

**RHODE ISLAND MARINE FISHERIES COUNCIL**  
**Minutes of Shellfish Advisory Panel**  
**March 13, 2007 4:30 PM**  
**Ft. Wetherill Marine Laboratory**  
**Jamestown, RI**

SAP Members Present: J. King (Chair), R. Bercaw, W. Cote, J. Gardner, J. Grant, O. Kelly, P. Kennedy, M. McGiveney (vice-chair), G. Schey, R. Vaughn

SAP Members Absent: J. Boland (3+), D. Brayton, S. DePetrillo, J. Migliore, J. Mullen (alternate), L. Ricciarelli

Scientific Advisor: D. Leavitt

DEM Marine Fisheries: D. Erkan, N. Scarduzio

DEM Enforcement: F. Ethier

CRMC: D. Alves

Public Present: E. Baker, J. Ilements, D. Eagan, L. Fraterelli, T. Gardner, R. Major, R. Rheault, W. Silkes, J. Vivari (alt), additional individual (unreadable signature)

1) Development of Whelk Regulations

A. Erkan identified the need to consider DEM Enforcement's recommendations and that bringing the draft regulations forward to the MFC would require at least one additional SAP meeting. Discussion on draft whelk regulations ensued. An issue raised by Industry was whether a regulation could be developed that could have a certain percentage of whelk be undersized and enforceable. Breakage of shells is common. Ethier stated that Enforcement's preference would be to set a zero-tolerance minimum size. Possession limits should be based upon volume (bushels). Industry stated 50-60 ponds per bushel. Enforceability of the number of pots fished is an issue. Trap tags while effective, are labor-intensive. Industry was asked to investigate other state programs. Enforcement cannot enforce a pot limit without trap tags. Enforcement noted that a "W" marking on the buoy is not helpful unless all types of pots have a designation. Need for definition of foam-core buoy. Escape vent requirements are diverse to allow various trap designs. Enforcement suggested placing an escape vent requirement on all pots fished. Tending requirements will be developed between Enforcement and DFW. Placement of a waterproof tag on the pot and/or buoy with a requirement to contact Enforcement was recommended by DFW to deal with this issue. Bait bags (extender) needs clarification. Recreational harvest possession and methods needs to be addressed. Recommendation was for 5 pots. DFW noted that the revised draft would be emailed after incorporating Enforcement and SAP revisions.

## 2) Aquaculture Leases

- A. Gardner Aquaculture lease, Winnapaug Pond, Westerly. Jeff Gardner (Aquaculture Lease Applicant) and David Alves (CRMC) were present to provide information and answer questions about the project. Gardner noted that he has had an aquaculture lease in Winnapaug Pond for 14 years. Over time he has gradually increased the lease size to 5 acres. Oysters, quahaugs and scallops are raised in cages, on the bottom. This proposal is a request for an additional 3 acres. Gardner position is that public access to the pond is limited because of the bridge over the breachway. Mark Gibson wrote a letter to CRMC on the Gardner lease application. Erkan clarified DFW's position on new aquaculture leases and expansions (Particularly in the salt ponds). DFW is advocating for the competing user groups (both recreational and commercial), boating, fishing, shellfishing, wild fisheries and shellfish stocks. The shallow water, sheltered conditions, and increased seasonal use associated with the salt ponds will likely result in future conflicts without an upper threshold on aquaculture leases. DFW has specifically asked the CRMC to identify an upper-threshold for aquaculture lease expansion in the salt ponds. The reviewing of leases on an individual basis does not provide a mechanism or process to address the cumulative impacts of multiple leases. Additionally, the precedent of approving new leases or expansions will likely make it difficult to restrict future proposals. The public trust issue is considered to be significant. Gardner stated that he believes that his application should be reviewed only on its own merits. Gardner also stated that Westerly Town Officials had no objections at the CRMC Preliminary Determination meeting. Kelly raised the issue of lease maximum size limits. While a 3-acre per lease guideline exists in Narragansett Bay (***north of a line across the bay at the latitude of 41° 35', CRMC RICRMP 300.11.G.1.a***), no such guideline exists for the salt ponds. Alves stated that the CRMC permit process is the only mechanism available to address the identified issues. Kelly stated that he would like an aquaculture plan to be in place before reviewing and permitting any more lease applications. Alves stated that in response to the recently identified issues, that the CRMC will reconvene the Aquaculture working group. Alves outlined the CRMC review process. Recommendations by the SAP, MFC, and DEM Director would be heard at a public hearing before the CRMC. McGiveney voiced concerns over the sizes of leases and the "puzzle pieces" method for establishing leases. General discussion about how a plan should already be in place in order to make decisions. Schey asked about an upper threshold for leases as DFW suggested, how quickly they would be identified, and voiced concerns for competing users in shallow-water areas in the bay and salt ponds. Chairman King informed the SAP that aquaculture lease issue has been under consideration by the MFC since August 2006 when the CRMC was asked to detail the future of aquaculture in RI waters and develop a plan. Alves stated that the working group meetings would begin soon. Gardner noted the water quality benefits and contribution to wild stocks by aquaculture operations. Rheault's position was that the SAP's time could be better served by evaluating the lease applications on their own merits and noting the concerns about the need for a plan. Rheault also believes that the

MFC's recommendations are limited to conflicts with the wild-harvest fishery or the ecology. Because of concerns raised on both sides of the issue, Erkan suggested that a conditional approval was an alternative to outright denial. Bercaw while supportive of Gardner, was concerned about lease sizes. Alves prefers that the competing user groups be required to map out areas and doesn't support setting an upper limit for aquaculture (like zoning). Alves was concerned that there would be a gold-rush effect. **Schey made a motion to "Not approve any new leases or expansions in the salt ponds until a master plan is in place and an upper threshold is identified." Seconded by Kelly.** Silkes, an aquaculture leaseholder suggested that the language of the motion needs to be clarified. **Schey then withdrew the motion. Kelly then made a motion to put a freeze on all aquaculture (no seconds).** Leavitt didn't consider the 8 acre total lease acreage biologically significant noted the socio-economic issues may be significant. Leavitt concurred there is a need for a plan to be developed but suggested that the absence of a plan should not penalize Gardner (or others). Leavitt recommended that SAP advise the MFC to participate in aquaculture master plan development. Vivari agreed with the concern for precedent and suggested giving each new lease a certain amount of acreage, with a set time limit, conditional on implementation of a plan. Alves outlined lease revocation protocol. As Gardner had no official alternate present, he elected to vote on his lease proposal. **King then asked for a vote to recommend approval (as proposed) to the MFC, on the 3-acre new Gardner Lease Site for Winnapaug Pond. (5 Approve – Cote, Bercaw, Vaughn, Gardner, Schey / 1 Deny – Kelly / 2 Abstentions – McGiveney & Grant).**

- B. McGiveney then made a motion for the SAP to recommend that the MFC support development of a master plan for aquaculture for the Salt Ponds and the rest of Rhode Island through the CRMC proposed aquaculture working group. Seconded by Kelly. Gardner added that as many user groups as possible should be incorporated in the working group. The motion passed unanimously.**
- C. Robert Krause Aquaculture Lease, Ninigret Pond, Charlestown. The proposal was outlined by Alves, and the applicant represented by Rheault. Krause has two existing leases (one adjacent to Sauks Island, Fort Neck Cove north of the proposed site). New two-acre lease will be bottom planting of oysters. Harvesting and working on the site will only occur from May 1 through January 31. Applicant also willing to abandon existing ¼-acre lease (in eelgrass) in exchange for this lease. Kelly raised the question of shellfish density. Erkan stated that the likelihood of finding steamers, quahaugs, and razor clams within the lease footprint is high, but the exact density was yet to be determined at the time of the SAP meeting. Kelly noted that Ninigret Pond receives heavy shellfishing pressure and he has fished throughout Ninigret Pond. Gardner noted that DFW "closed 1/3 of the pond" to shellfishing (Ninigret Spawner Sanctuary-no quahaug or soft-shell clam harvest). Alves stated that the Assistant Harbormaster (a commercial fisherman), offered no objection to the project. Alves stated that people have assured him that there are no commercial quantities of shellfish on the site. Erkan again clarified DFW's position on new aquaculture leases and expansions (Particularly in the salt ponds). DWF is advocating for the competing user groups

(both recreational and commercial), boating, fishing, shellfishing, wild fisheries and shellfish stocks. The shallow water, sheltered conditions, and increased seasonal use associated with the salt ponds will likely result in future conflicts without an upper threshold on aquaculture leases. DFW has specifically asked the CRMC to identify an upper-threshold for aquaculture lease expansion in the salt ponds. The reviewing of leases on an individual basis does not provide a mechanism or process to address the cumulative impacts of multiple leases. Additionally, the precedent of approving new leases or expansions will likely make it difficult to restrict future proposals. The public trust issue is considered to be significant. Rheault stated that the proposal is for bottom-planting and the only displaced uses will be recreational and commercial shellfishing. Alves stated that the Town of Charlestown preferred the location. Gardner made a motion to approve the lease with the conditions that the lease not be used from February 1<sup>st</sup> to May 1<sup>st</sup> to protect winter flounder and that the ¼-acre lease adjacent to Sauks Island be abandoned. Kelly added that he wanted any approval to be contingent on DFW conducting a shellfish survey of the site and finding no commercial or recreational shellfish density (fewer than 3 or more clams per meter<sup>2</sup>). Seconded by Bercaw. **(5 Approve – Cote, Bercaw, Gardner, McGiveney, Schey / 2 Deny – Kelly & Vaughn / 1 Abstention – Grant). Erkan will conduct survey prior to the MFC meeting.**

Adjourn: 7:00 PM.

Minutes prepared by D. Erkan