

Maine Regulatory Fairness Board
October 7, 2010
WCCC, Calais, Maine

10:00 A.M.
Opening Remarks, Eliot H. Stanley, Chair & Presiding Officer

Eliot welcomes attendees, introduces Board members, and explains the mission of the Board.

10:15 A.M.
Linda Cross Godfrey, Save Passamaquoddy Bay, Three-Nation Alliance

Ms. Godfrey expresses appreciation that there is a fairness board, and that the board has traveled to eastern Maine. She comes to speak to RFB about some challenges of the last few years, and with some recommendations for the future. Since 1991, founder/president Atlantic leadership company, a business consulting organization, she is also involved in The Common, representing artists of Passamaquoddy Bay, and is President of Dirigamoo, "we lead".

Whether or not LNG comes to Quoddy bay, this is a volatile topic that has led to discomfort and hurt within the community. Whether it's LNG, medical marijuana, or etc, these things seem to find their ways to remote towns and without state leadership or company representation assisting the locals. Eight years ago, LNG began to be of interest to people in Maine, first in Southern Maine as industry leaders attempted to place a terminal. Each location choice was fought by the respective community or other companies, and "it crept up the coast." The best places may have been in the southern part of the state, but Godfrey recalls a quote from the Governor in response the Harpswell's rejection of LNG, "There is always Washington County."

When LNG proposal came to Pleasant Point, area residents didn't even know what it was. There was an announcement for a community meeting to discuss the issue, inviting those who live there to speak in a talking circle (a practice embedded in the culture of the tribe), joined by various heads of state government, and staff "experts" who were "told" (by the state) to go to Pleasant Bay in support of LNG. Multiple developers had proposals for different port locations, but the route through the Bay remains the same, and this is a historically dangerous route. This is a David-and-Goliath circumstance where the players in support of LNG have millions of dollars. Thus, an alliance was formed to stop LNG from developing in Quoddy Bay.

- Passamaquoddy: Sipayik (Pleasant Point), Saint Croix Scoodic Band, and Indian Township tribal members.
- Canada: Campobello Island, Deer Island, Grand Manan, St. Andrews, St. George, St. Stephen, Charlotte County, New Brunswick, and Canada.
- USA: Eastport, Perry, Robbinston, Calais, Red Beach, Pembroke, Washington County, and USA

Six years has been spent trying to gain support from local interested parties and to secure regulatory approval. Developer #3 is still going through the process. DEP has given until December 1st to hold a hearing for which the Quoddy Alliance has 100 people ready to participate, but the developer keeps delaying.

Recommendations:

1. Maine would be well served to actually have what most businesses have: a complete process with a vision, values, and goals, but there is a gap determining "who are we", "what are we trying to do", and "how are we going to do it". Brookings Quality of Place report has done an excellent job of defining how Maine can create jobs and foster business while still protecting quality of place. This document should be put into a document for policies, process, and implementation.
2. A second policy, defined with FERC, is that these types of projects need to be fully decided by the state before the Federal review starts instead of continuing the in-state debates that are delaying the federal review.
3. An environmental justice during Clinton Admin stated that no community because of their location or economy should have to fight harder for their home or their job for environmental security. We propose legislation that actually brings the concept of environmental justice to action.
4. The Board of Environmental Protection needs to stay in place – allowing fair interaction from the public – this is important. BEP may further consider that once one of these developers is in the process and BEP is involved that all members of the board participate in all deliberations. Due to starts and stops in the Quoddy

LNG process, BEP has made and received announcements and decisions, but not all board members have been involved – only one person has been interacting with both sides through the whole process.

5. Finally, there is no member of BEP that is Native American in descent. The federal and state government is not setup to understand or interpret tribal/cultural laws and histories – this is important. A tribal member should be a full board member on BEP.

Carl Sapers, St. Andrews

Mr. Sapers presents 3 specific recommendations/criticisms, and from a legal background, argues that process can be more important than substance.

1. The process of regulatory action must work. It is always a David and Goliath case when you are the public up against a regulatory or industrial body – obviously cannot match dollar for dollar. When Calais LNG asked for its first extension, Quoddy had already spent large amounts of its treasury in response, but Calais LNG had a budget to continue for multiple rounds. A process should be considered to help with or defray costs for citizens when presenting to organizations making postponements and multiplying costs.
2. DEP has taken the narrowest view of jurisdiction – that it will issue its license if it finds that there is no adverse effect/impact on Maine citizens. Taking this view, Calais wisely responded by changing its access to Red Beach, where Maine and fishermen outcry has been heard. They instead decided to go up the Canadian side, and no longer considered the impact on Canadian fishermen or other interests. Canada responded by saying that Canada governed these waters, and declined to give permission for these waters to be used.
3. Both awkward and outrageous – the BEP has granted five extensions to Calais, and each time an extension is granted, the chair has grown more and more passionate about how important this project is to the people of Maine. However, there has not yet been a meeting, and the people in opposition have not yet had opportunity to make an argument. BEP chair has taken the position that the BEP's job is not to adjudicate, but rather to facilitate the petitioner. A Board's position should be FIRST to adjudicate, and then to facilitate.

Ms. Gross adds that it is an unfair position to be defined as “the opposition”. We live here and pay taxes here – we are not opposition. This is a negative connotation.

[Letters from Linda Gross and Carl Sapers with detailed issues and recommendations are included.]

11:00 A.M.

Cheryl Wixson, (MOFGA), Agriculture engineering & licensed professional engineer, Organic Marketing Consultant for MOFGA
MOFGA supports a safe and secure food system, and is active at both the national and local levels in advocacy for food education, safety, and access to market opportunities. The USDA uses GAP – Good Agricultural Practices – a one-stop-shop that can be problematic for small farms. The FDA uses a scientific and systematic approach that looks at the process from seed to market bag, evaluates where contaminants would enter the process, and then investigates how to mitigate the damage between these points. MOFGA favors a system that would combine elements of both.

Two regulatory agencies and both houses of congress have been grappling with legislation, and most of this has been for large, national, industrial farms, thus not addressing Maine's agricultural environment.

Does Maine have the capacity to produce for all 1.3million people? “Yes, we had been doing it for hundreds of years until industrial food systems in the ‘50s.” The Dept. of Ag's interpretation of the federal food code has been identified as a barrier to local and organic foods. In January 2010, MOFGA was part of a discussion to increase the market for small chicken farmers (<1000 birds per year). These are farms currently selling directly to consumers and were exempt from certain federal requirements because of their size. The proposed legislation was to include farmer's markers and restaurants to allow these small chicken farmers to sell not just to individuals who drive to the farm, but also to markets and to restaurants. The Dept. of Ag rendered a new interpretation of food code and put more requirements on these farmers, and this regulatory condition diminished markets instead of increasing them.

Restrictions against offering product samples have also negatively affected markets (portion control, covered/packaged, etc). Baked products and cheese products, in particular, consider such storage and display restrictions to be inappropriate, and have diminished sales.

The breakdowns of food safety systems occur in large environments – like 10 farms sending lettuce to a bagging facility. If one has salmonella, all are affected. Small, local distributors are not subject to this risk.

MOFGA emphasized that strategies for reducing risk in local food production should include education to farmers and consumers and conversation around ways to increase local food systems, not increased regulation. “We need a Department of Agriculture and state leaders who are committed to rebuilding a local food system which has been dismantled.”

Recommendations:

1. The Dept. of Ag should not continue to re-interpret the federal food code. The state should further engage in conversation concerning how Dept. of Ag’s interpretation can harm local food systems. MOFGA feels that Maine has been re-interpreting because of the increased consumer awareness of food safety. Since this time, Dept. of Ag has re-interpreted the food code and made it more difficult for local farmers to market their food, despite lack of evidence that local food is making people sick. The consumer must still be protected, but smaller farms are by their nature more accountable and more personable – the consumer has recourse to a small, local farm where the consumer has no such power over an industrial system – and does not require the centralized protections of larger food systems.
2. Raw milk is an example where the state is working as an advocate. The FDA wants to shut down all dairies who sell raw milk. As an advocate for these small, raw farms, the Maine Veterinarian is taking samples, building a database, and analyzing the results in support of raw milk to demonstrate the safety of it. Here, Maine is an advocate, and MOFGA would like to see continued advocacy for small farms by Maine to the FDA.

Representative David Burns, Whiting, House District 32 ([question/answer inaudible via conference phone.](#))

Fred Berlenski from Pembroke: Perhaps it’s the regulatory process that makes imported fish less expensive than local fish, for example? Ms. Wixson explains that economies of scale make industrialized harvesting, packaging, and reselling of food cheaper than through local food systems, but there are costs to the industrial (environmental, government subsidy, unmeasured, etc) that are not included in the price paid at the grocery store, rather through different means by the same consumers.

[A handout from MOFGA with detailed issues and recommendations relating to food safety/regulation is included.]

12:00 P.M.
Break

1:00 P.M.

Sheila Dassatt, Exec. Dir., and Michael Dassatt, (DELA) Downeast Lobstermen’s Association

State fisheries were split into zones, and certified fishermen are placed in zones to prevent overfishing. This has prevented overfishing, but it can take years to make it through the waiting list to be allowed a class 1 license in a zone. Some will not live long enough to receive this class 1 license.

Additionally, trap tags and then trap limits have been established. Such rule changes allowed some fishermen to manipulate the rules to their benefit, thus leading to additional regulation.

Additionally, sink ropes are required due to whale-safe regulation, but Maine doesn’t see the whale interaction like other fisheries, and sink ropes have dangers and costs associated with them which floating ropes do not.

1. The Maine governor and the Dept. of Marine resources need to be stronger advocates for Maine fishermen and not allow federal regulations such power. The State should assert more authority in managing its own fisheries, especially within the 3-mile border.
2. Further, licenses should be transferable to family members – this would allow veteran fishermen to retire, and it could free up much of the waiting list in the process because many people on the waiting list are directly related to a fisherman waiting to retire.
3. Trap tags and the proposed tax for lobster catches are excessive relative to existing licensing and fees.
4. Informational, policy, and regulatory meetings should be held in places that are more accessible to people in the fishing community instead of in the larger cities to the south.

[A letter from The Downeast Lobstermen's Association with detailed issues and recommendations is included.]

2:00 P.M.

Julie Keene, Commercial fisherman, Trescott Township

When regulations are implemented, there needs to be a community impact evaluation, not just an environmental impact evaluation. The local bay needs to be managed for local people – whole bay management, not just one species at a time.

The state needs to reduce barriers for citizens to transmit testimony to Augusta and be more involved in the democratic process – essentially discrimination against people who live further away in favor of people who live nearby the political offices.

Non residents should not be receiving commercial fishing licenses. Canadians can cut U.S. seaweed, but not vice-versa.

[A letter from Julie Keene with detailed issues and recommendations is included.]

Dr. Robin Hadlock Seeley, Board member, Rockweed Coalition

Rockweed is a slow-growing plant that is harvested for many purposes. Because of the biology of the plant, with root systems capable of being 400-years-old, regulations dictates that 16 inches of each plant must be left behind during harvesting. Meanwhile, DMR has examined areas that have been short-cut and not enforced the infractions. Part of the enforcement issue is that there are too few marine officers. DMR has worked hard to be transparent concerning Rockweed work in Cobscook Bay, but there must also be a lack of interest for enforcement, and officers must be better equipped with proper maps and legal text.

Further, Periwinkles are encompassed in commercial fishing licenses, but there must also be caps/quotas to prevent abuse of these harvests.

2:45 P.M.

Kenneth Ross, Proprietor, Ross Cottage, Pembroke

Mr. Ross is a member of the Rockweed Coalition and operator of an historic seaside cottage. He is concerned over rockweed harvesting and expresses the need for more information about Cobscook Bay ecology, in particular, in finding a regulatory balance between modern rockweed harvesting and bay preservation. Mr. Ross asserts the importance of rockweed in the bay, and that many local people feel they have a traditional right to harvest the rockweed, parallel to tree harvesting in forested regions. However, mechanical harvesters which are being used in higher frequency seem to be quite injurious to the bay. A wider picture of the area economy and the jobs affected must be combined with a study of the various marine species dependent on rockweed to allow for a more holistic approach to resource management in the bay.

3:00 P.M.

Dennis Bryant, DO and Dr. Rual Ugarta, Acadian Seaplants, Pembroke

William Look, Look's Lobster, Jonesport

Providing counter-arguments to the presentation from Rockweed Coalition representatives, these presenters insist that their rockweed harvesting is done sustainably and by well-trained and well supervised local employees.

Additionally, there is a cooperative spirit between fishermen and rockweed harvesters that is healthy for the sector.

3:30 P.M.

Hearing Adjourns

Jeffrey Wright, a registered Maine Guide, did not present during the hearing, but did submit a letter to the RFB detailing the disconnect between expert biologists and their scientific research/monitoring, economic development strategies, and the rule makers in the legislature.

Members of the Maine Regulatory Fairness Board: Marie Emerson, Addison; Van Perry, Readfield; Ed Phillips, Monmouth; Elizabeth Shissler, Harpswell; Linda Snyder, Deputy Chair, Auburn; and Eliot H. Stanley, Chair, Portland.