

In The Matter Of:
Coastal Resources Management Council
Perry Raso

Hearing
Vol. 3
November 17, 2020

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

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IN RE:

CRMC File No. 2017-12-086

In the matter of Perry Raso

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Date: November 17, 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

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TUESDAY, NOVEMBER 17, 2020

[COMMENCING AT 1:07 P.M.]

CHAIRWOMAN CERVENKA: It looks like we have everyone. There's a smaller member of attendees, but you've admitted in everyone who is waiting. Okay.

I'm going to call this meeting to order. Today's date is November 17, 2020. It's 1:07 p.m. and this is the third meeting of the Subcommittee of the Rhode Island Coastal Resources Management Council that is considering a CRMC File Number 2017-12-086 in the matter of Perry Raso, his application to establish a 3-acre oyster and bay scallop farm using floating and suspended gear in Potter Pond, South Kingstown, Rhode Island.

Our Subcommittee members are as follows. I'm going to call each of your names, and if you can just unmute and indicate that you're here for everyone's benefit.

I'll start Vice Chair Raymond Coia?

MR. COIA: Ray Coia is here.

CHAIRWOMAN CERVENKA: Member Don Gomez?

MR. GOMEZ: Don Gomez here.

CHAIRWOMAN CERVENKA: Member Patricia Reynolds?

MS. REYNOLDS: Patricia Reynold, here.

CHAIRWOMAN CERVENKA: And Vin Murray who is our South Kingstown representative.

1 MR. MURRAY: Vin Murray is here.

2 CHAIRWOMAN CERVENKA: Thank you. And myself,
3 Jennifer Cervenka, Chair, here.

4 From staff, same thing. When I call your name if
5 could you unmute and indicate that you're here.

6 Our Executive Director Jeff Willis?

7 MR. WILLIS: Here.

8 CHAIRWOMAN CERVENKA: Our Deputy Director, Jim
9 Boyd?

10 MR. BOYD: Here, Madam Chair.

11 CHAIRWOMAN CERVENKA: Our Chief Legal Counsel
12 Tony DeSisto?

13 MR. DESISTO: Here.

14 CHAIRWOMAN CERVENKA: I don't think we have
15 Dave Beutel, is that correct, Mr. Willis?

16 MR. WILLIS: No, we do not have him today,
17 Madam Chair, but he may be in the audience but he is not
18 here as a panelist.

19 CHAIRWOMAN CERVENKA: Okay. So he will be with
20 us for our fourth meeting, correct?

21 MR. WILLIS: That is correct, Madam Chair.

22 CHAIRWOMAN CERVENKA: Ben Goetsch, our current
23 Aquaculture Coordinator, is in attendance just not on
24 stream?

1 MR. WILLIS: Yes, that's correct.

2 CHAIRWOMAN CERVENKA: Ryan Moore, who is our
3 moderator?

4 MR. MOORE: Here, Madam Chair.

5 CHAIRWOMAN CERVENKA: Lisa Turner, our
6 secretary?

7 MS. TURNER: Here, Madam Chair.

8 CHAIRWOMAN CERVENKA: And Lisa Reis, who is our
9 court reporter?

10 COURT REPORTER: Here.

11 CHAIRWOMAN CERVENKA: All right. I don't know
12 if I skipped this last time, Ryan, but do you want to
13 present the rules of the road for our Zoom meeting? I
14 don't know if it's necessary at the beginning of each
15 meeting.

16 MR. MOORE: That is entirely up to you, Madam
17 Chair.

18 CHAIRWOMAN CERVENKA: Okay. Why don't you just
19 -- can you briefly just state -- you don't need to go
20 through the slide show, just as far as muting, unmuting,
21 being a panelist or not being a panelist.

22 MR. WILLIS: Can do. Welcome to the CRMC
23 virtual Subcommittee meeting 11/17/2020 regarding CRMC
24 File 2017-12-086. Please be advised this online meeting

1 including all audio video and names and comments are
2 visible in the chat box are being recorded. All members
3 of the public who wish to comment, which I believe that
4 comment period is closed now, correctly identify yourself
5 before proceeding.

6 Please keep your microphones muted. Turn video off
7 unless instructed to turn on. Use raise hand function to
8 be recognized by the Chair. Identify yourself by name.
9 For those on the phone, please press star 9 to use the
10 raise hand function. Use the chat box to communicate any
11 issues of audio or video to the moderator. The Q and A
12 feature is disabled for this meeting. Thank you.

13 CHAIRWOMAN CERVENKA: Thank you, Mr. Moore.
14 We've been together for two sessions so far. We're
15 beginning our third meeting. We've covered about nine
16 hours, and we have a little under five hours today.

17 We are also scheduling, I don't know if the notice
18 is out yet, but we plan to schedule a fourth meeting
19 of -- is it five and a half hours of duration,
20 Mr. Willis?

21 MR. WILLIS: Yes, that's correct, Madam Chair.
22 We are scheduling December 4th for a rather long last day
23 of hearing that we anticipate from 11:00 a.m. to
24 5:30 p.m. assuming that we might need the first couple

1 hours of that meeting as a carry-over from today. We
2 will work the public comment period in the rest of that
3 day on December 4th.

4 We have also scheduled a workshop for the
5 Subcommittee on December 8th to do your deliverance after
6 the hearing has been closed.

7 CHAIRWOMAN CERVENKA: And with respect to the
8 public comment, we have a final list that was closed as
9 of the end of last meeting, and I believe that is 70 or
10 about 70 persons. We will be asking people to keep their
11 comments to two minutes only because of the vast number
12 of people who want to speak. I would urge you to
13 carefully, those of you in the audience, carefully
14 prepare those comments because you will be disabled at
15 the two-minute mark. You won't be able to go over.

16 I would like to spend as much time as we need to,
17 but we just don't have the ability to go on and on. So
18 we're going to schedule about three hours for that public
19 comment if we limit it to two minutes each. With
20 technology issues we should be able to get that done.

21 Okay. So at our last meeting we had gotten through
22 all of the direct testimony of the applicant, correct,
23 Ms. Noonan?

24 MS. NOONAN: That's correct, yes.

1 CHAIRWOMAN CERVENKA: And we have Dr. Rheault
2 who is still sitting and he's now going to go into
3 cross-examination. Correct?

4 MS. NOONAN: That's correct.

5 CHAIRWOMAN CERVENKA: And once we finish that,
6 you will rest, subject to rebuttal?

7 MS. NOONAN: Correct.

8 CHAIRWOMAN CERVENKA: Okay.

9 MS. NOONAN: I have three exhibits that I
10 wanted to get identified and moved full, whenever you
11 wish to do that.

12 CHAIRWOMAN CERVENKA: Okay. So we will finish
13 with your witness and then we'll do a little bit of
14 cleanup. Then following that, we'll shift over to the
15 objectors' case as represented by Mr. Capizzo, and he
16 will present his witnesses subject to applicant's
17 counsel's cross-examination.

18 Okay. So do we have Dr. Rheault with us and can he
19 unmute, please?

20 THE WITNESS: Yes, I'm here. Thank you.

21 CHAIRWOMAN CERVENKA: So I don't believe you
22 need to be sworn in again. You're still under oath.

23 MR. RHEAULT: Understood.

24 CHAIRWOMAN CERVENKA: And this is the time

1 where the objectors's counsel, Mr. Capizzo and
2 Mr. Wagner, are going to ask you some questions.

3 Mr. Capizzo?

4 ROBERT RHEAULT, Previously sworn

5 MR. CAPIZZO: Thank you, Madam Chair and good
6 afternoon members of the Subcommittee, Executive Director
7 Willis, Deputy Director Boyd. I want to thank you all
8 for the time over the last two days, Thursday and Friday
9 and today to hear testimony from both sides.

10 CROSS-EXAMINATION BY MR. CAPIZZO

11 Q. Good afternoon, Dr. Rheault. How are you?

12 A. Excellent, thank you, Christian.

13 Q. Good. Just a couple questions to follow up on your
14 testimony from Friday. Did you testify that you had
15 visited Segar Cove as part of your role here for Perry?

16 A. Correct.

17 Q. How many times did you visit Segar Cove?

18 A. Once.

19 Q. Okay. Was that with Perry?

20 A. Correct.

21 Q. What did you and Perry do when you visited the cove that
22 one time?

23 A. We took a lap around the entire cove, checked out the
24 entire cove.

1 Q. Okay. When you were speaking about the entire cove,
2 you're talking about Segar Cove?

3 A. Correct.

4 Q. Did you travel north to the northern basin --

5 A. Yes, correct.

6 Q. -- as well?

7 A. -- as well, yes.

8 Q. And the area where Perry has his current operations, did
9 you travel there as well?

10 A. I've been there many times, yes.

11 Q. Other than visiting Segar Cove with Perry on this
12 occasion, had you had an opportunity to visit the cove on
13 any other occasion?

14 A. No. As I said, just that once.

15 Q. Okay. Based on that one-time visit with Perry, I thought
16 you testified that this was a perfect spot to squeeze in
17 aquaculture; is that correct?

18 A. It was my opinion that that particular spot that he has
19 selected off to the side is a low impact site that should
20 have a minimum of conflict with the various users.

21 Q. What time of the year -- do you remember what month it is
22 that you visited the cove?

23 A. Yeah, it was just a few weeks ago.

24 Q. Okay. Was that your first involvement with this case?

1 A. Other than reading about it, you know.

2 Q. And participating on the Shellfish Advisory Panel which
3 you testified to?

4 A. Correct.

5 Q. Okay.

6 MR. CAPIZZO: Can I have one moment, Madam
7 Chair?

8 CHAIRWOMAN CERVENKA: Okay.

9 MR. CAPIZZO: Thank you.

10 [PAUSE]

11 Q. I thought you testified as well, I know you've been
12 involved with aquaculture for a long period of time, but
13 I think you said you've seen a hundred different
14 aquaculture operations. You had testified that at least
15 on your prior operation, you could waterski over that
16 operation; is that correct?

17 A. It has been done. I would not recommend it for a site
18 that has floating gear, but we try and allow as much
19 alternate and competing uses to cure as the project
20 allows.

21 Q. Okay. So if you were to waterski over the floating gear
22 let's say, and you fell into that floating gear, what
23 would happen?

24 A. It would be a very poor choice. First of all, you'd be

1 within a zone of 200 feet from the shore which is against
2 the ordinance, but obviously waterskiing through a bunch
3 of floating gear would be very ill-advised. If you were
4 to fall into it, injury would likely occur.

5 Q. Okay. And then when you are talking about the ordinance,
6 you're talking about the South Kingstown ordinance that
7 has been testified to?

8 A. Exactly.

9 Q. Okay. I guess the other question would be, I think you
10 testified that you can paddle board over these types of
11 operations, again, floating cages. If you're so unlike
12 myself maybe who doesn't have that good of balance and
13 fell off a paddle board into the raised cages, would you
14 get injured as well as you reference from waterskiing?

15 A. So, I mean, to waterski you have to be doing 20 knots.
16 That's a very different situation than falling from a
17 standing board. I suppose you might nick yourself on a
18 cage or something, but I don't really think it would be
19 very serious.

20 Q. I think you also testified to minimizing visual impact.
21 I think you said it was low profile. Is that what it's
22 called, low profile cages?

23 A. Yes. In all cases we advise applicants to try and
24 minimize the visual impact and try to avoid aesthetic

1 concerns, yes. These cages is developed and is working
2 with what we call a low profile. There are other
3 floating gear that have a much large float that sticks up
4 off the surface and is more visible, but these floats are
5 relatively low impact from a visual standpoint especially
6 when you're low on the water.

7 Q. Can you elaborate on that a little more? When you say
8 from the water standpoint, it appears lower on the water;
9 is that correct?

10 A. Sure. It doesn't project off the surface of the water as
11 much. But my point was if you are standing down at water
12 level as opposed to standing high on a bluff, the
13 appearance of the lease is slightly different.

14 Q. Would you agree that if you were on the water the visual
15 impact is also minimized?

16 A. Correct.

17 Q. Okay.

18 MR. CAPIZZO: I don't have any other questions.
19 Thank you, Doctor. Actually, Doctor, I do. I'm sorry.
20 I did forgot to ask you something.

21 If I may, Madam Chair? I apologize.

22 CHAIRWOMAN CERVENKA: Okay.

23 Q. Doctor, would you agree that at least in Rhode Island
24 it's the social carrying capacity that determines how

1 much aquaculture can be put in one location?

2 A. Currently this is a consideration so, you know, in terms
3 of what society is willing to accept. This is a
4 balancing act. So, yes, the social carrying capacity. I
5 would caution you, though, that the science of social
6 carrying capacity is not well settled. It's one of the
7 social sciences that's very difficult to measure. And
8 when you read the literature it's quite daunting, I must
9 say. Fuzzy logic is involved. It's not like you have
10 solid metrics that you can work with.

11 Q. Do you recall giving a statement or working with --
12 strike that.

13 Have you worked with Mr. Beutel over at the staff
14 report?

15 A. I have.

16 Q. Have you contributed to information that would be posted
17 on Coastal Resources' website in regards to aquaculture?

18 A. Very much so, yes. I was just reviewing the aquaculture
19 working group report from 2008, we were referring to it
20 in our last meeting, to try and remind myself who was
21 involved and what I had written in that document
22 pertaining to the ecological carrying capacity which was
23 the chapter that I wrote.

24 Q. I'm going to show you --

1 MR. CAPIZZO: Madam Chair and Ryan, if I could
2 share my screen?

3 MR. MOORE: Christian, you have the ability.

4 MR. CAPIZZO: Thank you, Ryan.

5 [EXHIBIT DISPLAYED]

6 MR. CAPIZZO: For the record, Madam Chair and
7 for Beth and Dean, this was a Rhode Island Coastal
8 Resources -- before I present it for ID only -- Rhode
9 Island Coastal Resources Council website posting entitled
10 CRMC's 5 percent aquaculture rule seems to balance the
11 use of salt ponds.

12 MS. NOONAN: What's the date on that?

13 MR. CAPIZZO: June 4, 2018.

14 CHAIRWOMAN CERVENKA: Is that the one that's
15 attached to your memo?

16 MR. CAPIZZO: It is.

17 Q. Doctor, can you see what's on screen?

18 A. I can.

19 Q. What does that say?

20 A. You want me to read the entire page?

21 Q. No, sir, just the title, just for the record.

22 A. "CRMC's 5 percent rule seems to balance the use of salt
23 ponds."

24 Q. Do you recall being quoted in this article?

1 A. I do not.

2 Q. I want to draw your attention down, scrolling down. Do
3 you see your name there, sir?

4 A. I do.

5 Q. That is you, Robert Rheault?

6 A. That's me.

7 Q. You're familiar with carrying capacities; is that
8 correct?

9 A. Yes, I am familiar with carrying capacities.

10 Q. And you heard the testimony of Dr. Rice and Dr. Byron
11 about the 5 percent rule?

12 A. Indeed, yes.

13 Q. I know you've been intimately involved with that 5
14 percent rule. That 5 percent rule, you would agree with
15 me, is one of the carrying capacities that's considered
16 in addition to the social carrying capacity?

17 A. So it was a first level attempt at defining the
18 ecological carrying capacity based on the best available
19 science at the time which we were later able to revise
20 based on the studies by Dr. Byron which revealed,
21 according to her food web model, the actually carrying
22 capacity for our waters was much higher.

23 Q. But that 5 percent hasn't changed, correct?

24 A. That is correct.

1 Q. And that 5 percent carrying capacity, would you agree,
2 solely has to do with the ecological carrying capacity?

3 A. The intent of the initial definition of that 5 percent
4 was to describe the best available science at the time.
5 It was an ecological carrying capacity estimate, yes.

6 Q. Okay. You just testified about the social carrying
7 capacity and how it's a very complex capacity to kind of
8 figure out and apply; is that right?

9 A. Correct.

10 Q. I want you to look -- let's see. Right below the
11 paragraph there are several types of carrying capacity,
12 and it says quote: "In Rhode Island it is the social
13 carrying capacity that really determines how many
14 aquaculture we can put in a location."

15 A. Indeed. Usually in any location, in any state, it's the
16 social carrying capacity that is going to be the
17 determinant. If you go to France, they are willing to
18 stock their waters with oyster culture right up in front
19 of multi-million dollar homes. That's part of their
20 culture and they have adapted to that. That's something
21 that would not go over well in this community.

22 But social carrying capacity is something that is
23 plastic and valuable, and over time can be expected to
24 change. So I think that as society either grows more or

1 less tolerant of aquaculture you'll see that social
2 carrying capacity go up or down.

3 Q. I also want to draw your attention to, for the record,
4 Page 3 of 4 of the same document. First sentence, you
5 can see that. Can you see that, Dr. Rheault?

6 A. Yes, I can.

7 Q. It says, for the record, Controversy over aquaculture
8 applications is something the industry and CRMC have
9 grown accustomed to for both Beutel -- that's Dave Beutel
10 who wrote the staff report; is that right?

11 A. That would be correct.

12 Q. And you, Rheault, said it's often unwarranted.

13 A. Everyone has opinions, yes.

14 Q. Was that your opinion then?

15 A. It is my opinion that sometimes some of these
16 applications get more controversy than I would believe
17 they deserve.

18 Q. You, personally, I think you testified that you
19 personally were impacted by that with your own
20 aquaculture operations back in the day?

21 A. That is correct.

22 Q. Okay. One last thing I wanted to ask you about regarding
23 your testimony. It had to do with a statement you made
24 about the northern basin. You said you visited that

1 area?

2 A. Visited the northern basin many times, yes.

3 Q. Is that because of your relationship with Perry or is
4 that just because you were -- why were you up in the
5 northern basin?

6 A. I've been on the pond, Potter Pond, several times usually
7 with Perry.

8 Q. Okay. I thought you mentioned back in the day that there
9 actually was an aquaculture, you remember there being an
10 aquaculture farm actually in the northern basin. Did I
11 hear that correctly?

12 A. Dr. Rogers was one of the first to try growing oysters,
13 and he had a lease up in that area probably up until I
14 think it was about 1985 or '86 that he took that lease
15 out.

16 Q. Okay. Do you have any of your aquaculture operations in
17 Potter Pond at all?

18 A. I do not.

19 MR. CAPIZZO: I'm going to stop. I appreciate
20 you answering my questions. I don't have anything
21 further.

22 CHAIRWOMAN CERVENKA: Okay. Thank you,
23 Mr. Capizzo. Mr. Wagner, would you like to ask this
24 witness questions?

1 MR. WAGNER: Yes, please.

2 CROSS-EXAMINATION BY MR. WAGNER

3 Q. Good afternoon, Dr. Rheault.

4 A. Good afternoon, Mr. Wagner.

5 Q. That last line of questions should remind you to be
6 careful when a lawyer tells you he has one more question.

7 You owned a large shellfish farm, right?

8 A. I owned a very small 13-acre operation.

9 Q. Okay. Was that Moonstone Oysters?

10 A. Yes, sir.

11 Q. You owned that operation for over 20 years, right?

12 A. Yes, sir.

13 Q. You are currently the executive director of the East
14 Coast Shellfish Growers Association?

15 A. Yes, sir.

16 Q. And Matunuck Oyster farm is a member of the East Coast
17 Shellfish Growers' Association, right?

18 A. It's one of my 270 grower members, yes.

19 Q. Okay. The website for that organization says that you
20 are a passionate industry advocate. Is it fair to say
21 that you are a passionate advocate for aquaculture?

22 A. Aquaculture, yes, absolutely.

23 Q. I think you testified that you've known Mr. Raso for some
24 time?

1 A. That's correct.

2 Q. Now, you are a member of this Shellfish Advisory Panel?

3 A. That's correct.

4 Q. Is that called the SAP, or the S-A-P or --

5 A. Yes, sir. So when the primary aquaculture representative
6 is unavailable, he calls me and sees if I can go and sit
7 in his stead.

8 Q. Okay. In this case this SAP made a recommendation to the
9 Marine Fisheries Council on this application, right?

10 A. That is correct.

11 Q. And when the application came before the Fisheries
12 Council the vote was a three-to-three tie?

13 A. That was the response of the SAP, yes.

14 Q. Now, the Fisheries Council is responsible for assessing
15 whether or not the proposal is consistent with other
16 competing fishing-related uses in the area, right?

17 A. That is correct.

18 Q. The Fisheries Council doesn't consider recreational uses
19 like waterskiing or tubing or sailing, right?

20 A. That has been their charge; however, having sat on the
21 Marine Fisheries Council and attended many meetings, I
22 would offer that they tend to stray from their charge and
23 often consider other aspects, especially when there's a
24 bunch of people in the room drawing their attention to

1 perceived conflicts.

2 Q. Is it fair to say that the primary concern of the
3 Fisheries Council is commercial and recreational fishing?

4 A. That is their charge.

5 Q. In this case, half of the Fisheries Council members found
6 the proposal was inconsistent with competing uses of the
7 fisheries, right?

8 A. That is the way they voted; however, I don't agree that
9 they were restricting their comments to their charge.

10 Q. Okay. In any event, half found that it was not
11 inconsistent.

12 A. That is what they records shows. I was not at that
13 meeting.

14 Q. Okay. Do you recall whether Dr. Rice, who testified last
15 week, I think he was one of the votes in favor.

16 A. That was what he testified. I was not at the meeting.

17 Q. Okay. At some point after that vote you were asked by
18 Mr. Raso or his representatives to provide testimony on
19 his behalf before this Committee, right?

20 A. Yes. As soon as -- well, I don't know the chronology,
21 but it was a month or two ago. When this meeting was
22 originally scheduled, I was approached to be a witness.

23 Q. Okay. You were provided documents to review in
24 preparation for your testimony?

1 A. Obviously the application and Mr. Beutel's report, and
2 then subsequently in preparation for my testimony we got
3 the package of materials that we went over in great
4 length the other day involving your engineer's report, et
5 cetera.

6 Q. Do you know if you reviewed the entire CRMC file?

7 A. I believe what I was given was all of the documents that
8 were in that file; however, there has been reference to
9 an extensive list of objectors' letters. Now, those were
10 probably in the file but that was not in the documents
11 that was provided.

12 Q. Okay. Did you do any independent investigation or
13 research?

14 A. I did go back yesterday and I went back and looked at the
15 aquaculture working group report, the 88-page report that
16 we put together in 2007 to remind myself, you know, who
17 were the 38 attendees who were involved in that consensus
18 document.

19 Q. Okay. Did you read the staff report?

20 A. I read the staff report.

21 Q. You had no involvement with the preparation of the staff
22 report, right?

23 A. None whatsoever.

24 Q. Did you speak with Mr. Beutel?

1 A. I see him on a roughly quarterly basis to drop off news
2 letters, say hi, see what's going on, make sure that I
3 understand what the industry is up to and what's going
4 on.

5 Q. Did you speak with Mr. Beutel about this application?

6 A. I don't recall. I don't believe so.

7 Q. You gave a number of opinions related to some of the
8 Category B requirements relating to the ecological
9 impacts of the proposal. I want to focus on your opinion
10 of whether the proposed farm will significantly conflict
11 with existing uses and activities.

12 Before rendering an opinion on whether the proposal
13 would result in significant conflicts, you need to
14 understand what uses and activities actually take place
15 on Segar Cove in the area in question, right?

16 A. That would be true.

17 Q. Did you review the 147 letters of objection?

18 A. I already said that I have not.

19 Q. Did you review any of the letters of objection?

20 A. Some of them were referred to in some of the documents
21 that I reviewed.

22 Q. Did you contact any of the people who wrote letters of
23 objection?

24 A. I did not.

1 Q. Did you contact any of the people who live on Segar Cove?

2 A. I did not.

3 Q. Did you interview any fishermen who fish on Segar Cove?

4 A. I did not.

5 Q. Did you interview any recreational boaters who use Segar
6 Cove?

7 A. I did not.

8 Q. I think you testified that you visited the cove once?

9 A. Exactly once, yes, sir.

10 Q. Doctor, would you agree that the opinion that you gave to
11 the Committee last week specifically with respect to the
12 conflict issue is only as accurate as the facts that you
13 base your opinion on?

14 A. I would agree that my opinion is based on decades of
15 recreating on many water bodies, watching waterskiers,
16 having been a waterskier, having been a sailor, having
17 been a farmer, having spent 30 odd years working on the
18 water. So, yes, my opinion is not necessarily based on
19 solely my experience in that cove, but my experience on
20 many such water bodies that are quite similar.

21 Q. Would you agree that people who actually live, work and
22 recreate on that cove are in the best position to inform
23 the Committee as to what activities actually occur on
24 Segar Cove?

1 A. I would agree.

2 MR. WAGNER: I don't have any further
3 questions.

4 CHAIRWOMAN CERVENKA: Thank you. Ms. Noonan?

5 MR. WAGNER: Thank you, Doctor.

6 MS. NOONAN: Some redirect, please.

7 REDIRECT EXAMINATION BY MS. NOONAN

8 Q. Dr. Rheault, good afternoon. In light of the questions
9 that Mr. Wagner just asked you, how are you able to opine
10 on the conflict of uses if you do not have sort of this
11 firsthand input from people who live and recreate on
12 Segar Cove?

13 A. Well, as I say, I've spent my entire life working on the
14 water, recreating on the water, and I'm intimately
15 familiar with Rhode Island waters. I've also heard
16 descriptions of the activities on that pond, the tubing,
17 the waterskiing. Certainly I heard a lot about paddle
18 boarding and kayaking on the pond and of these things.

19 I look at that particular site, and what I try to
20 evaluate is, okay, where are these activities going? How
21 would this farm impact those activities? So if you're
22 waterskiing or tubing you might have to go 50 or 100 feet
23 out of your way to avoid the farm. If you're trying to
24 get to that beach, what would be the impact on your

1 navigation? Can you get around the farm? What is the
2 draw to get to that beach? Are there other beaches?
3 Have we impacted the riparian interests of the
4 landowners? Can we manipulate the location of the farm
5 to minimize those impacts as I believe the Alternate B
6 was an attempt to achieve.

7 So I've read the report; I heard about the fishing;
8 I heard about the depths and the impacts on clamming;
9 I've heard about all the various uses of the pond through
10 the various documents that I reviewed. And in my mind it
11 looks like, okay, it's not like there's no impacts.
12 There's no place where you are going to have zero
13 impacts.

14 But when I look at the various alternatives, this is
15 relatively low impact. And when I look at the numbers of
16 people who are impacted and the degree of their impacts,
17 in other words, if we said you can't go waterskiing.
18 Well, no, you can still waterski, you can still tube, and
19 you can still do these activities. You just have to do
20 them over here.

21 So, in my mind and in my opinion, it seems like this
22 is a good site because, again, I think that the nature of
23 these conflicts are relatively minor. Obviously other
24 people have a different view.

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

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

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

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

19 Do you still stand by that statement?

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

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

1 shellfish that we are able to produce on an active oyster
2 farm or a [ZOOM INTERRUPTION] -- we only have a few of
3 those -- it's typically over a hundred to a thousand
4 times more shellfish than would be harvested just from
5 the wild harvest fishery. That's because we plant tens
6 of thousands and hundreds of thousands of dollars worth
7 of seed and that ensures future harvest. That investment
8 ensures those waters are much more productive than they
9 would be just naturally.

10 Q. Okay. Mr. Wagner also asked you about your prior
11 relationship both with Mr. Raso and Mr. Beutel. In terms
12 of Mr. Beutel, you obviously had no impact or input into
13 the staff report, correct?

14 A. That is correct, no direct impact on that report. I
15 mean, obviously I've had a big impact on the nature of
16 the laws and regulations that the state has adopted, but
17 pertaining to this specific application we did not
18 discuss it and it was not brought up.

19 Q. All right. If this application was brought forth by
20 someone that you did not know, would it in any way alter
21 the opinions that you have given to this Committee?

22 A. I have to hope that I would be impartial. Even if I
23 hated the person, I would probably still come up and
24 support the application.

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

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

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

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

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

1 CHAIRWOMAN CERVENKA: Thank you, Ms. Noonan.
2 So that completes your witnesses, and I think you said
3 you had three additional exhibits that you wanted to have
4 marked --

5 MS. NOONAN: Yes, thank you. From the witness
6 list that we submitted most recently, there are three
7 exhibits that we've identified that I would like to have
8 moved full. Two are exhibits -- let's go with Exhibits 8
9 and 9. These are letters that are in the CRMC file and
10 are statutorily required to be submitted to CRMC for
11 aquaculture applications, specifically the Rhode Island
12 Department of Environmental Management letter to CRMC
13 dated January 23, 2018.

14 I would ask that that be moved full.

15 CHAIRWOMAN CERVENKA: Any objections?

16 MR. WAGNER: No objection.

17 MR. CAPIZZO: No objection.

18 CHAIRWOMAN CERVENKA: Thank you. So moved
19 full.

20 [EXHIBIT #8 MARKED FULL]

21 MS. NOONAN: Exhibit 9 is the same thing, the
22 Rhode Island Historical Preservation and Heritage
23 Commission letter to CRMC dated January 10, 2018
24 indicating that there were no historical concerns.

1 I would ask that that be moved full also.

2 MR. WAGNER: No objection.

3 MR. CAPIZZO: No objection.

4 CHAIRWOMAN CERVENKA: Okay. That's full.

5 [EXHIBIT #9 MARKED FULL]

6 MS. NOONAN: Thank you. Finally, there were
7 letters of support that were submitted. Again, these are
8 part of the CRMC file and we would ask those be made
9 full.

10 CHAIRWOMAN CERVENKA: The CRMC file has been
11 previously defined and admitted as an exhibit, correct?
12 So this is duplicative but this is a separate bunch of
13 them?

14 MS. NOONAN: It's the letters of support, yes.
15 I've culled those out of all of them.

16 CHAIRWOMAN CERVENKA: Mr. DeSisto?

17 MR. DESISTO: May I ask why if the CRMC file is
18 part of the file and it's part of the record why -- and I
19 said this at the last meeting -- why would you need to
20 have specific items that are already in the file to be
21 moved as full exhibits? They are already in the record.

22 MS. NOONAN: My only concern, Mr. DeSisto, is
23 in us referencing those letters I don't have any
24 pagination on the record yet so we'd have to go through

1 and identify them and paginate them if we're on appeal.
2 It's merely pulling them out to identify them as a
3 cluster. I would prefer to have them full I think for
4 ease of reference, but I understand your concern.

5 MR. DESISTO: It just seems duplicative because
6 they are already in. They could be referenced as part of
7 the CRMC file.

8 MS. NOONAN: All right. Well, then we'll do it
9 that way. Like I said, hopefully they will all be Baits
10 stamped so we can refer to them.

11 CHAIRWOMAN CERVENKA: Okay.

12 MS. NOONAN: That's all the housekeeping
13 matters that I have. I believe everything else has been
14 moved full. So with that we rest our case in chief
15 subject to rebuttal and closing argument.

16 CHAIRWOMAN CERVENKA: Thank you, Ms. Noonan.

17 MS. NOONAN: Thank you.

18 CHAIRWOMAN CERVENKA: Shifting over to you now,
19 Mr. Capizzo. Would you like to call your first witness?

20 MR. CAPIZZO: Thank you, Madam Chair. If I
21 could just make a brief opening?

22 CHAIRWOMAN CERVENKA: Sure.

23 MR. CAPIZZO: Ryan, could you give access to
24 Payson Whitney from ESS Group, 10 Hemingway Drive,

1 Riverside, Rhode Island, and if he could also be granted
2 the ability to share his screen that would be great.

3 CHAIRWOMAN CERVENKA: Okay.

4 MR. CAPIZZO: I will give a brief opening
5 statement and proceed with Mr. Whitney.

6 CHAIRWOMAN CERVENKA: That's your Exhibit 1?

7 MR. CAPIZZO: That is correct, Madam Chair and
8 members of the Committee, Exhibit 1. That's the
9 technical peer review report along with the figures
10 attached to that report.

11 Again, for the record, my name is Christian Capizzo.
12 I'm here on behalf of Kevin Hunt, 98 Segar Court, Alicia
13 Cooney, 95 Segar Court, who both live on Segar Cove,
14 Mr. Steven Quigley, who is Ms. Cooney's husband who also
15 resides at 95 Segar Court, and Mr. David Latham on behalf
16 of his family who owns property at 298 Prospect Road.
17 That is on Gardner's Island on Segar Cove.

18 I'm here on their behalf to respond to Mr. Raso's
19 proposal for his second commercial aquaculture farm in
20 Potter Pond expanding his business to Segar Cove.

21 The statute as you've heard in this hearing
22 authorizes Coastal Resources Management Council to grant
23 aquaculture permits under Rhode Island General Laws
24 20-10-1, and it expressly limits and restricts the

1 ability of Coastal to grant permits for aquaculture.

2 We've heard the statements made previously in this
3 hearing, and I'll quote the statute:

4 "The process of aquaculture should only be conducted
5 within the waters of the state in a manner consistent
6 with the best public interest with consideration given to
7 the effective aquaculture on other uses of the free and
8 common fishery and navigation."

9 Now, this statute gives Coastal the power to grant
10 aquaculture permits only when an applicant, here
11 Mr. Raso, demonstrates that his aquaculture operation is
12 in the best public interest, does not have adverse
13 impacts or significant conflicts on those public trust
14 uses and on that public trust resource which we argue is
15 Segar Cove.

16 This is Mr. Raso's burden to meet, not the public,
17 not my clients, not Mr. Wagner's clients. It's
18 Mr. Raso's burden to meet when he files an application
19 with Coastal.

20 In our judgment, Mr. Raso has failed to meet that
21 burden and in fact has been dismissive of those public
22 trust rights including boating, fishing and other water
23 dependent activities that take place on Segar Cove.

24 The evidence will demonstrate that Segar Cove is and

1 has been heavily used for years by recreational boaters,
2 including towed-water sports, sail boaters, recreational
3 activities such as fishing, clamming, kayakers, paddle
4 boaters and an assortment of other activity, recreational
5 and public trust uses on the cove.

6 The evidence will come from residents who actually
7 live on the cove, who have spent decades on the cove and
8 can attest to its use. Now, this stands in contrast to
9 the evidence of noninterference which has been provided
10 by Mr. Raso. He hasn't lived on the cove for years. He
11 provided you with a series of photographs that show no
12 recreational activity during certain points in the time
13 of every day, and through the testimony of three experts,
14 who you just heard from the last expert Dr. Rheault, who
15 testified that the proposed farm will not, in their
16 opinion, the proposed farm will not result in significant
17 conflicts with water dependent use and activities such as
18 recreational boating, fishing, swimming and navigation.
19 Now, this is after they've only been to the cove in
20 total, in combined total, I counted of five times.

21 Segar Cove is one of only two spots within the
22 329-acre Potter Pond that accommodates power boating,
23 waterskiing and towed water sports.

24 As my client and experts will share, Mr. Raso's

1 commercial operation will adversely impact both the
2 public's use of the cove and their use under the Public
3 Trust Doctrine -- [ZOOM INTERRUPTION] who use the cove as
4 they have for many years.

5 Specifically, you'll hear from Payson Whitney from
6 ESS about the reduction in the reduction watersheet by 33
7 percent, essentially eliminating 10 acres from the
8 30.3-acre watersheet available for these types of towed
9 water sports and power boating. You'll hear testimony
10 about concerns of the area being compressed for the
11 public and my clients to recreate safely, being forced to
12 the center of the cove and compressing that recreation
13 activity in a very small area.

14 You'll also hear testimony from Alicia Cooney and
15 Kevin Hunt in regards to this facility encroaching on
16 their property which is on Ram's Point on the Ram's Point
17 of Segar Cove, in some places 10 feet, literally a
18 commercial operation within 10 feet of their shoreline
19 and within 200 feet of Kevin Hunt's property. You'll
20 also hear from them about the facility adversely
21 impacting the rights to recreate and navigate safely on
22 the cove.

23 Now, Mr. Raso is asking Coastal -- and you heard
24 about this -- the balance. You have to balance it.

1 Dr. Rheault spoke about it actually very eloquently. He
2 said you have to balance the uses on the cove. But
3 Mr. Raso is asking CRMC to trade use of the cove solely
4 for his expansion in commercial gain while at the same
5 time sacrificing the right of the public and my clients
6 to recreate on the cove, rights guaranteed under the
7 Public Trust Doctrine and protected by this Subcommittee.

8 My clients' testimony will focus on the history on
9 Potter Pond and Segar Cove, their experience in living
10 and recreating on the cove, their observations of
11 recreational activity that takes place on the cove, and
12 their concerns about the facility and the impact that
13 it's going to have on their right to access the tidal
14 waters and to recreate on that cove.

15 Now, a little housekeeping. You've heard in Beth's
16 opening statement about the South Kingstown ordinance and
17 you've heard some testimony about this ordinance from the
18 witnesses and its question of applicability as it relates
19 to Coastal reviewing this Perry application.

20 Beth cited a Rhode Island Supreme Court decision
21 which I know Mr. DeSisto is familiar with, as he was
22 involved with that case, without dating him, the Town of
23 Warren v. Thorton Whitehouse for the proposition -- and
24 this is Ms. Noonan and Mr. Raso's position -- that this

1 case will limit the application of the South Kingstown
2 Boating Ordinance or for the members of the Subcommittee
3 to consider this in their deliberations as to whether or
4 not it will impact the use of Segar Cove.

5 That case simply stands for the proposition that a
6 town does not have the authority to enact or impose
7 zoning ordinances that governs the constructions of docks
8 or wharfs. We agree with that. That is solely within
9 Coastal's jurisdiction to review a permit approve or deny
10 Mr. Raso's application. And a town can't enforce their
11 zoning regs on Mr. Raso. So we agree with that. But
12 what the town does have an authority to do is enact and
13 impose ordinances that protect public safety for those
14 who recreate every day on that cove. And that's exactly
15 what the ordinance does, both ordinances do.

16 Quote: "No waterskier or his or her boat shall
17 approach any stationary or moving objects closer than
18 200 feet. It's an ordinance that's binding on the public
19 and boating activities. Not on Coastal Resources'
20 ability to grant permits."

21 As I said, the ordinance is designed to protect the
22 public. Mr. Raso's proposal, we will present evidence
23 that the location will compress the area on the cove for
24 boaters and skiers to travel safely, forcing them to the

1 center of the cove and essentially restricting their
2 access.

3 In balancing the best public interest, not just
4 public interest, Coastal must consider this ordinance.
5 It's relevant, as it limits the exercise of the public
6 trust. The evidence will show that if Mr. Raso is
7 allowed to locate his facility in this location it will
8 result in significant user conflicts with the water
9 dependent uses and activities such as recreational
10 boating, fishing, swimming, navigation commerce as it's
11 regulated and protected by this Subcommittee. This level
12 of conflict and interference could never be found to be
13 the best public interest.

14 One other housekeeping matter I want to discuss was
15 raised in Beth Noonan's opening statement about riparian
16 rights, and it's argued in her memorandum. I just want
17 to clarify something about riparian rights as we were
18 asked by Coastal if we were going to be raising riparian
19 rights that we address it in a legal memorandum.

20 Beth has argued that Coastal is without jurisdiction
21 to hear testimony from interveners about the impact of
22 proposed projects and the exercise of riparian rights.
23 So that pertains to Kevin Hunt, Alicia Cooney and Steven
24 Quigley.

1 For this proposition she cites the Enabling Act
2 which grants the authority to "enforce and implement
3 riparian rights in tidal water after judicial decision."
4 So we agree with that. We are not seeking to enforce or
5 implement Kevin, Alicia or Steven's riparian right.
6 That's not what we are doing here. That's not the
7 purpose of this hearing. This is not a battle of one
8 riparian right over another riparian right. We are
9 simply offering their testimony, Kevin, Alicia and
10 Steven's, who live on the cove that Mr. Raso's facility
11 will interfere with their riparian rights. Nothing more.

12 Riparian rights are a distinct and well-established
13 subset of the public trust governed under the Public
14 Trust Doctrine. The primary riparian right is the right
15 to access and use public waters. So Kevin, Alicia and
16 Steven's right to access and use Segar Cove is simply a
17 riparian owner's exercise of the public trust rights. By
18 statute, the Subcommittee and Coastal are bound to
19 consider the impact of Mr. Raso's facility on the public
20 trust rights which includes the rights of the public to
21 use and enjoy Segar Cove and the rights of Kevin, Alicia
22 and Steven who live on the cove to access and enjoy that
23 same public trust resource.

24 Coastal has not only the jurisdiction but also the

1 obligation to listen and consider the rights of the
2 public as well as those who live on the cove, especially
3 when they will share information that will show that
4 Mr. Raso's facility will have a significant impact on
5 their right to recreate, use and access the cove, a right
6 guaranteed under the Public Trust Doctrine. Thank you.

7 With that, Madam Chair, I would introduce the
8 interveners' first witness as Payson Whitney.

9 CHAIRWOMAN CERVENKA: Mr. Whitney, you're going
10 to be sworn in by the court reporter.

11 PAYSON WHITNEY

12 Being duly sworn testifies as follows:

13 COURT REPORTER: Please state your name for the
14 record.

15 THE WITNESS: Payson Whitney.

16 DIRECT EXAMINATION BY MR. CAPIZZO

17 Q. Payson, how are you?

18 A. Good Christian, how are you?

19 Q. Good. Can you hear me okay?

20 A. I can.

21 MR. CAPIZZO: Can the Subcommittee and Madam
22 Chair hear Payson okay?

23 CHAIRWOMAN CERVENKA: Very well.

24 Q. Payson, Ryan should have given you the ability to share

1 your screen. Can you pull up your CV, please.

2 A. Yes. Hold on one second.

3 MR. CAPIZZO: I reserve the right to take back
4 control, Payson.

5 THE WITNESS: Sounds good. Let me grab the CV
6 here.

7 Q. While you're doing that, can you tell us who you are
8 employed by?

9 A. Yes. I'm employed by ESS Group, Incorporated.

10 Q. I have it up if it's easier.

11 A. I just got it right here.

12 Q. Okay.

13 A. Can everybody see that?

14 MR. CAPIZZO: There we go. I got thumbs up.
15 Madam Chair, can you see that? Thank you.

16 Q. Payson, who are you employed by?

17 A. I'm employed by ESS Group, Incorporated.

18 Q. How long have you been employed by ESS?

19 A. 22 years.

20 Q. In what capacity have you been employed by ESS?

21 A. I started out as a staff engineer, and I have risen to
22 the ranks and now I'm vice-president and chief operating
23 officer.

24 Q. Okay. I note on your CV on the second line it says you

1 have experience as a civil and coastal engineer and
2 project manager?

3 A. That is correct.

4 Q. Okay. What are your responsibilities over the course of
5 the 22 years in regards to civil engineering or
6 civil/coastal engineering?

7 A. I've worked on a wide variety of projects that include
8 both design, construction, a lot of permitting expertise
9 in there as well as overall project strategy, technical
10 peer review such as this.

11 Q. Okay. Looking at your CV, where did you get your civil
12 engineering degree from?

13 A. Lehigh University.

14 Q. What professional engineering licenses do you have and
15 where?

16 A. I have licenses in six states, Rhode Island,
17 Massachusetts, Virginia, New Hampshire, Maryland and
18 Maine.

19 Q. Okay. Are you the member -- are you the member of any
20 organizations that involve engineering?

21 A. Not directly engineering. ESS is a member of the
22 Environmental Business Council, and I chair the Ocean and
23 Coastal Resources Committee.

24 Q. Okay. Previously, your previous affiliations, at some

1 point were you the chairman of -- what is the BSCES
2 Waterways, Ports, Coastal & Ocean Technical Group?

3 A. Yes, I was -- I was chair, yes, a long time ago now. But
4 that was the Boston Society of Civil Engineers. At the
5 time it was a stand alone engineering society. It
6 actually predated the American Society of Civil
7 Engineers, and I was the Chair of their Waterways
8 Committee during 1999 and 2000.

9 Q. Okay. Can you describe your experience in working with
10 -- strike that.

11 In the course of your work, had you had the occasion
12 to work on projects that require you to assess project
13 impact to navigation?

14 A. Yes, I have. It's pretty routine in the projects that I
15 worked on.

16 Q. Okay. Could you give the Subcommittee here a brief
17 overview of the type of work that you have done in
18 regards to assessing a project's impact on navigation?

19 A. Mmm-hmm, yeah. It ranges in complexity. Pretty much any
20 project, most of the projects that I work on in the coast
21 whether they are utility projects such as summary
22 transmission or offshore wind farms to marinas, as you're
23 doing permeable level assessments for various agencies,
24 mostly the Army Corp of Engineers really focus on

1 navigation. Part of it is, one of the impacts you look
2 at is, what is the impact on navigation of construction
3 of a project as well as operation. That has grown with
4 the advent offshore wind. We were the lead environmental
5 consultant for the Cape Wind Project many years ago. As
6 part of that project review there was a requirement to
7 write a navigational risk assessment. It had never been
8 done before in the United States, so I was tasked with
9 being the lead author of that and worked with U.S. Coast
10 Guard sector, South Eastern New England and East
11 Providence to figure out how that would be done to
12 prepare that report and then submit it through the Bureau
13 of Ocean and Energy Management with four Coast Guard
14 reviews. The Coast Guard was the actual reviewing
15 entities for that.

16 Since then I've worked on other navigational safety
17 risk assessments and the work on the Cape Wind really led
18 to the Coast Guard being able to put together guidance on
19 how that gets done.

20 Q. What is a -- when you say you prepared a navigational
21 risk assessment, can you elaborate on that a little bit,
22 of what that is?

23 A. Yes. It's a document that looks at the water body where
24 a project is located. It looks at the navigational

1 conditions in that area in terms of what types of vessels
2 are out there. Now you do a lot more quantitative
3 assessment of that in terms of vessel counts and vessel
4 tracks, and then you look at what is the proposed
5 project, and then how would that project's presence in
6 the water body where there was none before, how does that
7 potentially impact navigation in terms of shifting vessel
8 lanes that are commonly used, changes to Coast Guard aids
9 navigation, effects on search and rescue operations by
10 the Coast Guard, marine radar. So there is a wide
11 variety of things.

12 Q. Was that navigational risk assessment submitted on behalf
13 of Cape Wind to the U.S. Coast Guard?

14 A. It was submitted on behalf of Cape Wind to the Bureau of
15 Ocean Energy Management who the Coast Guard is a
16 cooperating agency to both. So, yes, they ultimately
17 received it through --

18 Q. Did I hear you say something that -- what did that lead
19 to for the Coast Guard, if you testified previously?

20 A. Yeah, as I testified, when Cape Wind came around, it was
21 obviously the first offshore wind project that was ever
22 proposed in the United States, and it broke a lot of new
23 ground. The Coast Guard said we need to do a
24 navigational risk assessment but really wasn't sure how

1 to do it.

2 So I spent a fair amount of time with the local
3 waterways manager at Sector Southeastern New England, Ed
4 LeBlanc, and we sat down and he kind of outlined the
5 things that we needed to address and we worked through
6 the means to do that. Obviously there was information
7 from the Coast Guard that he had to prepare and provide
8 to be able to do that, but ultimately what came out of
9 that was a navigation, they call it a NAVIC, a
10 navigational information circular, and that led to
11 guidance on how to write navigational safety risk
12 assessments that is being used to this day. It has been
13 since amended, but a process.

14 Q. Have you had the opportunity to work on or prepare
15 additional navigational safety risk assessments for other
16 projects?

17 A. Yes. I prepared one for another offshore wind farm down
18 in the mid Atlantic off of Maryland and Delaware which is
19 currently in review. And in terms of that document, I've
20 also provided expert witness support for appeals under
21 Massachusetts Chapter 91 where navigation was an issue.

22 Q. I would like to walk you through that really quick. I
23 believe it's referenced in your CV.

24 A. Yes, I believe it is, right there at the top. Right

1 here.

2 MR. CAPIZZO: For the record for ID purposes,
3 the project, Page 2 of your CV as it appears on the
4 screen, Projects with Navigational Conditions
5 Reviews/Testimony.

6 Q. So can you explain, walk through, the projects here,
7 Lobster Cove in Gloucester, Massachusetts?

8 A. Yes, Yeah. Lobster Cove was a case somewhat similar to
9 this. A neighbor was proposing a new float in a fairly
10 confined area, and the neighbors on either side appealed
11 that draft license that was issued by DEP under
12 Chapter 91, and we prepared a technical review, and then
13 we developed a written pre-filed testimony that was
14 submitted to DEP. That case ultimately got settled
15 before going before the administrative law judge.

16 Q. What about Eel Pond in Falmouth, Massachusetts?

17 A. Eel Pond was similar. I like to refer to them as dock
18 wars. It was a similar thing where somebody was
19 proposing another float adjacent to two other objecting
20 neighbors. We provided some additional technical review
21 and some written comments to MassDEP to preserve their
22 standing under Chapter 91, and then that case is kind of
23 on hold at this point. There were matters at the local
24 level that were being appealed, and ESS was not engaged

1 to support the local piece of it. So if the Chapter 91
2 appeal gets heard then we would likely come back.

3 Q. Manchester Harbor in Mass?

4 A. Manchester Harbor, again, we had to -- we were retained
5 by a neighbor to a marina that was proposing an
6 expansion. And we did a technical review for that,
7 permit applications, we submitted comments to DEP. We
8 also attended the local conservation commission hearing
9 as well and worked on behalf of our client with the
10 proponent of that marina expansion to develop a marina
11 expansion that could best serve both parties and enable
12 the marine to expand while not adversely affecting the
13 ability of our client to navigate to and from his
14 property.

15 Q. Okay. What about more locally, Naval Station Newport.
16 Can you tell the Subcommittee what your involvement was
17 with that site?

18 A. Yeah, that site we were part of a design build team that
19 had a contract with the Coast Guard Haskell, a company
20 down in Florida. That project you may remember the naval
21 station in Newport, the two large piers as everyone
22 probably knows where the aircraft carrier used to be.
23 The Coast Guard occupied one of those piers, the more
24 northerly with their buoy tenders.

1 As part of this project they relocated to a new buoy
2 tendering facility in between the two piers. We were
3 responsible for the permitting of that. We did a lot of
4 the environmental assessments as well as working with
5 CRMC on getting the permit and working with Dan Goulet
6 from CRMC. We did environmental monitoring as well
7 during construction. We placed turbidity monitoring
8 buoys out in the water and then had them -- back to
9 observe conditions during dredging.

10 Q. Then the last one I want to ask you about is the Villages
11 on Mount Hope Bay in Tiverton.

12 A. Yeah, that one, more of an upland role on that one. My
13 primary role at the beginning of that, ESS was
14 responsible for all the design and permitting of that
15 project. My primary role was reviewing and developing a
16 request for a letter of map revision to FEMA.

17 A new shoreline was there. If anybody has been
18 there, there is a restaurant right on the water. That
19 portion of the shoreline was raised such that it was
20 above the flood hazard so the building could exist there
21 without being flooded out.

22 We pulled together a technical analysis to go to
23 FEMA and ultimately a letter of map provision was issued
24 and that building is no longer in the flood zone.

1 Q. So the projects that you're talking about, is it a
2 combination of civil and coastal engineering that you're
3 working with?

4 A. Yes, yes, as well as permitting, yes.

5 Q. I want to talk to you about your navigational experience.
6 I know you've testified about your navigational risk
7 assessments that you performed for commercial projects as
8 well as you've mentioned battle of the docks.

9 A. Yes.

10 Q. In regards to navigation yourself in your experience, can
11 you explain to the Subcommittee what experience you have
12 with navigation?

13 A. Sure. I've been around the water pretty much all my
14 life. I grew up -- my family is fortunate enough to have
15 a summer home on the Connecticut shoreline and spent my
16 summers growing up, learning to sail, teaching ourselves
17 to sail with my brother and my cousins and my friends,
18 spent a lot of time sailing growing up. I've owned a
19 powerboat, a 19-foot powerboat, that I've used since
20 2003. I have just about 700 hours at the helm of that
21 vessel including waterskiing. I've also waterskied since
22 I was about 15 years old, and now I'm fortunate to be
23 able to teach my nieces how to waterski.

24 Q. Do you hold any -- I don't know if you call them

1 registrations or certifications from the U.S. Coast
2 Guard --

3 A. No certifications. I have attended and passed, when I
4 bought my boat, the U.S. Coast Guard Auxiliary Boating
5 Skills and Seamanship class which does issue a
6 certificate and teaches the proper way to navigate and
7 also provides a discount to your insurance as well for
8 having done that. So it predated boating licenses.
9 Massachusetts does not require a license for a boat
10 operator.

11 Q. Okay. Did you apply your navigational experience over
12 the years in addition to your civil and coastal
13 engineering when preparing the risk assessments, the
14 navigational risk assessments for the projects you
15 previously listed?

16 A. Yes.

17 MR. CAPIZZO: Madam Chair, I would move to
18 introduce, one, this exhibit as full, but also to move
19 Mr. Whitney as an expert in civil and coastal engineering
20 and navigational risk assessment based on his testimony.

21 CHAIRWOMAN CERVENKA: Okay. Is there any
22 objection?

23 MS. NOONAN: I do not object to him being
24 listed as an expert for civil and coastal engineering.

1 However, based on his own CV he did not do a navigational
2 risk assessment in this case, so I don't believe it would
3 be appropriate or germane. I'm not questioning that he
4 knows how to do it, but he did not do it in this case.
5 He only did a navigational conditions review. They are
6 broken out differently on his CV.

7 CHAIRWOMAN CERVENKA: Do you want to respond,
8 Mr. Capizzo?

9 MR. CAPIZZO: Yes, Madam Chair. I would argue
10 that he is more than qualified based on his experience,
11 based on his testimony, based on the projects that he's
12 worked on and based on his background. He's more than
13 qualified to be qualified as a navigational risk
14 assessment expert. I think that will provide the
15 Subcommittee with a context of what we're talking about
16 here.

17 As Mr. DeSisto said before, this is about user
18 conflict and the impacts that this application will have
19 and the burden that Mr. Raso has to demonstrate -- his
20 facility is going to have on the cove.

21 I think that he certainly is qualified also for
22 having written the first navigational risk assessment for
23 offshore wind, that he's more than qualified and should
24 be qualified as a navigational risk assessment expert.

1 CHAIRWOMAN CERVENKA: I'm just looking at the
2 CV. I see there's both projects with navigational risk
3 assessments and projects with navigational condition
4 reviews. I don't know exactly what the difference is.
5 Can you explain that?

6 Q. Mr. Whitney, can you explain what the difference is
7 between the two?

8 A. Yeah. I think the navigational risk assessment, as I
9 testified to, it's more of a prescribed document that the
10 Coast Guard requires in the case of offshore wind. It's
11 really reviewing navigational impacts, whether you want
12 to call it navigational conditions or navigational
13 characteristics or impacts. I think the risk assessment,
14 there is now an actual risk-based decision guideline that
15 is used in doing those assessments for offshore wind
16 which, in this case, I don't think is really appropriate.
17 It's more of a technical review of navigational
18 conditions and impacts.

19 MR. DESISTO: Can I make a recommendation to
20 the Subcommittee, Madam Chair?

21 CHAIRWOMAN CERVENKA: You may.

22 MR. DESISTO: In this instance, I do think it's
23 appropriate for the Subcommittee to vote on Mr. Capizzo's
24 request that he be qualified in the manner that was

1 taken. That's appropriate. And I think it's been
2 demonstrated in the CV and the extensive testimony.

3 What Ms. Noonan is saying goes to the weight that
4 the Subcommittee would put on his testimony as he goes
5 forward on it. That's something that I'm sure she will
6 highlight in her cross-examination. But it is
7 appropriate for him to be qualified as an expert in the
8 manner as proposed by Mr. Capizzo.

9 CHAIRWOMAN CERVENKA: Mr. DeSisto, the only
10 comment, and it's really based on what Mr. Whitney said,
11 he said that the navigational risk assessment is unique
12 to what's required in offshore wind, that it's more
13 generically navigational impact review or conditions
14 review or assessment. So in my view, it's more generic
15 as opposed to that specific for offshore wind which we're
16 not talking about here.

17 So I would just ask Mr. Capizzo if he would be
18 satisfied with that more generic description based on
19 your witness's testimony?

20 MR. CAPIZZO: I think that's fair. I think it
21 accomplishes what Mr. DeSisto is saying. I do agree it
22 goes to weight, not to admissibility. So I would
23 rephrase it as civil and coastal engineer and
24 navigational impact assessment. I think maybe everybody

1 can live with that.

2 MR. DESISTO: I think that's better.

3 CHAIRWOMAN CERVENKA: Okay. Is there a member
4 on the Subcommittee who would make a motion to qualify
5 this witness as a civil and coastal engineering and
6 navigational impact assessment expert?

7 VICE CHAIRMAN COIA: Madam Chair, Ray Coia to
8 be recognized?

9 CHAIRWOMAN CERVENKA: Yes, Mr. Coia.

10 MR. COIA: Based upon the representations made
11 and the answers to the questions, I would make that
12 motion.

13 CHAIRWOMAN CERVENKA: Thank you, Mr. Coia. Is
14 there a second?

15 MR. GOMEZ: Don Gomez will second.

16 CHAIRWOMAN CERVENKA: Thank you, Mr. Gomez.
17 Any discussion?

18 [NO RESPONSE]

19 CHAIRWOMAN CERVENKA: Okay. If there is no
20 discussion, I'll do a roll call. Mr. Coia?

21 VICE CHAIRMAN COIA: Ray Coia votes aye.

22 CHAIRWOMAN CERVENKA: Mr. Gomez?

23 MR. GOMEZ: Don Gomez aye.

24 CHAIRWOMAN CERVENKA: Ms. Reynolds?

1 MS. REYNOLDS: Reynolds votes aye.

2 CHAIRWOMAN CERVENKA: Mr. Murray?

3 MR. MURRAY: Murray votes aye.

4 CHAIRWOMAN CERVENKA: And myself Jennifer
5 Cervenka votes aye. The motion to so qualify carries.

6 MR. CAPIZZO: Thank you, Madam Chair. I move
7 to have Mr. Whitney's CV entered as a full exhibit.

8 MS. NOONAN: No objection.

9 CHAIRWOMAN CERVENKA: Okay. That's admitted as
10 a full exhibit.

11 [EXHIBIT #3 MARKED FULL]

12 MR. CAPIZZO: Thank you.

13 Q. All right. Payson, can you tell us what you did in
14 regards to this matter and in regards to your technical
15 prep? You heard the other expert witnesses testify,
16 Dr. Rice, Dr. Byron, Dr. Rheault and Audie Osgood. What
17 did you do in preparation for preparing your technical
18 peer review memo?

19 A. Yeah, in terms of preparing our peer review memo we
20 conducted a file review at the CRMC to obtain the
21 correspondence and the application, the supplemental
22 application.

23 We also performed two site visits, the first of
24 which was during the summer months in 2018. During that

1 site visit, we observed site conditions out there both
2 from land and from the water with Mr. Latham's boat. We
3 also, while we were there, obtained GPS coordinates of
4 the existing boundaries of Mr. Raso's existing lease on
5 Potter Pond and then coordinates on the buoys, the marker
6 buoys that he placed out there, as part of the
7 application.

8 We also went up to the northern basin and just got
9 an overall tour and made observations of navigation and
10 just conditions in the pond and then those were used as
11 part of our technical review or reviewed the application.
12 We reviewed it against the South Kingstown boating
13 ordinance, and we prepared a variety of figures which I'm
14 sure we'll go through at some point.

15 Then for the testimony, I also reviewed the staff
16 report which was recently issued, then went back and
17 re-looked at our report and at our photos and our videos
18 that we took during the site visit.

19 Q. Okay. Did you testify -- I may have missed it -- I know
20 you took the GPS coordinates of Mr. Raso's existing
21 aquaculture operation. Did you also take the GPS
22 coordinates of his proposed location?

23 A. We did, yes.

24 Q. Did you reach out to Coastal Resources in regards to

1 whether or not any new information had been filed on this
2 matter since you last reviewed the file?

3 A. Yes. I reached out to Mr. Goetsch and spoke to him just
4 a few weeks ago, and he confirmed that nothing had been
5 added to the record after the staff report, or actually
6 prior to the staff report, I'm sorry, beyond I think he
7 said one objector who restated their objection. Our last
8 file review before that was December of 2019.

9 Q. Okay. When you say Mr. Goetsch, that is the new
10 aquaculture director for Coastal Resources; is that
11 correct?

12 A. That's my understand. That was his position, yes.

13 Q. What was the -- you mentioned a site visit. What was the
14 purpose of that site visit?

15 A. The site visit was in June of 2018. It was really to
16 observe conditions from the lay of the water and to speak
17 with our clients, the Hunts, the Cooneys and the Lathams
18 to understand how the pond gets used from their
19 perspectives, and to be able to see for ourselves.

20 We were able to observe other boats navigating.
21 Some kayakers were out there as well the time we were out
22 there. If memory serves, I think it was the weekend
23 before the Fourth of July, that Friday before, the end of
24 June, just before Fourth of July that we were there.

1 Q. What did you specifically -- I know you said you --
2 specifically, did you go to each, Mr. Latham, Ms. Cooney
3 and Mr. Quigley's property and Mr. Hunt's property?

4 A. Yes, we did. I actually did not get up onto the Cooney
5 property beyond the dock. I was out on the boat while we
6 were doing that.

7 Q. Okay. And did you access other areas of Potter Pond
8 other than Segar Cove?

9 A. We did. We went, like I said, we went past Mr. Raso's
10 existing lease. We went into the northern basin. We
11 also went into Sycamore Cove which is on the other side
12 of the Hunt's property if I recall correctly.

13 Q. And you mentioned that you were on a boat in Segar Cove.
14 What if anything did you do specifically as it relates to
15 Segar Cove as part of your technical review with the boat
16 in the area of Segar Cove?

17 A. We did a couple of things. Like I said, we took a
18 variety of pictures, made observations. We also went to
19 place the boat at the various marker buoy locations. I
20 think one marker buoy was missing. We used one of
21 Mr. Latham's floats and the GPS to reestablish that
22 position there, and then we put the boat at each point.
23 Then while I was out on the boat, one of my colleagues
24 was at the various properties taking photographs looking

1 back so that we could make some -- we made some
2 visualizations about at least where the boundary would be
3 because the buoys are kind of hard to see from a distance
4 so we could see proximity to the shoreline.

5 We did that and then we also -- Mr. Latham told us
6 that he does a lot of tubing, if I recall correctly. We
7 asked him to show us how the loops that he would make
8 typically, when he does that tubing activities, and we
9 did that with a video camera on board and we also had a
10 GPS running and chartered the path. We asked him to do
11 that counterclockwise, clockwise and also asked him to
12 pretend like the marker buoys were a lease and he would
13 have to stay about 200 feet away from them. And then
14 what would that -- how would he drive in that scenario.
15 Those are reflected in our report. I think it's
16 Figure 5.

17 Q. When you are talking about the marker buoys, which marker
18 buoys are you talking about?

19 A. There are orange marker buoys that Mr. Rasa had put out
20 there. It's a requirement, as I understand it, on the
21 application that the applicant put markers out there. I
22 think Mr. Rasa testified earlier that he put them out
23 there and they would disappear so he had to keep putting
24 them back. So those were the marker buoys. There were

1 lobster pot buoys essentially is what he put there.

2 Q. What were those marker buoys supposed to be reflective
3 of?

4 A. The proposed boundaries. And the configuration that was
5 out there the day we were there was, the configuration
6 that was submitted in March of 2018 which has been
7 referred to as Option B during this hearing.

8 Q. That is actually a good point from a clarification
9 standpoint. Your technical review focused on -- I know
10 there's been mention of an Option A and an Option B.
11 What's your understanding of the offer? What is your
12 understanding after review of the file of what option you
13 decided to review based on Mr. Raso's submittal?

14 A. We did our report, and as you look at it in the figures,
15 it's off of what is being referred to as Option B in
16 these hearings. The reason we did that, when we looked
17 at the file there was the initial application that was
18 submitted in December of 2017, if I can recall the date
19 correctly. There was subsequent correspondence in the
20 file from March of 2018. I think there was an email, and
21 it's in the staff report as well it was the email that
22 Mr. Raso sent to Mr. Beutel dated March 14th of 2018.
23 And in that the message says, quote, "This is the revised
24 proposed lease area."

1 So we took that to mean the option in the original
2 application had been revised and we based our report
3 based off of what was in that March 2018 email.

4 Q. How would you -- just so we're clear, when we are talking
5 about Option A and B, and I know it may already be clear
6 to the Subcommittee, but how would you describe the shape
7 of Option A?

8 A. Option A was more rectangular.

9 Q. Okay. Option B?

10 A. Option B had five sides, if I recall correctly. It's
11 been referred to as polygon during these hearings.

12 Q. Okay. So based on the review of the files, your site
13 visit and all the information that you obtained, did you
14 analyze that information?

15 A. We did, yes, yes.

16 Q. What was the purpose of analyzing that information,
17 technical peer review report?

18 A. We were engaged to do a peer review, so we viewed it
19 as we were asked to look at an application, and we were
20 asked to look at -- when we do a peer review we look at
21 the requirements for submitting an application. Are the
22 requirements being met? Were all of the -- there is a
23 checklist. Are all the requirements in the application?
24 Were there anything missing? If so, we would list them.

1 Was there any information that perhaps might be
2 inconsistent or hard to understand? We looked at that.
3 And then from there we looked at the -- I'll keep
4 referring to it as Option B. We looked at Option B with
5 regard to the effect on navigation primarily under the
6 South Kingstown Boating and Waterways Ordinance in terms
7 of its effect on personal watercraft and waterskiing or
8 towed water sports which is really what those sections of
9 the ordinance really pertain to.

10 Q. Do you recall which sections of the ordinance that you
11 reviewed of the South Kingstown ordinance?

12 A. Yeah, I can look up the number here. It's in the report
13 here. It is Part 3, Chapter 4 of the ordinance.

14 Q. And for the record, can you state which are the two
15 ordinances that you focused your peer review on?

16 A. Yes. So it was the CRMC regulation, and for the
17 ordinance it was the Town of South Kingstown has enacted
18 a boats and waterways ordinance, and it's listed as Part
19 3, Chapter 4 of their town ordinances.

20 Q. That applies to the people who are recreating in South
21 Kingstown on Segar Cove and Potter Pond?

22 A. Yes, as well as anybody operating a boat in South
23 Kingstown.

24 Q. I know there was some distinction made. So on

1 Chapter 4-8-1, what was that ordinance?

2 A. Section 4-8-1 said -- there is a little bit before this.
3 I don't have the entire section, but it says:

4 "No waterskier or his or her boat shall approach any
5 stationary or moving object closer than 200 feet except
6 as maybe incidental to starting or finishing a run. Nor
7 shall any waterskier ski within any designated channels."

8 Q. Okay. What about Chapter 4-8-6?

9 A. Yes, 4-8-6 I have saying:

10 "No person shall operate a personal watercraft
11 within 200 feet of swimmers, divers, shore or moored
12 vessels except at headway speed."

13 Q. In your experience doing navigational impact assessment,
14 what is the purpose of these two ordinances on boaters?

15 A. It's really geared towards public safety. If you really
16 drill down into it, it's really trying to prevent
17 somebody from skiing into an object and obviously the
18 negative consequences that could result.

19 Q. Okay. Payson, are you familiar with the existing
20 conditions of Potter Pond?

21 A. Yeah, from site visits that I mentioned previously and
22 also from review of aerial photographs.

23 Q. Okay.

24 MR. CAPIZZO: I want to, if you could share

1 your screen with us, and if you could for the record and
2 Madam Chair, part of the Exhibit -- excuse me.

3 Opposition Exhibit 1 figure, why don't we start, Payson,
4 with figure -- hold on one second, I'm sorry. I think
5 it's 1A.

6 Q. Payson, can you zoom that in? I know we might lose --

7 A. How is that? That's good.

8 [DOCUMENT DISPLAYED]

9 MR. CAPIZZO: Can everybody see that okay,
10 Madam Chair or Subcommittee members, would you like it
11 bigger?

12 CHAIRWOMAN CERVENKA: I have it on my big
13 screen so I can see it well. Maybe I'll ask the other
14 Subcommittee members.

15 VICE CHAIRMAN COIA: I am fine.

16 MS. REYNOLDS: I am also fine.

17 MR. GOMEZ: Also fine.

18 MR. MURRAY: It's not an issue. It's fine.

19 MR. CAPIZZO: Thank you.

20 Q. Payson, I'm showing you a document that's been marked as
21 Figure 1A as part of your tech review report. Do you
22 recognize this document?

23 A. I do.

24 Q. In addition to the materials that you reviewed as part of

1 your -- how long have you been involved with this matter
2 for?

3 A. I think since probably first quarter of 2018.

4 Q. And you have been present at both of the previous
5 hearings as well as today and listened to the testimony
6 of all the witnesses?

7 A. That is correct. I did step away for the redirect of
8 Dr. Rheault for a few minutes.

9 Q. All right. I'm going to go back for the record to
10 Figure 1A. Do you recognize -- you said you recognize
11 this document. Can you explain to the Subcommittee, this
12 document has already been presented I believe in
13 Dr. Rice's testimony for ID only, but if you could
14 explain to the Subcommittee what we're looking at here.

15 A. Yes. So Figure 1A is, it's entitled Existing Conditions
16 2020 Ecological and Recreational Resources. It's an
17 aerial photograph overview, and the aerial photo I
18 believe is from 2018 as well as a variety of publically
19 available GIS layers showing things like chartered water
20 depths from the north chart, the shoreline of Segar Cove,
21 Mr. Raso's existing aquaculture lease and public access
22 points within Potter Pond. It also culls out the areas
23 of Potter Pond and Segar Cove specifically.

24 Q. Just for the record so it's clear, how are the public

1 access points referenced in this document?

2 A. The public access points are shown as yellow triangles,
3 and there are unverified public access points that were
4 in the GIS data that is shown as red circles.

5 Q. For the record, where are the public access points on
6 Segar Cove?

7 A. The public access points on Segar Cove are on the western
8 shoreline, so the southwestern shoreline of Segar Cove.

9 Q. Okay. There's also a -- you've mapped out Mr. Raso's
10 current aquaculture operation; is that correct?

11 A. That is the -- yes, yes. That is based off the RIDEM
12 current mapping, yes.

13 Q. That's not from the GPS coordinates that you took when
14 you were out there?

15 A. That's correct. That's from the GIS data layers that
16 were available in the spring when we rechecked all this.

17 Q. When you say RIDEM, you are referring to the Department
18 of Environmental Management, correct?

19 A. I am, yes.

20 Q. The numbers that appear in Segar Cove, what are those? I
21 see several numbers. What are those number reflective
22 of?

23 A. Yes, so in Segar Cove it says 53.5 acres. That's the
24 measured side of Segar Cove. And when we measured that,

1 we drew a line from the tip of Gardner's Island and the
2 tip of Ram Point to measure that area in GPIS, and we
3 also computed the percentage of Potter Pond as
4 16.3 percent. Potter Pond is listed in a variety of
5 publications, and we verified that it's about 329 acres
6 in size.

7 Q. How large did you say Segar Cove is?

8 A. 53 and a half acres. I think it's just over a thousand
9 feet wide at the point where Mr. Raso is proposing his
10 lease. I just measured that earlier today.

11 Q. Are you aware based on the materials that you have
12 reviewed of how many deep water coves are on Potter Pond?

13 A. I am, yes. I believe there are two.

14 Q. If you could point out where the two are just for the
15 record --

16 A. Yes, so Segar Cove is here. I'm sorry, that's the
17 northern basin or Skier's Cove, and Segar Cove is right
18 here.

19 Q. Okay. So there is a notation below the green areas. Can
20 you explain to the Subcommittee, I know it speaks for
21 itself, but can you tell us how you came up with that?

22 A. Yes. On the Rhode Island GIS data portal there's a layer
23 called submerged aquatic vegetation with a date of 2013.

24 Q. Okay. I want to draw your attention now to figure --

1 actually, let's stay here for a sec, Payson.

2 Payson, when you were on the cove for your site
3 visit, can you show us the areas that you went to, that
4 you observed firsthand?

5 A. Yes. So Segar Cove is here. So we boated through this
6 area of Segar Cove, so really from the Cooney property
7 down to about where the mooring field is on the southern
8 end about here. We went into -- this is Sycamore Cove if
9 I remember correctly. We went in here. There was a lot
10 of yograss in there as the thing shows. It's fairly
11 shallow. We went around Mr. Raso's lease over here.

12 Q. What was the depth over by Mr. Raso's lease, if you
13 remember?

14 A. I don't really recall the depth. It was not that deep.
15 You could see bottom when we were in the boat. It wasn't
16 deep enough that you were afraid you were going to run
17 aground in the small boat we were in, but you could see
18 the bottom.

19 Q. Where else did you go?

20 A. We also transited up here into the northern basin or
21 Skier's Cove.

22 Q. All right. If you could scroll to, for the record,
23 Figure 1B. What are we looking at here, Payson? Do you
24 recognize this?

1 A. I do, yes. So Figure 1B in our report is dated existing
2 conditions. I'm sorry, it's entitled Existing Conditions
3 2020. It's available for towed water sports.

4 Q. What is the relevance of this document in your analysis?

5 A. This document, what we're doing is illustrating the area
6 that is available for towed water sports. It has been
7 previously described, and I described earlier, the South
8 Kingstown ordinance has the 200-foot buffer off the
9 stationary objects, docks specifically in this case. So
10 what we did is we put in, and shorelines, we put a
11 200-foot buffer -- I'm sorry, not the docks, which is the
12 red indications in here.

13 We also noted Mr. Raso's existing lease as being a
14 stationary object as well and there is a 200-foot buffer
15 there. The green hashed areas are the remaining areas or
16 the area available, and that total -- in Potter Pond that
17 total is 81.84 acres.

18 Q. That's available for towed water sports?

19 A. In all of Potter Pond, that's correct, of the 329 acres.

20 Q. Just to confirm, what are those two areas that are
21 available?

22 A. The northern basin and Segar Cove. I should also note,
23 too, in the green hatched is based on water depth as
24 well. There are areas that are not shown in red that are

1 not green hashed either. Those are the shallow areas or
2 Sycamore Cove which has a lot of yograss close to the
3 surface where you couldn't really ski.

4 Q. You have the southern part of Segar Cove, fair to say,
5 it's all red; is that correct?

6 A. It is all red. There are docks pretty much around that
7 perimeter of that southern portion of Segar Cove as well
8 as the adjacent cove to the east.

9 Q. Is there a mooring field in the south part of Segar Cove?

10 A. There is, yes.

11 Q. Can you show us where that is? Did I lose you, Payson?

12 A. Nope, I'm still here. Yes, there is a mooring field in
13 the southern part of Segar Cove.

14 Q. Can you show us with your cursor where that area is,
15 please?

16 A. Right about here.

17 Q. Okay.

18 MR. CAPIZZO: May I have just one moment, Madam
19 Chair?

20 CHAIRWOMAN CERVENKA: Yes.

21 [PAUSE]

22 Q. Payson, can you pull up, I believe it's -- it would be
23 opposition -- well, it would be figure -- actually, I
24 don't know if you have this. It's Figure 1. I don't

1 know if you have that, Payson.

2 A. I should. Figure 1 from our report?

3 Q. Yeah.

4 A. We have a 1A and a 1B.

5 Q. I'm going to ask you to stop sharing and I'll put it on
6 the screen. It's in our record. Rather than have you
7 shuffle through your stuff, if I may, Madam Chair.

8 Can you see that, Payson?

9 A. I can, yes.

10 Q. Do you recognize this document?

11 A. I do, yes.

12 Q. I'm just going to scroll down to the bottom. For the
13 record, Payson, what document is this?

14 A. It says Figure 1 Segar Cove docks and mooring areas,
15 South Kingstown, Rhode Island.

16 Q. Do you recognize this document?

17 A. I do.

18 Q. How do you recognize it?

19 A. I recognize it as an ESS document.

20 Q. What was the purpose of generating this document?

21 A. I don't have the context of what document this went into,
22 just seeing the figure alone. I believe it was prepared
23 as part of our work. I just don't remember the context
24 what document it got to.

1 Q. Can you tell us what it references though in looking at
2 the key?

3 A. Yes. It references Segar Cove. It shows the mooring
4 area as a dashed gray line, and then there's a count of
5 the docks. So the docks are numbered 1 through -- I
6 can't really see that number. I think it says 26, I
7 think.

8 Q. Okay. Can you tell me where -- you said when you did the
9 site visit you observed Ms. Cooney and Mr. Quigley's
10 property. Do you know where that dock is, do you recall?

11 A. I do, yeah. It's labeled as 1.

12 Q. Right here?

13 A. That's correct, yes.

14 Q. Where the cursor is right now, that is Ms. Cooney's and
15 Mr. Quigley's property?

16 A. Yes, it is.

17 Q. How about Mr. Hunt's property?

18 A. Mr. Hunt's property is on Ram Point, right there.

19 Q. Where your cursor is here is reflecting Ram's Point?

20 A. That's correct.

21 Q. His dock is right here; is that correct?

22 A. Yes, yes.

23 Q. Okay. And do you recall where Mr. Latham's property is?

24 A. Yes. He's at the tip of Gardner Point on the north side.

1 Q. Right over here?

2 A. Correct.

3 Q. This is reflective of the mooring field as well; isn't
4 that correct?

5 A. That's correct. While we were doing this we requested
6 the layout or the map for that mooring field from the
7 harbormaster.

8 Q. Okay.

9 A. I believe that was done in 2018, but I'd have to go back
10 and look to verify the date in our files.

11 Q. Okay. I'm going to stop sharing, Payson, and ask you to
12 share again, please.

13 If you could go to 4A, please, and if you can zoom
14 that in as well. Do you recognize this document,
15 Mr. Whitney?

16 A. I do.

17 Q. How do you recognize this document?

18 A. This is a document that is in our report entitled,
19 "Figure 4A, originally proposed aquaculture lease
20 watersheet available for towed water sports in Segar
21 Cove."

22 Q. Can you explain to the Subcommittee members what the
23 purpose of this document is?

24 A. Yes. So similar to the document that we were just

1 looking at, this focuses in on Segar Cove itself. It
2 shows the mooring area, it shows the 200-foot municipal
3 ordinance buffer off of stationary objects, and then also
4 applies that 200-foot buffer to the originally proposed
5 lease configuration that was in the application of
6 Mr. Raso.

7 Q. When you say "the original," that's the one that's been
8 referred to as -- is it A?

9 A. I believe it's A, yes. It's the rectangular
10 configuration that's shown.

11 Q. Just so we're clear, in the center of that, the green
12 area available for towed water sports, I know Segar Cove
13 said 58.3, but you've got it in the green that the area
14 available for towed water sports is what?

15 A. So Segar Cove is 53.5. The area in the green hatch is
16 the area, the remaining area available for towed water
17 sports, and that is 20.2 acres.

18 Q. Okay. That would be all the green area right there,
19 correct?

20 A. Correct.

21 Q. Okay. Then if you could go -- Payson, again, you
22 prepared this based on your review of the materials, the
23 site visit, and your review of relevant GIS documents and
24 charting this 200-foot buffer as well as the proposed

1 boundaries as prepared by Mr. Raso in his application?

2 A. That is correct. I'll just qualify that I did not
3 physically prepare this figure. It was prepared under my
4 supervision.

5 Q. Okay. If you could go to Figure 4B. If you could, for
6 the record this is Figure 4A, ESS Group modified proposed
7 aquaculture lease areas available for towed water sports
8 in Segar Cove; is that correct?

9 A. That's correct.

10 Q. Were you involved in the preparation of that document?

11 A. Yes, yes.

12 Q. Can you tell us what we're looking at and what went into
13 the preparation of this document?

14 A. This is the same context as the figure we just looked at
15 for Figure A. The difference here is that it shows what
16 is being referred to in the hearing as Option B, the
17 polygon shaped lease configuration that was the subject
18 of the March 2018 supplemental application, the revised
19 lease area that Mr. Raso submitted.

20 Q. So this is his proposed aquaculture that's been
21 referenced as B; is that correct?

22 A. That's correct, yes.

23 Q. The aquaculture, proposed aquaculture site, is in orange
24 for the record?

1 A. It is, yes.

2 Q. Where did you get those coordinates from?

3 A. The coordinates were provided in the application of
4 Mr. Raso. I believe there was one coordinate. I think
5 somebody else testified to that earlier that was a
6 duplicate, and I believe -- I don't remember if we
7 inquired, but we were able to straighten out what the
8 correct coordinates were by review of the record or
9 inquiries with CRMC.

10 Q. Okay. It's a fair and accurate representation of Segar
11 Cove?

12 A. Yes, yes. It's all based off GIS data and aerial
13 photographs, yes.

14 Q. Can you explain to the Subcommittee where you get the
15 aerial photographs?

16 A. The aerial photographs, there are a variety of sources.
17 These photographs actually were published by NOAA, the
18 National Oceanic Atmospheric Administration. They did a
19 lot of imagery of the coast, post-super storm Sandy. And
20 this is from what is called the Sandy orthoimagery set
21 and has a date of 2014.

22 Q. The GIS coordinates, where do those come from?

23 A. The GIS -- which GIS coordinates are you referring to?

24 Q. In the regards -- how do you figure out, I guess for the

1 Subcommittee, the 200-foot buffer zone when you're
2 preparing these figures?

3 A. So in GIS you can establish a buffer off of a point. So
4 in the case of the lease we established a 200-foot buffer
5 off of the corners of the lease and then connected them,
6 you know, basically between it, lines and curves. For
7 the docks, using the aerial photographs, we pointed the
8 selector or the cursor at the end of that dock in the
9 aerial photograph and drew a 200-foot radius or buffer
10 around that dock. So with docks being along a short
11 perpendicular object, you get a circle at the end and you
12 get a line going back to the shore that connects it.

13 Q. Can you show us the corners of the lease that you're
14 basing the 200-foot buffer?

15 A. Yes. So this is the southeastern corner. This is the
16 southwestern corner. We'll call this the western corner.
17 And then this is the northeastern -- northwestern corner.

18 Q. The boundaries coming off the west side of the proposed
19 facility, correct?

20 A. West and south, yes.

21 Q. Okay. Okay. In regards to the, again, the GIS
22 coordinates and the NOAA aerial photographs, those were
23 used as part of your analysis in each of the figures that
24 we presented so far?

1 A. That's correct, yes.

2 Q. You were involved with the preparation of these figures
3 as a part of your technical review?

4 A. Yes.

5 Q. Payson, can you go to -- let me ask you this. Are you
6 familiar with Mr. Raso's existing aquaculture facility?

7 A. Yes, from review of photographs and then from the time we
8 spent on the boat just being around it.

9 Q. Okay. If you can for the record move to Figure 2,
10 please. Payson, can you describe for us what you are
11 looking at here and what you prepared in this figure?

12 A. Sure. This is Figure 2 from our report. It's entitled
13 "Evolution of Potter Pond Aquaculture Lease." So it
14 shows Mr. Raso's existing lease in the southern end of
15 Potter Pond. There's an inset in the bottom left-hand
16 corner showing the location within Potter Pond. And as
17 the title states, it shows the evolution of Mr. Raso's
18 lease in two regards.

19 One, it shows the authorized lease boundaries from
20 various CRMC assents that lists the corners to those
21 boundaries, and we used the latitude and longitude
22 coordinates to plot those in GIS. And then we also
23 looked at various aerial photographs that are publically
24 available, the times subsequent to those authorizations,

1 and we measured the boundaries of them based on what we
2 could see in the aerial photograph.

3 You could see in this photograph here, you could see
4 the rows of the various cages and the various pieces of
5 his farm from the aerial photograph. This aerial photo,
6 again, is from the 2014 NOAA Sandy set.

7 Q. Okay. So can you walk us through Mr. Raso's first
8 aquaculture farm? Use the cursor to show us where that
9 is.

10 A. Sure. So the first one is the 2002 lease denoted by this
11 yellow line here. It's also noted 2002. And that was
12 authorized at 1.33 acres. When we looked at aerial
13 photographs, it looked like it was a little bit bigger
14 than that, and it was about 1.63 acres measured.

15 2004 is the red dashed line shown here. I'll trace
16 it. The 2004 assent authorized the lease area to be
17 3.8 acres. When we reviewed aerial photographs, we
18 measured it at about 4.98 acres. The green boundary is
19 the 2007 assent coordinates. I'm sorry, yeah, the green
20 as it's shown here. That assent authorized the lease
21 area at 6.9 acres. When we reviewed aerial photographs
22 we measured it at 8.44 acres. Rhode Island Historical
23 Preservation and Heritage Commission letter to CRMC dated
24 January 10, 2018.

1 Q. Can you explain when you say you measured aerial
2 photographs, what does that entail?

3 A. So we looked at -- with these aerial photographs, we
4 looked at the extent of where we could visibly see
5 structure on the bottom or cages on the bottom. I think
6 people have been using cages as a term. Then we draw a
7 boundary similar to what we've shown here. In GIS you
8 can get the area of those boundaries.

9 Q. Okay. I think you referenced that is 2007; is that
10 correct?

11 A. 2007 is where I left off the green, correct.

12 Q. Okay. Then go to your next one, please.

13 A. Yes. So this is where it gets a little bit harder. The
14 green -- the light green boundary and the orange shading
15 is the lease coordinates that are in the DEM map
16 documents. That listed at 9.68 acres in 2018. Then also
17 in 2018 the purple triangles are the GPS point that we
18 were talking about earlier that we acquired while we were
19 out there during our site visit on June 29, 2018.

20 And then lastly, we reviewed the RIDEM aquaculture
21 lease maps information again earlier this year, and now
22 the lease boundary is at 6.94 acres, and that is the
23 orange area that is shown.

24 Q. Just to take a step back. The purple triangles are your

1 ESS and your coordinates that you took when you were out
2 there at the site visit, correct?

3 A. That is correct, yes.

4 Q. Okay. And just to go back, and I think -- were you
5 present for Mr. Beutel's testimony about this aquaculture
6 facility?

7 A. I was.

8 Q. Okay, and I think he referenced something that the site
9 had grown, that he was notified that Perry's site had
10 expanded and that it was then corrected; is that correct?

11 A. That's my recollection, yes.

12 Q. Is that your understanding of I guess the -- we'll go
13 back. He was approved. You reviewed the previous
14 assents that Perry had?

15 A. We did, yes.

16 Q. So 2002, 1.33; 2004, 3.8 that was approved by Coastal;
17 and 2007, 6.9?

18 A. That's correct.

19 Q. That's where it should be at, that's the last approved
20 assent?

21 A. That's the last that we saw in the records, that's
22 correct.

23 Q. The measurements that you referred to as ESS measured at
24 8.44. Can you explain to the Subcommittee again where

1 those coordinates came from? Was that from the aerial
2 review in looking at the layout of the oyster operation?

3 A. It was, yes.

4 Q. Okay. Do you know who notified Mr. Beutel of the
5 expansion of that facility?

6 A. I don't, no.

7 MR. CAPIZZO: All right. Madam Chair, I'm
8 marking all these. I just want to confirm they are
9 figures. I would like them all to be marked for ID
10 purposes. I will be moving to enter them in as full
11 exhibits based on his testimony as we go through. I'm
12 going to do it in a group versus one by one.

13 CHAIRWOMAN CERVENKA: Let's mark those ID only
14 at this point.

15 [EXHIBIT #15 MARKED FOR ID]

16 MR. CAPIZZO: Okay.

17 Q. Payson, are you familiar with the type of operation that
18 Mr. Raso has at this location?

19 A. Primarily from listening to his testimony earlier and
20 then just observations that we made that day during the
21 site visit.

22 Q. Okay. I want to take you to the site, your review of his
23 application. You said you reviewed the application that
24 he submitted?

1 A. Yep, we did.

2 Q. What's the purpose of that review?

3 A. As I was testifying earlier, that was part of our
4 technical review. We looked at the contents of the
5 application and then looked at it in terms of the South
6 Kingstown ordinance.

7 Q. Payson, if you could go to Figure 4E, please. Do you
8 recognize this document?

9 A. I do.

10 Q. Can you tell us how you recognize this document?

11 A. Yes. This Figure 4E from our report, and the title is
12 Modified Proposed Aquaculture Lease Distance to
13 Shoreline.

14 Q. This is the polygon shape that you were talking about?

15 A. Yes.

16 Q. I think you referenced an email from Mr. Raso that was in
17 the file that you reviewed that this was the revised
18 proposal?

19 A. I did, yes. March 14, 2018, if I'm correct.

20 Q. What's your understanding of this proposal?

21 A. My understanding is it was revised from the previous
22 submittal. The actual -- as Mr. Raso testified in the
23 application, he wants to farm oysters and bay scallops
24 within it. We also measured the width of it. We did

1 preparation of testimony. It was about 280 feet at its
2 widest from east to west, and it's about I want to say
3 about 500 feet long. I just can't find that in my notes.

4 [PAUSE]

5 Q. Take your time.

6 A. Yes. I'm sorry, 810 feet long from north to south.

7 Q. So can you show us with your cursor from north to south?

8 A. Yes, so from north to south is probably here to here,
9 810 feet. We didn't go diagonally. And then this is
10 about 280 feet.

11 Q. For the record, when you say it's 280 feet, what is
12 280 feet?

13 A. The width, east to west.

14 Q. 810 feet long?

15 A. Yes, north to south.

16 Q. Are you familiar with that area that is referenced in
17 this aerial?

18 A. I am. That was part of where we went by boat. As I
19 mentioned, we put the boat on each of these corners,
20 marker buoys.

21 Q. What was the purpose of that?

22 A. I was talking about that earlier. The idea was to go out
23 there and identify the location and also put the boat on
24 it and be able to take photographs so we could visualize

1 where the boundaries would be.

2 Q. Okay. Do you see Mr. Hunt's property on this figure?

3 A. I do. It's on the lower left.

4 Q. What is that road right there? Is that -- can you tell
5 me, did you have an opportunity to go to that road?

6 A. I did. That's the access drive to Mr. Hunt's property
7 from Segar Court.

8 Q. Okay. How did you determine the distance between the
9 western side of the proposed aquaculture farm to the
10 shoreline?

11 A. We used the shoreline that was in the GIS data layers and
12 the plotted location of the proposed lease, and then used
13 the measuring distance tool and GIS to establish those
14 and rounded it likely to the nearest foot.

15 Q. You heard Audie Osgood testify about the distance of the
16 lease from the shoreline?

17 A. I did.

18 Q. And can you tell us what your analysis revealed in the
19 distance of this proposed location to the shoreline?

20 A. Yes. We show that from Mr. Hunt's property closest to
21 is house, we note a dimension of 10 feet from the
22 shoreline, and then farther to the north there's a
23 distance of 23 feet. I think -- we didn't show it here,
24 but the farthest distance between the westerly shoreline

1 and the eastern shoreline in the lease is about 65 feet.

2 Q. Can you show us that with a cursor, please? I lost you
3 there.

4 A. Yeah. I think it's probably right about here is the
5 widest point. I believe we measured that at about
6 65 feet.

7 Q. Okay. What are the numbers? I see at the top of the
8 screen a 5, a 6 and a 6. Can you tell us what those
9 numbers are?

10 A. Those are the soundings that are in the NOAA water depth
11 layer from the navigational chart.

12 Q. Did you have an opportunity to observe the shoreline
13 along Mr. Hunt's driveway, that road, private road and
14 driveway?

15 A. Yes.

16 Q. Can you tell us what observations you made?

17 A. Yeah. Obviously like the aerial photographs show,
18 there's vegetation very close to the shoreline. There's
19 a combination of mostly rock, cobbles along that
20 shoreline. If memory serves, there are some areas where
21 there's sand interspersed in there as well.

22 Q. Although not reflected here, how far is this aquaculture
23 farm from the closest point of Mr. Hunt's house?

24 A. We measured it at about 200 feet.

1 Q. And the closest point to the shoreline?

2 A. Would be -- from the lease would be 10 feet.

3 Q. Okay. Correct me if I'm wrong. Did you say it was
4 810 feet that this runs along the shoreline?

5 A. No. Along the shoreline it is 900 -- hold on. Let me
6 get my number of my notes here. It's about 900 feet. I
7 think it was just over.

8 Q. Can you show us what that 900 feet encompasses, please?

9 A. Yes. It would be here from the southeastern corner to
10 this easterly corner to what we were calling earlier the
11 northwesterly corner.

12 Q. You mentioned 810 feet. What was that reflecting?

13 A. That 810 feet was a north/south length.

14 Q. Okay. Did you also have an opportunity, Mr. Whitney, to
15 review Mr. Raso's application?

16 A. We did, yes.

17 Q. What was the purpose of that review?

18 A. Like I was talking about earlier, it was to do a
19 technical peer review, and we looked at the requirements
20 under CRMC for the components that need to be in an
21 application and to check off to see whether those
22 components were in there or not, identify any
23 deficiencies or any inconsistencies, or none if there
24 were none.

1 Q. What was the result of your review of the application?

2 A. We did find some deficiencies in there. They are
3 outlined in detail in our report. But just as an
4 example, the 2017 application did not provide distances
5 from the lease boundary to the shoreline, which is a
6 requirement. There was a cross-section in that
7 application that depicted about 20 feet of the lease area
8 rather than the full cross-section that the regulations
9 require. Some of those deficiencies were addressed in
10 the 2018 application, but when we looked at the 2018
11 application, like I stated earlier, there were some
12 incorrect coordinates for the lease corners in there.
13 There was a duplication of one coordinate, and two
14 corners. And then there were also differing lease
15 configurations in the information that was provided as
16 well.

17 Q. What do you mean by that, there was different --

18 A. It showed the Option B. The previous one, as I said, we
19 looked at the revised and used that as -- that's the
20 revised configurations, but there was also maps, and I
21 believe they may have been generated by DEM subject to
22 check that showed rectangular configuration, still
23 information that was in the 2018 application. So it was
24 inconsistent.

1 Q. Okay. What's the significance of those inconsistencies?

2 A. I think in terms of the inconsistencies it really makes
3 review by all the parties involved, by the public and by
4 CRMC more difficult because not only are you reviewing
5 information, but you're trying to decipher what the
6 applicant is intending.

7 Q. In your review of that application, was there a reference
8 -- do you recall if there was a reference to 150 feet
9 east to west?

10 A. There was -- it was in the staff report, actually. There
11 was an email in the staff report that talks about
12 150 feet west, and in the staff report there's an email
13 attached there. It's a February 26, 2018 email that was
14 responding to objections, is how it's described, for
15 Mr. Raso. I believe it went to Mr. Beutel.

16 In that email there's a statement in there, and I
17 have it quoted here in my notes here. It said "narrow
18 the area for skiing by approximately 150 feet from east
19 to west in the center of the area proposed," and there's
20 a parenthetical, "see attached." But we did not see
21 anything in that email that was an attachment, so I am
22 not quite sure what she is referring to in terms of the
23 attachment. It seems like it would be a map of some
24 sort, but we never saw it.

1 Q. Okay. And was that in the accurate -- this information
2 was provided to Mr. Beutel and you reviewed his staff
3 report, Mr. Beutel's staff report?

4 A. I did.

5 Q. You were present for Mr. Beutel's testimony that he
6 referenced that Mr. Raso attempted to address the
7 objectors' concerns of the residence?

8 A. Yes, I did listen to Mr. Beutel, and he did make that
9 statement in his testimony as well as in the staff
10 report.

11 Q. Are the numbers that Mr. Raso provided in that email
12 dated February 26, 2018 to Dave Beutel, were those
13 numbers that he provided to Mr. Beutel accurate?

14 A. That 150-foot width, or reduction narrowing, those are
15 the words he used, of the waterskiing is not accurate.
16 As I testified earlier, we measured the width east to
17 west of the lease area at 280 feet.

18 Q. Can you show the Subcommittee where that 280 feet is on
19 this map?

20 A. Yes. Again, it was from the easterly boundary over to
21 the westerly boundary here.

22 Q. The width at its widest point I guess you could say?

23 A. Yes.

24 MR. CAPIZZO: May I have one moment, Madam

1 Chair?

2 CHAIRWOMAN CERVENKA: Yes.

3 MR. CAPIZZO: Thank you.

4 [PAUSE]

5 Q. Payson, in regard to -- let's talk about Mr. Hunt's
6 property. You said it runs at least -- the full length
7 of the lease runs 916 feet?

8 A. 913.

9 Q. I'm sorry, 913 feet.

10 A. Yes.

11 Q. The closest point is 10 feet to his shoreline?

12 A. That's correct.

13 Q. In your opinion, if this aquaculture facility was here,
14 can you tell us how that would impact navigation in this
15 area?

16 MS. NOONAN: Objection. Foundation. He hasn't
17 spoken at all necessarily about recreational activities
18 to date. He's just given us measurements of diagrams.

19 MR. CAPIZZO: Madam Chair, I think he testified
20 as to his familiarity with this area. I didn't ask about
21 recreational activities. I asked about the navigational
22 impact that this would have, which he has been qualified
23 as an expert to discuss.

24 CHAIRWOMAN CERVENKA: I'll allow it.

1 A. Does that mean I can answer?

2 Q. Yes.

3 A. Can you repeat the question?

4 MR. CAPIZZO: Lisa, can you read that question
5 back?

6 [THE RECORD WAS READ BY THE COURT REPORTER]

7 A. We were just talking about the 10 feet between the
8 boundary and Mr. Hunt's property. So paddle boards and
9 kayakers could still get in there. As Mr. Raso
10 testified, the east side of the lease is where he intends
11 to put the floating cages. So that could still go on in
12 there. Potentially, maybe, if the winds were correct a
13 very small sailboat. I could actually see myself trying
14 to do that as a teenager trying to do that.

15 In terms of powerboats with 10 feet, a typical
16 powerboat is 7 to 8 and a half feet or so, and given the
17 proximity of the shoreline, the water depths are probably
18 fairly shallow in there, although we didn't measure them.
19 I don't believe it's a sheer drop, so that would restrict
20 the ability to navigate in a north/south direction along
21 that 10-foot area.

22 Q. Would you be able to launch a boat from the shoreline
23 into this area?

24 A. Perhaps a small kayak or a standup paddle board. You'd

1 probably need the limits of that and be able to get out.

2 Q. And which direction, I guess based on your observations,
3 would you have to travel in order to get out?

4 A. The easiest --

5 MS. NOONAN: Objection. When you say "get
6 out," I'm not sure if we're still in the 10-foot area or
7 somewhere else.

8 MR. CAPIZZO: I can rephrase that.

9 Q. Payson, if you were to navigate in this area, where would
10 you navigate into this area? How would you access this
11 area by boat if the farm was located here?

12 A. By boat you would navigate from the west to the south to
13 this area as you would now.

14 Q. Okay. Payson, did you also, as part of your review,
15 review the noise ordinance for South Kingstown?

16 A. We did, yes. I did not personally do it, but a member of
17 ESS did.

18 Q. Did you review the results of that person's review?

19 A. I did.

20 Q. And what was the purpose of that review?

21 A. That review was, again, knowing that an aquaculture
22 facility does generate some level of noise, we felt it
23 was appropriate to look to see if there was a noise
24 ordinance in the town of South Kingstown, and there is.

1 It's under Section 507 of their ordinances.

2 Q. Okay. What type of operations -- in your review of
3 Mr. Raso's application, what type of noise would be
4 generated at this facility based on your review?

5 A. Based on our review, we were envisioning the use of
6 tumblers or pressure washers. People obviously who are
7 working all day tend sometimes to have a radio, and that
8 was what we believe may have been, obviously talking as
9 well. People talking back and forth across a large area,
10 maybe doing that at elevated voice level, so...

11 Q. And based on your review of the South Kingstown
12 ordinance, what does that ordinance require?

13 A. The ordinance regulates noise, and it basically regulates
14 noise from -- I'll quote the ordinance. It says:

15 "Any new commercial and industrial use and proposed
16 source of sound to be located anywhere" within the town
17 of South Kingstown.

18 Q. And is aquacultural use exempted from this?

19 A. It is not. There's a list of exemptions in
20 Section 507.12, and aquaculture was not listed as an
21 exemption in that list.

22 Q. What does the sound ordinance say in regards to the
23 decibel levels?

24 A. It provides a variety of different criteria, but for

1 residential receptors which would be the nearest that we
2 have here, it states basically that a noise in excess of
3 60 decibels, d/b/a is how they note it, and they would
4 consider that "excessive, unnecessary, and in violation"
5 of that section.

6 Q. You said you read Mr. Beutel's staff report?

7 A. I did.

8 Q. Do you recall him testifying about several of the
9 objections that he received, and one of them being noise?

10 A. Yes.

11 Q. Did you agree with the statement that Mr. Beutel made
12 that aquaculture activities generate noise as does
13 boating, waterskiing, tubing, selecting which noises are
14 tolerable and which are not can only lead to hypocrisy.

15 A. I would agree with the first part about generating the
16 noise. I think the other part is his opinion so I'm not
17 going to comment on that. I will note that we were just
18 talking about some noises are regulated fairly tightly,
19 some are less regulated, and some noises are not
20 regulated at all.

21 Q. Okay. Do you have an opinion of whether or not the
22 noises at Mr. Raso's aquaculture farm would fall under
23 this ordinance?

24 MS. NOONAN: Objection. I mean, if he knows

1 what Mr. Raso's operations are. His report does not
2 comport with the testimony at this hearing.

3 MR. CAPIZZO: I would argue, Madam Chair, that
4 he said that he has observed Mr. Raso's operations, that
5 he indicated what type of equipment would be used at this
6 proposed facility, and that he listened to Mr. Raso's
7 testimony as to what type of equipment would be used, and
8 that he reviewed the noise ordinance as it relates to
9 these types of activities.

10 CHAIRWOMAN CERVENKA: Did I hear from Mr. Raso
11 that he would not be using tumblers or power washers or
12 radios?

13 MS. NOONAN: That's correct.

14 CHAIRWOMAN CERVENKA: Well, he is basing it on
15 equipment that this applicant has said he would not use.

16 MR. DESISTO: The qualification did not go to
17 being a sound engineer or expertise in sound on it. This
18 is something that goes beyond what this witness was
19 qualified for in the first place. He's gone from being,
20 you know, someone that is adept at navigation and now
21 that's a separate issue. The issue being noise
22 generation, and what that is at decibel level. He was
23 not qualified for that.

24 CHAIRWOMAN CERVENKA: That's accurate.

1 MR. CAPIZZO: The objection will stand, Madam
2 Chair, and I'll move along.

3 Q. Payson can we go to Figure 4C. I want to follow up on
4 Mr. DeSisto's comments -- statements, excuse me.

5 A. You said 4C, right?

6 Q. Yes. Do you recognize this document, Mr. Whitney?

7 A. I do.

8 Q. Can you explain how you recognize this document?

9 A. This was part of our report that was submitted.

10 Q. And ESS prepared this document?

11 A. We did.

12 Q. You were involved in the preparation of this document?

13 A. I was.

14 Q. Can you explain to the Committee members what we're
15 looking at here and what the purpose -- first, what we're
16 looking at.

17 A. Yes. So Figure 4C is entitled "Modified proposed
18 aquaculture lease areas." I'm sorry, "Modified proposed
19 aquaculture lease, areas available for towed water sports
20 in Segar Cove."

21 Q. Okay. This is similar to what we looked at before in
22 other figures, the red areas of the buffer zones, the
23 200-foot buffer on the 200-foot South Kingstown buffer;
24 is that correct?

1 A. That is correct.

2 Q. You have indicated a work vessel that has not appeared in
3 previous figures. Can you explain the -- can you explain
4 why you put that in there, please.

5 A. Yes. The ordinance says, as we were discussing earlier,
6 it talks about stationary objects. A stationary object
7 could be a moored vessel.

8 In observing Mr. Raso's existing lease when we were
9 out there, he has I think he testified earlier a 30-foot
10 pontoon boat. What we did is we put a rectangle for a
11 work vessel. I would have to check to see the exact
12 length. We may have estimated the length of that vessel
13 a little longer than what Mr. Raso testified, but the
14 point of this figure was to put that vessel at various
15 locations along the boundary of the lease where it could
16 potentially be sitting. It could also potentially be
17 within the lease, but we looked at the boundary to see
18 how far that would push out the 200-foot buffer since
19 someone operating a boat or somebody skiing or tubing
20 behind a boat would have to maintain that 200-foot
21 separation from that quote unquote "moored aquaculture
22 vessel."

23 Q. You heard me ask Dr. Byron and Dr. Rice and I think
24 Mr. Osgood about stationary objects and whether or not

1 you believe that this proposed aquaculture farm is a
2 stationary object.

3 A. I did hear those questions, yes.

4 Q. What is your opinion as to whether or not this
5 aquaculture farm is a stationary object?

6 A. I believe the cages and the floats are stationary
7 objects, yes.

8 Q. What about the -- I want to be fair here. We're not
9 saying there's going to be three vessels working this
10 site. You just put the vessel, you have it as a work
11 vessel at the different locations as you indicated in
12 your testimony?

13 A. That's correct, on three sides to illustrate the
14 difference. One could compare Figure 4B to Figure 4C and
15 see the effect of a vessel being on the edge of those
16 lease -- in those positions.

17 Q. Okay. And would that type -- I recall Mr. Raso
18 testifying to putting the work vessels on the inside of
19 the lease area, so on the eastern portion of that lease
20 area?

21 A. Yeah. I don't recall exactly what his testimony was
22 about the position of the vessel.

23 Q. Well, based on your review and analysis, would you be
24 able to get one of those work vessels on the eastern side

1 closest to the shore of this aquaculture facility?

2 A. Probably in places, probably at the southern end closer
3 to Mr. Hunt's house and then maybe up at the northwestern
4 corner in there. I'm not sure what the draft of his
5 vessel is and whether he could go past that 10-foot
6 narrow point that we previously have been discussing.

7 Q. How far is Mr. Raso's proposal from the Ram Point
8 headland?

9 A. I believe about 400 feet.

10 Q. Could you show from what point you're measuring from and
11 what the headland is?

12 A. Sure. So the headland is this point right here. So the
13 point in that distance there is probably about 400 feet.

14 Q. Okay. Do you recall how we entered and exited Segar Cove
15 on the motorboat?

16 A. Yes. So we entered, originally left from Mr. Latham's
17 dock. When we went up to the northern basin, we came
18 back and we followed a course visiting Mr. Raso's dock
19 back through here and then made the turn around the
20 headland.

21 Q. How many points of -- how many points are there to access
22 Segar Cove from Potter Pond by motor vessel?

23 A. One by boat.

24 Q. Where is that?

1 A. It's between Ram Point and Gardner's Island right here.

2 Q. If you were on a personal watercraft coming from Potter
3 Pond, where would you access Segar Cove?

4 A. It would be the same location.

5 Q. Payson, walk me through. You said you did a simulation
6 in this area. Can you show us -- when I say simulation,
7 you were on a powerboat with Mr. Latham who was showing
8 you the route he would drive if he would be waterskiing,
9 or as you referenced tubing. Can you show us where you
10 did that, please?

11 A. Sure. To do that I'm going to switch to another figure.
12 It's Figure 5 in our report. I have this in two ways.
13 If the Subcommittee can let me know what they can see
14 best.

15 Figure 5 in our report is a side-by-side comparison.
16 Is that big enough for the Subcommittee? I also have
17 this separated into figures on the same size that we were
18 just looking at as well. We can just look at them one at
19 a time. Whatever is best for the Committee.

20 CHAIRWOMAN CERVENKA: I can see it, but again,
21 I've got a larger screen kind of behind me. If anyone on
22 the Subcommittee has a problem seeing this, maybe
23 articulate that now and then we can do one by one. I
24 don't hear anything. You can do the side by side.

1 THE WITNESS: Very good. Thank you, Madam
2 Chair.

3 A. So this is Figure 5 in our report. It is entitled, Segar
4 Cove Towed Water Sports Demonstration. So, as I
5 testified earlier, while we were out there we had
6 Mr. Latham, we asked him what is the typical loop that
7 you will do when you're towing a tuber or a skier behind
8 your boat. That's obviously going to vary for various
9 conditions. The day we were out there it was a beautiful
10 day. There were no boats out there outside of a couple
11 kayakers while we were doing this. There were boats that
12 did enter the cove before and afterwards.

13 So on the left side shows Segar Cove as we were
14 looking before. It shows the 200-foot ordinance buffer
15 within Segar Cove under existing conditions. And so we
16 asked, like I said, Mr. Latham to bring the boat up on
17 plain and drive it the way he normally would today.

18 So we did it in two directions. We did a clockwise,
19 and that's indicated by the cyan or the bluish line,
20 which you could see the course here. We were going
21 clockwise so we did a couple loops clockwise and then
22 ended. Then we also did it in a counterclockwise
23 orientation by the purple line where we came around this
24 way, around this way, and then ended down at the southern

1 portion of the cove near the buffer.

2 As you can see, we asked Mr. Latham, we said drive
3 like you normally would, keeping in mind he's got the
4 200-foot ordinance. These are not exact things. It's
5 not like you a put a gate on your GPS and just stay out
6 of it with a buffer like this. So he did a pretty good
7 job. He stayed pretty close to the edge of his 200-foot
8 buffer, as you can see, almost in all the four lapse that
9 we did through here. Actually three it looks like. So
10 that was under the existing conditions.

11 Then once we finished that we asked him, again, as I
12 testified earlier the day we were out there Mr. Raso's
13 marker buoys were in place. We had this marker buoy, if
14 I recall, was the one that was missing, and using the
15 coordinates that we had we dropped a buoy there so we had
16 a visual reference as to where the lease would be. We
17 asked Mr. Raso to do the same thing. We just did it
18 once. We were kind of getting fixed on time. We did it
19 in a clockwise direction, and we asked Mr. Latham to
20 drive his boat and then do what he would normally do but
21 assume that -- take a look at those buoys and say you
22 have to keep 200 feet away from those when you tow your
23 skier or your tuber.

24 So we did the same thing and you can see the path of

1 the vessel indicated by the purple line. And again,
2 Mr. Latham was pretty good. He was pretty close to that
3 200-foot line visually.

4 For those that aren't boaters, doing distance over
5 water is not as easy as it is on land. There's less
6 positional reference. So it is a little bit more of a
7 challenge. It's something you kind of get used to as
8 you're boating, but to be able to put it that close is
9 pretty good. It always amazes me how boaters can put a
10 boat in the same, almost in the exact same position in
11 water just by looking at references, relative references
12 to land and to other objects.

13 So that was the intention, to show what the effect
14 of the proposed lease could be on skiing. Again, there
15 were no other boats at the time that we did it. If there
16 were two boats doing it at the same time, these areas
17 could be even more compressed.

18 Q. What's the significance of that compression?

19 A. As you can see, the area in green gets significantly
20 smaller. It's about another ten acres taken away. So
21 it's about a 33 percent reduction. So by compressing
22 that, if you have -- as a boat that's operating out there
23 with towed water sports by yourself, you can see the
24 turns are much tighter and steeper. They are almost

1 90-degree turns on here. Very tight turns which means a
2 little bit extra speed for the boat, means the skiers are
3 getting pulled around or the tubers are getting pulled
4 around a little bit faster as well. So under single
5 conditions you're compressed. The area you have to work
6 by yourself is less.

7 If there are multiple vessels out there, that
8 compression is even more. And not only are you trying
9 to, as you're navigating, maintaining your 200 feet from
10 stationary objects, but you're also having to look at the
11 position of your boat versus the other boat that's skiing
12 out there. And then also, you're also looking at the
13 position of your boat versus the person who is either
14 being towed on the tube or the waterskier.

15 As an operator of a vessel, where I do this all the
16 time when I tow skiers, is you're looking at both.
17 Because at any instant that person being towed could fall
18 and you have to obviously avoid them. You don't want to
19 be getting yourself in a position where you could be
20 running them over with obviously really bad consequences.
21 So it really compresses the area. It's more things for
22 people to look at, and to have to perceive and react to
23 as they are driving the vessel and towing water sports in
24 hopefully a safe and prudent manner.

1 Q. Now you mentioned that -- how did you come up -- you said
2 it was a loss of 10 acres. Can you tell the Subcommittee
3 how you came up with that?

4 A. Sure. We go back to a couple of the other figures here.
5 If we go back to --

6 Q. While we have you here and we have the travel, clockwise
7 travel, you had indicated on the day that you were there
8 that you observed other recreation going on in the cove?

9 A. We did, yes.

10 Q. You said there was some kayaks?

11 A. Yes. There were some kayaks. Just looking at the
12 pictures when I was preparing for testimony, they were
13 down in this area. There was also a powerboat that was
14 transiting kind of in a north/south direction through
15 here. And I don't have a picture of it, but I do recall
16 while we were finishing this up, just as we finished,
17 that another boat entered from the other part of Potter
18 Pond and came into the cove.

19 Q. Okay. In regards to those other recreational uses, the
20 kayaking that you observed, if kayakers were trying to
21 navigate out of Potter Pond over by the lease area, or if
22 a -- well, let's go with kayaks. How would they have to
23 travel if there's that compressed area and they were
24 traveling over by the polygon shape?

1 A. Well, I think a kayaker has a lot more leeway. I think
2 they would be only be compressed by the lease area
3 itself. And I think as part of what the earlier
4 testimony was, the floating cages were going to be in the
5 easterly side of the lease. A kayaker would certainly be
6 less constrained. They would be able to kayak through,
7 based on the testimony, through the leased area itself
8 just avoiding the buoys that would be in the westerly
9 side where the lantern nets would be. So a kayaker could
10 go to the west of the lease area, could go through it,
11 potentially could go to the east if there's enough room
12 for the paddle to be able to paddle through it.

13 Q. What about personal watercraft or other personal
14 watercraft, not waterskiing on the cove, or motorboats
15 not skiing on the cove. I know you said one on the
16 western side of the cove, but what about on that eastern
17 side of the cove trying to exit the cove?

18 A. In terms of personal watercraft, the ordinance as we were
19 talking about earlier, and I read the ordinance, that
20 section of the ordinance, it says it has to maintain more
21 than 200 feet off shore away from the shoreline except at
22 headway speed. So a personal watercraft would have to
23 maintain a 200-foot buffer from that shoreline and then
24 from the stationary objects. Obviously they wouldn't go

1 through the lease one would hope.

2 Q. Where would that put that personal watercraft or motor
3 vessel?

4 A. It would push them farther out. I believe we do have a
5 figure that we could go to. If I could just -- I think
6 we did one for that, but maybe we did not.

7 [PAUSE]

8 A. 4D. I think we -- 4D in our report, 4D shows the vessels
9 in those three locations like we were talking about
10 earlier where we put on each side to look at the effect
11 of whether a vessel was there. Obviously, it would have
12 to maintain that 200-foot distance from there. We did
13 prepare -- this has not been submitted, but listening to
14 the testimony the other day I pulled together a figure
15 showing --

16 MS. NOONAN: I'm going to object. I have not
17 seen this exhibit yet.

18 MR. CAPIZZO: I am not marking it as an
19 exhibit. I am marking it as ID only at this point.

20 MS. NOONAN: I don't think it matters. I mean,
21 I don't know. I thought you were supposed to provide all
22 exhibits as submitted as everyone did, and this one has
23 not been proposed. All I have is this compressed thing
24 on my screen.

1 MR. CAPIZZO: Madam Chair, this is similar, the
2 same aerial view. We are providing it for the
3 Subcommittee members to see what the area would look
4 like. It was not provided in the initial filing which
5 was filed on Thursday as requested by the executive
6 director. I would like the witness to be able to
7 testify. It is not any different than what we provided
8 previously as it relates to the aerial in the 200-foot
9 buffer that's referenced.

10 Q. Payson, what is the only difference with this --

11 MS. NOONAN: Well, wait --

12 MR. DESISTO: Madam Chair, you know, to me this
13 is a new one. While I understand that it might be
14 similar to others that were submitted, I'm wondering why
15 the others that were submitted can't be used to prove the
16 truth of the matter asserted on this one as opposed to
17 this new document which is going to be used for
18 identification purpose only, but I assume won't be
19 submitted afterwards as a full exhibit.

20 MR. CAPIZZO: Payson, we'll take that off and
21 we will go back to 4D.

22 MR. DESISTO: Thank you.

23 Q. Payson, what are we looking at here?

24 A. So this is Figure 4D from our report, and it shows

1 similar to what we've been talking about, the difference
2 and the distinction here is it's about personal
3 watercraft use under the South Kingstown ordinance. And
4 like I said a little bit earlier, the intention of this
5 figure was to show the 200-foot buffer off the shoreline
6 and from other vessels, or stationary vessels I think is
7 what the regulation says, with regard to personal
8 watercraft. It shows that 200-foot buffer. Obviously,
9 like we were talking about earlier, there will not be
10 three vessels. We don't believe there would be three
11 vessels there at the same time. It's just to show the
12 buffer off of a vessel on each side for context.

13 Q. Okay. Payson, would the reduction of the watershed, how
14 did you -- strike that. How did you come up with the
15 reduction in the watershed?

16 A. The reduction of watershed was calculated by -- we know
17 that the Segar Cove was measured at 53.8 acres in terms
18 of watershed area. Then we measured the area of the, in
19 this case the brownish orange buffer that occupies
20 37.2 acres, thereabouts. And so the balance is the area
21 available for personal watercraft, so about 13 acres in
22 this example.

23 Q. So what is the total reduction of the watershed with the
24 proposed -- Mr. Rasa's proposed farm here and in Segar

1 Cove?

2 A. Again, this shows the three vessels too. So it's kind of
3 -- it's not a case that could actually happen because we
4 were showing the three. But under this case, if you had
5 three vessels in this configuration, it would be reduced
6 -- the watersheet available, if you added the South
7 Kingstown ordinance and the presence of the proposed
8 lease in the polygon configuration and vessels, three
9 vessels in these locations alone, it would reduce 53 and
10 a half acres of watersheet down to 13.

11 Q. Of usable watersheet for power boating?

12 A. For personal watercraft, not at headway speed, correct.

13 Q. Let's go to 4C. When you say personal watercraft, can
14 you explain to the Subcommittee what that is?

15 A. Yeah, jet ski. Skidoo is another brand. It's a single
16 or double. There are usually one or two people that can
17 ride them. They are almost like motorcycles on the
18 water.

19 Q. Do you need a license to drive a personal watercraft?

20 A. I believe in all states you do, yes. They can go quite
21 fast.

22 Q. How fast do they travel?

23 A. I don't know the top speeds off the top of my head, but
24 they go faster than most powerboats and they accelerate

1 very quickly.

2 Q. Okay. Can you go to 4C. The difference with this one
3 is, this is not personal watercraft, this is --

4 A. This is the towed water sports section of that ordinance.

5 Q. And does the watersheet change, the available watersheet
6 change in this figure?

7 A. From the previous one, yes, it does. There's an
8 additional 6.7 acres, so it's 19.7 versus 13 on the
9 previous figure.

10 Q. I just want to make it clear. Can you start from what we
11 started at for acreage on Segar Cove, what you reduced it
12 to, similar to what you did on the personal watercraft?

13 A. Yes. So on this one, again, this shows a vessel on each
14 of the three sides. So 53.5 acres is the watersheet
15 available in Segar Cove. We applied the 200-foot
16 ordinance buffer off of stationary objects and vessels.
17 We didn't list the acreage of that, but subtract those
18 two, and you're left with -- and the lease. Well, the
19 lease is within that red area. So subtract the 53 and a
20 half from the red area and the remaining is 19.7.

21 Q. What is it, I'm sorry?

22 A. 19.7.

23 Q. Of available watersheet to use for towed water sports?

24 A. Yes, right. If there were vessels at all three positions

1 simultaneously.

2 Q. When you say "simultaneously," are you talking about the
3 three work barges?

4 A. Yes.

5 Q. I think that's the extreme. I mean, the extreme version.
6 Let's go to 4B with no work vessels.

7 A. So this is Figure 4B, and doing the same math we have the
8 53.5 acres of Segar Cove area applying the municipal
9 ordinance as it applies to towed water sports to the
10 docks, the mooring field, and then the proposed polygon
11 lease area. That occupies 33.2 acres. So the
12 difference, the area available for towed water sports, is
13 20.3 acres.

14 MS. NOONAN: Can you repeat the number? I
15 didn't hear.

16 THE WITNESS: 20.3.

17 Q. That's available for towed water sports?

18 A. That's correct.

19 Q. That includes the center area of Segar Cove that's in
20 green, with green lines?

21 A. Yes.

22 Q. Would you be able to -- in your opinion, would you be
23 able to waterski based on your observations in the
24 northern portion of Segar Cove?

1 A. It's pretty tight where those buffers come together. So
2 if you follow the letter of the law, then probably you
3 could not get from south to north. Do people probably do
4 it? Most likely.

5 Q. And then let's go to 4A. Can you run through that same
6 analysis that you did for the other?

7 A. Sure. Again, this 4A shows the configuration that was in
8 the original 2017 application, the rectangular
9 configuration. So 53.5 acres of total watershed in
10 Segar Cove, subtract the 200-foot buffer as applied to
11 the docks, the mooring field, and the rectangular
12 configuration, that's 33.3 acres. And the balance, the
13 area available for towed water sports is 20.2 acres. So
14 it's a one tenth of an acre difference from the previous
15 one we were just talking about.

16 Q. What impact, Payson, does either A, proposed this
17 rectangular proposal or the polygon proposal referenced
18 in figure B, what impact does this have on navigation of
19 those coming into Potter Pond from the headland?

20 A. If they are just navigating without towing a skier, the
21 ordinance doesn't really address that. If they happen to
22 be towing a skier from Potter Pond or Segar Cove or vice
23 versa, then you can see the green area that it's a fairly
24 narrow area that a vessel would have and a skier would

1 have to stay to be able to make that transit in between
2 Ram Point and Gardner Island out in Potter Pond or back
3 into Segar Cove.

4 Q. What about with a personal watercraft? What impact would
5 this have on personal watercraft entering the cove from
6 the headland of Potter Pond?

7 A. The personal watercraft like we were looking at the
8 previous figure have to stay 200 feet from shore. If
9 there were a vessel, work vessel within the leased area
10 or on the boundary of it, would have to stay 200 feet
11 from that too.

12 Q. What impact -- you heard Dr. Rheault testify about the
13 low profile of these types of operations?

14 A. Yes.

15 Q. What impact does that have on navigation on Segar Cove?

16 A. Obviously it's something that's low to the water. They
17 can be hard to see, especially if it's a windy day and
18 you have waves. It may make it harder for someone to
19 see, especially a personal watercraft, where the operator
20 sits fairly low to the water so you don't have the
21 additional height that you might in a boat where you
22 could be sitting or standing even from a higher elevation
23 off the water depth, the water.

24 Q. Again, based on your review and analysis of this

1 proposal, and if you go back to 4B, what impact does this
2 have on navigation in that I think you said 23 acres that
3 are available for towed water sports?

4 A. So again, similar if a boat is just navigating and not
5 towing skiers, then the 200-foot buffer doesn't apply.
6 But if somebody is towing, used in towed water sports,
7 then you have this compression towards the center. This
8 configuration provides a little bit more. It's not
9 north, strictly north/south on the adjacent because of
10 the configuration of the polygon.

11 Q. In your opinion, how many boats could operate within that
12 if they were waterskiing, could they operate in that
13 area?

14 MS. NOONAN: Objection as to type of boats.
15 I'm not certain what type size we're talking about.

16 CHAIRWOMAN CERVENKA: Can you clarify that with
17 the witness?

18 MR. CAPIZZO: Sure.

19 Q. Payson, what size is your boat?

20 A. 19 feet.

21 Q. If you were operating a 19-foot powerboat, what size is
22 your engine?

23 A. It's a 4 cylinder, 135 horse.

24 Q. Okay. How many types of your boat could you operate in

1 that area at 20.3 acres with the proposed aquaculture
2 farm there?

3 A. For towed water sports or just in general?

4 Q. No, for towed water sports.

5 A. For towed water sports one, maybe two at the same time.
6 You would probably be doing circles, loops, kind of do
7 something like this so you would be staying away from
8 each other.

9 Q. What does that do -- what effect does that have on the
10 other people recreating on the cove, the paddle boarders,
11 the kayakers, the sailboats?

12 MS. NOONAN: Objection as to "what effect."

13 Q. What impact does it have on the navigation for other
14 recreational uses on that cove such as a sailboat?

15 A. If you have multiple boats in a confined area doing loops
16 like that, obviously the wakes come together. And as
17 waves come together, their height goes up. So you would
18 be turning up the water so there would be more boat wake
19 in there because you're doing smaller loops. So the wake
20 doesn't have as long to dissipate as it does if you do a
21 long loop, go up, come down, go up, come down. So the
22 increased wakes would be the effect.

23 Q. With other boats, let's say with other power boats, how
24 would it impact navigation of other powerboats operating

1 on the cove?

2 A. It would be the same. You have more wakes you have to
3 contend with, so it changes how you operate the vessel
4 when you're in those types of conditions.

5 Q. Would those powerboats or sailboats be able to navigate
6 in the area where the proposed aquaculture farm is?

7 A. I believe some of the previous testimony with the
8 stationary objects there that sailboats or powerboats
9 likely would not.

10 Q. What about personal watercraft?

11 A. Personal watercraft potentially could, except for where
12 the floating cages are.

13 MR. CAPIZZO: Okay. Madam Chair, may I have
14 just one moment?

15 CHAIRWOMAN CERVENKA: Yes. Are you getting
16 close to wrapping up in your direct?

17 MR. CAPIZZO: I am.

18 CHAIRWOMAN CERVENKA: Because I'm going take a
19 break depending on when you're ending.

20 MR. CAPIZZO: Okay.

21 [PAUSE]

22 MR. CAPIZZO: Just one more moment. I'm just
23 checking my questions.

24 [PAUSE]

1 Q. Payson, based on your experience and review of the
2 materials and testimony of the proposed location of
3 Mr. Raso's farm, do you have an opinion on whether the
4 farm would impact navigational or have a significant
5 impact on navigation of powerboats -- excuse me, towed
6 water sports and personal watercraft on Segar Cove?

7 A. I do. I believe in terms of towed water sports it would
8 have a significant impact as we talked about and have
9 shown with these figures. We've got a significant
10 reduction in the amount of watersheet available for those
11 sports just based on the presence of the lease and the
12 required buffer, so it changes how the operations would
13 happen. I think it compresses it into the center as we
14 were talking about earlier. I think personal watercraft,
15 I think it's probably a lesser effect than this is in
16 terms of towed water sports.

17 Q. Again, what does that compression do to those navigating
18 in that area?

19 A. What are you referring to by "navigating"?

20 Q. When navigating within the area, the compressed area that
21 you're talking about, what impact does that have on those
22 navigating in there?

23 A. So if we take other like we were talking about a little
24 bit ago, in terms of if there are other boats in the

1 area, there's increased wake in a compressed area because
2 the wake doesn't have as long to dissipate. So it has
3 effect on other vessels navigating, either kayaks,
4 powerboats, sailboats. Personal watercraft may like it
5 because they like to jump wakes. So it compresses that
6 area. It compresses the area that they have to operate
7 as well. And some may decide that they are not going to
8 ski or do towed water sports there and go elsewhere where
9 they may not have otherwise. They may go up to the
10 northern basin or they may save the time and the transit
11 speed to go up there rather than stay in Segar Cove.

12 Q. Based on your review, you've heard testimony from all of
13 the experts about the regulations. Are you familiar with
14 the Coastal Resources regulations?

15 A. I am. I don't think I could quote them, but I know where
16 to look them up like any good engineer.

17 Q. Okay. So Section 1.3.1 that was introduced as part of an
18 exhibit for Mr. Raso's case, the category requirements,
19 you heard those and you heard the testimony of Perry's
20 experts as it relates to whether or not Mr. Raso has
21 demonstrated that the alteration will not unreasonably
22 interfere with, impair or significantly impact existing
23 public access to or use of the tidal waters in the shore.
24 You heard that and you reviewed that requirement?

1 A. Yeah, I did hear the testimony, and I reviewed the
2 requirements, yes, and the regulations, yes.

3 Q. Then you also reviewed -- did you also review the
4 requirements as it relates to the same Category B
5 requirements, for the record, Section 1.3.1 that Mr. Raso
6 must demonstrate that the alteration activity will not
7 result in significant conflict on water dependent uses
8 and activities such as recreational boating, fishing,
9 swimming, navigation commerce?

10 A. I did, yes.

11 Q. So as it relates to that section, Subsection J, based on
12 your experience and analysis of all of the materials and
13 the testimony, have you reached an opinion as to whether
14 or not Mr. Raso has demonstrated that this aquaculture
15 farm that he's proposing will result -- strike that --
16 will not result in significant conflicts with water
17 dependent uses and specifying recreational boating and
18 navigation?

19 A. Yes, I have made an opinion, and based on what I've
20 reviewed I don't believe that that demonstration was made
21 by the applicant. I believe we've quantified it in terms
22 of a 33 percent reduction. That was not in the
23 application or the compressing, like I said earlier,
24 there was some conflicting information in the application

1 as well like that statement about the reduction of
2 150 feet of skiing. So I would not say that they have
3 demonstrated that.

4 Q. Based on your experience and review and analysis of
5 materials and the testimony, have you reached an opinion
6 as to whether or not Mr. Raso has demonstrated that his
7 farm will not unreasonably interfere with, impair or
8 significantly impact the use of the tidal waters?

9 A. I think similar to what I said, I don't believe he has.
10 The application doesn't really address compression of the
11 skiing in the middle that's in use or navigation, or it's
12 also recreation which is cited in that section of
13 regulations which I'm looking at right here in my notes.
14 There certainly has been some testimony in that, but I
15 don't think that the application demonstrated that.

16 MR. CAPIZZO: Madam Chair, I actually have one
17 more exhibit. Do you want me to -- I have to take
18 testimony on that I would like to introduce. I don't
19 know if you want to take the break. I will probably be
20 no more than ten minutes.

21 CHAIRWOMAN CERVENKA: I'd rather just finish
22 your direct and then take the break.

23 MR. CAPIZZO: Okay. This is ESS, Exhibit 24,
24 ESS visual simulation existing conditions aquaculture

1 lease boundary.

2 Q. Payson, I forgot to ask you about this. You testified
3 earlier that during your site visit you visited the
4 property of Mr. Latham, Mr. Cooney and Mr. Quigley and
5 Mr. Hunt. Do you recognize the figure entitled Figure
6 VS-1 from the Latham property?

7 A. I do.

8 Q. How do you recognize that?

9 A. These are figures that ESS prepared based on our site
10 visit.

11 Q. Okay. Can you identify the house you can see across on
12 the right-hand side behind the boat?

13 A. Yeah, that's Mr. Cooney's family house.

14 Q. This photo was taken from Mr. Latham's property?

15 A. That's correct.

16 Q. And the boat in the water, can you explain to the
17 Subcommittee what that boat is doing there?

18 A. Yes. That is Mr. Latham's boat. That boat is at one of
19 the buoy locations, the marker buoy locations that
20 Mr. Raso has established.

21 Q. What was the purpose of having the boat there?

22 A. Like I was saying earlier, we wanted to make some
23 visualization of what the boundary would be, connect the
24 dots as it were between those marker buoys. And as you

1 can see from this distance, it's very hard to see the
2 buoys. So we put a boat on there as a positional
3 reference which would make it easier to see the other
4 buoys and connect the dots.

5 Q. Where is Mr. Hunt's property in relation to the boat in
6 the proposed farm?

7 A. It would be off the -- to the right hand of the --

8 Q. Where the cursor is?

9 A. Yes, right here where the cursor is.

10 Q. Okay. VS-2, can you explain to the Subcommittee what you
11 did here, Payson?

12 A. Yes. So what we did is, the black triangles of the
13 yellow outline are the positions of where the buoys can
14 be seen in the photographs. And what we did is we
15 connected a line from those points to give an indication
16 to where the lease area would be on the water.

17 MS. NOONAN: Christian, I apologize right now.
18 I don't see Exhibit 24. Maybe I missed it. I'm looking
19 at I believe what you sent us, and the last thing I
20 thought I had was Exhibit 23, Shellfish Advisory Panel --

21 MR. CAPIZZO: Beth, it was provided I think on
22 either Monday or Tuesday before you had submitted your
23 exhibits. I think it was an amended exhibit list that
24 was sent to you and Leslie, second proposed amended

1 exhibit list. Make sure you're looking at that exhibit
2 list.

3 MS. NOONAN: Okay. We'll check.

4 MR. CAPIZZO: Okay.

5 Q. Payson, I'm showing you figure VS-3.

6 A. You are.

7 Q. Do you recognize that photograph?

8 A. I do.

9 Q. How do you recognize that photograph?

10 A. Again, that's the photograph that ESS took from the
11 Cooney property.

12 Q. Okay. Can you explain what we're looking at and what
13 direction on Segar Cove?

14 A. We're looking to the south towards the Latham property.

15 Q. Okay. You see the boat in the photograph. Is that the
16 same boat that appeared in the other visual?

17 A. It is.

18 Q. Is it the same or different location?

19 A. It may actually be in a different location. It looks
20 like it's more towards the easterly boundary of the buoy
21 there.

22 Q. Again, what was the purpose of having the boat in the
23 photograph?

24 A. Again, so it provided a positional reference to the lease

1 boundary.

2 Q. This area where the cursor is, that's the mooring field,
3 is that correct, of Segar Cove?

4 A. That's correct, yes.

5 Q. Can you explain to the Subcommittee what we're looking at
6 here?

7 A. Yes. So again, similar to the figure VS-2 that we looked
8 at, the black triangles with the yellow outline are the
9 locations of the buoys, the marker buoys for the edge of
10 the lease and the black lines connect the dot to
11 illustrate the lease area.

12 Q. That's what the proposed Plan B for Mr. Raso would look
13 like with those coordinates?

14 A. Correct, yes, based on the buoys that were there, yes.

15 Q. Showing you VS-5 for the record. Do you recognize that
16 photograph?

17 A. I do.

18 Q. How are you able to recognize that?

19 A. That's the photograph that we took from the driveway that
20 we talked about earlier to Mr. Hunt's house.

21 Q. I think we said that's the access road that runs along
22 Ram's Point?

23 A. Correct, yes, yes.

24 Q. Again, for the purpose of having the boat in the

1 photograph?

2 A. Was again to provide a positional reference to the buoy.
3 I think that buoy is actually probably under where your
4 cursor is now. I think I can see it in that photograph.

5 Q. Right here?

6 A. It's kind of hard to see. It's a small screen.

7 Q. That buoy is reflective of what?

8 A. One of the marker buoys. It's probably the northeast
9 corner.

10 Q. Of Mr. Raso's proposed location?

11 A. I believe it would be, yes, yes.

12 Q. And then again, can you explain to the Committee, the
13 Subcommittee, excuse me, looking at here?

14 A. Yes. So similar to VS-2 and 4, the black triangles with
15 the yellow outline indicate the position of the marker
16 buoys at the corner of the lease and at the black line
17 illustrate what the boundary would be in that lease.

18 Q. Okay. So Exhibit 26, South Kingstown Boat and Waterways
19 Ordinance, is this the ordinance that you reviewed as
20 part your preparation?

21 A. Yes, Chapter 4, yes.

22 Q. Specifically which section, if you can reference those
23 two sections?

24 CHAIRWOMAN CERVENKA: Mr. Capizzo, I'm just

1 trying to figure out where these exhibits are. You have
2 Raso opposition first amended proposed exhibit list. Is
3 there something subsequent to that?

4 MR. CAPIZZO: I believe there was a second
5 amended proposed exhibit list that was submitted, Madam
6 Chair. And I can check at the break to confirm that.

7 CHAIRWOMAN CERVENKA: I don't see it on the
8 materials available. It may have been emailed to us and
9 not posted.

10 MR. CAPIZZO: I can check at the break, Madam
11 Chair. Madam Chair, I would like to introduce ESS
12 technical peer review report and the attached figures
13 that Mr. Whitney discussed, Figures 1A, 1B, 1C, 1D,
14 Figure 2, Figure 3, 4A, 4B, 4C, 4D and 4E.

15 CHAIRWOMAN CERVENKA: Is that all the figures
16 that is appended to Exhibit 1 or part of Exhibit 1?

17 MR. CAPIZZO: That is correct.

18 CHAIRWOMAN CERVENKA: Okay. So you want the
19 body of the report and then the figures, so the full
20 report?

21 MR. CAPIZZO: Correct.

22 CHAIRWOMAN CERVENKA: Is there any objection?

23 MS. NOONAN: I'm sorry, I did. The objection,
24 the only objection I have to this is Figure 2, and I know

1 I could handle part of it on cross-examination, but the
2 outlines that he's done going back to 2002 in the
3 aerials, he said he was able to do those based on the
4 cages, how they looked at the time. As I understand this
5 photo, it actually is the cages as they were in either
6 2018 or 2020. So I don't think there's sufficient
7 foundation to even question him on the propriety of
8 those. For that reason I would ask that Figure 2 be
9 excluded from Exhibit 1. That's my only objection.

10 CHAIRWOMAN CERVENKA: Okay. So let's just deal
11 with everything but this. So that's admitted in full.
12 And then with respect to Figure 2, I guess I'll give you
13 an opportunity to lay further foundation, Mr. Capizzo, if
14 you'd like.

15 MR. DESISTO: Madam Chair, if I may, it seems
16 to me that what Ms. Noonan says is correct. If she has
17 issues with the figure, that can be brought out on
18 cross-examination. So, you know, to me it can be
19 admitted and then impeached on that basis.

20 CHAIRWOMAN CERVENKA: Okay. Mr. Capizzo, do
21 you want to lay any further foundation or do you just
22 want --

23 MR. CAPIZZO: I believe, Madam Chair, I'm
24 sorry, I didn't mean to interrupt. I believe Mr. Whitney

1 did lay the proper foundation as to how he determined the
2 coordinates. I do agree with Mr. DeSisto that it goes to
3 the weight, not to admissibility.

4 Q. I believe, Mr. Whitney, and correct me if I'm wrong, you
5 testified that those coordinates were based on aerials
6 provided by NOAA and you used the coordinates from
7 basically -- well, I'll let you say it, Payson.

8 How did you figure it out? You figured it out from
9 NOAA aerials, correct?

10 A. From aerials. They may have been NOAA, or they may have
11 been other sources as well, but publically available
12 aerial photographs.

13 Q. That's the general area where Mr. Raso's leased location
14 is, correct?

15 A. That is correct.

16 Q. Also the purple are actually from when you were on site
17 taking coordinates of what would be his last approved --
18 of 2007, correct?

19 A. That's correct. Those are the coordinates that were out
20 there at the time.

21 Q. Okay.

22 A. They were there.

23 MR. CAPIZZO: Again, Madam Chair, I think in
24 his initial testimony that we satisfied the foundation.

1 I believe it goes to weight, not to admissibility.

2 CHAIRWOMAN CERVENKA: Okay. I will admit that
3 in full, and Ms. Noonan can deal with that on
4 cross-examination.

5 MR. CAPIZZO: The only other matter I would
6 reserve to move is that ESS visual simulation. I'll
7 check to make sure that was filed with Coastal obviously
8 beforehand. If we can take that subject to --

9 CHAIRWOMAN CERVENKA: That's the Exhibit 24?

10 MS. NOONAN: I'm going object to that. I don't
11 have it. The last thing I have from you, Christian, on
12 the 9th was the first amended exhibit list resent to us.
13 That was sent to us around 11:57 a.m. That's as far as I
14 know everything we've gotten.

15 MR. CAPIZZO: I'll double-check that, Madam
16 Chair.

17 CHAIRWOMAN CERVENKA: Okay, yes. After the
18 break just come back and address it. We're not showing
19 it, but I want to know if there was a mistake in not
20 getting it posted.

21 MR. CAPIZZO: Fair enough. And then I would
22 ask that the Subcommittee take judicial notice of the
23 South Kingstown boat ways and ordinance which I have as
24 Exhibit 26, but I would just ask they take judicial

1 notice of that.

2 CHAIRWOMAN CERVENKA: I don't know if we took
3 judicial notice of it previously, but we have been
4 talking about that ordinance which is applicable legal
5 authority. So, yes, we can take judicial notice of it.

6 MR. CAPIZZO: And the last one I would ask, and
7 I appreciate the time and everyone's patience on this
8 housekeeping, Exhibit 2 references Segar Cove dock and
9 mooring field prepared by ESS.

10 MS. NOONAN: No objection. That's the one that
11 has the dock identification and the mooring. No
12 objection.

13 CHAIRWOMAN CERVENKA: All right, admitted in
14 full.

15 [OPPOSITION EXHIBIT #2 MARKED FULL]

16 MR. CAPIZZO: All right. That's it.

17 CHAIRWOMAN CERVENKA: All right, so I'm going
18 to take a break until 4:50. It gives us about 25 minutes
19 because we've been going for a long time. Then we'll
20 come back. You can address the Exhibit 24 issue, and we
21 can have any questions that Subcommittee members have for
22 this witness, and then we can start with
23 cross-examination which will have to likely go into the
24 next meeting, but we'll see.

1 MS. NOONAN: Will Mr. Wagner be going first on
2 that and then I'll follow him?

3 CHAIRWOMAN CERVENKA: Mr. Wagner, are you doing
4 any cross?

5 MR. WAGNER: I didn't plan on doing any cross.

6 CHAIRWOMAN CERVENKA: Thank you. All right, so
7 we'll see you back here at 4:50.

8 [RECESS WAS TAKEN OFF THE RECORD FROM 4:30 TO 4:46]

9 CHAIRWOMAN CERVENKA: We're back on for the
10 examination of Mr. Whitney. First I'm going to start
11 with any questions that the Subcommittee members have and
12 then we can turn it over to counsel for
13 cross-examination. So does anyone have questions for
14 Mr. Whitney.

15 MR. MURRAY: Madam Chair, I have a couple if I
16 may. Mr. Whitney had indicated he did two site visits to
17 the cove.

18 THE WITNESS: That's correct, Mr. Murray, yes.

19 MR. MURRAY: And one of them was in June of
20 2018?

21 THE WITNESS: Yes.

22 MR. MURRAY: I think it was the 29th based on
23 the visual simulation note.

24 THE WITNESS: That's correct.

1 MR. MURRAY: How about the second one?

2 THE WITNESS: I went this February and just
3 looked at the cove and Potter Pond from Mr. Hunt's
4 property. It was a brief site visit.

5 MR. MURRAY: I only ask that because it was
6 questioned and some other witnesses were asked how many
7 times you were there, so in terms of providing some kind
8 of a balance context in terms of the inquiry.

9 The navigational risk assessment that was talked
10 about in your resume and experience, I presume that what
11 was done for the Cape Wind project was considerable more
12 depth than what was done here?

13 THE WITNESS: Yes, it was. It covered a much
14 wider variety of topics, yes.

15 MR. MURRAY: But I would kind of look at it
16 sort of like a traffic study?

17 THE WITNESS: Yes, yes.

18 MR. MURRAY: So again, the report seems to be
19 sort of in that vein, although water based. In that
20 regard, were any traffic, boat traffic counts done or any
21 accident data reviewed?

22 THE WITNESS: For this proceeding or for the
23 Cape Wind?

24 MR. MURRAY: No, for this proceeding.

1 THE WITNESS: Okay. No, for this proceeding
2 there were no counts done by ESS. The accident data we
3 didn't review either.

4 MR. MURRAY: I honestly don't know if there was
5 any or not. And I also note that from your report
6 there's 26 docks in Segar Cove and the five -- mooring
7 field?

8 THE WITNESS: That's correct. We counted 26,
9 yes.

10 MR. MURRAY: Do you have any idea as to
11 approximately the number of powerboats that are
12 associated with those, the mooring field or the docks?

13 THE WITNESS: The mooring field, I'm not sure
14 the number of powerboats. I'd have to go back and look
15 at the map in terms of the number of moorings that are
16 there. For the docks, you could reasonably assume
17 there's at least one, maybe two vessels per dock.

18 MR. MURRAY: Okay. Would you have a thought or
19 an idea as to how many of the powerboats typically
20 participate in towed water sports?

21 THE WITNESS: I wouldn't be able to comment on
22 that, no.

23 MR. MURRAY: I mean, a lot of your conversation
24 and your report focused on that usage within the cove

1 which is not a preeminent use among other uses of the
2 public facility. Right?

3 THE WITNESS: I'm not sure to be honest with
4 you. The percentage, the breakdown percentage of people
5 that are just out there, you know, boating around versus
6 those who are tubing or waterskiing. I know there are
7 some exhibits --

8 MR. MURRAY: But it has a much bigger footprint
9 than typical navigation, someone going fishing or --

10 THE WITNESS: Towed sports does, yes.

11 MR. MURRAY: Okay. I guess the last question I
12 would ask is, a lot of your calculations were based on
13 GIS?

14 THE WITNESS: That's correct.

15 MR. MURRAY: I make the point that that's not a
16 survey. It's reasonably accurate, ballpark accurate, but
17 not survey accurate, right?

18 THE WITNESS: Yes.

19 MR. MURRAY: Thanks. I appreciate it.

20 THE WITNESS: You're welcome.

21 MR. GOMEZ: Madam Chair?

22 CHAIRWOMAN CERVENKA: Go ahead.

23 MR. GOMEZ: I have one question if that's okay.
24 It seems that a lot of your testimony is based on the

1 200-yard ordinance -- 200-foot ordinance, I believe. My
2 question is, really, did you interpret the proposed
3 oyster farm or the proposed aquacultural farm as a hot
4 point that would initiate the 200 feet from the limit of
5 the farm? Or is that -- to me, you made an
6 interpretation and I'm not sure that's exactly what the
7 ordinance specifies. And I thought also that the
8 200 feet came from the shoreline out along the pond also,
9 and I do think that the staff report shows it that way
10 without going back to it. But I remember that the
11 200-foot in the staff report did not include the oyster
12 farm. It went through the oyster farm to some extent, so
13 it did -- the oyster farm was 200 feet, a portion of it.
14 But the 200 feet didn't start at the end of the oyster
15 farm to the water side. It started from the shoreline
16 coming out.

17 So there's a conflict in I guess the two
18 interpretations. You initiating the 200 feet from the
19 outside of the oyster farm, the water side, and the staff
20 report seems to have initiated it from the shoreline out
21 which still means that the farm encompasses some area
22 outside of the 200-foot limit.

23 So maybe you had a comment on that?

24 THE WITNESS: Yes, sure, a couple comments. I

1 think -- I didn't go back and look at the staff report,
2 but I think there are two different buffers that we've
3 been discussing here. There's the 200 feet from -- so
4 the towed water sports buffer, there's the towed water
5 sports buffer which is Section 4-8-1 of the South
6 Kingstown ordinance, and that is a 200-foot buffer. No
7 skier or his or her boat shall approach any stationary or
8 moving object closer than 200 feet. So that would be a
9 stationary object. You're right. We use the edge of the
10 lease as the stationary object. We can't know exactly
11 where the various cages or the buoys would be. So a buoy
12 that's anchored to the bottom would be a stationary
13 object in the water under that regulation.

14 The next piece you're referring to the 200 feet from
15 shore, and that is for Section 4-8-6, and that pertains
16 to personal watercraft where it says "No person shall
17 operate a personal watercraft within 200 feet of
18 swimmers, divers, shore or moored vessels."

19 So in our figures, the orange area was the personal
20 watercraft so that was based off of shore or moored
21 vessels in our two figures. And the towed vessels was
22 the red area of the buffer that was based off of
23 stationary objects, docks, and then also the stationary
24 object represented by the lease.

1 MR. GOMEZ: I need to think on that a little
2 bit. You clarified it for me to some extent.

3 Just a point of interest, and I know we dismissed
4 you as an expert on the sound analysis, but if you wrote
5 the ordinance correctly, then certainly the waterskiers
6 are exceeding that. So maybe there's a problem there.
7 But at any rate, we don't need to get into the acoustics
8 I guess. You know, my thinking is, where is the 200 feet
9 and I think you helped me. Thank you.

10 THE WITNESS: You're welcome.

11 CHAIRWOMAN CERVENKA: Any questions from
12 Mr. Coia or Ms. Reynolds?

13 MS. REYNOLDS: Madam Chair, I do have a
14 question having to do with the shape of those waterskiing
15 diagrams. So I'm not a waterskier, but it seems to me
16 part of what's important when you pick a route is
17 probably geometry and the shape of the cove and the area
18 in order to give you enough room to turn around. I know
19 in talking about the two areas in the pond that are good
20 for waterskiing, the northern cove which is called
21 actually Skier's Cove is the preferred place probably
22 because it's bigger and has a geometry.

23 When I looked at the diagrams that you have of Segar
24 Cove, even without the oyster farm it already appears

1 constrained geometry-wise for waterskiing, and there
2 didn't seem to be a huge difference to me between the
3 oval and the flattened oval of the impact of the farm on
4 that sort of geometry.

5 And I'm wondering, do you feel that it's not a
6 preferred cove right now because of this geometry, and
7 does this really impact it very much? I just don't see
8 that there is a huge impact between those two shapes, and
9 I'm wondering if I'm just reading that incorrectly.

10 THE WITNESS: I think, you know, there are two
11 locations within Potter Pond, so which is more preferred
12 than the other. That's really some of the public or the
13 local residents might be able to speak to that better
14 than I can, just based on local knowledge.

15 But in terms of the compression that I was talking
16 about, you're going from 30 acres available to 20 so
17 that's a 33 percent reduction. But the circles do get
18 smaller as we showed in that figure, but also the turns,
19 if you look at it, the turns become much tighter. And so
20 that means that you have to increase the speed of the
21 boat a little bit.

22 When you turn a boat, there's obviously more water
23 resistance. So you have to maintain -- to maintain the
24 plane of the boat, you actually have to put the throttle

1 up just a little bit when you go into a turn. The
2 tighter that turn is, sometimes you have to put it up
3 even more because the prop won't dig in as much, and it
4 just slows the boat on. The skier has the same thing.
5 So it makes it harder to ski in a tight almost 90-degree
6 turn. And you were right, you do have to -- as you're
7 operating a boat and skiing, you have to not only be
8 thinking about the path of your boat in relation to
9 things, but you have to be thinking about the path of
10 your skier and relying on your spotter to tell you is the
11 skier inside the wake or are they outside of the wake,
12 which they can -- you know, a skier can go outside the
13 wake behind the boat. They just don't stay straight
14 behind it.

15 So you have to take all that into account when
16 you're operating the boat because you're responsible for
17 the skier's safety, and the skiers themselves have to
18 take that into account too. They shouldn't be zooming
19 out of the wake toward a moored vessel or something that
20 they can hit because if they lose control, they could
21 wind up hitting it. I hope that helps.

22 MS. REYNOLDS: Thank you.

23 CHAIRWOMAN CERVENKA: Mr. Whitney, I have a
24 couple questions related to your concluding opinion.

1 Your opinion on whether or not there's a significant
2 impact on other water dependent uses, is it tied to Segar
3 Cove specifically, or are you saying that it's with
4 respect to the entire Potter Pond?

5 THE WITNESS: Segar Cove, that 53 acres, and
6 then the 30.3 acres of watershed that goes down to 20.
7 So I would say that 33 percent reduction is a significant
8 impact.

9 CHAIRWOMAN CERVENKA: Okay. And then what
10 remains, I guess, is that reduced sheet plus the -- I
11 can't really see it, but I'll say like 67.8 acres is the
12 normal [ZOOM INTERRUPTION] at Skier's Cove?

13 THE WITNESS: Correct. The other two areas,
14 right. But the Segar Cove number size would be down, so
15 the overall size would go down as well.

16 CHAIRWOMAN CERVENKA: So that's about 80 acres
17 of area that would -- if a proposed lease were approved,
18 and it did reach the watershed, the total acreage for
19 water skiing would be about -- do I have it right -- or
20 it would be maybe 87 or close to 90 depending what
21 configuration you used and whether or not you had the
22 anchored boats. I know there were different figures
23 offered.

24 THE WITNESS: Yes. So it would actually be a

1 little bit less than that. In our Figure 1B we show,
2 which was the existing conditions of the entire Potter
3 Pond, there are some docks in the Skier's Cove area. So
4 there would be 200-foot buffers off of that as well. I
5 don't have a quantification of what the buffer is, the
6 total acreage of those buffers in the northern basin, but
7 it wouldn't be the entire 67 acres. It would be somewhat
8 less than that.

9 CHAIRWOMAN CERVENKA: So just looking -- I'm
10 looking at Exhibit 1D. That is not specific to towed
11 sports. That's just a broader watercraft area?

12 THE WITNESS: That's actually a personal
13 watercraft, so that's the 200-foot buffer in the
14 regulations that applies to personal watercraft, so
15 staying 200 feet or more away from shore for the personal
16 water craft.

17 CHAIRWOMAN CERVENKA: In this report you didn't
18 calculate what would remain in the northern basin. You
19 didn't calculate --

20 THE WITNESS: Not specifically, no, no, we
21 didn't.

22 MR. CAPIZZO: Madam Chair, if I may, I think he
23 was referring to 1B, as in boy. I think that's what he
24 was trying to draw your attention to. I think that's the

1 towed water sports up in the northern basin.

2 THE WITNESS: That's correct, yes. 1 bravo,
3 yes, B.

4 CHAIRWOMAN CERVENKA: That's the towed water
5 sports, but you didn't do the buffer on that because that
6 shows the 67. -- it's either 3 or 8.

7 THE WITNESS: Right. We used 1B, bravo. We
8 showed a total area available under existing conditions
9 available under existing conditions of 81.84 acres. So
10 if you take 10 off that, then you're probably like just
11 under 72.

12 CHAIRWOMAN CERVENKA: Okay. Thank you.

13 THE WITNESS: You're welcome.

14 CHAIRWOMAN CERVENKA: Then also with respect to
15 your opinion of whether or not something has reached the
16 threshold of a significant impact, is that limited to
17 towed water sports but not for other water dependent
18 uses? I didn't follow it exactly as you were giving the
19 opinion. It sounded like, to me, that it was limited.
20 It certainly is the most extreme with respect to towed
21 water sports. I just didn't know if other water
22 dependent activities were within your opinion.

23 THE WITNESS: It was primarily the towed water
24 sports followed by the personal watercraft, yes, yes.

1 CHAIRWOMAN CERVENKA: And so it's your opinion
2 that there's also significant impact on the watercraft,
3 there's a significant impact?

4 THE WITNESS: I would say yes, but to a lesser
5 extent than the towed water sports, yes.

6 CHAIRWOMAN CERVENKA: That's all I have. I
7 just wanted to clarify your opinion whether or not it was
8 just Segar Cove or Potter Pond as a whole. Thank you. I
9 think that deals with Subcommittee member questions.

10 Before going on to Ms. Noonan, I forgot to ask
11 Mr. Capizzo that if during your break you had checked on
12 that Exhibit 24? I conferred with Mr. Willis and we
13 don't seem to have it.

14 MR. CAPIZZO: Yeah, that may be correct. I'm
15 trying to find out from my office if hard copies were
16 sent. It doesn't appear that they were. I can confirm
17 that tomorrow and can send an email. It does not look
18 like it was sent via email to Ms. Noonan either.

19 CHAIRWOMAN CERVENKA: Okay.

20 MS. NOONAN: Christian, are you going to send
21 it to us, or how do you want to handle that?

22 MR. CAPIZZO: I can send it to you, Beth.

23 MS. NOONAN: Okay. Am I up? Am I ready to go?

24 CHAIRWOMAN CERVENKA: Yes, you're up. You

1 don't have much time, but let's say until 5:55 and then
2 we'll deal with some administrative and then wrap.

3 MS. NOONAN: Thank you, Madam Chair.

4 CROSS-EXAMINATION BY MS. NOONAN

5 Q. I guess I'll say good evening, Mr. Whitney. How are you?

6 A. I'm good, thank you.

7 Q. I can say I've done a lot of work with ESS, and I respect
8 the work that they do, but I don't think we've had the
9 pleasure of working together yet.

10 A. I don't think we have. I heard your name, but we have
11 not had the pleasure.

12 Q. Thanks. Obviously you were retained by Mr. Capizzo to do
13 a peer review of the proposed farm in Segar Cove,
14 correct?

15 A. That's correct, yes.

16 Q. And you were retained in the first quarter of 2018?

17 A. I believe that's correct, yes, yes.

18 Q. Okay. How many aquaculture applications have you been
19 involved with prior to this one?

20 A. This is the first in terms of aquaculture.

21 Q. Is it fair to say that your testimony does not in any way
22 address the ecology of the aquaculture project, correct?

23 A. That's correct.

24 Q. You testified that you have a 19-foot boat. Dr. Rice

1 chooses not to own one, but you own one. Do you have
2 anything from the Coast Guard in terms of a captain's
3 license or other certifications?

4 A. No. As I testified, I just have the Safe Boating
5 certificate saying I completed the auxiliary boating
6 skills in seamanship class.

7 Q. In your Curriculum Vitae that Mr. Capizzo went over with
8 you, which is Exhibit 3, on Page 1 there where you talk
9 about your representative project experience, you talk
10 about projects with navigational safety risk assessments.
11 And then on Page 2 you talk about projects with
12 navigational condition review. Is it fair to say that
13 what you have done in this instance is the latter, a
14 navigational condition review?

15 A. Yes. I would say it's more of a navigational condition
16 or impact review, yes.

17 Q. And the three matters that you listed, you did work for
18 all abutters, correct?

19 A. The three were lobster cove, eel pond, and I forgot what
20 the third was.

21 Q. May I suggest abutters?

22 A. They were all abutters, that's correct.

23 Q. And Mr. Murray asked you a little bit about this. In
24 terms of navigational safety risk assessments, is this

1 like there were concerns of fishermen, how they could get
2 around the turbines and stuff. Is that part of it?

3 A. That is part of it, yes, yes.

4 Q. And so like Mr. Murray my experience is with traffic
5 studies. You didn't do any vehicle counts or boat counts
6 or anything like that, correct?

7 A. Not in this matter, no.

8 Q. All right. You've only been on the site on the pond
9 once, right?

10 A. That's correct.

11 Q. And the other times you were at Mr. Hunt's house?

12 A. That's correct.

13 Q. So you didn't have the opportunity to review or view any
14 recreational use on the pond except for those two
15 occasions when you were there, and I assume there wasn't
16 much going on in February?

17 A. That's correct.

18 Q. Okay. Again, in terms of sort of a navigational safety
19 risk -- strike that.

20 You and ESS never undertook to sit at the entrance
21 of the cove and count the powerboats coming in or any
22 other vehicles coming into the cove, correct?

23 A. We did not, no.

24 Q. And what you did was, you've looked at the impacts of the

1 farm as well as other objects in Segar Cove including
2 docks to see how much they've limited the watersheet; is
3 that right?

4 A. That's correct.

5 Q. We've talked about the town of South Kingstown ordinance.
6 Do you know whether or not that ordinance, which is
7 Section 4-8, has been approved as part of the South
8 Kingstown Harbor Management Plan?

9 A. I believe it's -- the Harbor Management Plan is
10 referenced in the beginning of that ordinance. I'd have
11 to go back and look and see what the exact language is,
12 but I do believe it is referenced in there.

13 Q. The question is, has it been adopted or approved as part
14 of the management plan? You don't know that as you sit
15 here today, right?

16 A. I do not, no.

17 Q. In talking about those buffer areas I want to be clear.
18 At 4-8-1, it talks about a waterskier in his or her
19 boat -- no waterskier or his or her boat shall approach
20 any stationary or moving object, correct?

21 A. That's correct.

22 Q. Do you consider the shore to be a stationary object?

23 A. I would, yes.

24 Q. And have you included that 200-foot buffer from the shore

1 in your calculations as well as from docks and the
2 proposed farm?

3 A. We did not, no.

4 Q. All right. So you've said that you were going to lose --
5 by this proposal you are going to lose 10 acres of
6 available area, right?

7 A. Correct.

8 Q. If you included that 200-foot buffer from the stationary
9 shoreline, wouldn't that decrease the 10 acres to about 5
10 acres as Mr. Osgood testified to last week?

11 A. I'd have to put in the GIS to be able to quantify it.

12 Q. You never included that buffer zone in your calculation
13 so it's not part of your report or your testimony at this
14 point?

15 A. That's correct. It was based off of the stationary
16 objects of those docks.

17 Q. Now, in terms of the Category B assent criteria that we
18 talked about, or that Mr. Capizzo talked about with you
19 in your report which is Exhibit 1, you never testified or
20 never stated in that report that the proposed farm would
21 unreasonably interfere with or impair existing public
22 access to or use of the tidal waters or shore, did you?

23 A. If I could just take a quick look at my report?

24 Q. Take your time, Mr. Whitney.

1 [PAUSE]

2 A. Just in looking at the introduction to our report, we did
3 not use "unreasonable." We made a variety ten statements
4 based on the findings of our review.

5 Q. But I'm going very specifically to the Category B assent
6 requirements. These are a term of art, and as an
7 engineer I'm sure you are used to precision.

8 So while you may have used the word, let's go to
9 Exhibit 1 on the first page, Number 4. You state the
10 position of the proposed -- strike that. Are you with
11 me, Mr. Whitney?

12 A. I am, yes.

13 Q. Great. "The position of the proposed 3-acre aquaculture
14 facility near the shoreline would interfere with riparian
15 access to approximately 590 feet of shoreline along Segar
16 Cove with the original proposed configuration."

17 You don't say "unreasonably interfere" there, do
18 you?

19 A. The word "unreasonably" is not there.

20 Q. Also, going to the Category B assent requirements J, no
21 where in your report did you state that the alteration or
22 activity will not result in significant conflicts with
23 water dependent uses and activities such as recreational
24 boating, fishing, swimming, navigation and commerce, do

1 you?

2 A. Can you repeat the question? I think there was a double
3 negative in there.

4 Q. Sorry. In your report -- I'm not trying to trick you up
5 here. It's 5:21 in the day --

6 A. Exactly.

7 Q. Going to Item J of the Category B assent in your report,
8 no where do you state that there are significant
9 conflicts with water dependent uses and activities such
10 as recreational boating, fishing, swimming, navigation
11 and commerce, do you?

12 A. I don't believe we use those words, no.

13 Q. And you understand those are the Category B assent
14 requirements, correct?

15 A. I do.

16 Q. And you're familiar with the CRMC regulatory scheme, I
17 presume?

18 A. Yes.

19 Q. So in fact then, today in your testimony you got a little
20 more expansive and you're talking about a significant, I
21 believe, let me get my words right here. Let's be clear
22 that when you make your determinations today, which are
23 different from your report, you're only talking about
24 Segar Cove, not Potter Pond, right?

1 A. The questions that I was being asked were predominantly
2 about Segar Cove, that's correct.

3 Q. Okay. And again, your area that you're testifying is
4 limited to boats with towed water sports and personal
5 watercraft which are jet skis, right?

6 A. We also talked about those. I think we also talked about
7 kayakers, paddle board and sailboats during the testimony
8 too.

9 Q. But would you agree that generally the access for paddle
10 boats and canoers, kayakers is less impaired by the farm
11 than motor sports, right?

12 A. I would agree, yes.

13 Q. You heard testimony that you can paddle through the
14 farms, right?

15 A. I did.

16 Q. And in fact, though, going back to this it's really an
17 issue of navigation. And you talk about the other farm,
18 the existing farm that's out there. You were able to
19 navigate that, were you not, or whoever was driving your
20 boat?

21 A. Yes, they were navigating, yes.

22 Q. So they were able to get around that -- say you're going
23 from Skier's Cove back to Segar Cove. Even though it
24 narrows at certain points, one can navigate between those

1 two points?

2 A. Yes, you can navigate, correct. Again, we weren't towing
3 a skier obviously as well. We were just a boat
4 navigating out there.

5 Q. Okay. In going on the issue of jet skiers, although I
6 know we didn't accept your qualifications as an expert,
7 you didn't analyze the noise levels of jet skiers in your
8 report, did you?

9 A. No.

10 Q. And you didn't analyze the noise impact of other
11 motorized tow sports like waterskiing in terms of the
12 South Kingstown noise ordinance, did you, in your report?

13 A. We did not. Our report was to do a technical review of
14 the application.

15 Q. And then in terms of whatever else went into your
16 application, who else aside from Mr. Capizzo did you get
17 information from for your report?

18 A. As I testified, we reached out to the harbormaster and
19 got the mooring maps. They are not available on GIS. We
20 requested them from the harbormaster. We talked to the
21 Lathams, Mr. Latham and Mr. Hunt, Ms. Cooney as well
22 during our site visit, and we did a variety of online
23 research as well in terms of the regulations. We looked
24 at other sources of information in terms of what was the

1 typical waterski speed. Intuitively I know it, but I
2 just wanted to look it up. So we looked for those pieces
3 of information to -- we also looked at sighting, whether
4 there were any sighting criteria that were out in the
5 published realm in terms of aquaculture facilities. We
6 only found one in New Zealand that is referenced in our
7 report.

8 Q. Because you had no personal knowledge of the recreational
9 use in the cove, you had to rely upon what the Lathams,
10 the Hunts, and Quigley and Cooney told you; is that
11 correct?

12 A. Yep, as well as the observations we made during that site
13 visit, yes.

14 Q. During that one visit?

15 A. Yes.

16 Q. Obviously I haven't seen Exhibit 24 that you discussed at
17 the end. What was the date of those pictures?

18 A. Was Exhibit 24 the boundary, showing the boundary over
19 the water? Was that the exhibit -- do I have that
20 exhibit number correct, the visualizations?

21 MS. NOONAN: Is that right, Christian?

22 MR. CAPIZZO: Yes, it was the visualization,
23 yes.

24 Q. What was the date of those?

1 A. The photos were taken that day, June 29, 2018.

2 Q. So this was the weekend before the Fourth of July and the
3 only thing that I saw in those pictures was Mr. Latham's
4 kayak; is that right?

5 A. That was Mr. Latham's boat in those pictures, yes. It
6 was a Thursday or a Friday in late June, yes. We were
7 out there early morning. We were out there -- I think we
8 got there mid-morning or early morning and then we
9 finished up around like lunchtime.

10 Q. Okay. I'd like to -- let me ask you. Did you look at
11 anything on the website in terms of Save Potter Pond?
12 Are you familiar with that website?

13 A. I have not looked at that website.

14 Q. Okay. I'd like to go to your report and sort of go
15 through it with you.

16 A. Okay.

17 Q. We can start with that. Turning to -- let's start at the
18 beginning, Number 1 on Page 1 of Exhibit 1. You agree
19 that the proposed farm does not exceed the 5 percent
20 coastal pond aquaculture threshold, correct?

21 A. We do, yes.

22 Q. Okay, and you understand that that pertains to all of
23 Potter Pond and not just Segar Cove, right?

24 A. Yes.

1 Q. And, additionally, the farm would only occupy 0.9 percent
2 of Potter Pond if approved, right?

3 A. I don't know that we calculated that number so I'd have
4 to verify.

5 Q. I think we did --

6 A. Did we?

7 Q. -- it before --

8 A. We might have. Let me see. Yes, 0.9 percent on Page 4,
9 that's correct.

10 Q. Okay. And you've calculated that the area of Segar Cove
11 that's currently restricted with the 200-foot town buffer
12 for waterskiers is at 57 percent of the cove, right?

13 A. 30.3 acres, which would be 57 percent, yes.

14 Q. So that's as it is today without any farm in there,
15 right?

16 A. Actually, are you referring to Section 1.6.1?

17 Q. I was on Page 7 --

18 A. Page 7, yes. I didn't mention -- it didn't come up in
19 the line of questioning, but I did notice as I was
20 preparing the other day that there was an error in those
21 numbers. I did the reciprocal. So in that line it
22 says -- it currently says any loss of 30 --

23 Q. Hold on so the Committee knows where you are.

24 A. Sure.

1 Q. You are in Exhibit 1 and on Page 7?

2 A. Page 7, right, Section 1.6.1.1. It's right in the middle
3 of the page. It's the --

4 Q. Existing conditions?

5 A. Yes, existing conditions. The fifth line down starts
6 with the word "in." It presently says, "In a loss of
7 approximately 30.3 acres, 57 percent." I reversed the
8 numbers. I did the reciprocal. It should read, "In a
9 loss of 23.2 acres or 43 percent." I testified earlier
10 that there was 30.3 acres available. I think attorneys
11 would call that a scrivener's error.

12 Q. Well, percents change. I'm not sure if that's quite
13 scrivener's. John Boehnert can weight in scrivener's
14 error for us.

15 If you applied that 200-foot buffer to the shoreline
16 with this number, what would the area currently be that
17 is covered by the buffer area, all the buffer areas? Do
18 you have that number?

19 A. I don't in front of me, no. I'd have to calculate that.

20 Q. What would it take for you to do that? Would you be able
21 to provide that?

22 A. I would. I would have to have somebody pull up NGIS and
23 do that.

24 Q. Okay. Any other errors in your report that you have

1 discovered that you haven't notified us or the Committee
2 of at this point?

3 A. Yeah, just in Section 1.6.1.2, just below it. The
4 20.2 acres should be 20.3.

5 Q. So you're talking in the second paragraph of that
6 Section 22 on the third line should be 20.3?

7 A. Yes, yes, and then on that line as well, 10.1 acres
8 should be 10.0.

9 Q. 10 even, okay?

10 A. Yes, yes.

11 Q. Again, this isn't factoring in that 200-foot buffer from
12 the shoreline, right?

13 A. Right, right, right. The regulation doesn't call out the
14 shoreline in that piece, where it does in the personal
15 watercraft piece as well. That's just the way the
16 regulation is written, I guess.

17 Q. Did you speak to the harbormaster about how this is
18 applied?

19 A. I did not.

20 Q. If there was a kayaker in the middle of the cove right
21 now without the farm, anyone that wanted to waterski
22 would have to stay 200 feet away from that kayaker; is
23 that right?

24 A. That's correct. It would be a moving object or a

1 stationary object.

2 Q. Depending, right.

3 A. It's an object, yes.

4 Q. But it falls under the ordinance, right?

5 A. It does.

6 Q. So if I lived on the pond and I wanted to go waterskiing,
7 and I saw a group of kayakers, maybe one, maybe three,
8 I'd have to be very cautious about how I went out there
9 if I even could; is that right?

10 A. That's correct.

11 Q. In terms of other stationary objects, that would include
12 lobster, eel and crab pots, would it not?

13 A. It should, yep. I would say that's a stationary object.
14 Same thing. The float at the top would be a stationary
15 object. So a mooring ball would be that way too, right?

16 Q. Right. The mooring, we know the mooring is in the
17 southern part of the cove, but if someone else had those
18 lobster, eel or crab pots, those would have to be
19 factored in with the 200-foot buffer also.

20 A. Yeah, an operator under the ordinance would stay away, is
21 supposed to stay away 200 feet.

22 Q. All right. I think you said on some of these maybe
23 people didn't observe them; is that fair to say?

24 A. Just like any law, not everybody observes the laws.

1 Q. So it's sort of a rule that's observed more, that's
2 followed more, in the breach than the observance, right?

3 A. I don't know what you mean by that statement, so I can't
4 comment on it.

5 Q. All right. Let's go back to your report again, Exhibit 1
6 at Page 10, I believe, second paragraph.

7 A. Okay.

8 Q. Just structured so everyone understands, I think if I'm
9 right your summary at the beginning sort of highlights
10 points 1 through 10, and then you go on to explain them a
11 little more in depth in the following report; is that
12 correct?

13 A. Yes, yes, exactly. That's exactly how we did it.

14 Q. I've read a lot of peer reviews. On Exhibit 1, Page 10,
15 second paragraph, you state that:

16 "The presence of the proposed 3-acre aquaculture
17 facility in Segar Cove may lead some of those that use
18 the cove for towed water sports to decide the reduced
19 watershed is not sufficient for towed water sports and
20 lead them to move elsewhere for such activities."

21 As a professional engineer, what is the basis for
22 that statement?

23 A. I did not make that statement as a professional engineer.
24 I made it as somebody who understands navigation. And if

1 an area is crowded and there's another area that is
2 potentially less crowded, one would move. I mean, it's
3 just human nature as well.

4 Q. And then later at the end of that same paragraph --
5 strike that.

6 Further down on Page 10, Section 1.6.3.2 which is
7 entitled Proposed Conditions/Limitations On Recreational
8 Use, do you see that?

9 A. I do.

10 Q. You state there that the proposed farm would
11 "significantly limit the size of Segar Cove's watershed
12 available for waterskiing and swimming," correct?

13 A. Correct.

14 Q. I was going to ask you, that's your conclusion when
15 almost 60 percent of the cove is restricted. But now
16 you're telling me that that has changed to 47 percent, is
17 that right, or 43?

18 A. A loss of 43 percent, yes.

19 Q. Let's go back to the question that Committee Member
20 Reynolds asked.

21 Your diagrams showing what can be towed showed maybe
22 one or two waterskiers that could be in the cove when the
23 farm was there with the applicable buffers. I believe
24 that that is Figure 5.

1 Let me ask you. Without the farm, how many skiers
2 can be accommodated in the cove with all of the
3 applicable buffers in place?

4 A. I think Figure 5 doesn't show the number of skiers that
5 could be accommodated. It's really -- that was a
6 simulation so it's showing the path that was taken by a
7 vessel on a day skiing, simulating skiing.

8 Q. And that was Mr. Latham, one of the objector's, vessels,
9 right?

10 A. It was.

11 Q. And that was the same day that you took those pictures,
12 the end of June 2018?

13 A. That's correct.

14 Q. Well then forget Figure 5.

15 Again, Committee Member Reynolds was talking about
16 the geometry. So let me ask you. Without the farm but
17 using all the necessary buffers that the town of South
18 Kingstown calls for, how many skiers could you have in
19 Segar Cove safely?

20 A. You could probably have two maybe three vessels in that
21 area doing small loops.

22 Q. All right. So that's two to three skiers with small
23 loops without the farm; do I have that correct?

24 A. That's my opinion, yes.

1 Q. And one to two skiers with the farm, correct?

2 A. Correct.

3 Q. And that assumes that there's no other stationary or
4 moving object in the area when those skiers are around
5 that would impact that 200-foot buffer, right?

6 A. Correct.

7 Q. So it would come down to, the impact is one waterskier on
8 this farm if the farm is implemented?

9 A. At a time, yes.

10 Q. Okay.

11 A. At a point in time, yes.

12 MS. NOONAN: I'd like to go to some of the
13 figures that you have. Let's start -- actually, if you
14 could, before we get to that, let's put up Exhibit 2,
15 please, Objectors' Exhibit 2, which is the mooring and
16 dock field. Mr. Moore, if you want to do that, or
17 Leslie, if you can do that. I'm certainly not doing it,
18 so...

19 MS. PARKER: Yes, it will just take me a
20 minute.

21 MR. MOORE: Leslie, you have control.

22 MS. PARKER: Thank you.

23 [PAUSE]

24 MS. NOONAN: Thanks, Leslie. Sorry. Just to

1 let you know, Leslie, the one I want is our Exhibit 4 if
2 you don't mind.

3 [EXHIBIT DISPLAYED]

4 Q. Mr. Whitney, do you see what was marked or admitted I
5 believe as Exhibit 2 for the objectors --

6 A. I can see your screen, yes.

7 Q. ESS put that together, right?

8 A. We did.

9 Q. All right. And Mr. Hunt's property is on Ram's Point,
10 correct?

11 A. That's correct.

12 Q. And that is the only -- strike that.

13 This plan does not show lot lines, does it, property
14 lot lines?

15 A. It does not, no.

16 Q. Did you prepare any plans that show the lot lines?

17 A. I don't recall that we did.

18 Q. We'll get to that in a second. Let me follow up with
19 this. Let's talk about Mr. Hunt's property. It
20 straddles effectively Sycamore and Segar Cove, right?

21 A. It's kind of -- I would say it's the border between the
22 two, yeah.

23 Q. Okay. And that's a single-family house that's on that
24 point, right?

1 A. Yes.

2 Q. And he has a dock on Sycamore Cove, correct?

3 A. Correct.

4 Q. If we go up north towards what's numbered -- so you
5 didn't number that because it's not in Segar Cove,
6 correct?

7 A. Correct.

8 Q. All right. But as you're aware, under CRMC regulations
9 that's the only dock that Mr. Hunt can have, as a
10 property owner is only allowed to have one dock per
11 property, correct?

12 A. I'd have to check the regulations but that sounds
13 reasonable, yes.

14 Q. You're not familiar with that specifically?

15 A. Not that provision specifically, no.

16 Q. If we go north then from the Hunt property up to the dock
17 that's numbered one, that's the Cooney/Quigley dock,
18 right?

19 A. Yes.

20 Q. Again, you don't show the lot lines dividing it, but fair
21 to say that that one dock is attached to their property
22 and there is no other dock, right?

23 A. Yeah, that's fair to say.

24 Q. Okay. Going southerly, and I'm having trouble seeing

1 what number it is, but I would assume or maybe you can
2 answer that, going -- which number is Mr. Latham's dock?

3 A. His would be 26. We're showing 23 to 26 there because
4 they are so tight it was hard to label them all
5 individually.

6 Q. All right. So 26 would be Mr. Latham's dock. And again,
7 that would be the only dock allowed to Mr. Latham under
8 CRMC regulations, right?

9 A. Yes.

10 MS. NOONAN: Okay. Leslie, if we could go to
11 our Exhibit 4 which was the map prepared by DiPrete
12 Engineering?

13 MS. PARKER: Yes.

14 MS. NOONAN: Thank you.

15 [PAUSE]

16 Q. While we're waiting for that, Mr. Whitney, do you have
17 any knowledge about whether people waterski in Sycamore
18 Cove?

19 A. I was told when we went and did our site visit, I was
20 told that people do not ski in Sycamore Cove. It's
21 fairly small. The water is relatively shallow in there,
22 and there is a lot of yograss which would really prevent
23 a propeller from going in there.

24 Q. Well, looking at your Figure 1C though, it appears the

1 depths are maybe somewhat similar to Sycamore Cove?

2 A. Somewhat similar, yes, yes.

3 Q. Okay. But certainly then as you get up north to the
4 waterskiers basin, you have deeper water there, right?

5 A. Correct.

6 Q. And you didn't do any bathymetric measurements? Did I
7 say that correctly?

8 A. You did say that correct, and no, we did not do
9 bathymetric measurement, no.

10 Q. What you were doing is relying on GIS and NOAA
11 information that's publically available, correct?

12 A. Correct.

13 Q. And on GIS, especially in areas with a shoreline, there
14 is a certain degree of -- what's the word I'm looking
15 for -- error is not the right word -- give, as Mr. Murray
16 said, it's not a survey, right, GIS?

17 A. Are you referring to GIS itself, or are you referring to
18 the water depths?

19 Q. GIS. I'm off water depth. I am on GIS.

20 A. A GIS system is not a survey.

21 Q. You did not do anything to undertake a survey of the
22 shore along the Segar Cove where the proposed farm is,
23 did you?

24 A. We did not.

1 Q. Okay. You watched Mr. Osgood's testimony?

2 A. I did.

3 Q. And do you recall this picture that was put up? Plan,
4 sorry.

5 A. Yes, I do. This was the second of the two he had, I
6 think?

7 Q. Yes, there is a second one, yes. There were two of them,
8 yes.

9 A. There was one that had more dimensions than the other
10 one.

11 Q. This is the simpler one. We'll start with this one.

12 A. Yes.

13 Q. Looking at this one, I think you can see there are lot
14 lines on it. Do you follow that?

15 A. I see parcel boundaries, yes.

16 Q. You testified today that the Hunt property would be
17 impacted along the shoreline of 913 feet, correct?

18 A. I don't think I made that statement specific to the Hunt
19 property. I think I was talking about the length along
20 the shoreline of 913 feet.

21 Q. I recall that the question pertained to the Hunt property
22 alone; however, based on Exhibit 4, Applicant's
23 Exhibit 4, is it a fair statement that the approximately
24 910 feet is not all on the Hunt property, correct?

1 A. That would be a correct statement, yes.

2 Q. Okay. And in looking at this, maybe Leslie if you can
3 zero in or expand the opening to the cove, did you do any
4 calculations about the ability of skiers or personal
5 watercraft, jet skiers, to enter or leave the cove in
6 light of the town ordinances on buffers?

7 A. Not specific to leaving the cove, no.

8 Q. And you see, if I'm reading that right, that it's
9 240 feet across; do you see that?

10 A. Yes, I believe that was shoreline based on GIS is what
11 Mr. Osgood testified, yes.

12 Q. And so if you applied the 200-foot buffers on either side
13 from the shoreline, effectively this cove should be
14 closed to towed water sports; is that fair?

15 A. If there was water for that 240 feet you'd have 20 feet
16 to be able to --

17 Q. You have -- I'm sorry, two --

18 A. Yes, yes, I'm sorry. It would effectively be closed,
19 yes.

20 Q. Right, because you have 200 feet coming from each
21 shoreline, correct?

22 A. That's correct, yes.

23 Q. Okay. I'm going to turn to your figures of your other
24 report, but before I do that I just wanted to ask you in

1 terms of sort of the original proposal and then what
2 we're calling Map B or Plan B, the figures that I've seen
3 that you've attached to your report, only one of them
4 addresses the rectangular layout and the balance of them
5 are all polygon, which is B; is that correct?

6 A. That is correct.

7 Q. And you would agree with the general proposition that if
8 we take Plan B, it opens up more area for waterskiing.
9 I'm not trying to put words -- but it gets it closer to
10 the shore, correct, on Plan B?

11 A. At the southwestern corner that would be correct, yes.

12 Q. Well, I'm looking at this and trying to -- if you look at
13 it, I'm going back to how they're overlaid. The
14 rectangular one is more towards the center of the cove
15 for the most part than Plan B is, correct?

16 A. Well, are you referring to the lease or to the buffer or
17 both?

18 Q. Just the lease. Just the lease.

19 A. The lease, yeah. So the rectangular lease is farther
20 west than what is being referred to, the revised
21 application or Option B.

22 Q. Okay. So if you move it towards -- more towards the
23 center of the cove, you open up Mr. Hunt's shoreline,
24 right?

1 A. That space does widen, yes.

2 Q. Then if you slide it back towards the Hunt shoreline to
3 make room for the skiers, that creates more of a pitch
4 point that we've been talking about, right?

5 A. Ten feet along the shoreline, that's correct.

6 Q. And again, moving this whole thing in terms of just
7 skiers, is for one skier, additional skier, to be allowed
8 to use the cove if the farm is put in place, right?

9 A. One at a time. Not one total.

10 Q. But I mean, you said one to two people can use it even
11 with tight circles when the farm is in place, right?

12 A. Yes. We were talking about how many skiers -- you were
13 asking me how many skiers did I think could operate at
14 the same time in that area, right? In one instance I
15 said one to two with a revised configuration and two to
16 three with --

17 Q. I thought you said --

18 A. I'm sorry, before existing --

19 Q. Two to three existing, one to two proposed?

20 A. Proposed under the revised configuration, right.

21 Q. And you didn't do the analysis for the rectangular
22 configuration, right?

23 A. No, no.

24 MS. NOONAN: Madam Chair, it's 5:53. I forgot

1 what time you said you wanted to break.

2 CHAIRWOMAN CERVENKA: Yes, 5:55. I'm assuming
3 that you have more cross-examination and that you would
4 do it in our next scheduled meeting which would be
5 December 4th?

6 MS. NOONAN: Yes.

7 CHAIRWOMAN CERVENKA: So if you finished this
8 line of questioning, more or less, than let's hold there
9 and you can pick up when we come back.

10 MS. NOONAN: All right, thank you. I hate to
11 do this, but just an instruction to the witness that he
12 is under cross-examination and unable to speak with
13 lawyers.

14 THE WITNESS: Understood.

15 CHAIRWOMAN CERVENKA: I won't hold you to it.
16 I just want to have a general idea. Do you think you're
17 going to take another several hours with your witnesses?
18 What's your estimate given that we've spent most of this
19 getting through your primary witness? And I'm not
20 limiting you. I just want to have an idea just for the
21 public comment period. Maybe they can gauge if they are
22 going to be making public comment or not, or we need to
23 schedule another meeting.

24 So any thoughts on that?

1 MR. CAPIZZO: So I think I had indicated that I
2 have three additional witnesses that will be called. I
3 anticipate their testimony probably lasting at least an
4 hour each, and that does not cover obviously any
5 questions or the cross-examination.

6 CHAIRWOMAN CERVENKA: Okay. Mr. Willis, I'm
7 thinking that most of our next meeting will continue with
8 the objectors, interveners' case, including the
9 cross-examination and that we would bring back Mr. Beutel
10 as we had planned for some questions about his staff
11 report.

12 MR. WILLIS: That's correct, Madam Chair.

13 CHAIRWOMAN CERVENKA: Okay. And if we can
14 start with public comment, great. We're not going to
15 further restrict public comment. If we need to push it
16 into an additional meeting to finish it, we will.

17 MR. WILLIS: Agreed. We can find a schedule
18 for that. Given what Mr. Capizzo just said on the time
19 frame for the remaining witnesses, plus this cross, plus
20 the cross of his remaining witnesses, I would suspect
21 most, if not all, of the December 4th hearing will be for
22 Mr. Capizzo's witnesses and cross.

23 MS. NOONAN: Madam Chair, I don't anticipate
24 extensive cross-examination of Mr. Capizzo's lay

1 witnesses.

2 CHAIRWOMAN CERVENKA: But you still have some
3 time on this expert witness, right?

4 MS. NOONAN: I do, yes. Probably another hour
5 or so at the most.

6 CHAIRWOMAN CERVENKA: Okay. That takes us to
7 four hours and then Mr. Beutel. So, Mr. Willis, we can
8 communicate, I guess, to the people who signed up for
9 public comment that we're unlikely to reach them on the
10 December 4th meeting. We will then have to schedule a
11 separate meeting for public comment. We'll try to reach
12 them. It's unlikely.

13 MR. WILLIS: I agree, Madam Chair. One of the
14 commenters asked if we could put the names of the list
15 available to speak up online so they have an idea of when
16 they might be up whenever that day comes. I think that's
17 a good idea. We can do that.

18 CHAIRWOMAN CERVENKA: I agree. That list
19 should go up. Mr. Wagner, I'm assuming we would start
20 with your client who is going to speak during the public
21 comment period?

22 MR. WAGNER: I think that would be fine. I do
23 have a concern over the limitation of I think you
24 said that -- I don't remember whether you said it was a

1 couple minutes for each person to give public comment. I
2 mean --

3 CHAIRWOMAN CERVENKA: Well, what do you
4 anticipate that your client needs?

5 MR. WAGNER: Well, I actually don't know, but
6 I'm sure it's more than two minutes. I don't think it's
7 much more than ten minutes, but I think it would be more
8 than two minutes.

9 CHAIRWOMAN CERVENKA: All right. Well, we'll
10 revisit this. I don't think we need to be concerned
11 about December 4th because we're going to take it up with
12 the counsel's presentation and Mr. Beutel, but I'll take
13 that under consideration.

14 MR. WAGNER: Thank you.

15 CHAIRWOMAN CERVENKA: Anything else
16 administratively, Mr. Willis?

17 MR. WILLIS: No, Madam Chair.

18 CHAIRWOMAN CERVENKA: Okay. Mr. Capizzo,
19 you're going to get back to us on that Exhibit 24 and if
20 it was sent and whether you intend to use it and all
21 that?

22 MR. CAPIZZO: Yes.

23 CHAIRWOMAN CERVENKA: Okay.

24 MS. NOONAN: Madam Chair, just for scheduling

1 purposes, are we doing that in the afternoon again on
2 December 4th?

3 CHAIRWOMAN CERVENKA: I think we decided 11 to
4 1, and then we were going to break for a half hour and
5 then we are going to do 1:30 to 5:30.

6 MR. WILLIS: That's correct, Madam Chair. We
7 wanted to explain that tonight, but that's exactly
8 correct.

9 CHAIRWOMAN CERVENKA: We had talked about
10 scheduling the workshop for December 8th. That's prior
11 to our regularly scheduled meeting, but I think that's
12 unlikely now because of the public comment period that we
13 need to afford. We'll revisit that, but for sure
14 December 4th from 11 to 5:30.

15 MR. WILLIS: Correct.

16 MR. CAPIZZO: Madam Chair, may I inquire, is
17 that December 8th date still held whether it is public
18 comment or workshop, or is that date going to be held or
19 no?

20 CHAIRWOMAN CERVENKA: I don't know yet.

21 MR. CAPIZZO: Okay. That's fine.

22 CHAIRWOMAN CERVENKA: We'll figure that out
23 with the agency. Anything else? Mr. DeSisto?

24 MR. DESISTO: No, I'm all set.

1 CHAIRWOMAN CERVENKA: Okay. We're all complete
2 here. Thank you everyone for the thorough presentation
3 and I will move to adjourn. Is there a second?

4 MS. REYNOLDS: I'll second.

5 CHAIRWOMAN CERVENKA: Mr. Coia?

6 VICE CHAIRMAN COIA: I'll second.

7 CHAIRWOMAN CERVENKA: Thank you, Ms. Reynolds.
8 All those in favor say aye.

9 [UNANIMOUS VOTE TAKEN]

10 [ADJOURNED AT 6:03 P.M.]

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

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

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

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

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