



Scituate Shellfish Advisory Committee

Wednesday June 16, 2021 7:00 pm

Scituate Town Library, Community Room

Meeting called to order at 7:06 pm

Committee Members in Attendance: Susan Harrison, Mike DiMeo, Jeff Palmer, Scott Connolly, David Friedman, and Adam Bisol

DMF invited guest Attendees include: Greg Sawyer, Jeff Kennedy, Tom Shields

Meeting called to order at 7:06pm

Mike DiMeo introduced Greg Sawyer and Jeff Kennedy who will present an update on the North and South River recreational shellfishing closure. Mike also introduced Senator O'Connor and Representative Kearney who have been working on budget amendments for next year.

Presentation from Massachusetts Division of Marine Fisheries (DMF)

Jeff Kennedy, DMF

Jeff Kennedy presented a powerpoint. His presentation can be found in the "Recreational Shellfish" Documents folder on the Shellfish Advisory Committee website. He specifically discussed shellfish classification around waste water treatment plants specifically Scituate and Cohasset treatment plants. National Shellfish Sanitation Program (NSSP) is what they use for water quality monitoring and management created by an interstate group concerned with shellfishing and shellfish issues. FDA is the lead federal agency on the group but other agencies include: NOAA, EPA, and CDC that attend the meetings. The meetings happen every two years but they have been delayed and the next one will be in another year. The group recommends management of shellfish and have a 500 page guide that they use to communicate the rules.

NSSP guidance states that without model data or dye studies all states are required to set mandatory closed safety zones around treatment plants. Prohibited closed safety zones are 1000:1 dilution. That can be adjusted with information regarding plant performance data. This would be a conditional restricted areas would be around the prohibited area. We are here today because the classification of Briggs Harbor as well as the North and South River would be around those restricted areas.

Conditional classifications require additional monthly water quality monitoring by DMF which will happen whatever we do in Cohasset Harbor and the North and South River.

Regarding the NSSP model ordinance classification, the size of the area, volume and performance and test results of the treatment plant need to be considered.

Regarding guidance and how to use the NSSP model ordinance which states that the boundaries of the area, you may have upsets in the system that you can not predict. The DMF goes out and does an analysis of the treatment plant. Greg Sawyer surveys the plants and tries to look for reliability in the treatment plants.

NSSP has 5 categories of classification based on water quality and risk: Approved, Conditionally Approved, Restricted, Conditionally Restricted, and Prohibited.

Jeff Kennedy showed a schematic of how classification would work near a treatment plant. He indicated that the rationale for following these guidelines is public health and consumption of shellfish. The specific concern is viral concerns.

FDA serves as the lead at the NSSP and they also serve as the evaluator of a state program. So, they have the ability to embargo a state and not allow the sale of shellfish.

Regarding the North and South River closure, conditional harvesting was allowed. FDA did an evaluation of the DMF program and classification in the North and South River and based on the flow rates at the treatment plant, that the dilution line would cover all of the waters in the North and South Rivers. This was a straight dilution study and not a model. This is why the DMF had to take the action last year to close shellfishing in the North and South Rivers. However, DMF has requested a dye study for the area.

Regarding Cohasset Harbor, all of the waters in Cohasset are closed because they do not have a Shellfish Constable and not based on water quality. The Scituate Side of Cohasset Harbor is currently approved and open for harvesting but we will have to do a dilution analysis of the Cohasset Treatment Plant. We don't know where the closed area will be. The area will likely be conditional, but we don't know where that area will be.

Currently the DMF is collecting water samples at all locations to determine how good the treatment plants are on treating effluent. DMF needs to do a treatment plant analysis in both Scituate and Cohasset.

Question on when the tests are being done? Mr. Kennedy responded that the tests are being done monthly throughout the year and that they have requested a dye study and DMF is collaborating and contracting with UMASS Dartmouth for the study using their hydrographic model.

Jeff Kennedy noted that the ISSC website contains the NSSP guide and asked if the group had any questions.

Mike DiMeo asked if Jeff Kennedy could discuss the process that DMF went through in Plymouth since the process seems similar to what will happen at the Scituate locations.

Jeff Kennedy responded that the FDA did a dye study on the Plymouth waste water treatment plant and came up with their recommendations that the entire three bay area should be classified to conditionally approved. DMF worked with the town and the treatment plant and issued a determination and created a conditional area and the northern area of Duxbury Bay as approved. Their treatment plant is unique because they have ground water discharge capabilities.

Greg Sawyer added that in Plymouth has is that in the inner harbor they had 1800 acres as prohibited. So, they only had to increase the closed safety zone a bit over 1800.

Question: If the ISSC is geared toward interstate commerce, where is the guidance on recreational shellfishing?

Kennedy: NSSP is for commercial harvest. DMF is the organization that makes those decisions and we have used the NSSP since 1982 as the guidance. If you don't use the NSSP, what would you use. We do not have alternate guidance to replace the NSSP. When states have gone another route, it has not worked, and they have gone back to using the NSSP. He indicated that parallel guidance is difficult.

Question: Jeff Mordel in Norwell. Isn't the FDA regulating it but we are not concerned with interstate commerce.

Shields: The driver is public health. To think that we would come up with a sub-standard on public health for recreational shellfishing is hard to recommend.

Question: Chuck Mordel in Norwell. Willing to take chances and have a different standard.

Shields: That is not how public health works.

Question: Chuck Mordel in Norwell. Make sure understand that we are closing beds. Couldn't there be a way to alert people if there is an incident at the plant to notify people.

Kennedy: Regarding notification, how much time do you need to get people off the flats. Today with technology we can cut the time down to 4 hours to notify the public regarding a plant upset and close the area.

Sawyer: When we test for fecal coliform in the rivers, even a very well-run plant like Scituate, there are still things that make their way into the river system. As much as it is a well-run plant, it is a terrible place for a plant which creates a bad situation. On the South shore there are many areas and plants to test so we combine commercial and recreational testing.

Question: Chuck Mordel in Norwell. There is a ton of seawater flowing out, having a hard time putting all of this together.

Kennedy: This is why we need to do the modeling. To account for the flow.

Sawyer: There is a lot to go through to cover basis on public health.

Question: Patrick Kearney, State Representative. Thank everyone for being here. Trying to understand that ISSC are recommendations?

Kennedy: Even though voluntary, if we want to participate with shipping shellfish across the country, we have to adhere to the regulations. It is voluntary, but we would have to consume all of our shellfish in our state if we don't want to adhere to the recommendations.

Question: Patrick Kearney, State Representative. What gives the DMF the legal authority to apply the same regulations to a recreational only zone shellfishing. Understands trying to keep people safe but

there is a frustration most of us have shellfished for years with no negative health impacts from recreational shellfishing. So we are trying to get a clarification on why regulations applied to a recreational zoned area based on public health.

Kennedy:

Chapter 130 Mass General laws is where DMF gets its authority. Why do we apply NSSP to the North and South River? There are valid public health concerns around harvesting around treatment plants. They are the standards that have worked. If you are not going to use NSSP, we are not sure what you would use. Louisiana tried a different standard 20 years ago and they gave up after several years because they could not make it work. Other states refused to do business with Louisiana refused to accept any product from Louisiana. This is why the DMF believes that they can work with treatment plant operators and find some area of harvesting in the North and South River Area.

Sawyer: To Representative Kearney, if we did two separate standards, DPH and DEP have a say in this too. There is no state in the country with two separate standards for shellfish. If there is a situation where Commercial could not harvest but recreational can, that would be World War III.

Question: Patrick Kearney, State Representative. Respectfully disagree, that there are different standards with butchering animals. It is not acceptable that we say that with shellfish is unacceptable.

Question: Brad White, 149 Old Main Street, Marshfield Hills. 100 people here tonight and over the years they have re-seeded the area under discussion. There are good students and stewards of the rivers. He does not have health issues due to eating clams. He has been clamming for 40 years and argues that the town can shut down the plant and clamming if there is an issue. He suggests that the state is manufacturing an issue and that he does not care about Louisiana and California. Appreciates that the DMF came to the meeting, but he notes a lot of double speak. Recommends that the DMF listen to the people in the room and open the flats.

Question: Scituate. Timeframe on figuring out dilution for Scituate plant.

Kennedy: DMF put in a request to FDA for a dye study but the FDA travel advisory has not changed. The study has not been scheduled yet. But DMF hopes to get modeling done sooner than that and hope to start that this summer. These treatment plants are not the only ones that need to be studied. Dartmouth, New Bedford, Wareham, and Marion are also included.

Question: If the Scituate plant is run so well, why can't they do the test?

Sawyer: There needs to be an independent study and test done.

Kennedy: You also need trained scientists to do the dye studies and mapping. Plants do their own testing, but they are different from what the state would have to do.

Question: Sara Grady, North and South River Watershed Association. Dye study verses the modeling, were you suggesting that the modeling would have more beneficial results than the dye study? Would one happen and not the other?

Kennedy: The only reason I suggest that is that the State of Maine had a dye study done and they disagreed with it and they were able to employ the modeling at the plant and shrink the closed area. Shields: Also important to note that when we get the funding, the modeling will happen a lot quicker.

Question: Samantha Woods, Executive Director North and South River Watershed Association. Wish we had this discussion in August when the river was shut down. For 40 years the watershed association has been working toward opening the river for shellfishing. Now changed the rules completely. That is the frustration. If there has been an imminent closure for 100 years, why not talked about it? Do you have the money for modeling? Can we enter into a contract July 1? Is there money in the budget? Can we get it done before November 1st?

Kennedy: As far as the money, we do not have that in our budget. We talking with UMASS Dartmouth regarding when their staff would be available for modeling. They have other work and will take on this work when they are available.

Question: Samantha Woods: Are there other modelers out there?

Kennedy: Sophisticated model and this model is the preferred model. They are our best option and they are local.

Question: Do you have the money?

Kennedy: The budget has not been passed yet.

Sawyer: In June or July we had a call with the Town Administrators of both towns. Every year the FDA visits, in 2018 was when they started bringing up ideas on recreational areas. We made the decision to put the rivers in closed status until they would do the study. The town administrators were involved and were kept up to date.

Mike DiMeo, Scituate Shellfish Constable, Did have a meeting in August with some of the people involved. Is the hydrographic model something that Woods Hole could help us with?

Kennedy: Some of the researchers are with Woods Hole.

Mike DiMeo: Would like to acknowledge Senator O'Connor and Representative Kearney who work hard to pass the budget. Maybe they could speak a bit about what they are working on.

Senator Patrick O'Connor: This has been an issue both Rep. Kearney and he have been involved in. They had a lot of the same questions that the group has and would like to understand how to get the beds open soon. One of the options is to get money in the budget for UMASS Dartmouth to do modeling. They have allocated \$450,000 to \$550,000. There is funding and can assure there will be funding but not sure where they will land on a total- \$450,000 or \$550,000. Goal is to get the studies to prove what we all know – that it is safe.

Representative Kearney: In addition, filed an amendment to Section 130 to give authority to local towns and not DMF. He is trying to change it in Massachusetts law.

Question: What can we do?

Senator O'Connor: Put pressure on DMF to get this done as soon as possible.

Representative Kearney: Happy to send the amendment with people. It takes longer to pass regulations. We are working on both legal and funding. Prior to the closure there was 1.4M acres open and no health

issues. He notes that a lot of people in attendance are concerned with the North and South River but also notes business in Briggs Harbor for aquaculture. Encourages actively working every day to open.

Question: Is there any way to undo this?

Kearney: If you want to do that, you file an emergency motion to compel in court to open and get a restraining order that forces them to open in the short term and then the case would be further litigated.

Mike DiMeo: Recognizing additional elected officials in attendance. Karen Connolley, Chair, Scituate Select Board; Karen Canfield, Vice Chair, Scituate Select Board and Jim Kilcoyne, Marshfield Select Board.

Karen Canfield: Scituate tests outflow from plant for years and it has almost gotten better over the years. We have done so much in our community to make progress on outflow, having trouble connecting this closure with the data.

Kennedy: Other towns have closed safety zones and they are in compliance with the NSSP. FDA evaluates all state programs annually and they do a subset of areas every year. It happened that this area was selected in the past few years.

Question: Karen Canfield: What was the criteria on how Scituate was picked?

Kennedy: Happened to pick Scituate.

Sawyer: Scituate is a well run plant but there are a lot of things that can be in the water that are not tested. Wastewater is so unique. Viral impact even after treatment can have some remaining.

Question: Karen Canfield: Plant knows exactly how they are treating. There seems to be a disconnect and a reverse of how things should be by shutting down without looking at how plants are treating effluent.

Sawyer: A lot of things in treated effluent are not tested for and it is a public health threat. That is why we do the testing.

Question: David Dauphinee, Commercial fisherman and recreational shellfishing Scituate. Appreciate time of DMF. Shellfished over 50 years. Present 350 signatures to support Representative Kearney's bill. Reading an email from the FDA, which states that the issue of recreational shellfish harvest is a state matter, and that the FDA has no interest within state borders. The FDA's only concern is commercial harvesting. Plymouth took 3 and a half years. We are a long way away. Question is where is the disconnect between the FDA and the DMF? We permit taking shellfish from closed areas for bait. If the director of shellfish sanitation at the FDA in Florida, does the FDA know that this is a recreational area and not a commercial area?

Kennedy: They do know that it is a recreational only area, and we are still questioned regularly on these areas. Scituate is on the list for FDA as is Cohasset. I cannot explain why you are getting a "hands-off" approach from the FDA and we are not.

Question: Rep. Kearney: If that is the pressure you are getting from the FDA, should we file a motion against the FDA?

Kennedy: I cannot answer that.

Question: David Dauphinee: If make a change it should not be because what might happen, but what has happened. Not high on the risk level, I don't know anyone who eats a raw steamer. Can not find anyone who has gotten sick.

Kennedy: Is that the bar, you have to get sick to set a regulation?

Question: David Dauphinee: I will quit shellfishing but you will have to pry my clam fork out of my hands. Upset that we are discussing this late. We should have discussed this earlier.

Sawyer: We take this to heart and this closure hurt us a lot. But there are criteria that we have to go by to protect the health. Even with a 9 or 10 foot tide, shellfish keep some things in them. We are trying everything we can.

Question: David Dauphinee: Is this the FDA pushing you to take action? Are they making you do this?

Kennedy: It is a state purview. It is up to DMF. We are applying the NSSP to this area.

Question: David Dauphinee: It is up to you?

Kennedy: Yes. The same way we do it all over the state. I know it feels like we are not engaging. But we are we are working to find a solution. If we can work within the model ordinance criteria. That is the goal here.

Sawyer: We managed the mooring area issue. There are new things coming down based on potential risk.

Question: David Dauphinee: Understand now that it is the state applying the model ordinance and not the FDA.

Mike DiMeo, Shellfish Constable: Regarding boats in the river and mooring issues, no boats in the winter so there should not be an issue. We talk with DMF once or twice a week. The wheels are turning and we think that we can get back to digging in the rivers.

Question: Name not clear. Did not have a question but a statement. He suggested keeping the ball moving compared this to lead paint and bureaucracy and employment.

Question: Samantha Woods, NSRWA, Is there some sort of treatment?

Kennedy: UV is the best which is what you have. What can you do? One days holding capacity. So, if there is an upset, you can process.

Scituate has the capacity to store one day. That will help us. Those are the conversations that we need to have on redundancy.

Question: Samantha Woods, NSRWA: Regarding science and policy, do we know what the true risk is?

Kennedy: Have not done those studies in this country. We test based on water quality and not shellfish. Risk assessments have been done in other countries. 1000:1 dilution gets you down to your approved area is based on coliform and not virus. Virus standards has just been introduced into the testing.

Question: When is the damage to the community considered and a timeframe for hydrographic modeling.

Question: How do we engage commercial fishing industry?

Shields: What can be done? Send someone to the ISSC. Go to specific meetings on viral loading. This is the best way to get involved with the ISSC since they make decisions regarding the regulations. Eric Hickey is our state representative.

Mike DiMeo: Thank everyone for attending and we look forward to getting dye studies done.

Question: Samantha Woods, NSRWA: Can we ask for another meeting for an update?

Sawyer: Talks to Mike DiMeo weekly on updates.

Mike DiMeo: We will have monthly meetings and bring the DMF back to discuss the budget and funding.

Jeff Palmer made a motion to approve January 12, 2020 minutes.

Second by Mike DiMeo.

All in favor 6:0

Susan Harrison made a motion to adjourn at 8:52

Second by Jeff Palmer

All in favor 6:0

Respectfully Submitted,
Susan Harrison