

Mark Ells
Town Manager
367 Main Street
Hyannis MA 02601

August 8, 2023

RE: Cotuit Oyster Company - Above Water Aquaculture Equipment - in Cotuit Narrows

Dear Mr. Ells:

I am writing to express my concern about the adverse impacts of the Cotuit Oyster Company's above-water oyster aquaculture equipment on the use and enjoyment of the Town's public marine resources.

The Colonial Ordinances codified the "public trust doctrine" more than 300 years ago, which holds that the sea belongs not to any one person but rather to the public at large.

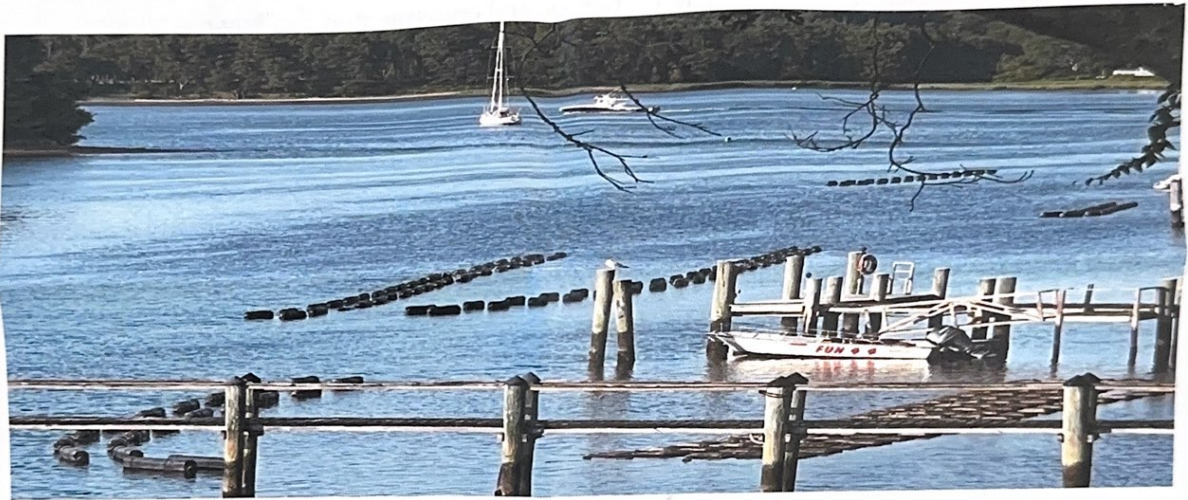
Fast forward to 16 years ago, during which time the Town of Barnstable exhaustively evaluated two separate permit applications for above-water oyster farming equipment in West Bay and concluded, among other things, that:

"The public demand for the non-exclusive use of limited town marine resources has increased dramatically and continues to do so while the availability of marine resources and natural marine habitat to the public continues to decline." (See 2007 Decision of Barnstable Town Manager John C. Klimm - Application for New Aquaculture In Re: Albert H, Suprenant).

And:

"The \$12,50 paid to the Town each year by the applicant, for his exclusive use of this public marine resources area, together with any other economic benefits derived by the applicant or by the Town and its citizens from the aquaculture business - - - would be far outweighed by the diminished value of this pristine conservation and recreation area to the Town with its growing population, diminished recreational opportunities for the public and its economic reliance on tourism." (See also 2007 Decision of Barnstable Town Manager John C. Klimm - Application for New Aquaculture In Re: David Ryan).

This legacy Town reasoning is even more true today than it was then. Yet, an industrial-scale above-water oyster farming operation is now being shoehorned into one of Cape Cod's most heavily utilized waterbodies – the Cotuit Narrows (see the photographic examples below).



This business strategy diminishes and degrades the value of this area to property owners, nature lovers, bird watchers, swimmers, fishers, boaters (including small sailboats operated by children sailors), kayakers, paddle boarders, rowers, children, families, and visitors.

Worse, the scale, location, and operation of the above-water equipment of this private business are in collision with common sense due to the obvious health and safety risks presented by where these devices are located (see photos below).



Moreover, at present, many of these devices are located in waters that the State required to be temporarily closed to public shellfishing due to repeated high fecal counts. On information and belief, the movement of oysters of a specific size from a temporarily closed area to other areas - during the temporary closure - is strictly prohibited. Confirmation of compliance with this important safety protocol is in order.

And how does any of this make any sense whatsoever, as Cotuit Oyster Company has approximately nine acres of alternative and available grant waters that are not identified as fecal-infested?

Notably, certain of the subject practices may violate existing Town Aquaculture Regulations, including but not limited to the grant of the existing Cotuit Oyster permit (and its legacy permit), which may have failed to comply with Barnstable rules requiring specific notice to abutters of any change in use from underwater farming to above-water farming.

The continued expansion of this above-water equipment, and the resulting impacts on the immediate area, may also undermine the massive investment of public funds in the dredging of the Cotuit Narrows.

The efforts of our neighborhood to obtain the cooperation of the Cotuit Oyster Company in addressing these issues have too often been met with unnecessary hostility and indifference by the Company. And in this regard, no aquaculture permit should constitute diplomatic immunity from the disregard of the rights of others.

It is not in the best interest of the Town or the shellfish and aquaculture community that a single private business interest be given priority status over the interests of the public on property owned by the people rather than owned by a private business. Particularly where, as here, the

private company has multiple proven options to successfully grow its oysters—without using offensive and problematic above-water equipment.

Above-water practices, which are operationally easier and financially advantageous for a single private business owner, are not sufficient justification for interfering with the rights and financial interests of the neighboring community. Oysters had been harvested successfully in the Cotuit Narrows and Cotuit Bay area for a century without deploying above-water apparatus. And so, too, is the case throughout Barnstable Harbor, where to this day, millions upon millions of oysters are successfully harvested without offensive above-water equipment.

I urge you to act on this issue and to protect the public trust waterways in the Cotuit Narrows and Cotuit Bay area. And meanwhile, I urge that the Town consider a moratorium on above-water oyster equipment in this area until it has first developed a comprehensive and balanced plan for the appropriateness of such devices. Continued piecemeal renewals of ten-year licenses are not in the public interest.

We welcome the opportunity to meet with you so that you can tour the area and witness firsthand the unsuitability of the expansion noted above. The risks of further development of this industrial-scale abuse of the public trust are worrisome.

Thank you.

Sincerely,

Leonard Zon

2138 Oyster Harbors
Osterville MA 02655

Cc

**Councilor Gordon Starr/ Councilor Eric R. Steinhilber/Councilor Betty Ludtke/
Councilor Nikolas Atsalis/Councilor Paul Cusack/Councilor Paul C. Neary/Councilor
Jessica Rapp Grasseti/ Councilor Jeffrey Mendes/Councilor Tracy Shaughnessy/Councilor
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Jennifer L. Cullum/Mark Ells, Town Manager/
Derek Lawson, Director, Marine and Environmental Affairs Dept.
Amy Croteau, Shellfish Constable /Stuart Rapp, Chair - Barnstable Shellfish
Committee/Brian W. Taylor, Harbormaster/ Cotuit Oyster Company**