

## Shellfish Committee Minutes of the Meeting

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**DATE:** February 21, 2007  
**TIME:** 7:30 P.M. to 9:30 P.M.  
**LOCATION:** MEAD Building

### **Shellfish Committee Members present:**

Les Hemmila, Andre Sampou, Richard Haskell, Mark Begley, Matt Ostrowski, Barbara Enos

### **General Public present:**

Richard Andres, Max Kumin, Al Suprenant, Missy Kalet, William Golden

### **NR Staff present:**

Tom Marcotti

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### **Chairman's Report:**

Les Hemmila chaired the February 21, 2007 meeting of the Shellfish Committee.

Andre Sampou noted that the discussions of watersheet zoning and Andre's request for Stuart Rapp to notify various Town committees, commissions and departments of watersheet zoning discussions were not included in the January 2007 minutes of the meeting of the Shellfish Committee.

With Andres' revisions the minutes of the January 17, 2007 meeting of the Shellfish Committee were unanimously approved by the Shellfish Committee.

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### **Natural Resources Report**

Tom Marcotti informed the Shellfish Committee that the Division of Marine Fisheries is currently sampling and testing the waters of the Marstons Mills River and Prince Cove to determine if it can open for shellfishing. These two areas are scheduled to open for shellfishing from February 15 until May 1 annually, when tests are completed and the area is approved to open by DMF.

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### **Piers, Dredging and Shellfish Habitat Issues:**

The Shellfish Committee discussed the following proposed pier applications:

**Applicant:** Herbert and Pamela Pheeney

**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 March 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. Andre said the Shellfish Committee submitted a letter to the Conservation Commission requesting that the pier proposal of H. Pheeney be denied on the basis that the proposed pier would in essence compromise shellfish resource and habitat.

**Applicant:** Michael A. and Maureen O. Champa.

**Application:** Reconfigure existing licensed pier including reconfiguration of floats, platform, ramp and piles; removal of one platform and the addition of a proposed ramp.

**Location:** 239 Eel River Road, Osterville as shown on Assessors Map 115 Parcel 006.

Tom Marcotti informed the Shellfish Committee of the Champa proposal to revise floats and ramps on a pier in West Bay. Tom informed the committee that the proposal was on the public hearing

agenda of the Conservation Commission's February 13, 2007 meeting as a "Request for Determination" and not a "Notice of Intent". This assignment resulted in a lack of notification to Natural Resources and the Harbormaster's Office for preliminary review of the proposal package before the hearing.

Matt Ostrowski submitted a document to the Shellfish Committee containing suggested order of conditions for new and seasonal piers:

*For all high value shellfish habitat rated 5 and above. I recommend the following:*

*1. Upon receiving an application for a dock or pier a shellfish and bottom survey should be done by the applicant's biologist and the town biologist or his agent.*

*2. If the dock or pier is permitted follow up surveys by the owners biologist and the town biologist or agent should be done 2 – 4 and 6 years after completion of said dock or pier. After the 6 year survey follow up surveys should be done every 5 years for a permit renewal. The town biologist will set the radius of the surveys. If the surveys show deteriorating effect on the shellfish and habitat the dock or pier must be removed. Failing to follow these conditions would result in the loss of permit and would require removal of said pier or dock. All fees and cost of the private and town surveys would be paid by the applicant. Since piers and docks are being permitted in high value shellfish habitat I feel some type of supervision is needed to help prevent possible destruction of the shellfish and their habitat. We must do all that is possible to protect this resource for future generations of shellfishermen and our children.*

*While this may not help with the potential problems from fuel discharge and frequent activity from the boats during prime time when the spat is present, at least we can monitor the area and make necessary changes if needed.*

Les Hemmila suggested that the recommendation also include the requirement to restore habitat/resource that is compromised or destroyed. Andre suggested that the Shellfish Committee submit Matt's recommendations with Les' suggestion to the Conservation Committee for review and adoption into their order of conditions. Attorney William Golden addressed the Shellfish Committee as a representative of the "Friends of West Bay". William Golden impressed upon the committee that the same protective measures and assessment protocols that Matt's proposal applies to private piers is applicable to floating shellfish culturing technology utilized by private aquaculturists.

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## **Ways to Water**

The Shellfish Committee discussed the issues pertaining to legally classifying ways to water throughout the Town. Andre noted that Town agencies/staff has recently met 2 -3 times to address ways to water issues. The Town is in the process of creating committees to address ways to water issues. The Shellfish Committee and the Barnstable Association for Recreational Shellfishing will be given the opportunity to present their findings pertaining to ways to water at a meeting of the Ways to Water Committee on February 27, 2007.

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## **Application for Aquaculture Gear by Cape Cod Oyster Co.**

At the request of the Town Manager the Shellfish Committee reviewed the request of Cape Cod Oyster Company to deploy floating shellfish culture gear on licensed area #202 located in West Bay. Les Hemmila prefaced the discussion of the topic by informing the committee that any discussion or action pertaining to the regulatory aspects of the use of floating gear should be forwarded to the next Shellfish Committee meeting with Stuart Rapp. Andre Sampou suggested that the Committee should be given time to review the proposed plans of Cape Cod Oyster Co. and address them at the

committees next meeting. Al Suprenant, President of Cape Cod Oyster Co. presented his request to use floating shellfish culture gear to the committee and answered questions by the committee about the gear. His detailed plan submitted to the Town is included below:

*Cape Cod Oyster Company  
Floating Nursery System for Oysters in West Bay*

*Bag Style: Diamond or square mesh ADPI style oyster bag in 4mm or 9mm size. Common trade names include ADPI, OBC 1 or OBC 2. Bags are made of a virgin polypropylene – polyethylene blend and measure 20" X 40". Attachment clips are 500# stainless longline gangions crimped to the bag with 300# test monofilament. Two clips per bag.*

*Floatation: "Swim noodle" type floatation is secured inside the bag so that the bag remains level on the surface of the water. This system has been tested and deployed with over 1000 bags in North Bay in August – October 2006.*

*Anchoring System: We propose to use a combination helix anchor with chain as the anchoring system for our floating gear.*

*anchors will be screwed into the ground flush with the bottom. Each anchor has a minimum 5000 pound holding capacity.*

*Chain: 5/16 inch hot dip galvanized at 93 pounds per 100 feet*

*Line: ¼ inch polypropylene rated at 1100 test*

*We would consider alternative anchors but believe the helix is the most appropriate for this system.*

*Location: Grant 202 in West Bay. We propose to use the southeast corner of this grant or other area on this grant that is determined to be more appropriate in terms of boat traffic. We believe the Southeast corner is the most appropriate location.*

*Time Frame: June 1 – October 15*

*Size Range of Oysters in System: Approximately 8mm – 60mm*

*Narrative: Please refer to diagram: The system used in West Bay in the summer of 2006 has been improved. The improvements have been developed and incorporated into the floating system in North Bay.*

*Nursery is 100' X 200'. 200' lengths of chain are anchored at 1', 50' 100' 150' and 200'. One row of oyster bags would be made up of 2 lengths of rope 50" apart. Oyster bags are clipped to each line, and spaced approximately 30' on center. In summary, one row would contain approximately 40 bags, each bag attached at either end to the ¼ inch line.*

*(a diagram illustrating CCO's proposed floating shellfish culture technology was also distributed to the Shellfish Committee)*

William Golden expressed to the Shellfish Committee that the committee's review of Cape Cod Oyster Company's request to deploy floating shellfish culture gear on licensed area #202 located in West Bay at the February 21, 2007 committee meeting was substituted in place of a discussion of proposed amendments that address floating shellfish culture. Andre Sampou suggested that Stuart Rapp look into clarification of the agenda scheduling.

The Shellfish Committee is in the process of revising the current Shellfish Aquaculture Regulations to account for the use of floating shellfish culture gear methodologies and technologies by aquaculturists. A draft of proposed regulations that specifically attend to floating shellfish culturing gear that was submitted to the Shellfish Committee by Mark Begley, at the February 21, 2007 meeting, is included below:

*A Proposal for the Management of floating Aquaculture Gear*

*Current, Town, State and Federal regulations governing shellfish aquaculture allow for the use of floating aquaculture gear with certain requirements or restrictions. There is also a long and positive history of floating aquaculture gear use to grow seed oysters in the Three Bays Area of Barnstable.*

*In 2006, some new deployments of floating aquaculture gear indicate the need for improvements in floating gear management. Community input at recent joint public meetings of the Waterways Committee and Shellfish Committee in Barnstable reinforced the widespread support of historic aquaculture practices in the area dating back over 150 years. Some community members shared their concerns as to certain aspects (listed below) of floating aquaculture gear. Others noted the value of shellfish aquaculture in reducing nitrogen problems in the bays while providing a renowned product for consumers. Based on the above meetings and background, additional permitting restrictions are proposed below to further manage floating aquaculture gear. The following proposal for implementing the Town of Barnstable shellfish regulations provides guidance to the Town's Natural Resources Division in their management of applications for future use of floating aquaculture gear.*

*In addition to the positive aspects of shellfish aquaculture noted above, issues raised at the Waterways Committee and Shellfish Committee meetings as concerns with floating aquaculture gear include:*

- a) Lost gear and length of time to recover lost gear*
- b) Contact information if gear is found*
- c) Individually marked floating bags*
- d) Maximum area of floating bags*
- e) Use of unapproved aquaculture gear in unapproved areas*
- f) Market size oysters in close proximity with bird waste*
- g) Floating bag areas and interface with navigation*
- h) Objectionable visual impact / floating bag colors*
- i) Use of sharp edge "double head" auger anchors vs. marine mooring anchors*
- j) Gulls roosting on floating gear*

*Proposed DRAFT Guidance for Implementing Aquaculture License Regulations:*

*407-48. Application for and issuance of license; hearing; fee,  
407-51. Submission of application for review by other agencies,  
407-55. Changes to original plans,  
407-63. Responsibility for gear and tackle, and*

*407-67. License review and/or revocation.*

*(Superscript in text below refers back to issues listed above)*

*1. 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. Approvals of floating gear shall provide a maximum of 4 days to recover said gear. If within 4 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 (a).*

*2. All floating gear shall bear the license number of the license holder (b). All floating gear shall be individually marked with the name and phone number of the licensee (c).*

*3. Floating gear has historically and may continue to be allowed to the extent that they cover no more than 20,000 square feet (0.459 acres) of the license area (d).*

*4. Failure to follow approved plans shall be grounds for the revocation of an approval to use floating aquaculture gear (e).*

*5. Floating oyster bags shall not be used for market ready oysters (f). Floating oyster bags used for growing seed oysters (f) shall be located in an area of a license farthest from navigational channels, as defined by the Harbormaster, and shall not be allowed within 20 feet of said channels (g).*

*6. Floating bags shall be designed and maintained to float nearly flush with the water's surface with no more than 6 inches above the surface (h).*

*7. All floating gear shall be securely attached to lines which are anchored to the bottom. All lines shall be attached to fixed anchoring points at both ends (a).*

*8. Anchoring systems shall be installed as close to flush with the bottom surface as possible. Any helix anchoring system shall be installed flush with the bottom surface. The use of "double head" style anchors are prohibited(i).*

*9. Bags and bag floats shall be black, white, or other color of minimal visual impact approved by Natural resources (h).*

*10. License holders using floating bags may be directed by Natural Resources to employ applicable systems or best management practices to minimize gull roosting on the floating bags (j).*

Les Hemmila informed the Shellfish Committee that a special meeting of the Shellfish Committee would probably be held to address proposed regulations for the use of floating aquaculture technology by aquaculturists. Les Hemmila notified the Shellfish Committee that William Golden presented letters commenting on floating shellfish gear to the Shellfish Committee for review.

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#### **Proposed Amendment to Shellfish Regulation 407-62 (Marking Boundaries of Licensed Shellfish Aquaculture Areas)**

Tom Marcotti conveyed to the Shellfish Committee that Dan Horn suggested that proposed amendments to the shellfish regulations be submitted as a comprehensive package to the Town Manager. On account of this directive, the proposed amendment to shellfish regulation 407-62 regarding the marking of boundaries of licensed shellfish aquaculture areas, has been indefinitely postponed for submittal to the Town Manager for a public hearing. The proposed amendment to 407-62 was finalized for submittal to the Town Manager by Natural Resources and the Shellfish Committee at the January 2007 meeting of the Shellfish Committee. Mark Begley suggested that the protocol for submitting proposed amendments to regulations could be discussed at a future meeting.

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#### **Proposed Use of Leadline Guidelines**

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At the request of Stuart Rapp, Tom Marcotti submitted (to the Shellfish Committee) a proposed amendment to the shellfish aquaculture regulations pertaining to the use of leadline on shellfish grants. The draft proposal is included below with rationale:

## **DRAFT**

**SUBJECT:** *Changes to the Town of Barnstable Shellfishing, Eel, Herring and Aquaculture rules and regulations as proposed by the Natural Resources Program of the Marine and Environmental Affairs Division after consultation with the Shellfish Committee.*

### **BACKGROUND:**

*The Town of Barnstable maintains a comprehensive compilation of rules and regulations for the management of town shellfish, eel and herring natural resources as well as town shellfish aquaculture licenses. An annual review of these regulations is conducted by staff to ensure that the regulations meet the current needs of the community. Changes in the regulations are recommended by staff to the Town Manager. The Shellfish Committee is invited to discuss the proposed changes and also to provide recommendation to staff and the Town Manager. The Town Manager holds a public hearing on any proposed revision to the regulations and the public is invited to comment on the proposed changes. The Town Manager's approval of shellfish, eel, herring and aquaculture regulations shall become effective upon the expiration of thirty (30) days from the date the Town Council is notified, in writing, of said regulation approval unless the Town Council votes within said time to disapprove of the said regulation(s).*

### **SHELLFISH COMMITTEE REVIEW:**

*This draft of a proposed amendment to Shellfish Aquaculture Regulations derives its formulation from the impetus of Town of Barnstable shellfish aquaculturists and sub-committee to the Shellfish Committee seeking to address the environmental considerations of the use of leadline materials in anchoring predator exclusion netting on shellfish aquaculture licensed sites.*

### **PUBLIC HEARING:**

*A public hearing on the proposed amendments will be appropriately scheduled.*

### **ANALYSIS:**

*The following represents the proposed changes and the rationale therefore. The proposed changes are highlighted in **bold** for ease of identification.*

**1: Proposal:** *Amend the Shellfish Aquaculture Regulations by adding the following regulation; Section 407-XX.*

***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 Office (NR). 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 Natural Resources, the grower will have the option of appealing the decision to the Barnstable Shellfish Committee, for further***

***recommendation to the Natural Resources. Should a second denial issue, the farmer may appeal to such bodies as may be legally available for appeal.***

***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.***

#### *Rationale*

*The sub-committee concluded that 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.*

*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 Office.*

Tom incorporated the suggestions of the Shellfish Committee (particularly regulatory wording as drafted by Bill Korkuch and Mark Begley). Mark Begley noted that the drafted regulatory wording could be used by the Town as a guideline, instead of a regulation, in order to keep the regulations from growing too large. The issue was continued to future meetings.

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### **Fines Schedule for Shellfish Aquaculture License Non-Compliance**

The Shellfish Committee undertook a further review of a proposed fine schedule as it pertains to the shellfish aquaculture rules and regulations. At the request of the Shellfish Committee, Tom Marcotti submitted to the committee a draft review (compiled by Natural Resources Officer Keith Williams) of a fine schedule for non-compliance with some shellfish aquaculture rules / regulations (to be implemented before the enforcement measure of license forfeiture is considered). The fine schedule draft is included below:

#### **SCHEDULE OF FINES**

##### ***Aquaculture Regulations Amendments***

<i>s. 407-61 – Transplanting Seed</i>	<b>\$300.00</b>
<i>s. 407-62 – Marking Boundaries/Gear</i>	<b>\$300.00</b>
<i>s. 407-63 – Gear &amp; Tackle</i>	<b>\$300.00</b>
<i>s. 407-64 – Removal of Gear</i>	<b>\$300.00</b>
<i>s. 407-66 – Inspection</i>	<b>\$300.00</b>

*(No person shall dig, take or carry away any shellfish of shells between one half hour after sunset and one half hour before sunrise, by any method whatever from any waters, flats or creeks as to which a license for an aquaculture grant has been given by the Town of Barnstable or State of Massachusetts.)*

*(Whoever works a dredge, oyster tongs, or rakes, or any other implement for the taking of shellfish of any description upon any shellfish grounds or beds covered by a license granted by the Town of Barnstable or State of Massachusetts, or in any way disturbs the growth of shellfish thereon, or whoever discharges any substance which may directly or indirectly injure the shellfish upon any such grounds or beds, without the consent of the licensee or transferee shall be punished by a fine of not more than \$300.00.)*

Les Hemmilla suggested a sub-committee of the Shellfish Committee be formed to review and propose a variable fine schedule for numerous items of non-compliance with the shellfish regulations. Mark Begley suggested that Stuart Rapp set the agenda for the proposed sub-committee at a future meeting. Richard Haskell asked if there is an appeal process for the accused offender and requested the input of Doug Kalweit and a Natural Resources Officer (at a future meeting) to define a fine schedule for shellfish aquaculture license non-compliance.

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### **Shellfish Aquaculture License Renewals**

The Shellfish Committee reviewed and recommended the approval of the shellfish aquaculture license renewal applications of Max Kumin (license #02-10, Barnstable Harbor) and Nancy Ashworth (license #02-08, Barnstable Harbor). Andre Sampou noted that as a committee member he would appreciate the opportunity to review items such as shellfish aquaculture license applications prior to the Shellfish Committee meeting and that a copy of an application be available at a Town Office prior to the meeting. Andre Sampou suggested that copies of agenda items (i.e., shellfish aquaculture license applications) should be available for review before the Shellfish Committee meetings take place.