



SUFFOLK COUNTY COUNCIL ENVIRONMENTAL QUALITY

in conjunction with the

SUFFOLK COUNTY DEPARTMENT OF PLANNING

Public hearing on the Draft Generic Environmental
Impact Statement
for the
Suffolk County Shellfish Aquaculture Lease Program
in Peconic Bay and Gardiners Bay

April 17, 2008
7:00 p.m.

Riverhead Town Hall
200 Howell Street
Riverhead, New York

P A N E L:

R. Lawrence Swanson, Ph.D., Chairman
S.C. Council on Environmental Quality

Thomas A. Isles, A.I.C.P.
S.C. Department of Planning

James Bagg,
S.C. Council on Environmental Quality

Dewitt S. Davies, Ph.D.,
S.C. Department of Planning

R E P O R T E D B Y:

CHERYL A. FERRELLI, RPR
SENIOR COURT REPORTER

1

2 PUBLIC SPEAKERS:

3 Bob Wemyss
4 Charles Murphy
5 Karen Rivara
6 Jim Markow
7 Michael Craig
8 Bryan Murphy
9 Chris Kiely
10 Gerard Troisi

Florence Sharkey
Joseph Woronowicz
David Johnson
John Dunne
Bill Pell
Arnold Leo
Dennis Connell

7

8 IN ATTENDANCE:

9 Laretta Fischer
10 Jennifer Kohn
11 Michael Mule
12 Barbara DelGiudice
13 Gregory T. Greens
14 Keith Brewer
15 Robert Nuzzi
16 Ken Koetzner
17 Jenny Koetzner
18 Gregg Rivara
19 Debra Barnes
20 David Lessard

Philip Curcio
Jen Skilbred
John Kramer
Ted Bucci
Paul Matthews
Antoinette Clemetson
Gary Crowther
Christina Grahn
Wade Carden
Walter Zalak
Denise Civiletti

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1 CEQ Public Hearing - April 17, 2008

2 THE CHAIRMAN: Good evening,
3 ladies and gentlemen.

4 If you'll take your seats, we
5 will commence.

6 I'm Larry Swanson and I'm the
7 Chair of the Suffolk County Council
8 on Environmental Quality, and I want
9 to thank all of you for taking the
10 time to come to this important,
11 important hearing concerning the
12 Shellfish Aquaculture Lease Program
13 and Peconic and Gardiners Bay of
14 Suffolk County.

15 I'll introduce the panel starting
16 with Mr. Davies over here -- or
17 Dr. Davies -- on my right.

18 MR. DAVIES: DeWitt Davies from
19 Suffolk County Department of
20 Planning.

21 MR. ISLES: Tom Isles, Director
22 of Planning, Suffolk County Planning.

23 MR. BAGG: James Bagg, Suffolk
24 County Council on Environmental
25 Quality.

1 CEQ Public Hearing - April 17, 2008

2 THE CHAIRMAN: We're here to
3 listen to your comments.

4 Consequently, there won't really
5 be dialogue between anybody here at
6 the panel and you unless it's to
7 clarify comments that you have made
8 and we don't quite understand.

9 We don't have too many speakers
10 signed up so far, so if you desire to
11 speak, please, make sure you sign up
12 in the back.

13 We're going to give each speaker
14 five minutes, and written comments
15 will also be accepted if you don't
16 choose to speak or if you don't get
17 everything said that you needed to
18 say.

19 I would request, for just common
20 courtesy of everybody in the
21 audience, that if you have a cell
22 phone, to, please, turn it off.

23 So, with that, we will begin.

24 Each speaker should state their
25 name and their affiliation for the

1 CEQ Public Hearing - April 17, 2008

2 record, and we may ask you to spell
3 it for our stenographer.

4 First speaker is Bob Wemus (sic),
5 the town of -- from Huntington
6 representing the North Shore Baymen.

7 MR. WEMYSS: Robert Wemyss.

8 THE CHAIRMAN: Wemyss. I'm
9 sorry.

10 MR. WEMYSS: It's okay.

11 I looked through the DGEIS, and
12 when you get to the subject of
13 productivity determinations, you're
14 doing a terrible thing. You
15 designate an aquaculture zone without
16 vetting.

17 You have side scan sonar
18 information, an example of which is
19 shown in -- in Peconic Estuary
20 Program.

21 It shows a ring of shell in
22 Orient Harbor and you have shell
23 information throughout Peconics where
24 you -- you show edge habitat.

25 And I'll describe edge habitat as

1 CEQ Public Hearing - April 17, 2008

2 that area where the mud in the middle
3 bays rises up to the shoal area and
4 turns into harder bottom.

5 Every clam digger on Long Island
6 knows that the edge is where the
7 natural clams live. And you,
8 basically, blacked out eighty percent
9 of the Peconics without taking into
10 account this type of habitat.

11 And the shell ring, the side scan
12 sonar can't differentiate between
13 live clams and shell.

14 You also have samples from
15 that -- from that study in Peconic
16 that show large numbers of juvenile
17 hard clams. And you simply haven't
18 vetted the habitat that you propose
19 to lease.

20 The program has also decided to
21 take the tact of ignoring the state's
22 legislature's -- legislature's clear
23 intent, which is to start a new
24 leasing program by attempting to
25 enable the layering of leases over

1 CEQ Public Hearing - April 17, 2008

2 oyster grants that were illegally
3 granted in the original that are
4 proven to be natural shellfish beds.

5 Aquaculture technology's lawsuit
6 which the county was involved in
7 showed that in court documents. Yet,
8 at a late date, you included that
9 property now owned by Perrino
10 (phonetic) as an aquaculture zone
11 which is known to be a productive
12 hard clam bed with the proof in that
13 court case. That is, the proof that
14 that defendant, in fact, dredged over
15 a million dollars' worth of hard
16 clams, of natural hard clams, off
17 that property.

18 Now, you have similar grants all
19 through Peconic Bay, especially
20 eastern portion of Peconic Bay, that
21 straddle the edge, which is the
22 productive hard clam habitat.

23 The state legislature, the plain
24 meaning of the law, did not
25 anticipate that the county should

1 CEQ Public Hearing - April 17, 2008

2 lease further rights to private grant
3 holders. Nothing in that legislation
4 suggests that the county has that
5 authority.

6 You have not dealt with the
7 productivity determination on a
8 grant. Specifically, you have
9 avoided the subject.

10 The whole proposal is dishonest
11 in its intent. Because the large
12 balance of acreage would be available
13 to private grant holders who have not
14 even used these lands.

15 These lands are worthless for
16 oyster culture. The proof is they
17 are not being used for oyster
18 culture. Nobody in this estuary is
19 doing broadcast planting of oysters
20 on these grants.

21 Any grant holder who has and
22 holds a permit to plant clams on an
23 oyster grant has that permit by
24 questionable authority because a
25 court case on the subject said those

1 CEQ Public Hearing - April 17, 2008

2 grants are for oysters only.

3 You have not contemplated what
4 the impact of leasing those lands for
5 other shellfish will be on those
6 grant holders's ability to dredge
7 natural hard clams from those grants.

8 Currently, they cannot without
9 determinations from the state. But
10 if they have a lease for cultivation
11 of other species as others in the
12 state do, it is very likely that the
13 state will have no choice but to
14 issue them permits that will allow
15 them to dredge those natural hard
16 clams.

17 And the vast majority of the
18 acreage affected in this proposal is
19 old grant lag. You propose six
20 hundred acres in new grants and you
21 cannot even tell us how much old
22 oyster land would be subject. You
23 don't know what's reverted, what's
24 not reverted, what's latent, what's
25 not latent. You have not disclosed

1 CEQ Public Hearing - April 17, 2008

2 the scope of the project to the
3 public, and the public has a right to
4 know.

5 And you have ignored the fact
6 that clams grow on edges, and these
7 grants straddle the edge. That
8 oyster commissioners met in dark
9 rooms for eight years granting land
10 before registering with the county
11 board of supervisors when they were
12 required to register every piece
13 within ninety days. That these were
14 not grants to individuals within the
15 county. These grants all became
16 incorporated prior to them ever being
17 registered and consolidated by the
18 likes of Blue Point's and Long Island
19 oyster farms.

20 THE CHAIRMAN: Could I ask you to
21 summarize, please?

22 MR. WEMYSS: That to continue
23 with this project in its current form
24 will be a violation of the public
25 trust and ignore the naturally

1 CEQ Public Hearing - April 17, 2008

2 productive lands which you have not
3 vetted in any way by designating an
4 aquaculture zone that covers nearly
5 eighty percent of the Peconics and
6 very productive existing oyster grant
7 lands that have not been used for
8 oyster culture in decades.

9 The program as its written is a
10 farce and a travesty against the
11 people of the State of New York.

12 THE CHAIRMAN: Thank you very
13 much.

14 Charles Murphy.

15 MR. MURPHY: I have a petition
16 here that twenty-five baymen have
17 signed. Do you need that up there
18 now?

19 While I'm walking up there, I'll
20 give you a little rundown of my life.

21 I'm sixty-five years old. I've
22 been clamming for about forty-odd
23 years and I've seen what damage
24 leasing has done to the public
25 bottom.

1 CEQ Public Hearing - April 17, 2008

2 But let's get back to what I'm
3 really here for.

4 A couple years ago, we had
5 pot-holers legal in New York State
6 now. A hand digger can use a
7 pot-holer to pull up a rake. That
8 gives them the opportunity to work in
9 fifty feet, thirty feet, sixty feet
10 of water, anywhere in -- in the state
11 waters.

12 To lease this bay bottom would be
13 a travesty. Right now, New York
14 State and the United States is
15 running into a recession. A lot of
16 people are being let go on certain
17 jobs.

18 This would give opportunity for
19 individuals, not just baymen or
20 someone who's out of work, to find
21 work on the water.

22 Like I've mentioned before, that
23 I've been around and I've seen what
24 these dredge boats do, how many clams
25 they can produce in a day.

1 CEQ Public Hearing - April 17, 2008

2 I always say one dredge boat
3 represents twenty-five baymen.

4 So, this area there that you're
5 looking at has lots of hard clams on
6 it. It could support quite a few
7 baymen.

8 And, if you want to shoot some
9 questions at me, go right ahead.

10 THE CHAIRMAN: I don't think we
11 want to shoot questions at you.

12 MR. MURPHY: Okay.

13 THE CHAIRMAN: If you have
14 further comments, you still have some
15 time.

16 MR. MURPHY: Well, I just -- you
17 know, I feel they have to look into
18 this seriously and find out what
19 dredges do.

20 I have an article here that --
21 within the National Fisherman, and in
22 Maryland, they're banning hydraulic
23 dredging in those waters. And I
24 think the State of New York should do
25 the same.

1 CEQ Public Hearing - April 17, 2008

2 Thank you for listening to me.

3 THE CHAIRMAN: Thank you.

4 And, if you want to submit that
5 article for the record, I'm sure we
6 would appreciate it.

7 MR. MURPHY: Okay. I'll copy
8 this and mail it to youse.

9 THE CHAIRMAN: Okay.

10 MR. MURPHY: Thank you.

11 THE CHAIRMAN: Thank you.

12 Karen Rivera (sic).

13 MS. RIVARA: Good evening. My
14 name is Karen Rivara, R-I-V-A-R-A --

15 THE CHAIRMAN: I'm sorry.

16 MS. RIVARA: That's okay.

17 -- and I am the secretary to
18 Noank Aquaculture Cooperative. I
19 also sit on the ALPAC as an industry
20 representative and I own an oyster
21 grant. They're called generic oyster
22 grants. We've had it since 1993 and
23 we've planted millions of clams on --
24 and oysters and bay scallops on that
25 property since that time.

1 CEQ Public Hearing - April 17, 2008

2 The DGEIS, the nature is to look
3 at economic impacts, not benefits.
4 So, I would just like to summarize
5 some benefits of the industry. And I
6 also have a pamphlet that was
7 produced by the University of Rhode
8 Island that summarizes the benefits
9 of the industry and also has a
10 website that you can go to for more
11 information.

12 But, essentially, the
13 environmental benefits are that the
14 shellfish we plant clean the water.
15 The industry is sustainable. We're
16 not taking -- we're taking animals
17 that we have planted. We're not just
18 taking. We're putting and then
19 taking. So, we continue to plant
20 after we've harvested and sustain the
21 resource that way.

22 The shellfish remove nitrogen
23 from the water and also stimulate
24 diversity. Other organisms usually
25 like to grow around shellfish farms

1 CEQ Public Hearing - April 17, 2008

2 because of the structure and the
3 animals that we place there.

4 Regarding this program, the scale
5 in terms of new acreage is -- is
6 negligible and, so, the impacts,
7 therefore, would also be negligible.
8 All the acreage that they're talking
9 about is acreage that will be farmed.
10 So, again, it's sustainable, it's
11 where people are going to be planting
12 and then harvesting shellfish.

13 And when I say the acreage is
14 negligible, it used to have about
15 four -- forty thousand acres that
16 were farmed the middle of the last
17 decade when the oyster industry
18 failed because of the supply of sea
19 oysters from Connecticut, those
20 acreage went fallow.

21 But, currently, there are about,
22 roughly, two thousand acres that are
23 farmed and then there's another,
24 roughly, four thousand that's fallow
25 but available for oyster cultivation.

1 CEQ Public Hearing - April 17, 2008

2 The people who have been farming
3 out in the Peconics have been doing
4 so without any concern in terms of
5 environmental damage. That's,
6 basically, what you're focusing on
7 tonight. And, actually, people have
8 seen benefits from what we do with
9 shellfish setting up in adjacent
10 areas.

11 The areas that are going to be
12 added from this -- with this program
13 would be, as proposed, thirty -- I'm
14 sorry -- three hundred acres over
15 five years, and then the possible
16 conversion of five-acre assignments
17 to ten-acre leases.

18 The leases that are being
19 referred to on the oyster grants
20 would be to cultivate species other
21 than oysters. But, currently, those
22 grants can be and are cultivated for
23 oysters which are either planted on
24 the bottom, just as the clams are, or
25 they're cultivated in cages.

1 CEQ Public Hearing - April 17, 2008

2 In addition to the environmental
3 benefits, many of us who are in the
4 industry are involved in projects
5 that contribute to the restoration of
6 the bay. We donate seed to towns, we
7 work on environmental projects.

8 Our cooperative is in the process
9 of developing a project where premium
10 shellfish will be sold and the net
11 proceeds will go to projects that
12 benefit the bay, either research,
13 education or land preservation
14 projects. And that's not atypical
15 for people in our industry.

16 The industry is also in the
17 process of developing best management
18 practices guidance, and we're doing
19 that with some input from a major
20 environmental group, so we do
21 interact with other stakeholders.

22 We're very -- we're stewards of
23 the land that we use. We're very
24 concerned about the health of that
25 land. We're farmers, so it makes no

1 CEQ Public Hearing - April 17, 2008

2 sense for us to be otherwise.

3 So -- and there are a lot of new
4 people coming into the industry. It
5 does have a lot of opportunity for
6 newcomers, so we want to make sure
7 that people coming into the industry
8 are aware of what the best management
9 practices should be from an
10 environmental and, also, a
11 sociological standpoint.

12 I will also say that I don't
13 believe that any other stakeholder
14 group could really withstand the
15 scrutiny of their industry as we have
16 regarding the environmental impacts.

17 Certainly, there was no
18 environmental impact study done when
19 we decided to develop so much of the
20 watershed for housing. And that,
21 certainly, has had an impact on the
22 water quality.

23 So, I think -- I'm, actually,
24 very proud of my industry and I feel
25 that we can withstand the scrutiny.

1 CEQ Public Hearing - April 17, 2008

2 THE CHAIRMAN: Thank you very
3 much.

4 MS. RIVARA: You're welcome.

5 And I have these pamphlets.

6 And there's a website that you
7 can access for more information, and
8 I'll probably be giving you more
9 written comments.

10 Thank you.

11 THE CHAIRMAN: Thank you.

12 Jim Markow.

13 MR. MARKOW: I'm Jim Markow. I
14 represent Aeros Oyster Company.

15 I grew up on Long Island, worked
16 for Blue Point's company and moved to
17 Connecticut. I still own grants here
18 in New York with my partner, Karen
19 Rivara.

20 But it was very difficult for us
21 to move our business along. And
22 after Blue Point's company had
23 closed, we had a brown tide problem
24 there, things got very difficult
25 for -- for us to survive there.

1 CEQ Public Hearing - April 17, 2008

2 But when we had the storm in 1992
3 and it broke through an inlet there,
4 the bay came back. It was great. I
5 thought everything was going to do
6 real well, and things got, you know,
7 pretty good.

8 So, we had built a hatchery. I
9 had a house over on the bay in
10 Moriches and we were doing very well
11 there.

12 But the problem that we had was
13 we couldn't grow our business in New
14 York because they're just so
15 restrictive on everything that we
16 wanted to do.

17 So, we had bought the grant in
18 Gardiners Bay and planted oysters and
19 clams, and we have done that for many
20 years. And just the opposition,
21 being able to do something with your
22 own ground that you pay taxes on and,
23 you know, have been taking care of
24 made it very difficult.

25 So, I ended up going over to

1 CEQ Public Hearing - April 17, 2008

2 Connecticut. And we have quite a few
3 leases over there and we work with
4 the towns, and we have a great
5 relationship. We have a good
6 recreational program that we work
7 with the towns with.

8 What we do is, on some of the
9 grounds that we lease from the towns,
10 we give them a percentage of the
11 seed. And they're able to have these
12 recreational programs where people
13 buy permits and they're able to go
14 and work in these areas that are
15 exclusive to them for recreational
16 shellfish.

17 So, the one town that I work with
18 primarily, they took in about eighty
19 thousand dollars in just permit fees,
20 so that pays for their waters,
21 they're able to buy boats, they're
22 able to do their water quality
23 testing, and they have a great
24 program. It's all self-supporting.
25 They don't need any tax payer money

1 CEQ Public Hearing - April 17, 2008

2 to keep it going, and it works great.

3 And I just can't understand why
4 something that's so simplistic can't
5 work in New York. And it's almost
6 discouraging to think that with all
7 the resources that are here, that you
8 can't carve out niches to -- for each
9 user group to have a piece of the
10 pie.

11 It's not that aquaculture wants
12 to take over the whole area. There's
13 small, little segments of area that
14 we want to use. It's a pinprick of
15 use. But the amount of area that
16 we're, you know, leaving alone is
17 huge. It's a huge amount of area.

18 The small amount that we're going
19 to use has such a great benefit with
20 having shellfish being planted back
21 there. Having the natural
22 recruitment of having those oysters
23 and clams planted there is almost
24 like having seed sanctuaries located
25 in different parts of the bay.

1 CEQ Public Hearing - April 17, 2008

2 And without that, you may not get
3 natural recruitment. This, at least,
4 gives it an opportunity to come back
5 naturally.

6 And I can't understand why -- you
7 know, like the baymen look at it,
8 well, like who's -- who's going to
9 help them out?

10 We're going to help them out.
11 Because the fact that we have areas
12 there that are spawning and we do
13 have a big amount of oysters or clams
14 there, those are like having natural
15 hatcheries all over the place.

16 So, you know, I don't really see
17 it as a threat. I think it's a
18 positive thing for them.

19 So, thanks for listening.

20 THE CHAIRMAN: Thank you.

21 Just for the record, you
22 mentioned a town in Connecticut
23 you're working with.

24 MR. MARKOW: I work with Town of
25 Groton and almost all the towns east

1 CEQ Public Hearing - April 17, 2008

2 of the Connecticut river.

3 THE CHAIRMAN: Thank you.

4 MR. MARKOW: We work with East
5 Lyme, Waterford, most of those towns.
6 And have had a great relationship
7 with all the towns. And they're all
8 able to be pretty successful.

9 THE CHAIRMAN: Thank you.

10 MR. MARKOW: You're welcome.

11 THE CHAIRMAN: Are there any more
12 people wishing to speak?

13 MS. DELGIUDICE: Yes. I have
14 more forms.

15 THE CHAIRMAN: Okay.

16 (Whereupon, the aforementioned
17 items were handed to the Chairman.)

18 THE CHAIRMAN: Thank you.

19 MS. DELGIUDICE: You're welcome.

20 THE CHAIRMAN: Michael Craig, I
21 guess it is.

22 MR. CRAIG: Hello. I'm Mike
23 Craig. I have a temporary site from
24 the State of New York.

25 I was a lobster man for

1 CEQ Public Hearing - April 17, 2008

2 twenty-two years and, unfortunately,
3 the lobster business died and now I
4 grow oysters at Peconic Bay.

5 I'm grateful for the State of New
6 York to let me continue on, and I
7 think the county is picking up, you
8 know, where they left off.

9 And I see a lot of opportunity
10 for growth. There is a lot of
11 collateral benefits to growing
12 oysters.

13 And I think you did a very good
14 job with your map as far as where
15 areas of cultivation are possible,
16 and I think it should be supported
17 and I encourage your efforts.

18 Thank you.

19 THE CHAIRMAN: Thank you very
20 much.

21 Bryan Murphy.

22 MR. MURPHY: I'm Bryan Murphy,
23 North Shore Baymen Association.

24 I just wanted to say that I dug
25 clams out in Gardiners Bay for a

1 CEQ Public Hearing - April 17, 2008

2 couple of years and, you know,
3 there's plenty of wild clams there.

4 And I just don't think that it's
5 right that you're going to allow
6 people to put leases on these grounds
7 and, you know, let them prosper and
8 stop baymen from earning a living on
9 wild clams.

10 That's all.

11 THE CHAIRMAN: Thank you.

12 Chris Keely (sic). Is that
13 correct?

14 MR. KIELY: Kiely.

15 THE CHAIRMAN: Kiely.

16 MR. KIELY: Chris Kiely, North
17 Shore Baymen's Association.

18 I also dug clams in Gardiners Bay
19 for about five years.

20 Recently, this January, I went
21 out there and, in about an hour and a
22 half, dug a bag of clams. It's a
23 very productive resource for the
24 public and it should stay public.

25 That's it.

1 CEQ Public Hearing - April 17, 2008

2 THE CHAIRMAN: Thank you.

3 Gerard Troisi.

4 MR. TROISI: Gerard Troisi.

5 Independent baymen.

6 I'd like to say that I am against
7 the leasing of these areas. And,
8 definitely, the state should assess
9 what kind of shell stock is on that
10 area before they give up the leases
11 to somebody who, ultimately, is going
12 to go there first and dredge those
13 clams off the bottom. I mean that's
14 a fact.

15 I don't care what they put down,
16 they're going to dredge the natural
17 shell stock that is there first.

18 Thank you.

19 THE CHAIRMAN: Thank you.

20 Florence Sharkey.

21 MS. SHARKEY: Good evening,
22 fellows. My name is Florence
23 Sharkey. I'm Brookhaven Baymen's
24 Association president.

25 We totally oppose giving our

1 CEQ Public Hearing - April 17, 2008

2 lands to anyone. It should be open
3 to the public.

4 Our baymen have a resource out
5 there and, if these men want to farm,
6 then let them put the seed in first
7 and leave the wild clam for the
8 baymen.

9 But, no, they will take the wild
10 clam and disappear in five to seven
11 years.

12 We have trustees, and our
13 trustees should keep this open for
14 all baymen, fishermen, conchers,
15 lobstermen.

16 You know, these men use these
17 waters too, and why are we thinking
18 about giving them up? This is land
19 grabs from the golden times, from
20 mining. You know, we're in the
21 twenty-first century. We shouldn't
22 be giving our lands away. These
23 belong to the baymen. All different
24 kind of baymen.

25 If they want to farm, we want

1 CEQ Public Hearing - April 17, 2008

2 them to put the seed down and not
3 farm them for five years.

4 Farmers seed their property.
5 They don't take the wild.

6 Thank you.

7 THE CHAIRMAN: Thank you.

8 I know I'm not going to say this
9 right. But Joseph --

10 MR. WORONOWICZ: Woronowicz.

11 THE CHAIRMAN: Thank you. You
12 saved me.

13 MR. WORONOWICZ: Thank you.

14 You have to excuse me, I'm a
15 little slow. I just had a mild
16 stroke.

17 But what I'm thinking is you're
18 giving away public land, or leasing
19 public land.

20 Right now the tax payer in
21 Suffolk County is paying to preserve
22 land, preserve wild species.

23 Does anybody know what a
24 mechanical dredge does or what it
25 looks like?

1 CEQ Public Hearing - April 17, 2008

2 You got two hoses like this
3 pumping from -- from a big diesel
4 engine, water under pressure blasting
5 the bottom. You got a steel blade
6 that goes underneath and cuts out the
7 bottom. Anything there is blown
8 apart or killed to whatever they set
9 it, four inches, six inches, eight
10 inches. You destroy the bottom.

11 That bottom has fauna, it has
12 your estuaries are beginning, are all
13 marine life in the ocean and the
14 bays. Fish. You have a
15 multi-billion-dollar fishing
16 industry.

17 You wouldn't give away some
18 private forest, a -- a preserve over
19 here to somebody to come in and plow
20 it up, destroy everything there and
21 plant corn. You would have corn.
22 You wouldn't have any other wild
23 species.

24 What you're doing is giving away
25 public land to be destroyed to

1 CEQ Public Hearing - April 17, 2008

2 harvest, to plant clams or to remove
3 the clams.

4 You wouldn't do it where people
5 could see it done. Why do it on the
6 water? Why, for whatever reason
7 allow somebody to come in and destroy
8 the natural habitat for everything
9 that lives there? The plants.

10 I don't know. When the brown
11 tide comes, you rip the plants out,
12 where does the oxygen come from?

13 This is what it does. You blast
14 it with a water pressure hose, you
15 cut under it.

16 Out of all the maricultures,
17 people of Long Island that were here
18 at one time, there's only one left.
19 All the rest of them went out of
20 business. It doesn't last. It's
21 like a one-shot deal for a certain
22 period of time and it destroys the
23 bottom.

24 Anything you do to the bottom is
25 like if you tear down trees, you

1 CEQ Public Hearing - April 17, 2008

2 destroy all your natural habitat,
3 what's left? You plant potatoes, you
4 get potatoes. You don't get anything
5 else.

6 THE CHAIRMAN: Thank you. I
7 appreciate you coming out.

8 David Johnson.

9 MR. JOHNSON: Hi. My name is
10 David Johnson. I'm a coastal
11 steward. I've been doing
12 environmental restoration on Long
13 Island for eighteen years. I've been
14 involved with shellfish restoration
15 for eight years and I work closely
16 with Cornell Cooperative Extension
17 and some of the people that have been
18 in this room.

19 I would like to turn around and
20 ask the baymen here, is the fishing
21 as good as it was ten years ago?

22 UNIDENTIFIED SPEAKER: Is
23 anything as good as it was ten years
24 ago?

25 THE CHAIRMAN: Excuse me.

1 CEQ Public Hearing - April 17, 2008

2 MR. JOHNSON: Do you think your
3 rakes are doing any damage to the
4 bottom?

5 THE CHAIRMAN: You should be
6 talking to us.

7 MR. JOHNSON: I'm sorry. You're
8 right.

9 I've been doing the shellfish
10 restoration. The natural stocks that
11 are, you know, in our waters right
12 now are under a lot of stress from a
13 number of diseases, over fishing,
14 pollution, et cetera.

15 The strain of oysters that they
16 use is the same oyster. It actually
17 came from Oyster Bay.

18 There's a gentleman there from
19 Flowers, you may have heard of him.
20 He's, I guess, the one that everybody
21 is talking about here that's still
22 around. He almost got wiped out by
23 these diseases.

24 What turns out is the only ones
25 that he had left to use as spawners

1 CEQ Public Hearing - April 17, 2008

2 were the only ones that survived.

3 These are naturally disease resistant
4 to the three diseases that are
5 plaguing the whole east coast, the
6 Gulf of Mexico.

7 We are down to one percent of the
8 historical high of oyster population
9 around Long Island right now. All
10 right?

11 These oysters that I've been
12 planting, I've released over two
13 hundred thousand adult oysters into
14 the Port Jefferson harbor alone.

15 I've been doing recent surveys at
16 low tide, walking the beach and
17 counting oysters, which are natural
18 set and which are the strain that I'm
19 talking about.

20 We have a genetic marker that
21 just happened to happen with these
22 oysters, and it's black stripes on
23 them. So you know right away if
24 you're successful, which is very
25 beneficial to me in getting grants

1 CEQ Public Hearing - April 17, 2008

2 and so on.

3 Seventy-two point five percent of
4 the oysters in Port Jefferson now
5 have black stripes. I've only been
6 doing this seven years. Okay? And
7 I've released a very small amount.
8 Two hundred thousand oysters may
9 sound like a lot of oysters, but it's
10 really not. It's not.

11 If you had property or bay bottom
12 leased and you're going to get a lot
13 more than two hundred thousand
14 oysters out there.

15 One of the other things you have
16 to keep in mind here is that if
17 they're putting down a lot of
18 oysters, these oysters are filtering
19 water. They're filtering -- adult
20 oysters can filter up to fifty
21 gallons a day of water. My little
22 two hundred thousand are doing over
23 ten million gallons a day. And you
24 can think about how many millions of
25 oysters these people that are trying

1 CEQ Public Hearing - April 17, 2008

2 to scratch a living, trying to make a
3 living. Some of them were former
4 baymen on the wild and they gave up.

5 The future is not natural stock.
6 The future is aquaculture and it puts
7 a less strain on the natural stocks.
8 It doesn't hurt them.

9 The baymen, I very sympathize
10 with them. It's a tough life, it's a
11 hard life, and it's getting harder
12 every day.

13 The baymen that I know that I
14 talk to, you know, they get a good
15 year here and there. Just like
16 anything in nature, you get cycles.
17 Okay?

18 We have to -- the United States
19 is so far behind the rest of the
20 world as far as aquaculture, it's
21 embarrassing. It's quite
22 embarrassing. You just can't keep
23 taking without putting something
24 back. Okay? And that's my point.

25 I mean these people are good

1 CEQ Public Hearing - April 17, 2008

2 stewards. They're trying to do the
3 best. And a lot of stuff that they
4 put down, you know, there's all kinds
5 of things that grow on them. It's
6 great habitat to juvenile fish
7 because they have got, now, something
8 to protect, something to hide in.

9 Okay?

10 And that's pretty much all I have
11 to say. Thank you.

12 THE CHAIRMAN: Thank you.

13 MR. WORONOWICZ: Can I answer
14 what somebody said about using a
15 rake?

16 THE CHAIRMAN: Let us get through
17 the agenda and, if we have time, we
18 might be able to come back.

19 John Dunne.

20 MR. DUNNE: Good evening. John
21 Dunne. I'm just representing myself,
22 and I want to step up as one of the
23 few proponents in the room.

24 I don't want to beat a dead horse
25 and repeat too many of the same

1 CEQ Public Hearing - April 17, 2008

2 points, but the sustainability, the
3 oysters are referred to as ecosystem
4 engineers. In other words, they
5 provide habitat and produce habitat,
6 create habitat.

7 The gear that will be used in any
8 sort of shellfish bottom culture acts
9 as a -- it's own habitat and harbors
10 juvenile fish and other juvenile
11 shellfish.

12 Another point that I wanted to
13 touch on, if there's bottoms out
14 there that people are able to go out
15 and in an hour and a half make a
16 day's pay, these are considered
17 productive bottoms. And those that
18 have been paying attention to the
19 leasing program know that these kinds
20 of bottoms will not be leased.

21 Productive bottoms are not going to
22 be leased. And we're talking about
23 six hundred out of a total of about a
24 hundred thousand acres out there in
25 the Peconic and Gardiners Bays. So,

1 CEQ Public Hearing - April 17, 2008

2 it's a pittance.

3 Another gentleman mentioned
4 something about a recession.

5 Well, there's a recession coming,
6 so why don't we think about creating
7 jobs? Which is just what this
8 program would do.

9 You'd have folks going out there
10 culturing shellfish, folks that would
11 need to be creating gear for the
12 shellfish growers to use and grow
13 their shellfish in. You got boat
14 repairs, gear repairs, gear
15 production, et cetera.

16 And there is an economic
17 multiplier to any industry. An
18 economic multiplier for this kind of
19 shellfish aquaculture is on the order
20 of four to six. In other words, for
21 every dollar spent in this industry
22 alone, you get a residual four to six
23 dollars out in the residual economy.
24 So, it is an economic boost.

25 And that's about it. That's it

1 CEQ Public Hearing - April 17, 2008

2 for me. Thanks.

3 THE CHAIRMAN: Thank you.

4 Bill Pell.

5 MR. PELL: Bill Pell,

6 Southampton. I'm an oyster farmer.

7 I'm representing myself and also East

8 End Marine Farmers. It's a group of

9 oyster farmers on the east end, north

10 and south fork.

11 I have lands in Southold and also

12 in Southampton Town and also get --

13 my seed is grown in Riverhead Town

14 out of East Creek.

15 A lot of people don't understand

16 aquaculture. You could hear all the

17 bad parts, all the good parts. I'm

18 just going to tell you what I know

19 about it.

20 Our gear is all plastic, it's

21 nontoxic to the water. We don't tar

22 it, we don't dip it, we don't use tar

23 nets. It goes on a bottom. It does

24 not hurt the wildlife at all. It,

25 actually, brings more wildlife to the

1 CEQ Public Hearing - April 17, 2008

2 area. It's like a barrier reef.

3 When you have oysters there,
4 you're going to have scallops come
5 alongside of them because scallops
6 love to live with oysters.

7 I think the scallops actually eat
8 the byproduct of the oysters.

9 Because I grew scallops. I had a
10 hard time keeping them alive during
11 the winter. But I found out if I
12 kept the oysters and the scallops
13 together, they lived fine.

14 You get eels there, you get
15 toadfish, you get crabs, you get baby
16 black fish, you get porgies. And,
17 actually, if you put the gear in the
18 bay, you will actually bring more
19 fish to the area.

20 People worrying about you're
21 going to cover the whole area.
22 You're only talking about six hundred
23 acres out of a hundred thousand
24 acres.

25 The stuff is going to spawn

1 CEQ Public Hearing - April 17, 2008

2 there. So, actually, you are helping
3 the environment by bringing more
4 oysters and other stuff into the
5 area.

6 The fisherman can go fish
7 alongside of it.

8 Right now where I have my gear,
9 there's a lot of striped bass there
10 in the summertime. The sport guys go
11 there fly-fishing every night, catch
12 baby blues, baby stripers. They love
13 it.

14 And there's more up side than
15 down side to the whole thing. You
16 are worrying about ruining the
17 bottom. You're not going to ruin the
18 bottom. It's off the bottom. Even
19 if you bottom plant, it's fine.

20 The new areas, you're not going
21 to be -- most likely you're not going
22 to be hydraulic dredging on. The old
23 leases are permitted but it's a small
24 fraction of that.

25 And it's a no win situation. You

1 CEQ Public Hearing - April 17, 2008

2 do more harm by not letting this
3 program go ahead and do it. The
4 people who are complaining, they're
5 going to lose big time because
6 there's not going to be any oysters,
7 no clams, no scallops, no fish in the
8 whole area. You're going to have a
9 dead bay.

10 What? Are you going to have a
11 petting zoo? You want to go to
12 Atlantis to see seafood? That's
13 where you're going to go.

14 Thank you very much.

15 THE CHAIRMAN: Thank you.

16 Arnold Leo.

17 MS. LEO: Hi. Thanks. Arnold
18 Leo. I'm secretary of the East
19 Hampton Baymen's Association. I'm
20 also consultant for commercial
21 fisheries for the Town of East
22 Hampton and I am a member of ALPAC,
23 the Aquaculture Lease Program
24 Advisory Committee. And I'm going to
25 just make three comments tonight.

1 CEQ Public Hearing - April 17, 2008

2 This DGEIS is a fairly complex
3 document and I can't pretend that
4 I've read all of it yet. But let's
5 start on Page 232 under an item
6 called Restrict Harvest Methods.

7 It's stated dredging would only
8 be permitted to harvest aquaculture
9 stock and not natural stock.

10 So, I've been wondering where the
11 hydraulic dredge is that's
12 intelligent enough to know which is
13 natural stock and which is cultured
14 stock, you know? Because I think if
15 you run a hydraulic dredge, it's
16 going to just take up anything that's
17 there.

18 So, I think that my problem here
19 is that so far the advisory committee
20 has not discussed the issue of
21 hydraulic dredging at all and I,
22 therefore, am requesting that that be
23 put on the agenda of the advisory
24 committee.

25 Now, on sizes of leases, you

1 CEQ Public Hearing - April 17, 2008

2 know, on page 286, under Limit Lease
3 Size, it's stated the rationale for
4 overlaying leases on the entire
5 acreage of an oyster grant is that
6 they are permitted by law to bottom
7 culture oysters.

8 Now, this -- this, legally, is a
9 problem because some of these oyster
10 grants are, you know, over three
11 hundred acres.

12 And what this is saying is that,
13 you know, under the county lease
14 program, you're, simply, going to
15 allow someone with a
16 three-hundred-acre grant to overlay
17 the lease program on all three
18 hundred acres.

19 That -- that's not acceptable.
20 And we have to address that further
21 because that, clearly, is not the
22 intention of the lease program where
23 the most leases will be owned in five
24 or ten acres in size.

25 So, this provision for the oyster

1 CEQ Public Hearing - April 17, 2008

2 grant lands are allowing, you know,
3 lease program sites of over three
4 hundred acres in one shot, and that
5 has to be addressed and corrected.

6 Finally, on Page 51, there's an
7 item called Documentation of Natural
8 Nonproductivity of Proposed Lease,
9 which doesn't make any sense to me.
10 But what it is saying here is that --
11 basically what it says is that if
12 someone is going to challenge a
13 proposed lease site, they have to
14 document that there is productivity
15 on that lease site in order to
16 prevent the lease from going through.
17 And they have to perform what is
18 called a -- you know, a field Benthic
19 survey. Now, that's a pretty
20 expensive, you know, operation, doing
21 that kind of Benthic survey to prove
22 productivity on a particular site.

23 And, so, what I want to
24 propose -- and I know we have to
25 discuss this further -- is that, you

1 CEQ Public Hearing - April 17, 2008

2 know, if someone challenges an
3 applicant for a lease and says that
4 that site that the applicant wants is
5 productive, then I think, you know,
6 there has to be a Benthic survey
7 done.

8 And if the Benthic survey shows
9 that, indeed, the site is, you know,
10 productive, then the applicant should
11 pay for that survey.

12 But if, indeed, the survey shows
13 that that land is fallow and
14 unproductive and there's no good
15 historical record to show that it
16 was, indeed, you know, productive
17 scallop grounds when we had
18 widespread scallop populations, if
19 there's neither, you know, evidence
20 from a Benthic survey nor, you know,
21 reliable historical evidence of
22 productivity, then the challenger
23 should pay for the survey.

24 Thanks.

25 THE CHAIRMAN: Thank you very

1 CEQ Public Hearing - April 17, 2008

2 much.

3 Do we have any other speakers?

4 There was a gentleman that wanted
5 to clarify about raking, I guess.

6 I'll allow you to do this, but
7 there is not to be a dialogue between
8 you and anybody in the audience.

9 Would you repeat your name again,
10 please?

11 MR. WORONOWICZ: Joseph
12 Woronowicz.

13 If you drop an anchor to the
14 bottom, anything you do to the bottom
15 causes some damage, leaves a
16 footprint, whether it's a rake, an
17 anchor.

18 But if somebody plows the land --
19 but there's a difference between
20 using a plow and using a combine.
21 I'm saying the amount of damage you
22 do to the bottom, running over it
23 with a mechanical dredge versus what
24 a rake does, like I said, you're
25 pumping deep water through hoses this

1 CEQ Public Hearing - April 17, 2008

2 much, undercutting the bottom with
3 steal blades, running over it back
4 and forth, back and forth, versus
5 what a rake does.

6 Rakes have been used for hundreds
7 of years. The only thing that
8 destroyed raking in South Bay is the
9 water quality. Otherwise, the
10 clamming would be just as good as it
11 was.

12 THE CHAIRMAN: Thank you.

13 All right. Last call for anybody
14 that wants to speak.

15 MR. MURPHY: Just one more thing.

16 THE CHAIRMAN: Okay. Quickly.

17 We need your name.

18 MR. MURPHY: Charles Murphy,
19 North Shore Baymen's Association.

20 Some people like to believe that
21 the baymen don't believe in
22 aquaculture. We do believe an
23 aquaculture.

24 The Town of Huntington, we take
25 half of our fees for our licenses,

1 CEQ Public Hearing - April 17, 2008

2 put it to growing seed and putting
3 them out in the wild.

4 The Long Island oyster farms have
5 left Huntington, it's been about
6 eighteen years now, and the first
7 five years or so they left, there was
8 nothing.

9 Now, with the help of our town
10 and the fees from our licenses, we're
11 buying clams from the Flowers in
12 Oyster Bay and we're putting out seed
13 and it's put out there for the
14 public.

15 We would like to see more of that
16 done throughout the whole state.
17 We're not against aquaculture if it's
18 for the public.

19 Thank you.

20 THE CHAIRMAN: Thank you.

21 Dennis Connell.

22 MR. CONNELL: My name is Dennis
23 Connell from West End Baymen's
24 Association.

25 We had many discussions with

1 CEQ Public Hearing - April 17, 2008

2 DeWitt Davies. He was supposed to do
3 surveys before he allowed certain
4 areas to be designated for leases.

5 And, apparently, according to
6 this gentleman over here, it's going
7 to be nonexistent, they're going to
8 let the leases go through without the
9 surveys to tell you whether the
10 bottom is productive or not.

11 Like Charlie said, you know,
12 we're in favor of aquaculture. The
13 state has a program already and the
14 program seems adequate. There are
15 plenty of people filing for those
16 assignments.

17 But to lease out the bottom that
18 belongs to the public is not right.
19 It shouldn't be done.

20 That's all I have to say. Thank
21 you.

22 THE CHAIRMAN: Thank you.

23 Once again, last call.

24 If not, we will declare this
25 hearing a success, and I thank all of

1 CEQ Public Hearing - April 17, 2008

2 you for coming out and for
3 participating.

4 So, have a good evening and I'm
5 sure you'll see responses to your
6 comments in upcoming revisions to the
7 document.

8 (Whereupon, the hearing was
9 adjourned at 7:46 p.m.)

10
11 * * * * *

12 C E R T I F I C A T I O N

13
14 I, Cheryl A. Ferrelli, hereby certify
15 that the above and foregoing is a true and
16 accurate transcription of my stenographic notes.

17
18 

19 CHERYL A. FERRELLI
20 Senior Court Reporter

21
22
23
24
25

APPENDIX

Written Statements Submitted:

Appendix A - Pamphlet from the East Coast Shellfish Growers Association submitted by Karen Rivara.

Appendix B - Baymen's petition submitted by Charles Murphy.

Appendix C - National Fisherman, May 2008, "Maryland dredging ban closes out bay clammers," article cited by Charles Murphy.

Appendix D - Robert M. Wemyss, letter dated April 17, 2008.

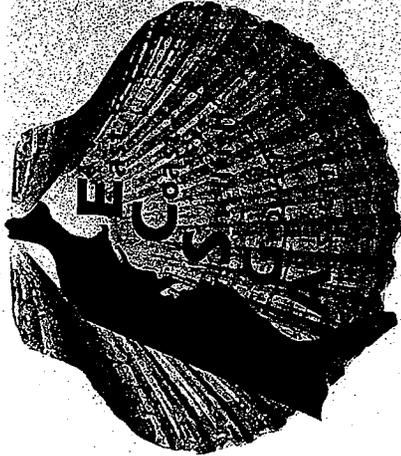
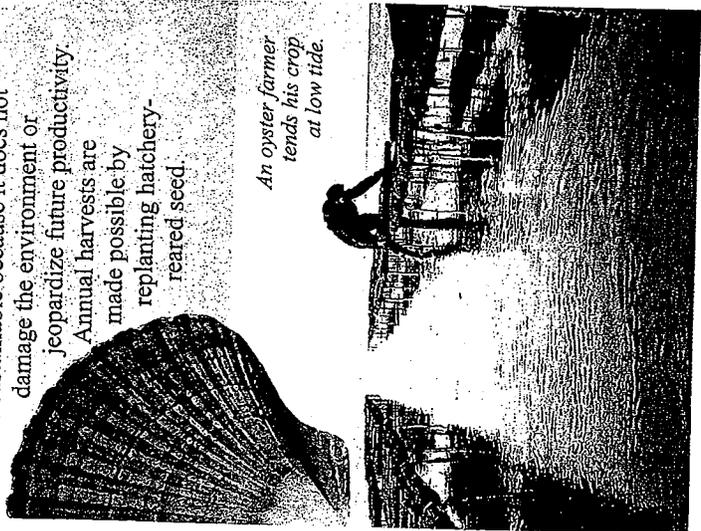
Shellfish Farming is Sustainable

- Shellfish filter microscopic plant cells from the water column.
- Shellfish feed low on the food chain.
- No fertilizers, feeds, herbicides, drugs, chemicals, or antibiotics are used.



Shellfish aquaculture has proven to be sustainable because it does not damage the environment or jeopardize future productivity. Annual harvests are made possible by replanting hatchery-reared seed.

An oyster farmer tends his crop at low tide.



1623 Whitesville Rd.

Toms River, New Jersey 08755

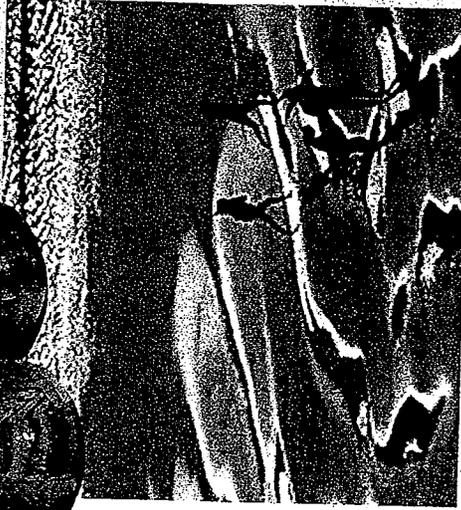
For more information please visit our website:
www.ECSGA.org



This pamphlet was financed by the Rhode Island Aquaculture Initiative and Rhode Island Sea Grant.



Did you know?
Shellfish Aquaculture is GOOD for the Environment!

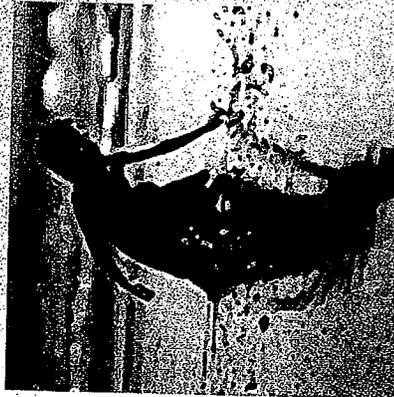


- Filter-feeding shellfish improve water quality.
- Shellfish farming provides habitat for fish and improves species diversity.
- Shellfish aquaculture is sustainable and good for the environment.

Shellfish Clean the Water by Filter Feeding

- A single oyster can clear over 15 gallons a day, retaining particles as small as 2 microns.
- A small oyster farm in Narragansett, RI clears 30 to 100 million gallons each day.

- ✓ Reduces turbidity
- ✓ Improves light penetration
- ✓ Improves water quality
- ✓ Reduces anoxia (low oxygen)



Shellfish improve water quality as they feed by filtering microscopic particles from the water. This removes problematic sediments and phytoplankton, and their associated nutrients. Some of the nitrogen is incorporated into protein, and the rest is deposited on the bottom, where it can be consumed by worms and other organisms.



Shellfish Remove Nitrogen

- Shellfish remove microscopic plants as they feed.
- Nitrogen contained in shellfish tissues is removed when animals are harvested.
- Shellfish feeding stimulates denitrification.
- Improved light penetration and reduced nitrogen help eelgrass recover.



Photo courtesy of Jerry Prezioso

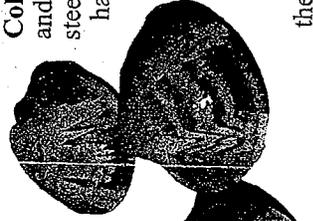
As both water clarity and light penetration are improved, the eelgrass is able to recover in waters that have not supported seagrasses for decades. Clearly shellfish aquaculture should be an element of any eelgrass restoration project.



Shellfish Aquaculture Stimulates Diversity

- Recent studies reveal that shellfish aquaculture can improve species abundance and diversity.
- Shells and aquaculture structures provide habitat for juvenile fish, crabs and other organisms.

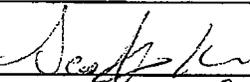
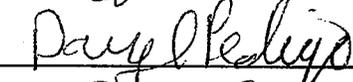
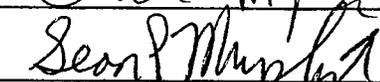
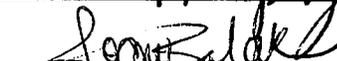
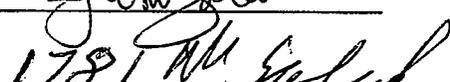
Cultured shellfish have gotten a thumbs up from environmental groups such as Environmental Defense, the Chefs Collaborative's *Seafood Solutions* and others. These groups work to steer consumers towards sustainably harvested seafoods. Oysters are a *keystone species*, meaning they control the environment in which they live by cleaning the water, while the spaces between their shells provide habitat for juvenile fish, crabs, and the organisms on which they feed.



APPENDIX B

BAYMEN'S PETITION AGAINST LEASING EDGE SHELLFISH HABITAT IN GARDINERS BAY AND PECONIC BAY BY SUFFOLK COUNTY

The primary habitat for hard clams in open bays is on edges where softer middle bay bottom rises up to harder and tighter bottom types. These edges are typically between twelve and forty feet deep and usually show on charts as a tightening of the depth contour lines, often with the bottom type transition noted. Edges are the bread and butter of deep water baymen and they produce hard clams year after year, while they may not get a set each year they almost always have several year classes of hard clams growing on them at any given time. This edge habitat itself is a public resource that should not be privatized by leasing. It would also be inappropriate for the County of Suffolk to convert assignments, or layer Oyster Grants with leases that would privatize edge habitat which. A significant buffer zone on either side of the edges in the cultivation zone should be protected as public shellfish habitat.

Name	NYS Permit Number	Signature
John Munno	12099	
William Rusinski	8623	
SCOTT Hogan	1985	
Daryl Pedigo	17381	
Dan Crowe	8025	
Charles Murphy	10988	
Sean P. Murphy	15433	
Joanni Walter Zalak	7896	
WALTER + MILLIE ZALAK	1781	

National Fisherman

Incorporating ALASKA FISHERMANS

JOURNAL

MAY 2008

INFORMED FISHERMEN • PROFITABLE FISHERIES • SUSTAINABLE FISH

Maryland dredging ban closes out bay clambers

Bill proposes compensation for boats, gear

A bill passed by the Maryland General Assembly to ban hydraulic clam dredging will go into effect in October.

For as long as anyone can remember there has been winter clam dredging in Maryland's coastal bays. Though only a handful of watermen continue the practice, the methods used to harvest

the hard clams has come under scrutiny by both environmentalists and sport fishermen.

"Though I support the local seafood industry, those clam dredges are hell on the bay's bottom," says angler Chuck Johnson of the Ocean City area. "They scar it with big trenches, which can't be good for other fish and sea life."

But commercial dredgers like Gary Tull, of Crisfield, have spent a good part of their lives clamming the back bays and making a living from it. Tull was quoted recently in the *Daily Times* of Salisbury, Md., as saying, "This is all I've known and all I've ever done."

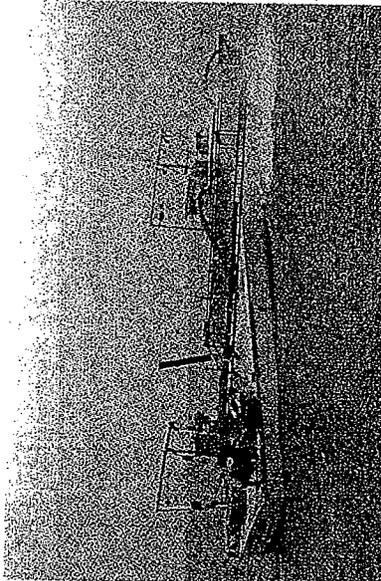
He isn't sure how he will fill in the economic gap after October. Some push clam aquaculture instead, but regulations and recent opposition from local land owners have limited the prospects in Maryland's coastal bays.

Clammers recently found support from

Sen. Richard F. Colburn (R-Eastern Shore), who sponsored a bill to compensate them for the cost of their boats and rigs when their jobs are excluded.

"Whether it be five or 10 or several hundred, the General Assembly is obligated to compensate those that are put out of work by our legislation," says Colburn. "We are supposed to be business-friendly and create jobs, not necessarily putting people out of work." If the compensation bill fails, Colburn will try a separate bill moving the dredging moratorium back one more year.

— *Charlie Petrocci*



CHARLIE PETROCCI

As of October, hydraulic dredging gear, seen here in Chincoteague Bay, will be a relic among Maryland watermen.

APPENDIX D

North Shore Baymen's Assn., Inc.
62 Oldfield Rd.
Huntington, New York

April 17th, 2008

For OGEIS

SUFFOLK COUNTY SHELLFISH AQUACULTURE COMMITTEE

Having reviewed the committee's most recent draft proposal, we have come to the conclusion that the committee has departed from its legislative mandate and is acting in the service of individuals and private companies.

When the New York State legislature passed the enabling statute, it did not authorize Suffolk County to lease underwater land that is naturally productive. The legislature did not exempt Oyster Grant Lands (OGL) from the substantive provisions of the statute that protect underwater lands that are capable of supporting significant commercial hand harvesting activity. The legislature did not authorize Suffolk County to lease underwater land currently held as oyster grants.

Always follow the money, keep your eyes on the actions of those who stand to profit.

The oyster grant lands in Gardiners and Peconic Bay are in many cases old growth clam beds that have been open to the public for decades. This is because many of them have not been used for any type of cultivation for decades: unmarked and unused. These lands have been the subject of recent speculative consolidation by members of the committee. The speculation is that the OGL will be eligible for leasing by the owners, and that these owners would eventually be able to hydraulically dredge these old growth clam beds. This has become the primary drive of certain committee members, and it appears that the committee has been co-opted by the individuals who stand to profit the most. The fact is that the committee has allowed OGL owners to drive the committee's agenda.

What value would be conveyed to holder of OGL with the committee's current proposal? OGL holders will be gifted an absolute right to lease the natural old growth clam beds on their grant land, effectively converting to ownership these clam beds creating an exclusive right of fishery for the state owned clams which abound there.

APPENDIX D

It cannot have escaped the committee members that under the present proposal the leases available to the public in ten acre plots will be dwarfed by those gifted to current OLG holders.

One thing court records make clear about Oyster Grant Lands is that any grants issued prior to the 1906 amendment were illegally granted if they are for more than 25 acres. For this reason alone their use should never be expanded. The commissioners who granted them were run out of office for illegally granting productive lands. The court that made landmark decision in the case of Suffolk County v. Edwards, 148 N.Y.S. 305; 86 Misc. Rep. 283 determine in its findings of fact:

“Fourteenth: That contrary to the statute in such case made and provided, the said Commissioners of Shell Fisheries did not bring the said applications to the attention of the Board of Supervisors of Suffolk County, and that said Commissioners and said Board, or a committee thereof, did not hear and pass upon said objections, and did not determine that the said land so applied for by either of the said applicants was of an area of not unreasonable extent and did not direct the Clerk of the County of Suffolk to sell the lands so applied for at public auction to the highest bidder; and that no attempt was made by the said Commissioners of Shell Fisheries to comply with the law applicable to said applications; that Chapter 385 of the Laws of 1884 of the State of New York permitted the conveyance of only four acres of oyster ground under the waters of Gardiner's Bay or the Peconic Bays to one applicant; and that Chapter 916 of the

APPENDIX D

Laws Of 1896, amending said Chapter 385 of the Laws of 1884, permitted the granting of no more than twenty five acres of such ground to one applicant; and that the only authority for conveying more than twenty five acres of said ground to one applicant, assuming that said ground has not been set apart and can be legally conveyed in an amount, is Chapter 640 of the Laws of 1906, which the defendant attacks as unconstitutional."

FIFTEENTH: That the defendants Everett J. Edwards, Clarence C. Cartwright and Edwin D. Tuthill, individually and as Commissioners of Shellfisheries, did not act in good faith in making the said attempted conveyance hereinbefore set forth, but acted in ignorance of the law governing their actions as such the commissioners and in defiance and contempt of its provisions".

When the State of New York took Aqua Culture Technologies to court for illegally dredging natural hard clams, the Attorney General refused to use the Edwards case. The only possible reason for not using that case was that the New York State Department of Conservation (DEC) knew that this would highlight the fact that it had been illegally issuing permits that allowed uses other than oyster culture on OGL to various parties for some time. The only proper course of action for the DEC would be to simply deal with the repercussions of rescinding all permits that allowed non-oyster activity. Instead they continued to permit these activities in clear contravention of the law. ***"There has always been a natural abundance of other shellfish such as clams and scallops...It is also to be observed that the act of 1884, if considered as a grant, is to be construed strictly in favor of the state, and that it was explicitly 'for the purpose of oyster culture' alone...There is clear distinction between grants of private property for private***

APPENDIX D

purposes and secessions of public properties for governmental purposes. To these lands underwater the right and title of the state was sovereign not proprietary. The state held the title of the people for the common benefit and to promote the public convenience and enjoyment of the natural beds. All the state had to cede and all the county took by the act of 1884 was the title held for government purpose” Suffolk County v. Edwards, 148 N.Y.S. 305; 86 Misc. Rep. 283

It is important to note that once Judge Kelby rendered this decision, any leeway the DEC and the County of Suffolk had with regard to interpreting the statute was suspended. It is role of the courts to interpret the statute and the role of the DEC to act according to the court’s interpretation. In this case that interpretation cannot possibly lead one to conclude that the DEC has any authority to expand use of OGL beyond oyster cultivation, regardless of how they try to craft their policy. This was the sentinel case directly on point to guard the public’s right to the enjoyment of the natural beds.

The effect of the DEC illegally allowing other shellfish to be cultivated on oyster grant lands has been to increase the value of private property that might otherwise have reverted to the public as the statute lays out. When land is no longer used for oyster culture, it reverts to the public. Private holders of OGL that have invested in cultivating species of shellfish other than oysters may in fact be damaged by having their permits rescinded, but the DEC never had any legal right to issue those permits in the first place. The OGL holders never owned anything but a right to cultivate oysters and oysters alone.

The DEC has sought to limit the states liability for issuing permits that were beyond its authority. That is understandable given the long history of collusion between DEC Suffolk County and oyster companies. Suffolk County issuing old growth clam bed leases to OGL holders would conveniently bail out the DEC at the expense of the law and the public right to the natural beds.

The proposed draft program recommends putting the obligation of determining the productivity of land on the public:

“14. Documentation of Natural Non-Productivity of Proposed Lease --If, during the application public comment period, comment is received indicating the presence of significant natural productivity on the proposed lease site, Prior to

APPENDIX D

~~issuance of a lease on lands not currently used for aquaculture, the applicant must provide documentation that the subject land does not presently support a productive natural shellfish stock. The County will identify what will be considered adequate documentation of the status of natural shellfish stock; such documentation may include, but not be limited to, a field benthic survey of the underwater land. The County will identify what is considered a significant shellfish stock.~~

What is “not be limited to a field benthic survey” supposed to mean? Where is the committee’s obligation to the public?

The law requires the determination that land offered for lease is not productive. The law does not authorize leasing of productive land as long as no one objects. At the very minimum a complete benthic survey needs to be performed with a full report conducted on behalf of the County at the expense of the applicant. It is the County of Suffolk that is responsibly under the law to certify to the public that the land it proposes to lease is not capable of supporting significant hand harvesting activity. There must then be a minimum 60 day public inspection period to allow the public to rebut the claim of non-productivity. That “claim of non-productivity” is no mere formality; it is the event in the process where the greatest conflict of interest exists. Objective criteria must be developed and applied. That 60 day period must be extended if extreme weather conditions or other extenuating circumstances prevent public inspection.

If the committee was really about the business of promoting aquaculture, it would designate modest cultivation zones in areas known to be non-productive. Has the committee scrapped the blue zone? Is the idea to make the entire Gardiner Peconic Bay system a cultivation zone? There is an obligation to determine where there is significant hard clam habitat; that habitat is meant by law to be protected from leasing. We have seen nowhere in the committee paper work a discussion of specific hard clam habitat. The idea is not to create the appearance of transparent government but actually to engage in transparent government.

The temporary assignment program is mischaracterized in the scoping document. The temporary assignment program was designed with particular safeguards for public access to the natural shellfish beds. This was repeated to me by DEC personnel on many occasions. I particularly remember telling Josh Thiele how I felt applicants were being granted temporary assignments on

APPENDIX D

edges that were primary hard clam habitat; he dismissed my concerns. My point then was that it was poor policy to grant temporary assignments in areas where the underwater topography make hard clam abundance likely. My point now is that the assignments on the edges in Gardiners and Peconic Bays should not be considered for conversion to leases. The DEC had no obligation at the time to certify that these areas were nonproductive, and they ignored and dismissed the suggestion that the assignments not be granted on edges.

The committee is designing an aquaculture program that will be a land grab for the naturally productive hard clam habitat that it is bound by law to protect. Blanket designation of aquaculture zones without ground truthing is an abuse of the authorizing legislation. The whole point of designating aquaculture zones was to put the question of natural productivity to rest to protect public access to the natural beds. Instead the committee spends its time crafting ways to avoid its duty to do the actual physical work. This is disappointing but not surprising. Every act for granting, leasing or otherwise alienating public land for shellfish cultivation in Suffolk County has always been a land grab for naturally productive underwater land. Huntington and Islip leases and the nefarious Blue Point Smith Patent were all naturally productive underwater lands, sold out from under the public by corrupt politicians and forwarded by judges and courts by deals made in Country Clubs. These oyster lands are part of one of the most corrupt land grabs in Long Island history - remnants of Blue Points and Long Island Oyster Farms clam cartel, and it is an insult that these illegally granted lands would even be considered for inclusion in any leasing program.



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