

Shellfish Committee Minutes of the Meeting

DATE: January 17, 2007
TIME: 7:30 P.M. to 9:30 P.M.
LOCATION: MEAD Building

Shellfish Committee Members present:

Stuart Rapp, Andre Sampou, Robert Lancaster, Les Hemmila, Richard Haskell, Mark Begley, Matt Ostrowski, Barbara Enos

General Public present:

Al Suprenant, William Golden, Chris Gargiulo, Tess Korkuch, William Korkuch, Richard Andres

NR Staff present:

Doug Kalweit, Tom Marcotti

Chairman's Report:

Stuart Rapp chaired the January 2007 meeting of the Shellfish Committee.

The minutes of the December 20, 2006 meeting of the Shellfish Committee were unanimously approved by the Shellfish Committee.

Natural Resources Report

Tom Marcotti informed the Shellfish Committee that the Ma. Division of Marine Fisheries reopened areas of Lewis Bay previously closed to all shellfishing under an emergency management pollution closure. The closure went into effect on December 20, 2006 and was lifted on January 9, 2007. The closure was prompted by a sewer line break, occurring on December 20th in the Hyannis area, that had the potential of leaking polluted waters into Snow's Creek and Lewis Bay. Thanks to the Division of Marine Fisheries, the Town Public Health Division, Engineering Dept., and Department of Public Works for protecting the public's health and timely repair of the break.

Tom announced the closure of oyster season as follows:

SHELLFISH MANAGEMENT NOTICE

OYSTER SEASON CLOSURE

Effective Saturday, January 20, 2007 the harvest of oysters in the Town of Barnstable is prohibited.

Oysters are required to be at least 3 inches in longest length to be legally harvested by State law. Recent recreational harvesting has removed many legal size oysters from the existing local town propagated oyster populations, leaving a large percentage of "seed" oysters. This prohibition is based on oyster seed management criteria to protect the oyster seed for long term survival and to prevent the potential unlawful harvest of seed oysters.

Piers, Dredging and Shellfish Habitat Issues:

The Shellfish Committee discussed the following proposed pier applications:

Applicant: Charles and Francene Rodgers

Application: Construction of pile supported pier with seasonal ramp and float; walkway from existing stairs to pier and relocation of existing boat rack.

Location: 621 Old Post Road, Barnstable, MA

Andre Sampou said that at a recent public hearing for the Rodgers application the Conservation Commission approved a seasonal pier with restrictions on the size of the boat and motor.

Applicant: Herbert and Pamela Pheeny

Application: Construction of a four foot wide timber pile supported pier for recreational boating. Pier to be shared by abutting waterfront properties.

Location: Sand Point Road, Osterville, MA, 02655

Andre Sampou stated the public hearing for this application has been continued to February 13, 2007. Andre noted that the area the proposed pier footprint is located in was not rated by the year 2000 Natural Resources subcommittee to the Pier Committee. Tom Marcotti described his shellfish survey of the project area to the committee noting the consistent productivity of the shellfish resource at this location and vicinity. Les Hemmilla noted that the area in the general vicinity of the proposed project is a breeding ground for shellfish. The Shellfish Committee unanimously approved a motion that the Shellfish Committee write a letter to the Conservation Commission requesting that the pier proposal of H. Pheeny be denied on the basis that the proposed pier would in essence compromise shellfish resource and habitat.

Applicant: John Cunningham

Application: Adding proposed 3 ft. X 14 ft. ramp to end of existing pier in File SE3-3576 together with 10 ft. X 20 ft. float replacing 8 feet of the existing pier and 8 ft. X 12 ft. float.

Location: 25 Oyster Way, Osterville, MA 02655

Applicant: John and Donna Carroll

Application: to amend and extend a pier previously permitted in file SE3-3318 by addition of an 8 ft. X 25 ft. float with 4 ft. X 18 ft. extension to the pier for recreational boats.

Location: 81 Oyster Way, Osterville, MA 02655

Matt Ostrowski suggested that the Shellfish Committee recommend to the Conservation Commission that specific conditions requiring a post construction shellfish / habitat survey be applied to approved pier applications. Matt said he would draft recommendations (for review by the Shellfish Committee) for submittal to the Conservation Commission.

Ways to Water

Andre Sampou reported that The Town has held two interdepartmental meetings that accommodate the interests of the Shellfish Committee and the Barnstable Association for Recreational Shellfishing in protecting ways to water. Progress has been made by DPW defining ways and paths to water. Andre noted another follow up meeting will be held in February 2007.

Floating Aquaculture Gear

Stuart informed the Shellfish Committee and general public that a special joint meeting of the Shellfish Committee and the Waterways Committee is scheduled to take place at the Senior Center on February 7, 2007 from 7:00 P.M. to 9:00 P.M.. The topic of discussion will be the use of floating bag shellfish culture gear by shellfish aquaculturists. Stuart Rapp will chair the meeting. The Shellfish Committee will submit a proposed amendment to the shellfish aquaculture regulations pertinent to floating shellfish culture methodologies to the joint committee on February 7, 2007, and illicit public comment. Any recommendations from the joint committee meeting will be further reviewed at the February 21, 2007 meeting of the Shellfish Committee. After further review of the joint committee recommendations the Shellfish Committee may submit to the Town Manager a proposed amendment for a public hearing. William Golden asked if any proposed

amendments to the shellfish aquaculture regulations may be submitted to the joint committee. Stuart replied that they may, as part of public comment at the joint meeting.

The draft proposed amendment from the Shellfish Committee, as of the January 2007, meeting is included below:

Responsibility for Gear and Tackle
Article 407-63

The license holder assumes all liability for all gear and tackle used on the license. If any such gear is moved to a location off the license, it shall be the responsibility of the licensee to remove said gear. If within 21 days after notification to the licensee by Natural Resources that the licensee has not complied with this requirement, the Town may cause such gear to be removed at the expense of the licensee. All floating gear and cages and netting greater than 200 square feet shall bear the license number of the license.

Rafts and other floating equipment may be allowed to the extent that they cover no more than 10% of the project area, or 20,000 square feet. An area shall be considered to be covered with floating equipment if normal navigation through the area is precluded. All rafts shall be securely anchored to the bottom, and all "lines" shall be attached to fixed mooring points at both ends.

All bags shall be individually marked with the name and phone number of the licensee. Bags, floats and rafts shall be either black or white in color or a color approved by NR.

Marking Boundaries of Licensed Shellfish Aquaculture Areas.

Tom Marcotti submitted to the Shellfish Committee, for further review, working proposed amendments to shellfish aquaculture regulation 407-62 drafted by Natural Resources and the Shellfish Committee. After an in depth discussion of the proposed amendment the Shellfish Committee unanimously adopted the submitted proposed amendment for submittal to the Town Manager for a public hearing and final approval. The submittal is included below:

PROPOSED REGULATION, (Mark Begley's suggestion)

407-62. Marking boundaries of licensed areas.

Shellfish aquaculture sites bordering the channel within the 98 acre aquaculture area in Barnstable harbor shall be marked with red buoys bordering the northside of the channel and green buoys bordering the southside of the channel where individual site boundary changes of angles border the channel. Said red and green buoys shall not be less than 11.5 inches in diameter.

Shellfish aquaculture sites on the periphery of the 98 acre aquaculture area in Barnstable harbor, shall use yellow buoys not less than 15.5 inches in shortest diameter, to mark only the most external changes of angles on said sites. The buoys shall bear the four-digit state propagation permit number and the words "Aquaculture area". Said numbers and letters shall not be less than two inches in height.

All other licensed area boundaries shall be marked at all corners and changes of angles by uniform yellow buoys, not less than 11.5 inches in shortest diameter, and bear the four-digit state propagation permit number issued to the licensee. Said numbers shall not be less than two inches in height. Where a licensed area borders another licensed area, a buoy may bear the four-digit state propagation permit number of more than one licensee. All said buoys shall be deployed from April 1 until November 15, annually.

Any proposed alternative marking of a licensed area, must be submitted in writing to Natural Resources and if in the discretion of Natural Resources the changes are warranted, they may be approved in writing. The Harbormaster may direct licensees of licensed areas that border navigational channels to use specified buoys to mark their licensed area boundaries for navigational purposes.

Each licensee is responsible for maintaining the buoys marking their licensed area. Failure to place or reasonably to maintain said buoys shall be sufficient cause for revocation of the license.

Recreational and Commercial Shellfishing and Shellfish Aquaculture Fines, Penalties and Fees

The Shellfish Committee undertook a review of the shellfishing fines and ordinances as they may pertain to the shellfish aquaculture rules and regulations. Currently, in many instances, the penalty for a shellfish aquaculture license infraction, at the local and state level, is the forfeiture of the license. Since this is a drastic all or nothing measure, the implementation of a monetary fine schedule, as exists in the recreational and commercial public shellfishery was brought up for discussion. Currently the maximum monetary penalty for a non-criminal citation is \$300. Stuart requested that Natural Resources review the shellfish aquaculture regulations and compile a list of infractions that could be penalized by a monetary fine (for 1st or 2nd time infractions) as opposed to a license revocation. No suggestions to change any commercial or recreational shellfishing fees or fines were acted upon.

Leadline

Mark Begley and Bill Korkuch have made an agreement addressing the use of leadline on shellfish aquaculture sites. Mark and Bill submitted a proposed regulatory guideline for leadline use to the committee for review (included below). Stuart requested that Tom Marcotti formulate the guidelines into a draft proposed regulation amendment to be reviewed by the Shellfish Committee at the committee's February 2007 meeting.

Recommendation to the Natural Resources Division for the implementation of the Barnstable Shellfish Committee's November 2005 vote on the use of leadline in aquaculture.

The application of leadline as a means to anchor clam anti-predator netting to the bottom in Barnstable should be restricted through a phase-out of leadline aimed at using a suitable substitute when it becomes available at a reasonable cost. Leadline should be allowed only in those cases where the farmer can demonstrate that (s)he have no other viable alternatives to anchor their nets due to the unique environmental conditions at their site.

It is recognized that the methods employed for clam farming is a site-specific phenomenon and an "all encompassing" recommendation as to application of specific technologies is not feasible. Some sites are more amenable to currently available alternatives, others are not. Currently, there is a lack of availability of non-toxic weighted line that closely mimics the anchoring properties of leadline. Therefore, at the time of license application, transfer or renewal the farmer shall outline their proposed methodology for growing shellfish, including the technology they will use to anchor nets to the substrate. If a farmer requests to use leadline as an anchoring device, (s)he will be required to justify the selection of that technology to the satisfaction of representatives of the Natural Resources Division (NRD). A history of the use of leadline on the site shall be prima facie evidence of the need for its use, and unless an irresponsible prior history can be shown, the request shall be granted. In the event of a negative decision by NRD, the grower will have the option of appealing the decision to the Barnstable Shellfish Committee, for further recommendation to the NRD. Should a second denial issue, the farmer may appeal to such bodies as may be legally available for appeal.

When non-toxic weighted line is locally available, this fact will be considered in the phase-out of the remaining leadline by the Natural resources Division.

It is further recommended that net anchors consist of a single length of line on each net. If segments are used, they shall be tied together to form said single line thereby reducing the risk of small sections being dispersed into the environment in the event of net failure. As with all other aquacultural gear, each segment of leadline shall bear the license number of the license holder.

January 17, 2007

William Korkuch

Mark Begley