

FILED

Sept 24 2018 AT 11:00 AM/PM
Wm Harris
EAST LYME TOWN CLERK



Waterford-East Lyme Shellfish Commission

Meeting Minutes

Thursday September 20 2018
East Lyme Town Hall, 7:30 pm



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

Guests: Chief Warden Richard Chmiel and Ex-Officio Dan Cunningham

- 1) The meeting was called to order at 7:32 pm and a quorum established.
- 2) Review and approval of the minutes of the August 16, 2018 were tabled.
- 3) Review and approval of the Treasurer's report for August 2018 was tabled.
- 4) Chief Warden's Report-
 - a) Clamming areas are currently closed, samples done today; APC samples up to date.
 - b) Boat running well; had recent oil change and pressure washed by Boats Inc.
 - c) A third quote on engine purchase obtained from Three Belles Marina.
 - d) Almost no scallops are being seen in the river.
 - e) Krista Romero of DEEP stated there may be an upgrade to the 1" rain fall closure.
 - f) The Co-op transport now includes only Stonington and WELSCO.
 - g) Boat will need bottom painting next spring.

5) Old Business-

- a) Chair Harris noted the edits to the 2002 WELSCO Aquaculture Policy Statement were approved by WELSCO members at the last meeting. He noted he has not received comments from the Waterford Harbor Management Commission and that the 35 day comment period ends on 9/21/18. Chair Harris received a written response from the East Lyme Town Attorney stating the Town of East Lyme statute does not give the East Lyme Harbor Management Shellfish Commission authority to approve or deny changes to the WELSCO Aquaculture Policy Statement; but Chair Harris suggested the commission be given the opportunity to comment on the document. He also stated there is no requirement under the CT General Statute. Chair Harris and members agreed no other amendments or action would be taken at this time.

Steve Dinsmore of the East Lyme Harbor Management Shellfish Commission formed a subcommittee at their last meeting appointing two members to work with WELSCO on concerns of both commissions according to Mr. Kanter. Chair Harris held off on a motion to form a subcommittee as several members of WELSCO were not present.

Chair Harris and members discussed the Waterford Harbor Management Commissions consistency with their Waterford Harbor Management Plan. An alternate option for an aquaculture project area being in East Lyme Waters was mentioned. Chair Harris will refer to Robert Avena, Town of Waterford Attorney on specific requirements with approval such as Waterford Board of Selectman. The commissioners raised the questions of approval and authority within different jurisdictions.

- b) No action taken on WELSCO Aquaculture Application submitted by NBSF for Area 2 and 5.
- c) Chair Harris requested the WHMC Chair and Harbormaster attend a WELSCO meeting to discuss impact on shellfish with regard to moorings and docks. Chair Adams of the WHMC requested WELSCO address concerns in writing to the WHMC. Chair Harris reviewed a draft letter with 6 specific items to be addressed. Motion by

Mr. Spakowski, seconded by Mr. Tytla to forward the letter of questions regarding moorings/docks and the impact on shellfish areas to the WHCM, all in favor, motion passed.

6) New Business-

- a) Scallop Season 2018-19 was discussed; the decision to open was tabled until October.
- b) Compensation increases for wardens and secretary were tabled.
- c) Members discussed WELSCO undertaking their own experimental project.
- d) The latest permits printed have a scallop symbol; consensus is to use them and correct the next print run.

Motion by Mr. Kanter, seconded by Mr. Tytla to add item E under New Business, all in favor, motion passed.
e) Mr. Kanter suggested spending funds to hire a consultant and update the Shellfish Management Plan.

7) Ex-Officio comments-

Dan Cunningham noted the repaving of Saunders Point and Route 156.

8) Correspondence -

- a) Tim Londregan of NBSF submitted a document dated 9-17-18 "WELSCO Policy Review" (attachment 8a).
- b) NOAA Open House on 10-13-18 from 9 am to 1 pm (attachment 8b).

9) Public Input-

Barbara Daversa-Waterford- Commented on seeing many scallops.

Lou Bull – Waterford- Commented on oyster research, seeding, culch and supporting shellfish.

Tim Londregan- NBSF- Commented on his correspondence; discussed the definition of aquaculture.

Terry Lineberger-Waterford- Commented on shellfish prioritizing vs recreational activities, State Statute authority, responsibility of East Lyme Members of WELSCO, the impact of one project vs another project in similar size and disagreement with a closed area to water skiing. She discussed negative effects and provided pictures of the Chatham Oyster Project Oysterplex.

Patricia Wise – Waterford – Commented on Area 5 being an extremely busy recreational activity area.

Fred Wise – Waterford- Commented on Solar Farm and WELSCO's position; commented on the undertaking of an experimental project by WELSCO.

Paul Daversa- Waterford- Commented on encouraging Type I aquaculture projects; concerns with safety, liability and risks of Type II aquaculture projects.

Mr. Kanter noted the comment period for the Solar Farm project may be extended; WELSCO should comment.

Chair Harris commented on Type I and II aquaculture and Attorney Avena's involvement with leases.

- 10) The meeting was adjourned at 8:45 pm on a motion by Mr. Spakowski, seconded by Mr. Bowlen.

Respectfully submitted,

Amy Tinker
Secretary

To: East Lyme Harbor Management Commission
From: Niantic Bay Shellfish Farm LLC
Date: 9-17-18

WELSCO Policy Review

It is my understanding that this commission (ELHMC), has been asked by the Waterford East Lyme Shellfish Commission (WELSCO), to comment/vote on the consistency of their latest policy statement with regards to consistency to the ELHMC Plan (ELHMP or HMP). With my previous experiences with other Harbor Management Commissions, it is crucial that members speak to consistency with the HMP. Upon DEEP review, the DEEP will determine whether or not what the Commission has presented is indeed reflective of their HMP or not. A previous SDF NBSF submitted, with an inconsistency review from another local HMC, was approved by DEEP with no letter of explanation to this HMC. DEEP is required to send a letter of explanation if they go against a HMP, not their decisions. In this case, the DEEP comment was, "This determination/letter by the HMC is the lease substantiated decision/letter we have ever received." If anyone on ELHMC would like this documentation for review, so as to not fall into the same issues, I can provide documentation upon request.

Below, I have presented certain facts and possible issues derived from the ELHMP. I hope you find this helpful. Lastly, before delving into the details, I should remind this commission that when presented with a previous proposal for WELSCO 7, this commission determined that such a proposal was outside their realm of jurisdiction and thus decided not to comment on it. This attitude should be a consistent one, we are not reviewing WELSCO's Policy statement from a shellfish stand point, nor are we reviewing any past or current applications/proposals pending or otherwise.

Let us remember that the "East Lyme Harbor Management Plan: A plan for the balanced use of the East Lyme Harbor Management Area for recreational and other purposes and for the protection of environmental resources..." (A-5) should be utilized for fair and equitable use of the area in question, WELSCO's jurisdictional bounds. Furthermore, do not forget that when the ELHMC were "...preparing the plan, the commission shall consider the following factors: (1) Recreational and commercial boating; (2) recreational and commercial fisheries and shell fisheries; (3) fish and shellfish resources, including leased or designated shellfish beds; (4) conservation of natural resources..." (B-3). It should be clear that under state Statute, as well as local law, aquaculture has a legal place/right within the waters overlapped by WELSCO and ELHMC.

In the ELHMP Ordinances, this commission acknowledges the authority of WELSCO, so let us get that issue out of the way; "The East Lyme Harbor Management Commission shall have charge of all shellfisheries and shellfish grounds lying in the Town of East Lyme not granted to the Waterford-East Lyme Shellfish Commission by Section 26-287 of the Connecticut General Statutes, Revision of 1958, as amended, and not under the jurisdiction of the commissioner of agriculture, including all rivers, inland waters and flats adjacent to all beaches and waters within the limits and marine bounds (below the mean high water line) of the Town." (C-1)

I-2 of the ELHMP indicates that "With authority provided by the General Statutes and the Town's Harbor Management Ordinance, the HMC prepared the East Lyme Harbor Management Plan establishing Town goals, policies, and other provisions for beneficial use of the East Lyme HMA for recreational, commercial, and other purposes, and for protection of the Town's natural coastal resources." A clear indication that within the HMA commercial activity is an acceptable use.

Also noted on I-2 “The Plan [ELHMP] complements the Town’s Coastal Area Management Program, as well as the East Lyme Plan of Conservation and Development (POCD) and waterfront zoning regulations, by focusing on issues most pertinent to the safe, orderly, and beneficial use of the HMA and protection of the HMA’s natural coastal resources.” Let us consider the following excerpt from the Town’s very own POCD,

“Shellfish, particularly scallops but also including hard clams (quahogs), soft shell clams and oysters, are an important resource of the Niantic River estuary. Harvesting of shellfish is regulated by the Waterford-East Lyme Shellfish Commission, which also engages in seeding and in research activities to improve the resource. Once abundant, the scallop fishery failed entirely in the mid-1960’s; the collapse was eventually attributed to a number of unfavorable conditions occurring simultaneously, the most damaging of which were starfish and drill predation and fouling by the seaweed codium. With the institution of aquaculture programs, the scallop population has re-established itself. Continued local management of the shellfish resource is a high priority, particularly because of the susceptibility of the scallop to changes in its environment..(170)”

Once again, we not only note the importance of shellfish but also the important function WELSCO plays, as well as aquaculture, in sustaining this resource which is given special consideration above other activities.

The POCD, which is upheld by the ELHMC, indicates that in our coastal waters we are to “support continued local regulation, aquaculture programs and research efforts to maintain and improve East Lyme’s shellfish resources. (183)” That is about as clear cut as a directive can get. Before we move past the POCD, just read the following excerpts from pages 86-89, “Aquaculture depends on clean water entering the River and ocean free from siltation and pollution. In turn, farmers and the land they steward provide many environmental benefits that are often overlooked.” After noting statistics from a survey the following is concluded; “East Lyme should clearly establish itself as a town that welcomes and encourages agriculture.” Lastly, “In summary, agriculture and aquaculture are the oldest uses of land and water in East Lyme.”

Moving back into ELHMP we should keep in mind the following, “The Plan does not replace existing state and federal programs that regulate in-water and waterfront activities. Nor does it give the HMC regulatory power to approve or deny the proposals that it reviews. (I-7)” In other words, in-water structures are regulated by the State and Federal Agencies, not local authorities. Just as this commission does not have the authority to alter dock requirements by the DEEP, they do not have the power to limit or control other structure with regards to aquaculture as there is no MOU between the ACOE and the State of CT. The consideration of any specifics regarding gear type to determine consistency is well outside the scope of this commission.

In one of the opening paragraphs of *Town Goals and Strategies* the following is stated, “That care—or stewardship—is for the purpose of ensuring that the natural, cultural, and economic values of the HMA are sustained for the future.” Aquaculture is just that, the stewardship of a natural resource which has very significant cultural and economic value to the Town. WELSCO is attempting to carry forward their charge of enhancing shellfish resources which have, as the ELHMP notes, been severely hindered due to poor land management, let WELSCO carry forth their charge.

5-15c “Continued efforts by the State Department of Energy and Environmental Protection and Bureau of Aquaculture to monitor commercial fisheries, including shellfisheries, in the East Lyme area and establish, with consideration of recommendations from the HMC, appropriate controls as necessary

to ensure the continued viability of fisheries resources should be encouraged and supported.” In other words, aquaculture should be encouraged and supported so long as,

“Any aquaculture activities in the HMA, including but not limited to activities regulated exclusively by the Connecticut Department of Agriculture Bureau of Aquaculture (DA/BA) and utilizing structures such as but not limited to docks, racks, cages, bags, and nets as well as buoys to mark the location of such activities, should be designed, constructed, and maintained to avoid any significant adverse impacts on navigation, coastal resources, and public safety in the HMA. Applications for aquaculture activities submitted to the DA/BA or any other agency should be reviewed for consistency with the Harbor Management Plan. (5-32r)”

At several points the ELHMP epitomizes the priority of shellfish cultivation by placing it ahead of other water-dependent uses; “Proposals affecting the real property on, in, or contiguous to the HMA that would cause acute and/or cumulative adverse impacts on: a) shellfish resources; or b) opportunities for shellfish cultivation and/or harvesting should be avoided. Proposals that could affect shellfish resources or cultivation and/or harvesting opportunities should be carefully designed and evaluated to avoid adverse impacts on those resources and opportunities.(5-33o-r)”

6-14, 4b “Scallop resources, including scallop populations and habitat, should be protected and, to the extent feasible, possible, enhanced. Moorings tackle should not be placed on significant important scallop resource areas identified by the Waterford-East Lyme Shellfish Commission.”

WELSCO wishes, to the extent feasible, enhance their shellfish resources within their jurisdiction by entering into a venture with a commercial entity(ies) just as the ELHMP allows for ELHMC to enter into ventures with commercial entities so as to better enhance shellfish resources. These are but a few examples of your very own plan supporting the concept of commercial shellfishing specifically aquaculture. Clearly any general policies of WELSCO formed around the above are consistent with the HMP, remember what is being reviewed, a policy statement from WELSCO.

P.S. A definition for those who are not aware of said definition.

Shellfish Concentration Areas: Areas defined in the Connecticut Coastal Management Act for the purpose of that Act as actual, potential, or historic areas in coastal waters in which one or more species of shellfish aggregate. As such, shellfish concentration areas area among a number of coastal resources of the state as defined in the Act. (ELHMP)

"Shellfish Concentration Areas" means actual, potential or historic areas in coastal waters, in which one or more species of shellfish aggregate. CGS section 22a-93(7)(N)

Consider also this excerpt from the Connecticut Coastal Management Act:

Shellfish Concentration Area

38 TO MANAGE THE STATE'S FISHERIES IN ORDER TO PROMOTE THE ECONOMIC BENEFITS OF COMMERCIAL AND RECREATIONAL FISHING, ENHANCE RECREATIONAL FISHING OPPORTUNITIES, OPTIMIZE THE YIELD OF ALL SPECIES, PREVENT THE DEPLETION OR EXTINCTION OF INDIGENOUS SPECIES, MAINTAIN AND ENHANCE THE PRODUCTIVITY OF NATURAL ESTUARINE RESOURCES AND PRESERVE HEALTHY FISHERIES RESOURCES FOR FUTURE GENERATIONS [CGS SECTION 22A-92(C)(1)(I)].



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Fisheries Science Center
Milford Laboratory
212 Rogers Avenue
Milford, CT 06460-6499

August 30, 2018

Mr. Peter Harris
Waterford-East Lyme Shellfish Commission
5 South Ridge Road
Niantic, CT 06357

Dear Mr. Harris:

NOAA's National Marine Fisheries Service, Northeast Fisheries Science Center, Milford Laboratory, cordially invites you to attend its Open House scheduled for Saturday, October 13, 2018 from 9:00 a.m. to 1:00 p.m.

The Milford Laboratory emphasizes research on the aquaculture of marine shellfish, including oysters, hard clams, and mussels. Culture methods development, diseases, nutrition, and genetics are of prime interest. The laboratory also researches the functional value of marine habitats as nursery areas for young fish and shellfish, effects of ocean acidification and interactions of aquaculture with the environment. For further information please visit our website at <http://www.nmfs.gov>.

A complete tour of our facility requires approximately 1½ hours. Please contact Patricia Widman or Sylvia Feeney at (203) 882-6541/6509 not later than October 1 if you plan to attend, have further questions, or to request a reasonable accommodation. I hope you can join us in October.

Sincerely,

Mark S. Dixon
Open House Coordinator