Oliver Stedman Government Center
4808 Tower Hill Road; Suite 116
Wakefield, RI 02879
401-783-3370

AGENDA

Semi-Monthly Meeting – Full Council
Tuesday, November 24, 2009; 6:00 p.m.
Conference Room A, Administration Building
One Capitol Hill, Providence, RI

Approval of the minutes of the previous meeting.
Subcommittee Reports.
Staff Reports.

Presentation: Ocean Special Area Management Plan update – Grover Fugate

Applications which have been Out to Notice for 30 days and are before the Full Council for Decision:

2009-08-088 **CITY OF NEWPORT** – Construct "Easton Beach Ultraviolet (UV) Stormwater Treatment System." Stormwater flow from Easton Pond drainage "moat"/breachway will be routed through UV system to reduce bacterial load, prior to discharge to Easton Beach, to reduce beach closures due to elevated bacteria levels. The application requires a "Special Exception" from the RICRMP to undertake construction on a Moderately Developed Barrier Beach and in CRMC Type 1 waters. Located at plat 15, lots 1 and 2; Plat 116 NW, lot 58; North of Memorial Boulevard, at Easton Pond breachway, Newport and Middletown, RI.

2009-06-087 **CHRISTOPHER WARFEL/SUN FARM OYSTERS** – Conduct a shellfish aquaculture site of 0.56 acres to grow oysters, bay scallops, and razor clams. Located in Trims Pond, New Shoreham, RI.

2006-04-062 **GUNTER HAFER** -- Construct and maintain a residential boating facility that is to be utilized by the current and future owners of AP 178 lots 10 & 87. The facility is to have a maximum 4 boat capacity. The facility is to consist of a 6 foot wide by 172 foot long fixed timber pier that leads to a ramp that leads to a 600 square foot terminal float, two tie-off piles are proposed on the north side of the pier. The proposed facility is to extend 141+/- feet seaward of the cited MLW mark and is variant to the RICRMP length, pier width and float size standards. Located at plat 178, lots 10 and 87; Bristol Harbor, 333 Poppasquash Road, Bristol, RI.

Enforcement Matter before the Full Council:

06-0088 **MICHAEL HYCHKO** -- Undertaken construction of a parking area in nonconformance with CRMC Assent A2006-05-118 within 200 feet of a coastal feature from your property located at Plat 9, Lot 51, Charlestown Beach Road, Charlestown, RI.

Public Hearing on Changes to the Rhode Island Coastal Resources Management Program:

3. Section 300.11 – Aquaculture

Revise Section 300.11 – Aquaculture **as follows:**

A. Definition

1. For the purpose of the Coastal Resources Management Council, marine aquaculture is defined as the culture of ~~salt tolerant~~ aquatic species under natural or artificial conditions in ~~tidal waters and coastal ponds~~ the state's waters including but not limited to: fish farming utilizing pens, tanks, or impoundments (which may be land-based); the culture of shellfish on the sea floor in permitted and leased areas, in cages, or suspended from structures in the water; and the culturing of aquatic plants. **NOTE:** land-based ~~marine~~ aquaculture operations (i.e., above mean high water) are also regulated under Section 300.3 of the RICRMP.

2. For the purpose of the Coastal Resources Management Council freshwater aquaculture is defined as the culture of aquatic species under natural or artificial conditions in freshwater ponds, tanks, raceways or other freshwater impoundments located within the coastal zone or in inland locations throughout the state.

3. Transient or mobile aquaculture gear is defined as cages containing cultured species which are periodically moved about within a specified area so as to reduce user conflicts. This gear is typically in the form of wire cages which are either individually marked with a surface buoy or strung together in trawls with end buoys to identify the location of gear.

B. Policies

1. The CRMC recognizes that commercial aquaculture is a viable means for supplementing the yields of marine fish and shellfish food products, and shall support commercial aquaculture in those locations where it can be accommodated among other uses of Rhode Island waters. The CRMC recognizes that responsible shellfish aquaculture has a net positive effect on the environment. As any human activity can have adverse environmental affects, the Council recognizes the possibility of setting scientifically defensible limits on aquaculture leasing in any particular water body. The CRMC also recognizes that in the framework of adaptive management protocols, research into the ecology of coastal waters and our understanding of ecosystem carrying capacities is constantly evolving and improving.

2. The Council may grant aquaculture activities by permit only. The CRMC may grant aquaculture applicants exclusive use of the submerged lands and water column, including the surface of the water, when the Council finds such exclusive use is necessary to the effective conduct of the permitted aquaculture activities. Except to the extent necessary to permit the effective development of the species of animal or plant life being cultivated by the permittee, the public shall be provided with means of reasonable ingress and egress to and from the area subject to an aquaculture lease for traditional water activities such as boating, swimming, and fishing. All plant and animal species listed for culture in an aquaculture lease are the personal property of the permittee.

3. At the discretion of the Executive Director, leaseholders may be required to temporarily remove their aquaculture facilities, which may include all associated gear and cultured species, when ~~they~~ said facilities are not being used to conduct research, culture or to harvest an aquatic species of plant or animal for a substantial period of time. The Council may permit inactive aquaculture facilities to remain if it determines that the temporary removal of these facilities would place an undue burden on the leaseholder or would prove detrimental to coastal resources of the state. Report of such action by the Executive Director shall be made in writing to the full Council at the next regularly scheduled meeting of the Council.

4. The Executive Director may ~~require~~ order the removal of any aquaculture facility that is in an obvious state of disrepair or has ~~become~~ been determined to be a navigation or public safety hazard. Report of such action by the Executive Director shall be made in writing to the full Council at the next regularly scheduled meeting of the Council.

5. Upon application to renew an existing aquaculture Assent, the Executive Director may administratively renew said Assent for a period not to exceed that period set forth in Title 20 Chapter 10 of the General Laws for each renewable period, provided the applicant is in conformance with the terms and conditions of the Assent, the aquaculture lease, and with the Coastal Resources Management Program (RICRMP) in effect at the time of renewal provided, further, that there are no amendments to the Assent or lease. Report of such action by the Executive Director shall be made in writing to the full Council at the next regularly scheduled meeting of the Council.

6. In the event that a CRMC approved aquaculture operation is determined by the Council to not be actively "farmed" for a period of one year, the assent and lease shall be deemed null and void and the site shall ~~be returned~~ revert to the State's public use upon order by the CRMC. Actively farmed may be defined by the yearly monetary investment in the farm, ex: the purchase of seed and supplies and/or proof of sales.

7. The Council may grant an aquaculture Assent for a period not to exceed that period set forth in Title 20 Chapter 10 of the General Laws.

8. It is the Council's policy to prohibit private molluscan shellfish aquaculture for human consumption ~~activities~~ in not-approved waters, as defined by the National Shellfish Sanitation Program, ~~that contain significant shellfish stocks potentially available for relay into approved areas for free and common fishery.~~ and that

(a) This prohibition shall not apply to activities like spat collection, or to the cultivation of scallops, or to private aquaculture operations conducted within the confines of a CRMC-approved marina perimeter limit (as set forth in 300.4), or to Council-approved projects which are designed~~, with Council approval,~~ to enhance and restore the public resource.

(b) Aquaculture projects other than shellfish aquaculture proposed for ~~not approved areas~~ uncertified waters may be granted by the Council provided the applicant provides sufficient evidence that no harm to public health or safety will result. In the case of shellfish aquaculture, such activities shall be prohibited unless the applicant provides written statements from the directors of the Departments of Environmental Management, and Health certifying that the proposed activity is consistent with the requirements of the National Shellfish Sanitation Program.

(c) The Council may grant an aquaculture assent for growing shellfish in uncertified waters provided any and ~~Where a private shellfish aquaculture applicant expressly releases ownership of any and~~ all cultured shellfish stock ~~existing in a permitted area, the Council may grant a lease in addition to a permit~~ are directed strictly for public benefit uses only to enhance and restore the public resource.

C. Prerequisites

1. Prior to issuing a permit for marine aquaculture within tidal waters, the Council shall obtain and give appropriate consideration to written recommendations from the Director or his or her designee of the Department of Environmental Management and the chairman of the Marine Fisheries Council, as required by Chapter 20-10 of the state's General Laws. The director or his or her designee of the Department of Environmental Management shall review the application to determine that the proposed aquaculture activity will not adversely affect (a) marine life adjacent to the proposed area and the waters of the state, and (b) the continued vitality of indigenous fisheries. The

chairman of the Marine Fisheries Council shall review the application to determine that it is consistent with competing uses involved with the exploitation of marine fisheries.

2. An Aquaculture License issued by the DEM for the possession, importation, and transportation of marine shellfish species used in any aquaculture operation shall be obtained by the applicant from the director or his or her designee of the Department of Environmental Management. The DEM Aquaculture License may be processed concurrently, but must be obtained by the applicant prior to the issuance of a CRMC Assent.

3. Prior to submitting a formal Category B application to CRMC for aquaculture activities within tidal waters, applicants must first submit a Preliminary Determination application for the proposed project in accordance with existing CRMC procedures. A formal Category B application may be submitted only after the ~~receipt of the~~ completed Preliminary Determination report has been issued by CRMC. The applicant shall prepare the Category B application in accordance with all recommendations of the Preliminary Determination report.

4. Applicants for aquaculture operations within tidal waters must submit with their application(s) all required information as specified in the most recent version of the CRMC aquaculture checklist.

5. In those cases where alterations to freshwater wetlands may occur, applicants for freshwater and land-based aquaculture operations must first obtain a permit from the DEM Division of Agriculture ~~or DEM Freshwater Wetlands prior to applying with the Council.~~

6. Applicants for freshwater and land-based aquaculture structures and/or improvements must obtain local building official approval and zoning approval, where necessary, prior to submitting an application to the CRMC.

7. Applicants for land-based aquaculture operations which result in discharges to waters of the state are ~~shall be~~ required to obtain a Rhode Island Pollution Discharge Elimination System (RIPDES) permit issued by the department of environmental management. Said permit must be obtained by the applicant prior to any aquaculture facility discharges to waters of the state.

8. Applicants for aquaculture operations conducted at marinas using technologies such as an upweller unit may be reviewed as a Category A activity provided that the operation is conducted within a Council-approved marina perimeter, and that RIDEM has issued a Special Permit for Aquaculture for such an activity. Further, at the time of application, the applicant must provide proof that such seed product - prior to exceeding the size of the RIDEM seed definition - will be transferred to: (1) a permitted aquaculture facility operating in approved waters; (2) a scientific or educational institution; or(3) a government agency.

9. Upweller units at CRMC permitted residential docks, piers and floats may be reviewed as a Category A activity provided that: (1) only current council-approved aquaculture lease holders may propose to utilize upweller units at residential docks; (2) the inclusion of an upweller is incidental to the permitted use of the dock, pier, or float, and the original use of the structure not be inhibited by the inclusion of an upweller; (3) all shellfish from the addition of an upweller belong to a licensed CRMC aquaculture leaseholder and that the production from the upweller will go to the owners lease site; (4) all applicable Rhode Island Department of Environmental Management and Rhode Island Department of Health Regulations are followed; (5) all local and national codes regarding addition of electrical power to docks and associated structures will be adhered to; and, (6) adequate depth of water at the upweller addition is maintained. A CRMC assent will be issued for a period of up to five (5) years but in no case longer than the length of time remaining on the approved aquaculture leaseholder's permit. Addition of upwellers ~~in~~ to existing residential docks, piers, or floats in CRMC-designated Type 1 waters is prohibited.

10. Applicants who propose to introduce non-indigenous species into a CRMC-approved aquaculture ~~setting~~ facility or lease are required to design a protocol ~~that will be~~ and submit it for review and approval by the Bio-Security Board prior to issuance of an assent. This review can occur concurrently with the aquaculture application process.

11. All freshwater aquaculture permits will be reviewed and approved by the CRMC Biosecurity Board prior to issuance of an assent. This review can occur concurrently with the aquaculture application process.

D. Additional Category B Requirements

1. Applicants proposing to undertake any aquaculture ~~endeavor~~ project shall: (a) describe the location and size of the area proposed; (b) identify the species to be managed or cultivated within the permitted area and over which the applicant shall have exclusive right; (c) describe the method or manner of management or cultivation to be utilized, including whether the activities proposed are experimental, commercial, or for personal use; and (d) provide such other information as may be necessary for the Council to determine: (1) the compatibility of the proposal with other existing and potential uses of the area and areas contiguous to it, including navigation, recreation, and fisheries; (2) the degree of exclusivity required for aquacultural activities on the proposed site; (3) the safety and security of equipment, including appropriate marking of the equipment and/or lease area; (4) the projected per unit area yield of harvestable product; (5) the cumulative impact of a particular aquaculture proposal in an area, in addition to other aquaculture operations already in place; (6) the capability of the applicant to carry out the proposed activities; and (7) the impact of the proposed activities on the scenic qualities of the area.

E. Prohibitions

1. Fish pen aquaculture operations are prohibited in all coastal ponds and nutrient sensitive shallow embayments and coves.

2. Private aquaculture leases for molluscan shellfish are prohibited in uncertified waters (i.e., restricted areas as defined by the National Shellfish Sanitation Program) ~~which contain significant shellfish stocks available for relay into certified public waters for the free and common fishery.~~

3. Upwellers at existing residential docks, piers, or floats in Type 1 waters are prohibited.

4. Introduction of non-indigenous species is prohibited unless protocols are in place to ensure that no accidental releases into the state's waters ~~can~~ may occur. These protocols ~~will be reviewed~~ must be submitted by the applicant for review and approval by the CRMC Bio-Security Board before any permit is issued. Any proposed modifications to the permitted operation will be reviewed by the Bio-Security Board before an assent modification can be issued. The issuance of a permit under these stipulations can be revoked if a release of non-indigenous species takes place during the term of the assent.

5. The harvest of wild shellfish naturally occurring in a CRMC permitted lease shall be prohibited. All wild shellfish within a lease area will remain the property of the State of Rhode Island and remain in place for the benefit of the public resource. This resource is not to be harvested by any person for commercial or recreational purposes. Any incidental catch by the lease holder within an aquaculture lease shall be returned immediately to the same waters.

6. In the coastal salt ponds the area occupied by aquaculture shall not exceed five percent (5%)of the total open water surface area of the coastal pond below MLW.

F. Standards

1. Marine Aquaculture within Tidal Waters
(a) In the event of revocation or termination of an Assent by order of the Council or expiration of any lease or Assent, the lessee or Assent holder is responsible for restoring the area to pre-existing conditions within ninety (90) days from the date of ~~permit~~ assent revocation, termination, or expiration. This shall include the removal of all structures, rafts, floats, markers, buoys, anchors, and other equipment brought to the site. Failure to comply with the Council's order to restore the site may result in the forfeiture of the permit bond posted by the lessee.

(b) Any person who maliciously and willfully destroys, vandalizes, or otherwise disrupts aquaculture activities permitted by the Council shall be in violation of an order of the Council and libel to all fines and penalties under law.

(c) All permittees shall mark off the areas under permit by appropriate buoys or stakes, as determined by the CRMC, so as not to interfere unnecessarily with navigation and other traditional uses of the water surface. The requirement for the agreed upon marking will be found in the lease requirements detailed in the assent. All authorized limitations upon the use by the public of areas subject to the permit shall be posted by the permittee.

(d) The Council may require the leaseholder for an aquaculture facility to post a performance bond in order to ensure the cleanup and removal of said facility upon either the termination or expiration of the lease.

(e) The Executive Director may approve the transfer of a lease from the lessee to another party provided the aquaculture operation remains the same, including size, species, gear, and methods of culturing. The full Council must approve any transfers that involve a deviation from the existing assented aquaculture operation.

(f) Experimental permits. (1) The Executive Director may issue an experimental aquaculture permit for operations which are expressly for the purpose of developing and testing new gear or techniques for aquaculture production. Applicants may be approved for three separate sites, with up to an area of one-thousand (1,000) square feet for each site. Experimental sites shall not be within 500 feet of one another. Areas in excess of this may be approved by the full Council. Experimental aquaculture Assents shall be valid for a period not to exceed three (3) years. A lease may be required and the sale of any aquaculture product is not allowed. Report of such action by the Executive Director shall be made in writing to the full Council at the next regularly scheduled meeting of the Council. (2) Experimental aquaculture operations wholly contained within the confines of a council-approved marina perimeter area excluded from the 500 foot separation standard, as contained above, any may maintain a total of 3,000 square feet in any configuration for such operations.

(g) Commercial viability permit. (1) The Executive Director may issue a commercial viability aquaculture permit for operations which are expressly for the purpose of determining if a particular site is suitable for commercial aquaculture. The applicant may have one site, limited to a thousand (1000) square feet. Commercial viability permits shall be valid for a period not to exceed three (3) years. Permits for a commercial viability shall be subject to a two step process: (1) Issuance of a one-time administrative permit for the period of eighteen (18) months; followed by a one-time council-approved permit for an additional eighteen (18) months. A lease may be required. Report of such action by the Executive Director shall be made in writing to the full Council at the next regularly scheduled meeting of the Council. (2) Any continuation of the operation by the applicant beyond this permit length shall require a separate application which will be considered and reviewed by the Council as a Category B application and is subject to all applicable aquaculture policies and regulations. (3) The permittee may, on a one time basis, sell those products approved within the permit. Upon termination of the operation, or at the end of the three (3) year permit period, whichever comes first, the permittee must terminate the operation. (4) The permittee must show that, in case of successful trial, there is potential area to expand to a commercial aquaculture lease in the

same area that the commercial viability permit was granted. The Executive Director may require the permittee to post a performance bond in order to ensure the cleanup and removal of said facility. Detailed economic reports shall be required for all commercial viability permittees.

(h) Education/research permit. The Executive Director may issue a education/research aquaculture permit for operations which expressly for the purpose of using aquaculture for education or research. A lease may be required. Applicants may be approved for three separate sites, with up to an area of one-thousand (1,000) square feet for each site. Education/research sites shall not be within 500 feet of one another. Areas in excess of this may only be approved by the full Council. Educational/research aquaculture assents shall be valid for a period not to exceed three (3) years. A lease may be required and sale of any aquacultured product is not allowed, report of such action by the Executive Director shall be made in writing to the full Council at the next regularly scheduled meeting of the Council. The Executive Director may grant extensions to these permits. Each extension shall not exceed three (3) years. Educational/research aquaculture operations wholly contained within the confines of a council-approved marina perimeter are excluded from the 500-foot separation standard, as contained above, and may maintain a total of 3,000 square feet in any configuration for such operations.

(i) All transient aquaculture gear shall be operated within defined areas as established by the tidal water aquaculture management plan. Transient gear lease fees shall be based on the minimum area necessary to operate the proposed number of cages.

(j) Aquaculture operations shall be located at sites and operated in such a manner as to not obstruct public access to and from tidal waters.

(k) Any new lease in a coastal salt pond shall be limited in size as follows:
(1) maximum three (3) acres for traditional rack and bag or cage methods; or
(2) maximum six (6) acres for bottom planting

(l) Leaseholders may not apply for any lease expansion until such time that the leaseholder can demonstrate to the CRMC a need for additional area.

(m) Recreational Permits. The Executive Director may grant permits for recreational culture of shellfish by littoral landowners as follows:
(1) Recreational permits shall be limited to one culture enclosure limited to a volume of 48 cubic feet***; and***
(2) This cage shall be hung from an existing CRMC approved dock in a manner that it will not interfere with traditional navigation***; and***
(3) Recreational permit holders will follow all existing seed importation regulations**; and**
(4) Recreational permit holders will be required to complete a CRMC approved educational program.
(5) Recreational permits will be exempt from prohibition #6.
(6) All gear used under an education permit will be legibly marked with the letters “CRMC” and the CRMC permit number.

(n) The maximum area occupied by aquaculture leases in the coastal salt ponds is 5% of the total open water surface area of the salt pond below MLW. This limit is established based upon the current knowledge of ecological carrying capacity models See: Salt Pond SAMP Section 100.B.1 and Figure 1-1 for salt pond areas.

2. Freshwater Aquaculture

(a) The Council shall require a permit for all freshwater and land-based aquaculture operations located within the coastal zone or in inland locations throughout the state.

(b) Permits for land-based aquaculture operations shall be granted by the CRMC for a term not to exceed 50 years.

(c) When required, all species utilized for culture within land-based aquaculture operations must be approved by the DEM director or his or her designee. The aforementioned approval must be obtained prior to the Council issuing its assent, however, it may be concurrently processed with the Council's review.

G. Guidelines for Marine Aquaculture within Tidal Waters

In addition to the policies, prerequisites, additional requirements for Category B assents, prohibitions and standards above, the Council also suggests that applicants take the following items into consideration for any proposed aquaculture application.

1. Marine aquaculture lease size in Narragansett Bay.

(a) For the area known as upper Narragansett Bay, defined as the area north of a line across the bay at the latitude of 41 degrees 35 minutes, proposed aquaculture farms should be limited to three acres.

(b) Three (3)-acre leases will be granted by giving an initial two (2)-acre lease. Subsequently the third acre will be granted when the permittee shows that the initial 2-acre lease is being utilized.

(c) These guidelines may be adjusted for variations in water depth, species cultured, culture method, etc.

2. Guidelines for Marine Aquaculture in the Salt Ponds.

(a) Aquaculture leases will be discouraged in historically fished areas and encouraged in areas that have not been historically utilized in the wild harvest fishery.

(b) Buffer zones between aquaculture leases may be required when considering new leases.

Purpose: In various subsections throughout the regulations, to address issues such as recreational aquaculture activities; maximum water areas for aquaculture activities per waterbody; maximum lease sizes in the coastal ponds; and, several editorial revisions.

Enforcement Report – October, 2009

Category "A" List

Executive Session pursuant to R.I.G.L. 42-46-5(a)1 Personnel

/lam