

**In The Matter Of:**  
*Coastal Resources Management Council*

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*Perry Raso*  
*Vol. 2*  
*November 13, 2020*  
*Subcommittee Hearing*

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
COASTAL RESOURCES MANAGEMENT COUNCIL  
SUBCOMMITTEE HEARING

\* \* \* \* \*

IN RE:

CRMC File No. 2017-12-086

In the matter of Perry Raso

\* \* \* \* \*

Date: November 13, 2020

Time: 1:00 p.m.

Place: Via Zoom  
Rhode Island

MEMBERS PRESENT

Jennifer Cervenka, Chair

Raymond C. Coia, Vice Chair

Donald T. Gomez

Patricia Reynolds

Anthony DeSisto, Esquire, Legal Counsel

STAFF PRESENT

Jeff Willis, Executive Director

Lisa Turner, Secretary

Ryan Moore, Moderator

James Boyd, Deputy Director

David Beutel, Former Aquaculture Director

APPEARANCES

Elizabeth Noonan, Esq.....For the Applicant

Leslie Parker, Esq.....For the Applicant

Christian Capizzo, Esq.....For the Objectors  
(Hunt, Latham, Cooney and Quigley)

Dean Wagner, Esq.....For the Objectors  
(Andrew Wilkes and 454 Beach Road, LLC.)

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1 housekeeping? I forgot to move Dr. Byron's CV full. Can  
2 I move that full?

3 MR. WAGNER: No objection.

4 MR. CAPIZZO: No objection.

5 MS. NOONAN: Thank you.

6 CHAIRWOMAN CERVENKA: It's submitted.

7 [EXHIBIT #3 MARKED FULL]

8 MS. NOONAN: Pull up Dr. Robert Rheault. And  
9 thank you, Dr. Rice. We'll take you out of Zanzibar.

10 Good afternoon, Dr. Rheault. How are you?

11 THE WITNESS: Good afternoon.

12 MS. NOONAN: Can he be sworn.

13 ROBERT RHEAULT,

14 Being duly sworn testifies as follows:

15 COURT REPORTER: Please state your name for the  
16 record.

17 THE WITNESS: My name is Robert Rheault.

18 DIRECT EXAMINATION BY MS. NOONAN

19 MS. NOONAN: I would like to have Exhibit 4,  
20 Mr. Moore, if you could find Exhibit 4 which would be  
21 Dr. Rheault's CV.

22 Q. As he pulls that up, if I can start with you, Dr.  
23 Rheault. Can you please give the Council some of your  
24 background as set forth on Exhibit 4?

1 Q. I believe they are listed on Page 1 of your curriculum  
2 vitae. Can I ask, the most important question is that  
3 are you the guy that gave us Moonstone oysters?

4 A. I was the owner of Moonstone Oysters, President and CEO  
5 for about 29 years, started out at a hatchery and moved  
6 on to growing and selling oysters. I'm quite proud of  
7 that.

8 MS. NOONAN: Great. I would ask that  
9 Dr. Rheault be qualified as an expert in aquaculture.

10 CHAIRWOMAN CERVENKA: Any objection?

11 MR. WAGNER: No objection.

12 MR. CAPIZZO: No objection.

13 CHAIRWOMAN CERVENKA: Okay. Will someone make  
14 a motion to accept the qualification of Mr. Rheault as an  
15 aquaculture expert?

16 VICE CHAIRMAN COIA: Madam Chair, Ray Coia  
17 makes that motion.

18 CHAIRWOMAN CERVENKA: Thank you, Mr. Coia. Is  
19 there a second?

20 MS. REYNOLDS: Reynolds seconds.

21 CHAIRWOMAN CERVENKA: I will do a roll call.  
22 Ray Coia?

23 VICE CHAIR COIA: Ray Coia votes aye.

24 CHAIRWOMAN CERVENKA: Patricia Reynolds?

1 MS. REYNOLDS: Reynolds votes aye.

2 CHAIRWOMAN CERVENKA: Don Gomez?

3 MR. GOMEZ: Don Gomez aye.

4 CHAIRWOMAN CERVENKA: Vin Murray?

5 MR. MURRAY: Vin Murray aye.

6 CHAIRWOMAN CERVENKA: And myself Jennifer  
7 Cervenka aye. The motion to qualify carries.

8 MS. NOONAN: Madam Chair, I would also ask that  
9 his curriculum vitae be admitted full, Exhibit 4.

10 CHAIRWOMAN CERVENKA: Admitted full.

11 MS. NOONAN: Thank you.

12 [EXHIBIT #4 MARKED FULL]

13 Q. Dr. Rice, you were retained as an expert in this matter,  
14 right?

15 A. Yes. Dr. Rheault, yes.

16 Q. I'm sorry. That was my mistake. Dr. Rheault. Thank  
17 you. Do you know Mr. Raso?

18 A. I do. I employed him briefly as a diver in early 2000s  
19 before he started his farm, subsequently as president of  
20 the Ocean State Aquaculture Association where he was a  
21 member, we'd meet on occasion. And my wife was a big fan  
22 of his restaurant, and we occasionally would see him  
23 there.

24 Q. All right. Do you serve on the Shellfish Advisory panel?

1 something in their constitution words to the effect that  
2 it is incumbent on the resource managers of the state to  
3 manage the subtitle -- I'm sure I'm botching up the  
4 constitutional language badly, but to the benefit of the  
5 sovereign, not necessarily to the waterfront homeowners  
6 right there, but to the sovereign meaning the members,  
7 all the people of the state of Rhode Island. So the  
8 Council has a very challenging task, to balance these  
9 multiple users.

10 Q. So when you're looking at an application such as this,  
11 and Dr. Rice was led through some questions by  
12 Mr. Capizzo about the impact of the polygon on the shores  
13 of Mr. Hunt's property, while that may be true or have an  
14 impact, is that the balance that is required under CRMC  
15 regulations?

16 A. Well, certainly the coastal waterfront marsh of the right  
17 to wharf out and have riparian access. Both of the  
18 adjacent waterfront homeowners have docks. So that  
19 raises being honored. And then, you know, people have  
20 the right of recreation and certainly the fisheries, and  
21 the fisheries impairment in terms of what would be  
22 prepared by a 3-acre lease in that area, either Option A  
23 or Option B has been addressed, looked at and both DEM,  
24 and Mr. Beutel has looked at it and determined that it's

1 not a huge loss of fisheries access.

2 And then we look at the recreational use. Then in  
3 my mind this is one of those spots that's almost ideal  
4 because you have to try and find a spot that impairs the  
5 least number of people to the least extent possible. And  
6 so, obviously we've got a bunch of rules that say you  
7 can't put a farm in the middle of a channel. You can't  
8 impair certain fisheries resources, essential fish  
9 habitat, some -- vegetation. These are all off limits.  
10 But when you find a spot that is sort of out of the way  
11 that is tucked to the side and impairs the least amount  
12 of space, and the least amount of users, in the most  
13 insignificant fashion, to me that seems like a perfect  
14 spot to try and squeeze in a little bit of aquaculture.

15 When we created the 5 percent rule, it was an  
16 attempt to try and placate. So just going to take you  
17 back a little bit to the evolution of the 5 percent rule,  
18 we were challenged by oyster shell fishermen who were  
19 complaining that we were growing far too fast. I was  
20 applying for 7-acre lease expansion above my initial  
21 2-acre lease, and I was being called the Walmart of  
22 shellfish aquaculture in Rhode Island.

23 Obviously this was growth that was out of control.  
24 So a moratorium was being proposed by the fisheries

1 council so we reengaged in a group that we had  
2 established, an aquaculture working group, which is a  
3 multi-stakeholder group to really sit down and try to  
4 hash out the various issues. And I wrote one of the  
5 chapters entitled "carrying capacity," and did some  
6 research and moved around, and we were being accused of  
7 consuming too much of the phytoplankton. In other words,  
8 the shellfish that our farms were consuming was going to  
9 impair the wild shellfish in the area.

10 So I looked at the literature, and there wasn't a  
11 lot at the time, but we did find some related work down  
12 in New Zealand. I tried to do some packing the envelope  
13 calculations. It was very rough. At the time we all  
14 acknowledged that this was an imperfect comparison, that  
15 this giant bay in New Zealand wasn't anything like the  
16 ponds of Rhode Island. But we all agreed that the  
17 calculation that I did was at the very least it was very  
18 conservative -- carrying capacity. And until we had  
19 better available science, it was a recommendation based  
20 on the best available science.

21 So we went with it. Everybody agreed. Everyone had  
22 a chance to challenge it. This was a consensus document,  
23 and we all agreed that until better science was  
24 available, we would work with the 5 percent as an



1 estimate of the ecological carrying capacity, and as long  
2 as we didn't exceed that, we could rest assured that we  
3 were not sucking up all the phytoplankton to the  
4 disbenefit of all the wild animals that depended on it.

5 Everyone agreed that that was good. And then about  
6 5 years later, Carrie was able to do her modeling work  
7 and showed quite eloquently and very convincingly that my  
8 rough calculation was obviously a vast underestimate.  
9 And then there was a capacity. In terms of the  
10 ecological carrying capacity, we could put a lot more  
11 shellfish back in the water. It just makes a lot of  
12 sense.

13 If you look historically at the populations of  
14 shellfish in these areas, long before man started to get  
15 here, we had, you know, these bottoms were paved with  
16 shellfish. We are quite able predators. Oysters can  
17 escape very well and we were very proud to overharvest.  
18 So populations are well down from what they are  
19 historically.

20 Q. When you talk about consensus and reaching that, who was  
21 at the table for that?

22 A. We had -- it was a multi group of about 30 people,  
23 aquaculture working group, representatives from all  
24 various walks of life. We had biologists, scientists,

1 fishermen. We brought in pretty much anybody who was  
2 willing to attend 29 meetings over a space of I think a  
3 year and a half.

4 Q. Are you familiar then based on all this experience with  
5 the Category B assent requirements for CRMC that apply to  
6 all applications that follow including aquaculture?

7 A. Very much so.

8 Q. The first requirement is need. Can you address the  
9 concept of need generally in the context of aquaculture?

10 A. Sure. So we added that based on concerns that were  
11 raised by the fisherman because, you know, we didn't want  
12 people coming in and leasing up areas on a speculative  
13 basis. So, in other words, we wanted people to show that  
14 they had filled up their first 3 acres before they  
15 applied for another. That was what we meant. It was  
16 probably poorly worded, but that was the intent of that  
17 section. That you shouldn't be allowed to apply for more  
18 acreage beyond your 3 acres, your initial 3-acre  
19 application until you had filled that up because we  
20 didn't want people leasing up areas in speculative  
21 fashion.

22 So that was the primary thing. I think broadly, to  
23 put it in terms that perhaps a lawyer would understand,  
24 need, you know, do you need to hire another partner and

1 more interns to get more clients? Or a restaurant, do  
2 you need to have another location?

3 Well, certainly, as any businessman would be able to  
4 tell you, the larger your operation, the economy is to  
5 scale. So your fixed costs are likely fixed and remain a  
6 small percentage of your operating cost. And if you can  
7 expand your business, you will be more efficient in terms  
8 of this proportion of fixed cost to a variable cost. So  
9 you become more economic if you can increase the scale of  
10 your operation.

11 I would just add that, you know, various operation  
12 and 7 acres, hopefully to be 10 is a small farm, very  
13 small farm.

14 Q. So we talked generally about the need. Let me ask you  
15 specifically. Do you have an opinion whether or not  
16 Mr. Raso has demonstrated a need for this proposed oyster  
17 and scallop farm of 3 acres?

18 MR. WAGNER: Objection. No foundation.

19 MS. NOONAN: I believe I've laid the  
20 foundation. He looked at the application, he heard the  
21 testimony, he gave his background. He understands the  
22 standard.

23 MR. WAGNER: I don't understand how that's a  
24 foundation for what his need is for an oyster farm. I

1           frankly still don't understand from his testimony what  
2           this need requirement means. I don't think that because  
3           he had a hand in drafting it should have any  
4           admissibility before the subcommittee.

5                   MR. DESISTO: Rather than have an argument  
6           between the lawyers, Madam Chair, what I would suggest  
7           here is allow the witness to answer the question, and it  
8           can go to the weight as to whether or not he actually has  
9           expertise in this. But at this stage I think it's  
10          permissible for him to answer and then be cross-examined  
11          on it.

12                   MR. WAGNER: If I could just request, I will  
13          interpose objections, and I don't mean to -- we don't  
14          have to have an argument after each one. But I want for  
15          the record to interpose objections.

16                   CHAIRWOMAN CERVENKA: That's fine, and then  
17          you'll get your chance on cross-examination.

18                   MR. DESISTO: May I ask if this is going to be  
19          a continuing objection for this entire line of  
20          questioning?

21                   MR. WAGNER: Yes, if I could do that.

22                   MR. DESISTO: Okay. You can.

23                   CHAIRWOMAN CERVENKA: Can I ask the  
24          stenographer to read the question back, please.

1 [PENDING QUESTION WAS READ]

2 A. As I said, based on the reasoning for which that standard  
3 was inserted, yes, I believe that Mr. Raso has clearly  
4 filled up the space of his existing lease and that was  
5 certainly the intent. We want to take a different view  
6 of the term "need." I would say that if he wants to grow  
7 scallops, he needs additional depth. This is a spot with  
8 greater depth I think that shows needs, greater depth to  
9 grow scallops and lantern nets. I that the depth is  
10 another view of the term "need." You.

11 Know, in terms of profitability and economy to  
12 scale, I think that is a perfectly valid interpretation  
13 of the term "need" as well. So I would say that, yes,  
14 depending on how you choose to interpret the term "need,"  
15 he has fulfilled all three considerations.

16 Q. Do you have an opinion as to whether or not the shellfish  
17 aquaculture proposed by Mr. Raso will have any negative  
18 effect upon the erosion or deposition along the shore?

19 A. Looking at Segar Cove, one thing that I notice about the  
20 cove is a lot of the homes, especially along the south  
21 side, are protected by buttresses. It looks like there  
22 are erosion concerns, probably from boat wakes. There is  
23 not a lot of [ZOOM INTERRUPTIO] -- for wave action.  
24 Erosion seems to be a concern. A lot of the homes have

1 rip rap and things like that.

2 On the north side immediately adjacent, I'm sorry,  
3 Rocky Beach, I don't imagine that that's got significant  
4 erosion right there. You can't expect structures in the  
5 water to mitigate wave energy slightly. We don't have  
6 good science on the amount of wave energy mitigation, but  
7 if anything, it would slow the effects of the boat wakes  
8 on that particular shore. I can't imagine that we would  
9 experience anything else.

10 Q. Since you talked in detail, can you tell the committee  
11 about your familiarity with Segar Cove?

12 A. I've been to Segar Cove once.

13 Q. And you visited the proposed site?

14 A. I did.

15 Q. Okay. Just going back generally to oyster farming and  
16 aquaculture, is this considered a green industry?

17 A. Absolutely. It's one of the things I'm most proud of.  
18 We get very high marks from the environmental communities  
19 which is -- aquarium, the nature conservancy, other  
20 things like that because we have no food, no drugs, no  
21 chemicals, no fertilizers. We got the gold star. And  
22 then to boot, we offer what are called ecosystem  
23 services. In other words, benefits that we take for  
24 granted. In other words, still for the water improving

1 turbidity levels, mitigating the eutrophication impacts  
2 from excess fertilizers.

3 Q. Can I stop you? What is the word you used so the  
4 stenographer has it?

5 A. I'm sorry. We mitigate the impacts of eutrophication.  
6 Eutrophication is the syndrome that's related to excess  
7 nitrogen, phosphate inputs from lawn fertilizer, and  
8 wastewater from ISDS runoff. So when you have certainly  
9 fertilizer, and fertilizer are generally good, but when  
10 you have excessive amounts of nitrogen coming into the  
11 coastal waters, especially in almost all of our estuaries  
12 in the northeast, we see something called eutrophication.  
13 It's a tendency for excessive algal blooms that are  
14 stimulated by the nitrogen and phosphate runoff. After  
15 the algal blooms can diminish water quality by causing  
16 eutrophication, which is low oxygen, a buildup of  
17 excessive phytoplankton blooms which will shade out the  
18 eelgrass and then change the nature of the bottom to be  
19 more dominated by Rosularia and lesser habitat types.

20 So, as I said, because the shellfish feeding can  
21 mitigate and remove some of the nitrogen associated with  
22 the phytoplankton that they consume, we get the gold star  
23 from a lot of these environmental groups who recognize  
24 that when TNC, when the Nature Conservancy is coming out

1 in favor of the aquaculture, shellfish aquaculture, you  
2 know you're doing something right.

3 Q. And is Mr. Raso's proposed farm consistent with what  
4 you've just described for a green industry?

5 A. Absolutely.

6 Q. Moving on to a different topic. Do you have an opinion  
7 as to whether Mr. Raso has taken measures to minimize any  
8 adverse scenic impact?

9 A. Certainly the low profile choice for his floating gear,  
10 he's trying to make it less visible. Certainly that's  
11 probably the primary concern we hear on most applications  
12 is the aesthetic concern. Of course it's very  
13 challenging to assess what in someone's eyes is offensive  
14 to their sense of aesthetics is not necessarily so under  
15 someone else's.

16 For instance, I think those windmills off the coast  
17 are beautiful. Not everyone agrees with me. But, you  
18 know, a nice neat field of corn, to me that's beautiful,  
19 but it's not what nature intended. So everyone has their  
20 own view of what is an aesthetic view and what is  
21 something that is not.

22 Q. And the fact perhaps that half of the farm for scallops  
23 that is not on the surface, does that also play in for  
24 people that may find something on the surface offensive?



1 Q. In terms of the current application, have you seen the  
2 three different layout plans?

3 A. Yes.

4 Q. You heard us talk about A, B and C?

5 A. Yes.

6 Q. What's the effect of changing the original rectangle to  
7 either the polygon that is depicted in B and C?

8 A. So most of the discussion is focused on B, alternate B.  
9 The initial polygon is a regular shape, easy to mark.  
10 Four corner markers. It's relatively easy to manage in  
11 terms of laying out your lines and dealing with that.

12 I believe that the effort to move the polygon and go  
13 to alternate -- so-called preferred alternate B was an  
14 attempt to move away from the area of the center of the  
15 pond where the water sports activities has been  
16 described, move it closer to the beach and get it out of  
17 the main area of water sports activities. And I think it  
18 achieves that.

19 The detriment is that you're obviously closer to the  
20 shore, so you have to look at are you impacting  
21 activities on the shore and access to the water by the  
22 Hudson. I forget it's the neighbor to the north --  
23 anyway, the two properties that are immediately adjacent  
24 on the northeast shore there. You know, they certainly

1 CHAIRWOMAN CERVENKA: Is that reflected by the  
2 court reporter? I would ask that the court reporter just  
3 read the question back again, please.

4 [THE RECORD WAS READ BY THE COURT REPORTER]

5 A. So having visited probably over a hundred aquaculture  
6 farms up and down the coast, having spent my entire life  
7 working on the water, having spent my entire life  
8 recreating on the water, I would say that, you know,  
9 there is ample space to, you know -- it actually looks  
10 like a pretty small cove for waterskiing in my mind. I  
11 mean, growing up on a body of water where we waterskied  
12 regularly, but, you know, nowadays most people get  
13 dragged around in a tube, slower speed doesn't  
14 necessarily require as much space. Certainly there's,  
15 you know, the lease doesn't necessarily impair battling  
16 in a kayak or canoe or a wakeboard or standup board.

17 Actually, I would say that the lease actually  
18 enhances the experience because now you have something  
19 cool to look at, you have somebody there to talk to, I'm  
20 sure very happy to explain how they are growing oysters.  
21 Typically we find that people are fascinated about what  
22 we do in the water, very, very curious and they want to  
23 see what's going on and have a conversation.

24 Q. Just finally, Dr. Rheault, based on your experience with

C E R T I F I C A T I O N

I, Lisa M Reis, hereby certify that the foregoing Pages 169 through 295, inclusive, are a true and accurate transcript of my stenographic notes of the proceedings, via Zoom, which occurred on the above-entitled dates, to the best of my ability.

---

LISA M. REIS, RPR  
Court Reporter/Notary Public  
My Commission expires on 7/27/24

Sworn to and subscribed before me,  
This 16th day of November, 2020

**In The Matter Of:**  
*Coastal Resources Management Council*  
*Perry Raso*

---

*Hearing*  
*Vol. 3*  
*November 17, 2020*

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
COASTAL RESOURCES MANAGEMENT COUNCIL  
SUBCOMMITTEE HEARING

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IN RE:

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MEMBERS PRESENT

Jennifer Cervenka, Chair  
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Anthony DeSisto, Esquire, Legal Counsel

STAFF PRESENT

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James Boyd, Deputy Director

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1 Q. Thank you. In terms of the carrying capacity, in light  
2 of the fact that it is 5 percent for Potter Pond but in  
3 actuality this farm, if allowed, would only take up 3  
4 percent of the farm, correct? Of the pond, I'm sorry.

5 A. So, yes. The aerial coverage, this is certainly from the  
6 ecological carrying capacity we would be well below the  
7 45 percent that was determined to be the actual  
8 ecological carrying capacity for the pond. So we could  
9 be very confident that the ecological impacts of this  
10 pond are not going to be negatively impacting other parts  
11 of the food web. That's the definition of an ecological  
12 carrying capacity.

13 Q. All right. In the CRMC web page that Mr. Capizzo showed  
14 you, you stated on Page 3:

15 "So we are taking unproductive bottom and making it  
16 productive with obvious benefits to the economy and water  
17 quality while the rest, 95 percent of the ponds, are  
18 available for all other uses?"

19 Do you still stand by that statement?

20 A. I mean, certainly. I mean, that was why the Oyster Act  
21 was passed. It allowed people to plant and eliminate  
22 predators and increase the productivity of the waters of  
23 the state to the benefit of the sovereign.

24 Any time, typically, when we look at the amount of

1 Q. Okay. And so in light of all of this, do you still stand  
2 by your prior opinion that the proposed farm will not  
3 result in significant conflicts with other water  
4 dependent uses and activities?

5 A. Yes. I would also point out that there have been  
6 applications where I have not supported the application.  
7 I am not just a blind cheerleader. I actually do review  
8 these projects. When I believe that there will be a  
9 negative impact on the state or significant impacts on  
10 other users, I am not just a cheerleader for this  
11 industry. But I do believe that this is a project that  
12 has a minimum amount of impact, a tolerable amount of  
13 impact, if you will, and that the state, you know, in its  
14 task of balancing the multiple uses can do so in this  
15 case without unnecessarily, in my opinion obviously,  
16 harming the rights of the others to pursue their  
17 activities.

18 Q. So again, not rising to the level of a significant  
19 conflict with other water dependent uses in this  
20 application scenario, correct?

21 A. That would be my opinion. Obviously these are judgment  
22 calls.

23 MS. NOONAN: Thank you, Dr. Rheault. I have no  
24 further questions.



C E R T I F I C A T I O N

I, Lisa M Reis, hereby certify that the foregoing Pages 296 through 477, inclusive, are a true and accurate transcript of my stenographic notes of the proceedings, via Zoom, which occurred on the above-entitled dates, to the best of my ability.

---

LISA M. REIS, RPR  
Court Reporter/Notary Public  
My Commission expires on 7/27/24

Sworn to and subscribed before me,  
This 30th day of November, 2020