In The Matter Of:
Coastal Resources Management Council

Perry Raso
Vol. 2
November 13, 2020
Subcommittee Hearing

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

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IN RE:
CRMC File No. 2017-12-086
In the matter of Perry Raso
* * * * * * * * * * * * * * * * *

Date: November 13, 2020
Time: 1:00 p.m.
Place: Via Zoom
Rhode Island

MEMBERS PRESENT
Jennifer Cervenka, Chair
Raymond C. Coia, Vice Chair
Donald T. Gomez
Patricia Reynolds
Anthony DeSisto, Esquire, Legal Counsel

STAFF PRESENT
Jeff Willis, Executive Director
Lisa Turner, Secretary
Ryan Moore, Moderator
James Boyd, Deputy Director
David Beutel, Former Aquaculture Director

APPEARANCES
Elizabeth Noonan, Esq. For the Applicant
Leslie Parker, Esq. For the Applicant
Christian Capizzo, Esq. For the Objectors (Hunt, Latham, Cooney and Quigley)
Dean Wagner, Esq. For the Objectors (Andrew Wilkes and 454 Beach Road, LLC.)
housekeeping? I forgot to move Dr. Byron's CV full. Can I move that full?

    MR. WAGNER: No objection.

    MR. CAPIZZO: No objection.

    MS. NOONAN: Thank you.

    CHAIRWOMAN CERVENKA: It's submitted.

    [EXHIBIT #3 MARKED FULL]

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

    Good afternoon, Dr. Rheault. How are you?

    THE WITNESS: Good afternoon.

    MS. NOONAN: Can he be sworn.

    ROBERT RHEAULT,

    Being duly sworn testifies as follows:

    COURT REPORTER: Please state your name for the record.

    THE WITNESS: My name is Robert Rheault.

    DIRECT EXAMINATION BY MS. NOONAN

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

    Q. As he pulls that up, if I can start with you, Dr. Rheault. Can you please give the Council some of your background as set forth on Exhibit 4?
Q. I believe they are listed on Page 1 of your curriculum vitae. Can I ask, the most important question is that are you the guy that gave us Moonstone oysters?

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

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

CHAIRWOMAN CERVENKA: Any objection?

MR. WAGNER: No objection.

MR. CAPIZZO: No objection.

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

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

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

MS. REYNOLDS: Reynolds seconds.

CHAIRWOMAN CERVENKA: I will do a roll call.

Ray Coia?

VICE CHAIR COIA: Ray Coia votes aye.

CHAIRWOMAN CERVENKA: Patricia Reynolds?
MS. REYNOLDS: Reynolds votes aye.

CHAIRWOMAN CERVENKA: Don Gomez?

MR. GOMEZ: Don Gomez aye.

CHAIRWOMAN CERVENKA: Vin Murray?

MR. MURRAY: Vin Murray aye.

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

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

CHAIRWOMAN CERVENKA: Admitted full.

MS. NOONAN: Thank you.

[EXHIBIT #4 MARKED FULL]

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

A. Yes. Dr. Rheault, yes.

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

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

Q. All right. Do you serve on the Shellfish Advisory panel?
something in their constitution words to the effect that
it is incumbent on the resource managers of the state to
manage the subtitle -- I'm sure I'm botching up the
constitutional language badly, but to the benefit of the
sovereign, not necessarily to the waterfront homeowners
right there, but to the sovereign meaning the members,
all the people of the state of Rhode Island. So the
Council has a very challenging task, to balance these
multiple users.

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

A. Well, certainly the coastal waterfront marsh of the right
to wharf out and have riparian access. Both of the
adjacent waterfront homeowners have docks. So that
raises being honored. And then, you know, people have
the right of recreation and certainly the fisheries, and
the fisheries impairment in terms of what would be
prepared by a 3-acre lease in that area, either Option A
or Option B has been addressed, looked at and both DEM,
and Mr. Beutel has looked at it and determined that it's
not a huge loss of fisheries access.

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

When we created the 5 percent rule, it was an attempt to try and placate. So just going to take you back a little bit to the evolution of the 5 percent rule, we were challenged by oyster shell fishermen who were complaining that we were growing far too fast. I was applying for 7-acre lease expansion above my initial 2-acre lease, and I was being called the Walmart of shellfish aquaculture in Rhode Island. Obviously this was growth that was out of control. So a moratorium was being proposed by the fisheries
council so we reengaged in a group that we had
established, an aquaculture working group, which is a
multi-stakeholder group to really sit down and try to
hash out the various issues. And I wrote one of the
chapters entitled "carrying capacity," and did some
research and moved around, and we were being accused of
consuming too much of the phytoplankton. In other words,
the shellfish that our farms were consuming was going to
impair the wild shellfish in the area.

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

So we went with it. Everybody agreed. Everyone had
a chance to challenge it. This was a consensus document,
and we all agreed that until better science was
available, we would work with the 5 percent as an
estimate of the ecological carrying capacity, and as long as we didn’t exceed that, we could rest assured that we were not sucking up all the phytoplankton to the disbenefit of all the wild animals that depended on it.

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

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

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

A. We had -- it was a multi group of about 30 people, aquaculture working group, representatives from all various walks of life. We had biologists, scientists,
fishermen. We brought in pretty much anybody who was willing to attend 29 meetings over a space of I think a year and a half.

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

A. Very much so.

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

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

So that was the primary thing. I think broadly, to put it in terms that perhaps a lawyer would understand, need, you know, do you need to hire another partner and
more interns to get more clients? Or a restaurant, do you need to have another location?

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

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

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

MR. WAGNER: Objection. No foundation.

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

MR. WAGNER: I don't understand how that's a foundation for what his need is for an oyster farm. I
frankly still don't understand from his testimony what this need requirement means. I don't think that because he had a hand in drafting it should have any admissibility before the subcommittee.

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

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

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

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

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

    MR. DESISTO: Okay. You can.

    CHAIRWOMAN CERVENKA: Can I ask the stenographer to read the question back, please.
[PENDING QUESTION WAS READ]

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

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

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

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

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

Q. Since you talked in detail, can you tell the committee about your familiarity with Segar Cove?
A. I've been to Segar Cove once.

Q. And you visited the proposed site?
A. I did.

Q. Okay. Just going back generally to oyster farming and aquaculture, is this considered a green industry?
A. Absolutely. It's one of the things I'm most proud of. We get very high marks from the environmental communities which is -- aquarium, the nature conservancy, other things like that because we have no food, no drugs, no chemicals, no fertilizers. We got the gold star. And then to boot, we offer what are called ecosystem services. In other words, benefits that we take for granted. In other words, still for the water improving
Q. Can I stop you? What is the word you used so the stenographer has it?

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

So, as I said, because the shellfish feeding can mitigate and remove some of the nitrogen associated with the phytoplankton that they consume, we get the gold star from a lot of these environmental groups who recognize that when TNC, when the Nature Conservancy is coming out
in favor of the aquaculture, shellfish aquaculture, you know you're doing something right.

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

Q. Moving on to a different topic. Do you have an opinion as to whether Mr. Raso has taken measures to minimize any adverse scenic impact?
A. Certainly the low profile choice for his floating gear, he's trying to make it less visible. Certainly that's probably the primary concern we hear on most applications is the aesthetic concern. Of course it's very challenging to assess what in someone's eyes is offensive to their sense of aesthetics is not necessarily so under someone else's.

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

Q. And the fact perhaps that half of the farm for scallops that is not on the surface, does that also play in for people that may find something on the surface offensive?
Q. In terms of the current application, have you seen the three different layout plans?
A. Yes.
Q. You heard us talk about A, B and C?
A. Yes.
Q. What's the effect of changing the original rectangle to either the polygon that is depicted in B and C?
A. So most of the discussion is focused on B, alternate B. The initial polygon is a regular shape, easy to mark. Four corner markers. It's relatively easy to manage in terms of laying out your lines and dealing with that.

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

The detriment is that you're obviously closer to the shore, so you have to look at are you impacting activities on the shore and access to the water by the Hudson. I forget it's the neighbor to the north -- anyway, the two properties that are immediately adjacent on the northeast shore there. You know, they certainly
CHAIRWOMAN CERVENKA: Is that reflected by the court reporter? I would ask that the court reporter just read the question back again, please.

THE RECORD WAS READ BY THE COURT REPORTER

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

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

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

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

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

Sworn to and subscribed before me,
This 16th day of November, 2020
In The Matter Of:
Coastal Resources Management Council
Perry Raso

Hearing
Vol. 3
November 17, 2020

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

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

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

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

Do you still stand by that statement?

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

Any time, typically, when we look at the amount of
Q. Okay. And so in light of all of this, do you still stand by your prior opinion that the proposed farm will not result in significant conflicts with other water dependent uses and activities?

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

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

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

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

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