

Shellfish Committee Minutes of the Meeting

DATE: February 20, 2008
TIME: 7:30 P.M. to 9:30 P.M.
LOCATION: MEAD Building

Shellfish Committee Members present:

Stuart Rapp, Les Hemmila, Matt Ostrowski, Richard Haskell

General Public present:

David Still, Dave Barry, Bob Lewsen, Lenny Clark,

NR Staff present:

Doug Kalweit, Tom Marcotti

Chairman's Report:

Stuart Rapp announced that Mr. Jarred Ganey has recently been appointed as a member of the Shellfish Committee once he is sworn in by Town authorities.

Stuart Rapp chaired the February 20, 2008 meeting of the Shellfish Committee. Stuart Rapp requested a change to the minutes of the January 16, 2008 meeting of the Shellfish Committee regarding the topic of "Native American Shellfishing in Town Waters". Stuart's recollection of his statements was that "he was unaware of whether there has ever been any clarification by the Town, State or courts regarding the issue other than Native Americans have rights to shellfish in the Commonwealth."

A motion to approve the minutes of the January 2008 meeting of the Shellfish Committee was forwarded to the March 2008 meeting of the committee.

Natural Resources Report

- **Marstons Mill River and Prince Cove Shellfish Area Opening:**

The **Marstons Mills River** and **Prince Cove** (as defined) opened to shellfishing as of February 15, 2008. The Marstons Mills River and Prince Cove shall automatically close to shellfishing as of May 1, 2008 unless DMF changes the area status prior to said date.

The Marstons Mills River is defined as: The waters and flats and all tributaries thereto of Marstons Mills River in the Town of Barnstable, south of a line drawn across the mouth of Prince Cove, north of a line drawn across the mouth of the river and westerly of a line drawn northerly from the two "No Shellfishing" signs located at the mouth of Warren's Cove (DMF/SC:23.1; classified as conditionally approved).

Prince Cove is defined as: The waters and flats and all tributaries thereto of Prince Cove in the Town of Barnstable, north of a line drawn across the mouth of Prince Cove (DMF/SC:23.1; classified as conditionally approved).

Doug Kalweit and Tom Marcotti presented plans for in-town and out-of-town contaminated quahog relays as part of Natural Resources shellfish propagation program. A number of defined shellfish relay areas located in the Three Bays Area and the Scudder Lane Recreational Shellfishing Area were proposed for relays during the Spring of 2008.

Tom Marcotti informed the committee of the Southeast Massachusetts Aquaculture Center's (SEMAC) offer to supply the Town with triploid oyster seed during 2008. Tom explained that the

project is an experiment that will compare the growth rates and morphologies of triploid vs. diploid oysters. SEMAC coordinator Bill Walton will oversee the progress of the project.

Stuart Rapp presented a letter addressed to the Shellfish Committee from the Cape Cod Oyster Company as included below:

Dear Mr. Rapp,

February 20, 2008

I am writing to remind the Shellfish Committee that Cape Cod Oyster Company would like to donate approximately 20,000 oysters for propagation in the Three Bay area. These oysters will be 2007 year class, produced in North Bay, and will measure approximately 2 inches. They should nearly all be ready for harvest in October 2008. We would like to give these oysters to the town in March or April, 2008. The value of this oyster seed is about \$6,500. We would expect a very high survival (80-90%) and the same percentage to reach three inches by the end of this year.

Included in the many discussions of the benefits of a healthy oyster population to the marine environment, there has been discussion of purchasing oyster seed for propagation in areas other than Scudder Lane. Our company would be very interested in providing the town with large oyster seed that has no maintenance or equipment requirements, but can simply be planted in the spring, clean the water all summer, and be harvested in the fall. If the town wants to pursue this effort, they should prepare bids within approximately the next month.

*Best Regards,
David Ryan*

Tom Marcotti informed the committee of the the particular interests of some members of the Barnstable Association for Recreational Shellfishing (BARS) to experiment with culturing oysters for public propagation purposes at the Scudder Lane Recreational Shellfishing Area. Tom explained how these culturing activities may result in the continuation and enhancement of the town's annual oyster season.

During the Spring / Summer of 2008 the Town will receive approx 350 shellbags of remote set oysters and 1,000,000 quahog seed from the Ma. Division of Marine Fisheries / Barnstable County / SEMAC shellfish propagation program which supplies shellfish seed to Barnstable County Towns.

Ways to Water

Stuart Rapp presented a letter, which he received from Lindsey Counsel, to the committee that addresses certain aspects of the Ocean View Avenue way to water in Cotuit. Lindsey's letter states that the public, not necessarily the Town, may maintain the Ocean View Avenue way to water.

Shellfish Overlay District

The Shellfish Committee discussed various aspects of the proposed Shellfish Overlay District that seeks to protect shellfish habitat in defined Shellfish Relay Areas and Recreational Shellfish Areas. Upon being informed by the Town Legal Dept., Stuart Rapp informed the committee of recent revisions to the Shellfish Overlay District Proposal by some Town Councilors. The amended proposal would essentially have a sunset clause of two (2) years for the purpose of developing a "Harbor Management Plan" for the Three Bays Area to address the multi-user group issues that are integral to the issue.

Stuart Rapp noted that the first reading of the revised "Recreational Shellfish Area and Shellfish Relay Area Overlay District" is on the Town Council / Planning Board public hearing agenda for Thursday, February 28th, 2008. with a subsequent hearing on March 6th, 2008.

Stuart stated that the proposal's implementation will protect shellfish resources and habitat and asked that the proposal be supported and the development of a Three Bays Harbor Management plan be developed with the input of the Shellfish Committee.

Native American Shellfishing in Town Waters

Stuart Rapp informed the committee that he had recently had conversations with the Town's attorney and the Wampanoag Nation's attorney regarding Native American shellfishing rights in the Town of Barnstable. Stuart passed out copies of the court case: the Commonwealth vs. Maxim (1999). Stuart said that the Town and the Wampanoag Nation should work towards an understanding or agreement that the Wampanoag Nation abide by Town shellfish regulations. Doug Kalweit said that he has found no example of managing Wampanoag shellfishing rights, in written form, in any Commonwealth town. Doug said that he would participate in any meeting with the Wampanoag Nation to come to an agreement on shellfishing rights in the Town of Barnstable. Doug said that a potential meeting is pending.

Shellfish Aquaculture License Site Transfer

The Shellfish Committee reviewed, discussed and unanimously passed a motion to recommend the approval of the shellfish aquaculture license site transfer application of Jeffrey Craddock to Ms. Florence Lowell. Mr J. Craddocks shellfish aquaculture site is located in Barnstable Harbor (Area 1 site ng010). A public hearing time will be scheduled for the proposed transfer application.

Piers, Dredging and Shellfish Habitat Issues:

The Shellfish Committee reviewed and discussed the following proposed pier application:

Applicant: J. Bergeron & J.L. Crowley

Application: Construction of a permanent timber pier with seasonal ramp and float.

Location: 59 Short Beach Road, Centerville, MA 02632

Les Hemmilla researched a number of dredging projects that have been performed in the Three Bays over the last decade. Les noted that as a result of multiple dredging projects various detrimental impacts to the shellfish habitat and or resource have occurred. Les informed the committee that there are other pending dredging projects that could potentially be deleterious to shellfish habitat / resources. Les suggested that the committee seek the assistance of the Conservation Law Foundation to protect habitat and resources in such cases.

The Shellfish Committee unanimously passed a motion for Stuart Rapp to send a letter to the Town Attorney requesting that appropriate agencies be informed of potential detrimental impacts to shellfish habitat / resources, if certain proposed dredging projects are allowed to occur, and to seek an injunction action from the appropriate agency to halt any future dredging projects until a review of the proposals and past projects occurs.

Soft Shell Clam Management for Little Huckins Island

Natural Resources informed the Shellfish Committee of the interests of some commercial shellfishermen to open a portion of "Little Huckins Island" to commercial soft shell clamming. The Shellfish Committee reviewed the various aspects of the issue such as resource allocation between recreational and commercial, enforcement, limited season, etc.. Attending members of the

committee generally favored the limited commercial utilization of the resource suggesting only a portion of the island be designated for commercial harvest with strong enforcement for any rule infractions.

Shellfish Aquaculture License Waiting List

In response to an inquiry by Natural Resources, the Shellfish Committee determined that once a shellfish aquaculture site of any area size is allotted to an applicant on the waiting list, that applicant is removed from the list. If the applicant accepted a parcel less than his/her potential allotment of 2 acres, and the applicant desired to acquire his/her maximum allowance, he/she could reestablish him/herself at the bottom of the waiting list for the area balance up to the 2 acre maximum.

Commercial Shellfish Licenses

Dave Barry and Bob Lewsen presented a proposal to create a new class of commercial shellfishing permit for town residents 62 years of age or older. Stuart Rapp said he would put the proposal on a future agenda of the Shellfish Committee for review and discussion. The proposal is included below:

To Whom It May Concern:

I am requesting that there be an additional class of license for Commercial permits, said change would be to Article III, Commercial Shellfishing, paragraph 407-12, a new subparagraph "D" inserted between the present "C" and "D". This paragraph would be for senior persons who have reached an age of 62 [Social Security first age] or older as of the date of application. The rationale for said license is to allow seniors to supplement their incomes. This category of license would be an experimental license for a period not to exceed three (3) years to allow for the fisheries personnel to evaluate the impact upon the overall shell fishing industry and health of the shellfish. At the end of 3 years, if there is a proven adverse affect to the shellfish population, this class of license could be revoked or amended depending on the analysis of impact on various types of shellfish populations. A suggested language would be:

- D. Senior Commercial Shellfishing Permit. The Town Manager or Shellfish Constable may issue a senior commercial shellfishing permit to a resident senior. Said senior must be considered mentally competent and be at least 62 years of age. The senior shellfish permit holder would have the same authorizations as a basic permit holder with the exception that this category of permit would be subject to review at the end of the initial three year period and every two years thereafter due to possible deteriorating shellfish populations. The senior applicant must have successfully completed a Coast Guard boaters safety course prior to applying for the senior permit. All other provisions of the 407-12 Classes of permits and permit conditions." Shall apply.*

*I respectfully submit this for consideration, thank you,
Robert F. Lewsen*