Suffolk County Aquaculture Lease Program Advisory Committee
Public Meeting

MEETING SUMMARY
December 11, 2008
Meeting Number 18

Location: Cornell Cooperative Extension, Kermit W. Graf Building,
423 Griffing Avenue, Riverhead, New York – Second Floor Conference Room

Start/End: 4:00 p.m. / 6:45 p.m.

Attending: Members/Alternates
Thomas Isles, DeWitt Davies, Jay Schneiderman, Martin Trent, Camilo Salazar,
Debra Barnes, Arnold Leo, Gregg Rivara, John Aldred, James McMahon, Karen
Rivara, Cornelia Schlenk, Edward J. Warner, Jr.

County Officials and Staff
Patrick Heaney, Lauretta Fischer, Jennifer Kohn, Michael Mulé, Susan Filipowich,
Barbara DelGiudice

Others
Gregory Greene, Keith Brewer, Kimberly Somers, Floyd Carrington, Bill Pell,
Dean Yaxa, Dave Bergen, Michael Craig, Jen Skilbred, Wade Carden, Ted
Szczotka, Dennis J. Quaranta, Florence Sharkey

Materials
Distributed: Meeting Agenda; August 13, 2008 ALPAC Meeting Summary;
Correspondence/Communications (letter from Thomas Isles dated September 11,
2008 in response to the Long Island Business News September 5-11, 2008 article,
Shellfish game: Baymen battle over proposed program; and outreach letter to
elected officials and environmental groups); September 17, 2008 CEQ Meeting
Transcript (pp. 85-131) on FGEIS; Administrative Guidance (Fifth Draft -10/30/08)
and comments received (email from Gregg Rivara, dated November 6, 2008; email
from John Aldred dated November 12, 2008; email from Patrick Heaney, dated
November 14, 2008; email from Martin Trent dated November 14, 2008;
memorandum from Carrie Meek Gallagher dated November 17, 2008; email from
Karen Rivara dated November 17, 2008; email from David Bergen dated
November 18, 2008); The East Hampton Press/27east article, County approves
aquaculture leasing program, dated December 9, 2008; Memorandum from
DeWitt S. Davies to ALPAC dated December 11, 2008; Shellfish Cultivation Zone
Map (September 3, 2008); Shellfish Cultivation Zone - Aquaculture Lease Sites
Map (December 11, 2008); Draft Program Schedule.

Note: copies of all the above are available and can be obtained by request from Ms.
Barbara DelGiudice (Barbara.Delgiudice@suffolkcountyny.gov/631-853-5111).
Welcome and Introductions

Chairman Thomas Isles began the meeting by giving a quick overview of the agenda, to include project updates, comments received by ALPAC members on the revised Administrative Guidance (Fifth Draft - 10/30/08), the status of the Lease Program Management Plan, the Lease Program schedule, and a summary of work conducted at previous meetings. T. Isles introduced Hon. Jay Schneiderman, Skip Heaney, Commissioner, Suffolk County Department of Economic Development & Workforce Housing; and Camilo Salazar representing Commissioner Carrie Meek Gallagher, Suffolk County Department of Environment and Energy.

Review of August 13, 2008 ALPAC Meeting Summary

T. Isles asked for comments regarding the August 13, 2008 ALPAC Meeting Summary. No comments were received and the document was accepted.

Correspondence & Communications

DeWitt Davies gave a brief summary of the correspondence and communications the County has received regarding the Lease Program since the last ALPAC meeting on August 13, 2008. The letter submitted by Thomas Isles to the editor of Long Island Business News on September 11, 2008 in response to the September 5-11, 2008 article – Shellfish game: Baymen battle over proposed program; Suffolk County Department of Planning outreach letter to elected officials and environmental groups; and Dennis Quaranta to NYSDEC via email regarding the Winergy Power, LLC water column lease site in Gardiners Bay. Also discussed were the responses received regarding the Administrative Guidance (Fifth Draft - 10/30/08) from Gregg Rivara (email dated November 6, 2008), John Aldred (email dated November 12, 2008), Patrick Heaney (email dated November 14, 2008), Martin Trent (email dated November 14, 2008), Carrie Meek Gallagher (memorandum to Tom Isles dated November 17, 2008), Karen Rivara (email dated November 17, 2008), and David Bergen (email dated November 18, 2008).

D. Davies also discussed the article published by The East Hampton Press titled, County Approves Aquaculture Leasing Program (dated December 9, 2008) and the September 17, 2008 CEQ Meeting Transcript (pp. 85-131) on the FGEIS (September 3, 2008).

Michael Mulé stated that there were several inaccuracies within The East Hampton Press article, such as: stating that the Lease Program was approved; that leases would be issued via lottery; that the program would be limited to cage culture; and that mechanical harvesting would be prohibited on leases.

Jay Schneiderman also commented on the inaccuracies of the article and a number of statements he was misquoted on, one being that he stated that the leasing program had been approved. He also suggested a letter be written to the editor with corrections on the article.
Project Updates

T. Isles stated that the Boundary Survey Resolution (610-2008) was approved by Environment, Planning & Agriculture Committee of the Suffolk County Legislature on July 28, 2008 and subsequently adopted by the Suffolk County Legislature on August 5, 2008. D. Davies explained that this resolution will provide funding for lease boundary surveys through the County’s Water Quality Program.

Gregory Greene, Cashin Associates (CA), informed the group that the Final Generic Environmental Impact Statement (FGEIS) was approved by CEQ on September 17, 2008. He also stated that the Findings Statement was presented at the CEQ meeting, during which CEQ recommended water quality monitoring to measure potential adverse and beneficial impacts to water quality and resources associated with the Lease Program.

M. Mulé stated that the Findings Statement was adopted on December 2, 2008 by Resolution 1028-2008, which completes the SEQR process and allows Suffolk County to proceed with the development and adoption of the Lease Program.

Administrative Guidance (Fifth Draft - 10/30/08)

D. Davies stated that the Administrative Guidance document is a work in progress and more changes will be made to the document. He also stated that the Administrative Guidance document is currently under review by the Suffolk County Department of Law and that a new form of lease will be developed upon review by the Department.

Susan Filipowich informed the group of the major changes to the Administrative Guidance document, which includes more clarification, updated maps, an expanded County administration requirements section, the addition of a County Shellfish Aquaculture Lease Advisory Board, modifications to application forms, and the addition of the Shellfish Productivity Survey (Appendix H).

Karen Rivara stated that the aquaculture policies stated on page 33 of the document should be discussed somewhere in the document and available for review.

Gregg Rivara expressed his concerns that the Lease Program is becoming more expensive for farmers and could be damaging to the Lease Program. T. Isles replied that the state law requires certain fee based procedures but the County is trying to minimize expenses.

J. Schneiderman questioned if there was any way to waive the recording fees for this program. D. Davies stated that the county is looking into waiving certain fees for the lease applicants.

S. Filipowich stated that in her conversation with the County Clerk’s Office, the recording fees associated with the program are required by the County because a private individual would be benefitting from public property. She stated that the County is trying to cut down on the amount of application pages to be filed with the County Clerk’s Office to save money on filing fees.
M. Mulé added that the leases may be able to be exempt from associated taxes since the underwater lands were ceded to the County for aquaculture purposes, in the same way that aviation related uses at the Gabreski Airport are exempt from taxes since the land is designated for airport use only. He stated that the County is still looking into this possibility.

Martin Trent stated that the public benefit of anticipated improvement in water quality as a result of increased shellfish populations from the Lease Program may help the County’s case for waiving taxes.

T. Isles stated that the Aquaculture Lease Advisory Board would consist of three County department heads from the Department of Planning, Department of Economic Development and Workforce Housing, and the Department of Environment and Energy, and that it would conduct an administrative process; not a legislative process.

John Aldred stated that a local representative should be included on the Lease Advisory Board. They do not have to be voting members, but they may help expedite the lease review process. He also suggested that if a town representative was included, participation could be limited to applications within the respective town.

Patrick Heaney asked if there was due process for lease applications that were denied. T. Isles stated that he would check with the County Law Department to see if an appeal procedure was in order.

Debra Barnes stated that issues with towns regarding a lease application would be dealt with during the pre-application meeting and public notice procedures, and that she is unsure what merit it would have to have other representatives on the Aquaculture Lease Advisory Board. She had questions as to what role this board would play, given that the County has authority to issue or deny a lease. She suggested the board be re-named. The current name is misleading considering that the Board is more than advising, but approving and denying leases.

J. Aldred stated that there is no local town representation for a lease application during the pre-application meeting.

D. Davies stated that a lease applicant will choose up to three potential lease sites during the pre-application period; therefore, it would not be known ahead of time in what town the potential lease holder will pick sites, and that this would make it problematic to notify towns prior to the pre-application meeting.

J. Schneiderman stated that the Aquaculture Lease Programs seems like its going to be a popular program and the Aquaculture Lease Advisory Board may come under scrutiny when leases are approved or denied. He also stated that it may be better to have the process be performed administratively through SC Department of Planning or SC Department of Environment and Energy and possibly having civil servants on the board.
T. Isles reiterated the group’s desire to have more town participation on the board and questioned if the participation would be more beneficial at the beginning or end of the process. It was suggested that the membership structure of the SC Council on Environmental Quality could be considered as one approach to follow, where a town has a vote if a County project is located in that town’s jurisdiction.

J. Aldred asked if a lease could start on the first of the year, instead of applying on the first of the year, thus allowing the time needed for a farmer to culture shellfish for that year.

D. Davies stated that the first year of the Lease Program will be the most difficult year with transferring existing operations to leases. He stated that lease applicants could request a start date on their lease application. D. Davies asked D. Barnes if a lease application was post-dated, would it delay the permit process, to which D. Barnes replied that it would not.

David Bergen, Town of Southold Trustee, stated that according to the maps (dated September 2008) Town Jurisdiction goes half way out into the bay. He then stated that floating equipment, such as buoys, may cause navigational hazards. D. Bergen also stated that if some buoys were placed within the Town of Southold they may be required to be reviewed under the town’s LWRP and may require a town trustee permit.

Edward Warner stated that the Town of Southampton’s Trustee jurisdiction extends only to the mouths of creeks and to Sag Harbor Cove; therefore, floating structures beyond 1,000 ft from shore would not be subject to Trustee jurisdiction. J. Aldred stated this was the same case for the Town of East Hampton Trustee jurisdiction.

Arnold Leo stated that the definition of the Aquaculture Lease Advisory Board on page 5 of the Administrative Guidance document should be changed to “Aquaculture Lease Management Board,” or “Administrative Board.”

In response to J. Aldred’s comment regarding survey techniques outlined in his email (dated 11/12/08), G. Greene stated that the technique description to survey a potential lease site for productivity has been left open to allow the use of different available methods, so long as they are scientifically acceptable.

J. Aldred stated he would like to see guidelines that are more specific on the number of samples required, and inclusion of smaller sampling gear types.

D. Barnes stated that on page 15 of the guidance document, there is no accounting for recruitment on a potential lease site. G. Greene replied that it is difficult to develop a standard for seed clams, and that the County should have some flexibility to take into consideration if seed clams are on a potential lease site.

M. Trent stated his support for the Lease Program development process. He also stated that the SC Department of Health Services will help the Lease Program with the use of
the Department’s boats and staff, but there is a need for laboratory support. If additional staff is required, Water Quality funds could be available.

T. Isles addressed the comments submitted to the County from Carrie Meek Gallagher from SC Department of Environment and Energy, on the role that her dept. would have in this program, and administrative responsibilities. T. Isles stated the basic administration would be handled through the Dept. of Planning.

K. Rivara re-stated her comments submitted to the County on behalf of the East End Farmers Association. She stated this is the first time she saw the schedule of fees for the program and noticed the cost to the grower has increased. She expressed concerns for smaller operations who may wish to stay small. She also stated that it was unfair for people to have to ground-truth areas they have cultivated shellfish on for years, and may now have become productive as a result of their efforts.

J. Aldred stated that the ground-truth process would have to be triggered by people making claims they had been harvesting wild products in a specific area.

D. Barnes stated that Assignments are very different than a lease and that there is no trespassing involved; they can’t restrict access to fishermen around an Assignment.

E. Warner stated that a lot of productive scallop grounds are located near existing and abandoned aquaculture Assignments. He inquired about abandoned cages, and stated that he has found abandoned cage parts, as well as whole cages left in the water. G. Greene replied that under the Lease Program, equipment would be required to be tagged with the lease holder’s information. E. Warner asked whether the tag information would be limited to just the cage, or all of the removable cage components.

K. Rivara stated that the corners of the grants should be established and marked; however marking leases inside of grants with buoys would make it easier for poachers to locate where planting is being done. She also expressed concern about not being able to utilize her whole grant due to the potential costs.

T. Isles stated the importance of physically having the buoys out on the water, to identify lease boundaries. K. Rivara stated that it is much easier for a person to steal shellfish from bottom culture, than from someone’s off-bottom gear, and that she might consider not cultivating here because of onerous requirements.

D. Davies stated that there are many reasons to have or not to have buoys required as part of the Lease Program. Perhaps everyone (i.e., NYSDEC Environmental Enforcement Officers, town harbor masters, County Marine Police, Coast Guard) should be notified of the coordinates of a lease.

D. Barnes stated that the lease boundaries should be marked with buoys for enforcement purposes. She also noted that without buoys marking the boundaries of leases, you will be setting yourself up for more problems.
Dean Yaxa, a private oyster grant holder, stated his opposition for marking the area of bottom planting on a grant.

Bill Pell, Southampton Oyster Company, and an Assignment holder, also stated his opposition for marking the area of bottom planting on a grant and suggested that lease holders could instead have their boats equipped with black boxes, like draggers do, to track where shellfish are harvested from a lease.

D. Barnes suggested that the County contact the head of NYSDEC Marine Enforcement Unit, Dorothy Thumm for further information on enforcement.

D. Bergen stated that it appeared that leasable areas depicted on the Lease Map (dated September 2008) are still within a government-marked channel. He also suggested that the lease holder should be liable for any shellfish equipment placed on the lease.

A. Leo stated that, in regards to the 2 clams/sqm density guideline on page 97 of the guidance document, perhaps the County should require that if there is a set of seed clams on the potential lease site, the leasing of such site should be postponed.

In response, G. Greene stated that assigning a numerical criteria for presence of seed clams as a measure for assessing the relative productivity of a proposed lease site was problematical, and that the criteria should remain flexible for seed clam presence. After discussion, it was decided that the last sentence in the “Guideline for Assessing Potential Productivity” section of the guidance document (page 97) be amended to read as follows to reflect A. Leo’s concern:

The County reserves the right to consider any relevant data and information pertaining to a site’s productivity in making its decision regarding lease site approval, including the presence of significant numbers of seed clams.

K. Rivara asked for clarification for the term “sanitation” on page 56 of the Administrative Guidance document. T. Isles stated that use of this term will be either clarified in the document, or deleted.

Status of Lease Program Management Plan

D. Davies gave a brief discussion on the memorandum to ALPAC dated December 11, 2008 regarding the relationship of the Administrative Guidance (Fifth Draft - 10/30/08) to the Lease Program Management Plan.

Keith Brewer (CA) gave a brief presentation of the revised lease sites map with the lease grid format using “NAD 83” coordinates (dated December 11, 2008).

D. Barnes stated that shellfish planting data are for Suffolk County use only, and should not be available to the public. Lease Program documents should state that such data are confidential and not obtainable though FOIL.
A. Leo questioned the strip of leasable area from Mattituck to Riverhead, landward of the areas deemed as productive and non-leasable. K. Brewer replied that the areas of production shown on the maps were the result of numerous interviews with stakeholders and individuals that had a working knowledge of the bays.

J. Aldred questioned the flexibility of the lease map, in terms of moving around leases once the program is implemented. D. Davies replied that the lease map is currently in draft form and that changes can presently be made; however, once the program is formerly adopted, amendments to the lease map will only take place every five years.

Floyd Carrington, licensed surveyor, expressed his concern that fishermen will have potential conflicts with several lease grid sites in the “South Race” area between the southern tip of Robins Island and Cow Neck Point. He suggested relocating these grid sites to new prospective locations. F. Carrington also stated that for the lease site map to become a legal document, it must be signed off by a licensed land surveyor, and that only a licensed land surveyor can generate the points that would determine lease boundaries.

E. Warner stated that potential leases should be moved away from the channel in Peconic Bay, otherwise there will be conflicts with many boaters traveling from the Shinnecock Canal towards the north end of the channel to Robins Island. D. Barnes replied that all leases would be placed on a navigational chart to alert boaters where the sites are in that area.

Program Schedule

D. Davies discussed the draft program schedule handout.

Next ALPAC Meeting


Public Portion/Comments

Florence Sharkey stated that conditional area opening was a big problem for baymen, and that NYS doesn’t have the money to check water quality to open conditional areas. She questioned where the County is going to get the money to get check the water.

Ted Szczotka stated they had one of the biggest scallop sets in 18 years. He asked how scallop sets on leases would be dealt with.

The meeting was adjourned at 6:45 p.m.