

Meeting Date:

May 8, 2023

**Wellfleet Dredging Task Force (DTF) Committee
Minutes of Meeting**

May 8, 2023 – 7:00 pm

Meeting held via Zoom conference call

DTF Present: Co-chair Joe Aberdale, Co-Chair Chris Allgeier, Curt Felix, Charles Annett.

Others Present (DTF Committee Participants): John Wolf.

Others: Gail Ferguson, Dennis O'Connell, Ginny Parker, Jude Ahern.

1. Announcements, Open Session, and Public Comments – None.
2. Administrative.
 - 2.1. Roll call was taken to confirm attendees.
 - 2.2. Approval of Minutes of Meeting, from the April 24, 2023, meeting.
 - 2.2.1.1. Time was allocated for people to review the Meeting Minutes from the April 24, 2023, DTF meeting.
 - 2.2.1.2. A motion to accept the Minutes was made by Curt and seconded by Charles.
 - 2.2.1.3. The motion was approved by a vote of 4-0.
3. Update on permit activity, Area 2 and recent discussions with Shellfish Advisory Board (SAB):
 - 3.1. There will be a Shellfish Advisory Board (SAB) meeting on Tuesday May 9, 2023, at 7:00 pm.
 - 3.2. There will be a Wellfleet Community Forum on dredging/mitigation plan on Monday, May 22, 2023, at 7:00 pm.
 - 3.3. Permit/mitigation plan updates:
 - 3.3.1. There was a call last Thursday with US Army Corps of Engineers (USACE); which concentrated on several items:
 - 3.3.1.1. Long Term Management Plan including comments from USACE. The LT Management Plan kicks in after Year 5, more specifically after we achieve the metrics.
 - 3.3.1.2. Adaptive Management Plan including comments from USACE. This plan defines what actions we will take while the plan is being implemented, nominally in the first five years.
 - 3.3.1.3. A Certificate of Compliance will be issued by USACE upon our achieving the metrics.
 - 3.3.1.4. Time of year for quahog relay and cultch, especially next year in Blackfish Creek. The relay typically occurs in May and the cultch can best be performed in June. USACE is fine with that sequence of events.
 - 3.3.1.5. Financial Assurance – The Town will post \$50K performance bond that will be in effect essentially for one year, until we initiate Blackfish Creek site.

- 3.3.1.6. The discussions on the LT Management Plan and the Adaptive Management Plan were especially productive with respect to dealing with “what if” scenarios (e.g., severe storms, Force Majeure events) and what our obligations would be; part of that depends on whether we have already received a Certificate of Compliance or if it occurs in a year subsequent to having received a Certificate of Compliance. We’re getting into detail language and finding language that is acceptable to both parties.
- 3.3.2. Curt noted:
- 3.3.2.1. We made good progress with USACE around the unknowns that people have been asking about – when is it over, what does the end look like. USACE provided clarity around the 5-year detailed monitoring program. Monitoring in subsequent years will be a check-in by the Shellfish Department to determine if we are still at 25 oysters/square meter. If we are consistently maintaining the level, the check-in may revert to every 5 years or even a 10-year frequency.
- 3.3.3. The Certificate of Compliance clarifies where USACE is looking in fine detail vs. everything is up and running. If there is an ice event or a disease event or some act of nature, USACE would look to us to implement the first year of cultch and seed to jump-start the site and get it going again.
- 3.3.4. John Wolf asked if the Performance Bond is money the Town would put up and what do we get for it. The Performance Bond is not \$50K money held in escrow; its cost is based on a bond rate, which typically runs about .5%, so the cost could be approximately \$250 (subject to whatever rate the Town is able to obtain). It is our promise that sufficient funds will be made available to the Shellfish Department to perform cultch and seed in Blackfish Creek. The bond gets relinquished once we initiate the activity in Blackfish Creek.
- 3.3.5. Jude Ahern asked about:
- 3.3.5.1. The bond -did the requirement recently originate? The reference to providing a bond (but not bond rates) was included in the draft mitigation plan provided in the recent Selectboard packet, as was the budget for the Shellfish Department.
- 3.3.5.2. Updates on discussions with property owners. There has not been much discussion with property owners since the last meeting (i.e., the Selectboard meeting of May 2, 2023). Curt noted there is a public process as part of the Chapter 91 permit process to use cultch for resource enhancement and protection. Jude questioned if it is legal to place cultch. The Chapter 91 process includes notifying all abutters. The Town owns considerable land in Blackfish Creek so if an upland owner had a substantial problem with the cultch location, it can be moved. The area that needs to be clutched is about 10% of the 28 acres and yes, the Town already has approval to place cultch in certain areas around the Harbor
- 3.3.5.3. Jude asked if you can place contaminated quahogs on top of cultch? The quahogs are disease free; the contamination is fecal coliform which clears very quickly but the quahogs must be in clean water for a few days for that to happen. The cultch will be placed near the quahogs – the details are up to the Shellfish Department. It is currently envisioned there will be 10 lines of cultch per year, therefore 50 lines over the 5 years.
- 3.3.5.4. Jude asked who attended the USACE meetings. Chris advised that the recent meeting was attended by Chris Allgeier, Curt Felix, Rebecca

Roughley, Will Sullivan, GEI (Dan Robbins, Alyssa Richard) and two USACE representatives.

- 3.3.5.5. Jude inquired about changing the Chapter 91 Permit to cultch. Curt advised that amending the Chapter 91 permit is a public process. We currently have a Chapter 91 permit for about 8 locations in Wellfleet Harbor; those locations are about 1 acre to 2 acres each. The process involved notifying about 100 upland owners who are impacted. There is an extensive process to solicit comments from the public. The state ultimately accepts, rejects, or modifies the application. In the case of Blackfish Creek, that same process would be followed, and it would be an amendment to the existing permit because the area that will be identified will be different. Where the 50 lines will be placed has to be determined and placed on a map. That would lead to the process of notifying all the upland landowners to participate in the process.
- 3.3.6. Ginny Parker inquired about:
 - 3.3.6.1. The bond issue - Do we have to borrow against it? No, it is a performance bond more like an insurance policy.
 - 3.3.6.2. Budget allotted to Shellfish Department. Where will the money come from? Will it come from the enterprise fund or from the new mooring fees? It can come from the dredging fund because it is part of obtaining a permit.
 - 3.3.6.3. What about subsequent/ongoing years funding, approximately \$20K per year in addition to the cultch and seed, because we have to hire a 3rd party to oversee the process. Joe Aberdale stated that revenue generated from the mooring field must go to the enterprise fund. The funding could come from the dredging account or another town account, it is up to the Selectboard.
 - 3.3.6.4. Third party for overseeing the process and going out for bid. We will go out for bid to entities like Audubon and academic institutions. The monitoring entails going out every 2 weeks to do an assessment from April through October; counting all species, checking out density, and documenting what is happening on the site. Typically, the research universities have students and postdocs who go out and do this type of work. Audubon has expressed interest in monitoring and helping out.
- 3.3.7. John Wolf:
 - 3.3.7.1. Returned to the Force Majeure issue and asked if it only kicks in after the five-year mark? What if the event happens in the first five years? The first five years fall under the Adaptive Management Plan and the goal is to get to a sustainable level to meet the metrics. If there was an event in the first five years (e.g., ice), we'll put cultch and seed down, possibly change the location of the cultch to where it is more protected, change the cultch configuration. After receipt of Certificate of Compliance our only obligation would be to do one (additional) year of cultch and seed.
 - 3.3.7.2. Is there a point in time that our obligations are over, sometime after five years or ten years or whatever? Our obligation becomes minimal based on finalizing reporting frequency; we are seeking agreement that we go to either five year or ten-year reporting frequency and ultimately, no reporting is required. Curt noted that five years (if we achieve the metrics) is the end of the road. USACE will have said we've been successful and as long as we don't allow harvest below 25 oysters per square meter, you're good – you have planted the forest and it is good. USACE would

not want to see a scenario where we go harvest everything (the equivalent of clear cutting all the new trees we planted). Going forward on the part of the Town, it is a commitment to create success and then not destroy it.

3.3.8. Dennis O'Connell asked:

3.3.8.1. Where can he read about the conditions or terms of this arrangement? Next draft of the mitigation plan will be a very mature plan. (In the meantime, there is an earlier draft in the recent Selectboard packet).

3.3.8.2. Will there be any filings at the Registry of Deeds or Land Court as an attachment to our land? No, attachments don't really apply here. The only thing that is occurring is the Town is continuing to monitor and regulate the shellfish harvest. The Chapter 91 Permit that allows cultch to be placed, effectively allows the jumpstart of seeding for oyster growth. The upland property owner continues to own the property and enjoy the full rights and privileges associated with that ownership. The ownership is somewhat restricted due to the fishing and fowling regulations within the State.

3.3.9. John Wolf inquired when something can be posted for people to read or download. DTF will coordinate the timing with Town Administration and the Selectboard. The last (most recent) draft was in the Selectboard packet. The next Selectboard meetings are on May 16, 23, June 6, and June 20, DTF will coordinate with the Town Administration/Selectboard as to how best to share the mature draft. John Wolf offered to discuss timing with the Selectboard Chair.

3.3.10. Ginny Parker reiterated that the final draft needs to be made available prior to the meeting at which the Selectboard will vote. Fully agree.

3.3.11. Previous Selectboard request for USACE Terms and Conditions – the permit conditions will be the same as previous permit conditions (from our last dredging) plus the addition by reference of the mitigation plan.

3.3.12. Dennis O'Connell – what do we know about product off-take from these “shellfish beds”. It is important to Wellfleet Conservation Trust (WCT) that it is not viewed as a commercial project. To whom will it be open? The opening details are up to the Shellfish Department. It was also noted that if WCT says ok to cultch, WCT could also state a preference that it be open to recreational permit holders.

3.3.13. John Wolf stated his impression that once the once the 3-year (DMF) period is over, depending on shellfish population, there would be some limited shellfish harvest. Yes, the opening after the first three years will be for a very limited time. We do not want to destroy the progress enroute to achieving final metrics. The Shellfish Department determines the details of opening; it is the jurisdiction of the Selectboard/Shellfish Department. USACE does not weigh in on the opening details; USACE recognizes we must comply with the DMF regulations. USACE only interest in shellfish harvest is with respect to oyster density and therefore only caution that the opening after a 3-year period should be managed appropriately in other words only a change in management approach.

4. 2023 Dredging Plans.

4.1.1. The bid package will be issued on April 26, 2023.

4.1.2. There was a pre-bid meeting with the bidders on May 3, 2023.

4.1.3. Bids due - May19, 2023.

- 4.1.4. Award a dredging contract – No later than June 30, 2023. This provides time to resolve any questions and solicit Selectboard approval and award before June 30, 2023, in order to maintain our \$2.5 million, grant that was awarded last year.
5. Future Plans to reduce sedimentation rate and future maintenance dredging.
 - 5.1. This item remains on the back burner for the next several months. We'll then circle back to work on a long-term maintenance plan and thin layer deposition
 - 5.2. Curt noted the state recently awarded a large grant to the County to expand the capability of the County dredge.
6. Sand/shoaling area at the breakwater- Engineering drawings and permit applications.
 - 6.1. No current update. As of the last meeting:
 - 6.1.1. BSC Group had completed the land survey and marine survey.
 - 6.1.2. As noted at our last meeting, we will have BSC add the location of shellfish grants that are in proximity to the breakwater.
7. Miscellaneous
 - 7.1. Dennis O'Connell asked what type of agreement the town might want from the landowners? It will be the Chapter 91 Permit, the public process. There would not be a binding agreement. Like any abutter, you would come to the meeting, express your concerns. It is a state process; the state then decides what they approve and write it into the permit. For approval to cultch, the state writes the coordinates into the permit.
 - 7.2. Landowners would not be a party to the agreement; they would be an influential abutter.
8. Next Meeting – it was agreed the next DTF meeting will be held on Friday May 19, 2023, at 7:00 pm.
9. Motion to Adjourn – a motion to adjourn was made by Curt and seconded by Charles. The motion to adjourn was approved, 4-0.

The meeting was adjourned at approximately 8:03 pm.