

November 8, 2021

The Honorable Deborah L. Ruggiero
Chair, Special House Legislative Commission
Rhode Island House of Representatives
82 Smith Street
Providence, RI 02903

Dear Representative Ruggiero:

Thank you for your work to study the Rhode Island Coastal Resources Management Council (CRMC) and provide recommendations for its reorganization. In the spirit of improving the CRMC, I would like to share my experience as an objector in the CRMC's aquaculture permit process. I hope the Special Commission, the CRMC, and others will benefit from hearing my impressions so we can collect meaningful information that will allow us to make better decisions, protect what is unique about Rhode Island's waters, and do what is best for the public.

On May 17, 2020, I sent an objection to the CRMC against an application to site an aquaculture business in Tiverton, in waters adjacent to the Department of Environmental Management's (RIDEM) Wildlife Management area (Attachment A). Unfortunately, the proposed location is a popular fishing hole, with certain unique characteristics, and is used by many anglers. The value of a public shore fishing location and the social and environmental good it provides to many current users and future generations, should be prioritized, especially if a potential lease could be sited in a number of other locations.

During the twelve-month period after I filed my objection, there was little effort by the CRMC to gather input from local anglers. I felt members of the public must fight an uphill battle to participate, while applicants are highly supported by CRMC staff in the permit process. Interaction with staff also makes me question whether the process can be influenced by unconscious bias in favor of aquaculture growth, at the expense of existing recreational uses, such as fishing, and at the expense of other considerations that should be given greater weight.

Does the CRMC have enough systems in place so that its regulatory role can be carried out in a way that is even-handed and consistent with the public trust? Over time, agencies can become overly influenced by the special interests they regulate. It is to be expected that the CRMC will have staff who have experience in, or deep ties to, the industries that CRMC regulates. The staff level is important because it controls what information is relayed up to the voting Council for evaluation and decision.

I had to navigate a process that is confusing, nontransparent, and discourages public input. Receiving notice and timely information was so hard to acquire, that it can effectively deny the public its right to these important things. Only after I hired legal counsel to help navigate what is supposed to be a public process accessible to and inclusive of all, was I able to understand the application process timelines.

CRMC's process should also protect public access, consistent with Rhode Island's Constitution, under Article I, Section 17 so that, *"The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore...."*

This Tiverton shoreline location, with shallow waters and a long sandbar, provides rare and easy access to shore fishing. Both adults and children can wade safely. For people who do not have the means to rent or buy a boat, and with the free parking provided at the location, this popular fishing hole gives access to a fishery by people from all walks of life, regardless of their individual means.

Anglers who use this location know that placing oyster cages in this spot will significantly impede fishing, because fishing tackle, line and fish will become tangled in the cages. Fish run erratically when hooked. Striped bass must be caught and released if under 28 inches. Safely releasing these fish will be difficult when they get snagged on the underwater metal cages. So, leaving space between oyster cages is an illusory proposal as far as fishing is concerned. The same is true of forcing anglers to stand and cast from a place outside the perimeter of the oyster cages. Contrary to Rhode Island's Public Trust Doctrine, the lease would effectively eliminate the ability of anglers to wade in the shallow waters where the farm would be placed.

Due to the deficiencies of the notification process, I had no opportunity to present this important fishing information early enough in the process to make a difference in site location. The CRMC's own Guide to Aquaculture Lease Application states that siting a farm "is the most important aspect of the process" and that the "leasing process must take into consideration what is best for all of the residents of the state." Knowledge about what is best for all residents was excluded for consideration by various entities like the Tiverton Harbor Commission.

To the extent that the CRMC needs change, one practical solution is to reform the method, timing, and principle of notice. For example, applicants should be required to notify potential users including abutters, and to prove such notification before applications can be submitted. If this had been so, in the Tiverton community, it would have avoided a long and difficult period of heightened uncertainty: not only for me and the many others that, as it turned out, also object to this application; but also for the applicants and the civic entities such as the Tiverton Harbor Commission who must be involved in the process.

I have attached a timeline of my experience and letters from the Tiverton Harbor Commission and Tiverton Town Council that outline concerns about CRMC notification (Attachment C and D). I appreciate your consideration. Thank you for the work you are doing.

Sincerely,



Kenneth Mendez
Tiverton, RI

Attachments

cc: Tiverton Town Council and Harbor Commission

Timeline, Questions, and Implications

- I submitted my objection in May 2020. Another Tiverton resident lodged an objection in July 2020. We included our contact information (Attachment A and B):
- From May 2020, until May 2021, CRMC staff never reached out to inform me how I could engage in the application process. In May 2021, *nearly twelve months later*, CRMC staff notified me that the application was being brought for a vote by the full CRMC.
- In the twelve months following my initial objection, there were numerous meetings with the applicants and CRMC, as part of the application process, with the Tiverton Harbor Commission, the Rhode Island Marine Fisheries Council, and its Shellfish Advisory Panel. Because the notice to the public is weak in conception and execution, ***officials voted on the application without the benefit of sufficient recreational angler user input.*** In fact one Tiverton Harbor Commissioner [stated](#) he would not have supported the application's location if he had knowledge about the fishing hole when he voted to support it. The Chair of the Rhode Island Marine Fisheries Council also flagged the lack of public comment (see attachment E highlighted).
- The Rhode Island Marine Fisheries Council (RIMFC) convened a public meeting for a vote on the application on June 7, 2021. While I submitted materials to the RIMFC on June 3, 2021 to support my CRMC objection, I never received formal notification about the June 7 meeting from the RIMFC. Email records show the Aquaculture Coordinator (AC) of the CRMC was in contact with the applicants about this meeting well in advance but there was no similar outreach by the AC or other CRMC staff to me. I found out about the meeting **by accident from RIDEM staff four hours before the meeting** (Attachment F). I know of other objectors and fishing stakeholder organizations who wanted to participate and would have attended, but could not because they did not receive notification about this meeting. As a result, I was the lone recreational angler voice who attended. The information and questions that others would have presented, was lost to the RIMFC and to the public event.
- CRMC's Aquaculture Coordinator worked closely with the applicants to keep the applicants apprised of next steps, helped and guided them through the process and attended many meetings of important entities (such as the Tiverton Harbor Commission, the Rhode Island Marine Fisheries Council, and its Shellfish Advisory Panel) with the applicants – was this effectively, coaching the applicants? Does the Staff cater to applicants, to the diminishment, as I experienced, of objectors from the general public?
- ***At no point did the AC or anyone from the CRMC contact me or the other objector to communicate how we could provide public comment during any of the steps of the application process.*** Furthermore, in my objection I indicated the unique characteristics of this fishing hole. No one from the CRMC contacted me to collect information on what distinguishes this one-acre location from the acres of other water in Narragansett Bay.

cstaff1

From: Kenny Mendez <kenneth.mendez@gmail.com>
Sent: Tuesday, May 19, 2020 5:05 PM
To: cstaff1@crmc.ri.gov
Subject: File #2020--04-037 application for one acre oyster farm

To whom it may concern,

I am writing to request a hearing and to receive consideration for the proposed one acre oyster farm at the mouth of Seapowet Marsh on the Sakonnet River. I urge CRMC not to grant approval for that location and instead find a more appropriate location. The current proposed site location is in prime striped bass fisheries habitat used by migratory fish that use that section of the Sakonnet River to feed on nutrients flowing out of the marsh. In addition, the location of that structure is frequently used by recreational fishermen, kayakers, and beach-goers. The location of the proposed farm would displace those recreational activities and displace prime fish habitat.

My address is 123 Long Pasture Way, Tiverton. You can reach me on this email address and my cell phone number is 703-304-1488.

Thank you for your consideration.

Sincerely,

Kenneth Mendez

Amanda Turco

From: CRMC Staff <cstaff1@crmc.ri.gov>
Sent: Monday, July 20, 2020 8:25 AM
To: Amanda Turco
Subject: Fwd: Bowen Oyster Farm; File# 2020-04-037

----- Original Message -----

From: Justin <jcd401@gmail.com>
To: cstaff1@crmc.ri.gov
Cc: friendsofseapowetmarsh@gmail.com, stevem@risaa.org
Date: 07/18/2020 9:37 AM
Subject: Bowen Oyster Farm; File# 2020-04-037

Dear team CRMC,

I am writing to express my concern and displeasure regarding the proposed oyster farm located at Seapowet Marsh in Tiverton, RI (File# 2020-04-037). I have just recently learned that the proposition has continued to move forward, and sadly without any significant opposition from the many residents and other outdoor enthusiasts who utilize the area for recreation. I understand that the comment period has closed, but I would like to have my note added to the file if at all possible.

Like many others in our state, I am an avid surf/shore fisherman. As such, I spend much of my time from April to November wading the shorelines of RI in search of striped bass, an extremely valuable species that we are so fortunate to have inhabiting our coastal waters. It is a fish whose commercial value is eclipsed by the wealth of unique recreational opportunities it provides. Fishing for many of us striper fisherman has become more of a lifestyle than a hobby; one where we are equally attached to our favorite spots as our own backyards. More so than most, we understand that our pursuits are only made possible by free public access, that we happily share with beach goers, kayakers, and the like. For myself and fellow anglers in the know, Seapowet Marsh is synonymous with striped bass fishing, and the placement of the Bowens oyster farm threatens to end that reality.

The farm is planned to be located in the fertile outflow of the marsh, just off the beach in shallow water. The one acre plot chosen here is prime fish habitat and for this reason, the most frequented area by the majority of anglers visiting Seapowet. The usual approach for wade-fisherman here is to walk out into waist deep water along the elevated sandbar, and depending on the tide, fishing from within the prospective farm, or at the very least casting within its perimeter. Fishing outside of the outflow is not nearly as productive, as the current running through this section creates a unique set of conditions. Unfortunately, we do not have the luxury of simply moving down the beach for this reason. The Bowen's commercial endeavor, in its current location, will completely displace our recreational activities and is an unfair use of this fantastic public space.

The biggest key to fishing successfully is choosing the right location, but without a boat, that means finding where you are allowed free access. RI has many legal access points mapped, but

the majority provide no parking opportunity, close during nighttime hours, or have been effectively privatized by abutting homeowners. Seapowet is really a gem in that it provides open and unrestricted access year-round for recreational activities. I feel the farm could jeopardize this altogether if placed in water accessible by foot, as security may become an issue. I worry parking may be jeopardized, as the commercial workers will be utilizing some of the already limited parking spaces during daytime hours. I believe allowing this operation will be opening a can of worms that leads to the average person losing more of their right to coastal access. Lastly, I'm concerned that increased human activity across this prime fish habitat may displace them as well.

For these reasons I would ask you to extend the public comment period, taking input from other anglers, kayakers, and town residents on how this would personally impact them and their enjoyment of the space. The community deserves a fair chance to voice their opinion on this, as the Bowen's endeavor benefits very few, but affects many. The events of the last several months have been distracting to say the least, and it is no surprise how this remained under the radar. Now that there are some of us in the know, we can spread the word and encourage others to speak their point of view regarding this massive change, before it is too late.

Thank you for your time and everything you do to protect the health of our coastline.

Sincerely,

Justin DiTucci
Tiverton, RI
401-207-8872

Town of Tiverton, Rhode Island
HARBOR AND COASTAL WATERS MANAGEMENT COMMISSION
343 HIGHLAND ROAD
TIVERTON, RI
02878

October 8, 2021
Amended October 26, 2021

Executive Director Jefferey Willis
Coastal Resource Management Council
4808 Tower Hill Road, Ste 116
Wakefield, R.I. 02879

INRE: Aquaculture Development

Dear Executive Director Willis:


I write on behalf of the Harbor and Coastal Waters Commission of the Town of Tiverton. As you are undoubtedly aware the development of aquaculture farms in Tiverton has been the topic of significant controversy. This controversy has been intensified by the lack of meaningful notification to interested parties or stakeholders in the relevant areas who have only recently been made known to the Commission. This is consistent with the discussions I have held with CRMC personal regarding the lack of meaningful notification. Publication of agendas on the Secretary of State website and local postings, while legally compliant, are clearly not sufficient. The applicants appeared before the commission, in some instances numerous time. Their applications were duly noted on the Commission's posted agenda each time they appeared. Despite these postings and meetings many of the interested parties were not aware of the change in the use of the waters in the waters of interest. (See the attached SAVE SEAPOWET binder with memo with exhibits and the group letter dated August 27, 2021)

The CRMC regulations do not require specific notification to those most directly effected, the waterfront owners, as they do not require any notification beyond the agenda posting. Indeed, I've been told, by CRMC personnel, that the use of the Harbor Commission as a means of

obtaining public input is somewhat unique to the process of obtaining public input. The CRMC notification requirement of aquaculture applicants is clearly deficient. It is in no way provides meaningfully notification to those with the greatest interest in the use of the impacted waters. As a result of this deficiency in notice it is the unanimous position of the Commission that the pending Boehringer & Lundgren as well as the Bowen applications warrant further vetting by the CRMC by referral to Subcommittee, prior to their approval. In addition to this immediate local issue, is the need to require direct notification to those most impacted as well as a meaningful public notification such as advertising in a local publication as is done with land based changes in zoning.

Kindest Regards.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Bruce H. Cox", written over a horizontal line.

Bruce H. Cox, Chair

Harbor and Coastal Waters Commission,
Tiverton, Rhode Island

Cc: Coastal Resource Management Council

TOWN OF TIVERTON, RHODE ISLAND

TOWN COUNCIL

Coastal Resources Management Council
4808 Tower Hill Road
Wakefield, RI 02879

Re: CRMC File No. 2020-04-037
Hearing Date: June 22, 2021

Dear Commissioners:

At the regular meeting of the Tiverton town council on June 14, 2021, we heard objections from many residents regarding the proposed off-shore oyster farm being proposed in the application as referenced above.

While we recognize that the Town of Tiverton does not have any authority over the issuance of the actual permit, we are concerned that the notice provision currently contained in the aquaculture statute does not require an applicant and/or the CRMC to provide notice to "abutters" to the project. Such notice would give residents who are affected the ability to actively participate in the public hearing process and assure that everyone's concerns are voiced.

Tiverton residents expressed concerns about the location of the oyster farm and its potential effect on recreational fishing and boating, as well as the lack of specificity as to how the owners would access their farm through privately owned shoreline access. All of these concerns need to be addressed by CRMC as you consider this application.

I am attaching copies of various letters and notices that we received at our town council meeting from concerned residents, and would ask that they be included in your official record at your public hearing scheduled for June 22, 2021.

Sincerely,



Denice DeMedeiros
President, Tiverton Town Council

Enclosures



Rhode Island Marine Fisheries Council

3 Fort Wetherill Road Jamestown, Rhode Island 02835
(401) 423-1920 Fax: (401) 423-1925

Robert Ballou
Chairman

David Monti
Vice Chair

Travis Barao

Andrew
Dangelo

Katie Eagan

Jason Jarvis

Christopher
Rein

Michael Rice,
Ph.D.

Michael
Roderick

November 16, 2020

Ben Goetsch, Aquaculture Coordinator
Coastal Resources Management Council
4808 Tower Hill Road
Wakefield, RI 02879

Re: CRMC Aquaculture Lease Application # 2020-04-037, John and
Patrick Bowen, Sakonnet River, Little Compton

Dear Mr. Goetsch:

Pursuant to R.I. Gen. Laws §20-10-5, the above-referenced aquaculture lease application was brought before the RI Marine Fisheries Council's (hereafter "Council" or "RIMFC") Shellfish Advisory Panel (SAP) on September 2, 2020. The SAP was presented with two locations for the proposed lease site – one being the site set forth in the public notice dated April 17, 2020; the other being an overlapping alternative location offered by the CRMC, during the public comment period, as a proposed modification in response to initial concerns raised during the public notice period. The SAP found the matter involving two proposed sites confusing and, based on that confusion, voted to recommend that the aquaculture activities proposed in the application are not consistent with competing uses engaged in the exploitation of marine fisheries. The recommendation was rendered with the expectation that the matter would be brought before the full Council for further consideration.

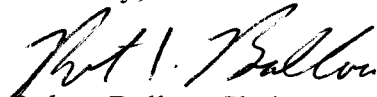
At the request of the applicants, the application was brought before the full Council at the Council's meeting on November 2, 2020. The Council deliberated upon the recommendation of the SAP, as well as additional input provided by you on behalf of the applicants, and additional input from the applicants themselves. The Council considered two motions:

- Motion #1: To remand the application back to the SAP for additional review due to the location being modified since being publicly noticed. Motion failed 5-3.
- Motion #2: To recommend to the CRMC that override area 1 is consistent with competing uses engaged in the exploitation of the marine fisheries and minimizes impacts compared to override area 2. Motion failed 6-2.

There being no further motions, the RIMFC's review concluded. Thus, the application is hereby conveyed to the CRMC with no recommendation from the RIMFC.

The key challenge faced by the Council and the SAP regarding this application is that the members felt uncomfortable rendering a recommendation pertaining to two proposed lease site locations, only one of which was noticed for public comment. The members value the insights and perspectives offered by fishermen via the public comment process, and consider them carefully when formulating recommendations to the CRMC. The shifting nature of this proposal during the public comment period made it difficult for the Council and the SAP to apprehend public opinion and render informed recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Ballou", written in a cursive style.

Robert Ballou, Chair
RIMFC

cc: RIMFC Members
Michael Wierbonics, ACOE
Alicia Wilson, ACOE

From: GerberWilliams, Anna (DEM) Anna.GerberWilliams@dem.ri.gov
Subject: RE: [EXTERNAL] : Proposed Tiverton oyster farm CRMC file #2020-04-037
Date: June 7, 2021 at 2:08 PM
To: Kenny Mendez kenneth.mendez@gmail.com

Hi Kenny,

Yes, there is a RIMFC meeting tonight at 6pm to review this application. We forwarded your letter and presentation to the Council.

Meeting Notice **Rhode Island Marine Fisheries Council**

Please be advised that the next meeting of the **RI Marine Fisheries Council** will be held next **Monday, June 7, 2021, @ 6:00 PM.**

This is a virtual meeting only (Zoom). Please see the attached agenda for meeting details and Zoom login information.

The ePacket (meeting materials) is available on the Division's calendar page [here](#) (go to June 7).

Thank you.

From: Kenny Mendez <kenneth.mendez@gmail.com>
Sent: Monday, June 7, 2021 1:54 PM
To: GerberWilliams, Anna (DEM) <Anna.GerberWilliams@dem.ri.gov>
Subject: Re: [EXTERNAL] : Proposed Tiverton oyster farm CRMC file #2020-04-037

Hi Anna...I sent these same materials to the CRMC. Is there an RIMFC meeting tonight to review these and is it a public meeting? I didn't know there was a meeting tonight so hadn't planned to attend. There's a Tiverton Harbor Commission meeting tonight that will review the same letter from me since they are a cc.

On Mon, Jun 7, 2021 at 1:44 PM GerberWilliams, Anna (DEM)
<Anna.GerberWilliams@dem.ri.gov> wrote:

Hi Kenny,

I apologize for just getting back to you about your letter. I have been out on vacation leave. I will forward this to the person who manages the RIMFC and make sure that they are sent over to the Council members for the meeting tonight. Did you also submit these to the CRMC?

Best,
Anna

-----Original Message-----

From: Kenny Mendez <kenneth.mendez@gmail.com>
Sent: Thursday, June 3, 2021 1:44 PM
To: GerberWilliams, Anna (DEM) <Anna.GerberWilliams@dem.ri.gov>
Subject: [EXTERNAL] : Proposed Tiverton oyster farm CRMC file #2020-04-037

Hello Anna...I see you listed as DEM Staff for the RIMFC Shellfish Advisory Panel. Would you be the right point of contact to distribute my letter and attachment to the Advisory Panel Members?

Thank you,

Kenny Mendez
703-304-1488



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