



## Waterford-East Lyme Shellfish Commission

### Public Hearing Minutes

Thursday May 17, 2018

Waterford Town Hall, 6:30 pm



Members present: Peter Harris, Tom Bowlen, Paul Spakowski, J. Patrick Kelly, Elizabeth Gelinas, Eric Kanter, Larry Tytla and Fred Grimsey

Guests: Attorney Robert Avena -Town of Waterford and Abby Piersall, Director of Planning – Town of Waterford

1) The meeting was called to order at 6:31 pm and a quorum established.

2) Pledge of Allegiance was recited.

3) Chair Harris gave an introductory presentation.

4) Public Input

FILED

May 21 2018 AT 1:35 AM/PM  
*(Signature)*  
EAST LYME TOWN CLERK

**Robin Lineberger** of the Niantic River Advocacy Coalition submitted written comments (attachment 1); read into record by Paul Daversa.

**Gary D. Smith** of Waterford submitted written comments (attachment 2); read into record by Attorney Robert Avena.

**Carol and Richard Dudek** of 134 Niantic River Road read and submitted written comments (attachment 3).

**John Hughes** of 52 Niantic River Road read and submitted written comments (attachment 4).

**Terry Lineberger** submitted written comments (attachment 5) read into record by Ellen Fratus.

**Jane Adams**, Chair of the Waterford Harbor Management Commission read and submitted written comments (attachment 6).

**John Starrett** of 132 Niantic River Road submitted written comments (attachment 7) read into record by Roy Nelson of 16 Sixth Avenue.

**Barbara Kamicker** of Old Oak Lane commented on her support of aquaculture.

**Paul Daversa** of 168 Niantic River Road opposed the policy statements validity; needs defined standards and measurements.

**Dave Hirsh** of 30 Oswegatchie Road commented on insurance liability issues and enforcement.

**Don Danila** of 24 Pattagansett Drive supports aquaculture; shellfish decrease nitrogen loading, increase visibility and benefit eel grass.

**Dave Turner** of 68 Ridge Rd supports aquaculture.

**Jane Wadsworth** of Mago Point requested clearly defining license/agreement; approval and compliance and better explanation of recreational shellfishing.

**Denise Garofalo** of 15 Ledge Road commented on shellfish survival with all the combatants.

**Aaron Rosenberg** of 163 Niantic River Road commented on water quality, recreational usage limitations and compromising the aesthetics of the river.

**Scott Gladstone** of 30 Niantic River Road commented on benefit of aquaculture; has concerns with policy and protocol errors; need defined procedures.

**Debra Hadaway** of 377 Mago Point Way commented on commission's ability to sustain and enhance recreational shellfishing; who will actually benefit from an aquaculture project.

**Michelle Pedro** of 120 Oswegatchie Road where does policy benefit recreational activities; information on open and closed areas; agrees with Paul Daversa's comments.

**Marcia Benvenuti** of Waterford noted concern with who is affected by right of ways in Welsco areas 4 and 5, better guidelines and procedures to measure policy goals.

**Liz Harris** of 5 South Ridge Road supports commercial aquaculture; noted benefit to local businesses.

**Craig Pedro** of 120 Oswegatchie Road commented on defining gear descriptions; policy changes should be addressed and comments submitted by the NRAC should be considered.

**Mark Mazzella** of Spithead Road commented on areas for projects having documented studies; benefit of a project for the water or for the applicant, opposed to policy.

**Orin Wilson** of 17 Second Avenue commented aquaculture and areas may be beneficial but will take away from the recreational shellfishing.

**Ron Barhorst** of 162 Niantic River Road concerned with policy stating change of areas and the standards within the policy.

**Carol Silva** of Quaker Hill commented aquaculture would not be unfavorable to small businesses.

**Jim Foertch** of 1 Leary Drive commented on criteria and policy's framework; policy should not be as specific as a license.

**Maria Moulthrop** of 71 Quarry Dock Road commented on the percent of shellfish survival and recreational areas affected.

**Fred Wise** of 138 Niantic River Road commented on Oyster Farm outside Hole in the Wall supports local business, no specifics on oysters in policy; focus should be on non-commercial; opposed to commercial and Type II gear in the river.

~~**Tim Londregan** commented on benefits of oyster filtration; all the Harbor Management Plans include aquaculture; policy percentage of use vs other large use in the river; noted attorney involvement and hatchery benefits.~~

5) Commission Closing Comments

Mr. Kelly reviewed historical legal issue; past experimental projects and the state charter and town ordinance.

Mr. Kanter reviewed the safety of shellfish consumption; protocol and test requirements of DA/BA; criteria for chosen Areas 1 – 6; protective storage of gear and protocol of aquaculture ventures.

6) Adjournment

The meeting was adjourned at 8:45 pm on a motion by Mr. Spakowski, seconded by Mr. Kelly. All in favor, motion unanimous.

Respectfully submitted,

Amy Tinker  
Secretary



**TO:** Peter Harris, Chair  
Waterford East Lyme Shellfish Commission (WELSCO)

Robert Avena, Esq.  
Waterford Town Attorney

**RE:** Niantic River Advocacy Coalition Comments on  
**Public Hearing on Draft Policy Statement May 17, 2018**

On behalf of the Niantic River Advocacy Coalition, we request that these comments be accepted into the permanent record of the Public Hearing on changes to WELSCO's Aquaculture Policy Statement 2018.

First, let us begin by reiterating that the Niantic River Advocacy Coalition is supportive of responsible commercial aquaculture (in general and in the Niantic River). It is the view of the Niantic River Advocacy Coalition that WELSCO is not yet prepared to receive, evaluate, or approve experimental Type II (gear based) aquaculture projects or to approve up to 5-year commercial Type II aquaculture projects and therefore shouldn't be adopting a policy statement that addresses such.

We have arrived at this conclusion because although WELSCO may have authority to bring forward for approval where in the river aquaculture may be acceptable, and the manner in which shellfish are taken from the river, it has no authority to lease land nor the expertise to do regulatory reviews. WELSCO is getting beyond its statutory powers, which are limited to designating the manner in which shellfish can be taken, the licensing of such taking, and in connection therewith, adopting reasonable regulations and fix license and permit fees to that taking. Anything else is beyond WELSCO's statutory authority.

We are NOT supportive of and are very skeptical of Type II commercial aquaculture in the Niantic River as we believe it is in direct conflict with the existing policies and plans of the Waterford East Lyme Shell Fish Commission (WELSCO) itself, the Waterford Harbor Management Commission (WHMC), and the East Lyme Harbor Management / Shellfish Commission (ELHM/SC). We hold this view because we cannot reconcile how the installation of a Type II aquaculture project can avoid:

- a. Reducing the public accessibility and recreational use of the Niantic River
- b. Reducing public safety
- c. Impeding use of navigable waters
- d. Negatively impacting local environmental conditions in the river
- e. Reducing available recreational shellfishing areas
- f. Negatively impacting the aesthetics of the river
- g. Negatively impacting the traditional character of the shoreline community

All of which are specific reasons for disapproving proposed projects in the river by one or more of the local management commissions listed above.

Even if WELSCO did have the authority and the expertise for such an undertaking, the current and draft policy statements do not:

1. Direct the candidate projects to be in alignment with WELSCO's stated mission of sustaining and enhancing recreational shellfishing.

2. Require an applicant to fully describe the experiment, how it aligns with WELSCO mission, and the evaluation criteria to be used to evaluate success or failure.
3. Indicate that WELSCO has developed proper implementation, monitoring, and management plans for approved projects and that they will be used to properly manage the respective towns aquaculture resources.
4. Indicate how the granting of up to 10 Acres of Type II aquaculture and an unlimited amount of Type I aquaculture can possibly sustain or enhance recreational shellfishing when it will remove the acreage from recreational use.

The Policy states: "...it is the mission of the Waterford-East Lyme Shellfish Commission to sustain and enhance recreational shellfishing." We do NOT believe that Type II Aquaculture is in alignment with WELSCO's mission statement because:

1. The mission statement is for sustaining and enhancing recreational shellfishing, not commercial aquaculture farms
2. Implementing Type II commercial aquaculture in the river will remove, at a minimum, 10 acres of recreational shellfish beds. And as currently written, has no limit to the acreage that can be deemed for Type I commercial use.

Further evidence that WELSCO does not have the expertise to manage such projects in the river are found throughout the draft policy statement.

The draft policy statement does not make reference to any implementation, management and performance assessment plans necessary to responsibly manage commercial aquaculture, particularly Type II aquaculture. So, we must assume that these plans do not exist.

1. We do not believe that WELSCO can adequately carry out its self-appointed role, under the draft policy statement, without the establishment and enforcement of these plans and the expertise to execute them.
2. These plans are necessary for the applicants and the public in that they establish a common understanding of what is expected by both, and an objective framework within which the project(s) can be established, observed, managed and evaluated.
3. These plans must be established, reviewed, and agreed upon by the Boards of Selectman of both East Lyme and Waterford prior to any applications being considered as this is key to protecting the public's interest in the administration of the Towns' assets.

The draft policy statement indicates any aquaculture project be on an "experimental basis and if deemed successful, potentially a small commercial operation, limited in its size, scope and duration" could be granted (for up to 5 years with subsequent renewals)

1. The policy statement does not explicitly state that an experimental project must be in furtherance of the WELSCO stated mission: to sustain and enhance recreational shellfishing. To approve projects outside this scope strays from the Mission of WELSCO and is outside their stated mandate.
2. A responsible policy statement would address a framework within which experimental projects would be assessed:
  - a. For an experimental Type II aquaculture application to receive a favorable review, the experiment must be demonstrated to either sustain and / or enhance recreation shellfishing.
  - b. The experiment should not be deemed successful by merely providing shellfish to be distributed in the river. This is effectively a compensation strategy, not an

experimental outcome. The requirement to provide shellfish produced is better suited for a lease / license agreement rather than a condition of an experimental aquaculture demonstration.

3. The policy statement does not require that the applicant provide a full description of the proposed experiment in the application or other means.
  - a. An Application for a less than 2-year experimental Type II commercial aquaculture project should include a complete description of the experiment to be conducted in the river. It should minimally include:
    - i. An overview of the experiment, its approach and the processes to be conducted.
    - ii. The benefits of the outcome / project to sustaining and/or enhancing recreational shellfishing in the Niantic River (beyond providing shellfish produced to be distributed in the river).
    - iii. Measurements to be taken, before, during, and after the completion of the experiment that will be used to demonstrate the success or failure of the experiment.
    - iv. The measurement thresholds to be achieved by a successful experiment. Again, these should be directly tied to the achievement of the WELSCO mission.
    - v. Achieving the financial goals of an individual business is not relevant to sustaining and enhancing recreational shellfishing in the river. Certainly not the central goal.
4. The policy statement indicates that if successful, a longer, up to five-year project can be approved. The policy is not explicit that the project must be an extended version of the successful experiment. By omission, there is a potential for expansion of an unrelated, different and longer-term Type II commercial aquaculture project.
  - a. A sound policy would be explicit that any approved follow-on project based on successful experimental results must be an implementation of the same type proven by the experiment.

The draft policy statement indicates that: "commercial operations limited in size to 10 acres of total aquaculture footprint area at any one time (the 10 acres will constitute the total acreage of all aquaculture operations combined utilizing type II aquaculture with emphasis on restoration of native shellfish."

1. It is unclear if the 10 Acre limit applies only to Type II aquaculture and thus Type I aquaculture could consume the remaining acreage of the designated lease areas.
  - a. Both Type II and Type I should be established individually and in total so that the vast majority of the rivers shellfishing areas remain available to recreational shellfishing.

Below are a number of areas that are key in the Implementation, Management, and Performance review plans necessary, but nonexistent, in WELSCOs draft policy and further demonstrate that WELSCO does not have the expertise nor is prepared to adopt a policy to manage commercial aquaculture:

1. Policy states: "The applicant assumes all liability if any third-party damage occurs."
  - ii. The applicant should be required to provide liability insurance.
  - iii. The applicant should be required to post a bond sufficient to remove any gear from the River.
2. Policy states: "At the conclusion of the initial experiment, applicants will be required to present their results for consideration of a small-scale commercial license."

- i. The criteria against which the "results" will be measured should be included in the Applicant's experimental proposal and the Plans should indicate the periodic monitoring of the criteria during and at the conclusion of the experiment.
  - ii. These criteria should align/map to the mission of WELSCO –sustaining or enhancing recreational shellfishing.
3. As stated earlier, there are no objective criteria with which to evaluate how an applicant is abiding by this agreement. There is no definition of what the agreement will contain. For the protection of the applicant and the Public (the towns), implementation and management plans are needed.
4. Any agreements should be clear that the town authorities, upon determination the applicant is not abiding by the agreement can request that the gear be removed and if not removed by the applicant, the town will utilize the bond to have the gear removed.

The following terms, as set out in the policy statement, have not been defined:

- a. Successful (according to what criteria?)
- b. Experimental aquaculture project (ambiguous and not necessarily aligned with the mission of WELSCO)
- c. Small scale commercial operation
- d. Hazard
- e. Maintain gear in good order (according to what standard?)
- f. 2-year experimental agreement (where is this standard document for review?)
- g. Full license term
- h. Results (against what criteria?)
- i. Commercial License Agreement (where is this standard document for review?)

In closing, WELSCOs role is that of advisory, not regulatory, and it should not be adopting policy statements which are beyond its authority and expertise in the stewardship of a public trust asset. Again, WELSCOs statutory authority is limited to the *taking* of shellfish, and in connection therewith of that *taking*, to adopt reasonable regulations and fix license and permit fees. WELSCO has no authority (nor expertise) to manage the implementation, operation or regulation of commercial aquaculture in the Niantic River.

Respectfully,

Robin Lineberger  
Niantic River Advocacy Coalition

Cc: Dan Steward, Waterford First Selectman  
Robert J. Brule, Waterford Selectman  
Peter Davis, Waterford Selectman  
Mark Nickerson, East Lyme First Selectman  
Kevin Seery, East Lyme 1st Deputy Selectman  
Marc Salerno, East Lyme 2nd Deputy Selectman  
Rose Ann Hardy, East Lyme Selectman  
Dan Cunningham, East Lyme Selectman  
Paul Dagle, East Lyme Selectman



Holly Cheeseman, State Representative

Kathleen McCarty, State Representative

Paul Formica, State Senator

Jane Adams, WHMC Chair

Steven Dinsmore, ELHM/SC Chair

Waterford RTM Members:

- Timothy Condon
- Andrew Frascarelli
- Jennifer Mullen
- Calley Merriman
- Michael Perkins
- John Appicelli
- April Cairns
- Mark Olynciw
- Sharon Palmer
- Baird Welch-Collins
- Mark Balestracci
- Pat Fedor
- Paul Goldstein
- Joshua Steele Kelly
- Richard Muckle
- Elizabeth Sabilla
- Carl D'Amato
- Thomas J. Dembek
- Susan Driscoll
- Ivy Plis
- Francisco Ribas
- Michael Rocchetti



Presented by: Gary D. Smith, PhD, P.E.

Owner of The Point Marina, 1 First Street, Mago Point  
Member & Past-President of the Mago Point Business Association  
Member & BOD of Niantic River Coalition Advocacy  
Family of Five Generations on the Niantic River

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Local Commissions, State Agencies and Federal Agency are all **Stewards of the public trust land and public waterways of the Niantic River**. To me, this means that the property and waterway of the Niantic River is owned by the Public Trust at large and it is the Stewards' fiduciary duty to the Public Trust at large to manage or look after the use of the River with the Public Trust's best interest being foremost.

As WELSCO's Policy notes, "The Niantic River is a small shallow estuary with a restricted outlet to Long Island Sound." It is also noted that the river is highly utilized recreationally. Therefore, allowing a commercial aquaculture operation to place thousands of pieces of gear for a hatchery or to grow out various types of shellfish, that will stick out of the water for many hours per day, will create a navigational and safety hazard, which is not the best use of the river; a commercial aquaculture operation will deface the river and the businesses and properties that derive their value from the aesthetics of this river will be irreparably harmed.

The Harbor Management Plans by East Lyme and Waterford for the Niantic River do not provide for thousands of pieces of gear that could create safety, navigation and aesthetic issues and/or could significantly alter the character of the shoreline neighborhoods. Every business on the river supports the tourism industry of the region. A commercial aquaculture operation would specifically remove recreational space from the public and potentially endanger those who use the river -- all for the sole benefit of one person to make a profit.

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***Questions on the proposed March 2018 revised Policy Statement:***

- This Policy Statement lacks any standards, procedures, protocol, standard lease agreement, management plan or regulations for commercial or recreational shell fishing or for conducting shellfish aquaculture within the Niantic River waters;
- Definition of a "small commercial operation"?
- Definition of a "small-scale commercial license"?
- It is noted that "commercial operations limited in size to 10 acres of total aquaculture footprint area at any one time". Does this mean 10 acres (435,600 s.f.) land area with gear spread over it or does it imply only the footprint area of the gear will not exceed the 10 acres?
- The policy qualifies "the 10 acres will constitute the total acreage of all aquaculture operations combined utilizing type II aquaculture (aquaculture with gear)...". Does this imply that type I aquaculture and/or bottom aquaculture could exceed the 10 acre limit?
- What is the area of each current WELSCO location 1 through 6?

- Is there a "less than two (2) year experimental agreement" prepared?

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*I would like to make it perfectly clear that I would not be against having an aquaculture project within the Niantic River as long as the following is complied with:*

1. Going forward, **WELSCO** needs to adhere to its Policy Statement for aquaculture projects:
    - A. to be on an experimental basis only, limited in their size, scope and duration;
    - B. favor experiments of scientific nature with emphasis on restoration of native shellfish;
    - C. so as not to infringe on any navigable water, private property, marine grasses or in any other way to create a hazard or lessen the use of the Niantic River;
    - D. to be in areas identified so as not to adversely affect areas open to recreational shell fishing; and
    - E. to assure applicants that a successful project does not automatically grant ongoing operations at the conclusion of the experiment.
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2. It is imperative that **WELSCO**:
    - A. develops standards for commercial aquaculture;
    - B. provide a clear policy for shellfish leasing;
    - C. given the controversial aspects of private aquaculture operations within public waters, **WELSCO** must be pro-active in determining the best locations for these activities taking into account all available planning resources, including the Harbor Management Plans and Plan of Conservation and Development;
    - D. develop a protocol for granting leases for commercial shell fishing;
    - E. develop regulations for managing shellfish aquaculture in the Niantic River, including jurisdictional authority, application process, and acceptable aquaculture area and activities;
    - F. with the assistance of Town Counsels, develop a uniform aquaculture lease agreement which better defines expectations and conditions for conducting shellfish aquaculture in the Niantic River;
    - G. develop a Shellfish Management Plan that contains current operating procedures and regulations for commercial and recreational shell fishing and for conducting shellfish aquaculture within the Niantic River waters;
    - H. set high priority to maintaining exceptional water quality with the recognition that access to, and use of, the River's most valuable natural resources needs to be balanced carefully and responsibly to protect the aquatic ecosystems and *preserve the scenic quality that draws so many people to the River.*

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3. **Applicants** for commercial aquaculture projects should be required to provide, but not limited to, the following so as to be able to assess the impact of the project on the river and on the public at large as well as the consistency of the project with the requirements of the local reviewing commissions:

*A. Tests and reports prepared by professionals in their field of expertise. e.g.*

1. An A-2 Survey of the proposed area tied into the State Coordinate's System;
2. A Bathymetric of the area that is tied into the NAVD88 elevation Datum;
3. Grain Size Analysis and Chemical Analysis of the river bed;
4. Benthic Analysis to determine the benthic community structures of the shallow water habitat and to determine the long term loss of benthic productivity for the Niantic River ecosystem;
5. The long term impact on tidal cycles and current velocities.

B. In addition, applicants should provide a comprehensive Business Plan, Market Analysis, Budget, Financial Statement and Proof of Insurance naming the Town and public at large as additional insured;

C. They should provide a Hazard Analysis defining the potential hazards and their long term effects, including temperature, dissolved oxygen, salinity, pH, metabolic waste products (ammonia, nitrites and nitrates), turbidity (concentration of phytoplankton), harmful algae bloom and adverse weather;

D. Also, a Risk Management Plan that defines how they will handle loss of production, impact of marketing, financial impacts, potential legal issues or Human Resource Management;

E. In order to monitor the impact of the project on the river an annual update of the tests and reports noted in 3A above should be required;

F. They should post a performance bond in an amount that would be sufficient to assure complete removal of gear and restoration of the river bed.

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Thank you.



*Shellfish Commission*

Dear Waterford Harbor Management Commission: \*(I also sent this through email)

Why is the Niantic River identified as an open area for commercial aquaculture projects? Who is pocketing the money that is pushing this project?

We have lived at 134 Niantic River Road for over 22 years. The river is our home, our backyard, our entertainment and our love. We pay extra taxes to live here. We are proud of our River, our Town and our Representatives.

This river is unique. Yes, aside from its beauty it has the ability to produce shellfish. It pleases us to see people shell fishing across the river because it means this beautiful place is available for the enjoyment of others. It is also available for Waterford residents to swim, boat, water ski, kayak and play. The surrounding area is residential. Bringing in commercial entities is like building a large business in the middle of a residential area. It would not be allowed on land and should not be allowed on this river. There is plenty of room out in the bay for a commercial business.

Ten acres is a huge amount of water space; six acres in the middle of a residential area isn't better. There are no trees, bushes, fences etc. to hide the nets, buoys, pilings, floats and work boats. What kind of assurance will we have that more commercial operations won't be added? Think of what it would be like to have an industrial park as your main view from your backyard.

A number of years ago our neighborhood association was banned from putting our docks on the beach for winter storage because occasionally the tide would bring the water up onto the beach. As I understand it, the EPA decided the docks might interfere with the marine life of the river. This commercial project will interfere with 10 acres by disrupting the area where the netting, pilings, cages, and anchors are placed. Later the area will again be disturbed by moving large areas of shellfish and collecting them for sale. This does not make sense.

Finally, as residents on the river we pay higher taxes because of our water front and view. Will the Town compensate waterfront homeowners because we now looking at pilings, nets, buoys, floats and work boats?

Please, please reconsider what you are doing. Do not "open the door" to commercial usage of the river.

Sincerely,  
*Carol Dudek*  
Carol and Richard Dudek

*Richard Dudek*

May 14, 2018

[Theriverwoman@att.net](mailto:Theriverwoman@att.net)

(860) 748-9554





May 14, 2018

Waterford/East Lyme Shellfish Commission  
15 Rope Ferry Road  
Waterford, CT 06385  
Attn. Commissioner Peter Harris

Re: Public Hearing, May 17, 2018 to discuss "Policy Statement on Aquaculture Projects in the Niantic River - July 19, 2002, revised March 2018"

Commissioner Harris,

Please accept this letter as my input and comments relative to the inclusion of any aquaculture project planned for the Niantic River.

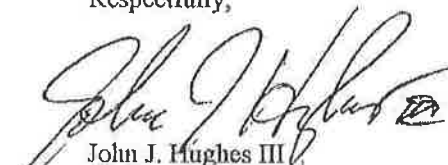
I feel the most detailed and informative literature available about the Niantic River is a book written by Nelson Marshall, Professor Emeritus of Oceanography and Marine Affairs, University of Rhode Island titled, "The Scallop Estuary, The Natural Features of the Niantic River" first published in 1994.

Professor Marshall references findings from studies produced by the United States Coast Guard, Northeast Utilities, Northeast Nuclear Energy Company and United States Department of Commerce, National Oceanographic and Atmospheric Agency. He goes into great detail discussing the "food column" which includes nutrients that feed the plankton, then shellfish and other living species that spawn and populate the Niantic River. In Chapter XVI, titled "The Future", Professor Marshall begins the chapter by saying, "Certainly a number of influences will affect the future of the Niantic River, but in my mind the most important and urgent need is the completion of sewer systems for communities surrounding it." The sewer system is complete on the east side, Waterford side, of the Niantic River. The sewer system is complete on the West side, East Lyme side, of the river from Route 156 to Smith Cove. Homes and businesses north of Smith Cove are dependent on septic tanks, leach fields and cesspools, creating what he calls "nutrient loading" with a nitrogen and bacteria rich runoff and potential for a catastrophe for all species and potential for health problems for those of us that use the river.

Allowing an aquaculture farm in a river that at times, must be closed due to a rain event does not sound rational or consistent. Expecting a farming system that includes spat and immature scallops and oysters downstream from the polluting areas in East Lyme seems counterintuitive and futile.

I am opposed to aquaculture in the Niantic River for many reasons but to approve the project without first doing what I feel is a very basic commitment to clean the environment would be a very serious oversight and blunder on the part of WELSCO and may cause irreversible harm to the Niantic River for years to come.

Respectfully,



John J. Hughes III  
52 Niantic River Road  
Waterford, CT 06385



May 15, 2018

Mr. Peter Harris  
Chair  
Waterford East Lyme Shellfish Commission  
c/o Waterford Town Hall  
15 Rope Ferry Road  
Waterford, CT 06385

RE: **Public Comments: WELSCO 2018 Draft Aquaculture Policy Statement**

Dear Mr. Harris

I respectfully request that this letter be entered into the official record of Public Hearing for Comments on WELSCO 2018 Draft Aquaculture Policy Statement.

I would like to start by sharing that my family represents three generations who have grown up on the Niantic River. My father, John E. Fratus, Jr., and his friends were affectionately known as the "River Rats" – spending their summer days clamming and scalloping and recreating on the river as children. As teens they would gather up scallops and clams and sell them to Harriet Brown's luncheonette across from Oswegatchie Fire House. He was a volunteer firefighter for more than 50 years, a former fire chief, as well as a Waterford Postman for 37 years and EMT instructor and Paramedic for L&M. A beloved and respected pillar of the community, he raised me in Oswegatchie, where I spent my youth playing on the river, at the beach on Sandy Point and jumping off 'High Rock' with my friends, swimming and learning to water ski. I have spent my adulthood raising my own children on the river, where every summer since they were born, they have played in the river, learned to sail, kayak, paddle board and earned their boating licenses from the home that we have owned in Mago Point for going on 9 years, and that will be our permanent retirement home in just three short years. Our home will be passed to our daughters and their children and yet another generation of my family will experience the recreational safe haven and gorgeous aesthetic that is the Niantic River. My family has a long history with and knows and loves this river. It is from this place that I write these words.

WELSCO's statutory authority is limited to the taking of shellfish and fixing permit and license fees to that activity, not introducing commercial businesses to the river that will remove a public trust asset from public use. It's not clear to me why they are now in the business of creating policy statements to orchestrate commercial aquaculture farms on the Niantic River.

With the adoption of this policy statement, WELSCO is asking the public to trust in its ability to steward a public asset, that will be given to commercial businesses for their sole use and profit. And WELSCO is asking this in the context of the following missteps on the part of its commission:

**1. Improper Actions:**

- a. Improperly modified its 2002 Aquaculture Policy Statement in October 2016;
- b. Improperly gave itself the power to independently create lease areas in public trust waters with no input from the public, other commissions or approvals from town officials and representatives;
- c. Improperly created a lease area known as WELSCO 7;
- d. Improperly gave itself the power to enter into lease agreements;
- e. Improperly entered into a lease agreement on behalf of Waterford in November 2016 with a commercial business;

May 15, 2018

- f. Allowed the applicant to draft the lease agreement, which it turns out, wasn't reviewed by the WELSCO commission at large prior to the Chair signing; and
- g. Sought no advice and counsel of the town attorney in any of the above actions;

**2. Premature Actions:**

- a. Prematurely released a commercial lease/license application:
  - i. with no input from the harbor management commissions of either town
  - ii. prior to the policy statement on aquaculture being fully defined;
  - iii. prior to public hearing and approval of a draft aquaculture policy
- b. Insisted, as recently as March 2018, on holding a dual public hearing on a specific commercial applicant and the draft policy statement (in tandem), resulting in the public being asked to weigh in on a specific commercial application while the policy that governs it has not been finalized nor approved;

**3. Poor Stewardship Actions:**

- a. WELSCO commissioners have been heard repeatedly, at public meetings, reassuring a commercial business owner to hang in there, they will take care of him. So much so, that the business owner has gone on local television and announced his project WILL go forward and it's only "politics" that are the cause of delay. (The Murray Renshaw Show, January 11, 2018);
- b. The WELSCO Chair has accompanied the same private business owner to other town meetings and business groups to advocate for support of this private business' efforts to set up an aquaculture farm in the river, instead of remaining an independent steward of the river;
- c. WELSCO has used this same commercial business' desire to place an aquaculture farm in the river to be the driver of all of its subsequent behavior (straying from its mission and statutory authority), instead of developing a thoughtful policy, independent of any particular business, with the necessary implementation and management plans that are in alignment with the stated mission (recreational shellfishing) and consistent with the harbor management plans of both towns.
- d. WELSCO is not bringing thought leadership to the table in consideration of other approaches to achieve its mission and is instead singularly focused on paving the way for a specific private business.

It is my conclusion that without the constant hand holding of the town attorney, WELSCO is not capable of properly managing its own affairs, never mind a public trust asset. WELSCO has demonstrated it does not have the management capability, is not impartial, and demonstrates a bias to support efforts that are contradictory to its own mission and statutory authority and is inconsistent with established harbor management plans.

With that said, the specific issues I have with the policy statement as drafted are:

- 1. This policy statement is a high-level mission statement that lacks implementation, management and performance assessment plans in order to execute the mission.
  - a. WELSCO has known since at least October 2016 that it wanted to head down a path to bring commercial aquaculture farming into the Niantic River. Yet, over the last 18.5 months, the commission has done nothing to create an independent management plan

that serves to guide it in the implementation, management and assessment of commercial operations in the river.

2. WELSCO's stated mission is: "...to sustain and enhance recreational shellfishing."
  - a. The mission statement is for recreational shellfishing, not commercial aquaculture farms.
  - b. Implementing commercial aquaculture in the river will remove, at a minimum, 10 acres of recreational shellfish beds. This is contradictory to the stated mission.
  - c. The 'designated' lease areas 1-6 are in recreational shellfish areas and will be cut off from public access depending on areas approved for an applicant.
3. WELSCO states: "...any aquaculture project be on an experimental basis and then if successful, potentially a small commercial operation, limited in its size, scope and duration."
  - a. What is "successful"? The policy statement is void of any definition or criteria that defines what constitutes success.
  - b. There is no defined framework in which "experimental" projects will be evaluated. Does any kind of experiment work? Does a proof of concept for a business work? Does an experiment that results in WELSCO achieving its mission statement work? Be specific.
  - c. WELSCO's current lease application asks the applicant only to describe their "business and operational objectives" – it does not ask the application to define what experiment will be conducted.
    - i. An experiment formulates a question to be answered, tests a hypothesis, predicts an outcome, measures results and analyzes the steps necessary to move forward should the experiment be successful. The application is void of any requirements to define an experiment.
4. WELSCO states: "...commercial operations limited in size to 10 acres of total aquaculture footprint area at any one time (the 10 acres will constitute the total acreage of all aquaculture operations combined utilizing type II aquaculture (aquaculture with gear)) with emphasis on restoration of native shellfish."
  - a. It is unclear if the 10-acre limit applies only to Type II aquaculture and thus Type I aquaculture could consume the remaining acreage of the designated lease areas.
  - b. Let's be clear, the "emphasis" of a commercial business is profit. If the "emphasis" is to be restoration of native shellfish, investigating projects such as the development of oyster reefs, that actually would result in the sustainment and enhancement of WELSCO's mission, should be initiated.
5. WELSCO states: "If approved, it is incumbent on the applicant to adhere to all Federal, State, Harbor Management, Local and other regulations that may be in effect, as to placement, size, construction, etc., so as not to infringe on any navigable water, private property, marine grasses or in any other way to create a hazard or lessen the use of the Niantic River."
  - a. Waterford Harbor Mgt is UNANIMOUS in its opinion that this policy statement conflicts with the Harbor Mgt Plan.
    - i. What modifications is WELSCO going to make to bring it into consistency w/the HMP?
    - ii. By proceeding with a policy statement that is inconsistent with the HMP, this edict will never be able to be realized – it will always be in conflict with the HMP – why is WELSCO setting applicants up for failure?
    - iii. When is WELSCO going to partner with Harbor Mgt to devise a plan that IS consistent with the HMP and incorporate advice and counsel of this commission?
  - b. WELSCO, by definition, is creating a hazard and lessening the use of the river.

- i. A commercial operation will remove acres of recreational shellfishing and boating space from public use and install thousands of pieces of gear that in some cases float on the water and in some cases submerge and protrude with the ebb and flow of the tide. This creates such safety issues that it requires DEEP to place hazard markers all around it – yet it does not preclude a boater or non-powered vehicle from entering the area and colliding with the gear.
  - ii. How does this not create a hazard or not lessen the use of the river?
6. WELSCO states: "Projects shall be in areas identified by the Waterford-East Lyme Shellfish Commission so as not to adversely affect areas open to recreational shellfishing, as determined by the Waterford-East Lyme Shellfish Commission. "
  - a. How were these designated lease areas 1-6 created?
    - i. Was there public notice?
    - ii. A public hearing?
    - iii. Reviewed by Harbor Management?
    - iv. Approved by the Board of Selectman?
    - v. Approved by the RTM?
    - vi. Where is the analysis that went into choosing these 6 areas?
      1. What criteria were used to assess them?
      2. Where is the documentation that shows they don't interfere with recreational activities?
7. WELSCO states: "The applicant assumes all liability if any third-party damage occurs. "
  - a. Is the applicant required to provide liability insurance?
  - b. Is the applicant required to post a bond?
8. WELSCO states: "At the conclusion of the initial experiment, applicants will be required to present their results for consideration of a small-scale commercial license."
  - a. What are the criteria against which the "results" will be measured?
  - b. How do these criteria map to the mission of WELSCO – which is to enhance recreational shellfishing?
  - c. WELSCO plans to use these "results" to determine if a 5-year commercial lease will be granted yet other than the word "results", there are no defined performance metrics at all.
9. WELSCO states: "If the applicant fails to abide by this agreement in any way, as determined by the Waterford-East Lyme Shellfish Commission, the Waterford-East Lyme Shellfish Commission reserves the right to terminate the experiment with the responsibility on the applicant to promptly remove the project and all structures from the Niantic River. "
  - a. WELSCO is not authorized to enter into leases on behalf of either town. The towns' legal counsel will write the lease and are the ones who should determine if the lease is being adhered to – not WELSCO – who has an inherent bias toward shellfishing.
  - b. WELSCO, if it had the statutory authority, should be managing the commercial operations pursuant to their implementation, management and performance plans . . . that don't currently exist. So how will WELSCO determine if a business is compliant?
  - c. WELSCO is not qualified nor empowered with the legal expertise to determine lease compliance.
  - d. This clause would be executed in the case of failure to comply – so why does WELSCO think the applicant would remove the gear as required?

- i. Once again, a bond should be required to ensure that if applicant fails to comply with the lease agreement or the governing management plan, the taxpayers do not get stuck with the bill to remove the gear from the river.
- 10. WELSCO provides the geo-coordinates to 6 designated lease areas on the river:
  - a. I refer you back to item #6 above
  - b. I can find no evidence these lease areas went through a public review and town approval process.
- 11. Where are the following standard documents to accompany this change in policy?
  - a. Shellfish Management Plan, consisting of the operational model by which WELSCO will manage commercial operations in public trust waters, including:
    - i. Implementation
    - ii. Management
      - 1. Operational
      - 2. Risk
    - iii. Performance Review
  - b. Experimental Application
  - c. Experimental License/Lease Agreement
  - d. Commercial Application
  - e. 5-yr Commercial License/Lease Agreement
  - f. Renewal Request

In conclusion, this policy statement is premature, a departure from WELSCOs stated mission and statutory authority, not well thought out and does not contain the necessary factors for success to implement, execute, manage and assess commercial aquaculture operations in the Niantic River.

Respectfully submitted,

Terry Fratus Lineberger  
Waterford Homeowner

Cc: Dan Steward, Waterford First Selectman  
Robert J. Brule, Waterford Selectman  
Peter Davis, Waterford Selectman  
Rob Avena, Waterford Town Attorney  
Mark Nickerson, East Lyme First Selectman  
Kevin Seery, East Lyme 1st Deputy Selectman  
Marc Salerno, East Lyme 2nd Deputy Selectman  
Rose Ann Hardy, East Lyme Selectman  
Dan Cunningham, East Lyme Selectman  
Paul Dagle, East Lyme Selectman  
Holly Cheeseman, State Representative  
Kathleen McCarty, State Representative  
Paul Formica, State Senator  
Jane Adams, WHMC Chair

Steven Dinsmore, ELHM/SC Chair

Waterford RTM Members:

- Timothy Condon
- Andrew Frascarelli
- Jennifer Mullen
- Galley Merriman
- Michael Perkins
- John Appicelli
- April Cairns
- Mark Olynciw
- Sharon Palmer
- Baird Welch-Collins
- Mark Balestracci
- Pat Fedor
- Paul Goldstein
- Joshua Steele Kelly
- Richard Muckle
- Elizabeth Sabilla
- Carl D'Amato
- Thomas J. Dembek
- Susan Driscoll
- Ivy Plis
- Francisco Ribas
- Michael Rocchetti



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## WATERFORD HARBOR MANAGEMENT COMMISSION

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April 20, 2018

Mr. Peter Harris  
Chairman  
Waterford East Lyme Shellfish Commission  
15 Rope Ferry Road  
Waterford, CT 06385

Dear Peter,

I am transmitting the comments of the Waterford Harbor Management Commission (WHMC) in response to the Waterford East Lyme Shellfish Commission's (WELSCO's) draft revised Policy Statement on Aquaculture in the Niantic River (draft Policy Statement) which the WHMC received on March 21, 2018. Thank you for the opportunity to comment.

In summary, the WHMC finds that the draft Policy Statement is inconsistent with the Waterford Harbor Management Plan (WHMP) for the following reasons:

1. The approval of commercial aquaculture in the fragile and congested ecosystem of the Niantic River compromises if not conflicts with the many Harbor Management goals of the Town of Waterford
2. The draft Policy Statement would license structures that limit existing public access
3. The draft Policy Statement lacks implementation procedures that would enable the WHMC to assess and determine whether the proposal is consistent with certain mandates established in the WHMP.

1. **The approval of commercial aquaculture in the fragile and congested ecosystem of the Niantic River compromises if not conflicts with the many Harbor Management goals of the Town of Waterford**

The Niantic River is a popular recreational river. It is home to commercial and charter fishing boats and hundreds of recreational boats. Kayaks, canoes, stand-up paddleboards, and personal watercraft enjoy the protected harbor of the Niantic River. The State Boat Launch at Mago Point in Waterford is the state's busiest boat launch in Connecticut. Public safety and public access are key goals of the WHMC.

The WHMC agrees with WELSCO's opening paragraphs in its 2002 Aquaculture Policy Statement and believes that the heavy usage described in 2002 has become even greater in 2018.

The Niantic River is a small shallow estuary with a restricted outlet to Long Island Sound. It is a mostly residential area and **is heavily used for a variety of marine recreational activities**. The Niantic River has few identified areas open for aquaculture projects, which would not encroach

## WATERFORD HARBOR MANAGEMENT COMMISSION

on these activities. One of these activities is shellfishing and **it is the mission of the Waterford-East Lyme Shellfish Commission to sustain and enhance recreational shellfishing.**

Therefore the Waterford-East Lyme Shellfish Commission **has deemed that any aquaculture projects be on an experimental basis only**, limited in their size, scope and duration. Due to the restricted area available for aquaculture projects in the Niantic River, the Waterford-East Lyme Shellfish Commission shall favor experiments of a scientific nature with emphasis on restoration of native shellfish. Aquaculture projects shall be defined as any experiment requiring any structure to be placed in the river, such as buoys, floats, nets, cages, lines, anchors, etc. [Emphasis added.]

[WELSCO 2002 Aquaculture Policy Statement, p. 1]

The Niantic River ecosystem is also a fragile one. The WHMP contains directives [Please refer to the Appendix for the extract of pages 8-12 of the WHMP that contains the full context of references and citations included in this response] as to the protection of coastal resources such as tidal wetlands, intertidal flats, eel grass, and other submerged aquatic vegetation (SAV). While *generally* aquaculture can benefit water quality, there are *specific* circumstances in which it does not. It is the view of the WHMC that many of those specific circumstances that can compromise or degrade an aquatic environment could be present in a commercial aquaculture proposal. Among those specific circumstances are: concentration of aquaculture gear, impact of aquaculture gear on tidal water flow and exchange, and effects of effluent discharge from concentrated shellfish populations. These concerns could be addressed or alleviated by an environmental impact analysis of the area and the structures proposed. The draft Policy Statement is silent as to the analyses that must be performed prior to application approval.

The Waterford-East Lyme Shellfish Commission will review applications for aquaculture projects on a case-by case basis and approval is based solely on the discretion of the Waterford-East Lyme Shellfish Commission. If approved, it is incumbent on the applicant to adhere to all Federal, State, Harbor Management, Local and other regulations that may be in effect, as to placement, size, construction, etc., so as not to infringe on any navigable water, private property, marine grasses or in any other way to create a hazard or lessen the use of the Niantic River. Projects shall be in areas identified by the Waterford-East Lyme Shellfish Commission so as not to adversely affect areas open to recreational shellfishing, as determined by the Waterford-East Lyme Shellfish Commission. All applications shall show consistency with all applicable laws, including filing of public notice, and be subject to a public hearing before the commission.

[WELSCO 2018 draft Policy Statement on Aquaculture Projects in the Niantic River—July 18, 2002, Revised March 2018, p.1]

Indeed, WELSCO's March 2018 intent to consider a commercial application for approval that lacks any environmental impact analysis prepared by licensed professionals is interpreted by the WHMC that the protection of the Niantic River is not a priority.

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The following extracts from the Niantic Bay Shellfish Farm Application to conduct Aquaculture Areas 2 and 5 dated 3/15/2018 demonstrate the absence of sufficient detail to evaluate gear concentration:

Planting of seed will occur from April until July. Initially, the first group of oyster seed will be placed in the Sepa baskets. The next group will move into the float gear primarily in Area 2. Then into the suspended gear in area 5. . . . Remaining seed will either be planted on bottom in Area 2 or it will be stored at high densities in gear on bottom in the deeper portions of Area 2 as well as Area 5. [Emphasis added.]

[Niantic Bay Shellfish Farm Application to conduct Aquaculture Areas 2 and 5 dated 3/15/2018, p. 6]

From the West most side of the gear area, there will be two 290' long lines, running N and S, used to suspend lantern nets, these are two experimental lines to compare growth rates. 15' between lines, suspended by standard black lobster buoys 2 per net, 100 nets per line, each end 5' helix anchor. Third line, also suspended via larger poly balls, used with Sepa baskets interlocked. Additional area can support 8 more floating lines. First 163' of site designated for development of float gear. The remaining 200 feet is designated for sub-tidal apartment style cages fitted for vexar bags (3'x3'x5') as well as trays (3'x4'x 17") individually buoyed. First year 200 apartment style and 200 trays. Total possible, in this permit, trays/apartment style limited to less than 1/3 of total area or 1000 apartments or 1300 trays. Furthering permits required to apply for build out as similar with NBSF EL-3 lease 25% available per year.

[Niantic Bay Shellfish Farm Application to conduct Aquaculture Areas 2 and 5 dated 3/15/2018, p. 7-8]

As a consequence, the WHMC believes:

- The introduction of commercial aquaculture into the Niantic River is inappropriate and would restrict public access while increasing public safety concerns.
- The request to comment on the draft Aquaculture Policy Statement is premature insofar as it fails to provide implementing guidance that lays out the prerequisites for an aquaculture proposal that ensures the protection of the Niantic River. The WHMC notes that WELSCO intends to consider a commercial application for approval that provides no specific details as to the number, type, or concentration of gear nor does the commercial proposal contain any expert analyses of the presence of or impact on protected coastal resource characteristics of the sites.

### **2. The draft would license structures that limit existing public access**

It is the view of the WHMC that licensing commercial aquaculture operations in certain areas of the Niantic River conflicts with the goals and mandates of the WHMP. While aquaculture in designated shellfish resource areas is identified by the WHMP as a priority in those areas, that priority must be informed by the mandate that the proposed structures *shall* not restrict existing public access. The two citations follow.

# WATERFORD HARBOR MANAGEMENT COMMISSION

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.

[Waterford Harbor Management Plan 2012, p 10.]

## 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.

[Waterford Harbor Management Plan 2012, p 12.]

The WHMC consequently believes that any proposed aquaculture structures or methodology must not restrict existing public access. Area 5 is an area that is used by the public for boating, tubing, and water skiing, among other activities. This mandate—that public access not be limited—does not necessarily preclude aquaculture in areas of existing public access. Rather, it would require that all aquaculture gear be sufficiently deep, i.e., sufficiently below the water surface at mean low tide, to ensure that the public, such as vessels, would have unimpeded access through the area.

## 3. The draft Policy Statement lacks implementation procedures that would enable the WHMC to assess and determine whether the proposal is consistent with certain mandates established in the WHMP

In light of the fact that WELSCO intends to consider a commercial application for approval in the absence of implementation procedures that would identify prerequisites for the applicant to meet, it would seem that WELSCO finds that evidence of compliance to be unnecessary or irrelevant to its decision. However, that information, i.e., the details as to what the standard of compliance is and the facts demonstrating that the standard has been met, is relevant to the WHMC in order to ensure consistency with the WHMP.

### *Example: wetlands and submerged aquatic vegetation*

For example, the WHMC finds the following requirement in the draft Policy Statement to be inadequate to ensure consistency with the WHMP as it relates to Submerged Aquatic Vegetation: "It is incumbent on the applicant to adhere to all Federal, State, Harbor Management, Local and

## WATERFORD HARBOR MANAGEMENT COMMISSION

other regulations that may be in effect, as to placement, size, construction, etc., so as not to infringe on any navigable water, private property, marine grasses or in any other way to create a hazard or lessen the use of the Niantic Rivers... All applications shall show consistency with all applicable laws, including filing of public notice, and be subject to a public hearing before the commission." [WELSCO 2018 draft Policy Statement on Aquaculture Projects in the Niantic River – July 18, 2002, Revised March 2018, p.1]

The Waterford Harbor Management Plan (WHMP) provides the following guidance for Preservation of Coastal Resources to the WHMC in implementing the goals of the Town of Waterford:

(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.

[Waterford Harbor Management Plan 2012, p 11.]

Indeed, the Town of Waterford is obligated to ensure that wetlands are not degraded.

**What are municipal responsibilities toward tidal wetlands?**

Although activities within tidal wetlands are regulated by the DEEP, municipalities are responsible for ensuring that adjacent upland development does not harm these resource areas. The Connecticut Coastal Management Act contains policies and standards regarding tidal wetlands that must be applied during municipal coastal site plan review process. Generally speaking, **land use boards and commissions in coastal municipalities must ensure that development will not result in degradation of tidal wetlands, and that tidal wetlands are preserved, protected and, to the extent practicable, restored.** [Emphasis added.]

[Connecticut Department of Energy and Environmental Protection (CT DEEP) webpage entitled *Tidal Wetlands: General Information*, located at [http://www.ct.gov/deep/cwp/view.asp?a=2705&q=323824&depNav\\_GID=1625](http://www.ct.gov/deep/cwp/view.asp?a=2705&q=323824&depNav_GID=1625)

WELSCO's March 2018 intent to consider a commercial application for approval that fails to provide evidence by a licensed professional as to the presence of submerged aquatic vegetation is further support that the draft Policy Statement is insufficient in itself to ensure compliance with the WHMP.

## WATERFORD HARBOR MANAGEMENT COMMISSION

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*Example: Bottom culture*

The draft Policy Statement states that "Bottom culture with no gear will also be considered Aquaculture and require written approval." Yet, research states that "[t]oothed rakes used for shellfishing can uproot eelgrass."<sup>1</sup> The light regulation envisioned for bottom culture, i.e., written approval, such that it could be casually allowed in areas of SAV is concerning and could be inconsistent with the WHMP depending on the activities. The WHMC is also concerned that such a proposed application would not be referred to the WHMC. We note that WELSCO intends to consider a commercial application for approval that envisions bottom culture without further permitting required, yet the locations encompassed and activities to occur are unspecified.

Indeed, the application for NBSF for Areas 2 and 5 contains the following statement:

Bottom planting is not included in the chart as the primary use of the gear areas are for exactly that gear. The additional lease areas if used for bottom planting **which do not require any further permits** could top 1 million oysters per acre not being utilized for gear. Given the circumstances and ecology of the area NBSF is not committing to bottom planting but it is a possible option being considered to a certain degree. [Emphasis added.]

[Niantic Bay Shellfish Farm Application to conduct Aquaculture Areas 2 and 5 dated 3/15/2018, p. 9]

As such, the WHMC is unable to conclude that the draft Policy Statement is consistent with the WHMP.

**4. The WHMC recommends that the draft Policy Statement clarify the following items:**

- a) The maximum portion, preferably specified in acreage, of the Niantic River that would be used for experimental aquaculture and the maximum portion that would be used for commercial aquaculture. The draft Policy Statement provides: "[T]he Waterford-East Lyme Shellfish Commission shall favor experiments of a scientific nature or commercial operations limited in size to 2% of the total recreation shellfishing conditionally open area with emphasis on restoration of native shellfish." [WELSCO 2018 draft Policy Statement on Aquaculture Projects in the Niantic River -July 18, 2002, Revised March 2018, p.1] In minutes of March 15, 2018 there was the following discussion, however, there is no similar language in the draft Policy Statement forwarded to the WHMC for review on March 16, 2018.

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<sup>1</sup> Section 300.18 *Submerged Aquatic Vegetation and Aquatic Habitats of Particular Concern*, Rhode Island Coastal Resources Management Program, Paragraph 8, Pg. 2.

## WATERFORD HARBOR MANAGEMENT COMMISSION

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- d) Items D and E combined, Mr. Harris asked Mr. Londregan of NBSF to review the highlights of his application to an aquaculture project in Area 2 and Area 5. He noted he modified his application to established areas away from the Mago Point area, no rebar usage in construction and distanced from public launch areas. Members discussed the 2 year timeframe and the footprint area in the proposal that totals 0.9 acres. Members agreed the gear/structures would remain within the footprint and cannot exceed the 10 acre limit. Mr. Harris labeled the application 001 and will forward the application to the Waterford and East Lyme Harbor Commission's for their comment. Moving forward if the application was approved there would need to be a public notice sent and public hearing along with proper protocol procedures before any official lease was granted.

Attorney Avena commented that the percent of acreage to lease and actual size needs clarification. There was further discussion on the maximum space being leased to one company or applicant.

[WELSCO minutes, March 15, 2018]

- b) The Policy Statement should clarify how the maximum acreage discussed in (a) above would be allocated among Areas 1-6.
- c) At a minimum, the Policy Statement should require that all applications be accompanied by a complete schematic for the acreage to be licensed that would identify the gear type, quantity, layout, among other items as well as fallow areas in the full area under license.
- d) That the Policy Statement specify how the "portion" of shellfish to be provided to WELSCO, discussed in the following excerpt, will be determined. "During the project's life, the Waterford-East Lyme Shellfish Commission reserves the right to ask for a portion of shellfish produced to be distributed in the River in order to enhance the river's recreational shellfishing..." [WELSCO 2018 draft Policy Statement on Aquaculture Projects in the Niantic River - July 18, 2002, Revised March 2018, p.2]
- e) The draft Policy Statement provides that: "At the conclusion of the initial experiment, applicants will be required to present their results for consideration of a small-scale commercial license." [WELSCO 2018 draft Policy Statement on Aquaculture Projects in the Niantic River - July 18, 2002, Revised March 2018, p.2] The WHMC believes that the policy statement should articulate the basis on which the results of initial experiments will be assessed for determining whether a commercial license would be awarded.

Sincerely,



Jane B. Adams

Chair

Waterford Harbor Management Commission

Cc: Dan Steward, Town of Waterford First Selectman  
Abby Piersall, Town of Waterford Town Planner  
Robert Avena, Attorney, Town of Waterford  
Waterford Harbor Management Commission



# WATERFORD HARBOR MANAGEMENT COMMISSION

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## APPENDIX

### Extract from the 2012 Waterford Harbor Management Plan (pages 8-12)

#### Harbor Management Issues and Goals: Town of Waterford

- I. Waterford's boating activity occurs along the Long Island Sound shoreline and in the numerous bays, coves and rivers. Boating, particularly vessels capable of navigating open water, emanates mostly from the Niantic River and Jordan Cove. Private Marinas and charter and commercial fishing operations line the eastern shore of the lower Niantic River around Mago point. A state launch area with parking for vehicles is located at Mago Point, and another one with parking for vehicles is located at Pleasure Beach on Jordan Cove. The development of a marina along Waterford's Thames River shoreline has been discussed and is in process. Limited small boating takes place in Alewife Cove. Many private residences along the east side of the Niantic River, on Jordan Cove, Smith Cove and other areas have their own docks and moorings.
  - a. Protected anchorage areas are extremely limited, especially for sea-going vessels. Permanent mooring areas are feasible only in the Niantic River, in Jordan Cove and on the Thames River, most of the rest of the shoreline being open and unprotected. Protected shellfish beds take up a great deal of space in the Niantic River. Other shoreline areas including Alewife Cove do not lend themselves to moorings. The intent of the Waterford Harbor Management Commission is to prevent unbridled proliferation of permanent moorings, especially commercial and multi-vessel moorings, that will cause congestion and adversely affect Waterford's water-dependent usage on the land side as well as the water side. The Commission recognizes waterfront residents' littoral and riparian rights and their traditional prerogative to anchor vessels on their own moorings in waters adjacent to their properties. Waterford to date has experienced very little in the way of problems associated with overuse.
  - b. It is the intent of the Commission to propose regulations regarding these limited existing boating facilities *to encourage the most efficient utilization of the waterfront for the best benefit of the public, to maintain the status quo where appropriate, to help the Town prevent encroachment by non-boating interests, and to give highest priority and preference to water dependent uses in suitable waterfront locations.* The Commission will regulate and distribution of mooring locations to ensure equitable, efficient and safe usage with special attention given to the protection of shellfish, fish and wildlife habitat and other environmental concerns. The Commission will investigate and pursue opportunities for the development of new areas and for improving existing areas for public access and use.
  - c. The Commission will encourage non-structural solutions to flood and erosion problems where feasible and where there are no environmentally satisfactory alternatives, to encourage minimally intrusive constructions along the shoreline.
  - d. The Commission will establish a Harbor Management Fund to be used in the administration and conduct of the Commission's business.
  - e. The Commission will strive to preserve the maritime character of the waterfront where possible and recommend against incursions of any type that tend to degrade the area's sensitive natural environment or destroy the pleasant ambiance of Waterford's shoreline that the Town presently enjoys.