

**John and Patrick Bowen
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Little Compton, RI 02837**

Jeffrey Willis, Commissioner
Coastal Resources Management Council
Stedman Government Center
Suite 116, 4808 Tower Hill Road, Wakefield, RI 02879-1900

September 18, 2023

File #: 2020-04-037

Dear Commissioner Willis,

The Council hearing for the above referenced application began May 11, 2021. It was continued due to a CRMC procedural matter which was remedied prior to rescheduling for the Council meeting on June 22, 2021. On June 17, 2021, an entry of appearance by legal counsel was presented on behalf of objectors, and a continuance was requested and granted by CRMC.

That continuance extended more than two years, during which time objectors organized a group called "Save Seapowet" through social media and other platforms. Deploying yard signs, false statements, staged photo shoots, and computer-generated photographs they attempted to sway opinion and garner support, including soliciting donations for a "legal fund". During this extended time the group strategized and the largest number of letters of objection were received, however no new information was presented. Additionally, its members became heavily engaged in political lobbying and calls to reform CRMC.

In May, 2023, CRMC staff decided a second public notice period was procedurally necessary, and notice of the above application was sent to residents within 1,000 feet of the site. CRMC Staff issued their *second* staff report on July 10, 2023, stating this application meets all technical requirements, and giving deference to the Council "on the objections as they relate to the policies and standards of the RICRMP". After two years the hearing was due to resume on July 18, 2023.

Although scheduled to resume, the Agenda for the meeting restricted the Council's deliberations to "discussion and possible action on referral to the CRMC Hearing Officer based on objections received regarding the application". The Agenda item as posted served as a directive to limit the adjudicatory authority of the Council and is contrary to the recommendations stated in the Staff report(s).

The applicants object to the consideration of this application as a "contested case". Characterization in this regard, in advance of an impartial hearing by the Council is inconsistent with CRMC's definition and policy, "a case in which the legal rights, duties or privileges of a specific party are required to be determined by the Council after an opportunity for hearing". As evidenced by reports of the Marine Fisheries Council, DEM Divisions of Fish and Wildlife and

Marine Fisheries, in addition to CRMC's two Staff reports, this application does not affect the legal rights, duties, or privileges of any specific party.

The definition also includes submission of "substantive formal written objection" to the Council, or at the request of at least four members of the Council. As demonstrated below, none of the objections submitted in reference to this application rise to the level of "substantive".

Pursuant to CRMC Red Book, 650-20-00-1.1.6: Substantive objections are defined by one or more of the following:

- a. Threat of direct loss of property of the objector(s) at the site in question;
 - *The application contains no need nor demand to take an objector's property.*
- b. Direct evidence that the proposed alteration or activity does not meet all of the policies, prerequisites, and standards contained in applicable sections of this document;
 - *Each of the two CRMC staff reports state that the application meets all technical requirements.*
- c. Evidence is presented which demonstrates that the proposed activity or alteration has a potential for significant adverse impacts on one or more of the following descriptors of the coastal environment:
 - (1) Circulation and/or flushing patterns;
 - *USACOE permit evaluated these parameters and approved the application.*
 - (2) Sediment deposition and erosion;
 - *USACOE permit evaluated these parameters and approved the application.*
 - (3) Biological communities, including vegetation, shellfish and finfish resources, and wildlife habitat;
 - *RI DEM Divisions of Fish and Wildlife and Marine Fisheries evaluated these and approved the application, and the RI Marine Fisheries Council found it consistent with other uses engaged in the exploitation of marine fisheries.*
 - (4) Areas of historic and archaeological significance;
 - *HPHC reviewed the application and found it would have no effect on Historic Preservation.*
 - (5) Scenic and/or recreation values;
 - *The application intentionally plans to utilize submerged cages so as to preserve the scenic local area. As early as the Preliminary Determination Meeting, the applicants have welcomed the opportunity for kayakers, paddleboards and others to visit the area to learn about aquaculture. University of Rhode Island Studies have proven that shellfish aquaculture gear serves as structure equivalent to artificial reefs in support of sea-life habitat (Tallman and Forrester, 2007). The application states the cages will be spaced with twenty-five feet between rows, allowing more than sufficient room for rod and reel fishing.*
 - (6) Water quality;
 - *As described in Reitsma, et al, 2016, shellfish aquaculture has been proven to provide environmental benefits, including improvement of water clarity and reducing nutrient loading.*
 - (7) Public access to and along the shore;

- *This application will have no effect upon public access to or along the shore.*
- (8) Shoreline erosion and flood hazards; or
 - *USACOE permit evaluated these parameters and approved the application.*
- d. Evidence that the proposed activity or alteration does not conform to state or duly adopted municipal development plans, ordinances, or regulations.
 - *As evidenced in each of the two CRMC staff reports, this application conforms well to all state or duly adopted municipal development plans, ordinances, or regulations.*

As stated in CRMC Staff reports, this application has received all required approvals, including unanimous recommendation for approval from the Tiverton Harbor and Waterways Commission on March 1, 2021.

The applicants hereby respectfully request that this application be heard and considered for approval by the Full Council based upon the Staff Reports and the merits of the application, and pursuant to CRMC Management Procedures. It is also respectfully requested that the Agenda for such hearing clearly reflect the Council's authority and autonomy to deliberate and render a decision in an open and fair manner.

The courtesy of your response is hereby requested, providing assurance that the applicants will be afforded due process before the full Council.

Sincerely,

John and Patrick Bowen