

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, February 9, 2016 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, DEM Rep
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
Jim Boyd, Coastal Policy Analyst
Caitlin Chaffee, Coastal Policy Analyst

John T. Longo, 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 January 26, 2016 Semimonthly meeting; seconded by Mr. Gomez. Motion carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

None heard.

4. **STAFF REPORTS**

Mr. Fugate reported on the following items:

- The Director described the new Coastal Environmental Risk Index (CERI) pilot project that will involve the Town of Charlestown and the City of Warwick as the two pilot communities to test CERI. The project is being funded through 200K HUD grant.
- The General Assembly through Rep McEntee appropriated \$25,000 in funds which was matched by the Federal Fish and Wildlife to do a modeling study on the Narrow River for tidal modeling. The total funding for this modeling study is \$50,000.
- The Beach SAMP Subcommittee meeting is scheduled for Thursday, February 11 at 4:00 p.m. at the CRMC offices in Wakefield.
- A RI Coastal Erosion workshop sponsored by CRMC and URI CRC scheduled for April 21.

- Public Event for Ocean SAMP scheduled for March 29th which will give an update on the research being done by URI for the Ocean SAMP.

5.. **Applications which have been Out-To-Notice and are before the Full Council for Decision:**

2015-07-087 JOHN ROBERTS – Create and maintain: a 2.3 acre oyster farm using the rack and bag and cage culture methods. Located in Ninigret Pond, Charlestown, RI.

Mr. Beutel gave a brief overview of the project stating that the applicant was proposing to use two methods of farming which are common to Ninigret Pond – a cage system and a rack and bag. Mr. Beutel stated that the application was modified after the preliminary determination process as there were concerns raised from the duck hunting community that had hunting blinds in the area. Mr. Beutel stated that the applicant agreed to move the lease site southward to be about 500 feet from the northern most duck blind. Mr. Beutel explained that the water was shallow in this area from 2’ to 4’ during the summer. Mr. Beutel stated that he and CRMC staff member Greg Baribault did the site assessment and found a low density of quahogs which was consistent with other leases on the washover fan. Mr. Beutel stated that RIDEM did their own assessment and came up with different numbers than his assessment. Mr. Beutel stated that there was not eel grass found on the site but there were beds to the north of the site. Mr. Beutel explained a few staff recommendations/stipulations to minimize any potential impacts to the duck hunting – mandate site work hours during hunting season from 10 a.m. to 2 p.m. and the work week would be from Monday through Friday during duck hunting season which happens to be a very inactive time period for aquaculture. Mr. Beutel stated that in his assessment, the aquaculture site would not have a significant impact on duck hunting. Mr. Beutel stated that Mr. Roberts had met all the requirements of the CRMP and that if approved he will be successful in his operation. Mr. Beutel stated that Mr. Roberts had worked for another aquaculturist on Ninigret Pond and that he completed the practical shellfish farming course offered by Roger Williams University.

Mr. Beutel explained, using a map, where the duck blinds were for Council members. There was also discussion on pellet traveling distance and velocity.

Mr. Affigne asked for an explanation on the difference between CRMC and DEM’s assessment on shellfish in the area of the proposed lease. Mr. Beutel suggested that maybe it was the sample area and style and explained that CRMC used random samples on the site and that possible DEM sampled from a transition area which would give a higher density of quahogs. Mr. Beutel also explained that he felt that the site would not represent a significant loss to the duck population as they use the entire pond

Vice Chair Lemont asked and Mr. Beutel confirmed that a duck hunting club owned that land near the proposed site.

Chair Livingston asked about the objection received regarding the aquaculture apparatus. Mr. Beutel confirmed that the cages would not be too far underwater but that the lease would be marked for the boaters safety.

Mr. Beutel stated that CRMC is meeting with the Charlestown harbor master to work on creating a color coded marking system for every lease in the pond for identification and safety purposes.

Mr. Gomez explained that the issue for the duck hunters may be about the retrieval process and making sure dogs are safe. Mr. Beutel confirmed that with the water being only inches above the cages, the dogs would be impeded.

Chair Livingston asked the applicant to come forward where he was sworn in and identified himself for the record as John Roberts. Mr. Roberts stated that, in the winter months, he was planning on moving the gear to the farthest corner towards the north so that the dogs would be able to swim over and there would not be a problem.

Mr. Roberts confirmed for Mr. Gomez that he accepted the operation stipulations from Mr. Beutel. Mr. Robert expressed his interest and willingness to work with the hunting community and suggested decoys and stated that he felt the cages would provide natural resources, such as food, for the water fowl.

Supporters were sworn in and identified themselves for the record when they spoke.

John Labrosse, duck hunter, stated that when he hunted, he would travel by boat to get to the blind but did not hunt from the boat. Mr. Labrosse stated that he did use a dog for retrieval. Mr. Labrosse stated that he felt the aquaculture lease would benefit the ducks as they like to eat fish and aquatic plants.

Richard Hotchkiss spoke in favor of the project stated that he felt the two entities could coexist as shellfish comes to an end when the water fowl hunting begins. Mr. Hotchkiss stated his dog was like a family member and although he was concerned about obstacles in the water he did not feel this aquaculture site would be a problem. Mr. Hotchkiss confirmed for Mr. Gomez that the water fowl consisted of both ducks and geese. Duck hunting regulations were discussed as pertains to species and limits.

Mr. Labrosse added to his statement saying that the bird population on the salt water after thanksgiving becomes more populated as the lakes and streams become frozen.

John Roberts, Sr. began his statement by agreeing with Mr. Labrosse and Mr. Hotchkiss and added that he was a hunter and had hunted geese and duck in many areas of South County, both fresh and salt water. Mr. Roberts Sr. stated, based on his experience as a waterfowl hunter, that there would be a negative impact to bird hunting with the addition of an oyster farm in the area.

The objectors were sworn in and identified themselves for the record when they spoke.

Dr. Christopher Deacutis from RIDEM spoke using a map that was distributed to the Council. Dr. Deacutis began by stating that the RIDEM is not against aquaculture on Ninigret pond and recognizes the benefits that aquaculture provides, but that DEM does have a concern regarding the conflict of use on this particular site. Dr. Deacutis explained the map that was distributed showed the original site area (dark purple) and the relocation of the site which was outlined in purple. Dr. Deacutis also pointed out the green area on the map as an eel grass bed with the blue area being he extension of the eel grass bed seen in 2009. Mr. Deacutis informed the Council that the area of eelgrass is a dynamic area stating that in dry years the eelgrass bed can expand significantly but in wet years through turbidity the eelgrass bed will contract. Mr. Deacutis pointed out that the CRMC was making an effort to decrease nitrogen by requiring advanced wastewater treatment along the pond to increase eel grass beds and that the CRMC had worked with the USACOE on developing restoration projects to increase eelgrass. Dr. Deacutis pointed out that shade will decrease the eelgrass as it needs light but an aquaculture lease which would increase the shade on the bottom of the pond would have a potential impact to the ability for eelgrass to come back. Dr. Deacutis stated that DEM was also concerned that the aquaculture site would impede the recreational shellfishing that takes place in that area which was known to have a high public usage due to public access through Grassy Point, a US Fish and Wildlife access point, used by kayakers and canoers.

Josh Beuth, Wildlife Biologist with RIDEM Division of Fish and Wildlife, oversees the waterfowl program. Mr. Beuth reiterated that the Department of Environmental Management and the Division of Fish and Wildlife is not against aquaculture, only the user conflicts for this aquaculture site would create. Mr. Beuth stated that in order to correct the user conflict, the aquaculture site should be moved. Mr. Beuth stated that he recently became involved in the review of aquaculture applications for DEMFW and that he felt the amount of aquaculture in the salt ponds was heavy. Mr. Beuth stated that all of the aquaculture sites to the west of the proposed site have a conflict with water fowl and that he believes that aquaculture lease activities take away water fowl habitat. Mr. Beuth stated that he does not view aquaculture apparatus as habitat. Mr. Beuth explained that ducks dive into the benthic substrate and feed on eel grass. Mr. Beuth stated that aquaculture activities had a tendency of flushing and displacing the birds from the habitat and that through repeated flushing, the birds become accustomed and will avoid the site and the surrounding areas for 100 yards around the site, making the loss of habitat as much as 200 yards. Mr. Beuth stated that with 30 acres of actual leases in the pond, he estimates that there is 236 acres of potential loss of habitat. Mr. Beuth stated that birds will nest in upland habitat and are very sensitive to disturbance, especially the American Black duck, which are showing a decline in population and have been identified as a species of greatest conservation needs through the 2015 Wildlife Action Plan. Mr. Beuth stated that he conducted aerial surveys and that he sees the largest majority of black ducks along the southern extent of the pond. Mr. Beuth stated that with milder winters, the possibility of greater disturbance of the area due to aquaculturists working their site, is high. Mr. Beuth stated that all factors are cumulative to the displacement of birds on pond.

Mr. Beuth stated that as the Waterfowl Program Coordinator, he has spoken to a few hunters who have encountered cages and hit bags with motors on their way to hunting blinds in the dark hours of early morning and the dark hours after dusk when they go to and from the blinds.

Vice Chair Lemont asked Mr. Beuth if he had noticed a decrease in ducks in this area during flyovers. Mr. Beuth stated that he had noticed a decrease in ducks in the western part of the pond not in the eastern part of the pond. Vice Chair Lemont asked if it was due to climate change. Mr. Beuth stated that he felt it could be due to a fluctuation in the weather change but see the differences due to usage change. Vice Chair Lemont asked if the change in Bluebill population was due to climate change up north and not due to aquaculture. Mr. Beuth stated he believed the bluebill population decrease was due to a multiple of factors.

Mr. Gomez stated that through his experience with hunting water fowl over the past 50+ years he was familiar with the bird migration habits and that the bird migration seemed less when the winter climate is warmer as fewer birds migrate south to RI area. There was discussion on waterfowl harvesting numbers. Mr. Gomez was concerned that aquaculture which was beneficial to RI for many reasons, such as water quality and fish habitat, would be hindered due to small use conflict.

Chair Livingston expressed appreciation for the testimony from RIDEM but explained that according to CRMC policy, materials to be presented as evidence to the Council needed to be submitted at least five days in advance of the meeting and that the Council will be more strict with that policy in the future.

Mr. Longo marked the three sheets submitted by DEM as exhibits DEM1, DEM2, and DEM3 and the markings on the Exhibits correlates with the transcript. Also marked, Exhibit CRMC 1 page 24 of the Agenda packet where duck blinds were marked.

Stuart Demirs of 92 East Arnolda Drive, Charlestown, RI, explained that he was the past State Chairman of Ducks Unlimited, currently serving as co-chair of the South Shore Chapter of Ducks Unlimited, RI and past president of the Marsh Neck Gun Club. Mr. Demirs explained that the Gun

Club entrusted with the Arnold family own several islands in Ninigret Pond that have fixed hunting blinds set up. Mr. Demirs stated his concern that with aquaculture in close proximity to the islands will have adverse effect on the duck population. Mr. Demirs expressed concern for boater and animal safety due to aquaculture apparatus. Mr. Demirs stated that he would have expressed his concern regarding the other aquaculture sites in the pond but did not receive notifications and that the only reason he heard about this aquaculture proposal was by notice from the Town of Charlestown.

Richard Jalette began by stating that he was in favor of shellfishing but was concerned with this particular aquaculture site for safety reasons. Mr. Jalette stated that motoring a boat at night and not being able to see buoys that mark the aquaculture site is hazardous. Mr. Jalette stated there were areas that could not be accessed for hunting because it was owned by federal government.

Mr. Sahagian asked Mr. Beutel if we could require illuminated buoys. Mr. Beutel stated that we have in the past and the illuminated buoys cost approximately a few hundred dollars each.

Vice Chair Lemont asked if a clear wider opening could be created so as to alleviate boating concerns. Mr. Beutel stated that it did not seem logical to shift this aquaculture site to create a clearer boating path. Mr. Beutel also stated that CRMC and the Town of Charlestown were working on these issues through a Memorandum of Understanding. Vice Chair Lemont suggested using lights on boats to make it easier to see markers.

Mr. Beutel agreed that area could be hazardous to power boats. Mr. Beutel stated that there were alternative ways to access hunting grounds where they did not have to pass the aquaculture site.

Chair Livingston also suggested lighted markers or fluorescent markers. Mr. Roberts stated he could have lighted markers. Mr. Fugate wondered if the lighted buoys could be more of a deterrent to waterfowl. Mr. Labrosse stated that the boaters could use gps to find buoys.

Mr. Gagnon stated he felt the area was not suited for an aquaculture site based on pond usage and eel grass beds as well as potential for eel grass bed growth.

Mr. Gomez stated that the user conflict was only during the winter and that the applicant stated he would move his gear into the deeper water area. Mr. Gomez stated he thought the applicant was showing a reasonable amount of accommodation and revisions to a project to alleviate a user conflict that would amount to the loss of a one duck limit per day.

Mr. Affigne stated his concern for the density of aquaculture in the usable area of the pond and stated that he did not agree with the 5% rule. Mr. Affigne also expressed his concern regarding the drain on the habitat of the waterfowl, the dynamic aspect of eelgrass beds and their expansion, the conflict with recreational shellfishing and the navigation and safety hazards of this proposed aquaculture site. Mr. Affigne stated he would reluctantly vote against the application.

Mr. Beaudette expressed his concern that DEM FW were not consistently reviewing aquaculture applications and that CRMC should encourage DEMFW to review and get their feedback.

Mr. Hudner asked for clarification of the proximity of the aquaculture site and the eel grass bed. Mr. Beutel confirmed that the applicant relocated the site at the recommendation of staff and stated that although he understood that eel grass beds are dynamic and migrate but that there was not a bed where the site is proposed at this time. Mr. Beutel was not in agreement that the eel grass bed moved north and east but he felt, based on the preliminary determination review, the bed moved south.

Chair Livingston stated that CRMC needed to find a balance between the benefits of aquaculture and other uses of the area. Chair Livingston stated that aquaculture was known to clean up the water quality of ponds and is beneficial to the State of Rhode Island both environmentally and economically which is a way that the agency can help the State. Chair Livingston thought there was a difference of opinion when talking about the disturbance of waterfowl from habitat. Chair Livingston also stated that aquaculture can be removed if it is found that it is not working in the area. Chair Livingston stated she thought the idea of lights for the site markers and for the safety of the hunters was a good idea and also the limiting of the work hours during the hunting season.

Peter Sozek, objector, was sworn in and identified himself as a summer resident of Charlestown. Mr. Sozek asked why wait until oyster farm needed to be moved due to unresolved conflicts. He suggested that it be moved elsewhere initially.

Mr. Gagnon asked that a new location for lease be found rather than putting it in a site with so many issues based on the fact that there is still a good percentage of the usable aquaculture area that can be found.

Mr. Beutel stated that this is what the applicant applied for and this area is what is before the Council for their review. Mr. Beutel stated that in working with the Town of Charlestown and the US Fish and Wildlife Service, they agreed not to put any further aquaculture on the fan to the west of this lease to maintain other uses that occur there during the year. Mr. Beutel stated that the area is really concentrated with aquaculture in a very small stretch. Mr. Beutel also stated that this is a prime location for shallow water aquaculture which is what Mr. Roberts is trained and experienced in.

Vice Chair Lemont motioned to approve application with a second from Mr. Gomez.

Motion carried with seven in favor and three against. The three against were Mr. Affigne, Mr. Gagnon and Mr. Beaudette

Chair Livingston called a brief recess. At this time, Council Member Sahagian took his leave.

6. **Coastal Education Series:**

Coastal Wetlands: Monitoring, Assessment and Management
Caitlin Chaffee, Coastal Policy Analyst, CRMC

Ms. Chaffee stated that at the next meeting she would be bringing funding recommendations before the Council for habitat funding. Ms. Chaffee thought giving an update on CRMC habitat restoration activities outside the habitat fund would be beneficial. Ms. Chaffee stated that Ms. Dwyer would put the presentation up on the CRMC website. Ms. Chaffee's presentation talked about CRMC's role in preservation of our highly valued coastal wetlands during a time of climate change, sea level rise and shoreline change. Ms. Chaffee's presentation focused on salt marsh restoration and mitigation.

Mr. Fugate added that the timeframe is staggering in how marshes are being lost and would be lost within 10 years. Mr. Fugate stated that Rhode Island is leading the country in mitigation and restoration activities and that our research documents have been helping other states.

7. **Public Hearing on Program Changes:**

Management Procedures - Section 5.9 Presentation of Expert and Lay Testimony.

The purpose of the proposed regulation change to Section 5.9 Presentation of Expert and Lay Testimony of the CRMC Management Procedures is to codify and provide due notice to applicants and other parties that the introduction of new evidence, reports or data at a Council or subcommittee hearing may result in the rescheduling of the hearing. The proposed rule change will incentivize applicants to provide all pertinent evidence, reports or data to the Council or subcommittee prior to the hearing so that the Council or subcommittee can efficiently hear and process pending applications in a timely manner. The introduction of new materials by the applicant at a hearing only causes delays for the applicant, and sometimes objections from other parties, which unnecessarily lengthens the time to issue a final decision.

Chair Livingston opened the public hearing on program changes and hearing no requests to comment, closed the hearing.

Mr. Fugate explained that the change to Section 5.9 of the CRMC Management Procedures would allow staff the time to review documentation submitted prior to being heard before the Council and be able to comment.

Chair Livingston asked how this change was different than current practice.

Mr. Boyd explained that the provision would put applicants, their experts and their attorneys on notice that, at the discretion of the Council, they may continue the hearing if information is submitted at a meeting that needs to be reviewed in depth by staff.

Mr. Affigne thinks the program change is a good idea. Mr. Affigne asked what was happening with the application tabled at one of the previous meetings. Mr. Fugate stated that the applicant's attorney said it could be tabled ad infinitum.

Vice Chair Lemont motioned, seconded by Mr. Gomez for the approval of the program change.

Motion carried on a unanimous voice vote.

Mr. Coia stated for the record the Council's deepest condolences to Council Member Mike Hudner on the passing of his wife, Hope Hudner.

8. **ADJOURN**

Vice Chair Lemont motioned, seconded by Mr. Gomez, to adjourn.
Motion carried on unanimous voice vote. Meeting adjourned at 8:00 p.m.

Respectfully submitted,

Lisa A. Turner
Recording Secretary