

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

**MEETING SUMMARY  
June 26, 2008  
Meeting Number 16**

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

Start/End: 4:00 p.m. / 6:30 p.m.

Attending: *Members/Alternates*  
Thomas Isles, DeWitt Davies, Jay H. Schneiderman, Kimberly Paulsen, Todd Stebbins, Kenneth L. Koetzner, Debra Barnes, Arnold Leo, Gregg Rivara, John Aldred, Wayne L. Grothe, James McMahan, Victor Bethge, Karen Rivara

*Staff*  
Daniel Gulizio, Laretta Fischer, Jennifer Kohn, Michael Mulé, Barbara DelGiudice

*Others*  
Gregory Greene, Keith Brewer, Robert Nuzzi, Steven Lang, Bill Pell, Matthew Atkinson, Floyd Carrington, Howard Pickerell, Wade Carden, Dennis Quaranta, Stephen Gauger, Michael Kujawa, David Relyea, Jim Markow, Robert Rheault, Philip Curcio, Chester Zarnock, Nick Anastasi

Materials

Distributed: Meeting Agenda; May 14, 2008 ALPAC Meeting Summary; Written comments on the S.C. Shellfish Aquaculture Lease Program DGEIS – May 6, 2008 through June 26, 2008; Written comments received on the S.C. Shellfish Aquaculture Lease Program Administrative Guidance First Draft (May 14, 2008); Correspondence/Communications (May 29, 2008 letter from Dr. David Conover, SoMAS; June 11, 2008 email from Dr. Gary Wikfors, NMFS; email dated June 12, 2008 from Dr. Ronald Goldberg, NMFS; June 25, 2008 email from Karen Rivara, Aeros Cultured Oyster Co.; May 21, 2008 CEQ Meeting Transcript (pp. 12-48); Oyster Grant Activity Maps; S.C. Shellfish Aquaculture Lease Program Administrative Guidance – Second Draft (June 26, 2008)

Note: copies of all the above are available and can be obtained by request from Ms. Barbara DelGiudice (Barbara.Delgiudice@suffolkcountyny.gov/631-853-5111).

## Welcome and Introductions

Chairman Tom Isles began the meeting by giving a quick overview of the agenda, to include updates on comments of the Draft DGEIS, update on revised Administrative Guidance and a summary of work conducted at previous meetings.

## Review of May 14, 2008 ALPAC Meeting Summary

T. Isles asked the committee for comments regarding the May 14, 2008 ALPAC Meeting Summary. No comments were received, and the document was accepted.

## 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 May 14, 2008. Correspondence via email and letters received by the County and discussed were submitted by Matthew Atkinson, Peconic Baykeeper, regarding his email to the NYSDEC dated May 15, 2008; an anonymous letter received on May 20, 2008 that contained comments on the Lease Program DGEIS; three separate letters from the NYSDEC (Charles T. Hamilton dated May 21, 2008 with comments on the DGEIS from the Office of Natural Resources; Christina Grahn dated May 22, 2008, which referenced the report – *Species Composition, Seasonal Occurrence and Relative Abundance of Finfish and Macroinvertebrates Taken by Small-Mesh Otter Trawl in Peconic Bay, New York* (1988); and James Gilmore dated June 24, 2008 with comments on the DGEIS from the Bureau of Marine Resources); a letter from Wallace Steidle, Coastal Farms Inc., dated June 6, 2008 stating his opinion that the shellfish lease program as proposed would be more detrimental than beneficial to the shellfish aquaculture industry because of its limitation on lease size that would preclude bottom cultivation; the burden imposed by new regulations, monitory and report requirements; and other factors; an email from Victor Bethge, dated June 9, 2008 with Town of Shelter Island comments on the Draft Shellfish Aquaculture Lease Program Administrative Guidance (May 14, 2008) document, and summary of substantive comments on the DGEIS distributed at the May 14, 2008 ALPAC meeting; an email from Karen Rivara, East End Marine Farmers, dated June 10, 2008 responding to issues raised on the DGEIS by various parties, and providing information on the limitations and constraints currently imposed on shellfish farms in NYS; the viability of shellfish farm operations in light of these constraints; and water quality and management problems relating to the status of finfish and shellfish populations in the Peconics; an email from Gregg Rivara, Cornell Cooperative Extension, dated June 12, 2008 with attached report and comment from Don Webster concerning mechanical harvesting in Maryland; and an email from John Aldred dated June 10, 2008 with comments on the Draft Shellfish Aquaculture Lease Program Administrative Guidance (May 14, 2008) document. Additional communications received include a letter from Dr. David Conover, SoMAS, dated May 29, 2008 thanking the Director for help in securing continued funding in the NYS budget for the Marine Disease and Pathology Research Consortium; an email from Dr. Gary Wikfors, NMFS, dated June 11, 2008 in reference to a research proposal - *Quantitative Impacts of a Commercial Oyster Nursery Upon Water Clarity, Phytoplankton, and Dissolved Nutrients*; an email from Dr. Ronald Goldberg, NMFS, in reference to a preliminary research proposal - *Assessing the Impacts of Mechanical Harvest of Oysters and Clams on Seafloor Habitat and*

*Bethos*; and an email from Karen Rivara, dated June 25, 2008, with information/photos on the various phases of shellfish farming.

D. Davies informed the group that comments received to date on the DGEIS and the draft Administrative Guidance document have been compiled and are in the handouts. He also explained that included in the handout material was the portion of the transcript discussing the lease program from the Council on Environmental Quality (CEQ) meeting held on May 21, 2008. D. Davies stated that all of the comments and correspondence received will be included in the Final Generic Environmental Impact Statement (FGEIS).

Also, D. Davies informed ALPAC that he received a phone call from Wayne Grothe, The Nature Conservancy, questioning the fact as to why the burden of ground truthing of a parcel should be on the applicant, as opposed to the accuser. Also, W. Grothe suggested that the County explore some type of grant trading where an owner of a fallow grant in Gardiners Bay would have the option to trade the grant for a lease in a different location.

D. Davies also had a phone conversation with Arnold Leo, East Hampton Baymen's Association, regarding his concerns on mechanical harvesting, and request to add this topic to the June 26, 2008 ALPAC meeting agenda. Fallow grants were discussed as well.

T. Isles received a phone call from Dennis Quaranta, Winery Power LLC, requesting that the program include the Winery Power 200-acre site leased from the New York State Office of General Services (NYS OGS) located just south of Plum Island within the Shellfish Cultivation Zone.

Gregg Rivara asked why the County and ALPAC are bothering to entertain or respond to anonymous letters. T. Isles responded by stating that the anonymous letter (May 20, 2008) was received during the DGEIS comment period, and therefore will be considered along with other comments received in the FGEIS.

Karen Rivara passed around vials containing clam and oyster seed to the committee for viewing. She reiterated that the aquaculture program is about harvesting only those shellfish that are planted, and not natural stock.

Hon. Jay Schneiderman added that he was very grateful for Karen and other shellfish farmers for taking the time to show him their operations so he could better understand the day-to-day activities associated with shellfish cultivation. He also stated that just because a letter is received from an anonymous person does not mean that the comments are not valid, and that they should not be dismissed for that reason.

G. Rivara expressed concern over the letter submitted by C. Hamilton (NYSDEC) dated June 24, 2008. C. Hamilton states in his letter that the DGEIS did not adequately address the adverse impacts associated with chronic hydraulic clam dredging on marine resources and habitats. With this statement according to G. Rivara, it is obvious that C. Hamilton does not understand how shellfish farming works. There is no chronic harvesting of clams in shellfish farming; clams are planted and harvested years later when they mature. Perhaps there is chronic harvesting on wild

shellfish harvesting, but that is not what we are talking about here. Another point G. Rivara made was according to C. Hamilton, the Atlantic States Marine Fisheries Council's marine fishery plan for winter flounder specifically recommends the prohibition of dredging to reduce mortality on eggs and larvae. G. Rivara looked up the management plan in question, and nowhere in the plan does it state anything about shellfish harvesting (hydraulic or otherwise), but only discusses sediment dredging. So, C. Hamilton must not have read the management plan that he quotes. Lastly, C. Hamilton says the DGEIS fails to consider more ecologically sensitive alternatives, such as considering restricting the leasing program to public shellfish restoration projects. It appeared to G. Rivara that C. Hamilton did not read the 2004 New York State Law, that authorized the County lease program and states that this program is to promote commercial shellfish aquaculture activities.

J. Schneiderman stated that it is obvious that there is not enough time to debate all the comments, and the County is developing a response to all the substantive comments that were made, and these will be addressed in the FGEIS, which T. Isles confirmed. There may be some substantive issues that do require mitigation, and the program may need to be modified to address these.

K. Rivara suggested that as the County moves through the process of completing this program, decisions should be made based on science and much of the information available can address the concerns being discussed. D. Davies responded by stating that as part of the process, all information and comments received by the staff have been distributed to ALPAC for review, with the intent that they will be used to complete the FGEIS and improve the program .

J. Schneiderman stated that if this project was to incorporate the entire 100,000 (+) acres, some of these concerns would indeed be an issue, but because the program currently includes leasing such a small portion of the bay system that many of these concerns are mitigated; and if the program were to go beyond this scale after 10 years, it may require additional mitigation. T. Isles confirmed that this was the purpose of limiting the program to a modest growth scenario.

### Oyster Grant Status Update

Mike Mulé gave a brief presentation of the updated findings and recommendations of the title search conducted on over 400 underwater land parcels in Peconic Bay and Gardiners Bay. He also gave the group an overview of the shellfish permit breakdown for all of the oyster grant lands after a recent meeting with Debra Barnes of the NYSDEC. M. Mulé explained that, based on the new permit information provided by NYSDEC, there are currently 65 privately-held underwater grant parcels in Peconic Bay and Gardiners Bay accounting for 5,822 acres, 2,695 acres of which have 2007-2008 NYSDEC permits for shellfish aquaculture; 2,565.5 acres of this total are outside the 1,000 foot shoreline buffer. A total of 15 grants (1,119.5 acres outside the 1,000 foot shoreline buffer) have permits to cultivate oysters only. In addition, 13 grants have 2007/2008 NYSDEC permits to cultivate shellfish species other than oyster with a total acreage outside the buffer zone of 1,446 acres.

T. Isles and D. Davies stated that the oyster grant maps distributed assist in the determination of how many grants and how many acres will be involved in the program. As indicated, only a small portion of the private grant lands will be grandfathered in the program.

### Winergy Power LLC Lease Area

T. Isles opened the discussion on the Aquaculture Lease Program Maps by talking about the Winergy Power 200-acre water column finfish lease in Gardiners Bay, issued by the NYS OGS, and whether this parcel should be included into the County's lease program. The County questioned ALPAC as to whether it feels that this area should be included in the Shellfish Cultivation Zone.

D. Quaranta, gave a brief introduction of how the lease was acquired from the previous owner (Mariculture Technologies), and that it consisted of a 200-acre water column lease to farm finfish. He also stated that because of this lease, the acreage is a restricted use zone until the lease expires in 2037. He would like to get permission to raise oysters/scallops on the site and has requested to have a portion of the 200 acres made available to do so. He said he would like to start off slowly with a 5 to 10 acre lease area for shellfish, and may also want to use the water column later.

J. Schneiderman asked if the site posed a conflict with fisheries, and if the site were to be added, he was concerned about how the 200 acres would be phased into the program.

D. Davies stated that in order for Winergy to obtain access to the bottom for cultivating shellfish, it would have to get a lease from the County. If the final Cultivation Zone Map that will eventually be adopted by the County does not have the 200-acre area on it, then the area will not be considered eligible for shellfish aquaculture leasing.

Greg Greene, Cashin Associates (CA), stated that if this area is included in the Cultivation Zone, then it would most likely be treated the same as a fallow grant area, and would be subject to the same requirements set forth for fallow grants.

John Aldred asked if the original agreement with NYS OGS could be modified to include shellfish cultivation; D. Davies said he could not answer that because there are most likely legal issues that would have to be addressed. D. Barnes stated that neither NYS OGS nor DEC can issue leases for shellfish cultivation in Peconic/Gardiners Bays. That right belongs to the County.

J. Schneiderman suggested that CA should evaluate Winergy's request. T. Isles asked James McMahon if he could determine if the Town of Southold had any particular view on this matter.

### Discussion on Lease Program Maps

K. Brewer of CA gave a brief overview of the Shellfish Cultivation Zone as it was presented in the DGEIS, and stated that of the 110,000 acres of underwater land ceded to the County for shellfish aquaculture, approximately 33,000 acres fall within the Cultivation Zone. The zone includes all private oyster grants and TMAUAs outside the 1,000 foot buffer zone, as well as areas considered for new leases. K. Brewer then introduced the Shellfish Aquaculture Lease Map. This map shows all of the potential locations where the new growth leases (60 acres a year for 10 years) may be issued, and each site was displayed as a 10-acre grid square surrounded by

a buffer zone. The areas were broken up into letter designated sections, and each lease area had a designated identification number within that assigned section. In addition, K. Brewer explained that the private land grants did not have grids, because each grant will be handled on an individual basis depending on location, legal status and past/current activities. All TMAUAs within the 1,000 foot buffer zone would be given the opportunity to move directly outside the buffer and remain as is (5-acre off-bottom), or they can choose one of the grid cells in the cultivation zone, and be given the choice to remain as is, or convert to a 10-acre off/on bottom plot. All TMAUAs within an environmental or socio-economic area can remain there and continue existing operations (5-acre off-bottom only), or can move to a cultivation zone grid and remain as is, or convert to a 10-acre off/on bottom plot. New leases must be located in a cultivation zone grid.

G. Greene added that the Cultivation Zone map shows that each lease grid is surrounded by a buffer zone, and that new leases could be grouped in one area, or spread out over several areas. However, given program constraints, only a small percentage of the grids would actually be leased.

J. Aldred asked if this was an example of how the program was going to be set up, or an actual representation of the zone breakdown. G. Greene informed him that this is an actual representation, but reminded him that it is still in draft form and some changes could still occur as we proceed forward with the program.

J. Schneiderman asked if the County was going to survey all of these potential lease grid areas to which G. Greene replied: No, what is being proposed now is that during the first few months of each year, lease applicants would submit an application with a primary lease site and two alternative sites. After one lease grid location is vetted and approved for each lease application, that lease site would be surveyed along with other sites that have been approved for leases. Conducting several lease site boundary surveys at one time will reduce survey costs. J. Schneiderman also asked if it has been decided that new growth would be limited to six 10-acre plots a year, or could there be twelve 5-acre plots. G. Greene explained that a lease applicant could request either a 5 or 10-acre area, but both size areas would be located in the designated plots as described on the map. So, in other words, a 5-acre lease would still be located within a 10-acre designated area, but only 5 acres would be counted in the 60-acre limit/year. The 60-acres could be a combination of 5 and 10-acre plots.

#### Open Discussion – Hydraulic/Mechanical Harvesting

This segment began with showing a brief video produced by Cornell Cooperative Extension comparing two types of hard clam harvesting methods in Southold Bay (hydraulic harvesting and hand raking). After the video, T. Isles opened the floor for discussion on whether hydraulic harvesting should be permitted on leased underwater land. A. Leo on several occasions had expressed concerns over hydraulic dredging on fallow grant lands. He felt that this topic is very controversial, and needed to be discussed at an ALPAC meeting. A. Leo believes that according to current law mechanical dredging can only be permitted on private underwater lands. However, currently most of the oyster cultivation being conducted now is in cages and dredging is not an issue; however, there are some private grants that are doing on-bottom culture and he

would like to know how the County's program is going to address the concerns of hydraulic dredging on these sites. A. Leo stated that hydraulic dredging would not be practical on 10-acre leases and should only be used to harvest cultured stock and be subject to NYSDEC approval.

J. Schneiderman asked if the DEC has a threshold established on the amount of shellfish that must be planted to allow hydraulic harvesting, to which D. Barnes replied there is no threshold established by the DEC. She also stated that authorization for dredging would only be issued if a grant owner was able to provide documentation that the area to be dredged was in fact an area on which shellfish were planted. Currently, only one grant owner has requested and received permission from the NYSDEC to use hydraulic gear to harvest their shellfish stock. D. Barnes did not want to give the impression that hydraulic dredges are being used on thousands of acres of oyster grant land. In fact, most of the culturing is being done in cages because it much easier to recoup what is being planted.

J. Aldred stated that it is his understanding that fallow oyster grant owners that would be brought into the program will only be able to obtain leases on 10-acre areas of their grants. G. Greene replied that there would be possibly an additional 10 acres available. Also, all fallow grants would need to go through the leasing process, including the public comment period. D. Davies also stated that currently there is only one grant east of Shelter Island that has been active in culturing species other than oysters. He went on to explain that even though a fallow grant owner applies for a lease it does not mean they would be granted that lease, because they do have to go through the same process in terms of public notice, demonstration of no conflict and demonstration of non-productivity.

K. Rivara stated that the DEC can inspect her company operation at any time and because it is restricted to a very small area, unlike a wild harvester, it is very easy to find. As far as limiting the activities on active oyster grants, she said it would be an unfair loss to the rightful use of her property. K. Brewer replied that because the NYSDEC has already given her permission to cultivate species other than oysters on the entire grant, she will be allowed to continue to do so under this program, so long as the operation conforms to all the requirements of the permitting agencies. Also, K. Rivara stated that 10 acres is not large enough for hydraulic harvesting to be practical, and not allowing this type of harvesting will limit the growth of the aquaculture industry in New York State. D. Davies stated that after the first five years of the program, the option to increase lease size, as suggested in earlier meetings, to possibly 50 acres, may be revisited.

G. Rivara raised the issue of other forms of mechanical harvesting, i.e., dry dredges, causing environmental impacts. A. Leo stated that experience with wild fisheries, like surf clam, did not indicate any population problem, and that he had no issues with any harvest method from the environmental impact point of view.

Bill Pell, Southampton Oyster Company, stated that due to the limited 10-acre lease plots, and at the current price of 15¢ per clam, it would not be profitable for a grower to raise clams in the bottom. Therefore, hydraulic dredging is not a real issue.

Dave Relyea, F.M. Flowers & Sons, gave a brief explanation of his operation in Oyster Bay and once again offered the opportunity for members of ALPAC to come and see how his company operates. He explained the importance of hydraulic dredging to his operation and that it is a specific tool that is used in moderation and on a limited area, unlike those who use this type of equipment on wild stocks. He explained that in his operation, shellfish are planted and left to grow undisturbed for several years and then harvested. Once the harvest is complete, the process is repeated. D. Relyea introduced Dr. Robert Rheault and explained that R. Rheault was involved in the development of a recent grant proposal for NMFS to study the effects of hydraulic dredging.

R. Rheault is president of the East Coast Shellfish Growers Association and has over 25 years experience in the field. He was one of the principal architects in developing the current shellfish aquaculture regulations in Rhode Island, which are considered very successful and used as a model for many other states. The regulations are favored by both environmentalists and regulatory agencies. He did review the letters from C. Hamilton and J. Gilmore and the points raised. During the development of regulations for Rhode Island, many of the issues now being discussed by ALPAC were also concerns in Rhode Island. There is a substantial body of literature detailing impacts of mechanical harvesting used in wild fisheries, but this type of activity is not analogous to harvest on a shellfish farm, where short tows are made in a very limited area, after planted shellfish reach marketable size. The literature also suggests that the impacts are not significant. It depends on the environment being looked at, the methods being used and the agenda of the researchers. He also stated that winter flounder were attracted to those areas in Connecticut where oyster planting and harvesting activities occurred.

#### Suffolk County Shellfish Aquaculture Lease Program Administrative Guidance Document

D. Davies gave a brief introduction as to the status of the second draft document (June 26, 2008) and how the County has been addressing the comments received to date. He asked committee members to review the document.

G. Greene gave an overview of what new changes have been made to the guidance document since the last ALPAC meeting. He informed the committee that there were some format changes to make the document easier to understand, and in particular, how both the Temporary Marine Assignments and the private oyster grants can participate in the program. He also discussed some of the open issues that need to be resolved, such as the “blanks” in the document, which await input from the County’s Law Department. He also stated that the County and CA are still developing guidelines as to what would be considered a sustainable yield and ground truthing.

#### Development of Responses to Substantive Comments made on the DGEIS

G. Greene informed the committee that a major component of the FGEIS is the response to comments received on the DGEIS. Comments have been received at public meetings, CEQ meetings, and in written form. The two main issues are fallow underwater land grants and hydraulic/mechanical harvesting. In general, the response to the fallow grant issue is that there will be no widespread leasing of fallow grants, that leases will be limited in size and that they will be subject to review for non-productive status. With respect to mechanical harvesting, this

issue will be dealt with by providing more technical documentation in the FGEIS, and the fact that such activity will not be widespread under this program.

#### Next ALPAC Meeting

Wednesday, August 13, 2008, first floor conference room, Cornell Cooperative Extension of Suffolk County, Riverhead, New York. At this meeting, the third draft of the Administrative Guidance document and Draft FGEIS will be discussed.

T. Isles stated that it is his intent to complete all work on the County Shellfish Aquaculture Lease Program and forward the project final report to the County Executive/Legislature for policy consideration this fall/winter.

#### Public Portion/Comments

D. Relyea – offered his assistance to CA in answering any comments received by the NYSDEC. He also feels that the small scale nature of the proposed program, and its conservative approach, preclude any substantial adverse impacts on the environment from occurring.

M. Atkinson – feels that the decisions and impact of the program need to be based on science. The Baykeeper wants to learn more about mechanical harvesting.

R. Rheault said that Rhode Island had 25 meetings on the development of aquaculture regulations, and that he understands that this is a difficult process. He commended everyone on the work to date, and hopes the program does not become too restrictive. The aquaculture industry has tremendous potential to increase the productivity of the bays, but there is a need for flexibility to assure that growth can occur in Suffolk County.

Jim Markow, owner, Aeros Cultured Oyster Co., was initially concerned about the rights of grant owners, and he has put in a significant investment on his grants. Having the ability to grow hard clams in the bottom is like having a bank account, and it is comforting to know he will not lose rights on those grounds.

Philip Curcio, North Sea Aquafarms, Inc., stated that as a child and teenager growing up in Oyster Bay, he never knew there was a industrial size aquaculture operation in the bay. He never saw any conflicts or actions that could have been considered adverse to the environment. In fact, Oyster Bay is considered one of the most pristine bays on Long Island today.

Michael Kujawa, Winergy Power LLC, had a question for the DEC, regarding whether the DEC has done any mapping as to where the impacts of dredging on the flounder fishery may be most concentrated. D. Barnes replied that the DEC has been conducting juvenile finfish surveys in the Peconics for a very long time, and she believed that reports on same have been provided to CA.

G. Rivara added that a NMFS fact sheet indicates that populations of winter flounder usually spawn in shallow estuarine water less than 5 meters deep. He emphasized that most leases under the County program would be located in waters greater than this depth.

R. Rheault stated that studies in Rhode Island found that larval and young flounder are found in the upper reaches of estuaries in relatively shallow water, and congregate over mud/shell hash bottoms. In fact, it was found that oyster farms provide good habitat/rearing areas for juvenile winter flounder.

The meeting was adjourned at 6:30 p.m.