9-E

REQUEST TO BE PLACED ON THE AGENDA

TIVERTON TOWN COUNCIL

1. **Name of Department, Organization or Person:**

   Councilor Donna J Cook

2. **Subject of Agenda Request:**

   Discussion and possible vote regarding a Resolution for coastal buffer zone to allow for aquaculture operations and minimize conflicting uses

3. **Explain the Nature of The Request:**

   Since there was a letter and discussion about the Conservation Commission's request for the 1,000 ft buffer zone. The Town Council decided to send the request to the Harbor Commission to see if the Harbor Commission would support the Conservation Commission's request. I attended the THC meeting and Tiverton Harbor Commission supported the Tiverton Conservation Commission's 1,000 ft exclusion zone concept and a similar proposal from the Rhode Island Saltwater Angler's Association (RISAA) to exclude new aquaculture leases in Type 1 and Type 2 waters. Both are grounded in the Public Trust doctrine to protect Rhode Island constitutional rights of citizens. I believe the Harbor Commission is working on a letter of support for the concept.

   I think drafting a resolution would be helpful so here is a draft. This would be similar to what Jay put forward in January for a 1,000 ft notification resolution at a January Town Council meeting.

SIGNATURE: Councilor Donna J Cook **DATE:** 4/18/22

Please Note: Unless otherwise instructed, this request will be a public document. A copy of this request will be given to each Councilor prior to the meeting and, if applicable, to any appropriate department, board, commission, and/or officer.

Agenda items must be submitted to the Town Clerk's office before 3:00 p.m. on Monday prior to the meeting date.

DRAFT

TOWN OF TIVERTON

RESOLUTION FOR COASTAL BUFFER ZONE TO ALLOW FOR AQUACULTURE OPERATIONS AND MINIMIZE CONFLICTING USES

WHEREAS, the Town of Tiverton values existing public access and use of coastal waters and wishes to protect that access and use as guaranteed by the Public Trust; and

WHEREAS, the Town of Tiverton values and wants to protect the rights of riparian landowners; and

WHEREAS, the Town of Tiverton recognizes that other municipalities in Narragansett Bay also wish to protect public access and use of coastal waters, and want to protect the rights of riparian landowners; and

WHEREAS, the Town of Tiverton understands that the Rhode Island State Legislature gives the Coastal Resources Management Council jurisdiction over coastal waters; and

WHEREAS, the Coastal Resources Management Council is responsible for reviewing and permitting aquaculture leases; and

WHEREAS, the Coastal Resources Management Council is exploring expansion of aquaculture in Narragansett Bay; and

WHEREAS, the Town of Tiverton wishes to reduce conflicting use of public waters, protect the rights of the public to access and use the State's waters as guaranteed by the Public Trust, and protect the rights of riparian landowners; and

WHEREAS, the Town of Tiverton understands the need to accommodate aquaculture, and other uses of Tiverton's coastal waters; and

WHEREAS, the Town of Tiverton believes a 1,000 foot buffer zone from shoreline in which no future aquaculture leases can be sited will minimize conflicting uses; and

WHEREAS, the Town of Tiverton believes excluding the future placement of aquaculture farms from Type 1 and Type 2 waters will also minimize conflicting uses in the same way as a 1,000 foot buffer zone;

WHEREAS, the Town of Tiverton understands that it has no authority to create this kind of buffer zone but believes Rhode Island's State Legislature has the authority to create this kind of buffer zone through legislation,

DRAFT

NOW, THEREFORE, BE IT RESOLVED, that we, the Town Council of the **Town of TIVERTON** ask the Rhode Island State Legislature to develop and to pass legislation that minimizes conflicting uses of Narragansett Bay coastal waters but still allows for aquaculture projects by creating a 1,000 foot from shoreline (mean high tide) buffer zone in which no future aquaculture leases can be sited; *or* exclude future aquaculture farms from Type 1 and Type 2 waters. This approach will help Tiverton and other Narragansett Bay communities to balance public waters with commercial use and create more specific guidelines for the CRMC and future aquaculture farms.

BE IT FURTHER RESOLVED, upon passage of this Resolution, the Tiverton Town Clerk is requested to submit a certified copy of this Resolution to each and every member of the Rhode Island General Assembly who represents the Town of Tiverton and to all coastal Cities and towns in Rhode Island.

Introduced by: Councilor Donna J Cook
Date: April 25, 2022

REQUEST TO BE PLACED ON THE AGENDA

FOR A MEETING OF THE

TIVERTON TOWN COUNCIL

1. NAME OF DEPARTMENT, ORGANIZATION OR PERSON:

Harbor Commission

2. SUBJECT OF AGENDA REQUEST:

- Letter from the Harbor Commission to Town Administrator dated April 11, 2022, re. Tiverton Conservation Commission letter of February 17, 2022 on Shoreline Setback for new aquaculture leases
- Letter from the Harbor Commission to Town Administrator dated April 11, 2022, re. Rhode Island Salt Water Angler's Association letter of February 28, 2022

3. EXPLAIN NATURE OF THE REQUEST:

See attached

SIGNATURE: _____ **DATE:** _____

SIGNATURE: _____ **DATE:** 4/14/2022

Chris Cotta,
Town Administrator

Please Note: Unless otherwise instructed, this request will be a public document. A copy of this request and any attachments will be given to each Councilor prior to the meeting and, if applicable, to any appropriate department, board, commission, and/or officer.

Agenda items must be submitted to the Town Clerk's office before 3:00 p.m. on the Tuesday prior to the meeting date.

Town of Tiverton, Rhode Island

HARBOR AND COASTAL WATERS MANAGEMENT COMMISSION

343 HIGHLAND ROAD

TIVERTON, RI

02878

April 11, 2021

Chris Cotta, Administrator
Town of Tiverton
343 Highland Road
Tiverton, RI 02878

INRE: Tiverton Conservation Commission letter of February 17, 2022 on Shoreline Setback for new aquaculture leases.

Dear Administrator Cotta:

By unanimous vote of the Harbor Commission at its March 29th, 2022 the Commission agreed with the position of the Conservation Commission expressed in its letter of February 17, 2022 on Shoreline Setback for new aquaculture leases. We believe that the town should adopt the position that all aquaculture leases should be positioned with their inland edge of the proposed lease site at a minimum setback of 1000 feet from the shoreline. By shoreline we mean the nearest point of the lease must be no less than 1000 feet to the continuous mean high-water line of the abutting shore.

Kindest Regards.

Very truly yours,

Bruce H. Cox, Chair

D-2

Tiverton Conservation Commission

343 Highland Road, Tiverton, RI, 02878

RECEIVED
TOWN OF TIVERTON
2022 FEB 22 A 11: 17

February 17, 2022

Tiverton Town Council
Town of Tiverton
343 Highland Road
Tiverton, RI, 02878

RE: SHORELINE SETBACK FOR NEW AQUACULTURE LEASES

Dear Town Council Members,

The Tiverton Conservation Commission has long had concerns about aquaculture leases in Nannaquacket Pond and the Sakonnet River. In addition to their negative visual impact (especially at low tide), the proposed locations for these leases almost always pose conflicts with, and if approved by the CRMC would result in restrictions being placed upon, traditional shoreline uses at the lease sites including, but not limited to, fishing, clamming, boat moorings and salt water recreation activities. In addition, the fact that many of the proposed lease sites are in shallow waters adjacent to the few areas with easy public access to the sea increases our concern over the resulting restrictions on the public use of those areas should the leases be approved.

Boundary of the inland edge of the proposed site to the nearest POL of land

At its January 2022 meeting, the Tiverton Conservation Commission voted unanimously to endorse the concept of a one-thousand-foot setback from the shoreline for all aquaculture leases in Rhode Island waters. Such a buffer zone would essentially eliminate all potential conflicts between aquaculture leases and traditional shoreline activities. A one-thousand-foot shoreline setback would force new aquaculture leases to be serviced by boats, thereby removing the current incentive to locate the leases directly off of areas where the public has access to salt water.

The Conservation Commission recognizes that the Town of Tiverton cannot enact a one-thousand-foot shoreline setback for aquaculture activities on its own authority, because State of Rhode Island is empowered to regulate most activities in its coastal waters. The Commission does, however, urge the Tiverton Town Council to consider formally endorsing this concept as a way to balance the conflicting demands on our shoreline from traditional uses and aquaculture leases. The number of new aquaculture leases proposed for locations off of Tiverton's shoreline is expected to increase significantly over the next decade. Coastal towns must start working now with their elected State Representatives and Senators to direct aquaculture activities away from areas that trigger conflicts with, or restrict, other activities. Collectively, we have a responsibility to future generations to ensure they will have the same access to the sea that we currently enjoy – and to do that, the Commission believes the enactment of a well-defined shoreline setback for new aquaculture leases is absolutely necessary.

Sincerely,

Dr. Thomas S. Ramotowski
Chairman

cc: Tiverton Conservation Commission; Tiverton Harbor Commission; Tiverton RI House and Senate Districts

Town of Tiverton, Rhode Island

HARBOR AND COASTAL WATERS MANAGEMENT COMMISSION

343 HIGHLAND ROAD

TIVERTON, RI

02878

April 11, 2021

Chris Cotta, Administrator
Town of Tiverton
343 Highland Road
Tiverton, RI 02878

INRE: Rhode Island Salt Water Angler's Association letter of February 28,2022

Dear Administrator Cotta:

By unanimous vote of the Commission at it March 29th, 2022 meeting I was directed to inform you and the Town Council the it is the opinion of the Commission that the town should adopt the position of the Rhode Island Salt Water Angler's Association.

The above letter, copy attached, was before the Harbor Commission on March 29th, 2022 where the Executive Director of this 7000-member organization, Greg Vespe presented the position of the Rhode Island Salt Water Angler's Association ("Anglers"). He was clear in their position and answered all of our questions with candor. Their comments regarding the inherent conflict within CRMC as both the promotor and the regulator of the development of the aquaculture industry are on point with regard to the inability of CRMC to be unbiased and fair to the public citizens of the state, beneficiaries of the public trust. The focus of the SAMP was toward development of aquaculture verses protection of the public trust. This is a distinct deficiency in the process.

We have conveyed the position of the Commission and our intention of requesting the Council to similarly adopt the position of the Anglers to . Representative Deborah Ruggiero Chairwoman,

House Commission to Study CRMC Reorganization and Executive Director Jefferey Willis Coastal Resource Management Commission. We fully encourage the council to entertain and adopt a motion to endorse and adopt the letter and position of the Rhode Island Salt Water Angler's Association.

Kindest Regards.

Very truly yours,

Bruce H. Cox, Chair

Rhode Island
SALTWATER
ANGLERS
Association

P.O. Box 299, Tiverton, RI 02878 www.risaa.org Office: 401-826-2121

February 28, 2022

Representative Deborah Ruggiero
Chairwoman, House Commission to Study CRMC Reorganization
State House
Smith Street
Providence, RI 02903

Sent via email: rep-Ruggiero@rilegislature.gov

Re: Comments regarding CRMC Reorganization – Aquaculture Issues

Dear Representative Ruggiero:

The Rhode Island Saltwater Anglers Association (RISAA) is submitting the recommendations detailed below in an effort to help you and your Commission detail specific improvements that will make the RI Coastal Resources Management Council (CRMC) function better for the people of Rhode Island. We have been watching the process of your Commission very carefully and through our representative on the Commission, Richard Hittinger, we have had significant input into the process. Thank you for allowing that participation.

RISAA believes the rights of recreational anglers need protection given the increased pressure to develop aquaculture in Rhode Island. The CRMC has made recent revisions to the Aquaculture Application Process and is conducting a Narragansett Bay Special Area Management Plan (SAMP) Aquaculture Working Group. These changes do little to protect the rights of recreational anglers. CRMC must uphold the Public Trust Doctrine, but instead seems to favor accommodating commercial aquaculture over protecting the rights of recreational anglers who contribute over $400 million to the RI economy annually. The Public Trust Doctrine is a right written into Rhode Island's Constitution that guarantees shoreline privileges that include fishing from the shore, collecting seaweed, leaving the shore to swim in the ocean and passing along the shore (Article I, Section 17). Unless improvements are made, placement of aquaculture operations will remain a significant threat to closing off productive waters accessed by anglers, particularly from shore. Aquaculture growth in Narragansett Bay, the Sakonnet River and other coastal areas could be the greatest threat to recreational shore angling. RISAA believes the legislative actions to protect fishing access as described herein are critical.

Over the last eight months, CRMC and URI (Coastal Institute) have been conducting SAMP meetings with stakeholders to guide and to manage aquaculture in Narragansett Bay and the Sakonnet River. At the same time, the CRMC has also been under scrutiny by this House Special Commission on Reorganization of the CRMC. As a result of input from these two activities, CRMC unveiled a revised Aquaculture Application Process. Several RISAA members have been engaged in these meetings and have felt significant bias towards promoting aquaculture over other historic uses of the water such as recreational fishing. CRMC's proposed changes do not protect recreational angling interests. Unfortunately, the revisions do little to address user conflicts and instead focus primarily on the notification process to abutters and specifications on types of gear. Here are the continuing issues:

- Current CRMC changes to the notification process still do not create improved regulations for addressing user conflicts.
- In conflicting use situations, the lack of siting guidelines and an advocate for the public leaves recreational anglers exposed to losing their public trust rights to freely fish.
- Existing guidelines allow staff to have significant discretion when recommending approval of applications. It is expected that the Council vote in line with staff recommendation.
- CRMC is the promotor and regulator of the aquaculture industry, which can allow for bias in placement and the granting of permits. CRMC needs to either permit or promote but not both.
- Regulations state that CRMC "shall support commercial aquaculture in those locations where it can be accommodated among other uses of Rhode Island waters." Without a clear definition of "accommodated" the CRMC can lease water to accommodate aquaculture operations, especially in a conflicting use situation.

Given these continuing issues, RISAA asks that the Rhode Island State Legislature make changes to implement the following:

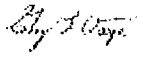
A. ***Create an objective process based on stakeholder input to map specific zones for aquaculture***. Since the second meeting of the Aquaculture Element Working Group Meetings (Bay SAMP), there have been no follow up discussions with stakeholders about creating aquaculture zones. Moreover, CRMC leadership cautioned participants in these meetings that the working group was advisory only and CRMC held the final decision-making authority for creating these zones. This process must be reset to protect public trust rights and to follow a similar course to the one using stakeholder input to develop the five percent rule for the salt ponds in 2007.

B. ***Call for a moratorium on current and future aquaculture applications until CRMC protects recreational angler interests and specifies aquaculture zones.*** The threat of losing recreational fishing access remains high. One example of this is the proposed aquaculture activity in the Seapowet Marsh in Tiverton. Meanwhile, the oyster aquaculture industry contracted by 32% in 2020. A pause on new leases will allow existing farms to recover while allowing for thoughtful placement of new farms in Narragansett Bay and the Sakonnet River.

C. ***Change CRMC's Red Book to protect and to prioritize the interests of recreational anglers over commercial aquaculture operations.*** Without any separation of duties within CRMC's role as promoter and permitter of aquaculture, there will continue to be potential for bias towards commercial development and no protection for the rights of recreational anglers. The attached proposed changes to the Red Book will strengthen protection for all recreational users of Rhode Island's waters.

We ask that these recommendations be included in the Commission discussions when the Commission is considering what legislative recommendations should be forwarded to the RI State Legislature. Thank you for your consideration of this matter.

Sincerely,



Greg Vespe
Executive Director
Rhode Island Saltwater Anglers Association

Cc via email: Governor McKee, Speaker Shekarchi, President Ruggerio, Jeff Willis, Commission members

PROPOSED CHANGES TO THE CRMC RED BOOK *Hyperlink to Red Book*--(650-RICR-20-00-1)

Language to be inserted in *BLUE font*. Language to be deleted in [redacted].

1.2 Areas Under Council Jurisdiction

1.2.1 Tidal and Coastal Pond Waters

A. The six categories of waters defined in this Program are directly linked to the characteristics of the shoreline, since the activities on the adjacent mainland are the primary determinant of the uses and qualities of any specific water site. Thus, Type 1 waters abut shorelines in a natural undisturbed condition, where alterations, including the construction of docks and any dredging, are considered by the Council as unsuitable. Type 2 waters are adjacent to predominantly residential areas, where docks are acceptable, but more intense forms of development, including more marinas and new dredging projects (but not maintenance dredging), would change the area's character and alter the established balance among uses. Alterations such as these would bring more intensive uses and are therefore prohibited in Type 2 waters. The waters along some seventy percent (70%) of the state's four hundred twenty (420) miles of shoreline have been assigned to Type 1 and Type 2, and should be expected to retain their high scenic values and established patterns of low intensity use. *In Type 1 and Type 2 waters, public trust uses take precedence over all other activities (excluding riparian rights).* Type 3 waters are dominated by commercial facilities that support recreational boating. Here, marinas, boatyards, and associated businesses take priority over other uses, and dredging and shoreline alterations are to be expected. Type 4 areas include the open waters of the Bay and the Sounds, where a balance must be maintained among fishing, recreational boating, and commercial traffic. Here high water quality and a healthy ecosystem are primary concerns. The last two water use categories are assigned to areas adjacent to ports and industrial waterfronts. waters, maintenance of adequate water depths is essential, high water quality is seldom achievable, and some filling may be desirable. Within Type 5 ports, a mix of commercial and recreational activities must coexist, while in Type 6 waters, water dependent industrial and commercial activities take precedence over all other activities. The water categories described in this section are complemented by policies for shoreline types (§ 1.2.2 of this Part), and the two must be combined to identify the Program's policies for a specific coastal site.

RATIONAL FOR THESE CHANGES: The proposed addition specifies that public trust uses like fishing take priority over commercial activities in Type 1 and Type 2 waters. The CRMC already states that these waters should remain natural and undisturbed or are near residential areas where CRMC discourages intensive use. This parallels the existing language where CRMC specifies that industrial and commercial activities take precedence over all other activities in Type 6 waters.

1.2 Areas Under Council Jurisdiction

1.2.1 Tidal and Coastal Pond Waters

B. Type 1 Conservation Areas

2. Policies

a. The Council's goal is to preserve and protect Type 1 waters from activities and uses that have the potential to degrade scenic, wildlife, and plant habitat values, or which may adversely impact water quality or natural shoreline types. *The rights of the public to enjoy Type 1 waters, shall be superior to any current and potential future concession therein (excluding riparian rights), that was or may in future be granted to any private pecuniary interest; and furthermore, such rights of the public shall be superior to any proposed or existing use, whether such use is for profit or not for profit.*
b. Such protected public uses include but are not limited to: historic, scenic, recreational, and community uses of the waters; wildlife refuges, recreational fishing, boating, and water sports uses; fishing and shellfishing uses; sensitive habitats, and public access areas.
c. The mooring of houseboats and floating businesses, the construction of recreational boating facilities, filling below mean high water, point discharge of substances other than properly treated runoff water (see § 1.3.1(F) of this Part), and the placement of industrial or commercial structures or operations ([redacted]) are all prohibited in Type 1 waters.
g. Activities and alterations subject to Council jurisdiction contiguous to public parks, public beaches, public rights of way to the shore, and conservation areas abutting Type 1 waters shall not [redacted] interfere with public use and enjoyment of such facilities. Where [redacted] interference is found, the Council shall suitably modify or prohibit that alteration or activity.

RATIONAL FOR THESE CHANGES: The additional language makes clear that the CRMC must protect and prioritize recreational fishing which are part of public trust rights. It allows for coastal property owners to exercise their riparian rights for moorings.

Removing commercial exemptions from Type 1 waters keeps Type 1 waters protected for public use and shoreline recreational anglers since most of Type 1 waters are 500ft from the mean high water levels.

Removing "significantly" eliminates subjectivity around interpretation of "significant interference."

1.2 Areas Under Council Jurisdiction

1.2.1 Tidal and Coastal Pond Waters

C. Type 2 Low Intensity Use

2. Policies

a. The Council's goal is to maintain and, where possible, restore the high scenic value, water quality, and natural habitat values of these areas, while providing for low intensity uses that will not detract from these values. *The rights of the public to enjoy Type 2 waters, shall be superior to any current and potential future concession therein (excluding riparian rights), that was or may in future be granted to any private pecuniary interest; and furthermore, such rights of the public shall be superior to any proposed or existing use, whether such use is for profit or not for profit.*
b. New or deepened dredged channels and basins; new or deepened dredged channels and basins at existing marinas that result in an expansion greater than twenty-five percent (25%) of their capacity; new marinas and expansion of preexisting marinas in excess of twenty-five percent (25%) of their capacity; the mooring of houseboats and floating businesses; industrial and commercial structures and operations ([redacted]); and filling are all prohibited in Type 2 waters.
g. Activities and alterations subject to Council jurisdiction contiguous to public parks, public beaches, public rights of way to the shore, and conservation areas abutting Type 2 waters shall not [redacted] interfere with public use and enjoyment of such facilities. Where [redacted] interference is found, the Council shall suitably modify or prohibit that alteration or activity.

RATIONALE FOR THESE CHANGES: The additional language makes clear that the CRMC must protect and prioritize recreational fishing which are part of public trust rights. It allows for coastal property owners to exercise their riparian rights for moorings or docks.

Removing commercial exemptions from Type 2 waters keeps Type 2 waters protected for public use and protects shoreline and watercraft anglers that fish just outside of casting distance from the shore.

Removing "significantly" eliminates subjectivity around interpretation of "significant interference."

1.3 Activities Under Council Jurisdiction

1.3.1 In Tidal and Coastal Pond Waters, On Shoreline Features and Their Contiguous Areas

K. Aquaculture

1. Policies

a. The CRMC recognizes that commercial aquaculture is a viable means for supplementing the yields of marine fish and shellfish food products *but not at the expense of public trust uses. In areas of conflict, public trust uses take priority over commercial aquaculture.* [redacted] As any human activity can have adverse environmental effects, the Council recognizes the possibility of setting scientifically defensible limits on aquaculture leasing in any particular water body. The CRMC also recognizes that in the framework of adaptive management protocols, research into the ecology of coastal waters and our understanding of ecosystem carrying capacities is constantly evolving and improving.

RATIONALE FOR THESE CHANGES: Adding the public trust use language and deleting the language around "shall support commercial aquaculture" removes aquaculture promotion from the Council's enabling legislation and makes clear that public trust uses (fishing) have superior rights to commercial aquaculture in areas of conflict.