

**Special House Legislative Commission to Study the Effects and Procedures for the
Reorganization of the Rhode Island Coastal Resources Management Council**

Thursday,

Time: 2:30 PM

Meeting Notes

(Not intended as official meeting minutes)

Commission Members in Attendance: Representative Deborah Ruggiero, Representative Lauren Carson, Representative Michael Chippendale, Topher Hamblett, Jamie Hainsworth, William DePasquale, Stephen Land, Laurence Taft, Richard Hittinger, Michael McGiveney, Paula Bontempi, Sven Risom, Nancy Letendre

I. Call Meeting to Order

Chairwoman Ruggiero called the meeting to order at 2:30.

II. Opening Comments: Chairwoman Ruggiero

Representative Ruggiero welcomed commission members to the meeting. She reminded the commission members that the Coastal Zone Management Act is a federal/state partnership that promotes the sustainable use of the waters which includes aquaculture and offshore wind. The job of CRMC is to strike a balance.

III. Recap of Previous Meeting's Discussion on Findings

After the last meeting, Representative Ruggiero spoke with Betsy Nicholson, Northeast Regional Director of NOAA. NOAA will have to approve any changes to the structure of CRMC. In the last meeting we discussed changing the council into an advisory board. Because this would have to go through a lengthy process at NOAA. I focused on the current empowered structure and putting in some guardrails.

Representative Ruggiero discussed the following changes to the board structure and staffing with the Betsy Nicholson. Betsy Nicholson said these recommendations are consistent with what NOAA had recommended in years past. NOAA would still have to approve this but she was lead to believe it is more of a formality

- Term limits, limiting members to three terms of three years each.
- Qualification of members, including zoning or planning experience.
- Diverse participation, allowing only one member from a community to serve.
- Full time staff attorney
- Empowering Harbor Masters to enforce aquaculture permits

Representative Ruggiero also discussed that a number of members are concerned that CRMC has a conflict of interest, advocating for aquaculture but also regulating it. They talked about having regulation and advocacy in different state agencies, CRMC and DEM. She reported that Betsy Nicholson responded that any state changes in permitting and enforcement would need NOAA's approval.

Another finding discussed included requiring aquaculture applicants to notify the public through the local paper and holding a public forum before a permit is granted.

IV. Continuation of the Discussion on Findings by Commission Members

Council Structure: Topher Hamblett reiterated that it is Save the Bay's position that the council should be advisory and not empowered.

Stephen Land suggested that the commission explore the idea of an advisory council verses a decision making council. He stated it is worth investigating.

Representative Ruggiero responded that it would be lengthy process, and there is only about six weeks left in the legislative session so it would not happen this year. If the council wants to try to accomplish something we have to figure what we need in the short term.

Sven Risom asked if it is possible to make recommendations for short term changes and recommendations for the next steps. He continued that when CRMC was established it was right for that time. It was pioneering. But times have changed and the role and structure need to reflect that. It would be a disservice if there was not a strong signal as what the next step should be.

Lawrence Taft would also like it on the record that CRMC should be advisory and not regulatory. It creates clearer accountability. The director should be nominated by the governor and confirmed by the senate. He is also very much in support of having a full-time attorney, but he would also like to raise the issue of a hearing officer, an important issue if the CRMC board is still regulatory. Also DEM should be the regulator of aquaculture and already has the tools to do that, the marine fisheries division exists and has authority.

Nancy Letendre added that there some practical solutions we can put in effect this session and there are other things that need to be worked on the off -eason and introduced early in the next session.

William Depasquale offered that resources in the state's coastal zone are for everyone, it is also for minority communities not just coastal communities. A community outside of the coastal district should have some sort of representation. Someone who lives in Pawtucket may want to fish and have access to the coast. Representative Ruggiero thought that that was a great idea and suggested that maybe seven members come from coastal communities, one from an urban community and one from a smaller non-coastal community.

William Depasquale added that it would be a good ideato work on some of these short term changes and see if it would address some the concerns. And if they do not work the state could move forward with an advisory type solution.

Jamie Hainsworth added that there should not be more than one representative from one community on the council. Representative Ruggiero agreed.

Paula Bontempi wanted to go on the record and say that she knows NOAA pretty intimately and will be happy to help in any way she can as the commission moves to longer term recommendations. And she agrees with William DePasquale's recommendation to include other communities other than coastal communities. She also reviewed the public testimony and there is a lot of commentary related to permitting. She asked if the permitting issues could be related to the qualifications of the council.

Richard Hittinger added that some of the decisions that come from the council don't follow their founding principles. Their founding principles include preservation and restoration of ecological systems shall be the primary guiding principles and it seems that if we were only to push them back to that sentence that would help a lot. Many of their decisions appear to not follow that primary principle.

Sven Risom agreed with Paula Bontempi that long term solutions will take care of the permitting issue. There have been a number of issues, some of them very public.

Aquaculture: Nancy Letendre added the commission should also consider moving the regulation from aquaculture from CRMC to DEM. In her experience it is bad combination. The advocate should not be the regulator. She would like to know how to put something in place so that consideration can be made and put before the legislature in the next session

Representative Ruggiero asked if DEM regulates aquaculture, who would make the other decisions. Lawrence Taft responded that CRMC is planning where aquaculture should happen through the Bay SAMP. They are deciding ahead of time where the aquaculture should be allowed rather than just reacting to applications. What matters is what 5% is for aquaculture and where it should be.

Representative Ruggiero said it is important for the public to know that there is an aquaculture project coming to their community. Transparency in government is important to her. If someone is applying for an aquaculture farm and wants to use the public trust they must notify the public. They must notify them in a local newspaper have some kind of a community forum. That way the whole community, not just those on the coast, can have input.

Nancy Letendre added that a possible solution to a local forum for aquaculture would be to work with the community. Planning boards and offices are well equipped to get the word out to who needs to know. Similar to what they do with the farmers, they send out special notices when anything effects the farms.

Permitting: Nancy Letendre, added that in regards to permitting on the landward side, there is a lot of coordination that needs to be done by the applicant between the local government and CRMC. Currently an applicant goes to the local government first to get permits to construct, and then to CRMC to get their assent. It would do everyone a service if the commission looked at getting CRMC involved earlier in the process. If it is a historical building in the flood zone, and the applicant must go before RI Historical Preservation and Heritage Commission for approval and then the applicant goes before the CRMC for a section 106, it is counter intuitive. Her recommendation is that CRMC get involved in permitting processes in a flood plain in an earlier stage.

Review of Regulations: Lawrence Taft added that when the Red Book was written Type 1 waters were generally drawn around already existing conservation land. Since then there has been a huge public investment in our coastal areas from our federal and state government and local trusts and non-profits. The Audubon Society has lobbied CRMC to update the Red Book so it reflects this public investment. The coastal lagoons are important migratory stopover area. Also it seems as though the conservation areas, where there are no residents that complain, have become the default easy place to allow a permit because there is no squeaky wheel. The Red Book needs to be updated to reflect the massive amount investment that our state and partners have made in protecting our coastal environment.

Stephen Land added that the Red Book is not up to date. He deals with it daily and in Newport Harbor the current laws and current uses are not in the Red Book. The staff has started to understand that and he believes that is something that needs to be addressed. He also understands the importance of the staff and council having the discretion to make decisions that are not exactly letter the law. And it is important that the commission does not have live by a set of laws that are set in stone. In RI coastal zone uses change. For example, twenty years ago they were not permitting wind farms and putting cables at beaches.

Representative Ruggiero added that the Red Book should evolve and things should change over the years. The commission could suggest that CRMC revise the regulations.

Bill DePasquale suggested legislation to required review of the regulations promulgated by CRMC. The land use act requires towns to not only have a plan but update it every 5 years. Maybe something like that could address the land use changes.

Rep. Ruggiero said that legislation could say that the Red Book must be updated every three years and reports presented to the governor, senate and house. That could be a short term solution with long term implications.

Hearing Officer: Representative Ruggiero stated that Article 6 of the governor's budget proposed a part-time hearing officer. Right now the CRMC council provides a transparent forum in the evening and it is important for the public to be able to get to these meetings and have access.

Topher Hamblett added that a law passed over 30 years ago that required both the DEM and CRMC to have independent hearing officers to adjudicate appeals of permits and enforcement decisions. The DEM complied with the law and has been using hearing officers ever since. The CRMC has never complied with the law.

Topher Hamblett continued that the governor put in a \$15,000 item in the budget and weakened the conflict of interest firewall that exists. The DEM hearing officers comply with the law and do not have outside practices and are state employees. The governor's proposal just says in effect that they can have an outside practice of law but cannot be involved in adjudication a case in which they would have a conflict. He continued that his recommendation is an adequately paid full-time hearing officer with the firewalls that exist currently in law.

Richard Hittinger added that the commission discussed the possibility of sharing hearing officers with DEM. Representative Ruggiero responded that the DEM Director said it would not work and many of their hearings are during the day. The public would have a hard time going to the hearings during the day, and NOAA is concerned with the transparency. Topher Hamblett added that the hearings can be done at night as well, it is just a scheduling choice.

Sven Risom added that the commission should push for a full-time hearing officer that is appropriately funded. A DEM split is an option. He thinks the commission should recommend a full-time position and see how the work load prevails.

Paula Bontempi suggested that the commission should recommend enforcement of the original statute from 30 years ago. There should be a full-time hearing officer, perhaps shared with DEM.

Jaimie Hainsworth added that the hearing officers at DEM are independent of the staff, would this also be the case at CRMC. The commission members agreed.

Representative Chippendale stated that it seems important to the experts that the hearing officer does not engage in private practice. You are not going to find a lawyer for \$15,000 that does not have a private practice. It needs to be a well-funded position. Our law books are replete with mandates that we ignore as a state because we do not have funding.

Paula Bontempi stated that there are 413 miles of coastline and the state is going to be facing a situation with climate change. Given the construction she sees in her own coastal neighborhood, she would say there is going to be enough full time work.

Representative Ruggiero asked if the commission is looking for a full-time hearing officer, with no outside practice of law, to be shared with DEM if needed.

Sven Risom answered it should be full-time but giving the caveat to share, the hearing officer starts at CRMC and can share with DEM. This is important, we should be proactive rather than reactive.

Topher Hamblett added that position does not need to be created in law, but it needs to be funded. Rep. Chippendale added that the caveat should be added that DEM needs to demonstrate the need to share.

Executive Director: Representative Ruggiero asked the commission if the executive director should be appointed by the governor or the council. She continued that if the governor appoints both the Board and executive director, it would become a very political position.

Representative Chippendale continued that DEM does a fairly good job of managing those aspects, they are a regulatory agency, oversight agency, promulgate rules and regulation and enforce. The director is appointed by the Governor. Representative Ruggiero added that DEM does not have a board like the CRMC.

Representative Ruggiero continued that the executive director would become a political appointment, so every four years when a new governor is sworn in there could be a change. She suggested that it could be a six-year term. When Grover Fugate resigned there was a nationwide search and five applicants applied from across the country for the job. Will the fact that it is a political appointment further limit the applicants?

Sven Risom added that if the executive director is appointed by the governor it could lead to the proposed long term solution of an advisory council. Just because the governor changes it does not necessarily mean they will change the position.

Representative Carson asked if there any other state agencies that have advisory councils. If there are, how is the executive director appointed?

Michael McGiveney added that he has worked with seven DEM directors and there is a lot for them to learn. He agrees with a 6 year contract.

Nancy Letendre suggested that the commission look at how RIDE hires its director, they also have a board. Representative Ruggiero said the state has seen many commissioners of education. The lack of consistency is problematic.

Richard Hittinger added that the RI Fisheries Council members are recommended by the DEM to the governor for appointment. The council is advisory and the DEM director is appointed by the Governor.

Topher Hamblett said that Grover Fugate's contract was renewed by the council several times. RI had a DEM director for 10 years, it varies from agency to agency. The idea of a contract that outlasts a single governor has merit. It gives equal footing to the director with the governor as other department heads.

Sven Risom continued that currently the council could change the director every two years, he supports the six year plan because the director is in place for a long enough period beyond the Governor's terms and if he or she is not renewed there might be a reason. He thinks this sets the state up for the longer term goal of moving the council to advisory.

Rep. Ruggiero stated that any legislation should start after the contract with the current director ends. All agreed.

Topher Hamblett stated that there is a bill that in the senate that does this but has the executive director reporting to the council. Representative Ruggiero added that she would like the Executive Director to report to the governor.

Lawrence Taft liked the idea of the Executive Director being appointed by the governor. It does not take away the function of the council. It is similar to how a town planner is hired by and reports to a mayor but still works with the planning board.

Paula Bontempi added that it makes here uncomfortable to have the executive branch in control of the Executive Director and the council. She is worried about the balance but does not have a solution.

V. Next Steps: Chairwoman Ruggiero

Representative Ruggiero thanked the commission members for the excellent discussion. She will schedule another meeting to discuss the findings further.