

WATERFORD HARBOR MANAGEMENT COMMISSION

2. Waterford's coves are subject to silting. Alewife Cove has recently been dredged, but it is again filling. Jordan Cove and Smith Cove on the Thames River are experiencing similar problems. The Commission will monitor developing problems in this regard and advise the Flood and Erosion Control Board.
3. Federal channels are maintained in the Niantic and Thames Rivers. A major presence of the U. S. Navy and U. S. Coast Guard on the Thames River tends to reduce the Commission's responsibilities for that channel. The Niantic River channel, except for that portion located at the very mouth of the river, is a good distance from Waterford's shoreline. The Commission intends to monitor any structural encroachment – fish weirs, moorings, pilings, and so forth – and report such to the proper authorities, and work to discourage the dredging of new or expanded federal or local navigational channels, basins and anchorages unless critically necessary.
4. Many agencies, local state and federal, have responsibilities regarding the protection of wetlands, wildlife and fishing. In particular, Waterford has its own Shellfish Commission and participates in the Waterford-East Lyme Shellfish Commission which regulate the harvesting of oysters, clams and the internationally famous Niantic scallops. The Commission will provide what apropos information and advice it may have to support these agencies in the enforcement of their regulations.
5. Waterford has town owned beaches plus several other semi-private beaches, some of which are long standing and traditional swimming areas. In cases where these do not comply with the state buoing and other regulations, the commission will inform those responsible and aid them in compliance where possible.
6. The Commission sees a duty to enhance where possible water related recreational activities. However, in order to minimize potential conflict between competing activities, such as water-skiing, sailing, shellfishing, fishing, boating and swimming, the Commission will promulgate appropriate regulations to resolve conflicts between competing users in a manner which provides for the safe, orderly and efficient use of the water and waterfront by the public and provide the environment for a safe harbor and shore access for transient vessels.
7. The commercial and charter fishing businesses located in the Mago Point area of the Niantic River are significant and appropriate economic resources for the Town of Waterford. They are essentially self-regulating and self-enforcing with regard to state law and Town ordinances. They are well-run, long standing businesses, some of which date back to the early part of this century, and the Commission sees no need at present to change any regulation or to promulgate new ones regarding them.
8. The water quality of Waterford's shoreline, coves, bays and estuaries is subject to the ever present danger of pollution from accidental and purposeful discharges of waste, trash, debris and untreated sewerage. The Commission will advise the enactment of pertinent laws to prevent or minimize such pollution. The Commission will endeavor to define the waters of the Town of Waterford as a no-discharge zone and encourage the installation of pumpout facilities for vessels with toilets where possible.

The Commission will advise the Waterford Police Department to take action for the removal of derelict vessels which pose potential pollution or navigational hazards in accordance with section 15-9 of the General Statutes.

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9. The Commission notes that some waterfront communities in Connecticut have experienced problems relating to so-called "liveaboards/houseboats" and recognizes Waterford's susceptibility. Although nothing of the kind currently exists within its jurisdiction, the Commission will recommend ordinances regarding liveaboards or houseboats.
10. The Commission foresees the necessity of coordinating information and activities among the various agencies, commissions, departments and individuals with interests along the waterfront. Where it has expertise, the Commission will offer advice and assistance to departments such as police, fire, flood and erosion and the like. The Commission will also encourage adequate personnel to enforce pertinent regulations, and provide access to available resources (e.g. funds, information, and volunteer manpower) that support water development activities.
11. The Commission intends to work closely with the Long Island Sound Councils to carry out their long term goals and objectives for the improvement of the water quality of the Sound and the enhancement of uses for the Sound.

Policies and Recommendations: Town of Waterford

To implement the goals presented in the previous pages the following policies and recommendations are part of the Waterford Harbor Management Plan:

1. Waterford Water Use Plan

The Waterford Water Use Plan can be viewed in Appendix D and presents the Harbor Management Commission's recommendations for conservation, development and use of Waterford's waterways. In accordance with Section 22a-113n of the Harbor Management Act, all state and municipal regulatory decisions within the area of the Harbor Management Commission's jurisdiction shall be consistent with this water use plan, unless contrary actions are supported by a "show cause" justification.

A. Preservation of Coastal Resources

The preservation and improvement of significant natural resources in Waterford is consistent with the Connecticut Coastal Management Act and the Waterford Municipal Coastal Program and is further supported by the Waterford Harbor Management Plan.

(1) Shellfish Resources

Significant shellfish concentration areas, as mapped by the Division of Aquaculture within the Department of Agriculture and refined through consultation with the Waterford Shellfish Commission, have been designated. The Harbor Management Commission should periodically consult with the Shellfish Commission and update the water use plans if changes become necessary. Shellfish plans are included with Appendix D.

Within designated shellfish resource areas, the following policies shall apply:

- (a) The cultivation, transplantation, harvest and general management of shellfish shall have priority over all other uses within designated shellfish resource areas. This should not, however, be construed to deny a riparian owner's access to navigable waters as long as such access will not create a significant adverse impact to the shellfish habitat.
- (b) New navigation channels, turning basins, fairways, berthing areas, mooring areas and anchorages shall not be dredged in designated shellfish concentration areas nor should any new structures such as docks, pilings, breakwaters, groins, or sea walls be placed in

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designated shellfish concentration areas unless it is demonstrated that the effected resource area has been permanently depleted or that no other feasible alternative exists and that any adverse impact to the shellfish resources are fully mitigated to the satisfaction of the Waterford and Waterford-East Lyme Shellfish Commissions.

(c) Moorings and anchoring are not prohibited in shellfish resource areas but the Harbor Master shall consult with the Waterford-East Lyme Shellfish Commission or the Waterford Shellfish Commission in the issuance of new mooring permits. Discharges are discouraged in shellfish areas.

(2) **Tidal Wetlands, Intertidal Flats, Eel Grass and Other Submerged Aquatic Vegetation**

Tidal wetlands and intertidal flats are to be construed as one of the Town of Waterford's greatest assets and the following policy shall apply:

(a) The priority use for tidal wetlands and intertidal flats is preservation, limited uses and structures may receive regulatory approval if the resource impacts are minimal, no feasible alternatives exist and the use is of utmost importance to the well being of the community.

(b) The ecological values of intertidal resources for habitat, breeding, nutrient productivity, storm water retention and pollution control are well established and as such the use of these areas should be discouraged except in extreme cases of importance. This habitat is a non-renewable resource and the eel grass is of utmost importance in the production, growth and survival of the Niantic Bay scallop larvae.

B. Structures

To ensure the orderly, safe, and efficient use of designated mooring areas, anchorages, fairways and other navigational areas, the following policies shall apply to new applications:

- (1) There shall be a fifteen (15) foot setback of all new structures from any designated channel, turning basin, fairway, mooring area, or anchorage in the Niantic River and Bay area and a fifty (50) foot setback from the Thames River federal channel. Existing structures which extend into the setback area may be subject to periodic removal, if required, for maintenance dredging.
- (2) No vessels at a dock permitted after the adoption of this plan shall extend into the limits of the channel, fairway, turning basin, mooring or anchorage setbacks, as delineated on the water use plan.
- (3) There shall be a ten (10) foot setback of new structures from property line extensions into navigable waters where practicable. This should not, however, be construed to deny a riparian owner's access to navigable waters. Setback requirements may be waived if some legitimate coastal and/or harbor management objective such as resource preservation is furthered.

C. Special Regulations

To resolve identified conflicts between harbor uses and to promote public safety, the following policies are incorporated into the water use plan:

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- (1) To prohibit swimming in all designated channels and fairways as delineated on the water use plan and encourage the same to take place in designated swimming areas only.
- (2) To maintain unobstructed channels and fairways to promote safe passage of vessels.
- (3) To encourage water-skiing, swimming and boating in designated areas where safety permits.

D. Public Access

Consistent with the Connecticut Coastal Management Act and the Waterford Coastal Program, public access to Waterford waters should be preserved and improved together with all proposed waterfront use and development. Accordingly, the following policies shall apply:

- (1) No proposed structures or uses shall restrict existing public access.
- (2) Plans reviewed by the Harbor Management Commission in accordance with Section 22a-113p of the Harbor Management Act shall be examined for potential impacts to existing or needed public access. The provisions of additional public access in conjunction with proposed plans is encouraged and will be viewed favorably by the Harbor Management Commission.*[Italic emphasis added.]*

Date: May 16, 2018 at 9:44:59 PM EDT

To: <peterharris@yahoo.com>, <kelly817@sbcglobal.net>

Reply-To: John Starrett <john.starrett@sbcglobal.net>

Hello Peter and Pat,

I am a Waterford resident and I have some concerns about the upcoming aquaculture project that I would like to voice at the public hearing on Thursday, May, 17, but unfortunately, I have to travel out of state to attend a funeral. I respectfully request that you read the letter below out loud into the public record at the meeting. I know it is short notice, but, if for some procedural reason, you are unable to read the letter into the record, I would appreciate it if you could let me know, and I will try to find someone else who is attending the meeting in person. Thank you in advance for your consideration on this important matter and thank you for your service on the shellfish commission.

#7

Sincerely,
John Starrett
132 Niantic River Road
Waterford, CT 06385

I am reading this letter on behalf of John Starrett, who could not attend the meeting tonight. He resides at 132 Niantic River Road in Waterford and asked that his letter be read into the record.

I have several concerns I would like to voice with respect to the "Proposed policy statement on aquaculture projects in the Niantic River - Revised March 2018":

My first concern is with respect to liability: The Proposal states: "The applicant assumes liability if any third party damage occurs." How will that liability be enforced, and to what amount? Will the applicant be bonded, and if so, to what extent? Of similar concern, the proposal states, (...WELSCO reserves the right to have the applicant remove the structure prior to the project duration...). How will WELSCO ensure that the applicant removes the structures? If the applicant refuses or abandons the structures, how will they be removed, and who will pay for the removal?

A larger concern is the construction of the aquaculture structures in navigable waterways. The proposal states, "...as to placement, size, construction, etc., so as not to infringe on any navigable water..." As depicted in the nautical chart in the proposal, areas 4 and 5 would directly contradict the proposal. This area of the Niantic river is used as a navigable waterway for a wide assortment of watercraft, including recreation boaters, boaters towing waterskiers, boaters towing water tubers, kayakers, and conoers, among others. Just to be clear, the term "navigable waters" does not just apply to the channel as demarked by USGS channel buoys. In 1979, the U.S. Supreme court heard the case of Kaiser Aetna v. United States and determined what constitutes navigable waters. The tests asks whether the body of water (1) is subject to the ebb and flow of the tide, (2) connects with a continuous interstate waterway, (3) has navigable capacity, and (4) is actually navigable. Using these tests, courts have held that bodies of water much smaller than lakes and rivers also constitute navigable waters. Even shallow streams that are traversable only by canoe have met the test. Based upon this information, I respectfully request that you reject the request to implement an aquaculture structure in areas 4 and 5 as depicted in the nautical chart in the proposal because it would definitely infringe upon navigable water.

Thank you.

✓

Karen Galbo

From: Paddy Kelly [kelly8171@sbcglobal.net]
Sent: Thursday, June 21, 2018 9:27 AM
To: Karen Galbo
Cc: Peter Harris; Amy Tinker; Robert Avena
Subject: Fw: Public Hearing 5-17-2018 6:30 PM Waterford Town Hall

Please add this email as an attachment to our May 17 Public Hearing Minutes! I have already dropped a copy to Waterford Town Clerk's office.

Pat Kelly, Waterford-East Lyme Shellfish Commission

On Wednesday, May 16, 2018 1:44 PM, Timothy NBSF <timothy@nianticbayshellfishfarm.com> wrote:

Good Afternoon,

I am sure many of you are aware that there is to be a public hearing regarding Waterford-East Lyme Shellfish Commission's (WELSCO) Policy statement update. This public hearing will be occurring tomorrow, Thursday the 17th 6:30pm in the Waterford Town Hall.

Over the last year or so, WELSCO has worked with both Towns and the Town Attorneys to craft an updated policy so as to clear up certain issues raised in the past regarding aquaculture within the Niantic River. This new policy explicitly allows commercial aquaculture while also establishing certain checks on commercial aquaculture. Even though WELSCO's statutory rights allow them to permit commercial activity, this update was necessary as a way to help bridge the gap between commercial activity, certain interest groups, as well as other commissions on the River.

This gap, or difference of opinions regarding commercial aquaculture, should have been resolved via the DEEP mediation process, which all involved parties took part in. At these mediation sessions, and other town meetings, WELSCO asked for input regarding their policy statement, upon receiving no more input, the DEEP concluded the mediation sessions. WELSCO has decided to move forward with their new policy which can be found at <https://eltownhall.com/wp-content/uploads/2018/05/WELSCO-DRAFT-Aquaculture-Policy-Statement.pdf> Even after a year, mediation sessions, and outside input, some do not find WELSCO's policy statement to be satisfactory. Such concerns include, but are not limited to the following;

1. Use of public trust lands for private enterprise.
2. Removal of public trust land from other uses.
3. Lack of oversight on any aquaculture project.
4. Lack of professional studies regarding submerged aquatic vegetation or other environmental issues.

A further list of issues can be found on the Niantic River Advocacy's Face Book page:

<https://www.facebook.com/nianticriveradvocacy/photos/a.105393170154964.1073741829.102138270480454/145137886180492/?type=3&theater> These issues have been directly address to the Coalition, but it seems not to their satisfaction.

It should be kept in mind, that WELSCO is simply in charge of the designation of grounds and terms of the permit, which would follow the acceptance of an application and the approval of an application. The terms would then be crafted between the applicant, Town Attorney and WELSCO.

The DEEP, Army Corps of Engineers, and Bureau of Aquaculture (BA), oversee the remainder of permitting for the project which receives a full environmental analysis including SAV, fin-fish,

waterfowl as well as a myriad of other potential impacts. Any applicant must submit permits to the above State and Federal Agencies and undergo a very similar process to the installation of a marina, dock or any other water dependent use/structure. These agencies regularly check on aquaculture projects during and after completion. It should also be noted that an active farm must receive yearly permits to conduct aquaculture from the BA.

Water dependent uses are encouraged under the oversight of the DEEP. The use of public lands for the cultivation of shellfish is a permissible use, in fact, it is encouraged by the Coastal Management Act https://www.cga.ct.gov/current/pub/chap_444.htm see Sec. 22a-93 (14). Furthermore, the earliest documented lease in the Niantic River is from 1876. Since 1876, there have been many other leases and projects within the River and outside the River.

WELSCO has determined that it is in the best interests of the River and shellfish populations to explore the possibility of commercial aquaculture so as to boost the native stocks. In other words, any commercial aquaculture operation would be required to sow a portion of the shellfish it produces into the public grounds. Furthermore, the establishment of structures act as artificial reefs creating habitat for juvenile animals. Studies have shown that the biomass living within an aquaculture site is hundreds of times greater than that of eel-grass beds. Lastly, as we all know, the growing of a corner stones species, oysters or other filter feeders, removes excess nitrogen from the water thus enabling more sunlight penetration, which leads to SAV growth, then more oxygen, more habitat, and lastly more biodiversity.

If you are interested in learning more or supporting WELSCO in this update, please attend the public hearing tomorrow at 6:30 in the large meeting room at the Waterford Town Hall. This policy will support local, green, sustainable, water-dependent business. This, in turn, will help enable the youth of today to work the waters which we can no longer wild harvest from due to a lack of product and other environmental situations we, as a community, have put our waterways through. Our heritage is in the River, in shellfish, so why not help WELSCO attempt to revive what we have nearly lost?

WATERFORD EAST LYME SHELLFISH COMMISSION

NOTICE OF PUBLIC HEARING

The Waterford East Lyme Shellfish Commission will hold a public hearing on Thursday, May 17, 2018 at 6:30 p.m. at the Waterford Town Hall, located at 15 Rope Ferry Road, Waterford, CT to consider modifications to the Commission's 2002 Aquaculture Policy Statement. Proposed modifications include consideration of commercial aquaculture in the Niantic River and the manner in which commercial aquaculture would be permitted. The proposed Aquaculture Policy is available for review at both the Waterford and East Lyme Town Clerk's Offices.

Best,

Timothy A. Londregan III
Niantic Bay Shellfish Farm
Founder & Owner
860-739-6273