

SHELLFISH ADVISORY PANEL
May 20, 2022
Held Virtually via Zoom

In attendance:

Shellfish Advisory Panel: Bill Doyle; Renee Gagne; Seth Garfield; Michael Moore; Todd Callaghan; Lisa Rhodes; Michael DeVasto; Alex Hay; Shannon Emmett (on behalf of Mindy Domb); Josh Reitsma; Sean Bowen; Ron Bergstrom; Stephen Kirk; and Allen Rencurrel. *Absent:* Mike Trupiano; Amy Croteau; Bob Colby; Dale Leavitt; Jim Abbott; John Lebeaux; Jim Peters; and Rebecca Rausch

Division of Marine Fisheries: Jared Silva; Jeff Kennedy; Thomas Shields; Chrissy Petitpas; Mark Rousseau; and Matt Camisa

Massachusetts Environmental Policy Act Office: Tori Kim; and Paige Czepiga

NOAA: Chris Schillaci

Members of the Public: Helen Miranda Wilson; Mark Begley; Beth Gibbons; Matt Haney; Chloe Starr; Hillary Greenberg; Rebecca; David Slack; Suzanne Phillips; Beth Gibbons; Heinz Proft; Scott Soares; Danny Badger; Matt Haney; Rebecca Taylor; and Pat

INTRODUCTIONS AND ANNOUNCEMENTS

Jeff Kennedy called the May 20, 2022 Shellfish Advisory Panel (“SAP”) Business Meeting to order. He stated Dan has asked him to chair the meeting as he had a conflict, and Jared Silva will be running the technical portion of the meeting.

Jeff then explained the need for this SAP meeting highlighting the SRP for MEPA as the main topic. Jeff then asked Jared Silva to take attendance.

REVIEW AND APPROVAL OF MAY 20, 2022 BUSINESS MEETING AGENDA

Jeff welcomed any questions or comments regarding the business agenda. There were no requested amendments to the agenda.

REVIEW AND APPROVAL OF MARCH 1, 2022 DRAFT BUSINESS MEETING MINUTES

Jeff asked the Panel for any changes or input regarding the March 1, 2022 SAP meeting minutes. No amendments were made to the minutes.

Chairman Kennedy asked for a motion to approve May 20, 2022 SAP business meeting agenda. Todd Callaghan made the motion to approve the May 20, 2022 business meeting agenda. Seth Garfield seconded the motion. A roll call vote was

taken and the motion passed unanimously 11-0-3 with Alex Hay, Mindy Domb, and Renee Gagne abstaining.

CHAIRMAN'S COMMENTS

Jeff Kennedy thanked everyone for their attendance and moved on to the joint presentation with MEPA regarding the Special Review Procedure (SRP) for environmental review of shellfish aquaculture projects.

Massachusetts Environmental Policy Act (MEPA) Special Review Procedure (SRP) for Environmental Review of Shellfish Aquaculture Projects

Jeff Kennedy provided the panel with a presentation regarding MEPA and the SRP process. Jeff asked Chris Schillaci from NOAA to give an overview.

Origin and History of DMF Request to MEPA for SRP

Chris Schillaci provided the Panel with an aquaculture overview presentation. Chris Schillaci gave some background on the number of acres of aquaculture sites in MA as well as the average acreage per site. Chris then moved on to discuss some challenges facing growers. Some of the challenges included: small growers are required to navigate web of federal, state, and local permitting requirements; permit agencies differ in how impacts are calculated, and whether they require permitting at all – requirements vary across municipalities; the majority of small projects have predictable and minimal impacts on environmental resource areas .

He then moved on to describe the impacts of these challenges and the need to provide clear guidance to growers. Aquaculture is subject to MEPA, and Chris explained that the SRP will allow the state to look at the impacts of the different gear used in aquaculture as a whole. Chris then turned the floor over to Chrissy Petitpas who provided more in-depth background.

Existing Permitting Process and Challenges

Chrissy stated that shellfish aquaculture may be licensed to plant and grow shellfish, place shellfish in or under protective devices, harvest and take legal shellfish, plant cultch for the purpose of catching shellfish seed, and grow shellfish by means of racks, rafts, or floats. She went on to describe the required permits which includes a municipal license; DMF section 57 certification, and a DMF propagation permit in addition to potentially an order of conditions from local conservation commissions; MEPA review; Natural Heritage and Endangered Species Program (NHESP) review; MassDEP c.91/Water Quality Certification (WQC); US Army Corps of Engineers SVN, General or Individual permit; and federal consistency review by Coastal Zone Management. Chrissy pointed out that these are not consistent among different municipalities.

Chrissy turned the floor over to Tori Kim and Paige Czepiga to discuss the current MEPA process and the proposed SRP.

Paige Czepiga reviewed the purpose of MEPA (MA Environmental Policy Act), it applies to projects requiring agency action which includes state permitting. It requires assessment of environmental impacts, review of alternatives, and development of mitigation measures. The MEPA agency must certify that all feasible measures to avoid or minimize environmental damage will be taken before taking action (i.e. issuing permits).

Paige then went into detail regarding when a project requires agency action. Usually a project requires an agency action when both a project is undertaken by agency (usually state agency), a project requires from an agency a permit (such as the DMF Sec 57 certification for aquaculture) or financial assistance or land transfer AND a project meets or exceeds a MEPA review threshold such as land, rare species, wetlands, water, wastewater, transportation, energy, air, solid/hazardous waste, historical/archaeological resources.

Paige noted that MEPA review consists of filing an Environmental Notification Form (ENF) and possibly a lengthier Environmental Impact Report (EIR) process. Paige then moved on to discuss the current MEPA Process.

Current MEPA Process

Paige described several examples of MEPA review, one example was thresholds such as alteration of > ½ acre of wetlands (including coastal beach, land underwater. She then went over agency actions applicable to shellfish aquaculture such as: DMF Section 57 Certification, Chapter 91 license/permit, 401 water quality certification, Superseding Order of Conditions, and a Conservation and Management permit (CMP) for NHESP.

Paige discussed new requirements effective Jan. 1, 2022. These are as follows: Any project within a 'designated geographic area' of Environmental Justice (EJ) populations (typically 1 mile) must undertake the EIR process. The project may seek to expedite review by requesting a 'single EIR' or a 'Rollover EIR'; however a minimum of two review periods each is required. Another new requirement is that all projects must conduct pre-filing outreach to EJ populations. Additionally, if the applicant is seeking an expedited review, 45-day advance notification must be provided to a list of local organizations.

Description of SRP for Shellfish Aquaculture Projects

Paige Czepiga then outlined the SRP and how it will modify the MEPA review process. Paige stated that the secretary has the authority to create special review procedures (SRP) for certain categories of projects for which typical review process may not be warranted. Paige stated that the SRP serves the purpose of MEPA by:

- Providing meaningful opportunities for public review
- Analysis of alternatives
- Consideration of cumulative environmental impacts

Paige then stated that the SRP may provide the following: review of documents other than ENFs and EIRs, and shortened or extended review periods. Paige stated that SRP can increase the efficiency of MEPA review and reduce the administrative burden.

Paige then highlighted the proposed SRP for shellfish aquaculture. No MEPA review would be required for projects less than two acres. Projects equal to or greater than 2 acres and less than ten acres would need to submit a copy of (new) DMF Aquaculture Description Form and conditional certification letter to MEPA. The form will include cumulative impacts table from DMF, and EJ supplement if the project is within one mile of an EJ population. If the project is greater than or equal to ten acres the project would not be subject to the SRP and must follow normal MEPA procedures. Paige concluded her comments on the proposed SRP by stating that the SRP is intended to streamline review for small projects, while allowing for review of cumulative impacts. She added that this is limited to projects requiring only DMF Sec 57 certification. If other state agency permits are required, the project must follow normal MEPA procedures.

Paige stated that the SRP is proposed as a one-year pilot to streamline MEPA review for simple projects and to begin to apply consistency in permitting approaches. The one-year program would not apply to projects that need other state permits such as cultch projects, placement of permanent, non-seasonal gear, and kelp or other aquaculture activities not associated with 'class three/type one' permits issued by DMF.

Paige discussed the timetable and next steps with the SAP. Some dates that were of note included August or September of this year, MEPA hopes to have the final SRP published and effective. In July and August of 2023, DMF and MEPA will consider whether to extend or modify the SRP after the one-year pilot. Paige thanked everyone for their attendance and welcomed a discussion from the Panel.

SAP Discussion

Steve Kirk asked about how the cumulative impact assessment is reviewed by the MEPA office. Paige stated MEPA looked at the number of projects in the same embayment. Paige stated MEPA is open to discussion of the (*negative*) impacts as well as benefits of the projects within the cumulative impact assessment. MEPA is not necessarily a permitting process but rather an environmental review and disclosure process.

Dale Leavitt asked how the SAP will be of help to MEPA, and what they are looking for from the Panel. Tori Kim explained that they would like feedback from industry on the appropriateness of the SRP and any comments on the concept of the SRP. Tori Kim also added that MEPA is looking at this as a pilot and is looking for it to become a permanent solution that would apply to other permits. She anticipated bringing the long-term solutions back to the Panel at some point in the future after the pilot program has come to an end.

Sean Bowen asked about the spatial thresholds and how it would apply if a farmer were to expand their growing area. Tori Kim gave Sean an in-depth response, and she stated that each additional expansion would likely be considered a new project.

Alex Hay asked what MEPA sees the permitting process looking like in the future. Tori Kim described several different options including regulatory review processes.

Mike DeVasto stated he is currently going through the MEPA process, and expressed frustration over the length of how long the process has taken. He then asked Tori Kim about the spatial thresholds. Tori Kim stated there has been a backlog and they are working through the different requests. She then provided Mike DeVasto with insight as to how they determined the spatial thresholds. Mike DeVasto suggested using language for accepted practices for aquaculture in the event that new aquaculture gear is developed for use.

Chris Schillaci thanked MEPA for taking on the pilot program. Chris stated there are projects that could potentially support an expansion to this program and asked whether MEPA would be interested in considering these projects for an expansion of the pilot program. Paige stated that this could be possible with the support of partner agencies in the future. Tori Kim stated that currently they are more focused on smaller projects that they know have minimal impacts but are open to expansion.

Josh Reitsma stated there are best management practices in place in MA. He asked MEPA which impacts a prospective grower would need to put down. Tori Kim stated the expectation of the new grower would be to fill out the new form and would work with DMF to determine the cumulative impacts.

Dale Leavitt asked if the form DMF is developing is meant to be a common application for all agencies and if the SAP would be helping create the form. Chrissy Petitpas stated the other agencies have their own application processes, but the aquaculture description form would be a supplement to the municipal application form. DMF would ask municipalities to use the form as supplemental to their applications. Dale advocated for having each agency use the same form for ease. Chrissy stated this could be considered provided there is sufficient interagency interest in the future.

There were no further questions from the Panel, Jeff Kennedy welcomed any comments from the Panel members.

OTHER BUSINESS

Panel Member Comments

Allen Rencurrel requested two proposals to be added to the next SAP meeting, one is to plant surf clam seed in state waters, and the second would be to re-open Hatches Harbor off Provincetown for surf clammers. Jared stated he will follow-up with him after the meeting and Dan McKiernan intends to add them to the next SAP meeting.

Lisa Rhodes thanked MEPA for their efforts.

Renee Gagne stated Paul Bagnall asked if the SAP could weigh-in at the next meeting on the release of radioactive wastewater by Plymouth's Pilgrim nuclear power station into CCB.

Seth Garfield agreed with Renee that the issue should be discussed at the next meeting. He also would like to see a discussion on icing rules and regulations for MA, and the timing of getting logbooks to growers added to the next SAP meeting agenda. Jeff Kennedy stated that DMF is willing to have those discussions and addressing these issues at the next SAP meeting would be a good next step.

PUBLIC COMMENTS

Helen Miranda Wilson requested a list of participants who are in attendance at this Zoom meeting, as well as a link to the recording. Jared explained that due to the limitations of Zoom a list of participants is not available during the call, but he can send a list of participants after the meeting ends, a list will also be present in the minutes by the next meeting. He stated the link will be available on [DMF's Youtube channel](#).

ADJOURNMENT

Jeff Kennedy asked for a motion to adjourn the Shellfish Advisory Panel meeting. **Mike Devasto made a motion to adjourn. Todd Callaghan seconded the motion. The motion was approved by unanimous consent.**

MEETING DOCUMENTS

- May 20, 2022 SAP Business Meeting Agenda
- March 1, 2022 SAP Draft Business Meeting Minutes

UPCOMING MEETINGS