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MEMORANDUM

To: Matthew Beaton, EEA Secretary
From: David Pierce, Director
Date: August 16, 2018
Subject: Request to Initiate MEPA Special Review Procedure for Marine Aquaculture Permitting

SRP Request for MAPP

The Division of Marine Fisheries (DMF) requests you initiate a Special Review Procedure (SRP) – pursuant to the Massachusetts Environmental Policy Act (M.G. L. c. 30, ss. 61-62H) and Section 11.09 of the MEPA regulations – to facilitate the development of a state-wide *Massachusetts Aquaculture Permitting Plan (MAPP)* for private marine aquaculture and shellfish propagation and restoration projects in the Commonwealth. DMF through the Department of Fish and Game (DFG), in coordination with partner agencies within the Executive Office of Energy and Environmental Affairs (EEA), proposes to develop updated guidance for aquaculture project proponents and local and state resource managers involved in the review of aquaculture activities, and to evaluate the current permitting process to identify areas of efficiency and enhanced coordination while ensuring we continue to minimize adverse effects on the environment and public trust through project review.

The MAPP is primarily intended to encourage sustainable growth in the Commonwealth's private marine aquaculture industry and the responsible implementation of municipal shellfish propagation and restoration activities through the development of environmental and public use standards for aquaculture projects, and by expanding opportunities for agency, industry and public input on future aquaculture development in the Commonwealth.

We request that concurrent with your initiation of the MAPP SRP, you establish a Citizen's Advisory Committee (CAC) to assist with the development of the environmental and public use standards. We also request you waive the requirement to submit the standard MEPA Environmental Notification Form (ENF) to initiate the process. Instead, following an initial stakeholder engagement process to determine the scope of activities to be covered in the plan, we intend to submit an ENF-equivalent document for review that will outline the MAPP activities to be specifically addressed by the SRP. In an effort to encourage additional stakeholder participation, we are also requesting this letter be posted in the next edition of the MEPA *Environmental Monitor* for 20 days to solicit public feedback on the scope of activities and any specific stakeholder concerns that should be addressed under the MAPP.

A detailed summary with additional background information related to this request is provided below.

Aquaculture Opportunities and Growth

Marine aquaculture offers tremendous opportunities for the Commonwealth. This growing industry is providing much-needed jobs in the seafood sector of the economy and stands to support many more. If sited and operated correctly some aquaculture activities not only represent a sustainable economic use of our coastal resources, meaning they can be continued into the future providing economic opportunity without depleting non-renewable resources, they can also provide a net benefit to the environment. To ensure this sustainability aquaculture activities must be managed in a way that is compatible with the environment and other marine user groups.

The marine aquaculture industry in the Commonwealth has experienced remarkable growth in the past 20 years, and particularly within the past decade. In 2006, statewide shellfish aquaculture landings were valued at \$6.2 million. In 2017, annual shellfish aquaculture production was valued at approximately \$28 million¹ (and contributes an estimated 900 jobs on Cape Cod alone²). This growth combined with: (1) increasing interest in siting projects in offshore waters; (2) increasing complexity of operations; (3) growing interest in the culture of non-shellfish species such as sugar kelp; and (4) growing interest in aquaculture by municipalities and non-governmental organizations as a means of water quality remediation and coastal protection, are significant factors which warrant the Commonwealth to review its current aquaculture management framework with the goal of expanding and modernizing its scope while addressing stakeholder concerns regarding potential user group conflicts and the cumulative environmental impacts associated with some aquaculture activities.

Aquaculture Review

M.G.L 130 charges DMF with the review and permitting of marine aquaculture activities in the Commonwealth. The typical marine aquaculture project in Massachusetts also receives individual review by other state agencies under their respective statutory authority, including the Department of Environmental Protection (DEP), the Office of Coastal Zone Management (CZM), the Board of Underwater Archaeological Resources (BUAR), and the Division of Fisheries and Wildlife's (DFW) Natural Heritage and Endangered Species Program (NHESP). Projects also undergo review by local and federal agencies, which involve the participation of state agencies both formally and informally.

Projects that require a state agency action are also required to file with MEPA if specific thresholds are exceeded (e.g., ENF filings for alteration of ½ acre of Wetland Resource Area such as Land Under Water or work within Areas of Critical Environmental Concern).

The permitting process is considered confusing and difficult for many aquaculture proponents, many of which are independent or small business enterprises who do not have ready access to professional consulting assistance. The regulatory landscape has been identified by industry members and managers as a potential limiting factor for growth in the marine aquaculture industry.

¹ 2017 DMF Annual Report

² Cape Cod Cooperative Extension 2015 aquaculture report

Many of the proposed aquaculture projects reviewed by state agencies in recent years are of a similar nature and often receive standardized (“boiler-plate”) permit conditions. More complex projects may require additional consideration; however, if sited and managed appropriately, these may also have predictable characteristics and conditions. This predictability provides an opportunity for enhanced coordination of the permitting process.

MAPP

Under the MAPP, DMF proposes to work with partner EEA agencies to develop updated guidance for marine-related user groups, aquaculture proponents, municipalities, and resource managers involved in marine aquaculture and propagation activities in the Commonwealth. Guidance will outline the state permitting process and regulatory review triggers for a number of common aquaculture activities and related gear. Working with our partner agencies and a CAC established through the SRP process, we will evaluate the potential for environmental impacts and user group conflicts associated with these common aquaculture activities and identify practical alternatives and siting and performance criteria that project proponents could implement to ensure aquaculture activities avoid and minimize damage to the environment and conflicts with other user groups.

MAPP will serve to clarify the aquaculture permitting process in the Commonwealth and to provide review agencies with uniform and practical standards under which most aquaculture projects can be evaluated. Under an approved MAPP SRP, projects that exceed MEPA thresholds will continue to receive adequate and robust review. If the project adopts the relevant environmental and public-use standards and is proposing activities and gear types included in the scope of the MAPP SRP it may be eligible for an alternative MEPA review process established by the SRP and tailored specifically for aquaculture projects. Projects that are not able to meet the siting and performance criteria developed under the MAPP, or are of sufficient size and/or complexity to be outside of the scope activities covered by the SRP, will likely continue to be subject to the standard project review thresholds and criteria under MEPA.

An approved SRP for the MAPP will not eliminate the legal requirement for aquaculture project proponents to seek individual agency authorizations. However, through their participation in the MAPP SRP process, agencies will evaluate options for coordinated and expedited reviews through the development of formal policies, administrative guidance, or potential regulatory revisions.

Actions Taken & Requests

DMF has consulted with a number of our partner agencies, the DMF Shellfish Advisory Panel, the Massachusetts Aquaculture Association, Massachusetts Shellfish Officers Association, and the Marine Fisheries Advisory Commission on this effort. To encourage additional stakeholder participation, we request: (1) this letter be posted in the MEPA Monitor for 20 days to solicit preliminary public feedback on the scope of activities and any specific stakeholder concerns that should be addressed under the MAPP; and (2) concurrent with your initiation of the SRP, you establish a CAC to assist the development of the environmental and public use standards.

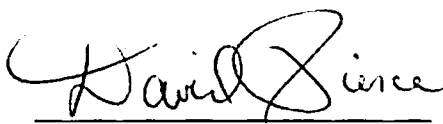
Throughout the process of developing the MAPP, DMF will hold regular meetings focused directly on specific agency and stakeholder concerns. These meetings and resulting reports and documentation will be designed to meet any project timelines and reporting requirements identified in your SRP certificate.

Additionally, working with CZM, we will tailor this effort to also meet the 2015 Massachusetts Ocean Plan objective to consider siting and performance criteria for offshore aquaculture in the Ocean Plan area. In order to coordinate these efforts, we propose the CAC also serve as the working group identified in the Ocean Plan. The CAC should include representatives from: commercial aquaculture businesses and organizations working in support of the offshore aquaculture industry, representatives of the commercial and recreational fishing sectors, environmental organizations, coastal cities and towns, regional planning agencies, and state and federal agencies. *DMF and CZM will both provide staff to support the SRP process and coordinate CAC activities.*

We also request you waive the specific requirement to submit the standard Environmental Notification Form (ENF) to initiate this process. Use of the standard form at this point in time may be premature as we would like to begin this process with stakeholder input and engagement to help define the scope and nature of the requested SRP. We do recognize that many proposed projects will likely exceed thresholds pertaining to wetlands and some may be in areas known to contain both estimated and priority rare species habitat, adjacent to significant cultural and historic resources, and in Areas of Critical Environmental Concern and in Outstanding Resources Waters. Following an initial stakeholder engagement process to determine the scope of activities to be covered in the plan, we will submit a MAPP Outline (ENF "equivalent" document) for CAC review and then public comment. The MAPP Outline will summarize all of the basic information on the project; including a concise narrative to identify how and to what extent the projects covered under the MAPP may exceed each of the MEPA and individual agency review thresholds. Following continued stakeholder engagement and a thorough review of impacts and alternatives, we will submit a document serving as a Draft MAPP (EIR "equivalent" document) for review, followed by the submission of the final MAPP for your certification.

Thank you for your consideration, and please reach out with any additional questions, comments, or concerns.

Respectfully,



David Pierce
Director

cc:

Dan McKiernan, Kathryn Ford, Chris Schillaci, and Jared Silva: DMF

Ron Amidon, Mary-Lee King, and Rich Lehan: DFG

Deidra Buckley, Eve Schluter, and Page Czepiga: MEPA

Bruce Carlisle: CZM

Thomas French, Amy Hoenig: NHESP

Lealdon Langley and Ben Lynch: DEP

John Lebeaux: DAR

Victor Mastone- BUAR

Proposed Special Review Procedure (SRP) Process

- A. DMF sends a request to the EEA Secretary to establish a SRP for the Massachusetts Aquaculture Permitting Plan (MAPP).
 - a. Notice of the requested SRP is published in *Environmental Monitor* for comment
- B. Secretary issues certificate establishing SRP for the MAPP. The certificate identifies:
 - a. Structure of Citizens Advisory Committee (CAC), and;
 - b. Timing and content of future review documents
 - c. Signed by proponent and Secretary
- C. DMF works with permitting agencies, CAC, and information from public comment period to develop MAPP Outline (ENF equivalent).
 - a. DMF communicates with specific working groups to determine the scope of MAPP
 - b. DMF communicates with partner agencies and CAC to identify permitting requirements, MEPA thresholds that will be exceeded.
 - c. DMF Submits MAPP Outline to MEPA and Secretary
- D. Secretary comments on MAPP Outline and outlines timing and content of MAPP (Draft EIR equivalent)
 - a. DMF communicates with partner agencies to evaluate impacts and alternatives
 - b. DMF works with CAC to discuss alternatives, prepare Draft MAPP (Draft EIR equivalent).
 - c. DMF submits Draft MAPP for CAC review
- E. DMF submits Draft MAPP (Draft EIR equivalent) to MEPA and Secretary for review
 - a. Notice is published in *Environmental Monitor*
 - b. MEPA Scoping Session / Public Meeting
 - c. DMF works with CAC and other to address any unresolved issues and public comments.
- F. DMF submits MAPP (Final EIR equivalent) to MEPA and Secretary for review
 - a. Notice is published in *Environmental Monitor*
 - b. MEPA Scoping Session / Public Meeting
- G. Secretary issues certificate on MAPP

Sample Outline for Massachusetts Aquaculture Permitting Plan (MAPP)

- I. Executive Summary
- II. Introduction, history, and current aquaculture activities in Massachusetts
 - a. Legislation and regulation
 - b. Economic value of aquaculture/shellfish
 - c. Current aquaculture practices in Massachusetts
 - d. Current municipal siting process for aquaculture
 - e. Current state permitting process for aquaculture
- III. Description of aquaculture species and habitats
 - a. Shellfish species
 - b. Algae species
 - c. Habitats in which aquaculture takes place
- IV. Current aquaculture practices and their impacts
 - a. Gear Type/Region/Species/Habitat #1
 - i. Practice description (include what species are grown this way)
 - ii. Impacts
 1. Types of habitat modification
 2. Ecosystem impacts on non-target biota
 - a. Entanglement
 3. Navigation
 4. Broodstock
 5. Invasives
 6. Etc...
 - b. Practice #2
 - c. Practice #3
 - d. Etc...
- V. Standards for Siting and Permitting
 - a. Standards for each practice (e.g. no digging up eelgrass) (and if the standards can't be met, identify what other review or permit application is triggered)
 - b. Standards for public notification
 - c. Standards for reporting/monitoring
 - d. Explicitly identify how standards meet MEPA, DEP, DMF, and CZM permitting requirements
 - e. Explicitly identify standards that apply in the ocean planning area/ACEC/etc.
- VI. Summary and Recommendations
- VII. Written Comments
 - a. Comments on ENF & EIR Scope
 - b. Comments on Draft EIR
 - c. Comments on Final EIR
- VIII. Literature Cited