agency charged with managing the state's fishery

and quahogs. Most commercial fisheries are restricted to some degree. Unrestricted fisheries are those fisheries without such management measures in place. An example of an unrestricted species would be mussels.

24. Letter from Lincoln Almond, Governor, State of Rhode Island to Robert L. Carothers, President, University of Rhode Island (Dec. 6, 2000) [hereinafter Almond Letter] (on file with author).

25. See *id.*

26. See PHASE II REPORT, *supra* note 14, at 2-3.

resources, provided technical information on the status of the resources and biological goals for stock recovery, promoted conservation objectives such as managing the state's marine fishery resources for sustainability, and advocated for a revised licensing system that would aid data collection and expand management options. The IWG served as the intermediary group between the public participation phase and the state legislature. The IWG's primary role was to draft licensing legislation based on input received during the Coastal Institute meetings, and shepherd it through the legislative process. Other major players included members of the fishing community representing vested interests, members of the academic community interested in interjecting their specific areas of expertise, environmentalists with a general interest in protecting the resource and the marine environment, and assorted individuals sensitive to the rights of those not currently involved in commercial fishing. The Governor's Office maintained a presence in the process, primarily to ensure the issues were resolved. Members of the General Assembly and their staffs closely monitored policy debates and eventually took the lead, through the IWG, in drafting and sponsoring legislation.

The legislation that was ultimately enacted had two distinct stages: Phase I and Phase II. The Coastal Institute, in partnership with RIDEM, proceeded with a series of eight open meetings. Phase I, as this series of meetings came to be identified, took place between January and April of 2001, and culminated in the issuance of a Coastal Institute report entitled *Options for Commercial Fishing Licensing in Rhode Island (Options Report)*.²⁷ Background information on status of the resource, characteristics of the existing licensing system, approaches used in other states, regional and federal regulatory systems, and legal considerations served as the basis for identifying and compiling various licensing options and noting the pros and cons of each.²⁸ Meeting interactions were

27. See Phase I meeting schedules and summaries, at http://www.ci.uri.edu/projects/rifish/P1_schedule.htm (last visited Dec. 18, 2002) (on file with author); see also COASTAL INSTITUTE, OPTIONS FOR COMMERCIAL FISHING LICENSING IN RHODE ISLAND, at http://www.ci.uri.edu/projects/rifish/Documents/options_Final_List.pdf (Apr. 15, 2001) [hereinafter OPTIONS REPORT] (documenting various options for restructuring commercial fishing licensing) (on file with author).

28. See OPTIONS REPORT, *supra* note 27.

supplemented with web page updates and postings on a listserv e-mail bulletin board.²⁹

In April 2001, the *Options Report* was submitted to the IWG. Utilizing the information in the report, the IWG drafted a bill that was reviewed and discussed at a public hearing of the General Assembly's Joint Committee on Energy and Environment.³⁰ Based upon information learned at the public hearings, an amended bill (Sub A) was drafted, moved to the State Senate and House for a vote and was passed in June 2001.³¹ Section 5 of the bill added chapter 3.1 to title 20 of the Rhode Island General Laws, and was entitled the Rhode Island Marine Fisheries Management Modernization Act of 2001 (Act of 2001).³²

The Act of 2001 extended the moratorium on the issuance of new licenses through June 30, 2002, and established specific tasks and deadlines for RIDEM to comply with in order to improve marine fisheries management in Rhode Island.³³ These requirements, to be carried out with the advice of the fishing community and the involvement of the Coastal Institute, included the following:

- By October 1, 2001, recommendations on goals and principles "to guide the development and implementation of a restructured marine fisheries management system."³⁴
- By January 1, 2002, recommendations on "options for commercial fishing licenses that address license eligibility, provide for new entrants into fisheries in the state, and establish an analytical basis and method to manage fisheries by effort as well as by quota for catch by species."³⁵

29. See Listserv Archives, at <http://pete.uri.edu/archives/rifish-l.html> (last visited Dec. 17, 2002) (on file with author).

30. An Act Relating to Fish and Wildlife, H. 6544, 2001 Gen. Assem., Jan. Sess. (R.I. 2001) (unenacted).

31. An Act Relating to Fish and Wildlife, H. 6544 sub A, 2001 Gen. Assem., Jan. Sess. (R.I. 2001) (codified as amended in scattered sections of R.I. GEN. LAWS § 20 (2001)).

32. Rhode Island Marine Fisheries Management Modernization Act of 2001, H. 6544 sub A, 2001 Gen. Assem., Jan. Sess. (R.I. 2001) (codified at R.I. GEN. LAWS § 20-3.1 (2001)).

33. R.I. GEN. LAWS § 20-2-1.1 (2001).

34. *Id.* § 20-3.1-7(1).

35. *Id.* § 20-3.1-7(2).

- Proposal for a licensing system for the marine recreational fishery, not to be effective before April 1, 2003, or without General Assembly approval.³⁶
- By January 1, 2002, development of separate proposed rules and recommended statutory changes for the purpose of “fostering the expansion and competitiveness of commercial aquaculture.”³⁷
- By January 1, 2002, “development of a plan to coordinate Rhode Island licensing requirements with federal licensing requirements and the requirements of other states to minimize conflicts and confusion in licensing and reporting.”³⁸

Following the enactment of the Act of 2001, the Coastal Institute, RIDEM and the IWG teamed up again to implement the legislative mandates set forth in the statute. This process became known as Phase II and took place between September and December of 2001. Following a work plan developed by the IWG, the Coastal Institute took the lead in organizing and facilitating discussions in a series of subcommittee meetings and plenary sessions.³⁹ Six subcommittees were established: License Restructuring/Data Collection and Management, Shellfish Management, Lobster Management, Finfish Management, Aquaculture Management, and Recreational Licensing.⁴⁰ In the initial organization of the subcommittees, effort was made to invite representatives of various license and gear categories, and levels of involvement to insure a balance of viewpoints. Members of the IWG chaired the subcommittee meetings, at which attendees from the general audience engaged in discussions with the subcommittee members. Monthly plenary sessions were used to develop subcommittee reports and to collectively discuss common issues.⁴¹

In December 2001, the Coastal Institute issued a second report to the IWG entitled *Commercial Fishing License Reform Initiative – Phase II*, summarizing the proceedings of the sub-

36. *Id.* § 20-3.1-7(3).

37. *Id.* § 20-3.1-7(4).

38. *Id.* § 20-3.1-7(5).

39. See Commercial Fishing License Reform Initiative Phase II Work Plan, at <http://www.ci.uri.edu/projects/rifish/Documents/Phase%20II.pdf> (Aug. 2001) (on file with author).

40. *Id.* at 2.

41. See Phase II Meeting Summaries, at <http://www.ci.uri.edu/projects/rifish> (last visited Dec. 18, 2002) (on file with author).

committee and plenary sessions held during the fall of 2001.⁴² The report compiled the more comprehensive and detailed licensing and management options identified and evaluated during the Phase II discussions, and outlined for the IWG the major policy issues that had surfaced.⁴³ At the same time, RIDEM, using input received during the Coastal Institute meetings and in accordance with the Act of 2001, submitted, under separate cover, its own set of licensing recommendations to the IWG.⁴⁴ The Phase II report and the report from RIDEM served as a basis for the drafting of the license restructuring bill.

Following the completion of the formal Phase II process in December, responsibility for producing legislation shifted to an IWG subcommittee comprised of RIDEM staff, House Environmental Policy staff, and Senate Policy Office staff.⁴⁵ Taking the lead role, the Senate Policy Office continued to meet one on one with groups of interested parties to receive additional input. A working outline of legislation was developed and presented to the IWG. From this outline, the Senate Policy Office crafted the actual legislation, working with the legislation's lead sponsors in the State Senate and State House of Representatives.⁴⁶ This version of the bill was introduced to the General Assembly in February 2002.⁴⁷

Once the bill became public, the IWG members convened two additional plenary sessions and four additional subcommittee meetings at the Coastal Institute to review and discuss suggested changes to the proposed legislation. Members of the fishing industry, through their fishermen associations, prepared input and drafted suggested changes to the bill. RIDEM staff also conducted a detailed review of the bill and the University of Rhode Island

42. PHASE II REPORT, *supra* note 14.

43. *Id.*

44. R.I. DEP'T OF ENVTL. MGMT., PROPOSAL FOR COMMERCIAL FISHING LICENSE STRUCTURE AND DATA COLLECTION, at http://www.ci.uri.edu/projects/rifish/Documents/DEM_Overview-JR_files/frame.htm (Dec. 2001) (PowerPoint presentation) (on file with author).

45. See MARGARET PETRUNY-PARKER, LEGISLATIVE BRIEFING, MANAGEMENT OF RHODE ISLAND'S MARINE FISHERIES, at http://www.ci.uri.edu/projects/rifish/Documents/Leg_Briefing_PParker.pdf (last visited Nov. 22, 2002) (on file with author).

46. Senators V. Susan Sosnowski and Patrick T. McDonald, and Representatives David A. Caprio and Eileen S. Naughton.

47. An Act Relating to Fish and Wildlife, S. 2771, 2002 Gen. Assem., Jan. Sess. (R.I. 2002); An Act Relating to Fish and Wildlife, H. 7825, 2002 Gen. Assem., Jan. Sess. (R.I. 2002).

arranged a meeting for academics with expertise in fisheries issues to give their input.⁴⁸

Armed with this array of recommendations, the Senate Policy Office undertook the task of revising the legislation. A working outline of a revised bill was reviewed by the IWG and then posted on the Coastal Institute listserv.⁴⁹ Finally, before developing an amended bill, the Senate Policy Office convened a meeting of leaders from the commercial fishermen associations and RIDEM to review the draft text. At this point, the Chairman of the Joint Committee on Environment and Energy,⁵⁰ recognizing the continued work that had been conducted to revise the legislation, ordered the production of a substitute bill.⁵¹ On May 30, 2002 this substitute bill was the subject of a hearing by the Joint Committee on Energy and Environment. The Committee recommended passage of the bill, and Senate and House leadership gave the bill the necessary support. On June 4, 2002, the General Assembly passed the license restructuring bill and Governor Almond signed it into law

48. The Mar. 26, 2002 meeting at the University of Rhode Island was chaired by Jon Sutinen, Professor of Resource Economics. Presentations were given by: Dennis Nixon, Associate Dean, College of Environment and Life Sciences; Jon Sutinen, Professor of Resource Economics; Jeremy Collie, Professor of Oceanography; John Poggie, Professor of Sociology/Anthropology; Timothy Hennessey, Professor of Political Science; and Eric Thunberg, Economist, Northeast Fisheries Center. See also NIXON, *supra* note 13; Fishery Conservation and Management (Magnuson-Stevens) Act of 1976 § 301, 16 U.S.C. § 1851 (2000); Jeremy Collie, Biological Guidelines for Fisheries Management (Mar. 20, 2002) (unpublished presentation) (on file with author); MADELINE HALL-ARBER ET AL., MIT SEAGRANT COLL. PROGRAM, NEW ENGLAND'S FISHING COMMUNITIES (2002), available at <http://web.mit.edu/seagrant/advisory/marfin/htmlvers/newbedford.html> (last visited Feb. 26, 2003); Christopher L. Dyer & John J. Poggie, *The Natural Resource Region and Marine Policy: A Case Study from the New England Groundfish Fishery*, 24 MARINE POL'Y 245 (2000) (proposing a Natural Resource Region as a policy tool for marine fisheries management); T. Hennessey & M. Healy, *Ludwig's Ratchet and the Collapse of New England Groundfish Stocks*, 28 COASTAL MGMT. 187 (2000) (analyzing the causes responsible for the collapse of the New England groundfish fishery); M. C. Healey & T. Hennessey, *The Paradox of Fairness: The Impact of Escalating Complexity on Fishery Management*, 22 MARINE POL'Y 109 (1998) (arguing that fishery management regimes that strive for fairness are overly complex).

49. Posting of Kenneth Payne, KPayne@rilin.state.ri.us, to rifish_l@pete.uri.edu (May 19, 2002) (on file with author); posting of Kenneth Payne, KPayne@rilin.state.ri.us, to rifish_l@pete.uri.edu (May 22, 2002) (on file with author).

50. Representative Peter Giniatt, Chairman, Joint Committee on Environment and Energy.

51. An Act Relating to Fish and Wildlife, S. 2771 sub A, 2002 Gen. Assem., Jan. Sess. (R.I. 2002).

on June 10, 2002 as Chapter 47 of the Public Laws of 2002.⁵² At that point, responsibility shifted to RIDEM to develop an implementation program prior to the lifting of the moratorium on new licenses designated for January 1, 2003.

Over the course of the entire Phase I/Phase II Coastal Institute process that extended from January 2001 through May 2002, participants spent over 130 hours in 50 meetings identifying, assessing, and debating changes to the licensing system.⁵³ In addition to the subcommittee and plenary sessions, countless hours were spent in discussion at fishermen association meetings, agency staff meetings, and office meetings at the State House, conferences at the University of Rhode Island, small group interactions, and computer on-line exchanges.

III. MAJOR ISSUES CONNECTED WITH THE DEVELOPMENT OF A NEW LICENSURE SYSTEM

Central to the discussion about license restructuring was the question of whether or not licensing should be used as a tool to control fishing effort. When fishing mortality rates exceed sustainable levels, should limits be placed on the number of participants in combination with other measures, or should managers rely solely on technical measures such as gear restrictions, quotas, closed fishing areas, and closed seasons? Should management measures be aimed at providing some degree of economic stability for full-time, invested fishermen, or allow unbridled competition among all those who wish to fish, essentially a survival-of-the-fittest approach within the limits of resource availability?⁵⁴

Embedded in this debate were the concepts of allocation, fairness, flexibility, data collection needs, new entry, market mechanisms, business security, and resource management. Participants focused on the challenge of developing a licensing framework and fisheries management approach that would enhance data collection, enable managers to respond quickly to changes in stock condi-

52. 2002 R.I. Pub. Laws 47; see Legislative Status Report for S. 2771 sub A, at <http://www.rilin.state.ril.us/billstatus> (last visited Dec. 18, 2002) (on file with author).

53. See Calendar and Notes of Meetings, at http://www.ci.uri.edu/projects/ri_fish/P2_schedule.htm (last visited Dec. 18, 2002) (on file with author).

54. See generally PHASE II REPORT, *supra* note 14, at 2-3 (summarizing the goals of the Phase II process).

tions, differentiate management approaches for different fishing sectors, provide tools to better deal with allocation issues associated with mandated quotas, and integrate economic and social considerations into management measures.⁵⁵ Discussions revolved around protecting three main interests: 1) those of the state's marine fishery resources; 2) those of invested fishermen who rely on commercial fishing for their livelihoods; and 3) those seeking the opportunity to fish on a commercial basis.

A. *Protecting Fishery Resources*

Of foremost concern to resource managers was the need to develop a license structure that would provide a framework for adaptive management measures responsive to changing conditions of the resource. With this overall objective in mind, the license restructuring discussion encompassed two major management needs: data collection and the expansion of management options to include limited entry as a means of controlling fishing effort.

These management needs came in direct conflict with the needs of the fishermen to remain flexible in their fishing practices. Under the licensing system in place at the time of the moratorium, fishermen with a multipurpose license could move among fishing sectors in response to changing conditions.⁵⁶ The drawbacks of that system were that managers did not have accurate information on either the number of active participants in particular fishing sectors, or the effort being exerted to land the harvest. Additionally, they lacked the management option of controlling the number of participants entering overfished fisheries, a type of input control.

With regards to specific fisheries, concerns surfaced regarding the potential impacts associated with a return to an open access system of licensing. In the shellfish sector, it was felt that open access licensing would lead to overfishing, resulting in severe impacts to both the resource and those who rely solely on shellfishing for their livelihoods.⁵⁷ In the lobster sector, both managers and lobstermen recognized the very vulnerable state of the lobster resource. Without added controls on entry into the fishery, manag-

55. *Id.*

56. See REPORT ON MARINE FISHERIES, *supra* note 5, at 42.

57. See PHASE II REPORT, *supra* note 14, at 20-26; see also *id.* app. 6 at 10-11 (noting dissatisfaction with open access fishery amongst meeting attendees).

ers warned that management measures would likely expand to include closed seasons, closed areas, and quotas. Some viewed these blanket measures as acceptable and fair, while others perceived serious consequences for invested lobstermen and for the overall economic stability of the fishery.⁵⁸

In the finfish sector, concerns centered on allocation issues connected with quota-managed species. Managers pointed to the difficulty in being able to extend harvests throughout the year given limiting quotas and the race to fish among competing user groups. Continued entry into overfished sectors would only exacerbate the conflicts, and diminish an individual's shares of the total allowable catch.⁵⁹

B. *Concerns of Invested Fishermen*

Established fishermen pointed to the need to protect the livelihoods of those who participate in various fishing sectors over the course of a year. Having invested in the gear necessary to fish in more than one sector, these fishermen used their multi-purpose licenses to move among sectors in response to changing market conditions and resource availability. The question became one of how to best preserve this adaptive strategy while also enabling managers to have a full range of management tools available to assess and control fishing effort for fish stock rebuilding and protection.⁶⁰

Transferability of licenses was another key topic raised. Licenses can take on value, depending on rules governing their transfer. Under a free market system, licenses, together with vessels and gear, become assets when fishermen choose to sell their businesses. A fisherman's ability to sell becomes dependent on a buyer's assurance of being able to go fishing. In overfished sectors, however, consolidation of licenses was raised by some to be a desirable goal.⁶¹ In situations when fishing effort needs to be decreased for stocks to recover, the restrictiveness of license transfer rules comes into question.⁶²

58. See *id.* at 27-36; see also *id.* app. 4 (summarizing meetings of the Lobster Management Subcommittee).

59. See *id.* at 37-42; see also *id.* app. 2 (summarizing meetings of the Finfish Management Subcommittee).

60. See OPTIONS REPORT, *supra* note 27, at 19-21.

61. See PHASE II REPORT, *supra* note 14, at 14.

62. See *id.* app. 4, at 17-22.

In restricted fisheries participants found it difficult to reconcile providing invested commercial fishermen with the opportunity to make a livelihood, while simultaneously providing an opportunity for "new blood" to enter the fishery. In the shellfishing sector, some fishermen argued in favor of continued open access, while others suggested a controlled access system be established, with entry and exit ratios to be determined by the regulators.⁶³ Active fishermen in the finfish sector were concerned that a return to open access licensing in restricted fisheries would worsen conflicts among various fishing sectors and further decrease an individual's share of the allowable catch, jeopardizing the financial security of full-time, year-round fishermen and the infrastructure in place to support that industry.⁶⁴ In the lobster sector, managers and lobstermen debated whether or not any new entry could be accommodated given the dire state of the resource.⁶⁵

C. *Concerns of Would-be Fishermen*

In anticipation of the removal of the moratorium on new licenses, participants also directed their discussions to the topic of providing for new entry. Maintaining some degree of flexibility for fishermen to move laterally between fishing sectors, and providing opportunities for "new blood" to move into the fishing industry as other fishermen retire, were identified as commonly held goals.⁶⁶ The difficulty resided in how to accommodate these needs in fisheries where the resource is in a serious state of decline or under restrictive quota measures, such that additional fishing effort would further diminish individual shares of the total allowable catch.⁶⁷ Some would-be fishermen pointed to the need to simply provide equal opportunity to access the resource. Those promoting this school of thought recommended relying on management measures that would affect everyone equally.⁶⁸

63. See PHASE II REPORT, *supra* note 14, at 20-26; see also *id.* app. 6 (summarizing meetings of Shellfish Management Subcommittee).

64. See *id.* at 37-42; see also *id.* app. 2 (summarizing meetings of Finfish Management Subcommittee).

65. See *id.* at 27-36; see also *id.* app. 4 (summarizing meetings of Lobster Management Subcommittee).

66. See *id.* at 8.

67. See generally *id.* (summarizing the license restructuring recommendations of various fishing sectors).

68. *Id.*

Regarding new entry, participants debated whether or not a ranking system should be established to determine entry when the number of people desiring to enter a fishery exceeds the number of participants called for in managing fishing effort. Discussions focused on the values that should guide the development of the ranking system.⁶⁹

D. *Other Concerns*

Whether or not a new licensing structure should address latent effort in the state's fisheries was also addressed. Some current license holders are not actively fishing but are simply holding onto their right to access fisheries. In fisheries where stringent management measures are being contemplated or are in place, many perceive this practice to be a problem. Their concern is that the benefits of stock recovery programs resulting from the sacrifices of active fishermen will dissipate if latent license holders become active participants. Participants in these discussions debated whether a new license structure should provide for the involuntary retirement of inactive licenses, and whether a mechanism such as a higher fee structure that would discourage holding onto licenses for speculative purposes should be incorporated.⁷⁰

At the time of the licensing discussions, the General Assembly retained the authority to make decisions regarding access to Rhode Island's fisheries. Some participants raised the question of whether the legislative decision-making process would allow for timely and flexible decisions to be made, should the state move in the direction of allowing for controlled access based on resource abundance levels. Discussions in this regard focused on development of an alternative process that shifted authority to RIDEM and encompassed standard administrative procedures.⁷¹

IV. OVERVIEW OF THE LEGISLATION

Chapter 47 of the Public Laws of 2002⁷² added chapter 2.1 to title 20 of the Rhode Island General Laws.⁷³ This chapter, entitled

69. See OPTIONS REPORT, *supra* note 27, at 19-21.

70. See PHASE II REPORT, *supra* note 14.

71. See *id.* app. 4, at 50-51.

72. 2002 R.I. Pub. Laws 47 (codified as amended in scattered sections of R.I. GEN. LAWS § 20).

73. R.I. GEN. LAWS § 20-2.1 (Supp. 2002).

Commercial Fishing Licenses, recognizes the issuance of licenses as a management tool in controlling fishing effort, and establishes an adaptive system of fisheries management responsive to changes in resource abundance. The state's regulatory agency, RIDEM, is charged with developing rules to govern the issuance and function of licenses, in consultation with the Rhode Island Marine Fisheries Council.⁷⁴ This is part of a larger responsibility to develop management plans, in concert with federal regulatory standards, for the state's marine species.

The major components of chapter 2.1 include broad fishery management principles to guide the development of management plans, a revised license structure, and an ongoing process for rule making.⁷⁵ The chapter's provisions end Rhode Island's moratorium on new licenses and establish a new licensing system beginning on January 1, 2003.⁷⁶ In accomplishing these general actions, the Act enables:

- Current license holders to maintain their licenses;⁷⁷
- Managers to control entry and differentiate levels of participation within fishing sectors;⁷⁸
- Rhode Island residents who want a license to fish commercially to obtain a basic commercial license;⁷⁹
- Existing fishermen to continue to fish with licenses similar in function to those they currently hold, but in accordance with management measures as may be adopted.⁸⁰

The Commercial Fishing Licenses chapter strengthens data collection by expanding license application requirements to include declarations of vessels and intended effort.⁸¹ It also exempts aquaculture crops from certain restrictions governing wild shellfish stocks,⁸² and provides stronger protection for the interests of

74. The R.I. Marine Fisheries Council advises the Director of RIDEM on the development of fishery management plans and regulations for the marine fishery resources of the state. It is composed of representatives from the commercial and recreational fishing communities, and persons with expertise in fisheries management and/or marine biology.

75. See R.I. GEN. LAWS § 20-2.1-9.

76. *Id.* § 20-2.1-2(2).

77. *Id.* § 20-2.1-2(4).

78. *Id.* § 20-2.1-2(6).

79. *Id.* § 20-2.1-5.

80. *Id.*

81. *Id.* § 20-2.1-5(2)(i).

82. *Id.* § 20-10-13.1.

Rhode Island fishermen in quota-managed fisheries.⁸³ Non-residents are allowed to harvest and land fish upon demonstration of historic effort or in some instances, if their home states provide reciprocity.⁸⁴

In cases of license denials, the legislation provides an explicit process for review and appeal.⁸⁵ It also provides for continued input from industry to RIDEM regarding management measures and licensing decisions by creating a permanent advisory committee under the RIMFC representative of the major fishing sectors.⁸⁶

V. EFFECTIVENESS OF THE INITIATIVE

The need to restructure the state's marine fisheries licensing program and develop a means for controlling the issuance of new licenses to help guard against overfishing emerged as critical issues in the mid-1990s. In response, RIDEM pursued a remedy utilizing the standard mechanism: direct appeal to the General Assembly via a RIDEM-led bill. This approach failed to produce results and RIDEM recognized that meaningful progress would have to be achieved by way of a new approach, giving rise to the Phase I/Phase II Coastal Institute process. Why did the initial process fail and why did the revised process succeed? The answer appears to be based in three main concepts: foundation building, elimination of bias, and political support.

A. *Foundation Building*

Initially, RIDEM's pursuit of legislative reform lacked a sufficiently broad foundation. By taking the lead, RIDEM believed that, as resource manager, it would capture the General Assembly's attention on what was ostensibly an exclusive resource management issue. However, given the profound socio-economic implications associated with license reform and the disparate interests at stake, the issue was hardly limited to resource management considerations. The socio-economic component meant that no reform was possible without the involvement of all stakeholders, including the various sectors of Rhode Island's commercial

83. *Id.* § 20-2.1-5(3).

84. *Id.* § 20-2.1-6.

85. *Id.* § 20-2.1-12.

86. *Id.* § 20-3-1.

fishing industry. Historically, little significant effort was directed toward involving industry in the process and in turn, industry leaders lacked the motivation to work with each other as well as with RIDEM, to investigate options and build support for reform.

As a result, for several years the sequence was the same: RIDEM would draft a bill, appear at the State House for a hearing, provide its recommendation, listen as a few stray voices from industry added their thoughts (both pro and con) to the discussion, and watch as the legislators tried to understand what was *really* at issue and what was *really* in the state's best interest. It was the wrong approach. It lacked foundation and it led inevitably to inaction.

In launching the Coastal Institute process, RIDEM, with full support of the Governor, spearheaded a revised, foundation-building approach.⁸⁷ It encompassed a well-structured, open forum that enabled all interests, including all segments of the commercial fishery, to come together in a comfortable and productive environment.

The many hours spent in discussion during the Phase I/Phase II process served as a foundation for the legislative process that followed. The reports and written records that were generated, along with the direct involvement of IWG members in the Coastal Institute meetings, provided a solid base of knowledge from which legislation could be crafted. There emerged among the participants and those reviewing the summary materials associated with the process a clearer understanding of the concerns and issues that needed to be addressed in a new license structure, and the balance of interests needed to gain broad community support. Most importantly, the substantive discussions helped identify and solidify the goal of developing a licensure framework and management approach responsive to changing conditions and circumstances in the state's fisheries, including changes in resource status as well as changes in federal and regional regulatory measures.

Modern technology in the form of a project web site and an e-mail listserv, aided communication and helped keep the process moving towards the completion of designated tasks. The web site, in essence, served as a comprehensive, accessible filing system for project documentation, keeping participants and those monitoring

87. See Almond Letter, *supra* note 24.

the initiative informed of meeting schedules, meeting discussions, and pertinent support documents. A commitment to documenting what was discussed during each step of the process enabled the discussions at the meetings to build upon each other thereby diminishing repetitiveness. Exchanges posted on the project listserv extended meeting discussions and contributed to identifying areas of conflict and mutual agreement.⁸⁸

Concern about the license categories in the original bill, S. 2771, led a number of commercial fishing groups, across the gamut of fishing sectors, to agree to work together to propose an alternative approach. Thus, on major issues as well as specific details, the communicative process was iterative. Through discussions, positions changed and agreements were reached. It can fairly be characterized that communication did produce action. The meetings within the commercial fishing community took place over six weeks, and the results were presented in the series of plenary and subcommittee meetings that the Coastal Institute arranged during the legislative refinement phase.⁸⁹ The Senate Policy Office participated in each of these meetings to assure that there was equal access to the legislative process and that the range of opinions from the fishing sectors would be included in revising the legislation. The Coastal Institute actively augmented the legislative process by arranging the meetings.

B. *Elimination of Bias*

The neutral nature of the Coastal Institute process, underscored by the role RIDEM assumed in the process, changed the dynamics of the license reform initiative considerably, and contributed significantly to its ultimate success. There was a sense of bias associated with the first attempts to reform Rhode Island's commercial fishing licensing system because these attempts emanated almost exclusively from RIDEM. The agency responsible for managing the resource and regulating the industry assumed the lead role, and this induced a sense of suspicion and distrust on the part of the industry, as well as wariness on the part of the General Assembly.

88. See <http://pete.uri.edu/archives/rifish-1.html> (last visited Dec. 18, 2002).

89. See http://www.ci.uri.edu/projects/rifish/P1_Schedule.htm (last visited Dec. 18, 2002).

In the Coastal Institute process, RIDEM assumed an entirely new role – the agency served as a partner in the process, joining others from industry and academia in a shoulder-to-shoulder setting. The Coastal Institute was handed the reins and tasked with coordinating the initiative, and the process for developing proposals was shifted from RIDEM's conference rooms to the Coastal Institute. RIDEM's switch from leader to partner proved to be a key factor in convincing industry that the process was open and fair, and thus worth the commitment of time and energy. RIDEM also endeavored to keep the regulatory mentality from dominating its involvement. Staff was encouraged to contribute to the discussions, but also advised to maintain an open posture regarding the importance of other considerations, such as socio-economic factors.⁹⁰ This attitude on the part of RIDEM further enhanced its status as an unbiased, open-minded contributor to the development of the license reform proposal.

The final phase of the licensing reform process – developing the bill for submission to the General Assembly – was also handled in a decidedly unbiased manner. Unlike prior efforts, whereby RIDEM took the lead in drafting bills, the last leg of the process was handled almost exclusively by the Senate Policy Office. RIDEM's willingness to cede the role of bill writing to the General Assembly helped immeasurably to preserve the integrity of the overall process.

Utilization of the Coastal Institute as a neutral forum in the Phase I/Phase II discussions added a dimension to the process of identifying and assessing license restructuring options not present in previous attempts aimed at license reform. As the neutral third-party responsible for structuring, facilitating, and summarizing meeting discussions, the Coastal Institute worked to build and maintain a credible process in which participants could develop confidence and stay engaged in the effort. While participants could not be promised their viewpoints would necessarily prevail, they were assured that their positions would be heard, recorded, and passed on to policy decision-makers. This helped foster working relationships that carried into the legislative process and eased some of the tensions and controversies inherent in previous discussions between the regulators and those being regulated.

90. See Almond Letter, *supra* note 24.

In addition to providing structure and protocol for interactive discussions, one of the strengths of the Coastal Institute process was that it was inclusive – accommodating the sharing of a wide range of ideas from individuals as well as from groups. Votes were not taken and there was no emphasis placed on reaching a consensus. Individual viewpoints were received and given the same consideration as those coming from groups. Participants, however, were prodded to clarify and develop their proposals in a comprehensive manner to move past vague statements and enable others to more fully understand and evaluate the impacts from various options.⁹¹ Differences and common ground became clearer as the process progressed.

During the legislative part of the process, the Coastal Institute continued to serve as a communication vehicle to interested parties on the status of the legislation, particularly after its sponsors introduced it. Since bill drafting is subject to legislative privilege, this stage of the process was not public. However, the Senate Senior Policy Advisor, speaking on behalf of the lead sponsors of the bill,⁹² publicly pledged that after the bill was introduced the process would be public and provide ample opportunities for public input.⁹³ A plenary session was used to present the bill and the Coastal Institute web site and listserv were actively used to distribute it and share thoughts and concerns about it.⁹⁴

The original 2002 bill reflected the implications of the Coastal Institute Phase II discussions and report. The legislation did not embrace the position of any one party, and was not the exclusive product of RIDEM. Indeed, the legislation endeavored to balance the concerns of the regulatory agency's interests with the concerns of other parties. The position of resource manager was not privileged during the development of legislation. This contributed to the fairness of the process, and the sense of fairness reinforced the willingness to participate constructively. However, the fishing

91. See Listserv Meeting Minutes, at <http://pete.uri.edu/archives/rifish-1.html> (last visited Dec. 18, 2002) (on file with author).

92. Senators V. Susan Sosnowski and Patrick T. MacDonald and Representatives David A. Caprio and Eileen S. Naughton.

93. See Meeting Summary for Dec. 17, 2001 plenary session, at http://www.ci.uri.edu/Projects/rifish/P2_schedule.htm (last visited Jan. 15, 2003) (on file with author).

94. See Listserv Meeting Minutes, at <http://pete.uri.edu/archives/rifish-1.html> (last visited Dec. 18, 2002) (on file with author).

community's reaction to the original 2002 bill, S. 2771, was that the legislation would be unfavorable to a number of interests. The sincerity and the fairness of the process were not broadly questioned, but the initial legislative product was.

C. *Political Support*

In a sense, the foundation-building and bias-reduction aspects of the Coastal Institute process led naturally to the development of political support for the process. But it was the establishment of the IWG that essentially locked in the support necessary to effectuate passage of the bill. The group was convened early in the process and guided every major step. By capturing the attention of the key decision-makers who ultimately would be called upon to coordinate, direct, and achieve passage of the legislation, and by keeping that attention focused throughout the various phases, the bill emerged in the 2002 legislative session as a *de facto* priority. With the IWG in the lead and with the positions and perspectives of government, industry, and academia having coalesced prior to hearing, the bill soared. It passed unanimously in Committee, then unanimously in both the Senate and House, and then was quickly transmitted to the Governor, who signed it into law.⁹⁵

At the launching of the Coastal Institute Phase II process, there was a commitment on the part of RIDEM, the Coastal Institute, and the IWG, major partners in the initiative, that the legislative mandates of the 2001 Act would be met. An IWG spokesperson stated at the opening plenary session in September 2001 that: 1) inaction was not a viable option so there would be legislation; 2) it would be necessary for the parties to come together, as the General Assembly was not an arena in which to resolve differences amongst interested parties; 3) legislation would be introduced early in the session and there would be ample time and opportunity for review and comment; and 4) the process would be structured so that all parties would be heard and have their positions considered.⁹⁶ These statements acted as the overall goals and guidelines for the process that followed.

95. See Legislative Status Report for S. 2771 sub A, at <http://www.rilin.state.ri.us/billstatus> (last visited Dec. 18, 2002) (on file with author).

96. Statement taken from personal notes of Kenneth Payne, IWG spokesperson during the Coastal Institute plenary session on Sept. 25, 2001 (on file with

Throughout the autumn of 2001, IWG members participated in Coastal Institute meetings, and from a leadership level, kept maximum feasible pressure on the process. The IWG also recognized that there were widely differing and deeply held views, and it exhibited a strong commitment to hearing all views fairly. The subcommittee meetings were critical to fulfilling this commitment. Given the number of parties, it was practically impossible for plenary meetings to be long enough to allow everyone time to speak fully. Furthermore, large meetings are not as conducive to free-ranging discussion as are small group meetings. It was vital that the Coastal Institute had the flexibility to facilitate both types of meetings.

D. *Shortcomings of the Process*

One of the drawbacks of the Phase I part of the process was that it took place in the winter-spring period, allowing little time for public scrutiny of legislative proposals.⁹⁷ There was almost no time for interested parties to comment on H. 6544 sub A, the Marine Fisheries Management Modernization Act, which emerged from the IWG in the spring of 2001. Other than extending the moratorium and establishing some special provisions for aquaculture, the legislation had no substantive impacts on commercial fishing; it simply established a process for addressing issues.⁹⁸ Despite this fact, the legislative part of the Phase I process was viewed by a number of parties as not being open and fair.

Another possible shortcoming of the Coastal Institute process was the under-representation of a key interest group: those not presently a part of the existing commercial fishing industry, but who want the opportunity to become part of the industry, now or in

author). See generally STUART HAMPSHIRE, *JUSTICE IS CONFLICT* (2000) (arguing that being heard is the critical ingredient of fairness).

97. The state legislature is only in session from January through June. Complex bills are usually introduced at the beginning of the session (January-February) to allow enough time for the bills to go to hearing(s) and revisions to be made. When bills are drafted and introduced late in the session, there is less time for public review. The Coastal Institute stayed involved during the legislative phase to help keep participants informed and engaged, therefore supplementing the established formal legislative hearing process. The Coastal Institute's role in the legislative development process was the unique aspect of this experience.

98. Rhode Island Marine Fisheries Management Modernization Act of 2001, H. 6544 sub A, 2001 Gen. Assem., Jan. Sess. (R.I. 2001) (codified at R.I. GEN. LAWS § 20-3.1 (2001)).

the future. Some who had been closed out by the moratorium on new licenses participated early on in the series of meetings, primarily in the open forum meetings of Phase I. But it was those already invested in the industry that took the time to stay engaged throughout, and to actively participate in the numerous subcommittee meetings. This may have been due in part to the minimum amount of statewide media coverage during the process. Those who were not members of fishermen associations may have been less informed. It could also have been a natural outcome that those already invested would take the time to participate and promote their interests.

The relatively short time frame of the Phase I/Phase II process affected to some degree, the participation and the comprehensiveness of the option evaluations. During Phase II, many meetings were scheduled over the course of just two months. Fishermen spending long days at sea had to commit to spending long evenings in meetings, while those fishing further offshore or for several days at sea had difficulty attending. Similarly, the RIDEM, already understaffed, had to devote additional staff time to participating in the process. The success of the meetings was often dependent on the preparedness of the participants, and the fast-paced process was at times difficult to keep up with. Had the process begun in July 2000 or taken place during the 1995-1998 moratorium period, the time between meetings could have been lengthened to allow for better preparation, and more time could have been delegated to fully investigating the biological, economic, and social impacts associated with all of the options presented.

E. *Summary of the Process*

The partnership among RIDEM, the Coastal Institute, and state government that developed during the commercial fishing license reform initiative has the potential of serving as a model for addressing other difficult policy issues. Accurate information, structured discussions, a neutral setting, ongoing communication, and a direct tie to policy decision-makers were effective elements that members of the partnership brought together in developing and implementing a strategy for resolution of deeply rooted licensing issues. Appropriately, the lead entity in the overall licensing reform initiative shifted at various times: the Coastal Institute led in the development of policy options; the IWG led during the legis-

lative phase when public input was transformed into draft legislation; RIDEM took the lead after passage of the legislation, and was charged with the responsibility of implementing the provisions of the legislation. Throughout these shifts in leadership, there remained a sense that this was a collective effort, requiring ongoing communication and a network of support.

VI. CONCLUSION

The process used in Rhode Island to restructure its commercial fishing licensure system can be viewed, in a general sense, as a successful model for policy development and legislative enactment. The process was successful in producing substantive change and serves also as an example of effective use of the legislative process. In addition, the Coastal Institute, IWG, and RIDEM, as partners, remained committed to a fair, open, and inclusive approach throughout the initiative, including the legislation refinement phase. In doing so, a high value was placed on a democratic, participatory approach to resource management.

From a substantive perspective, key entities worked together to develop a new licensing structure that essentially moved state fisheries management practices from an open access system with periodic moratoriums, to a system of adaptive management encompassing a full range of management options. The process produced a new licensure framework that aids data collection efforts and specifically provides managers with the option of controlling entry and levels of participation dependent upon changing conditions of the resource. It also instituted an ongoing process that requires the development of fishery management measures in a comprehensive manner, in concert with federal regulatory guidelines and with the continued involvement of the fishing community and others.

The substantive changes were closely tied to an effective use of the legislative process. Extension of the public participation component of the process beyond typical hearing procedures, use of the IWG as an intermediary group between stakeholders and legislators, and a working partnership among governmental, regulatory agency, and university staff were key contributing factors in the effective use of the legislative process.

Extension of public participation beyond typical hearing procedures allowed time for participants to present their ideas and for

all reasonable options to be considered. Stakeholders were able to genuinely assist in the development of the final recommendations to the state legislature, and this inclusive process built general support for the resource management approach outlined in the final bill.

In terms of fairness to participants, timing difficulties made it impossible to allow adequate public input on the legislation that was produced at the end of Phase I.⁹⁹ These difficulties were corrected during Phase II. Regarding the license restructuring bill,¹⁰⁰ all viewpoints were considered until it was time for the bill's final revisions, and efforts were made to continually communicate to participants the status of the bill as it developed, by channels established as part of the Coastal Institute process.¹⁰¹ The commercial fishing license restructuring bill, S. 2771 sub A, enacted as Chapter 47 of the Public Laws of 2002 and submitted to the assigned legislative committee in May 2002, reflected a centrist position acceptable to a majority of participants.

At the beginning of the initiative, Rhode Island lagged behind other states in achieving an overall licensing restructure that was responsive to changing circumstances in its fisheries and conducive to adaptive management practices. In the end, it accomplished this task in a relatively short timeframe and seemingly less acrimonious manner. The Rhode Island model demonstrates that a neutral university setting can be effectively used in conjunction with a legislative process to produce substantial institutional changes.

99. *Id.*

100. An Act Relating to Fish and Wildlife, S. 2771 sub A, 2002 Gen. Assem., Jan. Sess. (R.I. 2002) (codified as amended at scattered sections of R.I. GEN. LAWS § 20 (Supp. 2002)).

101. See Listserv Meeting Minutes, at <http://pete.uri.edu/archives/rifish-1.html> (last visited Dec. 18, 2002) (on file with author).