

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, November 24, 2015 at 6:00 p.m. in Conference Room A of the Administration Building, One Capitol Hill, Providence, RI.

Members Present

Anne Maxwell Livingston, Chair
Paul Lemont, Vice Chair
Ron Gagnon
Raymond Coia
Don Gomez
Tony Affigne
Jerry Sahagian
Joy Montanaro
Paul Beaudette
Mike Hudner

Staff Present

Grover J. Fugate, Executive Director
Jeffrey Willis, Deputy Director
David Beutel, Aquaculture Coordinator

John Longo, Esq., Legal Counsel

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**

Chair Livingston called for approval of the minutes from the previous meeting.

Vice Chair Lemont motioned for the approval of the minutes from the November 10, 2015 Semimonthly meeting; seconded by Mr. Coia. Motion carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont read out the ROW Subcommittee recommendation to approve the Old Ferry Road, Bristol ROW and deferred the matter to the Council for a future meeting.

4. **STAFF REPORTS**

Mr. Fugate reported on the following items:

Climate Change Workshop on Tuesday, December 1st at the Roger Williams Law School. Any Council members that wish to attend should speak with Mr. Fugate and any lawyers that attend will receive 7 hours of credit towards continuing education.

5. **REPORT – Deepwater Wind, LLC** -- update from Ted Hofbauer, CVA

Mr. Hofbauer gave a presentation to the Council regarding the current status of the Block Island Wind Farm. Very pleased to have good reports regarding safety issues on the project and the addition of the L.B. Roberts for installation purposes has helped.

- Update on Welding concerns – most recommendations are been confirmed and being done. The Design Comment Sheet that DWW responds will be received soon and they expect all the be positive there.
- All of the jackets have been done; the decks have been installed, leveled and welded. Weather permitting finishing work will be completed next week.
- All of the work scheduled for 2015 has not been completed – Grouting and finishing for corrosion protection still needs to be completed. Awaiting information as to how that will be handled in 2016 phase. FIR needs to be changed to reflect work in 2016. Mr. Hofbauer does not feel that any harm will come from waiting until 2016 to do this work; just more prep work in the spring prior to starting Phase II.
- P1 pile at Site 1 is still being reviewed. DWW is supposed to do an analysis on this to understand where the actual life of the pile stands at this time with an estimate of 64 years. There are concerns that after grouting it will be difficult to inspect. ABS will continue to work on this with DWW and Keystone to understand the actual life of the joint.
- The first tower sections were delivered to ProvPort and will be assembled there. ABS is currently reviewing the design calculations for those footings to hold storage frames and assembly frames.
- 2016 Phase
- Facility Design Report – Received one very generic document, awaiting report with specifics
- Looking for timetable schedule from DWW.

Jeff Grybowksi, CEO, DWW

- Towers arrived at Provport in three segments
 - 95' tall bottom sections have been delivered
 - will be stood up in early December to allow for mechanical components to be installed.
- Overall very happy 45% done on the project. Critical piece for this year was foundation. Feel good about where it is today. Grouting and corrosion protection will be done in the spring prior to turbine installment.
- Substation work will be done soon and will be ready for August when cable is ready. National Grid overseeing work done by joint team for cable execution – same contractor installing cables for both companies.

Chris VanBeek

- Foundations and jackets will be protected throughout the winter

6. **APPLICATIONS WHICH HAVE BEEN OUT-TO-NOTICE AND ARE BEFORE THE FULL COUNCIL FOR DECISION:**

2015-06-005 CHRISTOPHER JOHNSON & JEN SCAPPATURA – Establish a one acre oyster aquaculture site using the rack and bag method. Located in Quonochontaug Pond, Charlestown, RI.

Dave Beutel gave brief overview of the project to the Council explaining that the one acre site in Quonochontaug Pond would consist of a rack and bag method. Mr. Beutel explained that the applicant, the town and the neighbors worked cooperatively together for everyone's satisfaction. Mr. Beutel stated that the application was before the Council due to objection from RIDEM Fish and Wildlife because of the possibility of eel grass growth. Mr. Beutel confirmed that during his assessment of the site during the season, there was not eel grass present and that from CRMC's programmatic standpoint, there is no basis for an objection. Mr. Beutel recommended approval of the application.

The Council discussed the growth pattern of eel grass beds which change locations over time. Mr. Gagnon reaffirmed RIDEM Fish and Wildlife objection to the project. Mr. Affigne questioned the site location and asked if could be moved to avoid a possible eel grass bed, meeting DEM's concerns.

Mr. Beutel stated that there was considerable effort that went into being able to find a site that worked for the neighbor and town. Mr. Beutel explained to the Council that in his experience, eel grass will grow between gear and thrive. Mr. Fugate confirmed that the presence of aquaculture improved the water quality promoting eel grass growth around the gear. Mr. Beutel

Mr. Lemont motioned, seconded by Mr. Coia, for the approval of the application.

Mr. Beaudette asked about the RIDEM request for the requirement of temperature recording at the site. Mr. Beutel stated that the request is in every single letter from RIDEM Water Resources and that we ask each aquaculturist to take the temperature of the water every time they are at the site. The aquaculturists follow that and turn it in to Water Quality on a voluntary basis.

There was discussion on the view point of eel grass between the two agencies.

Motion carried with one opposed, Mr. Gagnon, and one abstention, Mr. Affigne.

2015-07-083 BRADLEY BOEHRINGER & BRENDAN HOEHN -- Create and maintain a one acre oyster aquaculture farm using the rack and bag method. Located in Point Judith Pond, South Kingstown, RI.

Mr. Beutel gave a brief overview of the application to the Council explaining that the applicant proposes a rack and bag method in Point Judith Pond. Mr. Beutel explained that the applicants worked to remedy objections received during the preliminary determination

process and selected a site that did not have any concerns. Mr. Beutel confirmed that no other objections were received other than DEM Fish and wildlife who stated that the area was cited on shellfish management map for recreational shellfish. Mr. Beutel stated that he addressed this objection during his site assessment where he found no eelgrass and no shellfish. Mr. Beutel stated that the application received either approval or no objections in each of application steps and reviews. The applicant voluntarily offered to change the configuration of the site to mitigate navigation effects in the area if approved. Mr. Beutel stated that CRMC staff recommended approval.

Mr. Gomez motioned, seconded by Mr. Sahagian, for the approval of the application.

Brad Boeringer was introduced for the record.

Mr. Beaudette asked about public access on this site. Mr. Beutel stated that the adjacent land belonged to Camp Fuller and they did not object.

The motion carried on unanimous voice vote.

2015-05-107 NICK PAPA – Create and maintain a 14.95 acre oyster farm in Ninigret Pond. Bottom planted oysters would be year round on 4.27 acres. A seasonal area (Oct. to June 1) is requested for cages of oysters for winter storage. Located in Ninigret Pond, Charlestown, RI.

Mr. Beutel gave a brief overview of the application stating that the applicant was requesting a variance due to larger than normal farm than we permit, which is just shy of 15 acres. Mr. Papa worked cooperatively to make sure his project is acceptable to all parties. Mr. Papa requested to withdraw the part of the application with cages for any part of the farm and will use only bottom planting for the extended 10.69 acre extension; no gear will be used for this farm. Mr. Beutel explained that Mr. Papa has a very busy operation in the pond already and wished to expand and the logical method would be bottom planting. Mr. Beutel stated that a stipulation will be in the permit that Mr. Papa will only work on this site Monday through Friday from Memorial Day to Labor Day; not during the weekends as pond is busy. Mr. Beutel stated that Mr. Papa would use a bullraking method to collect the oysters. Mr. Beutel stated that Mr. Papa is also asking to plant quahogs under the oysters which is a common practice in aquaculture. Mr. Beutel confirmed that the aquaculture site will be marked for notification to prevent poaching.

Mr. Papa was introduced for the record.

Mr. Beutel explained that this is the most benign type of aquaculture there is as there is no gear, only four corner markers and people can recreate over it. Mr. Beutel stated that he recommended approval.

Mr. Gomez asked if there were any objections to bullraking. Mr. Beutel stated that this method was used in Point Judith Pond.

Mr. Gomez motioned, seconded by Mr. Lemont, to approve the application.

Motion carried on unanimous voice vote.

7. **REVIEW BY COUNCIL FOR REVOCATION OF ASSENT AND RESTORATION ORDER PURSUANT TO CRMC RULES:**

A2002-03-044 & A2003-06-098 – CHRISTOPHER WARFEL, SUN FARM OYSTERS – Revocation of permit and restoration order pursuant to CRMC rules for aquaculture farms in Trims Pond and Harbor Pond, New Shoreham, RI.

Mr. Beutel updated the Council on the status of Sun Farm Oysters compliance to the current permit and leases. Mr. Beutel stated that he met with all parties concerned at the end of the summer (08-31-2015) and explained exactly what needed to be done by September 21. Mr. Beutel stated that Mr. Warfel continued to be in noncompliance. Mr. Beutel stated that the revocation hearing which had been scheduled for October was continued to this date and that in the meantime, Mr. Warfel was working the site to become compliant based on what was iterated on August 31st. Mr. Beutel stated that as of October 26th, Mr. Warfel was still not in compliance but when he visited the site the day prior to the hearing (11-23-2015) the large platforms were not on the site and mostly removed. Mr. Beutel stated that Mr. Warfel did not meet his deadlines but as of 11-23-2015 he was in compliance with his assents.

Vice Chair Lemont asked about the regulations for fining an applicant for noncompliance. Vice Chair Lemont expressed his concern that Mr. Warfel took so long to bring his farm into compliance but was also concerned that he did not want to the Council to put someone out of business by revoking his assent and lease.

Mr. Longo suggested that administrative fine process. Mr. Fugate agreed that a notice of fine could be issued.

Vice Chair Lemont stated that he would be in favor of allowing the continued business but at the same time, bring Mr. Warfel before the administrative fine process. Vice Chair Lemont also stated that he was in favor of imposing a very strict oversight that Mr. Beutel would have to undertake so that if Mr. Warfel falls out of compliance, the CRMC has the ability to take action that may end the business.

Chair Livingston was in agreement about having a procedure so that the Council did not have to start from the beginning with the revocation process.

Mr. Coia clarified the need for two separate processes -- Council meetings and Administrative fine hearings and the information needed for both.

Mr. Beaudette stated he was in support of the idea of imposing a fine and asked that if the site were to fall out of compliance, does the Council have the authority to instruct the staff to shut the site down. Mr. Longo clarified that the Council was the only body that could shut the site down completely but staff could issue violation notices. Mr. Beutel stated that he was concerned the Council was setting a precedent by prolonging the process. Mr. Fugate assured Mr. Beutel that CRMC staff will continue to monitor the situation and if the applicant becomes noncompliant again, he will be scheduled to come back before the Council on the next meeting. Mr. Fugate also suggested another option that the Council could require Mr. Warfel to post a bond that he may forfeit in the event of being found noncompliant.

Mr. Affigne expressed his concern regarding the trust factor of the operator. Mr. Affigne wanted to make sure that the process they chose will remain in effect and that they would not have to start over again in the event there is another situation of noncompliance.

Mr. Longo stated that the Council could require the bond at this meeting but the forfeit process requires another Council meeting as the operator would have the right to contest.

Chair Livingston agreed that some kind of provision was necessary to provide a strong incentive for the operator not to fall out of compliance.

Vice Chair Lemont stated that he liked the administrative fine process better as it was not as timely as the bond scenario. The enforcement/administrative fine process was discussed. Mr. Fugate stated that each infraction would be a separate fine. Mr. Affigne made the point that the administrative fine was a penalty for the period of noncompliance and that the bond would be an attempt to prevent future recurrence of noncompliance.

Mr. Longo suggested that the Council could continue to defer full council's action on the revocation and start the fine process. Mr. Affigne was in favor of this.

Mr. Hudner asked about Council/Staff costs incurred for noncompliance. Mr. Fugate referred to the fee schedule which provides for \$500.00 an hour with staff keeping track of time spent which is charged back to operator as an administrative fee.

Mr. Gagnon stated that he was in support of the administrative fine process and that the size of the platforms should be enforced and that the bond requirement could be used to remove the platforms if they are out of compliance. Mr. Beutel confirmed that the two big platforms cannot go back in the water until they are 8.5 x 12.5 feet as permitted.

Mr. Beutel brought up the possibility that Mr. Warfel may want to modify his assent.

Mr. Affigne motioned to continue the revocation hearing but Chair Livingston asked to hear from Mr. Warfel and Mr. Priestly who was present as his attorney.

Attorney Joseph Priestly introduced himself for the record and stated that he and his client had discussed the situation and that they were on the same page with the Council. Mr. Priestly stated that Mr. Warfel was in favor of the imposed supervision of the site and the continuation of the revocation process. Mr. Priestly also stated that Mr. Warfel asked to maintain the right to modify his assent to run his business better but that in the meantime, he will operate in compliance with the Assent. Mr. Priestly stated that anything that is returned to the water will comply with the size requirement.

Mr. Priestly also stated that his client is aware that the administrative fine process will proceed.

Mr. Beutel stated that he felt the solution was reasonable so long as there were measures in place to move quickly to revocation if noncompliance occurs again.

Officer Stephen Land, Block Island Harbormaster, was sworn in and identified himself for the record. Mr. Land explained his involvement in the situation stating that he had been dealing with the aquaculturist in cooperation with Mr. Beutel. Mr. Land expressed concern regarding the continued noncompliance and the precedence aspect for other aquaculturists on the island.

Chair Livingston asked Mr. Land how he felt about solution discussed. Mr. Land stated that he was in favor of it and would help when necessary.

Mr. Affigne motioned to continue revocation hearing for compliance until such time needs to be reconvened. Motion seconded by Mr. Gomez.

Motion carried.

6. **ADJOURN**

Vice Chair Lemont motioned, seconded by Mr. Coia, to adjourn.

Motion carried on unanimous voice vote. Meeting adjourned at 7:35 p.m.

Respectfully submitted,

Lisa A. Turner
Recording Secretary