

In The Matter Of:
Coastal Resources Management Council

Perry Raso
Vol. 2
November 13, 2020
Subcommittee Hearing

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

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

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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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FRIDAY, NOVEMBER 13, 2020

[COMMENCING AT 1:20 P.M.]

CHAIRWOMAN CERVENKA: I'm calling this meeting to order. It's Friday, November 13, 2020. It is 1:15 p.m. This is the second of three scheduled meetings of a subcommittee of the Rhode Island Coastal Resources Management Council. We are convened to hear a contested case in CRMC File No. 2017-12-086 in the matter of Perry Raso to establish a 3-acre oyster and bay scallop farm using floating and suspended gear in Potter Pond, South Kingstown, Rhode Island.

We have our subcommittee members that are all here today. I will do a roll call. When I call your name out, if you could please unmute and indicate that you're here. Starting with Vice Chair Raymond Coia.

VICE CHAIRMAN COIA: Raymond Coia present.

CHAIRWOMAN CERVENKA: Patricia Reynolds.

MS. REYNOLDS: Patricia Reynolds present.

CHAIRWOMAN CERVENKA: Don Gomez?

MR. GOMEZ: Don Gomez, present.

CHAIRWOMAN CERVENKA: Vin Murray.

MR. MURRAY: Vin Murray present.

CHAIRWOMAN CERVENKA: Again, Vin Murray is our South Kingstown representative, and myself, Jennifer

1 Cervenka, Chair.

2 From CRMC staff, we have our executive director,
3 Jeff Willis. Our Deputy Director Jim Boyd, Tony DeSisto,
4 our chief legal counsel, Dave Beutel, who is here all
5 day, all afternoon yesterday, will be joining us, but
6 from three to five. So he will not start with us today.
7 We also have Lisa Turner, our recording secretary, Ryan
8 Moore, our CRMC moderator, thank you, and we have Lisa
9 Reis who is our court reporter. I think I have everyone.
10 Ben Goetsch is our current aquaculture coordinator, and
11 he is on this call but he's not on the video. He's
12 available for any questions, process questions,
13 regulation questions that may come up.

14 Yesterday we covered the staff report. We covered
15 the applicant's case with respect to two witnesses. I
16 believe there's three additional witnesses that the
17 applicant would like to present, and so we'll go through
18 that today. If we have time, and I hope we will be able
19 to read the objectors' counsel presentation for these
20 cases, and that will be followed by public comment that's
21 going to start necessary Tuesday.

22 Again, there probably will be overflow of these
23 matters between today and next Tuesday with the
24 possibility, the likelihood, that we'll have to schedule

1 a fourth meeting because the subcommittee itself will
2 have to have a workshop following the public comment so
3 that we can come up with our recommendation to the full
4 Council.

5 The meeting before the full Council, Mr. Willis,
6 correct me, is that January 27th? I thought it got
7 scheduled.

8 MR. WILLIS: Correct, Madam Chair. We
9 tentatively set it up for the second meeting of January.

10 CHAIRWOMAN CERVENKA: Thank you. Any other
11 administrative matters, Mr. Willis, that I may have
12 missed?

13 MR. WILLIS: Not necessarily. Just we did post
14 on our website both in the calendar section for under
15 each day of the subcommittee hearings as well as our home
16 page why we have moved the public comment section to the
17 Tuesday hearing date. We wanted to let everybody know as
18 soon as possible what we are doing there, and I want to
19 thank staff for staying late last night and emailing
20 everybody that we had on our email contact list for
21 public comment to let them know the same.

22 CHAIRWOMAN CERVENKA: Okay. Thank you,
23 Mr. Willis.

24 Mr. Moore, do you have a current number of people

1 who have signed up for the public comment portion?

2 MR. MOORE: I had 13 sign up yesterday. I'm
3 not sure how many Lisa had already in her list, but 13
4 were added yesterday.

5 CHAIRWOMAN CERVENKA: Okay. Thank you.
6 Ms. Turner?

7 MS. TURNER: Madam Chair, I have 50 people so
8 far that have signed up to speak, and separate from
9 Mr. Morris' list. There's 50 people so far --

10 MR. MOORE: We collaborated our list.

11 MS. TURNER: -- which I assume will grow over
12 the weekend.

13 CHAIRWOMAN CERVENKA: Okay. And we are
14 accepting public comment to sign up for public comment
15 today in addition to yesterday, correct?

16 MS. TURNER: That is up to you, Madam Chair.

17 CHAIRWOMAN CERVENKA: Okay. Mr. Willis, what
18 have we decided on that?

19 MR. WILLIS: Yes. Anybody who wants to provide
20 public comment, they can do so during this hearing in the
21 chat box, and then we take their contact information,
22 their name and email, so that we can add it to the list
23 in the order received.

24 CHAIRWOMAN CERVENKA: Okay. So if anyone wants

1 to provide public comment they should register today.
2 We're not taking any of that over the weekend, correct?

3 MR. WILLIS: Right, that is correct. We should
4 have the information by the close of today's hearing.

5 CHAIRWOMAN CERVENKA: Okay. Great. Thank you.
6 I'm going to turn it back over to Ms. Noonan who is going
7 to present her third witness, I believe.

8 MS. NOONAN: Thank you, Madam Chair. I am in
9 fact presenting my third witness. We have three
10 witnesses today, so it will be Drs. Carrie Byron,
11 Dr. Michael Rice, and Dr. Robert Rheault. So I'd like to
12 start with Carrie Byron first.

13 Carrie, are you up there?

14 DR. BYRON: I am here.

15 DR. CARRIE BYRON,
16 Being duly sworn testifies as follows:

17 COURT REPORTER: Please state your name for the
18 record.

19 THE WITNESS: My name is Carrie Byron.

20 DIRECT EXAMINATION BY MS. NOONAN

21 Q. Good afternoon, Doctor. How are you?

22 A. I'm well, thank you.

23 Q. Good. Dr. Byron, could you please tell this subcommittee
24 of CRMC where you presently are employed?

1 A. I am presently employed at the University of New England.

2 Q. And what's your position there?

3 A. I am a faculty member there.

4 MS. NOONAN: Okay. And what I'd like to do it
5 introduce Exhibit 3, Mr. Moore, if we could put that up
6 on the screen, please.

7 [EXHIBIT DISPLAYED]

8 Q. Dr. Moore (sic), can you describe for the committee your
9 professional -- strike that -- your educational
10 background?

11 A. Sorry, you said "Moore."

12 Q. Sorry. Mr. Moore is going to put up your CV hopefully.
13 And then as we go through that, I would like to ask if
14 you can give the committee your educational background,
15 please.

16 A. Yes, I would be happy to. I hold a doctorate degree
17 trained in environmental science and marine science. I'm
18 currently employed at UNE where I run a research lab on
19 ecology in -- ocean in application to aquaculture.

20 Q. And where did you obtain -- prior to your Ph.D what other
21 degrees do you hold?

22 A. I hold both a master's degree in environmental studies
23 and a bachelor's degree.

24 Q. Okay. Did there come a period where you were at the

1 University of Rhode Island?

2 A. I did my doctorate work at the University of Rhode
3 Island, yes.

4 Q. Can you describe to the committee what your doctorate
5 work was?

6 A. Yes. My thesis was working with farmers in Rhode Island
7 in stake holder engagement. And with them, I designed a
8 food web model of our coastal systems in Rhode Island
9 including Narragansett Bay and the salt ponds in order to
10 calculate a carrying capacity for aquaculture in these
11 waters. So this model was informed by the people who
12 work and live in this place and know these ecosystems
13 quite well. I was also informed by peer reviewed
14 published data and by ongoing surveys, environmental
15 surveys, and other data collected.

16 All of that information brought together to describe
17 that in a model and then can use that model to ask
18 questions, such as how much aquaculture can we have in
19 this environment, in this space, without impacting the
20 ecology in the environment.

21 Q. And in addition to your dissertation, have you engaged in
22 other publications that are listed on Exhibit 3?

23 A. Yes. I'm well published in this area of carrying
24 capacity for aquaculture and much of my work in

1 particular, my dissertation work that was done in Rhode
2 Island is recognized globally around the world, some of
3 my most highly cited work.

4 MS. NOONAN: I'm going to ask this committee to
5 qualify Dr. Byron as an environmental scientist as she is
6 a professor of marine science.

7 CHAIRWOMAN CERVENKA: Tony?

8 MR. DESISTO: It's going to take a motion which
9 is an order, by the way.

10 CHAIRWOMAN CERVENKA: Same as last time. Can I
11 get a motion to qualify Ms. Byron as an environmental
12 scientist, Ms. Noonan?

13 MS. NOONAN: With a specialty as a professor in
14 marine science.

15 MR. COIA: Madam Chair, Ray Coia to be
16 recognized?

17 CHAIRWOMAN CERVENKA: Yes, Mr. Coia.

18 VICE CHAIR COIA: Madam Chair, based upon the
19 CV that's presented to us on screen and the
20 representation, I would move to accept her as an expert
21 in the fields as indicated.

22 CHAIRWOMAN CERVENKA: Thank you, Mr. Coia. Is
23 there a second to Mr. Coia's motion?

24 MR. GOMEZ: Don Gomez, second to Mr. Coia's

1 motion.

2 CHAIRWOMAN CERVENKA: Thank you, Mr. Gomez.
3 Any discussion? Okay, I'm going to do a roll call. Ray
4 Coia?

5 VICE CHAIR COIA: Ray Coia votes aye.

6 CHAIRWOMAN CERVENKA: Patricia Reynolds?

7 MS. REYNOLDS: Reynolds votes aye.

8 CHAIRWOMAN CERVENKA: Ron Gomez?

9 MR. GOMEZ: Ron Gomez aye.

10 CHAIRWOMAN CERVENKA: Vin Murray?

11 MR. MURRAY: Vin Murray aye.

12 CHAIRWOMAN CERVENKA: Jennifer Cervenka aye.

13 Motion to qualify carries. Thank you.

14 MS. NOONAN: Thank you.

15 Q. Dr. Byron, do you know the applicant Perry Raso?

16 A. I do.

17 Q. And how long have you known him?

18 A. About 12 years.

19 Q. And how did you get to know Mr. Raso?

20 A. I first met him while doing my dissertation work at URI
21 as just described.

22 Q. And are you familiar with the application that Mr. Raso
23 has submitted to CRMC for this project?

24 A. Yes.

1 Q. And were you watching the proceedings yesterday afternoon
2 of this subcommittee proceeding?

3 A. Every minute of them.

4 Q. Great. Thank you. What other materials did you review
5 in preparation for your testimony today?

6 A. As an academic I always turn to peer review literature
7 first, but I also received the CRMC staff report dated in
8 June and the opposition package to CRMC I believe dated
9 last week.

10 Q. Okay. In that staff report which we've identified as
11 being admitted as Exhibit 17, there's a section where
12 Mr. Beutel makes a reference to a 5 percent rule with a
13 citation after it. Are you familiar with this 5 percent
14 rule?

15 A. I am.

16 Q. Can you tell us about that, please.

17 A. This 5 percent rule was developed in parallel to my
18 dissertation work that I just described. If anything, it
19 motivated my dissertation work. The 5 percent rule
20 came -- well, it came out of discussions among multiple
21 users of these systems in Rhode Island. And the goal, as
22 I understand it, was to come to an agreement on how much
23 aquaculture could be developed in these systems including
24 the salt ponds. And the way that it was agreed on 5

1 percent would be the rule, is that that 5 percent was
2 based on a calculation intended to reflect the ecological
3 carrying capacity of the system.

4 However, the information on hand at the time that
5 calculation was made was limited, and prior to my work
6 using the more comprehensive food web model, that
7 calculation was made based on a study done in New Zealand
8 where that ecosystem in New Zealand is much different
9 than the ecosystem in Rhode Island salt ponds but it took
10 some calculation from that New Zealand ecosystem and
11 applied them to oyster culture in Rhode Island.

12 One of the witnesses that you'll hear from after me
13 was the one who actually made that calculation,
14 Dr. Rheault. Feel free to ask him more about it.

15 Q. We shall.

16 A. He's the one who drafted that calculation and suggested
17 five percent as an ecological carrying capacity for
18 aquaculture, and the other stakeholders at that table at
19 that time in that discussion agreed that that should
20 become a rule or a maximum allowable amount of
21 aquaculture in both in Narragansett Bay and the salt
22 ponds.

23 To be clear, the 5 percent is describing a surface
24 area coverage of the total surface area of any particular

1 water body.

2 Q. Let's just back up a little bit. When you talked about
3 carrying capacity, can you explain that and what carrying
4 capacity is and what it means in the context of that
5 culture?

6 A. I would be happy to. Carrying capacity is a term used in
7 ecological science to describe the maximum of population,
8 level population that any ecosystem can support. So if
9 you were to exceed the carrying capacity, you would
10 expect that that population would crash, would diminish.
11 The ecosystem would change in some way. It's describing
12 how many resources are available to support a certain
13 level of population of an organism.

14 This definition that ecologists use has been adapted
15 to specifically for aquaculture. And there's actually a
16 couple different ways in which we can describe carrying
17 capacity for aquaculture. These definitions are now
18 widely accepted in the legislature, and I'm happy to run
19 through that.

20 Q. Sure, if you can describe the different types of carrying
21 capacity, please.

22 A. Absolutely. So the first type of carrying capacity is
23 physical carrying capacity which simply is the amount of
24 space available to aquaculture. This definition does not

1 consider biology, ecosystems or even humans of the system
2 and is therefore irrelevant for conversation today.

3 Another type of carrying capacity is production
4 carrying capacity, and this is the level of maximum
5 production possible at the farm site irrespective of
6 where this farm is located or ecology supporting that
7 farm.

8 Operating at production carrying capacity would
9 impact the ecosystem and also not what is in question
10 here today.

11 The next type of carrying capacity is ecological
12 carrying capacity which you heard me refer to already.
13 This is the level of farm development above which would
14 have unacceptable ecological impacts. This in particular
15 is my area of expertise and is highly relevant to the
16 testimony and conversation regarding Mr. Raso's proposal.

17 And then the fourth type of carrying capacity is
18 social carrying capacity which is the level --
19 development above which would cause unacceptable social
20 impacts. There are many different ways to describe,
21 define and quantify social carrying capacity, and it's
22 highly dependent on the interests and the values of the
23 humans of that place or that system.

24 Q. Okay. In terms of Potter Pond in Rhode Island, that is

1 one of the salt ponds that you have been discussing
2 initially in your dissertation, right?

3 A. Correct. Potter Pond is included as one of the salt
4 ponds in southern Rhode Island.

5 Q. Do you know what the ecological carrying capacity of
6 Potter Pond is?

7 A. According to my food web model, it would be 46 percent of
8 surface area of the salt pond, a magnitude higher than
9 our 5 percent rule in other words.

10 Q. Okay. I think you talked about this a little bit. I
11 don't know if there's anything else to add about your
12 involvement with the creation of the 5 percent standard.

13 A. I'll just reiterate that that 5 percent rule was
14 calculated and agreed on prior to the completion of a
15 more comprehensive food web model that calculated this
16 much higher ecological carrying capacity.

17 Q. How would you describe or define your food web, a food
18 web model?

19 A. That's a great question. So the food web model describes
20 basically who's eating who and how much in the ecosystem
21 so it's capturing transfer of energy. Humans are part of
22 this ecosystem and humans are included in terms of
23 fishing or other extractive exercise -- activities such
24 as harvesting of shellfish. And so the model looks at

1 data for all the major species present in the ecosystem,
2 and looks at how much of them is there, and there are
3 known rates of production and consumption and
4 respiration, all of our sort of bodily actions that keep
5 us moving and alive, right, from plants up to top
6 predators. You can describe how they are using the
7 energy that they are consuming from their prey and what
8 that means in terms of what is available for that next
9 link in the food chain, that next predator above them.

10 So that model captures all of those transfers of
11 energies between species. And what that allows us to do
12 is it really gives us a tool. It gives us a description
13 of the ecosystem and how it's operating, and it provides
14 us a tool by which we can then ask questions, different
15 scenarios, things that are -- what's really interesting
16 is you can ask these questions right on an ecosystem
17 scale instead of having to rely simply on experiments
18 done in small tanks, for example. It's really hard to do
19 ecosystem wide experiments. So by using modeling we can
20 do that in a quantitative way.

21 Q. Going back to the 5 percent standard that's set forth now
22 in the CRMC regulations, do you have any understanding of
23 what the initial rationale was for it?

24 A. Yes. The initial intent of calculating that 5 percent

1 rule was an ecological carrying capacity as I said
2 earlier.

3 Q. Okay. Based upon your review of Mr. Raso's application
4 and your education and experience, what will be the
5 effect of the ecological carrying capacity of Potter Pond
6 from this proposal?

7 A. Mr. Raso's proposal will not impact the ecological
8 carrying capacity. The scale at which he's proposing to
9 develop is quite small in comparison to what the pond is
10 able to support.

11 In other words, the addition of this proposal to the
12 pond, the addition of another 3 acres of -- farming will
13 still be well below the carrying capacity for this pond.

14 Q. That was the number that you indicated in your
15 dissertation was 46 percent based upon your modeling,
16 correct?

17 A. Correct. Not only my dissertation, but that work has
18 been published and peer reviewed and it is highly cited.

19 Q. In the staff report from CRMC which is Exhibit 17, it
20 indicated that if the application is proved, Potter Pond
21 would be at 3 percent of allowable aquaculture activity.
22 Do you have any reason to disagree with this conclusion?

23 A. I have no reason to disagree.

24 Q. Okay. Do you have an opinion as to whether or not that 5

1 percent standard is appropriate?

2 A. That 5 percent standard from an ecological perspective is
3 highly conservative.

4 Q. Would the addition of this farm, again, affect the
5 ecology of Potter Pond?

6 A. The addition of this farm will not harm the ecology of
7 Potter Pond.

8 Q. Okay. Dr. Byron, are you familiar with the CRMC category
9 B assent requirements?

10 A. Yes.

11 Q. And based on your experience, your testimony, your
12 experience, your review of the materials, do you have an
13 opinion as to whether the addition of this farm will or
14 will not create significant deterioration in the quality
15 of the water of Potter Pond?

16 A. I do not expect that this farm will have an impact on the
17 water quality of this pond. It certainly will not harm
18 the water quality of this pond. If anything, it may act
19 to improve the water quality and clarity of this pond.

20 Q. If you were watching yesterday, as you were, our focus
21 was -- a lot of it was on Segar Cove. Do you have an
22 opinion as to whether the addition of this farm would
23 create a significant deterioration in the quality of the
24 water of Segar Cove?

1 A. No. My answer is the same. Segar Cove and Potter Pond
2 are connected. There's water flushing between those
3 areas of the pond. My work describes the whole pond. It
4 does not look at particular bays. I don't expect that
5 there would be any harm to Segar Cove in particular.

6 Q. Okay. Do you have an opinion as to whether the proposed
7 aquaculture farm will or will not result in significant
8 impacts on the abundance and diversity of plant and
9 animal life?

10 A. That's exactly what the model was designed to look at,
11 the abundance of organisms. The carrying capacity
12 calculated, again, which is an ordered -- higher than
13 this 5 percent rule, suggests that organism abundance and
14 diversity will not be harmed at the level of farming that
15 Mr. Raso is proposing.

16 Q. Do you have an opinion, again based on your experience
17 and familiarity with the application and the area, as to
18 whether the proposed farm will or will not result in
19 significant impacts to water circulation including
20 flushing, turbidity and sedimentation?

21 A. Yes. Again, the small scale development I do not see how
22 this farm will impact flushing or sedimentation.

23 Q. And do you have an opinion as to whether under the
24 alteration or activity -- whether the alteration or

1 activity by the farm will or will not result in
2 significant impacts on erosion and/or definition
3 processes along the shore and in the tidal waters of
4 Potter Pond?

5 A. At this small scale development I don't understand how
6 the farm could impact soil erosion or deposition.

7 Q. Okay. Finally, based on your review of the application
8 and your expertise, what if any impact will this farm
9 have on Potter Pond?

10 A. Looking at other farms in this region, it's possible to
11 see localized positive benefits, actually, such as
12 enhanced water clarity, nutrient cycling, provide
13 structure and habitat by diversity. I do not anticipate
14 any pond-wide impacts or harm to the ecosystem of Potter
15 Pond with this proposal. Mr. Raso's proposal is well
16 below the 5 percent rule and below calculated ecological
17 carrying capacity for this pond.

18 MS. NOONAN: Madam Chair, if I might just have
19 a moment?

20 CHAIRWOMAN CERVENKA: Yes.

21 [PAUSE]

22 MS. NOONAN: I have no further questions for
23 Dr. Byron.

24 CHAIRWOMAN CERVENKA: Do the subcommittee

1 members have any questions for Dr. Byron? Mr. Gomez?

2 MR. GOMEZ: Yes. I think somewhere in all you
3 said you've answered my question, but it's a bad day for
4 me when I can't learn something so I have a question
5 relative to the -- is there any difference in impact if
6 the farm has a mixture of scallops and oysters, or do
7 they pretty much work together the same? This farm is
8 proposed to have a scallop farm and then have oysters,
9 and we're getting more and more of that. Their
10 interaction seems to me to be fine, but I'm not -- it's
11 not my professional expertise. If you had a comment, I
12 would be very interested.

13 THE WITNESS: It's a great question. I don't
14 expect any of my answers to change based on whether this
15 would have been all oysters or half oysters, half
16 scallops. They are all filter feeders. They all taking
17 plankton particles out of the water and improving that
18 water quality. So I don't see any -- I mean, if
19 anything, you're introducing or you're reducing the
20 polyculture. It's always -- polyculture is always better
21 for the environment, multiple species.

22 MR. GOMEZ: Same with the land. It does seem
23 to impact, in this case, the social carrying capacity and
24 that the scallops -- bottom, where the oysters would be

1 in bags near the surface. Thank you for your answer.

2 THE WITNESS: You're welcome.

3 CHAIRWOMAN CERVENKA: Any other questions from
4 the subcommittee members?

5 MS. REYNOLDS: Madam Chair, I have a question.

6 CHAIRWOMAN CERVENKA: I think we lost your
7 video, Ms. Reynolds.

8 MS. REYNOLDS: I'm not sure what that's about,
9 but I'm having some issues today.

10 I wanted ask Dr. Byron, when you talk about there's
11 no negative effect helping in the environment. This is
12 sort of localized to the farm itself. Do you factor in
13 the fact that there's going to be additional boating on
14 the pond, additional discharge from the engine and air
15 pollution to a net positive effect, or are you just
16 looking at exactly what happens in the pond itself
17 without the human impact that's part of it?

18 THE WITNESS: Boat, motor oil, gasoline, that
19 is not part of the model. Anthropogenic pollution was
20 not part of the food web model so that's not considered
21 in any of these calculations.

22 MS. REYNOLDS: Okay, thank you.

23 THE WITNESS: You're welcome.

24 CHAIRWOMAN CERVENKA: Mr. Murray, go ahead.

1 MR. MURRAY: Thank you. You mentioned social
2 carrying capacity, and I guess just in passing that would
3 seem to me to be a much more difficult carrying capacity
4 to quantify versus the more science-based carrying
5 capacity of the shellfish and ecosystem. And a lot of
6 the conversation yesterday, maybe it was geared towards
7 social carrying capacity versus ecological carrying
8 capacity.

9 THE WITNESS: Is there a question?

10 MR. MURRAY: Well, you're not testifying to
11 social carrying capacity, correct?

12 THE WITNESS: No, I'm not testifying as to
13 social carrying capacity, but I'm happy to share a few
14 thoughts on that if you want.

15 MR. MURRAY: Sure. You brought it up as one of
16 the -- among carrying capacity features that social is a
17 particular aspect of it.

18 THE WITNESS: It is.

19 MR. MURRAY: And that was it. If you want to
20 elaborate, then please do.

21 THE WITNESS: Well, I --

22 MR. WAGNER: I object to this witness giving
23 any testimony about social carrying cost. Despite the
24 fact that we all want to hear about it, this witness is

1 not qualified to give that. So I ask with respect to the
2 Board, I ask she be limited to her testimony about her
3 expertise.

4 MS. NOONAN: Actually, I would disagree that
5 she is not qualified to speak about it. I think she is
6 qualified to speak about it. What she testified, and she
7 testified about the four types of them, so she is aware
8 of them. We focused her testimony on ecological, but she
9 is certainly familiar and able to testify.

10 MR. WAGNER: No foundation for any testimony
11 about social carrying cost.

12 MS. NOONAN: That wasn't your first objection,
13 Mr. Wagner.

14 MR. DESISTO: I was about to ask that question,
15 Madam Chair.

16 Is the question based on foundation?

17 MR. WAGNER: Yes.

18 MR. DESISTO: That's a different objection, but
19 it's one that is cured by laying the foundation.

20 MR. WAGNER: If she can lay the foundation.

21 MR. DESISTO: If she can, but Beth hasn't had a
22 chance to do that yet, so --

23 MR. WAGNER: I thought the testimony was over.

24 MR. DESISTO: Well, here is the way I look at

1 T. There's a panel, and one of the members of the panel
2 asked a question. And I think that that panel member
3 should be allowed to have an answer to that question. If
4 the objection is a foundation, then I say let Ms. Noonan
5 lay that foundation so the member, who is going to be
6 making a vote on this, can be satisfied for what he did.

7 I'm going to make this statement and make a
8 recommendation to the Board. Because this is an
9 administrative panel, I don't want it to be that
10 information that Mr. Murray is seeking is limited because
11 we're going on legal technicalities. It's different than
12 a question from legal counsel. This is actually a member
13 of the panel who is going to have to vote on this who has
14 a question based upon testimony that Ms. Byron has
15 already gave. I think he's entitled to an answer.

16 So if the objection is no foundation, that's easily
17 cured and we can move along with this, but I do think
18 Mr. Murray should get an answer to the question that he
19 interposed.

20 MS. NOONAN: Would you like me to go or just
21 have her answer the question?

22 MR. DESISTO: Do you mind laying the
23 foundation?

24 MS. NOONAN: No problem at all.

1 Q. Mr. Byron, Mr. Murray who is a member of this panel asked
2 you a question about social capacity. You heard that
3 question, correct?

4 A. I did.

5 Q. You previously in your testimony defined that term when
6 you testified, right?

7 A. I did define social capacity, yes.

8 Q. Based on your experience and background, have you worked
9 with the issues of social capacity?

10 A. I have, actually. I also published in the area of
11 social carrying capacity. I worked very closely with
12 social scientists, and together, and an ecologist and
13 social scientist, have published multiple times on the
14 topic of social carrying capacity.

15 MS. NOONAN: I tender the witness, and I think
16 she's ready to answer the question, if you remember what
17 it is.

18 THE WITNESS: I believe Mr. Murray was curious
19 to hear me share some of my thoughts about social
20 carrying capacity and how they relate to Mr. Raso's
21 proposal and testimony. Am I correct?

22 MR. MURRAY: Yes.

23 MS. NOONAN: I think he's saying yes. I see
24 the head nodding. Mute is on. Go ahead, Dr. Byron.

1 Thank you.

2 THE WITNESS: I agree with Mr. Murray's
3 statement. When we have a situation such as this,
4 there's multiple users of an area of these salt ponds.
5 They all have different interests and need different
6 parts of that system for different uses. One way to
7 resolve that would be to examine the social carrying
8 capacity.

9 I'd like to mention some of the work done by
10 Dr. Tracy Dalton at URI who attempted to capture
11 quantitatively a measure of social carrying capacity for
12 Rhode Island waters. Her method was to present
13 photographs to a variety of different users, stakeholders
14 of these systems. In the photographs they showed
15 different amounts and configurations of buoys and
16 aquaculture gear in the water. And she asked respondents
17 to rate on a Likert scale, on a scale of 1 to 5, for
18 example, how accepting they were of these different
19 aquaculture configurations and levels of development.

20 What she found from her work was, I think much to
21 her surprise and my surprise, that there was actually
22 higher level of acceptance for aquaculture than we were
23 expecting to find. Again, for multiple different users.

24 So that's just an example of one way to capture a

1 measure of carrying capacity in one area of social
2 carrying capacity. It really -- you could take a market
3 analysis and look at the economies. You could really
4 examine it from multiple different disciplines and
5 perspectives in the social sciences.

6 If I may just expound a little bit more and perhaps
7 present a very contrasting situation, maybe explain the
8 situation here.

9 If we were to examine social carrying capacity in
10 the northeast of U.S., and then we would compare that to
11 somewhere in the other half of this world, say China,
12 there's very different human values that play there.
13 China is very interested in food security and food
14 production. We're very privileged on the East Coast of
15 the U.S. to have a -- water shed and with different
16 values there. It's not just about food production. It's
17 also about recreation and other things. So I'd expect
18 that the social carrying capacity would be much different
19 in these two different geographies based on human values
20 and human needs alone. All of this is to say it is very
21 complicated, and it very much depends on your question at
22 hand and how you want to address it.

23 But I'll end by going back to the 5 percent rule
24 that's on the -- was intended when it was first

1 calculated to be was intended to be an ecological
2 carrying capacity. Whether over time that has shifted to
3 a social carrying capacity I think is a matter of debate.

4 MR. MURRAY: Thank you.

5 MS. NOONAN: Thank you, Dr. Byron.

6 CHAIRWOMAN CERVENKA: Dr. Byron, I have a
7 couple questions for you. Continuing on the social
8 carrying capacity, I'm just trying to relate it, if it
9 relates to the criteria that you look at for Category B
10 assents.

11 You talked about the ecological impact and that's
12 definitely covered. One other criteria is to demonstrate
13 that measures have been taken to minimize adverse scenic
14 impact. Is scenic impact part of that social carrying
15 capacity? Is that what you're talking about in part?

16 THE WITNESS: It could be, yes. That certainly
17 is the angle that Tracy Dalton took, was that fusion.

18 CHAIRWOMAN CERVENKA: It's subjective depending
19 on the area that you're looking at?

20 THE WITNESS: Right, the people and the place,
21 yes.

22 CHAIRWOMAN CERVENKA: Okay. Question for you
23 on ecological impact. I know that your opinion relates
24 to the impact on the pond as a whole, so Potter Pond.

1 Counsel talked a little bit about the cove, Segar Cove,
2 and you said you considered them kind of one in the same.
3 There's flushing between the two. Is the ecology in the
4 ecosystem the same throughout the pond including the
5 cove? Does the cove have a separate ecological system?
6 How do you view that?

7 THE WITNESS: I would not be comfortable trying
8 to chop up Potter Pond which is already a small water
9 body into smaller sections to try to describe the
10 ecology. I really think we need to look at a basin wide
11 scale here, and not in this conversation.

12 CHAIRWOMAN CERVENKA: Thank you. Those are all
13 the questions that I have. I think we, unless we have
14 others from subcommittee members, I will turn it over to
15 counsel for the objectors maybe starting with you,
16 Mr. Capizzo?

17 MR. CAPIZZO: Thank you, Madam Chair.

18 CROSS-EXAMINATION BY MR. CAPIZZO

19 Q. So Dr. Byron, basically that was a very good presentation
20 today, but basically you are saying that ecologically
21 this is not going to impact the pond, right? It's going
22 to work --

23 A. It's going to work. There will be no harm to the ecology
24 of the pond.

1 Q. I just want to make sure I understand this 5 percent
2 rule. I believe you testified that that goes to the
3 carrying capacity in each pond which goes to the maximum
4 amount of shellfish aquaculture that can occur in a given
5 water body without unacceptable ecological impact to that
6 body of water; is that right?

7 A. Yes.

8 Q. Okay. So that 5 percent rule only applies to ecological
9 impact. I think you said it was debatable as to whether
10 that applies to the social impact; is that correct?

11 A. Right. The intention of calculating that 5 percent rule
12 was to capture the ecological carrying capacity.

13 Q. Not the social?

14 A. Not the social.

15 Q. When we're talking about social impact, I just want to
16 make clear, those who use the cove for recreation,
17 correct?

18 A. Recreationist would be one user of the pond. There's
19 multiple users.

20 Q. Okay. What are most of the users for Segar Cove?

21 MS. NOONAN: I'm going to object. I don't know
22 how far we want to go down on individuals. And she also
23 indicated that it's Potter Pond not just Segar Cove. She
24 looks at it on a basin wide analysis.

1 Q. I'll rephrase the question. What types of recreational
2 activities take place on Potter Pond, if you know?

3 A. I'm sorry. That's outside my -- that's not why I'm here
4 to testify today. It's outside my expertise.

5 Q. But you were testifying about the social carrying
6 capacity, and we went down that road. You just testified
7 about the social impact would be impacted by recreational
8 activity. Correct?

9 MS. NOONAN: Wait. Can I stop one moment? Her
10 testimony went to ecological carrying capacity. She did
11 respond to a question from Mr. Murray on social carrying
12 capacity, which I think was proper to respond to a
13 committee member's question, and she has that expertise.
14 I don't want to go down that path. She is not a
15 sociologist by training, I believe. Correct me,
16 Dr. Byron.

17 MR. DESISTO: Madam Chair, actually on this I
18 think Mr. Capizzo's question is appropriate. The witness
19 might not be able to answer, but he has a specific
20 question, and I think it should be answered here.

21 CHAIRWOMAN CERVENKA: Yes. I think we went
22 down the road, so to speak, so, you know, to the extent
23 that Dr. Byron can answer it, I think it's okay.

24 A. Mr. Capizzo, can you please repeat your question?

1 Q. Sure. What types of recreation impacts social capacity
2 on Potter Pond if you know?

3 A. What types of recreation specifically impacts social --

4 Q. Social carrying capacity.

5 A. Social carrying capacity?

6 Q. Right.

7 A. And you want that answer specific to Potter Pond or more
8 in general?

9 Q. If you're familiar with Potter Pond and you can testify
10 to that, great. If not, then just give me what
11 recreational impact -- what types of recreation have an
12 impact on social carrying capacity.

13 A. Again, to answer what is impacting social carrying
14 capacity really depends on what your matrix are and what
15 perspective you want to take with that but --

16 Q. You testified that --

17 A. -- I can --

18 MS. NOONAN: Can she finish her answer,
19 Christian?

20 A. I can speculate as to types that could potentially. They
21 would not be specific to Potter Pond, and so I think
22 anybody who is on a water body, regardless of whether
23 it's recreation or not, is a user of that water body and
24 therefore included in a consideration or could be

1 included in a consideration for social carrying capacity.
2 I do not recreate on Potter Pond and cannot tell you
3 exactly what types of recreation occur on Potter Pond.

4 Q. Okay. Would you agree with the statement that social
5 carrying capacity really determines how much aquaculture
6 we can put in a location?

7 A. I think that's one factor to determine, to help
8 determine, how much aquaculture can be in an area. And
9 to my knowledge that is not how the regulations and rules
10 are written in the State of Rhode Island.

11 Q. Would you agree with this statement that it's far less
12 than ecological or the production carrying capacity,
13 that's social carrying capacity as it relates to
14 location?

15 A. Mr. Capizzo, that's a great question. That is one that I
16 am very interested in exploring in academic setting, and
17 it is highly dependent and relevant on the geography.
18 It's my thesis in the northeast of U.S. that, yes, often
19 social carrying capacity is the most limiting below
20 ecological carrying capacity which would not be the case
21 in a place like China like I just described.

22 MR. CAPIZZO: Can I have one moment, Madam
23 Chair?

24 CHAIRWOMAN CERVENKA: Yes.

1 MR. CAPIZZO: Thank you.

2 [PAUSE]

3 MR. CAPIZZO: I don't have any other questions.
4 Thank you, Dr. Byron.

5 THE WITNESS: You're welcome.

6 CHAIRWOMAN CERVENKA: Thank you, Mr. Capizzo.
7 Mr. Wagner?

8 MR. WAGNER: Good afternoon, Dr. Byron. I just
9 have maybe three or four questions.

10 CROSS-EXAMINATION BY MR. WAGNER

11 Q. You testified that you reviewed an opposition package in
12 order to prepare for your testimony, right?

13 A. I did.

14 Q. Did that include the 147 letters opposing the project?

15 A. I did not read 147 letters.

16 Q. Did you read some of the opposition letters?

17 A. I'm aware of some of the letters of opposition.

18 Q. What was the opposition package you referred to? I'm
19 just trying to determine what that was that you reviewed.

20 A. I'm sorry. I'm really at a loss at how else to describe
21 it. May I ask Beth Noonan help me to help describe the
22 opposition package that --

23 MS. NOONAN: I'll talk to you later. Go ahead.

24 Q. All right. I just have one question about the social

1 carrying capacity. Doesn't the social carrying capacity
2 depend on whether we're talking about bottom culture or
3 floating gear? Doesn't that make a big difference?

4 A. If one of the things being considered in social carrying
5 capacity is the view shed, then what is visible and what
6 is not visible would make a difference. So I'm assuming
7 that's where you're trying to go with this question of
8 submerge versus floating gear.

9 Q. Well, also some aquaculture doesn't obstruct other users
10 at all, right?

11 A. It depends on the technique. You're right.

12 MR. WAGNER: I have no other questions. Thank
13 you.

14 MS. NOONAN: May I go back?

15 CHAIRWOMAN CERVENKA: Yes, on redirect.

16 MS. NOONAN: Thank you.

17 REDIRECT EXAMINATION BY MS. NOONAN

18 Q. Dr. Byron, just a few questions. Ms. Reynolds had asked
19 you about whether or not things like air pollution,
20 gasoline, and oil from recreational vehicles, motor oil,
21 were factored into your model. Can you just explain why
22 they were not?

23 A. The different type of model and the food web model was
24 very focused on the species, the animals, the algae,

1 other organisms, living organisms in the pond. It was
2 really intended to capture, like I said, the energy flows
3 and predator relationships. One model does not do
4 everything. That wouldn't require a different tool to
5 look at pollution and those impacts. And for the purpose
6 of this study, I should just maybe back up.

7 For any study, you do the best that you can to match
8 the tool for the question. And so in this case we
9 determined that the food web model was the best tool for
10 this question. Not a pollution model.

11 Q. As to the questions that we got into about the social
12 carrying capacity, in your experience with it, do you
13 believe or do you have an understanding of whether or not
14 the science behind social carrying capacity is settled?

15 A. It's very much not settled. If anything, it's of the
16 four types of carrying capacity for aquaculture I
17 defined, the social carrying capacity is probably least
18 well understood, most flexible, and incorporates the most
19 diversity and disciplines and perspectives. So it's
20 really -- there's no one method or one answer here. It's
21 highly subjective to the question at hand, geography, and
22 the values of the humans of that system.

23 Q. Those questions that Mr. Wagner asked you about the
24 materials you reviewed, is it fair to say that those were

1 documents from Mr. Capizzo on behalf of his clients?

2 Does that refresh your recollection?

3 A. Yes, that was part of the package.

4 Q. And finally, again in terms of numbers that we've been
5 talking about, the 5 percent rule, that in your opinion I
6 think you told us is well below the 46 percent ecological
7 carrying capacity that you had calculated; is that
8 correct?

9 A. Correct.

10 MS. NOONAN: Nothing further, Madam Chair.

11 CHAIRWOMAN CERVENKA: Thank you. Okay. I
12 think we're going to move on then to your fourth witness.
13 And after we finish the fourth witness with everyone's
14 questions and your redirect, then I'd like to take a
15 break.

16 MS. NOONAN: Sure. Dr. Byron, thank you very
17 much.

18 If you would pull up Dr. Rice now, and I'm going to
19 tender him over to Leslie Parker.

20 MS. PARKER: Mr. Moore, while you're pulling up
21 Dr. Rice, if you could also pull up Exhibit 2. I know
22 there are multiple copies, so it would be the Michael
23 Rice CV.

24 Dr. Rice, can you turn your video on? Are you

1 there?

2 THE WITNESS: I'm here.

3 MS. PARKER: We can go ahead and swear in the
4 witness.

5 MICHAEL RICE,

6 Being duly sworn testifies as follows:

7 Court reporter: Please state your name for the
8 record.

9 THE WITNESS: Michael Rice.

10 MS. PARKER: Mr. Moore, we can share that
11 screen again when you're ready. Thank you.

12 DIRECT EXAMINATION BY MS. PARKER

13 Q. Dr. Rice, how are you today?

14 A. Quite well.

15 Q. Dr. Rice, could you give us an overview of your
16 educational background?

17 A. Okay, yes. I hold degrees from University of San
18 Francisco, a bachelor's in biology, and a master's and
19 Ph.D degrees from the University of California.

20 Q. And Dr. Rice, Applicant's Exhibit 2 is on the screen. Is
21 that a copy of your CV?

22 [EXHIBIT DISPLAYED]

23 A. Yes, this is. And in summary it covers my areas of
24 teaching, research, extension and professional

1 engagement. Some of the key areas that would be relevant
2 for these hearings is I teach the shellfish aquaculture
3 courses at the University of Rhode Island for
4 undergraduates. I've had various graduate students
5 supervising -- major professor and on the committees.
6 These include Perry Raso himself, Dr. Byron on her
7 committee, and a major professor Dr. Rheault who will be
8 following.

9 I've conducted research, some of the most relevant
10 research to these proceedings. Dr. Byron mentioned
11 studies in tanks. Some of the carrying capacity
12 estimates based by tank studies were done by my students,
13 again, papers that I have co-authored. And those show
14 some results that are similar to Dr. Byron's modeling
15 studies.

16 The second is in aquaculture extension, both locally
17 and internationally. I've received national awards from
18 the Republic of the Philippines and Indonesia for my work
19 there and here in Rhode Island. Also [Zoom interruption]
20 -- to this is that I was on the drafting team for the
21 current aquaculture legislation that set forth CRMC as
22 the lead agency for aquaculture permitting under
23 Chapter 2010.

24 These people were the major authors, former

1 representative Eileen Norton and legislative counsel
2 Attorney Amy Casega and myself. So we were the major
3 people, major reasons of the current [Zoom interruption]
4 of the laws. So this is sort of the overview

5 Q. Thank you, Dr. Rice. Could you give us -- what is your
6 current position?

7 A. My current position is Professor of Fisheries and
8 Aquaculture at the University of Rhode Island.

9 MS. PARKER: And Madam Chair, I would ask that
10 Dr. Rice be qualified as an expert on aquaculture as a
11 Professor of Fisheries and Aquaculture.

12 CHAIRWOMAN CERVENKA: Be qualified as a
13 professor of fisheries and aquaculture or an expert in --

14 MS. PARKER: Aquaculture.

15 CHAIRWOMAN CERVENKA: Okay. So I'll take up a
16 motion to so qualify Dr. Rice. Any subcommittee
17 member -- Mr. Gomez?

18 MR. GOMEZ: Madam Chair, I will make the motion
19 to qualify Dr. Rice as an expert witness.

20 CHAIRWOMAN CERVENKA: In aquaculture?

21 MR. GOMEZ: I'm sorry, in aquaculture, yes.

22 MS. REYNOLDS: I'll second that.

23 MR. DESISTO: Madam Chair, before the vote it
24 may be appropriate to see if any of the lawyers object to

1 Dr. Rice being qualified as an expert in aquaculture.

2 MR. WAGNER: No objection here.

3 MR. CAPIZZO: No objection.

4 CHAIRWOMAN CERVENKA: Thank you. Back to
5 Mr. Gomez's motion. Is there a second?

6 MS. REYNOLDS: Reynolds will second that.

7 CHAIRWOMAN CERVENKA: Thank you, Ms. Reynolds.
8 Any discussion?

9 [NO RESPONSE]

10 CHAIRWOMAN CERVENKA: I'll do a roll call. Ray
11 Coia?

12 VICE CHAIR COIA: Ray Coia votes aye.

13 CHAIRWOMAN CERVENKA: Patricia Reynolds?

14 MS. REYNOLDS: Reynolds votes aye.

15 CHAIRWOMAN CERVENKA: Don Gomez?

16 MR. GOMEZ: Don Gomez aye.

17 CHAIRWOMAN CERVENKA: Vin Murray?

18 MR. MURRAY: Vin Murray aye.

19 CHAIRWOMAN CERVENKA: And myself Jennifer
20 Cervenka aye. The motion to qualify carries.

21 MS. PARKER: Madam Chair, I would ask that
22 Dr. Rice's CV, Exhibit 2, be entered as full.

23 CHAIRWOMAN CERVENKA: Yes, that can be admitted
24 in full unless there's objection.

1 MR. CAPIZZO: No objection.

2 MR. WAGNER: No objection.

3 CHAIRWOMAN CERVENKA: Okay.

4 [EXHIBIT #2 MARKED FULL]

5 Q. Dr. Rice, you were retained by Perry Raso as an expert
6 in this matter; is that correct?

7 A. That is correct.

8 Q. Do you know Mr. Raso?

9 A. Yes, I do. I've known him for a good long while going
10 back to the early 2000s. He first began studying
11 shellfish aquaculture in the introductory aquaculture
12 class here at the University of Rhode Island.

13 Q. And Dr. Rice, do you serve on the Marine Fisheries
14 Council?

15 A. I do. I am a member of the Fisheries Council. According
16 to Section 20-3-1, which specifies the membership of the
17 Marine Fisheries Council, is that there are two positions
18 that are reserved for members of the scientific and
19 marine sciences to help guide the Council.

20 Q. And did you consider Mr. Raso's application as part of
21 that Council?

22 A. Yes, we did, and it was very unusual that we did it as a
23 full Council. Our normal procedures of the Marine
24 Fisheries Council is that the subcommittee on shellfish

1 considers all of the aquaculture applications unless it
2 gets contentious, and any member of the subcommittee can
3 petition that it goes to the full Council. So the only
4 reason I got to see it as a Fisheries Council member was
5 because of the contentious nature and it being raised to
6 the full Council.

7 Q. Did you have any idea at that time that you would be
8 providing testimony for Mr. Raso on the application?

9 A. No, I did not. In fact, I was rather surprised that it
10 even came to the Marine Fisheries Council, and I'm sort
11 of surprised that we're here again and that this sort of
12 thing has come up in the past about every ten years or
13 so, but it's now back on cycle.

14 Q. Did Mr. Raso discuss his application with you before the
15 Marine Fisheries Council meeting?

16 A. No. In fact, he never discussed this up until this
17 period for this hearing for the main Coastal Council.

18 Q. Other than your discussions at the Marine Fisheries
19 Council before you were engaged as an expert, did you
20 have any other knowledge of this application?

21 A. No. Quite frankly, I didn't know that it even existed
22 before it came to the Marine Fisheries Council.

23 Q. Did your involvement at the Marine Fisheries Council
24 impact your testimony here today in any way?

1 A. No. My role on the Marine Fisheries Council is largely
2 scientific. I am not sort of representing recreational
3 commercial fisheries. It's largely the fisheries
4 resources that I'm speaking to, and that will not affect
5 any testimony on these proceedings.

6 Q. Dr. Rice, are you familiar with the South Kingstown
7 Conservation Commission?

8 A. Yes, I am. I am very familiar with the South Kingstown
9 Conservation Commission. I served for a total of
10 18 years on the South Kingstown Conservation Commission
11 and 10 years chairing that commission. Largely, as
12 authorized under General Laws of Rhode Island,
13 Section 45-35-1, which is the authorizing legislation for
14 the conservation councils, they are largely advisory to
15 the town boards and the like. Much of the credibility of
16 the Conservation Commission rests in sort of the quality
17 and reputation that they built up.

18 I'm very proud that during my tenure on the
19 Conservation Commission in South Kingstown there were
20 three major initiatives adopted by the town. One was
21 septic system ordinances particularly in the pond areas
22 to protect the water quality. Number 2, a major tree
23 ordinance; and Number 3, the setting up and discussion of
24 the aquaculture in South Kingstown waters of which

1 Dr. Rheault, who will follow me, had one of the -- had
2 the first one in these local waters. So during my time
3 on the Commission these major issues came up.

4 Q. And in your experience does the Conservation Commission
5 give notice to an aquaculture applicant of its meeting on
6 the current application?

7 A. Yes. This is very much the standard procedures at least
8 when I was there. This would be in keeping with sort of
9 good practices, but quite frankly, it would be the type
10 of thing that would be required by the Administrative
11 Procedures Act.

12 Q. And do you know whether Mr. Raso received any notice from
13 the South Kingstown Conservation Commission on the
14 consideration of his application?

15 A. I would believe that would be hearsay because I do not
16 know directly, but myself, Perry Raso answered that
17 question yesterday.

18 Q. Okay. Did you hear Mr. Raso's answer yesterday?

19 A. Yes, I did, and his answer was that he was not noticed.

20 Q. Is the lack of notice to an applicant regarding the South
21 Kingstown Conservation Commissions consideration of their
22 application standard procedure?

23 A. That is not standard procedure as far as I know. It may
24 be now, but certainly was not when I was chair of the

1 Commission.

2 Q. Dr. Rice, are you familiar with Mr. Raso's application?

3 A. Yes, I am. I have read his application and I have read
4 the supplements in terms of the initial applied for lease
5 area and the modified ones as well.

6 Q. Are you familiar with the location of the proposed
7 aquaculture farm?

8 A. I am very familiar, yes.

9 Q. Have you visited the location where the proposed
10 aquaculture farm will be?

11 A. Yes, I have. We took out the little skiff. I didn't get
12 the big boat.

13 Q. Have you been present for the -- were you present for the
14 testimony yesterday?

15 A. Yes, I was, very much like Dr. Byron, from beginning to
16 end.

17 Q. Have you been present today for Dr. Byron's testimony?

18 A. I wouldn't miss it. Dr. Byron is a star.

19 Q. Did you have an opportunity to review the staff report
20 that is Exhibit 17 to the applicant?

21 A. Yes, I have, the staff report primarily authored by
22 Mr. Beutel.

23 Q. Did you review any other materials in preparation for
24 your testimony today?

1 A. Yes. There was several things. I got on the Rhode
2 Island General Assembly website to check out the various
3 authorizing statutes that might possibly come up in my
4 testimony, and I reviewed the letters of objections. I
5 reviewed the packet of the ESS Group, and some of the
6 potential court cases that might come up in terms of
7 discussion.

8 Q. And Dr. Rice, are you familiar with the history of
9 aquaculture in Rhode Island?

10 A. Yes, I am. On the CRMC website the aquaculture
11 coordinator maintains a website, and on that website in
12 the 2006 annual report I published a detailed history of
13 shellfish aquaculture going back to prior to the 1844
14 initial aquaculture or oyster act and reviewing sort of
15 the history of aquaculture within Rhode Island. So that
16 has a lot of major review of court cases and legislation.

17 Q. Based on your familiarity with the history of aquaculture
18 in Rhode Island, how has Rhode Island balanced public
19 access to the water in aquaculture?

20 A. Okay. So, let's see. The responsibilities of the CRMC
21 have been set forth in Chapter 2010 and set as the lead
22 agency. In fact, the office of the aquaculture
23 coordinator, Mr. Beutel and now Mr. Goetsch, is in fact
24 one of the statutory state positions within the state

1 government and is set forth with responsibility in terms
2 of that report to take and balance the needs of the
3 people of the State of Rhode Island in relationship to
4 their coastal resources. This is very much in keeping
5 with the supreme court case that I mentioned, Martin v.
6 Lessier Bordell, Supreme Court, -- courts in 1842. And
7 this is in terms of the state has responsibility to the
8 public trust. The procedures and setup for aquaculture
9 in Chapter 2010 follow this, and the procedure set up by
10 the coastal marine, coastal council including this Zoom
11 hearing, is all part of this balancing act and begins
12 with the preliminary determination that was put in as
13 part of the legislation, the legislation that enabled
14 this. So this is completely considering and balancing
15 the needs of the public and aquaculture.

16 Q. Dr. Rice, are you familiar with CRMC Category B
17 requirements?

18 A. Yes.

19 Q. And based on your experience and the review of materials
20 in this case, do you have an opinion as to whether or not
21 Mr. Raso has demonstrated a need for the proposed oyster
22 and scallop farm?

23 A. Yes, he has. In conformity to sort of agreed upon use,
24 which we've talked about this so-called 5 percent, this

1 is sort of an agreed upon sort of agreement, and that
2 came about during Dr. Byron's Ph.D dissertation time in
3 which there was a great deal of controversy and the
4 fishing community and members that were of the public
5 that were agreeing with this found that at the time to be
6 quite reasonable. Now it could come up for
7 renegotiation, reconsideration or something of that sort.
8 But that's where we are right now.

9 Q. Dr. Rice, based on your experience and review of the
10 materials, do you have an opinion as to whether shellfish
11 aquaculture, the shellfish aquaculture proposed by
12 Mr. Raso, will have an effect on erosion or will have an
13 effect upon erosion on the shore?

14 A. Yes, I do. I have an opinion on that. Given the
15 location and the like, there should be no major effect on
16 changing of currents or anything of the sort that might
17 increase scouring, erosion, turbidity. There's no --
18 sort of nothing is going on in the intertidal zone that
19 would change anything. There's no reason to believe that
20 there would be any erosion or turbidity increase.

21 In fact, the fact that these shellfish, both
22 scallops and oysters, are filter feeders and they are
23 removing Phytoplankton from the water, the converse is
24 probably more close to the truth that it is more likely

1 to improve the water quality.

2 Q. Dr. Rice, based on your experience and review of the
3 materials, do you have an opinion as to whether the
4 aquaculture farm will result in significant impacts on
5 plant and animal diversity and abundance?

6 A. Okay. This largely goes to the testimony of Dr. Byron.
7 Her work on ecology systems modeling is recognized
8 globally as gold standard in this area, and her
9 conclusions were no.

10 My tank studies, which she mentioned, were basically
11 set up so that the amount of oysters in the tanks in
12 terms of the biomass were modeling what the biomassive
13 oysters were at the turn of the 20th Century. And at
14 that level, which is something like 500 times the level
15 that they are now in Rhode Island waters, were not at
16 carrying capacity yet. So Mr. Raso's little 3 acres is
17 not going to affect things very much.

18 Q. Previously we discussed the balance between aquaculture
19 and public access, right?

20 A. Yes.

21 Q. Are you familiar with the arguments that are set forth by
22 the objectors in their filings?

23 A. Yes, I am. I believe that most of the objections could
24 be dealt with largely by design aspects. A lot of the

1 sort of citing discussions from yesterday could be taken
2 into account, and I believe that most of the objections
3 could be dealt with.

4 Q. So do you have an opinion based on your experience and
5 review of the materials as to whether the proposed farm
6 would result in significant conflicts with water
7 dependent uses and activities such as recreational
8 boating, fish, swimming and navigation?

9 MR. WAGNER: Objection.

10 A. Was there an objection?

11 MR. WAGNER: I think it's beyond the scope of
12 his expertise and there's no foundation for him to give
13 an opinion on that.

14 MS. PARKER: I would disagree. He testified
15 about the balance, his experience with the balance of
16 public access to the water and aquaculture. And he
17 testified that he was one of the drafters of the
18 legislation and is familiar with the history in Rhode
19 Island of balancing public access to the water and
20 aquaculture.

21 MR. DESISTO: Madam Chair, from what I heard
22 and based on Dr. Rice's testimony, I think he's able to
23 answer the question without further foundational
24 questions.

1 CHAIRWOMAN CERVENKA: I agree with that.

2 MR. DESISTO: Proceed.

3 A. Leslie, I forgot the question.

4 Q. No problem. Dr. Rice, do you have an opinion based on
5 your experience and review of the materials and review of
6 the site as to whether the proposed farm would result in
7 significant conflicts with water dependent uses and
8 activities such as recreational activities, including
9 boating, fishing, swimming and navigation?

10 MR. WAGNER: Objection for the record.

11 A. Well, it has to do with sort of the semantics of the word
12 "significant." I take it that this use of the word
13 significant would be a large, humongous sort of
14 outlandish, and my answer to that is absolutely not.

15 The applicant Perry Raso has gone to great pains to
16 be as accommodating as he possibly can, and this is sort
17 of the evidence by starting off with one configuration of
18 the firm trying to work with some objectors changing it
19 and coming up with the various polygons, and as being as
20 accommodating as possible. I believe this body, sort of
21 given all of the data presented here, could essentially
22 come up with a solution to satisfy most of people and
23 interests in the pond.

24 Q. Dr. Rice, based on your review of the application, the

1 site, and your expertise, do you believe this application
2 provides the balance of aquaculture and public access
3 sought by CRMC as set forth in that legislation?

4 MR. WAGNER: Objection for the record.

5 A. I do.

6 MS. PARKER: I have no further questions.

7 CHAIRWOMAN CERVENKA: Any questions from
8 subcommittee members for Dr. Rice?

9 [NO RESPONSE]

10 CHAIRWOMAN CERVENKA: I don't have any. I
11 don't think anyone else has questions so we'll turn it
12 over to Mr. Capizzo.

13 MR. CAPIZZO: Madam Chair, may I have a moment
14 to get my notes? I'll defer to Mr. Wagner and you can
15 come back to me.

16 CHAIRWOMAN CERVENKA: Mr. Wagner, would you
17 like to go?

18 MR. WAGNER: I might have a couple of
19 questions.

20 CROSS-EXAMINATION BY MR. WAGNER

21 Q. Doctor, you testified that in your opinion Mr. Raso
22 satisfies the first requirement of a Category B assent,
23 the requirement that he demonstrated need for the
24 proposal based upon satisfying the 5 percent rule; is

1 that correct?

2 A. Well, the 5 percent rule is sort of a guideline that has
3 been adopted by CRMC for these water bodies and his
4 application is not exceeding that. So expanding his
5 operations to include scallops, scallops need deeper
6 water. The site is deeper than where his current sites
7 are and more appropriate for the scallops. So if he
8 wants to expand operations, this makes perfect sense to
9 me in terms of a need.

10 Q. Does satisfying the 5 percent rule demonstrate a need for
11 the proposal? We agree that he satisfies the 5 percent
12 rule. I'm trying to understand how your opinion could be
13 that he demonstrates need for the proposal based upon
14 satisfying the 5 percent rule.

15 MS. PARKER: I'm going to object. He gave his
16 opinion and the basis for it. I think it's asked and
17 answered.

18 A. Yes. I mean, he needs an area. He needs an area for
19 deeper water to basically further his business interests.
20 I mean, that's about as simple as it gets.

21 Q. A need for deeper water has nothing to do with the 5
22 percent rule, right?

23 A. No, and it has nothing to do with the 5 percent rule.
24 The 5 percent rule is a guideline in terms of total water

1 surface area in the water. What you're asking and what
2 the assent -- sort of the assent is, you know, goes to
3 sort of need for it. I mean, it isn't capricious and
4 arbitrary. He has a business need to basically expand
5 his species under cultivation and that requires deeper
6 waters.

7 Q. Well, how do you know he has a business need to expand?
8 How is that related to the 5 percent rule? I just don't
9 understand. Maybe I'm misunderstanding your testimony.

10 MS. PARKER: Objection again. I think that was
11 three questions in one, so if we can ask one question at
12 a time.

13 CHAIRWOMAN CERVENKA: As I understand it, the
14 question is whether or not this expert believes that the
15 need criterion of a Category B assent is satisfied by the
16 5 percent rule. He's asking how you tie those two
17 together. I think that's a fair question. Maybe they
18 are not tied together.

19 A. They are not tied together. The 5 percent, the 5 percent
20 rule is basically a guideline that was set forth and
21 adopted by CRMC some 11 or 12 years ago as a means to
22 provide some sort of criterion or yardstick to measure
23 aquaculture expansion up to. Basically in terms of need,
24 that's a different issue.

1 MR. DESISTO: Well, Madam Chair, if I may, it
2 seems to me Mr. Wagner's real question, and I'm not
3 putting words in his mouth, is whether or not there's
4 been a demonstration that the need is on an economic
5 basis and that is separate from the 5 percent rule.

6 Is that correct, Mr. Wagner?

7 MR. WAGNER: Yes, that was part of my question.

8 MR. DESISTO: Okay. So the question has been
9 segmented out. I do think that's an appropriate question
10 to ask on cross-examination, Madam Chair.

11 CHAIRWOMAN CERVENKA: Yeah, I'm fine with the
12 line of questions. I think -- I don't know if they are
13 understanding one another, but I'm fine with the line of
14 questions.

15 A. Yeah, I guess I'm not following. You know, because --

16 Q. I'm sorry, Doctor. Maybe I am misunderstanding your
17 testimony.

18 In your opinion, Mr. Raso has satisfied the first
19 requirement of a Category B assent which is to
20 demonstrate need for the proposal, proposed activity or
21 alteration. I thought you testified he satisfied that
22 because he satisfied the 5 percent rule. I thought that
23 was your testimony. If it wasn't your testimony, I
24 apologize.

1 What I'd like to ask you then is, I think you
2 testified that he did satisfy that first criterion.
3 Could you tell me every basis you have for that opinion
4 that he satisfied the first criterion?

5 A. Yes, certainly. I mean, it's about as simple as can be.
6 You're right on the first level, the area that he's
7 applying for, and if granted, were far below the 5
8 percent.

9 Q. Are there any other reasons that you think he satisfied
10 the criteria of need, Doctor?

11 A. No.

12 Q. Thank you. I think you also testified that Mr. Raso has
13 been as accommodating as possible; is that correct?

14 A. That would be my opinion on reading these things.

15 Q. Wouldn't reducing the size of the lease area be an
16 accommodation that he has not agreed to do?

17 A. That would be -- that would be -- that would be true.
18 He's basically going for 3 acres, and -- I mean, that
19 could be discussed with him, but we are here on the 3
20 acres.

21 Q. And 3 acres is the maximum amount he could apply for;
22 isn't that right?

23 A. Correct.

24 Q. Now, you sat on the Marine Fisheries Council, right?

1 A. Yes, still do.

2 Q. You voted for the project?

3 A. Yes, I did.

4 Q. And the vote was 3 to 3 tied?

5 A. Yes.

6 Q. Right?

7 A. Yes, correct.

8 Q. Recommendation was not to recommend approval, or it was a
9 tie so there was no --

10 A. There was no recommendation.

11 MR. WAGNER: I think that's all I have. Thank
12 you, Doctor.

13 THE WITNESS: Thank you.

14 CHAIRWOMAN CERVENKA: Back to Mr. Capizzo.

15 MR. CAPIZZO: Thank you, Madam Chair.

16 CROSS-EXAMINATION BY MR. CAPIZZO

17 Q. Dr. Rice, you heard the questions that I asked Dr. Byron
18 about the 5 percent rule in earlier testimony?

19 A. Yes.

20 Q. So I just want to make sure I understand it correctly,
21 that that 5 percent rule is for the carrying capacity in
22 each pond, that the maximum amount of shellfish
23 aquaculture can occur in a given water body without
24 unacceptable ecological impact of that body of water; is

1 that correct?

2 A. Yes, that was the original intent. You'll be hearing
3 from Dr. Rheault following me. He was the one that did
4 the calculation. You can ask him directly, but it was
5 based on some earlier work that was done by a mussel
6 aquaculturist in New Zealand, and the waters in New
7 Zealand are different than our coastal ponds.

8 Dr. Byron's work, as we have heard, and I have read
9 her papers extensively, show that in actuality the
10 ecological carrying capacity for aquaculture is much
11 higher in Rhode Island waters. In fact, approaching what
12 the actual aquaculture production was at the turn of the
13 20th Century around 1910, we are far below that level
14 now.

15 Q. So the 5 percent rule only applies to the carrying
16 capacity, not the social carrying capacity, correct?

17 A. That is correct, and --

18 Q. That's the only question. Thank you.

19 MS. PARKER: Let him -- Mr. Capizzo, please let
20 him finish his answer.

21 A. That is correct. This was a first level estimate of
22 ecological carrying capacity when we were going into
23 this. Subsequently, the science has shown that the
24 ecological carrying capacity is actually much higher. We

1 could actually have something like 500 times as much
2 oysters being produced in our coastal waters and still
3 not reach ecological carrying capacity. So what this has
4 become is largely a set of guidelines by CRMC for
5 permitting purposes, just a sort of guidelines.

6 So you are correct. I mean, it was -- that was how
7 it was determined.

8 Q. Would you agree with the statement that social carrying
9 capacity really determines how much aquaculture we can
10 put in a location?

11 A. I unqualifiedly say yes, that is absolutely true. I also
12 agree with Dr. Byron's assessment that that is a very
13 tough thing to determine, and that is the reason why we
14 have the CRMC process.

15 Q. Okay. So you testified about this CRMC process, and I
16 think you cited a statute. It was 2010-5. Are you
17 familiar with that statute?

18 A. Let's see, 2010-5, yes. Well, that's part of the
19 chapter. That's Chapter 2010, yes.

20 Q. Of Rhode Island General Laws?

21 A. Yes.

22 Q. You testified that you were surprised as your role on the
23 Rhode Island Marine Fisheries Council as a voting member
24 that you were present for the hearing on this matter; is

1 that correct?

2 A. Yes, I was, yes. It came to the full council, yes.

3 Q. You said that was unusual because it usually doesn't
4 happen like that, but because this was contentious it
5 came to the full council?

6 A. Yes, that's what I said.

7 MR. CAPIZZO: Okay. Mr. Moore, can you give me
8 the ability to share my screen?

9 MR. MOORE: You should be able to.

10 MR. CAPIZZO: All right. Give me one sec.

11 Q. Dr. Rice, you reviewed submittals for this application
12 including the Rhode Island Marine Fisheries letter that
13 was sent to Mr. Beutel?

14 A. Yes.

15 MR. CAPIZZO: Okay. Let's start with this.
16 Give me one second, Madam Chair. I'm sorry.

17 [PAUSE]

18 CHAIRWOMAN CERVENKA: That's fine. Is this an
19 admitted exhibit already?

20 MR. CAPIZZO: It is not. I'm using it for ID
21 only for the purposes of cross-examination. Madam Chair
22 and Dr. Byron, can you see --

23 Q. Excuse me. Dr. Rice, can you see what's on the screen?

24 [EXHIBIT DISPLAYED]

1 A. Yes, I can see, yeah. I can see 20-10-5A, B, C.

2 Q. Okay. Is this the same statute, Rhode Island General
3 Laws that you are referring to, Title 20 Fish and
4 Wildlife for the record, Chapter 20-10, aquaculture?

5 A. Yes.

6 Q. I want to draw your attention for the record to
7 Section 20-20-5.

8 A. Yes.

9 Q. What does that say, procedures for approval?

10 A. Procedures for approval.

11 Q. Can you read me what Section B says?

12 A. "No application shall be approved by the CRMC or permit
13 granted prior to consideration of the recommendation by
14 the director and the Marine Fisheries Council."

15 Q. Is your statement this only went to the full Council of
16 the Rhode Island Marine Fisheries Council because it was
17 contentious or it was required by statute?

18 A. This is required by statute; however, the practices of
19 the Marine Fisheries Council is that it is handled by the
20 subcommittee. A shellfish subcommittee normally. The
21 subcommittee votes on it, and it largely becomes reported
22 to the full council and directed to the Director Coit.
23 So it surprised me largely because the subcommittee voted
24 to send it to the full council. That is a little bit

1 more unusual. More often than not aquaculture leases are
2 handled strictly within the subcommittee.

3 MR. CAPIZZO: Madam Chair, I ask this be moved
4 as a full exhibit, just the Rhode Island General Law
5 Section 20-10-5.

6 CHAIRWOMAN CERVENKA: Any objections?

7 MS. PARKER: My only objection is
8 authentication. It looks like it's just from the website
9 and sometimes that can be dated.

10 MR. DESISTO: Mr. Capizzo, do we actually need
11 to put a statute as an exhibit? I'm assuming that at
12 some point if you file a memorandum, you're just going to
13 cite to it, right?

14 MR. CAPIZZO: Correct, and I ask the Committee
15 take judicial notice of it.

16 MR. DESISTO: That's fine.

17 MR. CAPIZZO: Thank you.

18 Q. For the record and on the screen, this was admitted --
19 you were present for yesterday's testimony, correct?

20 A. Yes.

21 Q. It's Exhibit 14 for the record. A request has been made.
22 Actually this is a full exhibit. I believe it was
23 entered by Ms. Noonan. You read this letter, Doctor?

24 A. Yes.

1 Q. All right. This is from, if I scroll down, the Chair of
2 the Rhode Island Marine Fisheries Council; is that right?

3 A. Yes, yes.

4 Q. For the record, who is that?

5 A. For the record, this is Robert Ballou. He is with DEM,
6 and he is the Chair of the Council on behalf of the Janet
7 Coit.

8 Q. Okay. And drawing your attention to the first paragraph
9 after, "Dear Mr. Beutel," this letter is dated April 27,
10 2018, for the record, from Bob Ballou to Dave Beutel,
11 Aquaculture Coordinator.

12 How does that read? Pursuant to Rhode Island
13 General Laws --

14 A. 20-10-5.

15 Q. The above referenced application was brought before the
16 Rhode Island Marine Fisheries on March 14th for
17 consideration; is that correct?

18 A. That is correct.

19 Q. Did I hear you testify that you believe that your review
20 of the application that Mr. Raso has addressed or can
21 address the significant adverse effect to get this right,
22 regulations, he's demonstrated that the alteration
23 activity will not result in significant conflicts on
24 water dependent uses. That's your opinion?

1 A. Yes.

2 Q. I believe you testified that most of those objections
3 relating to the water dependent activities can be
4 addressed by adjusting the farm?

5 A. Yes.

6 Q. It's your opinion that you don't believe a compression of
7 the water sheath will impact or have a significant impact
8 on the rights of the public with the location of this
9 aquaculture farm?

10 A. Yes.

11 Q. Okay. You base that solely on your review of the
12 application?

13 A. Yes.

14 Q. And you heard Mr. Raso's testimony that you can't drop a
15 boat through this, correct, this aquaculture farm?

16 A. Yes.

17 Q. You can't swim through it?

18 A. Well, it would be very difficult to swim through it. I
19 mean, if you sort of took off from say the Hunts'
20 property, which would be the closest to the farm, you
21 probably could swim there, but it probably wouldn't be
22 advisable.

23 Q. You can't waterski through this area, aquaculture farm,
24 correct?

1 A. Well, you could waterski by it.

2 Q. Not through it?

3 A. Not through it.

4 Q. How about a sailboat, can you sail?

5 A. Nope.

6 MR. CAPIZZO: All right. Now, Ryan, do I have
7 the ability to share again? For Leslie and Madam Chair,
8 I would like to share my screen. It's a figure I showed
9 Audie Osgood. It's Figure 4A, Exhibit 1 of the ESS
10 report.

11 [EXHIBIT DISPLAYED]

12 Q. Dr. Rice, can you see what's on the screen?

13 A. Yes, I can.

14 Q. Okay. See if I can reduce it. Is this similar to the
15 application reviewed as to Mr. Raso's aquaculture farm as
16 you observed it?

17 A. Yes.

18 Q. The area that you're talking about where you could swim
19 between Mr. Hunt's property and the aquaculture farm is
20 between the blue line, for the record, which references a
21 shoreline, the eastern shoreline or western shoreline of
22 Mr. Hunt's property and the yellow line which references
23 the aquaculture facility; is that correct?

24 A. That is for this particular polygon, yes, and the normal

1 practice of CRMC, in my understanding, is that there is
2 an encouragement of multiple uses. So there are the --
3 often the aquaculture placements are willy nilly. People
4 do in fact go through the lanes and the like.

5 Q. Okay. How about navigating a boat from Mr. Hunt's
6 property, his property. I'm going to scroll down. Ram's
7 Point, are you familiar with Ram's Point?

8 A. Yes.

9 Q. And again, looking at the blue line for the record which
10 references Mr. Hunt's western side of his property to the
11 shoreline, going along the yellow line which is the
12 proposed aquaculture, would you be able to navigate a
13 boat between the aquaculture facility and the shoreline?

14 A. Depends on the size of the boat and probably the tide,
15 but the 10-foot might be a pinch point. But then again,
16 there's nothing that particularly excludes the boat from
17 the lease if they're sort of taking a look at where
18 they're going.

19 Q. Would you agree with me, Doctor, if you were entering
20 Segar Cove -- strike that.

21 If you were traveling south in Segar Cove by water,
22 the western boundary of this aquaculture facility, it
23 pushes you closer to the center of the cove if you were
24 in a powerboat?

1 A. If you're in a powerboat, there is a potential for being
2 forced to go toward, more toward, the center of the pond,
3 yes.

4 Q. What about a sailboat?

5 A. Sailboat certainly too.

6 Q. Jet skis?

7 A. Jet skis as well. Probably wouldn't be prudent to get in
8 and about the farm area, but most of the deeper water
9 gear would be on the outer edges.

10 Q. The markers to that facility, will you agree with me
11 those would be considered stationary objects, the cages
12 and the markers for this facility?

13 A. They are temporarily stationary projects very much like
14 fishing gear might be.

15 Q. That gear changes from season to season, correct?

16 A. Oh, it would change from season to season, yes.

17 Q. Here you could have the cages on top in some parts of the
18 season and in others you won't have them; is that
19 correct?

20 A. Yes. I mean, that would be part of the management plan.
21 So probably the management plan would include such things
22 as --

23 [ZOOM INTERFERENCE]

24 MR. CAPIZZO: Hold on one sec, Doctor. Madam

1 Chair, may I proceed?

2 CHAIRWOMAN CERVENKA: You may.

3 MR. CAPIZZO: Thank you.

4 [PAUSE]

5 Q. Doctor, you mentioned something about this being deep
6 water. You're familiar with Potter Pond; is that
7 correct?

8 A. Yes. I mean, not as intimately familiar as the people
9 that live there, but I've been down there around the pond
10 enough to kind of know it somewhat.

11 Q. Would you agree with me that Segar Cove in the northern
12 basis are the only two deep water areas in this cove for
13 in the cove?

14 A. That is true. That's the deepest water areas in the
15 cove, those two coves, sort of the northern end and those
16 two coves.

17 Q. Would you agree with me that it would be difficult to do
18 towed water sports or power boating in other areas of
19 Potter Pond because of the lack of depth?

20 A. Oh, yes, very much so.

21 MR. CAPIZZO: One moment, Madam Chair.

22 [PAUSE]

23 MR. CAPIZZO: Madam Chair, I'm going to be
24 sharing a screen, Exhibit 1.

1 CHAIRWOMAN CERVENKA: This is your Exhibit 1?

2 MR. CAPIZZO: Part of the Exhibit 1 only for ID
3 purposes right now, but it's for Ms. Parker and
4 Ms. Noonan and Mr. Wagner. It's Figure 1A. It's using
5 it for a map reference so we can show the committee where
6 Segar Cove is in relation to the northern basin for those
7 who are not familiar with it.

8 CHAIRWOMAN CERVENKA: Thank you.

9 [EXHIBIT DISPLAYED]

10 Q. Doctor Rice, can you see this map that I have on the
11 screen?

12 A. Yes, I do.

13 Q. Okay. For the record, this map is entitled, it's from
14 ESS Group existing conditions 2020, ecological and
15 recreational resources, 1A. Do you recognize this aerial
16 map, Doctor?

17 A. Yes, I recognize this. I'm not an expert in recreation,
18 if that will help you.

19 Q. I'm not asking -- I'm just asking you if you recognize
20 the area that I'm referring to in the map?

21 A. Yes, I do.

22 Q. Okay. So you testified that there's only two deep water
23 areas in Potter Pond here, if you can -- I don't know if
24 my cursor shows up on the screen. Do you see my cursor?

1 A. Yes.

2 Q. Okay, great. So the area that I'm circling right here,
3 it says Segar Cove. I'm not asking you to confirm the
4 acreage or the percentage. The numbers that are
5 referenced in it, that is Segar Cove; is that correct?

6 A. That is.

7 Q. Have you been on Segar Cove?

8 A. Yes, I have.

9 Q. I thought you said you went out -- you didn't get the big
10 boat but you got the little boat?

11 A. Yes, I did.

12 Q. Have you been on Segar Cove before you went out with
13 Mr. Raso?

14 A. Yes.

15 Q. Are you familiar with the areas of Segar Cove?

16 A. Yes, I am.

17 Q. Okay. The area that I'm circling down here, we talked
18 about public access, right?

19 A. Right. There's public access down there. That's a
20 mooring area.

21 Q. Okay. This area that I'm circling which is in the
22 southern portion of Segar Cove --

23 A. That's the mooring area.

24 Q. And the public access points which are referenced as

1 yellow triangles, are you familiar with the public access
2 points down there?

3 A. Yes. I saw -- I seen them, yes.

4 Q. Is that a fair and accurate representation of where those
5 public points are on Segar Cove?

6 A. Yes, I would say that would be matched up to what I saw.

7 Q. When we're talking about public access points, those are
8 access points where the public can get into the cove, and
9 we have to drive through the mooring area to get to the
10 area outside of the mooring area which would be north of
11 Segar Cove; is that correct?

12 MS. PARKER: Objection. He's not an expert on
13 the geography of Segar Cove.

14 MR. CAPIZZO: I'm not asking if he's an expert.
15 I'm just asking if he used those public access points.

16 Q. There's only one direction which you could go which is
17 north; is that correct, Doctor?

18 A. That is correct.

19 MS. PARKER: Objection. Dr. Rice is an expert
20 on aquaculture, not on navigation or recreational
21 activities like he said.

22 MR. CAPIZZO: He can --

23 MR. DESISTO: He can answer the question, and
24 I'll tell you why. He's familiar with Segar Cove, and

1 this ties in to whether or not the aquaculture project
2 here is appropriate for this. So I do think it's
3 appropriate that he answers, Madam Chair.

4 CHAIRWOMAN CERVENKA: Yeah, I mean, if there's
5 -- your objection can go to the weight of the testimony.

6 A. Okay, yes. If the public is accessing it, they would
7 have to go through -- there's some feedback --

8 MR. CAPIZZO: I agree there is feedback.

9 CHAIRWOMAN CERVENKA: Hold on.

10 [PAUSE]

11 CHAIRWOMAN CERVENKA: Mr. Moore, Mr. Willis, is
12 Mr. Moore around? I know he's having trouble with his
13 audio. We're working on that.

14 [ZOOM INTERFERENCE]

15 [PAUSE]

16 CHAIRWOMAN CERVENKA: Should we take a break
17 right now so you can fix it?

18 UNIDENTIFIED SPEAKER: That might be a good
19 idea.

20 CHAIRWOMAN CERVENKA: Okay. Well, let's see.
21 It's 3:14. Can we come back at 3:30?

22 MR. CAPIZZO: What time, Madam Chair?

23 CHAIRWOMAN CERVENKA: 3:30.

24 MR. WILLIS: Come back in 15, and we'll let you

1 know where we're at.

2 UNIDENTIFIED SPEAKER: I just spoke with
3 Mr. Moore and he asked during the break that everyone log
4 out and log back in at the end of this break.

5 CHAIRWOMAN CERVENKA: Okay. We'll take
6 20 minutes then. Everyone to get back in, try to start
7 logging in at 3:30 which would be okay. Thanks.

8 [RECESS WAS TAKEN OFF THE RECORD FROM 3:15 TO 3:35]

9 CHAIRWOMAN CERVENKA: Are we ready from a
10 technical standpoint?

11 MR. MOORE: Ready to go.

12 CHAIRWOMAN CERVENKA: Are we ready from an
13 everyone admitted standpoint?

14 MS. NOONAN: I believe so. Dr. Rice, you're
15 good? You're on mute and you changed locations.

16 THE WITNESS: It's Zanzibar.

17 CHAIRWOMAN CERVENKA: Ryan, you have everyone
18 in the public that's been admitted? You know how that
19 works?

20 MR. MOORE: They can come and go as they
21 please. They are still filing in a little bit, but the
22 same number we had before we had a slight issue.

23 CHAIRWOMAN CERVENKA: Okay. Just for the
24 record, as people can see, Dave Beutel has joined us for

1 this meeting. He'll be with us until we conclude at
2 five. I believe, Mr. Capizzo, you were at Objectors'
3 Exhibit 1, Figure 1A, asking a question of Dr. Rice.

4 MR. CAPIZZO: That is correct, Madam Chair. I
5 want to confirm. Did you say -- I know you mentioned
6 yesterday. Are we concluding at five today? Is that
7 correct?

8 CHAIRWOMAN CERVENKA: We are.

9 MR. CAPIZZO: Okay. That will help me manage
10 the time. May I proceed, Madam Chair?

11 CHAIRWOMAN CERVENKA: Please.

12 Q. Dr. Rice, I know you've switched locations to Zanzibar
13 now as you just indicated, but during this break did you
14 speak to anybody about your testimony that you are giving
15 today?

16 A. No.

17 Q. Okay. Excellent. That's what I was hoping you'd say.
18 So let's take you back. I'm going to share the screen.
19 You know, one sec.

20 Did you communicate with anyone about your testimony
21 whether it was a text, email or whatever other device you
22 use about your testimony today?

23 A. I sent a text to Leslie Parker.

24 Q. Okay. Don't tell me what she said. But you did send a

1 text to Leslie Parker?

2 A. Yes.

3 Q. Did she respond to you?

4 A. No.

5 Q. Okay. I'm going to share screen. Give me one second.

6 Can you see that map?

7 A. Yes, I can.

8 Q. Perfect. I want to reorient the committee with where we
9 were. We were talking about, you had given an opinion
10 that Mr. Raso demonstrated that this facility won't
11 interfere or significantly impact existing public access
12 or use of the tidal waters and/or the shore.

13 A. Yes.

14 Q. You also gave the opinion that Mr. Raso has demonstrated
15 that the alteration will not result in significant
16 conflicts, water dependent uses and activities such as
17 recreational boating, fishing, swimming, navigation and
18 commerce; is that correct?

19 A. Yes.

20 Q. Okay. You testified that you're familiar with this map
21 and we're looking -- for the record, I'm going to start
22 at Segar Cove. I believe you said that for traveling
23 north that that was the only direction that you could go
24 from those four public access points that you said you

1 were familiar with?

2 A. Yes. Those are public access points that are largely for
3 very small craft that could go through there. This is
4 not a major -- those are not major boat launching areas.

5 Q. But the public has access and they can launch from there?

6 A. Yes.

7 Q. Okay. I want to draw your attention to what we talked --
8 I asked you and you testified that there's two deep water
9 coves in Potter Pond. I'm going to draw your attention
10 to the north of Segar Cove and where my cursor is now,
11 following the blue line, is that the northern part of the
12 cove, the second deep water cove?

13 A. Yes, that is. That's the major one. There's this
14 so-called Skier's Cove.

15 Q. This is the one -- okay. I got it. This is the same one
16 that Mr. Raso talked about that he lives on now, right?

17 A. That is correct.

18 Q. Okay. So this is where Mr. Raso lives. Does it appear
19 at least, or are you familiar with any public access
20 points on Skier's Cove?

21 A. I'm not familiar whether there's public access there or
22 not.

23 Q. Fair enough. Is it fair to say that the only way to get
24 to Skier's Cove is to go through Potter Pond?

1 A. I can't say for sure, but I would suspect that that might
2 be true.

3 Q. Let me rephrase that because I think the question may
4 have been a little confusing.

5 Is the only way to get to Potter Pond from Segar
6 Cove by a motor vessel through Potter Pond?

7 A. Yes. I mean, basically it appears the access ways are
8 either through the channel to Pt. Judith Pond itself or
9 from these various access roads.

10 Q. Okay. I don't know if you can see my cursor. It was
11 working last time.

12 A. Yes, it's working.

13 Q. Thank you. So starting at Segar Cove leaving that
14 mooring field, if you were to travel to the northern
15 cove -- have you been to the northern cove?

16 A. Yes.

17 Q. The northern basin?

18 A. Yes.

19 Q. Okay. How did you get to the northern basin? Was it
20 with Mr. Raso?

21 A. Yes.

22 Q. Okay. Where did you leave from when you went with
23 Mr. Raso?

24 A. We left from his dock -- his dock at the restaurant.

1 Q. Okay. So just for -- so I understand, and the committee
2 members understand, is his restaurant, and following my
3 cursor to the east --

4 A. Yes.

5 Q. -- is that his restaurants right there?

6 A. That's his restaurant right there.

7 Q. Where the cursor is, okay. What road is that?

8 A. Succotash Road.

9 Q. I'm not that familiar with that area. At least -- can
10 you access Potter Pond from Mr. Raso's restaurant?

11 A. Yes. That is actually the main -- the main water inlet
12 to the pond. And in fact, all of the tidal exchange for
13 the pond goes right through it. So the currents going
14 through that channel are very, very intense during sort
15 of peak tidal exchange.

16 Q. Okay. So you take a -- when you went with Mr. Raso you
17 took the small boat, I think we said, and you went
18 through that little channel right there?

19 A. Yes.

20 Q. Okay. And did you go to the northern basin when you were
21 with him?

22 A. Yes.

23 Q. So is it fair to say that the way you went there,
24 following the cursor, you would have gone north up Potter

1 Pond?

2 A. Yes. It was toward the end of the trip, but I've been up
3 there several times.

4 Q. Okay. Okay. On your own?

5 A. Yes.

6 Q. Do you have a boat? Do you own a boat?

7 A. No, I don't.

8 Q. But how did you come to find yourself on I guess Skier's
9 Cove?

10 A. Well, I accessed it from several ways. I mean, basically
11 from Perry Raso's house and the vegetable farm. He has
12 the vegetable farm at the north end of the pond, and I've
13 been there and on boats several times, various people. I
14 don't own a boat.

15 Q. Probably a best case scenario, you don't own a boat, but
16 you know people who own the boats so you can get to those
17 locations?

18 A. Right. I mean, it's best to know people.

19 Q. Fair enough. When you went from -- so we understand, so
20 the committee understands, or I understand how you got to
21 the northern basin, I want to talk about going from
22 Mr. Raso's restaurant to Segar Cove.

23 A. Yes.

24 Q. So when you left the restaurant on this trip with

1 Mr. Raso, you traveled I guess you would say southwest
2 past his current operation?

3 A. Yes, in between that point and his current operation.
4 That's where the deepest water navigation channel is.
5 And it's the most -- it happens to be the most direct.
6 There's a shallow area that you have to avoid.

7 Q. Okay. And is that shallow -- so I want to take you two
8 steps back. Right here, is this the channel that you're
9 talking about that's deep water?

10 A. Yes.

11 Q. Okay. So for the record it's between, and I don't know
12 what point that is, but it's the point to the right,
13 excuse me, to the east of Ram Point which you're familiar
14 with you said --

15 A. Yes.

16 Q. -- and between Mr. Raso's current operation. Do you know
17 what the size of his current operation is?

18 A. I don't know the exact size. I thought it was -- I'm not
19 entirely sure --

20 Q. That's okay.

21 A. -- offhand.

22 Q. That's all right. Right there, driving by that
23 aquaculture that is highlighted in red, do you know what
24 the depths are there? Is it deep, is it shallow?

1 A. Yeah, it's fairly shallow there. At low tides, extreme
2 low tides, sometimes the oysters are out of the water.

3 Q. When you say that the oysters are out of the water, does
4 that mean the cages are out of the water?

5 A. Yes.

6 Q. Okay. Are you familiar with that operation there?

7 A. Very familiar.

8 Q. Okay. What type of operation does Mr. Raso have there?
9 You said it's floating cages?

10 A. Well, the vast majority are bags that are plastic mesh
11 bags that are on sort of a railing system, and these bags
12 get attached by bungee cords to it.

13 Q. Okay.

14 A. And they are very neat little lines.

15 Q. Okay. On the south side of that of Mr. Raso's
16 aquaculture farm, is that area still shallow as well?

17 A. It's very shallow and, yeah, it's a very sandy bottom.
18 The last few storms it's become a little bit more
19 shallow.

20 Q. Do you know if you can waterski in that area to the south
21 of that farm?

22 A. No. I mean, that would be pretty dangerous and actually
23 probably outboard engine extensions would be dragging
24 bottom.

1 Q. Okay. So when you said no, you're saying you can't
2 waterski in that area right there?

3 A. Right. That would be not particularly wise.

4 Q. Okay. I want to bring you back to the channel that you
5 are talking about. If you follow the cursor going west
6 towards Ram's Point and Segar Cove, you got Ram's Point
7 to the north where the cursor is?

8 A. Yes, and the Hunts' house right there.

9 Q. Yeah. So that's good memory. When you prepared for your
10 testimony, did you review the entire C file?

11 A. Yes. I looked through pretty much everything.

12 Q. Everything that's on file with Coastal?

13 A. Yeah, everything that was sent to me, yes.

14 Q. Do you remember what that included?

15 A. Well, that was your package from the ESS Group, we've got
16 Dave Beutel's report, we've got the various applications
17 that Mr. Raso had. So those were what I have.

18 Q. I thought you testified that you already reviewed the
19 letters of objection?

20 A. There was -- yeah, I saw a few of the letters of
21 objection.

22 Q. Okay. Okay. Going to Ram's Point, you said Mr. Hunt's
23 property is to the north and the channel -- strike that.

24 Gardner's Island, are you familiar with Gardner's

1 Island?

2 A. I don't know which one exactly is Gardner's Island.

3 Q. All right. So across from Ram's Point --

4 A. Okay. If that's Gardner's Island, okay, I'll buy that.

5 Q. But you're familiar with that channel right there,
6 correct?

7 A. Yes, ma'am.

8 Q. Is that the only way to access that cove?

9 A. Other than the public access points for small craft, yes.
10 I mean, if you're basically coming in there's no boat
11 launching ramps in that area.

12 Q. Okay. And the area that I'm outlining right now, you
13 reviewed his application. I think we went through this,
14 and the area, the general area where he's proposing his
15 3-acre farm, is right along the western portion of
16 Mr. Hunt and Ms. Cooney's property?

17 A. That is correct.

18 Q. Along this shoreline right here, right?

19 A. Yes.

20 Q. Did you have an opportunity to go to the northern part of
21 Segar Cove?

22 A. Yes, I did.

23 Q. What about the western side of Segar Cove?

24 A. Yes, we went all the way around those as well.

1 Q. Okay. How many times have you been to Segar Cove other
2 than that one time with Mr. Raso?

3 A. I've been there a couple, a couple times boating there
4 with some friends.

5 Q. Power boating?

6 A. Power boating.

7 Q. Okay. When you say a couple times, more than --

8 A. I mean a couple times. Not more than two.

9 Q. Okay. And the two times, is one of those times with
10 Perry, or is that separate and apart from being with
11 Perry?

12 A. Separate and apart.

13 Q. So other than with Perry, you've only been to Segar Cove
14 once?

15 A. Twice.

16 Q. I'm sorry, so a total of three times?

17 A. Yes.

18 Q. Okay. The three times that you've been there, did you
19 observe recreational water dependent -- what Coastal
20 calls water dependent uses and activities such as
21 recreational boating, fishing, swimming, navigation
22 and --

23 A. The times that I went there was in the high summer, and
24 there were people that were boating, and there were some

1 people that were fishing.

2 Q. Okay. Do you recall what areas of Potter Pond they were
3 boating and fishing?

4 A. Well, I can recall that there were people kind of more on
5 the south side of the cove, kind of the Gardner's Island
6 area.

7 Q. So fair to say this area right here?

8 A. Yes.

9 Q. Okay. What about you? Were you on a power boat,
10 sailboat?

11 A. Power boat.

12 Q. Okay. How about activity over here? Did you make any
13 observations of activity over where the proposed
14 aquaculture farm is?

15 A. No, I don't recall ever seeing anything ever there. But
16 again, I've only been there three times, so --

17 Q. Got you.

18 A. Add your weight to that.

19 MR. CAPIZZO: Okay. May I have a moment, Madam
20 Chair?

21 CHAIRWOMAN CERVENKA: Yes.

22 MR. CAPIZZO: Thank you. Madam Chair, I would
23 like to at this point move to have the CRMC file that
24 Dr. Rice reviewed entered as a full exhibit. He

1 indicated that he reviewed the entire file including all
2 the objections. I'd ask that be moved as a full exhibit.

3 MR. DESISTO: Well, it already is in the
4 record. That's the basis for this matter going forward.
5 So I don't know why it has to be admitted as a full
6 exhibit if it's part of the file already. I mean, it's
7 the basis for this application.

8 MR. CAPIZZO: I guess my point is, Mr. DeSisto,
9 I just want to ensure that that entire file is available
10 for the subcommittee to review since this expert is
11 basing his opinions on his review of that entire file,
12 including any reports or letters that he indicated and
13 testified that he reviewed.

14 So if it's already part of the file and review, I
15 just want to make sure the subcommittee has the ability
16 to review that entire file that he relied on.

17 MR. DESISTO: The application wouldn't be heard
18 if the subcommittee didn't have access to the file. I
19 just think it's duplicative.

20 MR. CAPIZZO: That's fine, as long as it's part
21 of the file and the committee will have an opportunity to
22 look at that, that's all I wanted to accomplish.

23 CHAIRWOMAN CERVENKA: I don't really understand
24 what the CRMC file is, how that's defined, what he looked

1 at. So I don't know what we're admitting as a full
2 exhibit.

3 MR. DESISTO: Well, here's the thing. I agree
4 with you, Madam Chair, by the way. You know, the file is
5 the file, and the file that Dr. Rice has stated that he's
6 reviewed, that's a public document. It's part of the
7 file already. It's part of the package that the
8 subcommittee gets going forward. So I don't know why you
9 want to put that in as an exhibit anyway. It seems like
10 it would be in twice.

11 MS. NOONAN: If I may interject? I know this
12 is Leslie's witness. Two weeks or so ago I asked Lisa
13 Turner for the file and she sent it on a USB. That's
14 what I sent to Dr. Rice in addition to what he also
15 described. I'll send it to you, Christian, if you want
16 to take a look at it.

17 MR. CAPIZZO: No, as long as -- Mr. DeSisto and
18 Madam Chair, as long as whatever is encompassed in the
19 file that Mr. Beutel reviewed to come up with that staff
20 recommendation is available for the subcommittee to
21 review, I'm all set. I think for the record we want to
22 make sure that that is part of what the subcommittee,
23 whether it's an exhibit or automatically reviewed by the
24 file, any reviewing court would want to know it's part of

1 the subcommittee's review.

2 MS. NOONAN: And I will state that what
3 Dr. Rice was referring to is what I forwarded to him that
4 was provided to me by Ms. Turner from CRMC a week and a
5 half ago maybe.

6 CHAIRWOMAN CERVENKA: Is Ms. Turner on? She
7 can say what that is?

8 MS. TURNER: I can read out 14 documents
9 included. Do you want me to read out what they?

10 CHAIRWOMAN CERVENKA: Sure.

11 MS. TURNER: Okay. CRMC staff reports and
12 reference materials, application materials, state and
13 local comments, Dave Beutel email correspondence,
14 attorney information, public notification, pictures,
15 cover sheet, July 2019 pictures, August 2019 pictures,
16 September 2019 pictures, October 2019 pictures, letters
17 of support, letters of objection, comments received after
18 public notice expiration date.

19 CHAIRWOMAN CERVENKA: Okay. So that doesn't
20 include the applicant's exhibits and memos and the
21 objectors --

22 MS. TURNER: We were asked for that before any
23 of that would be submitted, so I don't think -- it may
24 now be included.

1 CHAIRWOMAN CERVENKA: I don't have a problem
2 with that as it's been defined, and I'm looking at it
3 right now, too.

4 VICE CHAIR COIA: Madam Chair, it's Ray Coia.
5 May I add something? Does the witness have anything that
6 we do not have?

7 MS. TURNER: No.

8 VICE CHAIRMAN COIA: Then what does it matter
9 then? We have everything he has or more. I think what
10 Attorney Capizzo wants to be sure of is that we have what
11 he's referring to, and I think staff can attest to that.
12 I think our counsel Anthony has said that. The file is
13 the file. If they culled out certain things to send to
14 him for his testimony, that's something from what we
15 have.

16 CHAIRWOMAN CERVENKA: Mr. Coia, I didn't know
17 if it included all the exhibits that were being proffered
18 by applicant and objectors' counsel. If that's part of
19 the quote unquote file, and I understand that's not, so
20 I'm okay with how the CRMC file has been defined and that
21 be an exhibit. We consider it. It would be -- if there
22 was any appeal it would be the certified record on
23 appeal.

24 MS. PARKER: And for the record, I believe

1 Dr. Rice testified to this, but he also does have things
2 that were submitted after we received the CRMC file. So
3 I think he testified that he has the report, the
4 objectors' materials and our exhibits.

5 CHAIRWOMAN CERVENKA: Okay. Tony, do we need
6 to do anything other than admit it as an exhibit as it's
7 been defined as the CRMC file?

8 MR. DESISTO: You can, but you're going to have
9 a file and then you're going to have an exhibit with just
10 the file. You know, to me, it's just duplicative. I
11 hope it doesn't confuse things later on when it gets to
12 court. That's my concern.

13 CHAIRWOMAN CERVENKA: Okay. Mr. Capizzo, are
14 you satisfied that it will be duplicative and you don't
15 need to have it admitted as a full exhibit?

16 MR. CAPIZZO: Yes. My only concern as the Vice
17 Chair said, I wanted to make sure that the subcommittee
18 who is reviewing this has opportunity to review all that
19 information that's being referred to, and that
20 individuals are basing their opinion on. If that's part
21 of the record, then I'm satisfied.

22 CHAIRWOMAN CERVENKA: Yes. All those items
23 have been provided to this subcommittee.

24 MR. CAPIZZO: I don't have any further

1 questions for Dr. Rice.

2 MS. PARKER: Madam Chair, if I may, I have a
3 short redirect.

4 CHAIRWOMAN CERVENKA: Yes.

5 REDIRECT EXAMINATION BY MS. PARKER

6 Q. Dr. Rice, you're aware that the current application lays
7 out three plans for the possible site for the aquaculture
8 farm; is that correct?

9 A. That is correct.

10 Q. And would you say from reviewing those plans and your
11 expertise that the original site plan submitted by
12 Mr. Raso provides more access to the shoreline; is that
13 right?

14 A. That is correct. I mean, that is demonstrable and we saw
15 that from the testimony of the engineer yesterday.

16 Q. And when you reviewed site plans with Mr. Capizzo, did he
17 show you that original site plan that was submitted by
18 Mr. Raso in his application?

19 A. I sort of recall the subsequent months, but not the
20 original.

21 Q. So he showed you the polygon?

22 A. Yes, the polygon, yes.

23 Q. And finally, Dr. Rice, based on your review of the
24 application and your expertise, does this application as

1 the full 3 acres provide the balance of aquaculture and
2 public access sought by the CRMC legislation?

3 MR. WAGNER: Objection for the record.

4 A. Yes, it does. It basically fulfills all of the
5 requirements and it has been gone through a very
6 extensive review according to the procedures that the
7 statute that Attorney Capizzo has pointed out including
8 the Marine Fisheries Council.

9 MS. PARKER: Thank you, Dr. Rice. No further
10 questions.

11 CHAIRWOMAN CERVENKA: Thank you, Ms. Parker.
12 Ms. Noonan, do you have two or three more witnesses?
13 You're on mute.

14 MS. NOONAN: Just one.

15 CHAIRWOMAN CERVENKA: Okay. So you're not
16 calling, is it Kristen Hamel, because you had Mr. Osgood?

17 MS. NOONAN: That's correct.

18 CHAIRWOMAN CERVENKA: And then you had Rice,
19 Byron, and you're at Rheault now?

20 MS. NOONAN: Rheault, correct, sir.

21 CHAIRWOMAN CERVENKA: You do have 50 minutes,
22 and hopefully we can get through this witness with some
23 cross-examination questions.

24 MS. NOONAN: Okay. If I can quickly just, one

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 A. So I have a master's degree in zoology from URI, a Ph.D
2 in biological oceanography, grad school oceanography at
3 URI, 20 years of experience growing oysters in Pt. Judith
4 Pond. One of the people who helped craft the current
5 regulations sold my farm 13 years ago to become an
6 executive director of the East Coast Shellfish Growers
7 Association. I represent growers from Maine to Florida.
8 I worked on federal matters, but occasionally on state
9 matters like this.

10 Q. Do you teach also?

11 A. So my appointment with the East Coast Shellfish Growers
12 is a half time position, so I'm also a professor at URI.
13 I teach through the Rhode Island Department of Labor and
14 Training. I teach other opportunities, and I do
15 consulting work on the side nationally and
16 internationally.

17 Q. And have you also published papers in your field?

18 A. So I wrote chapters, several dozen peer reviewed signed
19 publications and a number of opinion pieces.

20 Q. And what professional affiliations do you have?

21 A. I am a member of a number of professional associations
22 from the National Aquaculture Association, National
23 Shellfisheries Association. I'm sure I'm forgetting
24 some.

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 A. I am an alternate, so I was called up the day of that
2 hearing when he was being -- when his application was
3 being reviewed. I got a call that afternoon, and the
4 primary, Jeff Gardner, said he couldn't attend so I made
5 plans to attend.

6 Q. And that committee made a positive recommendation at that
7 time, correct?

8 A. We did, yes.

9 Q. And at that time did you have any idea that you would be
10 providing testimony for Mr. Raso on this application?

11 A. Providing this testimony at this time, or providing
12 testimony at that particular meeting? I mean, I knew at
13 that time that Perry Raso's application was going to be
14 reviewed. Going into the meeting I was not totally
15 caught off guard.

16 Q. All right. But in terms of your expert testimony, you
17 were not retained until well after that meeting, correct?

18 A. Well, that's correct, yes.

19 Q. And other than discussions at the shellfish advisory
20 panel and the work that we've done together since you've
21 been retained as an expert, did you have any other
22 knowledge of the application?

23 A. I had read certain publications. Popular Press, Facebook
24 postings get circulated around. I tend to monitor what's

1 going on in the state when it comes to aquaculture. So I
2 was not totally in the dark, but I hadn't been following
3 it very carefully until very recently.

4 Q. Okay. Did your involvement at the shellfish advisory
5 panel have any impact on your testimony here today?

6 A. I don't see, no.

7 Q. In terms of the proceedings that we're at now, were you
8 watching or listening to the testimony both yesterday and
9 then earlier today starting at 1:00?

10 A. With great fascination, yes.

11 Q. Wonderful. We've heard a lot about this, but are you
12 familiar with Mr. Raso's application, and if so, can you
13 describe your familiarity with it to the committee?

14 A. I too reviewed the entire packet that we just discussed
15 in length. I don't recall seeing extensive letters of
16 objection, but obviously they were referred to in the
17 coastal committee's and the waterfront advisory's letter.
18 So I was pretty much aware that almost any aquaculture
19 application is going to be met with a bunch of, we'll say
20 objectors.

21 Q. That's based on your personal experience since the 80s,
22 correct or --

23 A. Certainly this whole hearing is bringing up sort of a
24 PTSD. I, too, had a Coastal Resources subcommittee

1 hearing in Narragansett after nine public hearings over a
2 two-year period with 600 objectors in my file. So I
3 certainly am well aware of the nature of these
4 proceedings.

5 Q. Okay. Did you have an opportunity to review the staff
6 report which is Exhibit 17?

7 A. Yes.

8 Q. And you heard Mr. Beutel testify?

9 A. Yes.

10 Q. Obviously you're familiar with the history of
11 aquaculture. Can you just provide any further
12 information of your familiarity with the history of
13 aquaculture in Rhode Island?

14 A. Well, it goes way back. At one point we had almost one
15 third of Narragansett Bay leased out for oyster
16 aquaculture, and it provided hundreds of jobs in the late
17 1800s and early 1900s. 20,000 acres of Narragansett Bay
18 was leased out for oyster farming. There were massive
19 oyster checking houses on the East Bay, and it was one of
20 the largest industries in the state.

21 That went into disrepair when we discovered that
22 bacteria caused disease. People stopped eating oysters.
23 We had some wars that drew away the workforce. The
24 Hurricane of '38 buried most of the beds. The price of

1 oysters was not sustained by the work involved.

2 We brought aquaculture back in I want to say the
3 70s. There was a Rhode Island Aquaculture Association in
4 effect. One of the early leases was Water Skier's Cove
5 by Dr. Rogers, and then I revived the Ocean State
6 Aquaculture Association in late 80s. I started my farm
7 in '86, started the Ocean State Aquaculture Association
8 in '89, and we've experienced rather substantial growth
9 subsequently.

10 Q. And hearing both Dr. Byron and Dr. Rice's testimony,
11 there's been discussion about balancing sort of the
12 public's access to the water and aquaculture. Can you
13 describe that based on your experience with the
14 aquaculture and the statutory I guess evolution in Rhode
15 Island?

16 A. Sure. So I don't want to tell the Council their job, but
17 I mean, obviously the Council is in charge of balancing
18 the multiple uses of this state, and it's quite a
19 challenge because any time you permit something like a
20 marina or a fish trap or a private dock or something like
21 that, you are jeopardizing someone else's use of the free
22 and commons and diminishing their access.

23 So the Council has to balance the various uses of
24 the commons, and indeed I think almost every state has

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 A. Certainly, anything you can do to minimize the number of
2 buoys, the number of things that are sitting on top of
3 the water is going to hopefully minimize the aesthetic
4 impact, if you will.

5 Q. Have you worked with aquaculture farms that have been
6 located in the areas where the public participates in
7 recreational activities?

8 A. Of course.

9 Q. And then what type of recreational activities?

10 A. Well, I mean, my own farm, people would waterski down the
11 middle, sail around, use the buoys, fishing. Fishing was
12 actually quite popular on my lease. Turns out, since I
13 never predicted when I got into oyster farming, but the
14 gear, the cages, serves as an excellent habitat. We
15 actually did studies to show that associated with the
16 bottom cages that I was using we attended ten thousand
17 times as many too little fish associated with our gear as
18 a nearby -- grass bed. It was something that I observed
19 while diving on the lease, but I never expected it.

20 There was all these larger fish that would come and
21 circle around the lease to try and eat the smaller fish.

22 So when I was taking my kids fishing, I was never a
23 good fisherman, but I'd always take them to lease because
24 I knew we would catch fish.

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 have a lot of beach access on their own properties.

2 Q. That's the one that's on the peninsula too, right?

3 A. The peninsula, yes. The question is, is the beach that's
4 right adjacent to the farm, is that better beach? It's
5 mostly cobble. It didn't look like it was an excellent
6 sunbathing beach. I do understand that there's some
7 access to clamming there right up on the shore.

8 Certainly that access is still there. The beach
9 points do prevent somebody from circumventing the lease
10 on the east side in a motor craft. My question is, why
11 would you want to go in there? You know, I mean, if I
12 was trying to get around the lease I would go around the
13 other side. If I were trying to access the beach, you
14 could certainly access it from the south or the north.
15 It doesn't appear to me that -- point poses a tremendous
16 challenge, but it's not for me to say. I'm not trying to
17 navigate in that pond.

18 Q. Well, let me ask you the question which is, based on what
19 you heard and the testimony over the last two days, as
20 well as all the materials that you have reviewed in your
21 experience, do you have an opinion as to whether or not
22 the proposed farm would result in significant conflicts
23 with water-dependent uses and activities such as
24 recreational boating, fishing, swimming and navigation?

1 MR. WAGNER: Objection.

2 A. Am I allowed to answer?

3 MR. WAGNER: Objection to the foundation. He's
4 been to Segar Cove once. He has no idea what the
5 activity and uses are in that cove. There's no
6 observations at all about any activity uses in that cove.
7 He's been there once.

8 MR. DESISTO: That goes to the weight, doesn't
9 it? You know, it seems to me with these witnesses that
10 the issue comes down to this use versus recreational
11 uses. It seems to be part and parcel of what goes on in
12 these things. So to me the witness should be allowed to
13 answer the question.

14 The fact that he's been to Segar Cove once, the fact
15 that his expertise is with aquaculture itself, goes to
16 the weight of his testimony. I think it's appropriate
17 for him to answer, and that can be an issue for
18 cross-examination later.

19 Madam Chair, I recommend that he be allowed to
20 answer.

21 MR. WAGNER: Madam Chair, may I have a
22 continuing objection?

23 CHAIRWOMAN CERVENKA: Yes.

24 MR. WAGNER: Thank you.

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

1 aquaculture in Rhode Island over the last few decades,
2 can you speak to how the interest of Mr. Raso and
3 objectors in terms of these conflicts of other
4 water-dependent use be reconciled?

5 A. So, you know, it's a balancing act. You have to try and
6 assess the number of people who are impacted and the
7 degree of their impact versus the desire of the state to
8 foster aquaculture.

9 We understand that the oyster act was passed because
10 the state recognized that if you give somebody a lease,
11 they are going to invest in that lease. They are going
12 to plant seed, they are going to pull out predators, and
13 it's going to enhance the productivity of those waters
14 and enhance the value to the state.

15 So when I sell oysters across the country and
16 somebody has them in a restaurant in Chicago, and they
17 have a big smile on their face, and they read about Rhode
18 Island oysters, now they want to come to Rhode Island and
19 go to recreation and have a vacation in Rhode Island.

20 So there are a multitude of cultural, social,
21 economic as well as environmental benefits associated
22 with that aquaculture.

23 The state recognized that when they put this
24 aquaculture bill into place, and also it's a balancing

1 act that is obviously quite a challenge which is why
2 we're here with a hearing that's lasting several days.

3 Q. And while we're focussing with the objectors and we're
4 here, they are not the only interest that needs to be
5 balanced in terms of Mr. Raso's application, correct?

6 A. Well, it's incumbent upon the managers of this resource
7 or the sub tidal waters to manage them for the benefit of
8 the sovereign, which is everyone in the state, not just
9 those who are lucky enough to have waterfront homes.

10 MS. NOONAN: Thank you, Dr. Rheault. No
11 further questions.

12 CHAIRWOMAN CERVENKA: Okay. I think I'm going
13 to end it here. I don't want to start the
14 cross-examination questions because we only have ten
15 minutes and that's going to chop up someone's
16 cross-examination.

17 I was looking, Ms. Noonan, at your list of witnesses
18 and you did have one additional listed. I assume you're
19 not calling him, Michael Stach?

20 MS. NOONAN: Correct. He was the harbormaster,
21 and instead we introduced the certified Minutes. You're
22 correct, I will not be calling him.

23 CHAIRWOMAN CERVENKA: All right.

24 THE WITNESS: Do the committee members want to

1 ask me questions? We have ten minutes. Might as well.

2 CHAIRWOMAN CERVENKA: Okay, but I will end at
3 five, and I just want to address what we're going to be
4 doing next time.

5 So next time we have to finish up Dr. Rheault, and
6 then we have to move on to the objectors' case. You're
7 going to have some closing argument, Ms. Noonan?

8 MS. NOONAN: I don't know if you want us to
9 argue just at the subcommittee level or submit -- I would
10 prefer to argue orally, yes. And possible rebuttal. I
11 don't anticipate a rebuttal witness right now, but I
12 might.

13 CHAIRWOMAN CERVENKA: Okay. So I think I
14 should ask -- well, let's do five minutes with
15 Dr. Rheault if there's any subcommittee questions, and
16 then I want to ask some questions of Mr. Capizzo and
17 Mr. Wagner as far as their cases and timing.

18 So does anyone on the subcommittee have questions
19 for Dr. Rheault?

20 [NO RESPONSE]

21 CHAIRWOMAN CERVENKA: I don't believe we have
22 any questions. It was thorough.

23 MS. NOONAN: Madam Chair, to avoid the question
24 from Mr. Capizzo to ask on Tuesday afternoon, just to

1 instruct the witness not to speak with anyone because as
2 he is under cross-examination.

3 CHAIRWOMAN CERVENKA: Okay. All right.
4 Mr. Capizzo and then Mr. Wagner, how much time do you
5 think that you'll need? I'm just trying to gauge for the
6 public when we'll be starting public comment, if we will
7 be starting public comment on Tuesday. And, you know, I
8 mean, you take the time that you need to get through your
9 case. I just want to get an idea.

10 MR. CAPIZZO: From my perspective we have four
11 witnesses. I've listed five, but I think there's only
12 going to be four. The bulk of the testimony will be
13 through Pace and Whitney from ESS, our expert witness.
14 That will be the first witness, and then I believe we'll
15 follow order of Mr. Hunt, Ms. Cooney and Mr. Latham. So
16 I imagine it will take up a good part of Tuesday between
17 presentation and cross.

18 CHAIRWOMAN CERVENKA: Okay. And you,
19 Mr. Wagner?

20 MR. WAGNER: I have one witness.

21 CHAIRWOMAN CERVENKA: Okay. So it sounds like
22 most of our third day will still be with attorneys and
23 witnesses, and we will unlikely reach public comment.

24 Mr. Willis?

1 MR. WILLIS: Madam Chair, that's what it sounds
2 like to me. We have been taking names all meeting long
3 as well as yesterday and via the email and we set up for
4 this hearing. So we do have a list. As we mentioned
5 this morning, it was at 50 plus, and I'm certain it's
6 grown over the course of today.

7 CHAIRWOMAN CERVENKA: Okay. So, we will need
8 to schedule at least a fourth meeting and potentially a
9 fifth meeting.

10 MR. WILLIS: Agreed.

11 CHAIRWOMAN CERVENKA: We have to get to the
12 rebuttal and workshop. Okay. So do we want to tell the
13 members of the public that they will not be speaking on
14 Tuesday?

15 MR. WILLIS: Yes, we can do that. We can get
16 an email out tonight. We will amend our website and let
17 everybody know that. We have already amended the website
18 during the hearing to broach the possibility that Tuesday
19 was hopeful to be for public comment, but maybe not. And
20 we will expound on that and get information out tonight
21 so that the public has clear expectations that Tuesday
22 will be for continuation of this hearing and public
23 comment will no doubt be at a date to be determined
24 shortly thereafter.

1 CHAIRWOMAN CERVENKA: Okay, and if you can
2 communicate that there will be a time limit on each of
3 those speaking because we have to do that so that we have
4 an end point. We'll figure out what the number is and
5 then we'll calculate the time limit.

6 MR. CAPIZZO: Madam Chair, may I inquire just
7 for those who are listening so there's a clear
8 understanding for the public? Are they going to be able
9 to sign up on Tuesday for participating in the public
10 comment, or is that closed as of today?

11 CHAIRWOMAN CERVENKA: It is closed as of today.

12 MR. CAPIZZO: I just wanted to make sure.

13 CHAIRWOMAN CERVENKA: I think we've given ample
14 opportunity for a period of time before these hearings
15 started. They got yesterday, they got today and, you
16 know, they just have to show up and register and we have
17 given a lot of opportunity.

18 MR. CAPIZZO: Does it make sense, Madam Chair,
19 to allow members of the public because of the number of
20 objections that Mr. Beutel had, to leave that open for
21 Tuesday? Because there will be additional testimony that
22 may sway the public one way or the other.

23 CHAIRWOMAN CERVENKA: Is that your request?

24 MR. CAPIZZO: Yes.

1 CHAIRWOMAN CERVENKA: Okay. I'll ask
2 subcommittee members what they think about it, the
3 request of Mr. Capizzo to hold open the registration of
4 those who want to give public comment orally.

5 VICE CHAIRMAN COIA: Madam Chair, Ray Coia. I
6 I think we've had nine hours of Zoom that they had an
7 opportunity to register and if there was any time before
8 that or not, I'm not sure. So I think ending it at the
9 end of today would be fair.

10 CHAIRWOMAN CERVENKA: Mr. Gomez?

11 MR. GOMEZ: I agree with that. I think that
12 you started the meeting indicating that this would be the
13 last opportunity by the end of today or the end of this
14 meeting, and I concur that they've had ample time to
15 voice, to request to be heard.

16 CHAIRWOMAN CERVENKA: Okay. Mr. Murray?

17 MR. MURRAY: I would agree as well. I think
18 Mr. Coia mentioned nine hours plus the lengthy travel of
19 this application, and all the public comment that's part
20 of the package in terms of the letters and what have you,
21 so I think it's fair.

22 CHAIRWOMAN CERVENKA: Ms. Reynolds?

23 MS. REYNOLDS: I'm also in agreement. I think
24 ample opportunity has been provided.

1 CHAIRWOMAN CERVENKA: Okay. So there you have
2 it. We're going to close it at five today.

3 MR. CAPIZZO: Thank you, Madam Chair.

4 CHAIRWOMAN CERVENKA: Okay. Anything else
5 administratively that we need to discuss, Mr. Willis,
6 Mr. DeSisto?

7 MR. WILLIS: No, Madam Chair. We have just
8 addressed what staff needs to do at 5:01.

9 MS. NOONAN: I apologize to staff that it's
10 5:01.

11 MR. WILLIS: No worries.

12 CHAIRWOMAN CERVENKA: I'll move to adjourn this
13 second session of the subcommittee meeting.

14 MR. COIA: Second.

15 CHAIRWOMAN CERVENKA: Thank you, Mr. Coia. All
16 those in favor say aye.

17 [UNANIMOUS VOTE TAKEN]

18 CHAIRWOMAN CERVENKA: Have a nice weekend,
19 everyone.

20 [ADJOURNED AT 5:00 P.M.]

21

22

23

24

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

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

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