

# TOWN OF PROVINCETOWN - BOARD OF SELECTMEN

SPECIAL MEETING- AUGUST 7, 2000

## JUDGE WELSH HEARING ROOM

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Chairman, Betty Steele-Jeffers opened the meeting at 7:00 PM, noting the following attendees: Board of Selectmen members: Elizabeth Steele-Jeffers, Cheryl Andrews, Mary-Jo Avellar and Secretary to the Board – Vernon Porter. Excused Absence: Richard Prowell and David Atkinson. Other Attendees: Keith Bergman - Town Manager, Mark Latour – Assistant Town Manager, Stephan Nofield – Town Clerk, David Ditacchio – Marine Superintendent and other interested parties.

The following are meeting minutes.

### **1PUBLIC HEARING: ATLANTIC BLUEFIN TUNA**

Application of Maguro America, Inc.

Representatives present for Atlantic Bluefin Tuna: Robert Fitzpatrick of South Chatham and Attorney William C. Henchy, representing Mr. Fitzpatrick and Maguro America, Inc.

Chairman, Betty Steele-Jeffers, read the public hearing then asked if anyone representing Maguro America, Inc. wanted to make a brief opening statement.

#### **OPENING STATEMENT**

Mr. William Henchy, PC- attorney from Orleans representing Maguro America and Mr. Robert Fitzpatrick owners of Maguro America, a Massachusetts Corporation owned by Mr. Fitzpatrick and his wife Laurie with offices located in Chatham, MA. The company exports fresh seafood products to Japan (Bluefin tuna) and sea urchin during the winter months.

We submitted, previously and I believe it has been widely circulated around town, both a memorandum describing the project, and a response to and a request for information by the Assistant Town Manager and the Harbor Master in a letter dated August 3, 2000 which I faxed in and the hard copy was sent to Town Hall.

Very briefly, the Bluefin Tuna fishery is a fishery in which fish are caught by several methods such as.1) Chumming – putting food or bait the over side until one takes the bait with the hook in it.2) Purse seining fishery – begins each year on August 15<sup>th</sup> - use of large net with sinkers on one edge and floats on the other that hangs vertically in the water and is used to enclose fish when it's ends are pulled together. Approximately 250 metric tons of purse seine quota available, which is approximately 1250 fish. Most fish are caught by the seining net method. When the net is pursed and the net is hauled aboard two things happen. The fish discover that they are encircled and try to escape and in so doing they swim faster and faster around in the net and as the net gets smaller they expend considerable energy trying to get away and also bump in to one another. By the time that's all over and the fish are hauled on board in the net, the quality of the fish is diminished substantially because of all the lactic acid that the fish build up in their systems as they try to escape as well as the physical bumping against one another, etc. That has the effect of doing two things to the overall market. The first thing that happens because the purse seine boats are only operational in the fall when the traditional rod and reel fleet is in its busy season, the fact that the purse seine boats tend to land a large number of fish at once – does something that the fishermen and the dealers refer to as 'bombs the market'. The market in Tokyo is an option based market and what happens is that fish buyers overseas literally bid on these fish, one at a time, against one another. So, the option market is extremely sensitive to supply and if there is a large supply on the market, at any one given time, the fish buyers simply do not have to bid up the price very high in order to get their fish and they in turn can sell it to their retail buyers. So, the introduction of large numbers of fish at one time, which is what happens inevitably when a purse seine vessel makes a set, then off-loads the fish has the tendency of depressing the prices for the entire fishery. I say that with some emphasis because I see that in some of the comments that I have received, courtesy of your staff, that there was a question as to how that process happens. There are so many fish on the market at once that an individual option buyer does not have to bid very high to get his/her fish and they simply don't and the overall price is depressed.

The second thing that happens, and this is particular to the purse seine fish; is that they do not command a high price in the market because of the physical effects in the manner in which they have been harvested. Now in the rest of the world, that is everywhere but the United States, where purse seine vessels are employed, notably Australia, Eastern Europe, Croatia, Spain, Mexico, and other countries, the way that this is dealt with is through

the use of holding pens, such as is proposed here. The distinction is rather than having the fish and, the net purse hauled on board in this proposal, which is not what is being proposed here, the purse seine vessel would locate the fish at sea and catch them in the same manner. But rather than closing them very tightly they would be wrapped up without constricting the behavior of the fish and another vessel called a towing cage would come along side; panels in the two nets would be opened up to join one another and the fish that are swimming around in the purse seine net would find the opening and go through it and then be enclosed in the towing cage. The panels are then closed up and the process of bringing the cage back to the side where the holding pen is to be located. That's a very slow tow – under 1-knot. For precisely the same reasons you don't want to purse the net – the point is not to spook the fish and get them to panic – rather to simply bring them along and allow them to engage in their ordinary behavior, when the towing cage gets back to the site of the holding pen. The same process is done in reverse. The panel is opened on the towing cage, the fish go into the holding pen– the panels are closed up and now the fish, hopefully, if everything has gone well (and it appears to be done well in the rest of the world where this has been done) they are now in the holding pen. The holding pen is, we described it in the papers; but for the members of the public who probably have not seen it, is an octagonal cage- 127 feet across and roughly 50 to 60 feet deep. It is anchored to the use of eight anchors, mooring chains, and lines. Our proposal is to have it anchored outside off Long Point – outside the boundaries of the National Seashore, - I want to say it again, outside the boundaries of the National Seashore, where these fish would be held and harvested, at the rate of roughly 25 fish per day, as marketing conditions would dictate, and harvested through the use of harpoon so that two things happen. One is that the price of the fish to the purse seine boats itself is enhanced because you don't have the degradation of the quality of the fish that occurs when they are harvested at sea through the traditional purse seine method. The other is that because you now have the ability to market the fish in very small numbers and most importantly to do it on days when the rod and reel fisheries are not going through a very busy day, you won't have that impact of bombing the market for the rest of the fisheries. So, the proposal will serve as a benefit directly to the boats by allowing a higher price at a higher quality of fish for the purse seine quota that is consistent with the National Marine Fisheries Service – Fishery Management Plan Goals of maximizing the economic return to the fishery. Secondly, you will not cause the effect of bombing the market and thereby diminishing the price for all the other rod and reel and harpoon fishermen who are still fishing during the fall – as a result of introducing large quantities of purse seine fish on the market at the same time the other fisheries are going through this busy time frame.

Madam Chairman that is a description of what is proposed here. There have been an awful lot of comments received in writing, I don't know how you care to handle the hearing – would you like to open it up to public comment or give a staff report or have me address these; I simply defer to your discretion on how to go from here.

**Chairman Steele-Jeffers.** I will open it to the public for proponents, general comments, and then opponents because I see some of the people who are in the audience have been represented in some of the material we have and at the conclusion of that I will give you a chance to rebut, then I will go to the staff report.

**Mr. William Henchy, PC**– The only other thing I would like to add, and I should by way of updating you on information as to where we stand with other permits, the project needs a Section 10 permit from the Corps of Engineers and that process, as we described at the informal discussion, is a joint consultation between the US Army Corps of Engineers and the National Marine Fisheries Service primarily, although there is also input from CZM and the US Fish and Wildlife Service. Joint consultation was held on August 3, 2000 since our last discussion and the Highly Migratory Species Division of the National Marine Fisheries Services has expressed to the Corps of Engineers its support for the project and the desire to go forward. The Protected Resources Division of the National Marine Fisheries Service has raised a number of concerns very similar to the comments raised to you particularly by the Center for Coastal Studies and to a much lesser extent the National Seashore in their comments. In general the concerns about this project focuses on many of the same things your Harbor Committee and Center for Coastal Studies have identified – namely concerns about entanglement and interactions with endangered species, particularly Right Whales but as well as the other whales present in the area, which are all Federal endangered species. Potential interaction with sea turtles, which are also, endangered species and concerns about protection of the water quality in Provincetown harbor and the habitat beneath the project.

We are generally supportive of most of the comments that have been made and are very amenable to discussion of how to address those matters. We know that that is going to happen at the Corps level. I saw a letter from the Town Manager or from the Assistant, I forget which, requesting joint consultation with the Corps, we are perfectly amenable to that. It is our intention to work these matters through satisfactorily for the town. After all, this is your harbor and we are very sensitive to that and although we are desirous of certainly utilizing this area

it's critically important to us that these fish have a very high level of water quality because without it they won't do well and it is critically important to us because we desire a long term relationship with the town that we do nothing to upset the environment of the harbor, its water quality, the marine habitat and certainly none of the endangered species that make this area so special. I just want to lay that out in terms of where we are on the Federal permitting. With that Madame Chairman, I will be quiet as you probably heard enough already.

**Chairman Steele-Jeffers** – I would like to repeat the way that I am going to try to do this because I feel that we probably have people who are proponents and may have people who are opponents. There's always that middle ground where we have people get up and say that I don't know if I am a proponent or opponent, so I am giving a general comment period.

For our Secretary, please state your first name and your last name and if you are speaking as a representative of some group, please add that.

### **PROPONENTS**

**Tony Jackett – Shellfish Constable** - I am speaking in favor of it and also for the Shellfish Committee. We met and discussed a number of issues and I think the presentation is quite clear and I think its overall benefit will be great for the town and we won't know a lot of problems that may arise until we do it. The harbor is vastly underutilized and I think when you look back historically we saw all the many traps and all the boats that used to come in – lay too in the harbor and clean their decks and a lot of the questions that people have of things that happened in the past, I think it will be a good thing for the town. (See attachments #6 and #8)

**Joe Vinagre – Cape Cod Bay Fisheries** – in favor of this project. Have 32 employees that will be in the unemployment line this year and this project will help. Just asking you to please take this project into consideration as it would be a good thing for the town. We should be proud of ourselves. The only place in the country that this is going to happen.

### **General Comments – which is Yes – No – Something to say.**

**Bobby Cabral** - know a project very similar to this and it was thoroughly investigated and it was approved. Too many things happened and it didn't coincide with the Japanese holidays, etc. If this man is nuts enough to go and get involved in this – then give him a chance. It would be beneficial to the harbor and very definitely a big plus for the fishermen.

**Paul Redlund** - Where they are proposing this is a prime recreational area where people swim, picnic, fish. My only concern with this project is the predator net. I would like to know exactly what kind of predators you're expecting and if I am out there swimming and these predators that can not get at the tuna and are excited by the chum are they going to decide to take a chunk out of me - So, what kind of predators are you expecting?

**Chairman Steele-Jeffers** – I will allow you to answer

**Mr. Henchy** – I believe the term 'predator net' is one used aquaculture industry-wide to keep predators from your fish away. Seals – I expect that seals will be the most critters that will come around.

**Paul Redlund** - I'm talking about sharks. Shark bites.

**Mr. Henchy** – I can't imagine that as we use a lot of herring and we intend to process the fish in a way that will not put blood in the waters.

**Paul Redlund** - say something did happen. If the town is going to enter into an agreement and get so much money per pound when this gentlemen sells the fish – does that mean that the town will be open to any type of liability?

**Keith** – sure. **Betty Steele-Jeffers** – but we would expect a bond or something.

**Keith** – yes, we would have some type of business terms worked out. Someone can always sue the town.

**Mr. Henchy** - First the town manager is quite correct, it's my business for better, for worse, but people can file law suits virtually over anything. That can and does happen. However, we've received comments from the Harbor Committee, the Selectmen, the Town Mangers office, all of which we agree with that would suggest that we would be required to maintain insurance on this. My client maintains a \$1M public liability insurance on all of his business ventures and we would see to it that this project is specifically covered in that respect. The town has also suggested a 'hold harmless agreement' in terms of any permit approval and that is certainly agreeable. The specific issue of a bond is problematic only because I don't know on the business markets how we do that but we are certainly willing to investigate something. We fully recognize that the town does not wish to borrow any trouble as the result of approving this and we are amenable to any terms that you want to suggest: insurance, hold harmless, indemnification agreements, and all the rest of it. I am sure your Town Counsel probably has an idea or two. Those are all things that we are perfectly willing to do.

**Custodio Joseph Silva Jr.** - I like this new category. We have been through this before – we were going to build a laundromat that everyone was going to use for years and was going to employ hundreds of people. Obviously, we got stuck with the bag on that one. We were going to have a boat that is going to employ 90 people – that

would be the best thing the town ever had – the boat is gone. My fears are, will we have a big cage out there in the middle of nowhere that just stays there and we, the taxpayers, be the ones that have to buy the crane to have it moved out. If it was not for past history, I wouldn't think this would ever happen. But since it has happened several times, you have to at least ask yourself will it happen again?

**Joel Ouelette** – You have to be in the game. Visit predator issue in detail.

### **GENERAL COMMENTS**

**Stormy Mayo** – I am speaking in a couple of different capacities, one I did deliver to the Town Clerk a commentary, I guess I was the commentator on behalf of the Center for Coastal Studies. I would like to very briefly visit that since it is already in your records and I don't think that I need to go over all the details. I would like to also make a couple of comments as a citizen and I will try to separate the two.

I am familiar with the projects penning tuna. I tend to favor the grow-out facilities although I know they are difficult, and those are ones where you take small fish and grow them up, that's a nice true aquaculture approach. Unfortunately, this one does not do that but it certainly makes sense from an economic point of view as far as the applicant is concerned. I spent years tuna fishing with my father and I should just say to disclose that my father since the very beginning when the Northern Explorer came here in the 50's and started seining tuna fish was perhaps some of you know a staunch and national recognized opponent of seining. We know that he was right in retrospect, the tuna population of the Western North Atlantic have been suffering in spite of what some people believe. So, I should say broadly I would very much like to see less support of seining which intends to not spread the wealth and hit the population very hard. On the other hand I support this project in its broad concept because it does represent a way of working with the market in an intelligent way. I think it's an advance way of bringing fishery to this community. So that is sort of my under penning.

The two areas of concern that I've expressed are: one, that related to marine mammals, and I will not spend much time on that because I do not think that it is very much your responsibility. I'm not sure you could hold up a permit based on that, I think that is up to the Federal Agencies their concern and the applicant I'm will listen to what they have to say. I would just mention that Northern Right Whales are in this and, they are now probably the biggest concern in large mammal biology in the world. They happen to be here and we are increasingly realizing Cape Cod Bay and Provincetown Harbor are a very important part of their potential but maybe failed future and there are comments in your packets, I think, to the effect of that. I've talked with the fishery services and I am sure I will be talking with the applicants in the future about ways to mitigate the problem. Let me say on that though, I do not think that this is a very substantial problem. I think there are ways of getting around it and I've suggested those in the insertion that I have given you and I think there are ways of reconstructing or looking at the project in some detail and making sure it does not catch a whale. Catch a right whale and we are looking pretty bad – if not going to jail.

I'll leave that and go to the last of my areas of concern and that relates to water quality which I think is something you should consider. Indeed, there is a similarity between what these people are planning in feeding the fish and chumming. The similarities do not go too far. This has a much more intensive impact on a potential aquatic system. Indeed, in the past there has been a lot of material thrown in the harbor, organic material, and it is hard to say how good that has made the harbor versus how bad. The system has clearly changed in the last three or four decades that is not to the positive benefit to either our tourist economy or those who fish and swim in the harbor. I'm not raising an alarm, I am just saying that by the addition of organic material lots of unseen things happen and those things are often difficult to track and they change the harbor forever. This harbor is not the high flushing harbor it once was. It flushes enough for tuna, they require a very high oxygen tension. I do not have any doubt that the applicant will be very much concerned about flushing rates, that means a sweeping pattern of the water. But it is not a harbor that is equivalent to what we had in the old days so I am not sure that we can generalize. I do think we are going to get a lot more animals like lobsters and in some respects that may be better. I do also think that you might want to consider encouraging the applicant on a few points and they are ones that I think contained in my note to you all and also others.

One, I do support the idea that projects of this size, especially with some of the concerns that have been voiced, be considered a pilot project. That is what we have done for other projects of its kind, you will remember the musselbeds that I testified on in the past, the New England Aquarium's plan for the tuna pen grow-out facility, now this one. All that a pilot project does is give the applicant and the town a chance to have a formal discourse again should there be issues not brought up on either side. So I hope that you will look at it and the Federal Agencies would look at it as a pilot project with a certain review process without thinking you are going to pull the rug out from under anyone, but just making sure that it works.

The second aspect that I would like to encourage, while the applicant is doing a great deal of water testing is to make sure that we do not run into an unforeseen problem, and I have to emphasize I do not believe that this is

going to be a mess but it conceivably could be. I would like to see that there be some sort of very broad standards, not with respect to the tuna, I am sure there are standards required to keep these animals alive, but I would suggest that in at least the principal nutrients there be a simple tracking. I would be glad to discuss with the applicants and with the Board of Selectmen the details of how that might be. I think that kind of thing can be worked out but you should not say “will follow standards” without knowing exactly what the standards are – at least they are not spelled out, it might be helpful for all of us to do that.

Lastly, and it is kind of on this broad subject, I would hope that as in past projects of this kind that there is an insurance clause or some sort of indemnity built into it so that if, as was suggested with the mussle project in the past is there is some sort of disaster and this thing comes up on the beach or wrecks, it is big enough to wreck some of the marine facilities, that there is a way of being sure as Custodio mentioned that we do not get stuck with something. I think the people running this project are well meaning, and I would like to point out we are not going to make millions of bucks, by the way. When we talk about this as being good economics, the gentlemen here are the ones that make it but that is their right and it will spin off, but we should make sure that there is a way of being certain about the future.

Lastly, I would also like to point out, first on the issue of predators, I am not concerned about that. There is a tremendous resource out there and the number of white sharks that are north of the cape is exceedingly low. Run into one of those, of course, and it is a different game. By-in-large I do not think that you have to worry about that from any other point of view but entanglement of whales, seals and whatever. So, I think we do have to worry a little about this being an attractive nuisance bringing in animals we do not want, perhaps birds we do not want, but if there is a control over the lost material here I don't think you will have a problem.

I hope that will cover the whole and I encourage you to in a friendly way keep the applicant honest as he will keep us honest and I think it is a fascinating project and one that I hope will work and make these gentlemen a million dollars. (See attachment #3 – Center for Coastal Studies)

**Joyce Guide, Harbor Committee** – Supports plan in concept, go slowly, wants questions answered. Would like to see staff report concerns answered (See attachment #7)

**Casey Smith** - If there becomes a concentration of fecal matter – who takes care of it? Who will pay the cost? How long will it take?

**Mr. Henchy** – I think this is an important point and one that is obviously sort of the underpinning of the concerns that have been expressed all along. I would answer it on two levels. First of all, everything that we have heard from the Center for Coastal Studies we agree with, both in terms of the written presentation and what I have heard from Mr. Mayo. One of the comments proposed was to articulate some standards for water quality and require a cessation of holding tuna if those standards were exceeded and I think, without having discussed that in great detail with my client, that at least makes a lot of sense. First of all we can't have these fish dying in the pen. The point is to hold them alive, they require a very high quality of water and require well-oxygenated water, and levels of low dissolved oxygen and high nitrates and nitrogen in the water are simply not going to be good for the commercial success of the venture. So, candidly, we anticipate and expect that both the Federal Regulatory authorities as well as some of the talented people here in town will suggest what those standards ought to be; and that is not something we have any trouble dealing with.

In terms of the issue of clean up and who is responsible, it is a very simple answer – if we cause a problem in the harbor it is our responsibility to address it and the staff has made any number of suggestions in terms of an agreement with the town and the applicant here in terms of how to address those matters. They are all fairly reasonable suggestions and I am sure we can come up with language that is acceptable to Staff, the Board, and the Town Attorneys to address those matters. I suppose that I cannot anticipate everything that might happen - if a hurricane were to bust up the pen, precisely how would it be cleaned up? The pen is engineered to handle rough water.

**Robert Fitzpatrick** - The cage is state of the art and is used in unlimited fetch conditions in the North Sea to take salmon through seven meters seas alive. It has eight 1500-pound military style anchors and thirty-seven millimeter chain. It isn't going anywhere. It is over kill for that location by ten times.

**Malcolm Cote** - How long is the your season going to be?

**Robert Fitzpatrick** – From the 15<sup>th</sup> or so of August until, we think we, can hold fish around the first few days in December. Some years December 7<sup>th</sup>, some years December 10, some years Thanksgiving, depending on the ecological condition in that particular year.

**Susan Avellar** – here tonight on behalf of the West End Racing Club. Concerned over the water quality and swimming area for kids.

#### **OPPONENTS**

**Heather Bruce** - Very much opposed to it as are many people who I talked through out town. I think it is a huge

project even though we have a large harbor. Looking at the diagram the actual octagonal cage might not seem that big in that area but my brother who has done a lot of computation and took another diagonal line around it that went out 300 yard where apparently no one can get within 300 yards of this cage and that diagram takes up a huge area of that – underneath that armpit of the Cape and actually even goes into the National Seashore, which I don't quite understand how that can be that now National Seashore land would not long be trespassable while this cage is in place. The other thing that really concerns me is just that it's a huge number of very large fish that are almost like whales and the swimming pool area that each fish individually would be given is not a very large amount of space for a fish to really maneuver around. I was told by a fisherman friend of mine that there was somebody who did a project similar to this a few years back and that it was disbanded because all of the tuna (I believe it was tuna), started just bumping into each other and they got so bruised that they just died. I haven't heard anything about that. I am wondering if anybody knows about that and if the net ended up somewhere, the netting and stuff ended up on the beach. It seemed to be a real disaster.

I think my biggest concern is the harpooning of them in that space. It think there is going to be a tremendous amount of blood so that the harpooning and the actual fish that they would have to eat, which is a huge amount of tonnage, I don't believe that our harbor can handle that kind of flushing. Just knowing how the harbor is already, we already have a harbor that is overburdened. I think to put that many slaughtered fish, I think I heard 25 a day that's going to impact a huge area, I don't even know if 300 feet around it would start to even look like clear water. If someone's kayaking around there, are they going to be going through bloody water? Lastly, the mooring fee price- \$8,000 is that correct?

I know there is another benefit per fish or something. But what I am saying just for the mooring fee alone that's a huge area of the harbor that would be off limits to kayakers, boaters and fishermen who want to catch their own fish. I just don't see a project like this that has so many questions and possible problems that the kind of money that you're even talking about here is even worth investigating it. To me it seems rather ludicrous and that is all I want to say.

**Mr. Henchy** - Do you mind Madam Chairman, because that one I would like to respond to, if I might? There are a couple of things thrown out that I think are a little bit – maybe its miscommunication. First thing is this business of the whole area being off- limits and a 300 yards area around the area being off-limits to anybody, I just do not know where that is coming from; it certainly is not our proposal. Certainly the area of the cage itself would be off-limits. The fish that are in the cage are the property of the vessels. Certainly we do not want boats zipping right around the cage; we do not want to spook the fish and so forth. But the area that is proposed to be permitted is not owned by my client. That is not what was proposed at all. That is an area in which we are seeking permission to locate the cage. That area will remain open to the public and will remain open to kayaking, I suppose it will remain open to lobstering, remain open to all the other uses that are traditionally made the harbor. It simply is a site in which we are requesting permission to locate this cage. The reason it appears so large on the diagram is because the anchoring system has to be encompassed within in the area that we are requesting. So, the first point is I do not know anything about a 300-yard off-limit area around this and that is certainly not in our proposal. Secondly, the prior project that was referenced was a pilot project that was proposed by the New England Aquarium to be a grow-out project, as Mr. Mayo indicated. That, in fact, was done off the Virginia coast with small tuna. They were successful, and they were kept in the cage, successfully fed and grown out. In fact, I think they survived a hurricane or tropical storm that blew through that area. I happen to have, in my own collection, some video taken in the cage, of the fish being fed, from under water. It was proposed and permitted for the harbor here but the staff person at the Aquarium who was doing it moved on to another job and I guess the Aquarium did not conclude the project. The net itself was a bit of a tragedy. It was a very well built net that ended up being donated to the Massachusetts Division of Marine Fisheries. It was stored at their facilities in Gloucester and when they moved from one building to the next the people doing the move did not know what it was and threw it out. So that is what became of that net.

**Betty Steele-Jeffers** – What about the blood in the water?

**Robert Fitzpatrick** - Fish we butchered – we butcher them into vats that contain the blood and the fish. Approximately 25 to 30 per day. They will be harvested at the site.

**Heather Bruce** - The 300 yards. Where I got it from was the Harbor Committee's letter dated 7/21/00 on page 2 – first paragraph. The area is probably going to be a mess and you would not want people coming in to that area. My point is that those 300 yards encircling the pen is really going to be a prime off-loading area of the harbor.

**Joyce Guide, Harbor Committee Chairman** – Just a point of clarification, Madam Chairman. The suggestion was made by the Harbor Committee that other boats not be allowed to anchor in that area so that boat anchors would not interfere with the tuna pen anchor and then we would have to have people diving underneath to sort

out lines. It was not about restricting use entirely but in keeping other boats, especially transient vessels who do not know our harbor, from getting tangled up in anchor lines.

**Mark Finley** - You said that these cages would withstand a certain amount of seas.

**Robert Fitzpatrick** - This cage can go 7 or 8-meter seas with live fish in them.

**Mark Finley** - What mile per hour wind do you estimate your pen would estimate a bearing?

**Robert Fitzpatrick** - In P-town harbor? It would never happen. It is a mile and  $\frac{3}{4}$ .

**Mark Finley** - What about open water - what type of wind are we talking about?

**Betty Steele-Jeffers** - Lets stay to the point please - which is projects in the harbor.

**Mark Finley** - my question then becomes, is their need to having it inside the harbor?

**Betty Steele-Jeffers** - as opposed to putting it farther out. Is that your basic question?

**Robert Fitzpatrick** - Certainly less exposure to sea conditions is preferred. Ease of access to a wharf. Relatively flat surface to work on a daily basis.

## **OPPOSITION**

**Donna Heitzman** - Question of why we are starting such a project now and we really do not know the affect of the outfall pipe and the long term environment of the sewerage coming from Boston.

**Jean Freebody** - I cannot speak to this technically because I am not in the fishing industry. But I can speak as somebody who lives in, swims, sails, and walks the West End pretty much every day of my life here. I can also speak from the part of me that is vegetarian. It feels very uneasy to me. I don't like this. I don't like the way it feels. I don't like the way the questions are being answered. I can also say if the Banner was right in it's first article that it would bring perhaps \$8,000 to the town annually. If that is what it takes, I will vow to you right now that I will get you 100 people by the end of next week to donate \$80 a year to keep this project out of the harbor. A neighbor told me tonight to tell them I will give \$500, I'll write you the check tomorrow. So if the town needs that \$8K, please allow us another way to get it for you.

## **STAFF REPORT**

**Mark Latour, Assistant Town Manager** - We still have some questions in terms of the permits that are needed before the Town could even pass on this. Certainly there is the Section 10 permit from the Army Corps of Engineers, and that is simply for approval of any obstruction located in the waters. There may be an agricultural permit needed from the State Division of Marine Services and then, of course, the temporary mooring permits from the town. There is a range of issues; one of course is the entanglement issue that has been talked a little bit. It does not seem as though there is going to be any disruption of present uses in the area or that is debatable according to some speakers. There are certain things the town can do to decrease some of the negative affects of this project. One relates to putting flashing yellow lights on the corners of the moorings to make people aware of the mooring area. I think the town certainly needs to be informed of the results of the water quality monitoring on a regular basis along with agencies like the Center for Coastal Studies and certainly we need to work out some clarification in terms of insurance and bonding issues. In terms of financial benefits to the town it could be fairly considerable depending upon the number of boats that join the project, if the project is approved by the town. There are some jobs that could have a positive impact for the people of Provincetown in the areas of security, feeding and processing of the tuna. There are certainly other possible benefits: increase tourism, increase utilization of the harbor. There are a number of other issues, I guess, that should be taken into consideration. One is the eutrophication issue that has been brought up and certainly the issue of and attractive nuisance for birds, for endangered species, turtles, bait fish, seals. The National Seashore, I do not think spoke this evening, but they have a number of comments and one of them was that there should be certain monitoring protocols put in place which trigger the closure of holding pen project if certain conditions are not met. There is also a question that they raised about mortality of the tuna in the towing process and in the holding pen. The last comment was that if the town does approve it the Seashore suggested that there should be an interdisciplinary interagency technical review committee, which the Town might consider.

**Stephen Nofield, Town Clerk** - The Town Hall Staff that worked on this are very interested in this project and thinks that it meets the multi-use criteria and is really worth looking at and giving it kind consideration. (See report from Stephan Nofield included in Agenda Item 1A) Question to the project manager, in your discussion do you think the project will go ahead in this year (2000)? **Answer by Mr. Henchy**: I think it is unlikely. This joint review that was referred to took place on August 3<sup>rd</sup> and that is what I referred to in my prior comments. The Protected Resources Division of the National Marine Fisheries Service has plainly identified the species concerned - largely surrounding rightwhale issues and to a lesser extent sea turtles and other great whales. They, it appears, will request Section 7, that is Section 7 of the Endangered Species Act consultation. My information, for the moment, and we will have to wait to see how the written comments come out, is that that will be an informal consultation request; which is a rather expedited review but which will never-the-less touch

on all of the issues that have been raised and the written comments raised with the Board. As I understand it, the Highly Migratory Species Division and the Protected Resources Division are “discussing” the scope of the endangered species review that is going to be requested. So they are having their own internal discussion about that. But the direct answer to your question is, until the Protected Resources Division raise these matters and request consultation, we were on the fast track – I think we are a little bit off of the fast track, at the moment. I do not think it will be unduly delayed. Even if they request a consultation my expectation is that it will be a fall – winter time frame. But in terms of August 15<sup>th</sup>, it is looking dimmer all the time. After I had that information I passed it along to Mr. Latour as well. You will see that in the letter I wrote to the Board on August 3<sup>rd</sup>, which was last Thursday. I think the first paragraph addresses those matters.

Our recommendation is let the State do their thing to resolve those environmental issues, which is where that it can happen. Let us resolve the local tourist, traffic, and navigational concerns, which we are narrowing that gap now so that next year the Town of Provincetown is in place when the Federal and State permits are issued.

**Mr. Henchy** – I had been provided with the staff report and I forgot to do this earlier. I spoke with Mr. Bergman earlier today and I want to compliment your staff on a very thorough job of pulling together a lot of material for the Board's consideration. I've had a lot of experience with town permitting processes, I sat on the Board of Selectmen myself, and it was an exemplary job. On the proposed motion, I'm going to struggle here a little bit. The permit from the Town is part of the permitting process that we are required to go through. I believe your staff has correctly identified the permits that we need and we are here applying for one of them. I recognize fully that there are any numbers of issues that need to be resolved. I am going to say that a vote to table it is something we would like to see. Although I recognize that we cannot come to closure on all of these matters at the present time, what I would really rather see the Board do is consider a motion to either continue the hearing indefinitely and allow us to address the local matters with staff and come up with a proposed agreement for the Board's consideration that you could then reconsider perhaps following the issuance of the other permits. Or a vote to approve subject to a resolution of those matters and whatever the Board is more comfortable with would be what I would request. I do not feel too strongly one way or the other but I do not wish, having come this far and having presented a substantial amount of information to the Board, sort of being tossed in the never-never land of a motion to table which just completely kicks us off track and with no sort of end point as to when we come back, either to report a successful closure on issues, or to report a narrowing on the issues and request that you vote on the ones that have not been fully resolved. Those would be my druthers and candidly I would rather have a motion to approve subject to. I've been at this long enough to know that that may or may not happen. We would like, and I know you cannot take any kind of a vote, some sense from the Board of the Board's views on this matter, recognizing that there are a number of unresolved issues mainly water quality and marine habitat.

My client has planning business decisions to make. The cages themselves require a substantial investment and there is the matter of ongoing negotiations with the boats that are interested in knowing if this is going to happen or whether they should look elsewhere, not only for this season but for next. I realize you cannot bind yourselves until you have come to closure on all of these things, but we would like some feedback from the Board in terms of where you are at this point in time and would not prefer a vote to table the request – I'd like something different than that.

**Betty Steele-Jeffers**- I would like to echo your comments to the Staff for a very good report.

#### **Comments – Members of the Board of Selectmen**

**Cheryl Andrews** – Three areas topic-wise from me. One is the fee. I would like to know from Staff based on the fact that the use proposed and the area proposed is not something actually in the regulations instead is falling under mooring applications. Is that fee something that we can discuss or are you locking us into that? Quite frankly I do not think there is a direct relationship between the experimental nature of it and the fee in the sense of what we are tying up but at the same time somehow this mooring fee does not feel right to me, in terms of the effort expended by the town and the pilot nature of the project. So on one hand I do not want to economically impact what they are doing to the point where it ruins the point of it all, which is to make some money and at the same time I would like to have some comments from Staff on that.

The second is, I labeled in my note taking ‘outs’ meaning on the one hand I have a lot of secured feeling about these environmental issues because, quite frankly, as they have said, if the environment is harmed to the point that we are concerned – they are out of business. The tuna themselves are going to be in a lot of ways environmental indicators and measurers. At the same time what people are saying is that we want protection and if there is some kind of unforeseen problem we want to be able to put a halt to this as soon as we determine that that is what should be done. That, for me, I would like to see more, in terms of verbiage for the agreement between the town and the applicant; under what circumstances would this pilot project cease and what would the town have to do in order to activate that clause- as opposed to say that we are going to go to court. I want to

see very clear out language for this so that we are all on the same page on that.

The third is the same issue the applicant raised, which is process. Quite frankly I do not see us conditioning this tonight and why would we want to pull our hair out over conditioning when some of the issues that we are raising may be issues in the permits they have to get elsewhere. It seems to me that we are going to have to, if we have any interest in voting yes in any way, come back and have a vote and that was what my question of Betty was at right from the beginning- well are we going to have another hearing or are we not and it seems to me that a continuation makes a lot of sense because we are going to have to have, not necessarily more public input, but certainly examination by Staff and us of the issues raised in the permitting process so that we can, if we wish, to approve it. Those were the three areas that I am sort of looking to take care of.

**Keith Bergman** - I can try and answer those three. Maybe Mark and Stephan can fill in.

First, on the fees. A couple of things to say: one, that our regulations on moorings specifically say \$100 per mooring. The proposal on the table, a financial proposal is being made is \$ .10 per pound. I think we are free to negotiate business conditions, which either memorializes in an agreement.

**Cheryl Andrews** – can you separate the two issues you are raising because they are separate for me? You are talking about the actual set bottom fee for an application and you are talking about an unloading per pound fee, which is a separate fee – a pier user fee to me.

**Mary-Jo Avellar** – are you saying that you would want the fee to be lower than the mooring?

**Cheryl Andrews** – No. Those are two different fees. The mooring fees of \$800 - is that one set?

**Keith** – that is negotiable because you could amend your regulations to say that moorings used for a certain use could be charged on another basis. There is a process we would have to go through and there is precedent power negotiating business terms for a particular use that may be unique and then going to amend our regulations to codify that. That is how I say we should approach that issue. We should feel free to make sure other business uses are acceptable to the town and not feel locked in to a \$100 per mooring.

With respect to the issue of the pilot project and what terms it would cease – and maybe the other Staff members may have comments – I think, in general, we want to establish some written protocols that we want to go by.

On the process issue if the intent is for the Board to send a signal that we need to keep going in a direction trying to address the issues and satisfy ourselves that the issues are addressed, I think it would be appropriate not only to have the Board vote to continue the hearing, as the applicants attorney has suggested, but also to have the Board direct the staff to continue negotiating terms to be brought back to the Board for final approval. That sends a signal to us and to the applicant that we are heading in a common direction but that it is ultimately subject to the Boards policy approval at the end.

**Stephan Nofield** - The only issue is regarding the mooring and under Chapter 90 that allows the town to issue moorings. Its time frame requirements are annually. So, through our process of negotiations we would explore and resolve that issue.

**Mary-Jo Avellar** – I would like to, at the very beginning, agree to continue the discussion. I find this entire proposal very intriguing and something the Town of Provincetown needs to pursue as far as our fisheries are concerned. My primary concerns were issues raised by Dr. Mayo regarding fixed gear being removed when you close down your operation and the question about making sure there is a plan for the mammals that might become entangled. Not particularly concerned with comments made by the Cape Cod National Seashore because it is well known that they have tried to control what goes on in the harbor of the Town of Provincetown on more than one occasion. Clearly, in my opinion, they do not have jurisdiction and I think they should butt out. I clearly think that our harbor is big enough and that this harbor is seriously underutilized.

**MOTION:** *Move that the Board of Selectmen continue the Public Hearing; Atlantic Bluefin Tuna with the applicant, Maguro America, Inc and the Town of Provincetown continuing to develop protocols and continue discussions regarding the establishment of fees and the language that would need to be developed to enter into an agreement to be brought back to us sometime in the future.*

**Discussion:** **Cheryl Andrews** – A Roberts Rules question. Are we just going to continue it open-ended? Is that OK? **Mary-Jo Avellar** – I think we should just continue it open-ended.

**Betty Steele-Jeffers** - My comments and questions always go to providing jobs in town and I know that you touched on that a little bit the last time you were here and I would just like to have it repeated as to what you think we might expect for local people for employment and how would you go about recruiting them or would you be bringing them in from Chatham?

**Robert Fitzpatrick** – No, we would recruit them through Joe and security at any scale of significance would be very important, because the fish are valuable. Either the Harbormasters office, the Provincetown Police Department or a combination of them will be paid detail, certainly after dark on location each night.

**Betty Steele-Jeffers**- What would you consider the length of time for a pilot project? Are you thinking of doing this for one or two years or would you be hoping to get a longer-term arrangement. It was spoken as a sort of a pilot.

**Mr. Henchy** – not by my client but that has been clearly the reaction by any number of folks in town, the Harbor Committee initially. I would like to say that I thought the way Mr. Mayo characterized it was really best – not that it would be that you would have the rug pulled out from you but that there would be an opportunity in a formalized process for discussing, perhaps re-negotiating, and going through any issues that have arisen during the season to mutually satisfy both the town and the applicant. Plainly we would like to request as long a permit as the Board is comfortable giving. However, having said that, we are certainly amenable to any formal review process that we can work out with staff that would meet your concerns so that after a one year season of operation, we could meet again, either informally or formally as the Board would like and have a Public Hearing so that members of the public could comment. Anything that the Board feels would give a level of confidence to the town to go forward again. It is Robert's intention to have a long-term relationship with the town and to continue this project indefinitely in to the future. In order for those things to happen, he has to have good relationships with local fishermen, processors, town government and not make any neighbors unhappy that would come to you to make our relationship with the town unhappy. So, any process after one year and periodically thereafter to address those concerns is certainly something we are willing to do.

**Cheryl Andrews** – Quick comment. Echo Mary-Jo Avellar's comments, which for me personally, to send a message to staff and also members of the public where I stand on it is: any type of business interest that goes towards enhancing or growing fishery aspects that goes on in Provincetown will receive my support. I don't know what's going to happen anymore than anyone else does and we certainly are going to have to protect the interest of the town. I think it is a fabulous project for Provincetown and I wish you all the best.

**Motion by: Mary-Jo Avellar Seconded by: Cheryl Andrews Yea 3 Nay 0**

**Robert Fitzpatrick** – What has not come up here is a couple of things. Mr. Mayo said that it is not grow out. Well that is in the first year. Other countries do charge the quota that the country receives at the initial catch weight of the fish. These fish can put on 50 – 75 pounds a piece over a couple of month's period. Clearly it would be our intentions, long term, to get the US Government to allow us to do the same. It is already happening in other countries where they are on a quota and there are technologies available to estimate the size of the fish. The other comment I wanted to make is that this is purse seine fish now. The purse seiner's quota are ITQ's – they sort of own them. Whereas general category fisherman sort of have to catch them before everybody else does or lose out. We have spoken, not formally, with overseers of the resource about the future and the possibility of general category fish from hook fishermen doing the same thing. The issue at hand is how do you – you can identify – you have to catch the fish by trolling. I already have people swimming the fish for an hour at a time and they could bring them over and put them in a cage and pop the hook out and we could put a tag identifying say Johnny Wood's fish in the fishes back and at harvest time we would know who's fish it was. The stumbling block to that right now is that the quota would be caught in the general category and we would have all these general category fish. But long term we, clearly, want to head in that direction. There is a market glut that occurs when the resources start to buddy and the price in Japan is, frankly, getting low and lower at times of high production. I wish we were first in doing this rather than last but better last than never.

**Betty Steele-Jeffers** - This concludes this public hearing. I want to thank the audience, the staff and to Mr. Fitzpatrick and Mr. Henchy.

**Note:** Attachments #1 through #8 are included with Agenda item #1A.

## **1B PUBLIC HEARING: MCDBG APPLICATION**

Business Development Center, Water Transmission Main

### **Public Comments**

**Business Development Center** – See attachments #9,10,11 for comments by: Carol Mahar, Deborah Karacozian, Kate Wolf, Zoe Lewis, Sarah Burrill, Diedre Colburn-Morehouse, Andrew Zourides, Jack Kelly. Other favorable comments were received from general public but voices were inaudible. (Joel Quelett, Olga ?)

**WATER TRANSMISSION MAIN REPLACEMENT**- Comments from general public.

**Joel Ouelette** – supportive of replacing old pipe.

**Paul Redlund** - I'm confused. I thought the money from this block grant, as stated in the Banner, is to be used by low income?

**Michelle Jarusiewicz** - One of the thresholds for any activity is that you must meet a national objective. Generally speaking that is to provide a benefit for low and moderate-income people. The Town of Provincetown as a whole, under the 1990 US Census data, which is what they use, has greater than 61% low

and moderate income. So, as a town wide benefit we qualify for that kind of project. To improve water quality, quality and fire flows to the town as a whole which is greater than 61%.

**Paul Redlund** – So it can be used for any project because of that?

**Michelle Jarusiewicz** - Depends on the users of the project. Certain kinds of projects cannot fit. Example: We talked about redoing sidewalks in Provincetown and that gets to be a little iffy, but the water is more of a common thing that we all use and they have funded that project many times in the past.

**Betty Steele-Jeffers** – are there any other persons or organizations wishing to speak on any other aspect or use of this money?

**Robert Cabral**, Board of Directors Cape End Manor – We have been discussing a need for a new manor and we are now in the process of getting the Determination of Need. So many things come up that are beyond our expertise. We need somebody to help us so that we can come to the Board of Selectmen and tell you what we found out and it would be up to you people to proceed or not. We have people at the Manor but they are so over their head. So, if there is money or grants to help, it would be a great thing if you could help us to establish what is going on with the Manor and come back to you with some real truthful and complete information so we can work together.

**Sandy Dobbyn** – comments are not audible. Same concerns and remarks as Mr. Cabral.

**Michelle Jarusiewicz** – any project we apply for we need to have ready to go. It is so competitive you must have answers to all the questions. These grant funds have to be spent on a project that will be completed by December 2001.

**Keith** – I would view the Block Grant as a potential use of funds in the future that we could parlay with other funds once a project like a new Manor or whatever has been approved by town meeting for a local match or something. We have to be within sight of seeing that project completed because if it is not a competitive grant application otherwise we get a low score ready to go.

**Betty Steele-Jeffers to Michelle** – because you have a lot of knowledge in securing grants maybe you can assist them (Cape End Manor Board of Directors) in what they may be looking for.

**MOTION:** *Move that the Board of Selectmen vote to submit an application in the amount of \$600,000 under the 2000 Massachusetts Community Development Block Grant program for the Provincetown Business Development Center, Water Transmission Main Replacement, and general administration.*

**Motion by:** Cheryl Andrews **Seconded by:** Mary-Jo Avellar **Yea 3 Nay 0**

#### **1CDEM GRANT AWARD**

Historic Landscape Preservation: Winthrop Street Cemetery \$37,916

**MOTION:** *Move that the Board of Selectmen vote to accept a grant award in the amount of \$37,916 to the Department of Environmental Management Historic Landscape Preservation grant program for the restoration of the Winthrop Street cemetery.*

**Motion by:** Mary-Jo Avellar **Seconded by:** Cheryl Andrews **Yea 3 Nay 0**

#### **1DGRANT ADMINISTRATOR**

FY 2000 Local Law Enforcement Block Grant Application

**MOTION:** *Move that the Board of Selectmen vote to authorize the submission of a grant application to the U.S. Department of Justice under its FY 2000 Local Law Enforcement Block Grant Program for \$13,139 for various equipment including radios, computers, software, binoculars, and handgun cleaner for the Provincetown Police Department.*

**Motion by:** Mary-Jo Avellar **Seconded by:** Cheryl Andrews **Yea 3 Nay 0**

#### **1EPROPOSED USE OF CHAPTER 90 FUNDS**

Sidewalk Projects

**MOTION:** *Move that the Board of Selectmen vote to approve the use of \$71,587.62 in Chapter 90 Massachusetts Highway Funds, for the following projects:*

(1) \$43,000 for sidewalks on Commercial Street from Howland to Anthony; and

(2) \$28,587.62 for replacement of cement sidewalks around Town Hall with brick sidewalks (total project cost is \$67,000; balance from Town funds).

**Motion by:** Mary-Jo Avellar **Seconded by:** Cheryl Andrews for discussion

*Motion withdrawn by Mary-Jo Avellar Seconded removed by Cheryl Andrews*

**MOTION:** *Move that the Board of Selectmen vote to approve the use of \$71,587.62 in Chapter 90 Massachusetts Highway Funds, for the following projects:*

(1) \$43,000 for sidewalks on Commercial Street from Howland to Anthony; and

(2) \$28,587.62 for replacement of cement sidewalks around Town Hall with brick sidewalks (total project cost

is \$67,000; balance from Town funds).

**MOTION:** Move to approve item# (2) as written

**Motion by:** Cheryl Andrews **Seconded by:** Mary-Jo Avellar **Yea 3 Nay 0**

**MOTION:** Move to lay on the table item # (1) until we can get a report on why we cannot have decent cement sidewalks.

**Motion by:** Mary-Jo Avellar **Seconded by:** Cheryl Andrews **Yea 3 Nay 0**

## **1FWEST END RACING CLUB 50<sup>TH</sup> ANNIVERSARY**

**MOTION:** Move to approve the proclamation with changes to be made by Mary-Jo Avellar.

**Motion by:** Cheryl Andrews **Seconded by:** Mary-Jo Avellar **Yea 3 Nay 0**

## **1GAPPROVAL OF APPOINTMENT**

Treasurer/Collector: DMF Reorganization Plan

(1) **MOVE** that the Board of Selectmen vote, pursuant to Charter sections 7-2-2 and 7-2-3 to approve the reorganization plan for the Department of Municipal Finance set forth in Administrative Directive 2000-05;

**Motion by:** Cheryl Andrews **Seconded by:** Mary-Jo Avellar **Yea 3 Nay 0**

(2) **MOVE** hat the Board of Selectmen vote to approve the Town Manager's appointment, pursuant to Charter section 7-2-5, clauses (g) and (i), of Ryk Tyszka of Canton, Massachusetts as Treasurer/Collector.

**Motion by:** Cheryl Andrews **Seconded by:** Mary-Jo Avellar **Yea 3 Nay 0**

## **2.SELECTMEN'S STATEMENTS**

### **Mary-Jo Avellar**

Memo from Claudia Martin – suggesting that we name the first bench by the light pole and under the tree in memory of Popeye because he sat on it all the time. I'll move that.

**No seconded.** Discussion: **Keith:** - they have plaques in memory of and they have all been privately paid for typically by those who have donated them. It would be a precedent for us to name one in memory of someone.

**Mary-Jo** can we bring this up at the next meeting.

**Orareo** letter - refer back to Judith Oset for response.

### **Cheryl Andrews**

Serious complaints this summer about the fact that the ferries did not keep to their normal schedule during the Tall Ships events in Boston. While we may not have anything in our pier dockage agreement saying that they are obliged to maintain their schedule, it seems to me that there should be. **Betty** – Two points. 1) We have no control of Boston Harbor Cruises – they tie up at the Whydah Museum. 2) The other high-speed ferry (Bay State Cruise Company) ties up at Cabral's. Those two we have no control over. **Cheryl** - Did that Boston State Cruises keep its schedule? **Betty** – they let people know in advance if they did not and they also provided buses. Boston Harbor did nothing.

**Betty Steele-Jeffers** – David Atkinson's written comments. Will have Vernon make copies for fellow selectmen to read. (Attachment #12)

**Parking Administrators** – as of this date have not received a plan from Don Richards to accommodating participants of Lower Cape Selectmen's Meeting that will be held in Provincetown. September 28, 2000. Need to have this ASAP.

**High Pole Hill Road** – vote of Town Meeting. Where are we on this? **Keith** – Mr. Guertin and I met with Chuck Turley about two weeks ago and we are in the process of hiring for the survey. We can get an updated report to you.

Do we clean out the **garbage trucks** on a daily basis? Some really powerful smell trailing behind the trucks. How do we maintain these trucks?

**Goals and Evaluation** – We are one month in to the new year and we have not decided how we want to frame Keith's specific goals. (Evaluation points). Also revamping of job description and rules for spending. Suggest the first regular meeting in September for our Secretaries job description and the use of money.

Letter from the **Carrie A. Seaman Animal Shelter** asking the Stakeholders to be part of Pet Appreciation Weekend in September. Will talk about this later.

**Mary-Jo Avellar** - Letters need to be sent to Plimoth Plantation, and Warwick Charlton. (*Betty Steele-Jeffers will do the letters.*)

Motion to adjourn by Cheryl Andrews at 9:20 PM

Minutes transcribed by: Vernon Porter, Secretary-August 21, 2000