

Shellfish Committee Minutes of the Meeting

DATE: April 15, 2009
TIME: 7:30 P.M. to 9:30 P.M.
LOCATION: MEAD Building

Shellfish Committee Members present:

Stuart Rapp, Richard Haskell, Gerard Ganey, Les Hemmila, Robert Lancaster, Matt Ostrowski, Andre Sampou

General Public present:

Gary Ostrom,

NR Staff present:

Tom Marcotti

Legal Dept. Staff

David Houghton

Chairman's Report:

Stuart Rapp chaired the April 15, 2009 meeting of the Shellfish Committee.

Gerard Ganey requested revisions of the minutes of the March 18th, 2009 meeting of the Shellfish Committee to include the request by the Shellfish Committee for Dan Horn to respond to the letter sent to him by the committee regarding a proposed Popponeset Bay shellfish propagation project. The Shellfish Committee adopted the minutes of the March 18th, 2009 meeting of the Shellfish Committee as amended.

Natural Resources Report:

Shellfish Area Closures

- North Bay Closure:

North Bay: The waters, flats and all tributaries of that portion of North Bay, northeasterly of a line drawn from Point Isabella to the north tip of Grand Island; north of the Bridge Street Bridge and south of a line drawn across the mouth of the Marstons Mills River (DMF/SC:23.2; classified as conditionally approved; **status: Closed to shellfishing May 1 through October 31, all dates inclusive. The area shall not automatically reopen to shellfishing on November 1 and will remain closed until examined and shellfishing is allowed by DMF.**).

- Pirate's Cove / Seapuit River (located at Sampson's Island) Closure:

Pirate's Cove, Seapuit River: The waters and flats and all tributaries thereto of that portion of Seapuit River and Pirates Cove in the Town of Barnstable, west of a line north from the "NO SHELLFISHING" sign at the westerly end of Dead Neck to the "NO SHELLFISHING" sign on Grand Island and east of a line drawn northeasterly from the northeast tip of Sampson's Island to the "NO SHELLFISHING" sign on the southwest end of Grand Island (DMF/SC:21.2; classified as conditionally approved; **status: Closed to shellfishing May 1 through October 31, all dates inclusive. The area shall not automatically reopen to shellfishing on November 1 and will remain closed until examined and shellfishing is allowed by DMF.**).

- **The Cotuit Narrows Closure:**

Cotuit Narrows: The waters, flats and all tributaries of Cotuit Bay in the Town of Barnstable, south of a line drawn from Point Isabella to the north tip of Grand Island and north of a line drawn between the two “NO SHELLFISHING” signs (DMF/SC21.1; classified as conditionally approved; **status: Closed to shellfishing May 1 through October 31, all dates inclusive. The area shall not automatically reopen to shellfishing on November 1 and will remain closed until examined and shellfishing is allowed by DMF.**).

- **Marstons Mill River and Prince Cove Shellfish Area Closure:**

Marstons Mills River: The waters and flats and all tributaries thereto of Marstons Mills River in the Town of Barnstable, south of a line drawn across the mouth of Prince Cove, north of a line drawn across the mouth of the river and westerly of a line drawn northerly from the two “No Shellfishing” signs located at the mouth of Warren’s Cove. (DMF/SC:23.1; classified as conditionally approved; **status: Closed to shellfishing May 1 through February 14, all dates inclusive. The area shall not automatically reopen to shellfishing on February 15 and will remain closed until examined and shellfishing is allowed by DMF.**).

Prince Cove: The waters and flats and all tributaries thereto of Prince Cove in the Town of Barnstable, north of a line drawn across the mouth of Prince Cove (DMF/SC:23.1; classified as conditionally approved; **status: Closed to shellfishing May 1 through February 14, all dates inclusive. The area shall not automatically reopen to shellfishing on February 15 and will remain closed until examined and shellfishing is allowed by DMF.**).

Tom Marcotti updated the Shellfish Committee with the upcoming contaminated quahog relay projects. for Spring 2009. The relays are to take place in the following areas:

Cotuit Bay Relay Area (DMF/SC 21.22)

The Cotuit Bay Relay Area is defined as: the waters, flats and shoreline of that portion of Cotuit Bay between the signs located along the shoreline at 884 Maine Street extending to the offshore sign/buoys.

Outer Hyannis Harbor Relay Area (DMF/SC 27.1R)

The Outer Hyannis Harbor Relay Area is defined as: the waters, flats and shoreline of that portion of Outer Hyannis Harbor west of the rock jetty located at the mouth of Stewart’s Creek to the pier located at 10 Hyannis Avenue and seaward for 500 feet.

Shellfish Propagation Revolving Fund: approx. \$69,000

Piers, Dredging and Shellfish Habitat Issues:

The Shellfish Committee reviewed and discussed the following proposed pier applications:

Applicant: **Richard M. & Anna Tocci**

Application: (N.O.I.) Construct and maintain a timber pier, ramp, and float in North Bay.

Location: 80 Great Bay Road, Osterville, MA. (as shown on Assessors Map 093-074)

The Shellfish Committee forwarded a discussion of the R. & A. Tocci pier proposal to the April meeting of the Shellfish Committee.

Matt Ostrowski informed the committee that he attended a Department of Environmental Protection meeting which addressed the Tocci’s disagreement with the Conservation Commission’s orders of conditions for the pier.

Native American Shellfishing Rights and the Town Commercial Shellfishery

At the March 2009 Shellfish Committee meeting Doug Kalweit introduced (for discussion) the concept of issuing a certain number of new commercial shellfish permits in addition to the existing permits. The Shellfish Committee discussed various aspects of the commercial shellfishery including: the current commercial shellfish lottery regulation and Native American shellfishing rights. At the March meeting, the Shellfish Committee planned to set up a meeting with the Town legal department and Wampanoag members to further address and define Native American shellfishing rights.

At the April 15th, 2009 Shellfish Committee meeting, in response to the request of the Shellfish Committee, Town lawyer, David Houghton, presented his views on Native American shellfishing rights. David informed the committee of the Maxim vs. the Town of Bourne case. He explained that the State could have certain control of Native American shellfishing, even abiding by aboriginal / treaty rights, if "conservation" measures were substantiated. David noted that Native American sustenance shellfishing was upheld in the Maxim case, but there has not been a case heard regarding Native American commercial shellfishing for sustenance. David considered the issue of Town propagated shellfish in contrast to naturally occurring shellfish. Stuart asked David if the Town officials should contact officials of the Wampanoags to discuss these issues.

The Shellfish Committee considered Tom George's written suggestion to revise the Commercial Shellfish Permit lottery regulation. Gary Ostrom made comment on the issue of allowing more commercial shellfishing permits in the Town. Gary did not support the idea of issuing more commercial permits based on conservation measures. Gary noted how other fisheries have had catch allowances reduced for conservation measures, which has made the town commercial shellfishery permit more valuable. The idea of the salability of Town commercial shellfishing permits was discussed by the committee. The committee decided to discontinue discussion on Tom George's written suggestion to revise the Commercial Shellfish Permit lottery system and suggested future discussions of the permit salability topic.