

Rivers and Coastal Waters Commission

MINUTES

April 28, 2021 6 p.m.

Members Present: Marko Melendy (Chair; Marine Resources), Bill Good (Citizen Rep.), RCWC Helene Harrower (Commercial Rep.), RCWC Mark Worthing, Doug Niven (Citizen Alt.), Cory Theberge (Vice Chair; Citizen Alt.) William Wilkoff (Parks & Rec. Rep)

Town Councilors Present: Steve Walker, Kathy Wilson

Staff: Dan Devereaux (Coastal Resource Manager)

Harbormaster Report (3:05)

Harbor Master Dan Sylvain is in the field so Dan Devereaux updated the committee.

Devereaux reported that mooring renewals continue to come in. There is a possibility that there will be an appeal on a mooring denial at the next RCWC meeting. If this goes forward, it will be the first appeal heard by the RCWC. According to town code, if the the commission agrees with the reasoning and decision of the harbormaster at the appeal, then the appealing party needs to go to court to continue their attempt to overturn the decision. The town attorney has written a letter which will be provided to the commission prior to the hearing if the party goes forward.

In response to a question by Doug Niven, Devereaux reminded the commission that the deadline for mooring reregistration is May 1st.

AGENDA

1. Mare Brook Watershed Assessment (7:15)

Chair Melendy told the commission that he had contacted Amanda Bunker who deferred to a letter from Sandy Stolt with updates about the Mare Brook Watershed Assessment. At this point, the Mare Brook group is waiting to schedule more meetings to gather additional public input and to disseminate information already gathered. Melendy will forward the letter from Stolt to the commission and will request a presentation before the commission when the report is available. Even if Mare Brook is not officially part of the purview of the RCWC, since the waters flow into the bay, Melendy wants to keep the commission updated on this work.

2. Airboat Legislation (9:58)

a. L.D. 89 An Act To Regulate Airboats

b. L.D. 114 An Act To Address Airboat Operation in the State of Maine

Melendy informed the commission that IFW held a working group where they made a decision about regulating airboats. After a lot of discussion, the group approved LD114, which was sponsored by Jay McCreight of Harpswell. LD114 better accommodates harvester concerns and is more consistent with actual noise level generation, than LD89. Under LD114, 75 decibels will be permitted from 7pm until 7am and 90 decibels will be permitted during the day; LD89 would have permitted only 65 and 75 decibels respectively. Professional testing of noise levels has not yet been done but is expected in the coming year. The law has a sunset provision to expire in one year. During that time, professional data should give a better idea of noises actually generated by the vessels loaded with shellfish. Melendy testified before the group in favor of doing the sound studies prior to passing legislation but also saw LD114 as the more favorable of the two options presented.

Asked for additional comments, Devereaux reported that the group wanted to make sure that the law is enforceable. As discussed and passed, the law will be very difficult to enforce and there were no fiscal notes attached to either bill. During the workshop, they were communicating with Rep McCreight, asking her to clarify with the commissioners of DMR and IFW that the state will be responsible for enforcement. Commissioners confirmed that the state will be responsible for this.

Melendy asked how many shellfish airboats there are in Brunswick. Devereaux replied that we have 18 boats which service over 30 harvesters. Melendy noted that the complaints that generated this legislative action were very localized and the law will be enforced state-wide. A lot of the discussion at the work group centered on areas that currently do not have problems but will be required to comply with the noise levels. Melendy also asked how many commercial harvesters are using airboats statewide and how many municipalities operate airboats. Devereaux answered that there are about 23 airboats used by commercial harvesters statewide; IFW has 4 or 5, and Brunswick and Harpswell each have one. Other towns that are on the mudflats are looking at purchasing them because they are a great platform to work out of.

Melendy noted that most of the noise complaints were generated in the Harraseeket River which has very different sound dynamics than Maquoit Bay and a single number doesn't seem to be a good fit due to variations between specific locations. Earlier in the year, local harvesters organized a demonstration for commissioners from DMR and IFW at Maquoit Bay so they could be exposed to launching noise. Sound decibel levels in LD114 do not apply when boats are launching or breaking suction after sitting in the mud; navigational emergencies were not mentioned. Municipal vessels are exempt.

Cory Theberge commented that the lighter boats make less noise. Can the issue be viewed as limiting the size of the boat — including with passengers and haul? Instead of doing sound enforcement, can they limit the size of the boats or power as a possibility? Maximum load and engineering issues would need to be looked into. Are the larger boats overpowered and thus overloud? Boats are all different size, as are the size of harvest and number of harvesters carried in the boats.

Devereaux answered that the legislature discussed technology to bring down sounds levels. One of the representatives at the local meeting mentioned that the state is getting federal technology funds and has asked the commissioner of DMR if some of that money can be directed towards the boats. The DMR commissioner seemed to think that this a possibility and that when they get those funds, the technology will be listed as part of possible grant funding to improve the operation of the older boats. Theberge commented that we can justify being strict about the motors and the mufflers on the airboats; everything else is need-based. Melendy cited the discussion during the working group about helping to standardize airboats with the grant funding that Dan mentioned. Various upgrades were discussed at that time.

Melendy asked to stay in the loop about when work starts on the sound testing. The standards (J1970 Shoreline Test) used in LD114 were designed specifically for recreational vessels and have now been applied to commercial vessels. He is concerned about this and recommends the commercial fishing industry pay attention to this issue. Devereaux answered that several commercial fishing people wrote in to oppose the laws. Devereaux thinks that the work will continue this coming summer and that these issues will be addressed. The test methodologies will be looked at to ensure that the most appropriate ones are used. It's the noise at the shoreline that matters, not the noise at the boat.

3. Evaluation & Ongoing Aerial Monitoring of shoreline projects (28:06)

Chair Melendy introduced this item as he had requested additional aerial monitoring based on discussion in February about the Miller Point project. Due to scheduling of the town's drone, this monitoring has not been done yet. Melendy would like to have drone footage in order to have both before and after records of projects, and to have a historical record to help with analysis of long term project impacts.

Devereaux noted that the town's policies and procedures for drones have changed since they starting using them. Drone use is now very controlled in terms of what it goes out for and what is being looked at because there are constitutional rights that could be violated. Devereaux then shared images of Miller Point based on Google Earth available online. The oldest image was from 1997 and shows shoreline hardening and natural erosion. Images from 2006 through 2015 indicate little change in the landscape. Tree cuts for the stabilization project show up in the 2016 image. Project installation is complete in the 2018 image. Bill Good noted that there has been a fair amount of vegetative ingrowth since the most recent Google Earth image was taken. Melendy commented that he would still like to use the drone for consistency and detail, and a standard operating procedure to document areas of specific concern. Devereaux agreed that the town needs to develop a policy; if projects go into the intertidal zone, there should be continued monitoring to detect changes. Devereaux offered to work with town staff to develop such a policy.

4. Update on proposed zoning amendments to Section 4.3.4, Protection of Significant Plant and Animal Habitat (39:07)

Steve Walker introduced this item. After the Bowdoin College solar project developed more than 10% of the rare sandplain grassland habitat in Brunswick, the town ordinance required mitigation for rare communities or important wildlife habitat. The town had a mitigation standard but no steps for how one should mitigate or define what needs to be mitigated for. Over the past few months, he and town staff have been working with the planning board to develop a process that clarifies what is necessary to first avoid, then minimize and finally mitigate for impacts in important habitat areas. Walker stated that they are making good progress but there are areas of continued concern, especially in the purview of rivers and coastal waters. For example, staff is recommending 500 foot exemptions for impact, which includes intertidal habitats where implications could be felt far beyond the 500 square feet of impact. The existing ordinance already requires that impacts be defined by impact on adjacent areas. The group is wrestling with how to address this.

Another issue of concern is monitoring. If an applicant mitigates by restoring, town staff doesn't believe they have the resources to monitor such projects. Walker argued that the monitoring should be the responsibility of the applicant. This is how it works at the state level.

The current ordinance includes important habitats identified by both the state and the town. Staff wants to delete the habitats identified by the town. Walker states that this defers authority back to the state; we have lots of local expertise that we should take advantage of and we shouldn't just rely on the state.

Overall, Walker believes the group is making progress and improving the ordinance by enacting what was stated during the ZORC process. He noted that the commission should continue to follow this work because some of the coastal and intertidal issues will need the commission's input, especially if anything moves forward with the 500 foot exemption. There will be a public hearing with the planning board and then the issue will go to the town council.

5. Simpson's Point Citizen Advisory Council (51:40)

Devereaux stated that the advisory council has been established but town councilor members have not yet been appointed. Walker hopes that this will happen at the first town council meeting in May.

Sue Stableford cannot continue to sit on this council. Helene Harrower had initially volunteered for the position, but as this is her busy time of year, cannot commit to attending all of the meetings. Will Wilkoff is interested but is concerned that the Rec Commission already has two representatives on that advisory council. Devereaux will follow up with staff to determine if Wilkoff can serve.

6. Intertidal Court Case Appealing Law Court Decision (56:12)

Devereaux introduced the court decision concerning Moody Beach. A group of reputable, experienced people who have worked on clam flats and beaches for years are trying to reverse the court decision which establishes private rights in the intertidal zone except for fishing, fouling and navigation. The challenge states that beaches are public and should be owned by the people of the state of Maine and that the court erred in its decision. He will continue to monitor this case. Devereaux thanked Good for the excellent articles he sends out for the RCWC to read.

Mark Worthing asked why they are choosing to sue landowners who are complying with current law rather than approach the state and to have the law changed. Devereaux answered that the attorney general is listed in the suit so the state is being sued as well.

Melendy asked if there were any other issues. Walker commented that in early May, there will be a town meeting with a public hearing on the change that will allow for satellite parking to happen at the Mere Point Boat Launch.

Meeting adjourned at 7:04 pm

Submitted By,

Sarah Brayman

Please note: These minutes are action minutes. The entire meeting can be viewed by visiting the Town TV3 website.

<http://tv3hd.brunswickme.org/CablecastPublicSite/show/4413?channel=1>