

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, April 09, 2013 at 6:00 p.m. in Conference Room A, Administration Building, One Capitol Hill, Providence, RI.

Members Present

Anne Maxwell Livingston, Chair
Paul Lemont, Vice Chair
David Abedon
Ronald Gagnon, RIDEM
Donald Gomez
Tony Affigne
Guillaume deRamel
Raymond Coia

Staff Present

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
David Beutel, Aquaculture Coordinator
James Boyd, Coastal Policy Analyst

Brian A. Goldman, Esq.

1. CALL TO ORDER

Chair Livingston called the meeting to order at 6:00 p.m.

2. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING

Vice Chair Lemont motioned, seconded by Mr. Gomez, approval of the minutes from the March 26, 2013 Semimonthly meeting. Motion carried on unanimous voice vote.

3. SUBCOMMITTEE REPORTS

At the end of the meeting, Mr. Goldman updated the Council on the Deepwater Wind application explaining that the OSAMP Subcommittee found that the four residents from Block Island did not meet the legal standards to intervene but that the subcommittee would give them adequate opportunity to comment on the project at the appropriate time. Mr. Goldman explained that the issue of the fee is resolved as Deepwater Wind agreed to pay the fee. Mr. Goldman stated that the fee was required to be submitted before any further meetings will be scheduled. Mr. Gagnon informed the Council that RIDEM would be holding a public hearing on April 24th at the Narragansett Town Hall and possibly one on Block Island for the water quality application and US ACOE will also be present and will explain the process.

4. STAFF REPORTS

Mr. Fugate reported to the Council on the following issues:

- A Historic meeting being held over the last two days ending tomorrow (April 8, 9, and 10) involving all of the New England Tribes and tribes from as far south as Virginia, the Bureau of Ocean Energy Management, underwater archaeologists and geoscience staff from the University of Rhode Island and the Coastal Resources Management Council. The purpose of the meeting is to look at underwater paleolandscapes with instruction on how to determine if something in present and how to document if found. Mr. Fugate stated that URI had been given a \$2 million contract for this project.
- A NE Regional Planning body meeting will be held in Narragansett on Thursday and Friday (April 10 and 11). Mr. Fugate stated that the Governor of NE states appointed two individuals to planning body, with Rhode Island's representatives being DEM Director Janet Coit and CRMC Executive Director Grover Fugate. The NE states elected Mr. Fugate as State's Lead.

- A reminder to all Council Members regarding the Workshop on Thursday April 18th which is an all day retreat at Alton Jones Conference Center starting at 8:30 a.m. and ending by 4:00 p.m.
- A Recreational boating meeting will be held on April 23rd at 2pm at Save The Bay. The NE Regional Ocean Council will make a presentation on mapping activities that have been done for recreational boating activities and economic study of all the recreational boating activities in New England and New York. The study produced heat maps which show density of boating tracks, and once finalized, there will be a presentation to the Council.
- The official kick off of the Beach SAMP was held this week and was well attended by approximately 150 people there for the meeting including Mr. Gomez, Chair Livingston and Mr. Gagnon. Mr. Fugate stated that the meeting went very well and that the presentation could be seen on the Shoreline Change SAMP Website sometime this week. Dave Valley from National weather service gave presentation on Hurricanes and their current patterns.

5. APPLICATIONS WHICH HAVE BEEN OUT TO 30 DAY NOTICE AND ARE BEFORE THE FULL COUNCIL FOR DECISION:

2012-10-066 EAST BEACH FARMS, LLC – Aquaculture commercial viability permit for rack and cage oyster aquaculture to be located in Quonochontaug Pond, Charlestown, RI.

Dave Beutel gave brief overview of application to the Council stating that the applicant was seeking a commercial viability permit limited to 1000 sf project in the NE section of Quonnie pond to grow oysters through a rack and bag cage method. Mr. Fugate and Mr. Beutel explained what a commercial viability lease is and its purpose. Mr. Beutel stated that the applicant was seeking the first authorization for this viability permit which would give him approval for an 18 month project. Chair Livingston, Vice Chair Lemont, and Mr. Affigne looked for clarification of objection letters from US FW service and Department of Environmental Management. It was determined that the letters of objection were primarily for the Brawley application which was next item on the Agenda. Mr. Beutel stated that the rack and bag method was a low profile method good for shallow waters. Mr. Beutel explained that the objections received stating that some also pertained to another aquaculture commercial viability permit in the same water body and that the major objections for this application were mainly from US Fish and Wildlife Service and the Department of Environmental Management. Mr. Beutel stated that the Charlestown Coastal Ponds Management Commission and the Charlestown Town Council did not object to the application. Mr. Beutel stated that Save the Bay's objection was because there is a prohibition of oyster harvesting in the Quonochontaug Pond but Mr. Beutel explained that the prohibition was for harvesting of wild product and that aquacultured oysters were the product of the aquaculturist. Mr. Beutel explained that DEM was objecting to the project because they believe it will negatively impact the 14-acre oyster restoration effort in the NE corner of Quonnie Pond and would like to see the aquaculture applications deferred until after the Shellfish Management Plan was finalized. Mr. Beutel explained that a Shellfish Management Plan was being developed as an ongoing cooperation between CRMC, DEM, URI, Roger Williams University and other agencies and organizations. Mr. Beutel talked about other objections explaining that the application had been in the office prior to Hurricane Sandy and that the applicant agreed to proceed with processing of the application after January 1 when emergency permitting status tapered off and the application's 30 public comment period started on January 2nd; therefore, it was evident that the application was not on a fast track. Mr. Beutel also stated that the objections were concerned that the commercial viability permit would lead to a larger aquaculture farm of 3 acres. Mr. Beutel stated that public access would not be prohibited for kayakers and walkers in the shallow area of this area of Quonnie Pond. Mr.

Beutel explained all of the objections and went through their validity for the Council stating that the application went through a 30-day public notice comment period, the CRMP provided for the leasing of land for aquaculture, the applicant was very qualified and successful at his aquaculture endeavors. Mr. Beutel stated that some activities can be prohibited at the site such as power washing. Mr. Beutel stated that aquaculture improves the water quality of any body of water. Mr. Beutel stated that Quonochontaug Pond was 745 acres and the applicant was only requesting 1000 sf at this time for an 18 month period.

Jim Arnoux was sworn in and identified himself for the record as the owner of East Beach Farms stating that he had been an aquaculturist for 8-9 years and that both of his sites were at full capacity and are both very successful. Mr. Arnoux stated that Ninigret Pond has many aquaculture operation set ups at this time and he is looking for an area that can provide further information on the aquaculture industry such as use of equipment in pond. Mr. Arnoux also went through each of the objections received. Mr. Arnoux stated that he is the president of the Ocean State Aquaculture Association and was participating in some of the meetings for the Shellfish Management Plan and his viewpoint on DEM's objections to aquaculture projects during the development of the Shellfish Management Plan. Mr. Arnoux explained that his site was potentially a site for DEM's oyster restoration program but was found as not suitable by the Nature Conservancy studies. Mr. Arnoux agreed not to power wash at the site. Mr. Arnoux expressed his hope that the pond can be used by both land owners and economic ventures. Mr. Arnoux explained that his farmed oysters were sold to wholesalers and out of state distributors at a cooperative along with product from other aquaculture operations.

Stan Hollis was sworn in and identified himself for the record as a resident of Charlestown belonging to the Shady Harbor Fire District which supports aquaculture and the efforts of Roger Williams University. Mr. Hollis asked that no mechanical means used, that the noise be kept to a minimum and that the gear is cleaned offsite with no storing of gear on waters edge to keep that corner pristine. Mr. Hollis expressed his support for the Shellfish Management Plan.

Lisa Urso was sworn in and identified herself for the record as land owner closest to East Beach Farm with concerns regarding her recreational dock being 160' from the proposed site. Ms. Urso stated that her family spends a lot of time at the property with their motor boat and kayaking. Chair Livingston asked if the access to Ms. Urso's dock would be blocked. Mr. Beutel stated that he had looked at aerial photos and did not see a conflict with that dock for the 1000 sf. proposal.

Mr. Affigne asked for a clarification of the DEM objection. Mr. Gagnon stated that the area is a very important location for oyster restoration and can be used for possible collection placement allowing for natural propagation. Discussion on the status of Quonnie Pond as an established shellfish management area and Mr. Beutel clarified that all coastal ponds, in their entirety, are shellfish management areas. Mr. Beutel stated that he did not agree with Mr. Gibson's viewpoint of the impact to disease resistance and recruitment of wild stock. Mr. Affigne expressed his concern of voting on the application without Mr. Gibson present to participate in the discussion regarding his letter and suggested that the application be deferred until Mr. Gibson could be present to testify. Mr. Gomez was of the opinion that the application before them should be acted on as it was properly advertised in accordance with CRCM regulations and that CRMC had been promoting the very successful aquaculture industry for many years and did not want to see the project held up. Mr. Affigne made a motion to defer the application until Mr. Gibson could be present to answer respond to CRMC's inquiries. Mr. Gagnon seconded the motion and asked for clarification on the area itself and deferment until the Shellfish Management Plan was finalized. Vice Chair Lemont asked about the

aquaculture percentage in the pond and the effect of this operation on the percentage. Mr. Beutel stated that the pond was 745 acres and Mr. Arnoux was asking to lease 1000 sf which turns out to be less than 1% of the pond. Chair Livingston stated that she supported making a decision on the application as she did not like delaying applicants. Mr. Affigne again stated that he would like DEM to have the opportunity to answer the scientifically disputed questions. Mr. Fugate suggested contacting Dr. Gomez-Chiarri for her advisory opinion as she is the pathologist involved. Mr. Abedon expressed concern over the timeframe involved if aquaculture is put on hold while the Shellfish Management Plan is being completed. Mr. Affigne clarified his motion stating that the application would be deferred until the first opportunity for Mr. Gibson to attend the CRMC meeting. A voice vote was taken with a four to three (4 to 3) vote in favor of deferring the application until Mr. Gibson could be present. Mr. Coia asked that the Chair request that Mr. Gibson attend the next meeting and failure to appear without good reason is a waiver of any objection. Mr. Gagnon offered to inform the DEM Director of CRMC's request of their presence at the next meeting. Vice Chair Lemont asked about Mr. Arnoux's timeframe. Mr. Arnoux stated that he will likely not be able to gather growing data for May if application is held up. It was decided to schedule the application at the April 23rd Semimonthly meeting. Mr. Coia clarified for the record that his vote was in support of Mr. Affigne's motion to allow more information to be presented and not a vote against the application.

Recess for 5 minutes.

2012-10-067 GRAHAM BRAWLEY – Commercial viability oyster aquaculture to be located in Quonochontaug Pond, Charlestown, RI.

Mr. Beutel gave a brief overview of the application stating that Mr. Brawley applied for a commercial viability permit for the southwest portion of Quonochontaug Pond with no difference in technique or operation but in the area of a DEM reserved quahog spawner sanctuary which Mr. Beutel explained as an area where shellfish is planted to help restore the natural population of the species in the pond. Mr. Beutel stated that he believes that an oyster aquaculture activity and the quahog spawner sanctuary are compatible activities and a common practice.

Mr. Affigne read from Mr. Beutel's report that this application was a perfect research topic to determine the effects on the quahogs in the spawning sanctuary where oysters are growing over them because the quahogs would not be harvested as is the usual practice.

Mr. Brawley was sworn in and identified himself for record as Graham Brawley, of West Kingston RI with a BS in Fisheries Science and Aquaculture from URI. Mr. Brawley stated that he worked in the young and small oyster industry in Moonstone Oyster farm and that at the present time he is a partner, manager and director of sales for the Ocean State Aquaculture Cooperative. Mr. Brawley stated that it may be better to conduct a research permit to understand for the Shellfish Management Plan what the impact would be on the spawning beds. Mr. Beutel explained the difference of a Research and Education permit which could be maintained for up to three years with the major difference being that the lessee could not sell his product.

Chair Livingston called for public comment.

Richard Sherman, Esq. gave legal argument as to why the application should be denied. Mr. Sherman stated that the proposed application does not meet all of the policies, prerequisites and standards contained in the applicable sections of the CRMP having to do with use conflicts, public access,

impacts to spawner sanctuary and impacts to biological communities, especially if the applicant requests to expand the lease to three acres.

Mr. Ferris was sworn in and identified himself for the record as Richard Ferris living in Westerly, RI. Mr. Ferris stated that his objections to the application were due to recreational uses of that particular area of the pond. Mr. Ferris explained that there are submerged and visible rock formations that people use the area in question to avoid. Mr. Ferris talked about water skiing and tubing in the area. Mr. Ferris inquired as to the liability aspect if someone were to get hurt on the aquaculture equipment. Mr. Brawley was unaware of personable liability insurance for aquaculture farms.

Mr. Lloyd, accompanied by Peter Ruggiero, Esq, legal counsel for the Fire District, was sworn in and identified himself as Thomas Lloyd, moderator of the Shelter Harbor Fire District and president of the Nopes Island Conservation Association. Mr. Lloyd stated that he objected to the application because he felt it did not meet CRMP statute and because of the heavily recreational aspect of the area proposed, known as "Ski Beach", such as water skiing, sail boating, kayaking and area used to beach their boats to go to the ocean. Mr. Lloyd suggested a site visit during the high season.

Ms. Turello was sworn in and identified herself for the record as Elise Turello, Executive Director of the Salt Pond's Coalition. Ms. Turello explained the mission statement of the SPC and stated that the Coalition was not against appropriately cited and operated aquaculture in southern RI coastal zones. Ms. Turello stated that the coalition objected to the proposed operation because of the DEM spawner sanctuary which she stated was established by DEM in the 1970s for the Shellfish Restoration project. Ms. Turello stated that a NOAA grant of \$60k was used by SPC, TNC and STB to stock quahogs and to plant eelgrass in area.

Ms. Mallard was sworn in and identified herself for the record as Gail Mallard of Westerly, RI. Ms. Mallard stated that her family objected to the proposed operation because of the recreational aspect of the pond and the spawner sanctuary.

Mr. Hollis was already sworn in and identified himself for the record as Stan Hollis representing Shady Harbor Fire District. Mr. Hollis stated that the SHFD objected to the application due to recreational aspects, potential safety issues and the spawner sanctuary.

Mr. Brawley responds to comments by giving examples in other ponds where people were still able to recreate over and close to area that aquaculture is going on and that an operation as small as 1000 sf is such a small portion of the recreational area. Mr. Brawley stated that the commercial viability aspect of the operation would be with the understanding that if the conflicts are too great, they would be addressed in 18 months.

Mr. Affigne asked for clarification on the equipment. Mr. Brawley confirmed that the operation would entail wire cages and stackable wire trays for eastern oyster with the trays sitting on the bottom. Mr. Brawley explained that every lease becomes a spawner sanctuary and that he has extensive experience working with such gear.

Mr. Gomez asked if Mr. Brawley had considered any alternate sites. Mr. Brawley stated that after talking to Mr. Beutel, Mr. Arnoux and other aquaculturists, the site held the most interest. Mr. Gomez stated that the recreational standpoint was the most legitimate argument tonight as well as the spawner ground and maybe he could consider an alternate site. Mr. Beutel clarified that the nature of the

commercial viability application was for the exploration to find different locations that might work for aquaculture and that negotiation was not an option in this particular process.

Vice Chair Lemont asked if Shellfish Management Plan would make the aquaculture location process easier. Mr. Beutel stated that aquaculture was only a very small aspect of the plan. Mr. Fugate explained that aquaculture is an evolving industry due to the changing in cultivation technology. Vice Chair Lemont expressed his support and the Council's support for aquaculture but that the process should be less complicated. Mr. Fugate explained the pre-application process and how sites are determined. Mr. Affigne suggested the pre-application process be applied to the commercial viability application.

Mr. Affigne motioned denial of application. Mr. Gagnon seconded the motion. Chair Livingston stated that she disagreed with the motion and that the members were losing site of whole point of a commercial viability application which is to see how site would be. Chair Livingston stated that supporting aquaculture was sometimes taking a risk and that it should be given a chance as a 1000 sf site is very small. Chair Livingston clarified that Mr. Beutel would be inspecting the project and that it would come back in 18 mos for further review. Chair Livingston stated that she opposed the motion

Mr. Gomez asked for clarification of the insurance issue for liability. Mr. Goldman stated that CRMC requires only a performance bond for restoration of the site.

Mr. Affigne defended his motion stating that the country had numerous designations to protect areas such as wild and scenic river designations, endangered species, national monuments, wilderness areas, and in RI, we have sanctuary areas for protection of shellfish.

A voice vote was taken with a six to one (6 to 1) vote for denial of the application.

2012-06-020 CHRISTOPHER WARFEL/SUN FARM OYSTERS – Create and maintain a .25 acre aquaculture lease for growing oysters using bags on a submerged bottom longline or wire mesh cages (4.5 inches tall) on a submerged longline. Located in Great Salt Pond, New Shoreham, RI.

Mr. Beutel gave a brief overview of application stating that the application proposed a 100' x 100' (¼ of an acre) aquaculture operation in the Great Salt Pond on Block Island. Mr. Beutel stated that the application had a preliminary determination process. Mr. Beutel stated that a recommendation was made to cooperate with the Block Island Town aquaculture site but due to an adversarial relationship between Mr. Warfel and the Town, that avenue was not pursued. Mr. Beutel stated that an objection came in from RI Marine Fisheries Council saying that the 100' x 100' operation would affect the wild harvest fishery. Mr. Beutel stated that the activity on this site would be bags of oysters on a long line on the bottom. With the shallowest corner being around 6' at mlw leaving a substantial water column over the gear. Objections were received from BI Shellfish Commission for the reason of recreational conflict (not specific) and the Block Island club objected to app for same reasons concentrating on affect of recreational boating. The Najjbe family objected based on the affect of on recreational boating. Mr. Beutel stated that the operation would be longline gear on the bottom using only four markers to demarcate the corners. Mr. Beutel stated that DEM Fish and Wildlife objected as well agreeing with Block Island Shellfish Commission stating that the operation would have an adverse affect on indigenous fisheries. Mr. Beutel stated that a shellfish density survey was conducted on this site using a bullrake across the entire 100' width of site and only capturing three quahogs for a density of .25 per sq meter aver is 2.3 per sq meter which was much lower than the commercially harvested density of quahogs per sq mtr is 10 proving that there is not a

commercially harvestable density on this site. Mr. Beutel stated that during their survey visit they did not see the problem with navigation. Mr. Gagnon clarified RIDEM's objection stating the department objected to support the Block Island Shellfish Commission. Mr. Beutel clarified that the New Shoreham Town Council supported this application during preliminary determination process.

Mr. Affigne asked for clarification on objections. Mr. Beutel clarified that the Shellfish Advisory Panel took no position on the application but the full Marine Fisheries Council voted to oppose the application. Mr. Affigne worked out that the main objection was to the use of recreational area.

Mr. Warfel was sworn in and identified himself for the record as Chris Warfel of Town of New Shoreham, Block Island. Mr. Warfel elaborated on DB's comments reiterating that the Town Council voted to approve the application, the Shellfish Commission and Harbor Commission voted in opposition, that he did not feel recreational use was an issue and that he received a letter of support from quahogger of 14 years who stated that the area was not an area of use. Mr. Warfel stated that he would like to have the lease in this area for security and convenience; he enjoyed aquaculture and wanted to continue to do it. Mr. Warfel stated that he would use the lease only in the summer months as the Great Salt Pond is open during the rest of the year for harvesting.

Vice Chair Lemont motioned, seconded by Mr. Gomez approval of application. A voice vote was taken with a six to one (6 to 1) vote for approval of the application. (One opposed)

6. PUBLIC HEARING ON CHANGES TO THE RHODE ISLAND COASTAL RESOURCES MANAGEMENT PROGRAM:

Ocean Special Area Management Plan (Ocean SAMP) Chapter 8 - Renewable Energy and Other Offshore Development and Chapter 11 – The Policies of the Ocean SAMP

Revise Section 860.2.1.3 as follows:

Offshore Developments shall not have a significant adverse impact on the natural resources or existing human uses of the Rhode Island coastal zone, as described in the Ocean SAMP. [In making the evaluation of the effect on human uses, the Council will determine if there is an overall net benefit to the Rhode Island marine economic sector from the development of the project or if there is an overall net loss.](#) Where the Council determines that impacts on the natural resources or human uses of the Rhode Island coastal zone through the pre-construction, construction, operation, or decommissioning phases of a project constitute significant adverse effects not previously evaluated, the Council shall, through its permitting and enforcement authorities in state waters and through any subsequent CZMA federal consistency reviews, require that the applicant modify the proposal to avoid and/or mitigate the impacts or the Council shall deny the proposal.

Revise Section 1160.1.3 as follows:

Offshore Developments shall not have a significant adverse impact on the natural resources or existing human uses of the Rhode Island coastal zone, as described in the Ocean SAMP. [In making the evaluation of the effect on human uses, the Council will determine if there is an overall net benefit to the Rhode Island marine economic sector from the development of the project or if there is an overall net loss.](#) Where the Council determines that impacts on the natural resources or human uses of the Rhode Island coastal zone through the pre-construction, construction, operation, or decommissioning phases of a project constitute significant adverse effects not previously evaluated, the Council shall, through its permitting and enforcement authorities in state waters and through any subsequent CZMA

federal consistency reviews, require that the applicant modify the proposal to avoid and/or mitigate the impacts or the Council shall deny the proposal.

Mr. Fugate gave a brief overview of the changes stating that they would prevent the potential for lease being given within federal area where electricity could be going to and a platform would be built in another state. Mr. Fugate stated that in the Human Use section at least some weigh in would have to be done through a Federal Consistency review which would look at net benefit to the marine environment from a project to the State of Rhode Island. Mr. Fugate stated that it was not intended to limit human uses but to give some criteria as to what to look at. Mr. Fugate clarified that the objections were received as they were mistaken that this was meant to limit the review of the Block Island project but that the application is already applied for and will be continue to be bound by regulations at time submitted.

Mr. Affigne asked if a clause could be added saying ...Council will determine.... Mr. Fugate agreed.

Mr. Affigne motioned approval of regulatory changes with amendment (after “the Council will determine” add “; for example,”). Motion seconded by Vice Chair Lemont. Motion carried on unanimous voice vote.

7. Category “A” List (quarterly from January 2013 through March 2013)

None were held.

8. ADJOURN

Vice Chair Lemont, motioned, seconded by Mr. Coia for the meeting to be adjourned at 8:45p.m.

Respectfully submitted,
Lisa A. Turner, Recording Secretary