

**Suffolk County Aquaculture Lease Program Advisory Committee
Public Meeting**

MEETING SUMMARY

February 26, 2008

Meeting Number 13

Location: Cornell Cooperative Extension, Kermit W. Graf Building,
423 Griffing Avenue, Riverhead, New York – Second Floor Conference
Room

Start/End: 4:00 p.m. / 6:10 p.m.

Attending: *Members/Alternates*
Tom Isles, DeWitt Davies, Jay H. Schneiderman, Martin Trent, Robert
Whelan, Tamara Sadoo, Wayne Grothe, Arnold Leo, Kenneth L.
Koetzner, Christopher Smith, Karen Rivara, Cornelia Schlenk, John
Aldred, Stuart Heath, Edward Warner, Jr., David Lessard, James
McMahon, Edward Bausman, David O. Conover.

Staff

Lauretta Fischer, Jennifer Kohn, Michael Mulé, Barbara DelGiudice

Others

Gregory Greene, Keith Brewer, Kimberly Somers, Robert Nuzzi, Dean
Yaxa, Floyd Carrington, Scott Gillis, Chuck Steidle, Dave Bergen,
Matthew Atkinson, Robert Hamilton, Jr., Michael Kujawa, Dennis
Quaranta, Gary Crowther, Michael Martinson.

Materials

Distributed: Final meeting agenda; January 24, 2008 ALPAC Meeting Summary;
Correspondence/Communications (January 31, 2008 email from Michael
Osinski, and response letter from DeWitt Davies dated February 5, 2008
[Attachment #1]); *Revised* Draft S.C. Shellfish Aquaculture Lease
Program – Proposed Program Components (Working Draft February 11,
2008); Summary Sheet of Preliminary Survey Costs.

Welcome and Introductions

Chairman Tom Isles began the meeting by giving a quick overview of the agenda and a summary of work conducted at previous meetings. T. Isles indicated that a brief public comment following each agenda item, in addition to the public comment period at the end of the meeting, will be permitted.

Review of January 24, 2008 ALPAC Meeting Summary

T. Isles asked the committee for comments regarding the January 24, 2008 ALPAC Meeting Summary. No comments were made at this point in the meeting, but later on Mr. Arnold Leo requested that the summary of the January 24, 2008 meeting be amended to more accurately reflect comments attributed to him. Hence, the second paragraph on page 7 of the January 24, 2008 summary is amended as follows:

“Arnold Leo stated that the lease of a public resource for private use would entail a cost to the private party involved, especially for conduct of the lease survey. The burden for preparation of the survey could be reduced by having the surveys conducted by Suffolk County. In return, the County could recoup costs for these surveys over time through receipt of a portion of the annual lease fee apportioned for this purpose.”

Correspondence, Communications and Updates

DeWitt Davies gave a brief summary of the correspondence and communications the County has received regarding the Lease Program since the last ALPAC meeting on January 24, 2008. Correspondence received and discussed was submitted by Michael Osinski, Greenport Village Trustee and the response letter to Michael Osinski from DeWitt Davies (Attachment #1).

Cashin Associates, P.C., Progress Report

Greg Greene, Cashin Associates (CA), informed the group of the status of the DGEIS and the proposed lease program components document. G. Greene stated that the changes shown on the revised version of the proposed program components (dated February 11, 2008) were based on input and data collected since the January 24, 2008 ALPAC meeting.

Kimberly Somers, (CA), discussed the revisions made to the draft lease program components document. A major change was the change of the term “blue zone” to “Shellfish Cultivation Zone.” K. Somers explained that the shellfish cultivation zone includes the “blue zone” as well as all of the temporary assignments and private oyster grants lying outside the 1,000 foot shoreline buffer. She stated that two new components were added: Termination of a Lease (Component #16) and Transfer of Leases (Component #18) in response to previous meeting comments. K. Somers explained that an additional component was added which addresses the phasing of converted temporary assignments (new Component #21), but was not included in the hand-out because the change was made after the document was distributed to the committee. K. Somers stated that a change was also made to the component addressing documentation of natural non-

productivity of proposed leases (Component #14). The revised Component #14 requires documentation of significant natural productivity on sites not currently used for aquaculture only if there is public opposition during the public comment period. A similar change was made to the component addressing the productivity documentation for conversion of existing temporary assignments (Component #21 – 2/11/08). K. Somers stated that under the current Component #21, the need for a benthic survey would only apply to those assignments expanding onto previously unused underwater land if there is comment indicating natural shellfish stocks during the public comment period. K. Somers informed the group that a change was made to the amount of time allowed for the relocation of leases (Component #7) from three years to five years, in response to comments received from the East End Marine Farmers Association. K. Somers stated that the component regarding leases for restoration, Component #32, was revised to clarify that restoration leases would be issued for shellfish resource restoration purposes. K. Somers explained that the change to Component #32 was made in order to be in accordance with the provisions of the 2004 Leasing Law. Other changes to the draft proposed program components document included reformatting components for a more comprehensive and streamlined document.

Wayne Grothe asked if the difference between a transfer of lease and sublease could be specified in the components document.

G. Greene replied that a lease transfer and a sublease are identified separately under components #17 and #18.

Cornelia Schlenk asked why shellfish resource restoration leases are not included in the 1% growth rate and cannot be subleased.

D. Davies added that shellfish resource restoration leases are excluded from the 1% growth rate because these leases would be for a general public purpose as opposed to private use, and that the 2004 Leasing Law authorizes leasing for shellfish cultivation purposes, without reference to type of lease. He added that there would be no business interest associated with shellfish restoration resource leases; therefore, subleasing would not be needed.

C. Schlenk asked if shellfish resource leases are necessary under the proposed Lease Program.

D. Davies replied that municipalities have showed interest in such leases since early on in this process and there has been no opposition to such leases from the committee or public to date.

C. Schlenk stated that review of activities on shellfish resource leases would be useful.

Martin Trent asked if GPS coordinates could be used for marking and surveying a lease.

T. Isles replied that lease surveys must meet the NYS Land Survey Standards and that the County is still looking into whether GPS coordinates would be sufficient to determine the boundaries of a lease.

John Aldred stated that Component #26 – Lease Establishment on Grants originally included only the oyster grants that were located within the “blue zone” (as depicted on the Draft Lease Program Shellfish Cultivation Zone Alternative 1B Map dated January 24, 2008) and that this has since been changed to include all of the grants outside the 1,000 foot shoreline buffer. J. Aldred informed the group that the inclusion of grants in Gardiners Bay may cause problems with commercial fishing interests. J. Aldred stated that it may be more appropriate to keep similar criteria that apply to new leases in the “blue zone” for fallow grants located outside of the “blue zone,” such as starting out with a 5-10 acre lease, as opposed to overlaying a lease on the entire grant.

Arnold Leo added that it is not the intent of the Lease Program to permit such large contiguous acreage for shellfish aquaculture. A. Leo suggested issuing 5-10 acre leases on fallow grants to start. A. Leo then asked if there would be a public hearing prior to issuing leases on these grants. He added that the waters of Gardiners Bay, where these grants are located, are heavily trafficked and fished.

T. Isles replied that no public hearing would be required for leases on these grants, but a public comment period would offer a chance for the public to comment on any lease application.

Karen Rivara stated that the intent of the legislation was to allow the cultivation of species other than oysters on the grants. She added that not all of the grants in Gardiners Bay are fallow, and that some have been used for the past 25 years. K. Rivara stated that a distinction would need to be made between the active and fallow grants. She informed the group that she intends to use her grant in Gardiners Bay to relocate her 200 cages in the event of a Brown Tide outbreak in order to protect her crop.

A. Leo stated that he agreed with K. Rivara, and that grants with NYSDEC permits should be grandfathered into the Lease Program. A. Leo stated that he is more concerned about the fallow grants in Gardiners Bay and that they should be issued 5-10 acre leases and be subject to the 1% growth rate. A. Leo also stated that Debra Barnes of NYSDEC has previously mentioned that NYSDEC has taken it upon themselves to issue permits for the cultivation of species other than oysters on private oyster grants, which is exercising a regulatory power, and is not the law.

M. Trent stated that conflicts between recreational and commercial fishermen exist (i.e., depletion of recreational fishery by draggers) in Gardiners Bay and that he does not see the exclusion of draggers over these grants as a negative.

T. Isles informed the group that CA will look into the possibility of including the 1% growth rate for fallow grants.

Edward Warner stated that it is not the intent of the Lease Program to exclude draggers from Gardiners Bay. E. Warner informed the group that commercial fishermen are allowed to drag over grants without disturbing the bottom. E. Warner asked to look into separating on- and off-bottom culture to reduce conflicts.

Edward Bausman asked if NOAA should be contacted to determine if a submerged structure would create a hazard and should be placed on nautical charts.

David Lessard replied that the US Coast Guard presently requires notice of structures set in the water column.

Public Comments for Agenda Item #4, First Bullet (changes to the Proposed Lease Program Components)

1. Dean Yaxa, a private oyster grant holder, stated that wild shellfish on a grant are permitted to be harvested by commercial fishermen. D. Yaxa added that a grant owner cannot stop a commercial fisherman from harvesting shellfish on a grant if the grant holder cannot prove that the shellfish were cultivated. D. Yaxa asked what is considered “significant natural shellfish stock” (referring to Component #14 of the draft proposed lease components document), and why shellfish cultivation under the Lease Program is not permitted within 1,000 of the shoreline.

T. Isles replied that the County still needs to define the criteria for “significant natural shellfish stock.” T. Isles also stated that Suffolk County’s jurisdiction only extends seaward of the 1,000 foot shoreline buffer but attempts will be made to accommodate those people.

2. Robert Hamilton, Jr., a commercial dragger, stated that he has not had any conflicts with any existing shellfish farmers or recreational fishermen in Gardiners Bay. He also recommends the use of GPS coordinates for lease surveys. R. Hamilton, Jr. also stated that he has caught large oyster cages when dragging, which caused damage to his net. He stated that all aquaculture gear should be required to be marked with the owner’s name and lease information in order to identify any abandoned or loose gear. He informed the group that portions of the Shellfish Cultivation Zone are active lobster and conch areas, as well as fish trap areas, particularly within the Town of Southold. R. Hamilton, Jr. also stated that Component #16 – Termination of a Lease should be revised to specify that the violation of the NYS ECL would be marine-related. He stated that commercial conch fishermen and draggers currently use the fallow oyster grants in Gardiners Bay and that the County should not suddenly close these areas and force commercial fishermen into smaller areas, as this would cause serious conflicts. He added that he appreciates the channels marked on the Draft Lease Program Shellfish Cultivation Zone Alternative 1B Map, and suggested contacting and speaking with Southold baymen. R. Hamilton, Jr. further stated that sections of Orient Harbor, particularly the shoal east of the channel and south of the harbor, are good places for aquaculture.

Keith Brewer replied that the fish trap locations within the study area have been identified and mapped.

A. Leo added that there was a case in Lake Montauk that ruled wild scallops on private lands were a common resource, and that baymen could dredge for scallops on these lands.

3. Mike Kujawa, Winergy, suggested that the wordage for Component #25 – Continuation of Grant Activities be revised to make it clear that the lease program is not limited “only to grants and portions therefore.” M. Kujawa also stated that the grants in Gardiners Bay should be safe-havens for lease holders in case of an outbreak of Brown Tide in other sections of the bay system.

4. Dave Bergen, Town of Southold Trustee, stated that due to the Town's jurisdiction out to 1500 feet, leases would need to be reviewed pursuant to the Town LWRP, a process that could take up to 30 days. D. Bergen also inquired about the liability issues regarding damage to boats from surface water structures associated with aquaculture leases.
5. Matthew Atkinson, Peconic Baykeeper, Inc., stated his belief that use of grants for conduct of research involving species other than oysters should be allowed. M. Atkinson asked the group how much time has to pass for a grant holder to lose the right to cultivate species other than oysters on their grant. M. Atkinson also stated that it is unlawful to prevent draggers from dragging over grants.

D. Davies indicated that all grants outside the 1,000 ft buffer have been included in the Shellfish Cultivation Zone. (Note: Shellfish Cultivation Zone includes all temporary assignments, private grants and areas with minimal environmental and socio-economical conflicts.)

J. Aldred asked to eliminate the word "habitat" from the text in Component #32- Leases for Shellfish Resource Restoration. Additionally, J. Aldred stated that Component #14 – Documentation of Natural Non-Productivity of Proposed Lease should only be limited to natural productivity of shellfish. J. Aldred also stated that opponents of a lease application should have a basis for claiming that there is a natural shellfish stock on a proposed lease site.

T. Isles replied that the components will be revised.

Keith Brewer (CA) gave a brief overview of the status of the DGEIS. He informed the group that comments on the Preliminary DGEIS were received from committee members Karen Rivara, Gregg Rivara, John Aldred, Arnold Leo, and Suffolk County Council of Environmental Quality (CEQ) member Jim Bagg. K. Brewer stated that major comments received by committee members addressed the Environmental Settings Section (Section 4) of the document, and J. Bagg addressed formatting issues needed to meet SEQRA requirements. CA is currently in the process of addressing and incorporating these changes into the DGEIS, and it is expected to be delivered to Suffolk County on March 5, 2008 for submittal to CEQ for their March 19, 2008 meeting. K. Brewer informed the group that comments on the DGEIS from the committee are still welcomed, but must be received by February 29, 2008. (Note: comments from Martin Trent and Bob Whelan were subsequently submitted to CA.)

G. Greene added that one of the comments received by J. Bagg was that the DGEIS should disclose the foundation of work that went into the preparation of the report and accompanying maps. G. Greene stated that this comment was addressed and included in detail in the DGEIS.

K. Brewer gave a brief discussion on the "Summary Sheet of Preliminary Survey Costs." K. Brewer explained that the three estimates obtained to date are preliminary and that more estimates will be obtained.

K. Rivara stated that survey costs listed on the Summary Sheet were very high, and that they could exceed the value of the parcel surveyed.

A. Leo corrected a statement he made at the January 24, 2008 ALPAC meeting regarding who should be made responsible for the costs of a survey on a lease. He asked that the meeting summary be updated accordingly. He clarified his suggestion by stating that Suffolk County should front the cost for lease surveys, and that a percentage of lease fees paid by the lease holders should go to reimbursing the County over the duration of the lease. A. Leo also asked if GPS coordinates could be used legally to survey a lease.

T. Isles replied that questions regarding survey issues, how they will be paid for, and is there a County benefit to subsidize the program, need to be clarified before making decisions.

Jay Schneiderman stated that grouping lease sites together when performing a survey may save on costs. J. Schneiderman suggested creating a subdivision-like map on which leases could be based. These leases could then be allocated out one at a time based on a grid system.

K. Rivara asked if the surveyor needs to be from NY State. K. Rivara stated that the survey cost estimates are astronomical and that a surveyor she used in Connecticut was much cheaper.

J. Schneiderman asked for a price for the County to conduct all surveys in advance of issuing leases.

K. Brewer replied that the County does not know in advance where in the Shellfish Cultivation Zone growers would request new lease sites.

T. Isles added that two or three approaches on how to pick lease sites need to be figured out prior to determining survey costs.

D. Davies added that the Suffolk County Title Search Data Report has been completed and should reduce the amount of work a surveyor would require to conduct a full survey, and hence may reduce costs.

David Conover asked whether a lease that is transferred would require another survey.

D. Davies replied that Suffolk County would retain the survey coordinates of a lease, making a second survey unnecessary.

C. Schlenk inquired about insurance and bonding issues.

K. Brewer replied that the project attorney is looking into this matter.

T. Isles added that the bond component has been removed from the proposed project lease components document. This was done to simplify the program and remove this burden on lease applicants.

Floyd Carrington, NYS-licensed land surveyor, stated that there are too many variables to come up with a survey cost estimate. F. Carrington stated that GPS only gives coordinates, which would place a liability on Suffolk County in regard to locating such sites in the field.

M. Trent stated that the requirement for a survey on building lots under Article 6 of the Suffolk County Sanitary Code does not apply to underwater lands.

J. Aldred asked whether each lease should be surveyed separately, or if a block of approximately 400 acres could be surveyed at once and then divided up into lease areas. T. Isles indicated that it was the County Attorney's opinion that each must be surveyed.

K. Rivara stated that she thought that zones would be established where leases could be placed. K. Rivara suggested that the East End Marine Farmers Association (EEMFA) should have a meeting to determine where there would be interest to obtain leases in the Shellfish Cultivation Zone.

D. Yaxa stated that there are too many variables in the water, such as tides and wind, that would prohibit buoys from staying in the exact spot they were placed. D. Yaxa asked if a degree of error of approximately 10 feet for each lease survey would be appropriate. D. Yaxa also stated that there is a need for shoreline access sites near underwater lands.

J. Schneiderman stated that leases do not have to abut each other, and that buffer areas should separate leases. F. Carrington stated that the problem of overlapping boundaries applies to oyster grant parcels.

Wayne Grothe stated that a timeframe for lease applications should be staggered to allow for a way to conduct lease surveys in bulk to reduce survey costs, as opposed to performing lease surveys separately. He suggested opening up the application process for leases during a specific time frame once a year.

Robert Whelan suggested keeping leases 100 feet apart from each other to avoid possible overlays. He stated that a grid map could be prepared by a surveyor, and that coordinates for leases could be obtained from this map and used to locate the leases in the field.

D. Lessard asked whether existing surveys on grants would be valid under the Lease Program.

F. Carrington replied that existing surveys on grants would be valid.

State Environmental Quality Review/Suffolk County Council on Environmental Quality

Michael Mulé gave a brief overview of the DGEIS review process. M. Mulé stated that the DGEIS will be delivered to CEQ in time for the March CEQ meeting. M. Mulé stated that the CEQ meeting will be held on March 19, 2008 at 9:30 a.m. at the Legislative Building auditorium in Hauppauge and that all are welcome to attend. He explained that the DGEIS will be reviewed by CEQ for SEQRA adequacy prior to approval and deemed complete. M. Mulé informed the group that the public hearing, pending the approval of the DGEIS by CEQ, has been scheduled for April 17, 2008 at 7:00 p.m. and will be held in the Riverhead Town Hall, at which time comments regarding the DGEIS will be solicited from the public and ALPAC members. He further explained that any comments received during the public hearing will be responded to by Suffolk County in a Final Generic Environmental Impact Statement (FGEIS), which will also be subject to CEQ and County Legislature approval.

T. Isles added that if the DGEIS is deemed incomplete by CEQ, the schedule discussed by M. Mulé would then be set back by one month. T. Isles also informed the group that the public hearing will provide an opportunity for comments, both positive and negative, as well as criticism, etc.

J. Aldred stated that the public notice procedure for the public hearing should be as thorough as that used for the previous project kick-off meetings.

T. Isles replied that the County will alert the press of the public hearing, as well as all interested parties.

Kenneth Koetzner asked if there will be a summary of draft comments published as a separate document.

M. Mulé replied that the comments, if substantive, will be published as part of the FGEIS document.

ALPAC Meeting Schedule

D. Davies informed the group that the next ALPAC meeting will be held on April 2, 2008 at 4:00 p.m. at which time a review of the draft lease program report will be discussed. D. Davies stated that the draft lease program report will include information regarding the lease procedure criteria, and how the program will be run.

Public Portion/Comments

1. D. Bergen stated that he would like to modify his previous comment made during the January 24, 2008 ALPAC meeting in which he requested the elimination of leases east of Robins Island in the Town of Southold. D. Bergen explained that he would like to modify his previous comment and reduce the exclusion area to include only the portions of the Shellfish Cultivation Zone extending from navigation aides R22 to C1 to G3 due to high vessel traffic in this area.
2. R. Hamilton, Jr. stated that a minimum of 100 feet of separation between leases should alleviate boundary disputes.

The meeting was then adjourned by T. Isles.

From: mike@widowsholeoysters.com
Sent: Thursday, January 31, 2008 11:07 AM
To: Planning
Subject: oyster leases in gardeners bay

Dear Mr. Isles,

I am an oyster farmer with a private grant in Greenport Harbor. I am also the Greenport Village Trustee.

After attending last Thursday's meeting in Riverhead, I was struck by the absence of lease land in Gardeners Bay. The contention that baymen have exclusive rights I find unbalanced. Small oyster leases promote fish spawn by acting as reefs. Whelk trappers actually set their traps on the boundaries of my underwater property in Greenport Harbor to catch the whelks which are drawn by my oysters.

Also, I noticed two lease areas that are open in Gardener's Bay. Why were those two areas designated for leases? They appear to be close to existing oyster farms. If that is true, then am I the only oyster farmer in the region who does NOT have access to nearby lease areas.

By depriving oystermen of access to public lease area in Gardener's Bay, you are only going to make the private bottom there more valuable.

Finally, as an elected Trustee of the Village of Greenport, I find that your removal of bottom near Greenport detrimental to the village. Greenport was the center of the oyster industry. For oystering to flourish, Greenport, by its location, harbor, access to labor, and availability of shore front land zoned for commercial waterfront industries must occupy a central place in the oyster business.

Do not let threats from a few fishermen cow you into skewing the location of the leases. I would like to continue this conversation at your convenience. My cell phone is 917-834-9061.

Sincerely,

Michael Osinski
Widows Hole Oyster Company
Greenport Village Trustee

COUNTY OF SUFFOLK



STEVE LEVY
SUFFOLK COUNTY EXECUTIVE

DEPARTMENT OF PLANNING

THOMAS A. ISLES, A.I.C.P.
DIRECTOR OF PLANNING

February 5, 2008

Hon. Michael Osinski, Trustee
Village of Greenport
263 3rd Street
Greenport, NY 11944

Dear Mr. Osinski:

In response to our phone conversation on January 31, 2008, I am enclosing the "Notice of Completion of the Final Scoping Document on the Draft GEIS" for the Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay, and a copy of the Final DGEIS Scoping Document itself. Your name has also been added to the distribution list for future receipt of all notices, etc. in regard to the State Environmental Quality Review process, given your position as a Trustee for the Village of Greenport. (Please note that these materials were previously sent to Sylvia Pirillo, Clerk, Village of Greenport.)

In our phone conversation you also reiterated points you raised during the public comment portion of the January 24, 2008 ALPAC meeting. These points are for the most part included in your January 31, 2008 email to Director Thomas Isles. I would like to respond as follows.

Point #1 – "Absence of lease land in Gardiners Bay."

Most of the lands included in the blue zone as shown on the "Draft Shellfish Cultivation Zone" map dated January 24, 2008 are located to the west of Shelter Island. This is due to the fact that most of the Gardiners Bay area to the east has been identified as an area that "supports multiple commercial fisheries," as shown on the "Draft Environmental Resource Conditions" map" dated September 26, 2007. As a result of this potential conflict, the blue zone is limited in extent to the east of Shelter Island.

Point #2 – "Why were only two areas designated for leases in Gardiners Bay?"

The two areas designated as in the blue zone to the south of Gardiners Island, northwest of Napeague Harbor are shown on the January 24, 2008 map in response to a recommendation from the Town of East Hampton Commercial Fisheries Advisory Committee. This committee identified these areas as "unproductive," and including them

Letter to Mr. Michael Osinski

February 5, 2008

Page 2

as available for potential leasing would minimize future conflicts with commercial fishermen. The location of the two nearby private oyster grants was of secondary importance in this determination.

Point #3 – “Greenport was the center of the oyster industry.” Removal of land from the blue zone near the village would be detrimental to the village. Greenport, given its location and land use, “must occupy a central place in the oyster industry.”

As stated by Cashin Associates at the January 24, 2008 ALPAC meeting, the blue zone near the Village of Greenport, between the Greenport breakwater on the west to Bug Light on the east, as shown on the “Draft Shellfish Cultivation Zone” map dated November 8, 2007, was reduced in response to navigation concerns and the need to reduce conflicts with boaters and commercial vessels using navigation channels and lanes. Hence, a modified, reduced blue zone in this area is shown on the revised “Draft Shellfish Cultivation Zone” map dated January 24, 2008. Private grant lands near Greenport remain available for conduct of aquaculture, and some areas in the blue zone are located about two miles away.

Your interest in the program is greatly appreciated, especially as it relates to the future of water dependent uses in the Village of Greenport. I will relay your concerns to Mr. Gregory Greene, the Principal-In-Charge at Cashin Associates for the lease program project, and ask him to contact you to further discuss the issues you have raised.

Sincerely,



DeWitt S. Davies, Ph.D.
Chief Environmental Analyst

DSD:bd

Encls.

cc: Thomas A. Isles, A.I.C.P., Director
Gregory Greene, Cashin Associates, P.C.
Home Address : Michael Osinski
307 Flint Street
Greenport, NY 11944