SUFFOLK COUNTY COUNCIL ENVIRONMENTAL QUALITY

in conjunction with the

SUFFOLK COUNTY DEPARTMENT OF PLANNING

Public hearing on the Draft Generic Environmental Impact Statement for the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay

April 17, 2008
7:00 p.m.
Riverhead Town Hall
200 Howell Street
Riverhead, New York

P A N E L:

R. Lawrence Swanson, Ph.D., Chairman
S.C. Council on Environmental Quality

Thomas A. Isles, A.I.C.P.
S.C. Department of Planning

James Bagg,
S.C. Council on Environmental Quality

Dewitt S. Davies, Ph.D.,
S.C. Department of Planning

R E P O R T E D B Y:

CHERYL A. FERRELLI, RPR
SENIOR COURT REPORTER
PUBLIC SPEAKERS:

Bob Wemyss
Charles Murphy
Karen Rivara
Jim Markow
Michael Craig
Bryan Murphy
Chris Kiely
Gerard Troisi

Florence Sharkey
Joseph Woronowicz
David Johnson
John Dunne
Bill Pell
Arnold Leo
Dennis Connell

IN ATTENDANCE:

Lauretta Fischer
Jennifer Kohn
Michael Mule
Barbara DelGiudice
Gregory T. Greens
Keith Brewer
Robert Nuzzi
Ken Koetzner
Jenny Koetzner
Gregg Rivara
Debra Barnes
David Lessard

Philip Curcio
Jen Skilbred
John Kramer
Ted Bucci
Paul Matthews
Antoinette Clemetson
Gary Crowther
Christina Grahn
Wade Carden
Walter Zalak
Denise Civiletti
CEQ Public Hearing - April 17, 2008

THE CHAIRMAN: Good evening,
ladies and gentlemen.

If you'll take your seats, we
will commence.

I'm Larry Swanson and I'm the
Chair of the Suffolk County Council
on Environmental Quality, and I want
to thank all of you for taking the
time to come to this important,
important hearing concerning the
Shellfish Aquaculture Lease Program
and Peconic and Gardiners Bay of
Suffolk County.

I'll introduce the panel starting
with Mr. Davies over here -- or
Dr. Davies -- on my right.

MR. DAVIES: DeWitt Davies from
Suffolk County Department of
Planning.

MR. ISLES: Tom Isles, Director
of Planning, Suffolk County Planning.

MR. BAGG: James Bagg, Suffolk
County Council on Environmental
Quality.
THE CHAIRMAN: We're here to listen to your comments.

Consequently, there won't really be dialogue between anybody here at the panel and you unless it's to clarify comments that you have made and we don't quite understand.

We don't have too many speakers signed up so far, so if you desire to speak, please, make sure you sign up in the back.

We're going to give each speaker five minutes, and written comments will also be accepted if you don't choose to speak or if you don't get everything said that you needed to say.

I would request, for just common courtesy of everybody in the audience, that if you have a cell phone, to, please, turn it off.

So, with that, we will begin.

Each speaker should state their name and their affiliation for the
record, and we may ask you to spell it for our stenographer.

First speaker is Bob Wemus (sic), the town of -- from Huntington representing the North Shore Baymen.

MR. WEMYSS: Robert Wemyss.

THE CHAIRMAN: Wemyss. I'm sorry.

MR. WEMYSS: It's okay.

I looked through the DGEIS, and when you get to the subject of productivity determinations, you're doing a terrible thing. You designate an aquaculture zone without vetting.

You have side scan sonar information, an example of which is shown in -- in Peconic Estuary Program.

It shows a ring of shell in Orient Harbor and you have shell information throughout Peconics where you -- you show edge habitat.

And I'll describe edge habitat as
that area where the mud in the middle
bays rises up to the shoal area and
turns into harder bottom.

Every clam digger on Long Island
knows that the edge is where the
natural clams live. And you,
basically, blacked out eighty percent
of the Peconics without taking into
account this type of habitat.

And the shell ring, the side scan
sonar can't differentiate between
live clams and shell.

You also have samples from
that -- from that study in Peconic
that show large numbers of juvenile
hard clams. And you simply haven't
vetted the habitat that you propose
to lease.

The program has also decided to
take the tact of ignoring the state's
legislature's -- legislature's clear
intent, which is to start a new
leasing program by attempting to
enable the layering of leases over
oyster grants that were illegally
granted in the original that are
proven to be natural shellfish beds.

       Aquaculture technology's lawsuit
which the county was involved in
showed that in court documents. Yet,
at a late date, you included that
property now owned by Perrino
(phonetic) as an aquaculture zone
which is known to be a productive
hard clam bed with the proof in that
court case. That is, the proof that
that defendant, in fact, dredged over
a million dollars' worth of hard
clams, of natural hard clams, off
that property.

       Now, you have similar grants all
through Peconic Bay, especially
eastern portion of Peconic Bay, that
straddle the edge, which is the
productive hard clam habitat.

       The state legislature, the plain
meaning of the law, did not
anticipate that the county should
lease further rights to private grant holders. Nothing in that legislation suggests that the county has that authority.

You have not dealt with the productivity determination on a grant. Specifically, you have avoided the subject.

The whole proposal is dishonest in its intent. Because the large balance of acreage would be available to private grant holders who have not even used these lands.

These lands are worthless for oyster culture. The proof is they are not being used for oyster culture. Nobody in this estuary is doing broadcast planting of oysters on these grants.

Any grant holder who has and holds a permit to plant clams on an oyster grant has that permit by questionable authority because a court case on the subject said those
grants are for oysters only.

You have not contemplated what
the impact of leasing those lands for
other shellfish will be on those
grant holders' ability to dredge
natural hard clams from those grants.

Currently, they cannot without
determinations from the state. But
if they have a lease for cultivation
of other species as others in the
state do, it is very likely that the
state will have no choice but to
issue them permits that will allow
them to dredge those natural hard
clams.

And the vast majority of the
acreage affected in this proposal is
old grant lag. You propose six
hundred acres in new grants and you
cannot even tell us how much old
oyster land would be subject. You
don't know what's reverted, what's
not reverted, what's latent, what's
not latent. You have not disclosed
the scope of the project to the public, and the public has a right to know.

And you have ignored the fact that clams grow on edges, and these grants straddle the edge. That oyster commissioners met in dark rooms for eight years granting land before registering with the county board of supervisors when they were required to register every piece within ninety days. That these were not grants to individuals within the county. These grants all became incorporated prior to them ever being registered and consolidated by the likes of Blue Point's and Long Island oyster farms.

THE CHAIRMAN: Could I ask you to summarize, please?

MR. WEMYSS: That to continue with this project in its current form will be a violation of the public trust and ignore the naturally
productive lands which you have not
vetted in any way by designating an
aquaculture zone that covers nearly
eighty percent of the Peconics and
very productive existing oyster grant
lands that have not been used for
oyster culture in decades.

The program as its written is a
farce and a travesty against the
people of the State of New York.

THE CHAIRMAN: Thank you very
much.

Charles Murphy.

MR. MURPHY: I have a petition
here that twenty-five baymen have
signed. Do you need that up there
now?

While I'm walking up there, I'll
give you a little rundown of my life.

I'm sixty-five years old. I've
been clamming for about forty-odd
years and I've seen what damage
leasing has done to the public
bottom.
But let's get back to what I'm really here for.

A couple years ago, we had pot-holers legal in New York State now. A hand digger can use a pot-holer to pull up a rake. That gives them the opportunity to work in fifty feet, thirty feet, sixty feet of water, anywhere in -- in the state waters.

To lease this bay bottom would be a travesty. Right now, New York State and the United States is running into a recession. A lot of people are being let go on certain jobs.

This would give opportunity for individuals, not just baymen or someone who's out of work, to find work on the water.

Like I've mentioned before, that I've been around and I've seen what these dredge boats do, how many clams they can produce in a day.
I always say one dredge boat represents twenty-five baymen.

So, this area there that you're looking at has lots of hard clams on it. It could support quite a few baymen.

And, if you want to shoot some questions at me, go right ahead.

THE CHAIRMAN: I don't think we want to shoot questions at you.

MR. MURPHY: Okay.

THE CHAIRMAN: If you have further comments, you still have some time.

MR. MURPHY: Well, I just -- you know, I feel they have to look into this seriously and find out what dredges do.

I have an article here that -- within the National Fisherman, and in Maryland, they're banning hydraulic dredging in those waters. And I think the State of New York should do the same.
CEQ Public Hearing - April 17, 2008

Thank you for listening to me.

THE CHAIRMAN: Thank you.

And, if you want to submit that article for the record, I'm sure we would appreciate it.

MR. MURPHY: Okay. I'll copy this and mail it to youse.

THE CHAIRMAN: Okay.

MR. MURPHY: Thank you.

THE CHAIRMAN: Thank you.

Karen Rivera (sic).

MS. RIVARA: Good evening. My name is Karen Rivara, R-I-V-A-R-A --

THE CHAIRMAN: I'm sorry.

MS. RIVARA: That's okay.

-- and I am the secretary to Noank Aquaculture Cooperative. I also sit on the ALPAC as an industry representative and I own an oyster grant. They're called generic oyster grants. We've had it since 1993 and we've planted millions of clams on -- and oysters and bay scallops on that property since that time.
The DGEIS, the nature is to look at economic impacts, not benefits. So, I would just like to summarize some benefits of the industry. And I also have a pamphlet that was produced by the University of Rhode Island that summarizes the benefits of the industry and also has a website that you can go to for more information.

But, essentially, the environmental benefits are that the shellfish we plant clean the water. The industry is sustainable. We're not taking -- we're taking animals that we have planted. We're not just taking. We're putting and then taking. So, we continue to plant after we've harvested and sustain the resource that way.

The shellfish remove nitrogen from the water and also stimulate diversity. Other organisms usually like to grow around shellfish farms
because of the structure and the animals that we place there.

Regarding this program, the scale in terms of new acreage is -- is negligible and, so, the impacts, therefore, would also be negligible. All the acreage that they're talking about is acreage that will be farmed. So, again, it's sustainable, it's where people are going to be planting and then harvesting shellfish.

And when I say the acreage is negligible, it used to have about four -- forty thousand acres that were farmed the middle of the last decade when the oyster industry failed because of the supply of sea oysters from Connecticut, those acreage went fallow.

But, currently, there are about, roughly, two thousand acres that are farmed and then there's another, roughly, four thousand that's fallow but available for oyster cultivation.
The people who have been farming
out in the Peconics have been doing
so without any concern in terms of
environmental damage. That's,
basically, what you're focusing on	onight. And, actually, people have
seen benefits from what we do with
shellfish setting up in adjacent
areas.

The areas that are going to be
added from this -- with this program
would be, as proposed, thirty -- I'm
sorry -- three hundred acres over
five years, and then the possible
conversion of five-acre assignments
to ten-acre leases.

The leases that are being
referred to on the oyster grants
would be to cultivate species other
than oysters. But, currently, those
grants can be and are cultivated for
oysters which are either planted on
the bottom, just as the clams are, or
they're cultivated in cages.
In addition to the environmental benefits, many of us who are in the industry are involved in projects that contribute to the restoration of the bay. We donate seed to towns, we work on environmental projects.

Our cooperative is in the process of developing a project where premium shellfish will be sold and the net proceeds will go to projects that benefit the bay, either research, education or land preservation projects. And that's not atypical for people in our industry.

The industry is also in the process of developing best management practices guidance, and we're doing that with some input from a major environmental group, so we do interact with other stakeholders.

We're very -- we're stewards of the land that we use. We're very concerned about the health of that land. We're farmers, so it makes no
sense for us to be otherwise.

So -- and there are a lot of new people coming into the industry. It does have a lot of opportunity for newcomers, so we want to make sure that people coming into the industry are aware of what the best management practices should be from an environmental and, also, a sociological standpoint.

I will also say that I don't believe that any other stakeholder group could really withstand the scrutiny of their industry as we have regarding the environmental impacts.

Certainly, there was no environmental impact study done when we decided to develop so much of the watershed for housing. And that, certainly, has had an impact on the water quality.

So, I think -- I'm, actually, very proud of my industry and I feel that we can withstand the scrutiny.
THE CHAIRMAN: Thank you very much.

MS. RIVARA: You're welcome. And I have these pamphlets. And there's a website that you can access for more information, and I'll probably be giving you more written comments.

Thank you.

THE CHAIRMAN: Thank you.

Jim Markow.


But it was very difficult for us to move our business along. And after Blue Point's company had closed, we had a brown tide problem there, things got very difficult for -- for us to survive there.
But when we had the storm in 1992 and it broke through an inlet there, the bay came back. It was great. I thought everything was going to do real well, and things got, you know, pretty good.

So, we had built a hatchery. I had a house over on the bay in Moriches and we were doing very well there.

But the problem that we had was we couldn't grow our business in New York because they're just so restrictive on everything that we wanted to do.

So, we had bought the grant in Gardiners Bay and planted oysters and clams, and we have done that for many years. And just the opposition, being able to do something with your own ground that you pay taxes on and, you know, have been taking care of made it very difficult.

So, I ended up going over to
CEQ Public Hearing - April 17, 2008

Connecticut. And we have quite a few leases over there and we work with the towns, and we have a great relationship. We have a good recreational program that we work with the towns with.

What we do is, on some of the grounds that we lease from the towns, we give them a percentage of the seed. And they're able to have these recreational programs where people buy permits and they're able to go and work in these areas that are exclusive to them for recreational shellfish.

So, the one town that I work with primarily, they took in about eighty thousand dollars in just permit fees, so that pays for their waters, they're able to buy boats, they're able to do their water quality testing, and they have a great program. It's all self-supporting. They don't need any tax payer money
CEQ Public Hearing - April 17, 2008

to keep it going, and it works great.

And I just can't understand why
something that's so simplistic can't
work in New York. And it's almost
discouraging to think that with all
the resources that are here, that you
can't carve out niches to -- for each
user group to have a piece of the
pie.

It's not that aquaculture wants
to take over the whole area. There's
small, little segments of area that
we want to use. It's a pinprick of
use. But the amount of area that
we're, you know, leaving alone is
huge. It's a huge amount of area.

The small amount that we're going
to use has such a great benefit with
having shellfish being planted back
there. Having the natural
recruitment of having those oysters
and clams planted there is almost
like having seed sanctuaries located
in different parts of the bay.
And without that, you may not get natural recruitment. This, at least, gives it an opportunity to come back naturally.

And I can't understand why -- you know, like the baymen look at it, well, like who's -- who's going to help them out?

We're going to help them out. Because the fact that we have areas there that are spawning and we do have a big amount of oysters or clams there, those are like having natural hatcheries all over the place.

So, you know, I don't really see it as a threat. I think it's a positive thing for them.

So, thanks for listening.

THE CHAIRMAN: Thank you.

Just for the record, you mentioned a town in Connecticut you're working with.

MR. MARKOW: I work with Town of Groton and almost all the towns east
of the Connecticut river.

THE CHAIRMAN: Thank you.

MR. MARKOW: We work with East Lyme, Waterford, most of those towns. And have had a great relationship with all the towns. And they're all able to be pretty successful.

THE CHAIRMAN: Thank you.

MR. MARKOW: You're welcome.

THE CHAIRMAN: Are there any more people wishing to speak?

MS. DELGIUDICE: Yes. I have more forms.

THE CHAIRMAN: Okay.

(Whereupon, the aforementioned items were handed to the Chairman.)

THE CHAIRMAN: Thank you.

MS. DELGIUDICE: You're welcome.

THE CHAIRMAN: Michael Craig, I guess it is.

MR. CRAIG: Hello. I'm Mike Craig. I have a temporary site from the State of New York.

I was a lobster man for
CEQ Public Hearing - April 17, 2008

twenty-two years and, unfortunately,
the lobster business died and now I
grow oysters at Peconic Bay.

I'm grateful for the State of New
York to let me continue on, and I
think the county is picking up, you
know, where they left off.

And I see a lot of opportunity
for growth. There is a lot of
collateral benefits to growing
oysters.

And I think you did a very good
job with your map as far as where
areas of cultivation are possible,
and I think it should be supported
and I encourage your efforts.

Thank you.

THE CHAIRMAN: Thank you very
much.

Bryan Murphy.

MR. MURPHY: I'm Bryan Murphy,
North Shore Baymen Association.

I just wanted to say that I dug
clams out in Gardiners Bay for a
CEQ Public Hearing - April 17, 2008

couple of years and, you know, there's plenty of wild clams there.
And I just don't think that it's right that you're going to allow people to put leases on these grounds and, you know, let them prosper and stop baymen from earning a living on wild clams.

That's all.

THE CHAIRMAN: Thank you.

Chris Keely (sic). Is that correct?

MR. KIELY: Kiely.

THE CHAIRMAN: Kiely.

MR. KIELY: Chris Kiely, North Shore Baymen's Association.

I also dug clams in Gardiners Bay for about five years.

Recently, this January, I went out there and, in about an hour and a half, dug a bag of clams. It's a very productive resource for the public and it should stay public.

That's it.
THE CHAIRMAN: Thank you.

Gerard Troisi.

MR. TROISI: Gerard Troisi.

Independent baymen.

I'd like to say that I am against the leasing of these areas. And, definitely, the state should assess what kind of shell stock is on that area before they give up the leases to somebody who, ultimately, is going to go there first and dredge those clams off the bottom. I mean that's a fact.

I don't care what they put down, they're going to dredge the natural shell stock that is there first.

Thank you.

THE CHAIRMAN: Thank you.

Florence Sharkey.

MS. SHARKEY: Good evening, fellows. My name is Florence Sharkey. I'm Brookhaven Baymen's Association president.

We totally oppose giving our
lands to anyone. It should be open
to the public.

Our baymen have a resource out
there and, if these men want to farm,
then let them put the seed in first
and leave the wild clam for the
baymen.

But, no, they will take the wild
clam and disappear in five to seven
years.

We have trustees, and our
trustees should keep this open for
all baymen, fishermen, conchers,
lobstermen.

You know, these men use these
waters too, and why are we thinking
about giving them up? This is land
grabs from the golden times, from
mining. You know, we're in the
twenty-first century. We shouldn't
be giving our lands away. These
belong to the baymen. All different
kind of baymen.

If they want to farm, we want
them to put the seed down and not farm them for five years.

Farmers seed their property.

They don't take the wild.

Thank you.

THE CHAIRMAN: Thank you.

I know I'm not going to say this right. But Joseph --

MR. WORONOWICZ: Woronowicz.

THE CHAIRMAN: Thank you. You saved me.

MR. WORONOWICZ: Thank you.

You have to excuse me, I'm a little slow. I just had a mild stroke.

But what I'm thinking is you're giving away public land, or leasing public land.

Right now the tax payer in Suffolk County is paying to preserve land, preserve wild species.

Does anybody know what a mechanical dredge does or what it looks like?
You got two hoses like this pumping from -- from a big diesel engine, water under pressure blasting the bottom. You got a steal blade that goes underneath and cuts out the bottom. Anything there is blown apart or killed to whatever they set it, four inches, six inches, eight inches. You destroy the bottom.

That bottom has fauna, it has your estuaries are beginning, are all marine life in the ocean and the bays. Fish. You have a multi-billion-dollar fishing industry.

You wouldn't give away some private forest, a -- a preserve over here to somebody to come in and plow it up, destroy everything there and plant corn. You would have corn. You wouldn't have any other wild species.

What you're doing is giving away public land to be destroyed to
harvest, to plant clams or to remove
the clams.

You wouldn't do it where people
could see it done. Why do it on the
water? Why, for whatever reason
allow somebody to come in and destroy
the natural habitat for everything
that lives there? The plants.

I don't know. When the brown
tide comes, you rip the plants out,
where does the oxygen come from?

This is what it does. You blast
it with a water pressure hose, you
cut under it.

Out of all the maricultures,
people of Long Island that were here
at one time, there's only one left.
All the rest of them went out of
business. It doesn't last. It's
like a one-shot deal for a certain
period of time and it destroys the
bottom.

Anything you do to the bottom is
like if you tear down trees, you
CEQ Public Hearing - April 17, 2008

destroy all your natural habitat,
what's left? You plant potatoes, you
get potatoes. You don't get anything else.

THE CHAIRMAN: Thank you. I appreciate you coming out.

David Johnson.

MR. JOHNSON: Hi. My name is David Johnson. I'm a coastal steward. I've been doing environmental restoration on Long Island for eighteen years. I've been involved with shellfish restoration for eight years and I work closely with Cornell Cooperative Extension and some of the people that have been in this room.

I would like to turn around and ask the baymen here, is the fishing as good as it was ten years ago?

UNIDENTIFIED SPEAKER: Is anything as good as it was ten years ago?

THE CHAIRMAN: Excuse me.
MR. JOHNSON: Do you think your 
rakes are doing any damage to the 
bottom?

THE CHAIRMAN: You should be 
talking to us.

MR. JOHNSON: I'm sorry. You're 
right.

I've been doing the shellfish 
restoration. The natural stocks that 
are, you know, in our waters right 
now are under a lot of stress from a 
number of diseases, over fishing, 
pollution, et cetera.

The strain of oysters that they 
use is the same oyster. It actually 
came from Oyster Bay.

There's a gentleman there from 
Flowers, you may have heard of him. 
He's, I guess, the one that everybody 
is talking about here that's still 
among. He almost got wiped out by 
these diseases.

What turns out is the only ones 
that he had left to use as spawners
CEQ Public Hearing - April 17, 2008

were the only ones that survived.

These are naturally disease resistant
to the three diseases that are
plaguing the whole east coast, the
Gulf of Mexico.

We are down to one percent of the
historical high of oyster population
around Long Island right now. All
right?

These oysters that I've been
planting, I've released over two
hundred thousand adult oysters into
the Port Jefferson harbor alone.

I've been doing recent surveys at
low tide, walking the beach and
counting oysters, which are natural
set and which are the strain that I'm
talking about.

We have a genetic marker that
just happened to happen with these
oysters, and it's black stripes on
them. So you know right away if
you're successful, which is very
beneficial to me in getting grants
CEQ Public Hearing - April 17, 2008

and so on.

Seventy-two point five percent of the oysters in Port Jefferson now have black stripes. I've only been doing this seven years. Okay? And I've released a very small amount. Two hundred thousand oysters may sound like a lot of oysters, but it's really not. It's not.

If you had property or bay bottom leased and you're going to get a lot more than two hundred thousand oysters out there.

One of the other things you have to keep in mind here is that if they're putting down a lot of oysters, these oysters are filtering water. They're filtering -- adult oysters can filter up to fifty gallons a day of water. My little two hundred thousand are doing over ten million gallons a day. And you can think about how many millions of oysters these people that are trying
to scratch a living, trying to make a living. Some of them were former baymen on the wild and they gave up.

The future is not natural stock. The future is aquaculture and it puts a less strain on the natural stocks. It doesn't hurt them.

The baymen, I very sympathize with them. It's a tough life, it's a hard life, and it's getting harder every day.

The baymen that I know that I talk to, you know, they get a good year here and there. Just like anything in nature, you get cycles. Okay?

We have to -- the United States is so far behind the rest of the world as far as aquaculture, it's embarrassing. It's quite embarrassing. You just can't keep taking without putting something back. Okay? And that's my point.

I mean these people are good
CEQ Public Hearing - April 17, 2008

stewards. They're trying to do the best. And a lot of stuff that they put down, you know, there's all kinds of things that grow on them. It's great habitat to juvenile fish because they have got, now, something to protect, something to hide in.

Okay?

And that's pretty much all I have to say. Thank you.

THE CHAIRMAN: Thank you.

MR. WORONOWICZ: Can I answer what somebody said about using a rake?

THE CHAIRMAN: Let us get through the agenda and, if we have time, we might be able to come back.

John Dunne.

MR. DUNNE: Good evening. John Dunne. I'm just representing myself, and I want to step up as one of the few proponents in the room.

I don't want to beat a dead horse and repeat too many of the same
points, but the sustainability, the oysters are referred to as ecosystem engineers. In other words, they provide habitat and produce habitat, create habitat.

The gear that will be used in any sort of shellfish bottom culture acts as a -- it's own habitat and harbors juvenile fish and other juvenile shellfish.

Another point that I wanted to touch on, if there's bottoms out there that people are able to go out and in an hour and a half make a day's pay, these are considered productive bottoms. And those that have been paying attention to the leasing program know that these kinds of bottoms will not be leased. Productive bottoms are not going to be leased. And we're talking about six hundred out of a total of about a hundred thousand acres out there in the Peconic and Gardiners Bays. So,
it's a pittance.

Another gentleman mentioned something about a recession.

Well, there's a recession coming, so why don't we think about creating jobs? Which is just what this program would do.

You'd have folks going out there culturing shellfish, folks that would need to be creating gear for the shellfish growers to use and grow their shellfish in. You got boat repairs, gear repairs, gear production, et cetera.

And there is an economic multiplier to any industry. An economic multiplier for this kind of shellfish aquaculture is on the order of four to six. In other words, for every dollar spent in this industry alone, you get a residual four to six dollars out in the residual economy. So, it is an economic boost.

And that's about it. That's it
for me. Thanks.

THE CHAIRMAN: Thank you.

Bill Pell.

MR. PELL: Bill Pell, Southampton. I'm an oyster farmer.

I'm representing myself and also East End Marine Farmers. It's a group of oyster farmers on the east end, north and south fork.

I have lands in Southold and also in Southampton Town and also get -- my seed is grown in Riverhead Town out of East Creek.

A lot of people don't understand aquaculture. You could hear all the bad parts, all the good parts. I'm just going to tell you what I know about it.

Our gear is all plastic, it's nontoxic to the water. We don't tar it, we don't dip it, we don't use tar nets. It goes on a bottom. It does not hurt the wildlife at all. It, actually, brings more wildlife to the
area. It's like a barrier reef.

When you have oysters there, you're going to have scallops come alongside of them because scallops love to live with oysters.

I think the scallops actually eat the byproduct of the oysters. Because I grew scallops. I had a hard time keeping them alive during the winter. But I found out if I kept the oysters and the scallops together, they lived fine.

You get eels there, you get toadfish, you get crabs, you get baby black fish, you get pogies. And, actually, if you put the gear in the bay, you will actually bring more fish to the area.

People worrying about you're going to cover the whole area. You're only talking about six hundred acres out of a hundred thousand acres.

The stuff is going to spawn
there. So, actually, you are helping
the environment by bringing more
oysters and other stuff into the
area.

The fisherman can go fish
alongside of it.

Right now where I have my gear,
there's a lot of striped bass there
in the summertime. The sport guys go
there fly-fishing every night, catch
baby blues, baby stripers. They love
it.

And there's more up side than
down side to the whole thing. You
are worrying about ruining the
bottom. You're not going to ruin the
bottom. It's off the bottom. Even
if you bottom plant, it's fine.

The new areas, you're not going
to be -- most likely you're not going
to be hydraulic dredging on. The old
leases are permitted but it's a small
fraction of that.

And it's a no win situation. You
do more harm by not letting this program go ahead and do it. The people who are complaining, they're going to lose big time because there's not going to be any oysters, no clams, no scallops, no fish in the whole area. You're going to have a dead bay.

What? Are you going to have a petting zoo? You want to go to Atlantis to see seafood? That's where you're going to go.

Thank you very much.

THE CHAIRMAN: Thank you.

Arnold Leo.

MS. LEO: Hi. Thanks. Arnold Leo. I'm secretary of the East Hampton Baymen's Association. I'm also consultant for commercial fisheries for the Town of East Hampton and I am a member of ALPAC, the Aquaculture Lease Program Advisory Committee. And I'm going to just make three comments tonight.
This DGEIS is a fairly complex document and I can't pretend that I've read all of it yet. But let's start on Page 232 under an item called Restrict Harvest Methods.

It's stated dredging would only be permitted to harvest aquaculture stock and not natural stock.

So, I've been wondering where the hydraulic dredge is that's intelligent enough to know which is natural stock and which is cultured stock, you know? Because I think if you run a hydraulic dredge, it's going to just take up anything that's there.

So, I think that my problem here is that so far the advisory committee has not discussed the issue of hydraulic dredging at all and I, therefore, am requesting that that be put on the agenda of the advisory committee.

Now, on sizes of leases, you
CEQ Public Hearing - April 17, 2008

know, on page 286, under Limit Lease
Size, it's stated the rationale for
overlaying leases on the entire
acreage of an oyster grant is that
they are permitted by law to bottom
culture oysters.

Now, this -- this, legally, is a
problem because some of these oyster
grants are, you know, over three
hundred acres.

And what this is saying is that,
you know, under the county lease
program, you're, simply, going to
allow someone with a
three-hundred-acre grant to overlay
the lease program on all three
hundred acres.

That -- that's not acceptable.
And we have to address that further
because that, clearly, is not the
intention of the lease program where
the most leases will be owned in five
or ten acres in size.

So, this provision for the oyster
grant lands are allowing, you know, lease program sites of over three hundred acres in one shot, and that has to be addressed and corrected.

Finally, on Page 51, there's an item called Documentation of Natural Nonproductivity of Proposed Lease, which doesn't make any sense to me. But what it is saying here is that -- basically what it says is that if someone is going to challenge a proposed lease site, they have to document that there is productivity on that lease site in order to prevent the lease from going through. And they have to perform what is called a -- you know, a field Benthic survey. Now, that's a pretty expensive, you know, operation, doing that kind of Benthic survey to prove productivity on a particular site.

And, so, what I want to propose -- and I know we have to discuss this further -- is that, you
know, if someone challenges an applicant for a lease and says that that site that the applicant wants is productive, then I think, you know, there has to be a Benthic survey done.

And if the Benthic survey shows that, indeed, the site is, you know, productive, then the applicant should pay for that survey.

But if, indeed, the survey shows that that land is fallow and unproductive and there’s no good historical record to show that it was, indeed, you know, productive scallop grounds when we had widespread scallop populations, if there’s neither, you know, evidence from a Benthic survey nor, you know, reliable historical evidence of productivity, then the challenger should pay for the survey.

Thanks.

THE CHAIRMAN: Thank you very
much.

Do we have any other speakers?

There was a gentleman that wanted to clarify about raking, I guess.

I'll allow you to do this, but there is not to be a dialogue between you and anybody in the audience.

Would you repeat your name again, please?

MR. WORONOWICZ: Joseph Woronowicz.

If you drop an anchor to the bottom, anything you do to the bottom causes some damage, leaves a footprint, whether it's a rake, an anchor.

But if somebody plows the land -- but there's a difference between using a plow and using a combine.

I'm saying the amount of damage you do to the bottom, running over it with a mechanical dredge versus what a rake does, like I said, you're pumping deep water through hoses this
CEQ Public Hearing - April 17, 2008

much, undercutting the bottom with
steal blades, running over it back
and forth, back and forth, versus
what a rake does.

Rakes have been used for hundreds
of years. The only thing that
destroyed raking in South Bay is the
water quality. Otherwise, the
clamming would be just as good as it
was.

THE CHAIRMAN: Thank you.

All right. Last call for anybody
that wants to speak.

MR. MURPHY: Just one more thing.

THE CHAIRMAN: Okay. Quickly.

We need your name.

MR. MURPHY: Charles Murphy,
North Shore Baymen's Association.

Some people like to believe that
the baymen don't believe in
aquaculture. We do believe an
aquaculture.

The Town of Huntington, we take
half of our fees for our licenses,
CEQ Public Hearing - April 17, 2008

put it to growing seed and putting
them out in the wild.

The Long Island oyster farms have
left Huntington, it's been about
eighteen years now, and the first
five years or so they left, there was
nothing.

Now, with the help of our town
and the fees from our licenses, we're
buying clams from the Flowers in
Oyster Bay and we're putting out seed
and it's put out there for the
public.

We would like to see more of that
done throughout the whole state.
We're not against aquaculture if it's
for the public.

Thank you.

THE CHAIRMAN: Thank you.

Dennis Connell.

MR. CONNELL: My name is Dennis
Connell from West End Baymen's
Association.

We had many discussions with
DeWitt Davies. He was supposed to do surveys before he allowed certain areas to be designated for leases.

And, apparently, according to this gentleman over here, it's going to be nonexistent, they're going to let the leases go through without the surveys to tell you whether the bottom is productive or not.

Like Charlie said, you know, we're in favor of aquaculture. The state has a program already and the program seems adequate. There are plenty of people filing for those assignments.

But to lease out the bottom that belongs to the public is not right. It shouldn't be done.

That's all I have to say. Thank you.

THE CHAIRMAN: Thank you.

Once again, last call.

If not, we will declare this hearing a success, and I thank all of
CEQ Public Hearing - April 17, 2008

you for coming out and for
participating.

So, have a good evening and I'm
sure you'll see responses to your
comments in upcoming revisions to the
document.

(Whereupon, the hearing was
adjourned at 7:46 p.m.)

* * * * *
CERTIFICATION

I, Cheryl A. Ferrelli, hereby certify
that the above and foregoing is a true and
accurate transcription of my stenographic notes.

Cheryl A. Ferrelli
CHERYL A. FERRELLI
Senior Court Reporter
APPENDIX

Written Statements Submitted:

Appendix A - Pamphlet from the East Coast Shellfish Growers Association submitted by Karen Rivara.
Appendix B - Baymen’s petition submitted by Charles Murphy.
Shellfish Farming is Sustainable

- Shellfish filter microscopic plant cells from the water column.
- Shellfish feed low on the food chain.
- No fertilizers, feeds, herbicides, drugs, chemicals, or antibiotics are used.

Shellfish aquaculture has proven to be sustainable because it does not damage the environment or jeopardize future productivity. Annual harvests are made possible by replanting hatchery-reared seed.

An oyster farmer tends his crop at low tide.

Did you know?

Shellfish Aquaculture is GOOD for the Environment!

1623 Whitesville Rd.
Toms River, New Jersey 08755
For more information please visit our website: www.ECSGA.org

Filter-feeding shellfish improve water quality.
Shellfish farming provides habitat for fish and improves species diversity.
Shellfish aquaculture is sustainable and good for the environment.

This pamphlet was financed by the Rhode Island Aquaculture Initiative and Rhode Island Sea Grant.
Shellfish Clean the Water by Filter Feeding

- A single oyster can clear over 15 gallons a day, retaining particles as small as 2 microns.
- A small oyster farm in Narragansett, RI clears 30 to 100 million gallons each day.
  - Reduces turbidity
  - Improves light penetration
  - Improves water quality
  - Reduces anoxia (low oxygen)

Shellfish improve water quality as they feed by filtering microscopic particles from the water. This removes problematic sediments and phytoplankton and their associated nutrients. Some of the nitrogen is incorporated into protein and the rest is deposited on the bottom, where it can be consumed by worms and other organisms.

Shellfish Remove Nitrogen

- Shellfish remove microscopic plants as they feed.
- Nitrogen contained in shellfish tissues is removed when animals are harvested.
- Shellfish feeding stimulates denitrification.
- Improved light penetration and reduced nitrogen help eelgrass recover.

As both water clarity and light penetration are improved, the eelgrass is able to recover in waters that have not supported seagrasses for decades. Clearly shellfish aquaculture should be an element of any eelgrass restoration project.

Shellfish Aquaculture Stimulates Diversity

- Recent studies reveal that shellfish aquaculture can improve species abundance and diversity.
- Shells and aquaculture structures provide habitat for juvenile fish, crabs, and other organisms.

Cultured shellfish have gotten a thumbs up from environmental groups such as Environmental Defense, the Chefs Collaborative’s Seafood Solutions and others. These groups work to steer consumers towards sustainably harvested seafoods. Oysters are a keystone species, meaning they control the environment in which they live by cleaning the water, while the spaces between their shells provide habitat for juvenile fish, crabs, and the organisms on which they feed.
APPENDIX B

BAYMEN'S PETITION AGAINST LEASING EDGE SHELLFISH HABITAT IN GARDINERS BAY AND PECONIC BAY BY SUFFOLK COUNTY

The primary habitat for hard clams in open bays is on edges where softer middle bay bottom rises up to harder and tighter bottom types. These edges are typically between twelve and forty feet deep and usually show on charts as a tightening of the depth contour lines, often with the bottom type transition noted. Edges are the bread and butter of deep water baymen and they produce hard clams year after year, while they may not get a set each year they almost always have several year classes of hard clams growing on them at any given time. This edge habitat itself is a public resource that should not be privatized by leasing. It would also be inappropriate for the County of Suffolk to convert assignments, or layer Oyster Grants with leases that would privatize edge habitat which. A significant buffer zone on either side of the edges in the cultivation zone should be protected as public shellfish habitat.

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APPENDIX B

BAYMEN'S PETITION AGAINST LEASING EDGE SHELLFISH HABITAT IN GARDINERS

BAY AND PECONIC BAY BY SUFFOLK COUNTY

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<td>Philip Beck</td>
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APPENDIX B

BAYMEN'S PETITION AGAINST LEASING EDGE SHELLFISH HABITAT IN GARDINERS
BAY AND PECONIC BAY BY SUFFOLK COUNTY

Name
Gary Kornil
Raymond Hartman

NYS Permit Number
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Maryland dredging ban closes out bay clammers
Bill proposes compensation for boats, gear

A bill passed by the Maryland General Assembly to ban hydraulic clam dredging will go into effect in October.

For as long as anyone can remember there has been winter clam dredging in Maryland’s coastal bays. Though only a handful of watermen continue the practice, the methods used to harvest the hard clams has come under scrutiny by both environmentalists and sport fishermen.

“Though I support the local seafood industry, those clam dredges are hell on the bay’s bottom,” says angler Chuck Johnson of the Ocean City area. “They tear it with big trenches, which can’t be good for other fish and sea life.”

But commercial dredgers like Gary Tull, of Crisfield, have spent a good part of their lives clamming the back bays and making a living from it. Tull was quoted recently in the Daily Times of Salisbury, Md., as saying, “This is all I’ve known and all I’ve ever done.”

He isn’t sure how he will fill in the economic gap after October. Some push clam aquaculture instead, but regulations and recent opposition from local land owners have limited the prospects in Maryland’s coastal bays.

Clammers recently found support from Sen. Richard E. Colburn (R-Eastern Shore), who sponsored a bill to compensate them for the cost of their boats and rigs when their jobs are excluded.

“Whether it be five or 10 or several hundred, the General Assembly is obligated to compensate those that are put out of work by our legislation,” says Colburn. “We are supposed to be business-friendly and create jobs, not necessarily putting people out of work.” If the compensation bill fails, Colburn will try a separate bill moving the dredging moratorium back one more year.

—Charlie Petrocchi
North Shore Baymen’s Assn., Inc.
62 Oldfield Rd.
Huntington, New York

April 17, 2008

For OGEIS

SUFFOLK COUNTY SHELLFISH AQUACULTURE COMMITTEE

Having reviewed the committee’s most recent draft proposal, we have come to the conclusion that the committee has departed from its legislative mandate and is acting in the service of individuals and private companies.

When the New York State legislature passed the enabling statute, it did not authorize Suffolk County to lease underwater land that is naturally productive. The legislature did not exempt Oyster Grant Lands (OGL) from the substantive provisions of the statute that protect underwater lands that are capable of supporting significant commercial hand harvesting activity. The legislature did not authorize Suffolk County to lease underwater land currently held as oyster grants.

Always follow the money, keep your eyes on the actions of those who stand to profit.

The oyster grant lands in Gardiners and Peconic Bay are in many cases old growth clam beds that have been open to the public for decades. This is because many of them have not been used for any type of cultivation for decades: unmarked and unused. These lands have been the subject of recent speculative consolidation by members of the committee. The speculation is that the OGL will be eligible for leasing by the owners, and that these owners would eventually be able to hydraulically dredge these old growth clam beds. This has become the primary drive of certain committee members, and it appears that the committee has been co-opted by the individuals who stand to profit the most. The fact is that the committee has allowed OGL owners to drive the committee’s agenda.

What value would be conveyed to holder of OGL with the committee’s current proposal? OGL holders will be gifted an absolute right to lease the natural old growth clam beds on their grant land, effectively converting to ownership these clam beds creating an exclusive right of fishery for the state owned clams which abound there.
APPENDIX D

It cannot have escaped the committee members that under the present proposal the leases available to the public in ten acre plots will be dwarfed by those gifted to current OLG holders.

One thing court records make clear about Oyster Grant Lands is that any grants issued prior to the 1906 amendment were illegally granted if they are for more than 25 acres. For this reason alone their use should never be expanded. The commissioners who granted them were run out of office for illegally granting productive lands. The court that made landmark decision in the case of Suffolk County v. Edwards, 148 N.Y.S. 305; 86 Misc. Rep. 283 determine in its findings of fact:

"Fourteenth: That contrary to the statute in such case
made and provided, the said Commissioners of Shell Fisheries did
not bring the said applications to the attention of the Board of
Supervisors of Suffolk County, and that said Commissioners and
said Board, or a committee thereof, did not hear and pass upon
said objections, and did not determine that the said land so
applied for by either of the said applicants was of an area of not
unreasonable extent and did not direct the Clerk of the County of
Suffolk to sell the lands so applied for at public auction to the
highest bidder; and that no attempt was made by the said
Commissioners of Shell Fisheries to comply with the law
applicable to said applications; that Chapter 385 of the Laws of
1884 of the State of New York permitted the conveyance of only
four acres of oyster ground under the waters of Gardiner’s Bay or
the Peconic Bays to one applicant; and that Chapter 916 of the
Laws Of 1896, amending said Chapter 385 of the Laws of 1884, permitted the granting of no more than twenty five acres of such ground to one applicant; and that the only authority for conveying more than twenty five acres of said ground to one applicant, assuming that said ground has not been set apart and can be legally conveyed in an amount, is Chapter 640 of the Laws of 1906, which the defendant attacks as unconstitutional."

FIFTEENTH: That the defendants Everett J. Edwards, Clarence C. Cartwright and Edwin D. Tuthill, individually and as Commissioners of Shellfisheries, did not act in good faith in making the said attempted conveyance hereinbefore set forth, but acted in ignorance of the law governing their actions as such the commissioners and in defiance and contempt of its provisions”.

When the State of New York took Aqua Culture Technologies to court for illegally dredging natural hard clams, the Attorney General refused to use the Edwards case. The only possible reason for not using that case was that the New York State Department of Conservation (DEC) knew that this would highlight the fact that it had been illegally issuing permits that allowed uses other than oyster culture on OGL to various parties for some time. The only proper course of action for the DEC would be to simply deal with the repercussions of rescinding all permits that allowed non-oyster activity. Instead they continued to permit these activities in clear contravention of the law. "There has always been a natural abundance of other shellfish such as clams and scallops...It is also to be observed that the act of 1884, if considered as a grant, is to be construed strictly in favor of the state, and that it was explicitly 'for the purpose of oyster culture' alone...There is clear distinction between grants of private property for private
purposes and secessions of public properties for governmental purposes. To these lands underwater the right and title of the state was sovereign not proprietary. The state held the title of the people for the common benefit and to promote the public convenience and enjoyment of the natural beds. All the state had to cede and all the county took by the act of 1884 was the title held for government purpose” Suffolk County v. Edwards, 148 N.Y.S. 305; 86 Misc. Rep. 283

It is important to note that once Judge Kelby rendered this decision, any leeway the DEC and the County of Suffolk had with regard to interpreting the statute was suspended. It is role of the courts to interpret the statute and the role of the DEC to act according to the court’s interpretation. In this case that interpretation cannot possibly lead one to conclude that the DEC has any authority to expand use of OGL beyond oyster cultivation, regardless of how they try to craft their policy. This was the sentinel case directly on point to guard the public’s right to the enjoyment of the natural beds.

The effect of the DEC illegally allowing other shellfish to be cultivated on oyster grant lands has been to increase the value of private property that might otherwise have reverted to the public as the statute lays out. When land is no longer used for oyster culture, it reverts to the public. Private holders of OGL that have invested in cultivating species of shellfish other than oysters may in fact be damaged by having their permits rescinded, but the DEC never had any legal right to issue those permits in the first place. The OGL holders never owned anything but a right to cultivate oysters and oysters alone.

The DEC has sought to limit the states liability for issuing permits that were beyond its authority. That is understandable given the long history of collusion between DEC Suffolk County and oyster companies. Suffolk County issuing old growth clam bed leases to OGL holders would conveniently bail out the DEC at the expense of the law and the public right to the natural beds.

The proposed draft program recommends putting the obligation of determining the productivity of land on the public:

“14. Documentation of Natural Non-Productivity of Proposed Lease — If, during the application public comment period, comment is received indicating the presence of significant natural productivity on the proposed lease site, Prior to
issuance of a lease on lands not currently used for aquaculture, the applicant must provide documentation that the subject land does not presently support a productive natural shellfish stock. The County will identify what will be considered adequate documentation of the status of natural shellfish stock; such documentation may include, but not be limited to, a field benthic survey of the underwater land. The County will identify what is considered a significant shellfish stock.”

What is “not be limited to a field benthic survey” supposed to mean? Where is the committee’s obligation to the public?

The law requires the determination that land offered for lease is not productive. The law is does not authorize leasing of productive land as long no one objects. At the very minimum a complete benthic survey needs to be performed with a full report conducted on behalf of the County at the expense of the applicant. It is the County of Suffolk that is responsibly under the law to certify to the public that the land it proposes to lease is not capable of supporting significant hand harvesting activity. There must then be a minimum 60 day public inspection period to allow the public to rebut the claim of non-productivity. That “claim of non-productivity” is no mere formality; it is the event in the process where the greatest conflict of interest exists. Objective criteria must be developed and applied. That 60 day period must be extended if extreme weather conditions or other extenuating circumstances prevent public inspection.

If the committee was really about the business of promoting aquaculture, it would designate modest cultivation zones in areas known to be non-productive. Has the committee scrapped the blue zone? Is the idea to make the entire Gardiner Peconic Bay system a cultivation zone? There is an obligation to determine where there is significant hard clam habitat; that habitat is meant by law to be protected from leasing. We have seen nowhere in the committee paper work a discussion of specific hard clam habitat. The idea is not to create the appearance of transparent government but actually to engage in transparent government.

The temporary assignment program is mischaracterized in the scoping document. The temporary assignment program was designed with particular safeguards for public access to the natural shellfish beds. This was repeated to me by DEC personnel on many occasions. I particularly remember telling Josh Thiele how I felt applicants were being granted temporary assignments on
edges that were primary hard clam habitat; he dismissed my concerns. My point then was that it was poor policy to grant temporary assignments in areas where the underwater topography make hard clam abundance likely. My point now is that the assignments on the edges in Gardiners and Peconic Bays should not be considered for conversion to leases. The DEC had no obligation at the time to certify that these areas were nonproductive, and they ignored and dismissed the suggestion that the assignments not be granted on edges.

The committee is designing an aquaculture program that will be a land grab for the naturally productive hard clam habitat that it is bound by law to protect. Blanket designation of aquaculture zones without ground truthing is an abuse of the authorizing legislation. The whole point of designating aquaculture zones was to put the question of natural productivity to rest to protect public access to the natural beds. Instead the committee spends its time crafting ways to avoid its duty to do the actual physical work. This is disappointing but not surprising. Every act for granting, leasing or otherwise alienating public land for shellfish cultivation in Suffolk County has always been a land grab for naturally productive underwater land. Huntington and Islip leases and the nefarious Blue Point Smith Patent were all naturally productive underwater lands, sold out from under the public by corrupt politicians and forwarded by judges and courts by deals made in Country Clubs. These oyster lands are part of one of the most corrupt land grabs in Long Island history - remnants of Blue Points and Long Island Oyster Farms clam cartel, and it is an insult that these illegally granted lands would even be considered for inclusion in any leasing program.

Robert M. Wemyss
Secretary, NSBA