

EAST COAST SHELLFISH GROWERS ASSOCIATION



The East Coast Shellfish Growers Association represents over 1,000 shellfish farmers from Maine to Florida. These proud stewards of the marine environment produce sustainable, farmed shellfish while providing thousands of jobs in rural coastal towns.

The ECSGA informs policy makers and regulators to protect a way of life.

The Mouth of the Bay In this Issue: Liability, Marketing and More



Executive Director
Bob Rheault

After a brutal winter, spring has arrived, cool and wet. New England growers were treated to four nor'easters in the month of March alone, and several growing areas were hit hard and suffered substantial winter kill and ice damage. Despite these setbacks, oyster markets are still flush with product, which led me to write about my fears of oyster overproduction on the East Coast (page 12). I hope everyone will take a minute to think about broadening markets and getting more folks to try their first oyster.

The ECSGA board has been busy working on a bill pending in Congress that would protect our members

from liability in the face of lawsuits from injured workers. I know most growers would rather stick pins in their eyes than read about insurance, but this is important so I urge you read the article below by marine law expert Chris Abel, who has clarified the legal landscape behind our Jones Act bill. An addendum with some FAQs about coverage can be found after the jump (page 5).

Our lobbyist Matt Mullin describes his efforts on our behalf in Washington, D.C. (page 11). We are happy to report that our efforts to reopen access to EU markets appear to be on the verge of success! We also continue to push for language in the Farm Bill that would improve the options for crop insurance.

The Member Spotlight (page 2) showcases Packaging Products Corporation and their efforts to find sustainable, recyclable options for shellfish shipping. Bill Mook contributed a piece describing the Shellfish Growers Climate Coalition (page 6) and its official roll-out this year at the Billion Oyster Party. And don't miss Dan Grosse's piece on selling oysters at his local farmers' market (page 10).

Amendment to Jones Act Would Limit Your Liability

by Christopher Abel,
Willcox & Savage, P.C., Norfolk, Va.

Do you feel lucky? Every day aquaculture business owners send workers out on boats hoping that none of their employees will suffer the kind of serious injury or death that could put them out of business. They are gambling that they won't find themselves on the wrong end of a Jones Act suit. The stakes could not be higher: there literally is no limit on the amount a jury can award a successful plaintiff who sues under the Jones Act.

And juries appear to have no problem awarding staggering sums to Jones Act plaintiffs: \$7.6 million in New York, \$8 million in California, \$9.4 million in Florida, and \$7.5 million in Virginia, for example. Even negotiated settlements of Jones Act claims can involve truly eye-popping numbers: a \$14 million settlement in Texas, a \$5 million settlement in Washington, and a \$6.8 million settlement in Alaska, to single out a few. The simple fact is that there aren't a whole lot of aquaculture businesses that can absorb that kind of financial gut-punch.

Because of the potentially fatal business threat posed by Jones Act liability, the ECSGA is working to amend the Jones Act to exempt aquaculture workers from its coverage. As it is, aquaculture workers already are exempt from coverage under the federal Longshore & Harbor Workers Compensation Act. This latest legislation would provide a parallel carve-out to protect aquaculture employers from liability exposure under the Jones Act as well.

So what is the Jones Act, and which employers currently are exposed to liability under it? Congress passed the Act in 1920 to provide a uniform federal



NOAA, NATIONAL WEATHER SERVICE

The Jones Act as written lumps aquaculture employees working in near-shore waters with seamen working on the high seas. A proposed amendment to the act would carve out an exemption for aquaculture businesses.

law that allows those working afloat to have a means of suing their employers for work-related injuries or death. It is not a workers' compensation statute. Indeed, unlike workers' comp (which is a no-fault compensation scheme under which an injured worker is entitled to receive certain pre-determined benefits) to recover under the Jones Act an injured worker has to prove some negligence (however slight) on his or her employer's part, and there is no cap on the amount of damages the worker can recover.

Significantly, a Jones Act plaintiff has the right to have his or her case heard by a jury; and juries not only tend to be very sympathetic to injured seamen, but also — as shown by the numbers cited above — are willing to send those same injured seamen away with some massive paydays. Put it all together: a sympathetic claimant, an extremely low negligence standard, unlimited damages, and jury trials in state

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Member Spotlight: Packaging Products Corporation

by Robert Rheault,
ECSGA Executive Director

Recently I had a chance to visit with one of our supplier members, Packaging Products Corporation (PPC) in New Bedford, Mass. For several decades back when I was growing oysters I relied on PPC for all my custom-printed boxes, and was always impressed by their friendly and timely customer service. One call to their office and I would see their truck, (usually the next day) even if it was only for a single case of gel packs. They would even reimburse me for any boxes damaged in transit.

Although I would often run into them at the Boston Seafood Show, I had never visited their plant. So it was a pleasure to spend some time with PPC president Ted Heidenreich, hearing about what's new in the packaging business. With 57 years of experience, this family-operated company was an early pioneer in custom seafood packaging. Now with a second facility in Miami, PPC continues to innovate, adapting to meet the needs of our industry coast-wide.

While most people look at packaging as just a container, Ted emphasizes the opportunity for branding and informing customers about the unique qualities of their products.

"You have lots of competition out there, so

branding your product and reinforcing your message on your packaging can really make a difference with sales. Your box design, materials, graphics and messaging are all factors that can attract customers and create brand loyalty," Ted noted. Following are some excerpts from my interview with Ted Heidenreich.

Bob: *How have things changed over the years in the packaging industry?*

Ted: We have come a long way from the days of wire-bound wooden baskets. With today's transportation infrastructure we can air-freight product around the globe overnight or put it on a refrigerated truck to reach middle America in a day or two. Today's shellfish sanitation regulations and transportation modes mean that packaging needs to survive longer holding times while insuring the quality and safety of live shellfish. PPC's strength is our knowledge of the seafood industry and the packaging materials that will do the job best. We are not married to any one material so we can recommend the best combination of materials to give our customers what they need. We love the seafood industry and have the experience and commitment to give customers our very best.

Bob: *What are some of the most exciting recent developments in the packaging business?*

Ted: We have embraced the sustainable seafood movement by developing sustainable packaging products. Shellfish farmers have a great story when it comes to sustainability, and now the packaging industry has some very good recyclable options. Today's advanced cold chain allows growers to use un-insulated



PACKAGING PRODUCTS CORPORATION

PPC prides itself on a culture that emphasizes customer service, from the first phone call to the office, to deliveries made with a smile and a helping hand.

packaging. Waxed-corrugated boxes have been around for years, but we now also have two good alternatives to waxed-corrugated boxes that are both water resistant and fully recyclable. We have a dry-corrugated option and a fully recyclable, #5-plastic-corrugated option.

Plastic-corrugated products are also very strong, making them a terrific choice for boxes up to 70 pounds. Foam packaging is still going to be needed for many applications such as air freight, but with today's enhanced cold chain

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Packaging Products Corporation

you can choose non-insulated options for refrigerated truck shipping. We are not claiming that plastic corrugated is a good insulator, and when good insulation is needed our foam-insulated boxes are still tops.

Bob: What's so special about the new plastic-corrugated options?

Ted: Plastic-corrugated does three things extremely well: 1) it is a high-performing, strong material; 2) it offers great branding opportunities; and 3) it is 100-percent recyclable.

By branding your shellfish and using plastic corrugated for your box, you are putting your best foot forward and making a recyclable statement at the same time.

Bob: What about styrofoam alternatives?

Ted: Styrofoam is a great insulator, it is strong and it is economical, but it is not recyclable

after transporting seafood, and it takes up too much space in the dumpsters and landfills. The truth is that we don't have a perfect replacement yet, but not for lack of interest. There are some alternatives that offer adequate insulation, but they lack in strength and water resistance, and they are quite expensive. There isn't a clear winner yet for seafood or shellfish. We hope to find an option down the road that will keep seafood fresh and safe.

Bob: As a company, what is the guiding principle that has driven your business to succeed for these past 55 years?

Ted: That is simple, "Our customers come first." We see ourselves as being in the service industry, and everyone who works with us feels that — from the first phone call to our office through to deliveries with a smile and helping hand. We serve our customers by helping them to make the best choices to promote their products and grow their business. We have built a reputation on trust, and that is reinforced by our love of the seafood industry.



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PPC's fully recyclable, #5-plastic-corrugated products are very strong, making them a great choice for boxes up to 70 pounds. They also present a branding opportunity for your shellfish.

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Jones Act Amendment

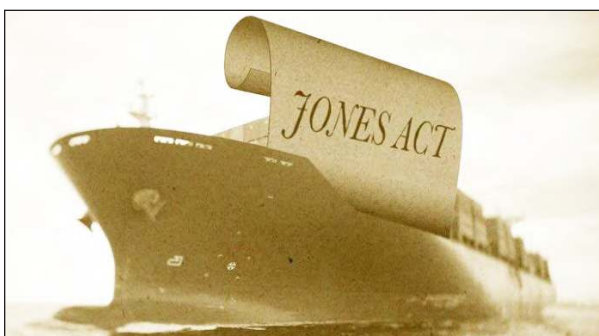
court, and you can see why plaintiffs' personal injury lawyers tend to regard Jones Act claims as being almost literal gold mines for them and their clients. And even if an employer can successfully defend against a Jones Act claim, the legal costs associated with doing so can easily run to \$100,000 per case — and often go much higher than that.

In order to qualify as a Jones Act seaman, a worker has to be the operator of (or a crew member aboard) a vessel. Additionally, the worker must have a connection to the boat aboard which he or she works that is "substantial" in terms of its duration and nature. The duration part of that test is likely to be satisfied if a worker spends at least 30 percent of their working time aboard a boat. As for the nature of the work, a Jones Act seaman needs to be exposed to the "perils of the sea" (like foul weather, winds, waves, an unstable platform, separation from the shore, danger of falling overboard, etc.).

Finally, in order to be a Jones Act seaman, the worker must contribute to the mission or function of the vessel. A passenger is not a "seaman." Growers who drive to their leases in a truck and don't work the grounds from a boat, and those who work more than 70 percent of the time on land probably are not "seamen," either. Insurance agents in some states are advising clients that the Jones Act doesn't apply to aquaculture. However, anyone other than a maritime lawyer who is providing advice on whether the Jones Act applies to aquaculture needs to have their advice taken with a huge grain of salt — they may well leave unwary

employers unwittingly exposed to a very serious liability threat.

The ECSGA has initiated a legislative effort to exempt aquaculture workers from the Jones Act. Our proposed amendment mimics an exclusion for aquaculture workers granted in the Longshore Act: those employed in the "controlled cultivation and harvest of aquatic plants and animals, including the cleaning, processing or canning of fish and fish products, the cultivation and harvesting of shellfish, and the controlled growing and harvesting of other aquatic species." Traditional fishermen pursuing wild stocks would still be seamen.



STILLWATERASSOCIATES.COM

Additionally, like the Longshore Act exemption, the proposed Jones Act exemption is limited to those workers who would be covered by state workers' compensation. An aquaculture employer whose workers are not covered by workers' compensation insurance would not be able to benefit from the amendment's Jones Act exemption.

Since the Jones Act only applies to an injured worker's employer, exemption from its provisions will not relieve businesses from all injury liability if the employer also owns the boat on

which the injured worker was employed. That is because federal maritime law provides an injured seaman a separate remedy against a vessel owner for un-seaworthiness. However, depending on the facts giving rise to such a claim, a safety-conscious vessel owner may be able to limit liability for such a claim to the value of the vessel aboard which the seaman was injured. Also, both the vessel owner and the employer share a duty to make maintenance and cure payments to an injured crewmember, independent of any Jones Act liability that might exist. But such maintenance and cure payments will almost always pale in comparison to the unlimited liability exposure under the Jones Act.

Prudent vessel-owning aquaculture employers will still need to carry marine "protection and indemnity" (liability) insurance on their boats. If the ECSGA's proposed amendment passes, employers can avoid buying expensive Jones Act endorsements to those same policies. Instead, they will need to ensure that their floating workers are added on to their state workers' compensation policies. Of course, even if employers insure for Jones Act liability, they can still be put out of business if a given claim exceeds the coverage limit provided by their Jones Act insurance — something that can happen easily enough. The beauty of state workers' compensation is that 100 percent of the worker's benefits are covered in every instance and the worker is legally barred from suing his or her employer for anything more.

What will this mean to your bottom line? Picking up state workers' compensation may add to some growers' costs, but they will save on Jones Act coverage. Your bottom line will vary greatly between states, as coverage costs for

workers' compensation and Jones Act endorsements are all over the map. The main benefit of the proposed amendment is to limit the extent of your liability risk.

Will amending the Jones Act to exempt aquaculture workers eliminate all of the liability risks faced by that industry's employers? No. But it absolutely will reduce those risks considerably by taking potentially unlimited Jones Act liability entirely out of the game. And that will go a long way toward finally getting aquaculture employers away from gambling with their companies' futures whenever their workers get underway on a boat. After all, while it is sometimes better to be lucky than good, it is always better to be smart about reducing the risks to which your business is exposed!

Christopher Abel is a maritime lawyer who heads the maritime practice of Willcox & Savage, PC, in Norfolk, Va. He represents maritime employers on a broad spectrum of legal issues, including defending against Jones Act claims.



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Christopher Able Answers Your Questions About the Jones Act, Liability and Workers' Compensation

If you own a boat you probably pay for P&I (Property and Indemnity) insurance to cover you for damage to others (hitting another boat, causing wake damage, running over a swimmer, etc.). And if you have employees working on a boat for more than a third of their working time, then they probably are Jones Act seamen.

In order to protect yourself from unlimited liability claims in case any of those employees get hurt, you should have Jones Act insurance. That coverage will cover up to a limit (depending on the policy you buy, usually \$500K or \$1 million). Once that limit has been reached, however, you will have to pay out-of-pocket if you are sued and the plaintiff is awarded damages that go beyond that same limit (a limit that may be reduced substantially by the cost of defending against such a suit). Those damages can run to several million dollars.

What changes if our bill passes?

If our bill passes you still ought to buy P&I insurance, but instead of having to buy a Jones Act endorsement for your aquaculture workers, you would pay to purchase state workers' compensation coverage for them. One of the principal benefits to you as an employer under a state workers' compensation system is that you cannot be sued in your role as an employer for workplace injuries or death by workers covered under that system.

What is the difference in costs?

A Jones Act endorsement typically runs about \$1,850 per employee. State workers' compensation varies greatly from state to state; from as low as 4 percent of payroll to as high as 10 percent.

(Note: states have different rates for different occupations and you might save lots of money if your employees can be classified as oyster processors as opposed to fishermen)

If you had an employee salaried at \$40K a year and your state had the higher workers' comp rate of 10 percent, you would pay an additional \$2,150 over what you pay for Jones Act coverage.

On the other hand, if your state rate is 4 percent, your cost would remain about the same. You need to decide if any additional expense is justified by the limited liability that getting out of the Jones Act infers.

What if I already pay for workers' comp?

The bill would not impact your finances, but it would protect you from unlimited Jones Act liability.

What if I'm not paying for either Jones Act insurance or for workers' comp now?

Then you are really exposed to a potentially devastating financial hit should an employee get hurt. You would be wise to cover that

risk. The benefit of this bill's passing is that you would eliminate the risk of a Jones Act lawsuit and its unlimited liability exposure, provided that your employees have workers' comp coverage. If they don't, then you'd still be exposed to the same Jones Act liability you are risking now.

What if I fish for wild fish and work my lease from the same boat?

The bill only provides a Jones Act exemption for workers engaged in "aquaculture." So you would still need to get Jones Act coverage for your seamen employees while fishing for wild stocks. You would still have unlimited liability if your Jones Act seamen get injured while fishing.

What if I pay my workers as 1099 independent contractors?

Assuming that they really are independent contractors (and there is a pretty good chance that they are not, regardless of what you call them — check the IRS definition of employee), you would not have Jones Act or workers' comp exposure anyway. Still, as a boat owner, you would be well advised to have P&I insurance for your boat, given that they could still sue you for any injury that they suffer while working in or from your boat — they just wouldn't be suing you as their employer.

What if I don't use a boat?

If your workers drive to work in a truck and wade out onto your lease they almost certainly are not Jones Act seamen, and this bill doesn't impact you at all.



AMMA RHEA POZZI /
AMMA RHEA PHOTOGRAPHY

The ECSGA is pleased to welcome Matt Behan to the board, replacing Steve Plant as Secretary. Matt was born and raised in South County, R.I., and earned a Bachelor of Science degree in Aquaculture from the University of Rhode Island in 2008.

Before establishing Behan Family Farms in 2011, Matt worked for Jeff Gardner (Shellfish For You) and for the Mohegan Indian aquaculture project. He now supplies oysters from his Charlestown, R.I., farm to 14 restaurants seasonally, and to a few distributors, in addition to running a successful catering arm of the business for weddings and other private events.



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Shellfish Growers Climate Coalition, Part 2

by Bill Mook, Mook Sea Farm, Walpole, Me.

As I discussed in the first part of this two-part series in the April issue, we shellfish growers are coping with serious problems caused by greenhouse-gas emissions and climate change. Being inventive and industrious people, we are working around these problems as best we can. But the truth is, our livelihoods depend upon a healthy environment, and unless greenhouse-gas emissions are curbed, the costs to our businesses will only continue to increase and our survival will be threatened. The Shellfish Growers Climate Coalition (SGCC) is a way for us to do our part — to try to leave our children and grandchildren with the opportunity to continue in our footsteps, and to help America chart a course toward a clean energy future.

What can we bring to the effort?

Shellfish aquaculture in the U.S. continues to grow at an enviable pace, and did so even throughout the Great Recession. Demand for our crops is driven by improve-

ments in production technology and by consumers (particularly younger people) who want to know where, how and by whom their food is grown. And we don't just provide healthy and sustainably grown food. We are re-establishing our importance to the fabric of small coastal communities that are emblematic of a treasured American way of life.

Climate change threatens America's coastal communities along every coast. As shellfish growers our voices bring authenticity, and as business owners our stories carry weight that non-profits alone cannot. If we are thoughtful, straightforward and strategic in telling how climate change is hurting us now and threatening our future, voters and policy makers will listen to us and understand that we need to act — now.

The formative steps

Early last year I asked six other growers who agreed that we need to address climate change and that shellfish growers could be influential, to form a steering committee. They represented three farms from the West Coast and four from the East Coast: Hog Island Oyster Company, Taylor Shellfish Farms, Hama Hama Company, Mook Sea Farms, Island Creek Oysters, Fishers Island Oyster Farm, and Rappahannock Oyster Company. We



THE NATURE CONSERVANCY

started by defining our mission: to create or join a geographically diverse coalition of businesses aimed at reducing greenhouse-gas emissions and shifting U.S. energy policy towards clean energy technology. Our goal was to do this in a way that attracts national publicity, promotes farm-raised shellfish, and fosters expansion of the coalition to other food sectors across the country.

We understood pretty much from the start that, given our own time constraints and resources, forming a coalition on our own to meet these goals was unrealistic. Over the next several months we explored several business coalitions that we might join, and other non-profit organizations that might help us create our own coalition and serve as host. We wanted an organization with a broad reach and a reputation for being politi-

cally inclusive. The Nature Conservancy quickly emerged as the right choice to help us coordinate and amplify our efforts.

Most of us already knew of The Nature Conservancy (TNC) through various aquaculture and restoration efforts. It had the ability to connect on the state level through its 50 state chapters, but also had a global platform that would allow our voice to be heard by national policymakers and a broad consumer audience. Moreover, TNC was already implementing a 50-state climate-change strategy aimed specifically at reducing greenhouse-gas emissions and promoting policy change, at both the state and federal levels. We could jump-start our policy agenda by aligning with their efforts and taking advantage of their strong reputation for bipartisanship.

Sally McGee, TNC's Northeast Marine Program Director, took our idea to her colleagues. Since addressing climate change is a priority for the organization, the chance to partner with shellfish growers provided a new way to advance climate policies in partnership with businesses directly impacted by environmental change. Motivated by a strong desire on both sides to realize the potential of a Nature Conservancy/shellfish grower partnership, the SGCC was developed during the summer and fall of 2017, and officially launched at the Billion Oyster Party in Brooklyn, N.Y., on April 27, 2018.

The way forward

With guidance from our Steering Committee the Nature Conservancy is developing a work plan, a key component of which is to engage coalition members with shellfish-loving consumers. National polling over the last several years shows (perhaps surprisingly)

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OysterGro Brings Stealth to aquaculture

To achieve our Stealth option, we re-engineered the material compound which allowed us to develop the best color and material combination to absorb light and blend in to the background. Our reasoning behind developing this is due to an increasing demand in certain areas for less visible equipment when deployed on the water. Our OysterGro Stealth float is now available across our range which includes Pro (6 bags), Pro Compact (4 bags) and LowPro (2 bags) to match your preferred cage format. The engineered polymer formulation utilized to produce this new version of our floats is of the highest quality and delivers a ruggedness and reliability that is built in to the DNA of all OysterGro products. That goes all the way back to the very first floating cage system we launched into the market over 15 years ago. As with all OysterGro floats, we only utilize 100% virgin materials which are specifically blended to be UV stabilized. Which gives you a toughness and longevity that's second to none and deliver you premium oysters over many years of service.



Introducing the OysterGro DryDeck system!

One of our latest innovation has been engineered to mimic the drying capabilities that is offered by OysterGro aquafarming range. This product has been developed for farmers who are specifically working in shallow water and intertidal areas where traditionally floating bags have been the farming technique of choice. The DryDeck gives you the ability to air dry your oysters for the required amount of time needed to control secondary spat and fouling issues which helps reduce your operating costs and increase the quality of your end products.



Thanks to Paul at Great Gun Shellfish for his invaluable insight on the challenges of shallow water farming and floating bags.

How does it work?

Depending on your farm size, you would utilise this system by having lines of DryDeck which would be configured in a similar manner to the OysterGro layout. Once Set-up, they're simple to use. Simply unclip your oyster floating bags from their feeding line and place them on the DryDeck then securely clip them to the mesh. Allow to dry for the required time (area/weather dependent). Then unclip them from the DryDeck and move your bags back to the feeding line then repeat with other bags on your farm.

Lady's Island Oyster delivers localized support with the OysterGro partner program.

Headed up by Frank Roberts and based out of Seabrook, South Carolina, the Lady's Island team delivers a total service mindset that's a perfect fit for our OysterGro customers. Supporting oyster farmers from North Carolina and down through Atlantic Florida. The Lady's Island team offers the full range of OysterGro product services which includes our second OysterGro hands on training site. There, they will advise you on system selection, farm setup and best practices. To round out their commitment to support the OysterGro farmers they also run a successful hatchery/nursery service which allows Lady's Island to offer a turnkey service in their territory that's second to none. To contact Frank, you can reach him at ladyislandoyster@gmail.com



BBI delivers new directions and commitments to ensure our customers get the best from their OysterGro system:

OysterGro and BBI Group are excited to announce that we have brought on a Director of Regional Sales for the Northeast and Mid-Atlantic. Ben Lord comes to us from New England with a wealth of experience in dealing with relationship growth and management as well as dealing with technical sales. As our resident American, Ben recently moved to the Maritimes to be closer to his wife's family. Growing up on the water in New Hampshire, Ben has always been interested in the development of natural resources and how it both provides to the local economy and environment. Ben's expertise and drive makes him a natural fit to oversee the OysterGro partnering with client's mindset which he will be leading from Maine to Virginia. Ben has saltwater and fishing in his blood which goes all the way up back to his great-grandfather who was a Cape Breton lobster-man. In his spare time Ben chases his two young oysters, Alec and Zoe and referee's University and Junior hockey across the Maritimes. To contact Ben, you can reach him at ben@bbigroup.ca



At BBI Group we feel it's critical for a system manufacturer to have a working R&D site and here's why.

Having a fully operational lease for training and R&D is beneficial in several ways; one of which will most definitely help the new farmers who aren't certain on what form of equipment best fits their situation. Also, for the veteran farmer who might be expanding in new, untouched areas which might need a different size or style system from their established operations. This offers the opportunity of getting out on the water and interacting with every OysterGro product type we have to offer. As well as seeing our differing setups and configurations; therefore, helping them make the "what's the best OysterGro system for me" decision with more confidence. Being out working on the lease ourselves lets us see our equipment through our customer eyes which lets us analyze any operational challenges a client may have and offer real support through tested solutions. Our farm has also enhanced our product development and productivity analysis as we are the ones to get our hands dirty through trial and error as we develop new models. This enables our team to introduce new systems to the OysterGro range and to our customers with unquestionable certainty that their selection is at a top performance level before deployment.



SmartLock OysterGro's wire mesh saving innovation.

Over the past several months we've been challenged by several of our customers to develop a cage latch that's easier to use and not so damaging on the PVC Aquamesh coating. Which is there for one reason, to protect the lifespan of your cage. Currently one of the methods of choice for door closure is to use small pieces of mesh, which is bent at one end to create a hook shape to grab the wire. Although this does work as a closure it can be damaging on your Aquamesh coating which can invite corrosion to your cage. As response to this issue we have developed SmartLock which is a polypropylene latch that will not corrode and spreads the clamp pressure much more evenly thus significantly reducing the wear on your PVC.



Your OysterGro system is a product that's proudly engineered, manufactured and delivered with North American team work of both USA and Canada.



To get more information or see some of our videos, visit our Facebook and YouTube Page. If you have any questions, give us a call at 1(506)743-5455 or visit our website at www.oystergro.com

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Climate Coalition

that a substantial majority of Americans understand that climate change is real and driven by human activity. Working with TNC's marketing and communications staff, we are developing compelling events and videos emphasizing that climate change is an urgent problem, and aiming to spur audiences to action.

Right now, we are recruiting new members. Most shellfish farms are small operations, and like most farmers, shellfish growers are busy dealing with the day-to-day demands of their jobs. For this reason, becoming a member of the SGCC can involve nothing more than filling out the membership paperwork and endorsing the purpose and goals of the coalition. On the other hand, there are plenty of opportunities for those who want to play a more active role in Coalition activities. At its core, members of the SGCC agree that:

- ❑ Human impact on the Earth's climate system is well documented, scientifically under-

stood and profound.

- ❑ Taking action to address climate change is imperative to secure the viability of our businesses, our communities and the natural resources they depend upon.
- ❑ Improving people's understanding of climate change and its impact on our businesses represents an important way to promote and enact climate policies that can guide America to a low-carbon future.

If we can successfully expand the climate coalition to include many shellfish farms from every coast, along with a diversity of food-sector businesses across America, policymakers and voters will take notice. If we are persistent, they will take our message to heart and begin to rally behind policies that set us on a course to reduce carbon emissions and address climate change in a comprehensive way.

To join or to receive more information about the Shellfish Grower's Climate Coalition, contact Sally McGee at smcgee@TNC.org.



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Selling Shellfish at Farmers' Markets

by Daniel Grosse, Toby Island Bay Oyster Farm, Chincoteague, Va.

For the past several years I have been selling my oysters at farmers' markets in Washington, D.C. Although the DC metro area has over 200 markets, I'm the first — and as far as I know, still the only — grower who provides live shellfish in DC itself. Legally, that is.

Long involved as a consultant in oyster market studies, I usually recommend farmers' markets as an option — they're popping up everywhere, and they remove one or more middle-men. What could be easier?

My first hurdle was to find good weekend markets that were close to where I live in DC. Because most farmers' markets run spring through fall, one challenge was to find year-round markets.

But not all farmers' markets are created equal. Large, well-established markets generally have more foot traffic than younger, smaller ones, even in neighborhoods with good customer demographics. I lined up two good year-round markets, one on Saturdays, one on Sundays.

After that, it took me the better part of a year to sell anything.

Although some growers and wild harvesters sold raw shellfish at DC farmers' markets in the past, it was done under the radar, without the DC health department's knowl-

edge or consent. But we tried to do it right, for everyone's sake.

When I started this process, the DC health department dealt only with restaurants, retailers, supermarkets and wholesalers. They lacked regulations for providing shellfish at farmers markets, and they didn't seem to know what to make of this request, which if nothing else presented more work. And they were in no hurry to change their *M.O.*

I sent the health department samples of neighboring jurisdictions' regulations and guidelines for farmers' markets. Then I drafted model regulations, to apply to any shellfish farmer at any farmers' market or similar event, for DC's adoption, and how I proposed to follow them. Offering shucked oyster samples, which I considered critical, added an additional layer of requirements, such as having triple sinks with hot and cold running potable water for cleaning and sanitizing equipment and washing hands.

Progress was glacial. A local elected official provided political support, pushing the health department to act and, had all else failed, was going to seek help from the mayor's office.

Eventually, I got the green light.

I now sell my own live oysters, and a colleague's live clams and shucked oysters and clams in jars. I also sell personalized shucking knives, guidebooks to regional oyster farms and raw bars and, most recently, stainless-steel shells for cooking shucked oysters. Customers are always asking about preparation, so I have on hand a hard-copy notebook of oyster and clam recipes (including ECSGA's), which also appear on my website.

In addition to expanding recipe repertoires, markets provide other educational opportunities. Many customers are fascinated with how seemingly provincial oyster issues can be a window to more general



KARLA RENSCHLER

The author at the Palisades farmers' market in Washington, D.C.

links between environmental quality, marine resources and human health. We chat about oyster farming basics. I show those who don't know — and who want to learn — how to shuck. I encourage them to recycle shells for the Annapolis-based Oyster Recovery Program, and show them how their shells contribute to new, living Chesapeake Bay oyster reefs.

Two years ago Chincoteague growers experienced a major wild spat-set on farmed oysters. It was great ecologically, but devastating agriculturally. The oysters required much more handling, and many were unsellable to restaurants and retailers. For me and my customers, it became an ecology lesson. Education is also long-term marketing. I have developed a faithful clientele and thrive on engaging with customers — an important personality trait in this sector. I stay in touch with many customers by email and texts, and encourage pre-orders, especially around holidays.

I needed year-round markets operating through the winter because I don't harvest in summer or when water temperatures exceed 75° F, usually post-Memorial Day through the end of September. But even in DC, mid-winter presents its own challenges, for it's far colder sitting or standing than walking. Every year I've gotten smarter. Likewise, it's harder to keep products cool in warm weather. I use lots of ice, frozen gel packs, thermometer monitoring and frequent product rotation.

Unsold live shellfish at the end of the weekend gets bartered with other vendors or goes back into the water, to live (and be sold) another day. Unsold jars of shucked oysters, if not bartered, become dinner.

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Making Progress on Legislative Priorities

by Matt Mullin, High Street Strategies, Washington, D.C.

This year we have been very active in working towards the East Coast Shellfish Growers Association's federal policy priorities in 2018: addressing insurance liability under the Jones Act, working to make USDA crop insurance programs better support the shellfish aquaculture industry, and reopening trade with the European Union. We have made tremendous progress on all fronts and continue to make headway towards achieving ECSGA's goals.

First, the Merchant Marine Act of 1920, otherwise known as the Jones Act, is notorious for its cabotage provisions (laws and regulations that determine how goods can be transported by ship between U.S. ports). But a lesser-known provision of the act protects injured seamen working on vessels.

The problem comes from the definition of a "seaman" to include (possibly inadvertently) aquaculture workers in near-shore waters. Jones Act insurance is often several times as expensive as state workers' compensation insurance and poses the risk of unlimited liability for aquaculture businesses.

The basic idea of our proposed change is to exempt aquaculture workers from the Jones Act by mimicking an exclusion for



aquaculture workers granted in the Longshore Act, excluding those workers who would be covered by state workers' compensation. Legislation has been introduced in the House of Representatives to address this issue, and we hope the Senate will do the same.

Secondly, Congress is currently debating another reauthorization of the Farm Bill, a massive omnibus bill that, among other things, determines broad agriculture policy across the country. Because shellfish aquaculture is considered farming, many of the provisions of the Farm Bill can have an impact on shellfish aquaculture operations and businesses. Unfortunately, crop insurance policies for aquaculture crops are often inadequate for shellfish, so we

are seeking helpful changes and clarifications for shellfish farming in the Farm Bill that Congress ultimately passes.

Lastly, earlier this year, the Food and Drug Administration (FDA) finally published a proposed "determination of equivalency," taking important and much-needed first steps towards allowing shellfish trade between the U.S. and the European Union. Since 2009,

a trade dispute has blocked shellfish exports to the EU. The FDA announcement begins a process to restore access to lucrative European markets for American shellfish growers.

As you can see, we have a lot of irons in the fire and have come a long way. But there is more to do and we will continue to work diligently on ECSGA's federal policy goals for the year.

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Oyster Markets: What, Me Worry?

by Robert Rheault,
ECSGA Executive Director

For decades I have been warning that increases in production could eventually lead to a collapse in market prices if we fail to invest in growing our markets. Well, I am starting to wonder if that day is finally approaching. While we have little in the way of good production data, my own survey of East Coast states tells me that we have doubled production in the past five years. During that time prices have remained stable or even inched up.

However, this trend probably won't last forever. It seems as if whenever we figure out how to grow something, we eventually see a collapse in price. It happened with salmon, catfish and tilapia. When we figured out how to grow clams back in the 1980s, overproduction caused the price to collapse by 30–50 percent. Hundreds of growers went out of business, and it took three decades for the price to recover. I predict that if we see a similar price decline for oysters, we will have hundreds of growers looking for a new line of work.

Why should I worry when things appear to be going so well? Because I am old enough to have some historical perspective. It used to be that we didn't sell much product in the summer. Markets were not well established and the myth that you should eat oysters only in months whose names include the letter "R" prevailed. Markets were also weak in the fall, despite the fact that oysters are in their prime at that time.

Several factors were at work here — the wild harvest opens in most states in October, and the Canadians and Cape Cod growers want to dump oysters before the ice sets in. On top of that, every grower is flush with lots of product, making the fall markets a nightmare.

We see small bumps in demand around the holidays, but markets don't really start to take off until Lent and Valentines Day, continuing to climb through the spring. By the time spring arrives, wild harvests are depleted, the Canadians are running out of their dry-stored product, and growers have picked through their crops two or three times so their mean size is getting smaller and smaller. By April we typically see a drop in the number of names on the wholesalers' lists.



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For many years I had been known to say that spring was the time when supply was so tight you could put rocks in a box and name your price. If you were going to raise your prices, spring was the time to do it because the buyers couldn't argue. If you ran out of product before April, I would have told you that your price was too low — you were leaving money on the table.

But around a decade ago we noticed the summer markets really started picking up. Fall markets were strengthened a bit too, but we would still see demand plummet around the middle of October. Now we also see a glut of product from the new growers who are all looking to pay off years of bills as they rush to market with their first crops. Until very recently we would still see tight markets in spring, with

everyone getting cold calls from wholesalers desperate for oysters.

But this year things are a bit different. I am seeing very strong supplies in May, with wholesalers still showing a variety of names on their supplier lists and restaurants pushing names I have never heard of. I suspect we are nearing a market top and we will see some downward price pressure in the fall when the new growers come on line with their product.

I asked a couple of friends what they've observed. Ben Lloyd of Pangea Shellfish in Boston said, "There is a huge amount of oysters in the pipeline. States are permitting more leases, and growers are increasing their production. Although North America's oyster consumption has increased dramatically over the past 15 years, it is bound to level off at some point. I fear a correction in price within a few years if markets aren't expanded."

On the other hand, Joe Lasprogata of Samuels and Son in Philadelphia is more optimistic. "Full speed ahead! There's a new grower every day pushing high-quality product and we are seeing lots of restaurants adding oysters to the menu to get folks in the door to drink," he said. I hope he's right.

While Gulf production has not recovered yet from the BP oil spill in 2010, in most parts of the country growth rates in production continue to exceed growth rates in markets. We're even starting to hear rumblings of overproduction on the West Coast, adding to my fears of impending market saturation.

To me the scary part is that many ECSGA members don't want to invest in marketing, which always comes up dead last when I poll them on their priorities. Everyone is selling everything they can grow (at least in the spring). Few growers have the resources to go out west and introduce "oyster virgins" to their first oyster, and there is no appetite for a generic oyster marketing campaign when everyone has their own brands.

I think we should be in college towns across the country introducing "oyster virgins," teens and foodies to the wonders of delicious, fresh, raw oysters. If we wait for the price collapse it will be too late. With the high cost of labor and tight margins in this industry, I doubt that many growers could tolerate even a 30-percent drop in price. If we don't work to boost our markets as we amp up production, we will have no one to blame but ourselves.

My best advice is to try to avoid competing on price. Find another quality to set your brand apart. Keep quality up and never drop your price. Once local markets are saturated you need to find new markets, and that takes time and money.

Never stop marketing!

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Finally, Some Legislative Success Stories

by Robert Rheault,
ECSCGA Executive Director

For 13 years we have been going to Washington to educate our elected representatives about many nettlesome issues facing us. Although they have been expensive and time-consuming, we can now say those efforts have finally paid off. We helped save the Milford Lab when NOAA wanted to close it down, and managed to get funds for a shellfish geneticist through USDA's Agricultural Research Service. Congress helped us push back when the FDA wanted us to poach all our shellfish and to redesign our packaging to address a theoretical health threat in shucked meats that never actually made anyone sick.

EU trade embargo

But the longest battle by far has been the effort to re-open shellfish trade with the EU. Years of pressure from congressional allies finally pushed the FDA and the EU to reconcile their differences. For years the Congressional Shellfish Caucus has written scathing letters to the FDA on our behalf and helped us hold informational briefings where the FDA had to explain their foot-dragging. Senate allies have called in FDA representatives to explain why the gridlock has persisted for so long. This fall Rep. Andy Harris (R-Md.) even inserted language into the FDA budget to compel action.



Finally, about two years ago the FDA proposed a limited re-opening to allow EU product from their Class "A" waters to enter the U.S. Although the FDA still had qualms about depurated product from the EU, shellfish from pristine waters should be able to meet our standards. Negotiations encompassing every state in the EU and the U.S. were too daunting, so negotiators settled on just two each as initial exporting candidates: Massachusetts and Washington, and the Netherlands and Spain.

Even though it took more than two years for the details to be hammered out, it seems as if the process will probably take another six months to finish. The public comment period for the proposed rule change closed on May 23, and once the FDA addresses the submitted comments we have high hopes of shipping to the EU in time for Christmas.

In comments submitted jointly by the ECSCGA and the Pacific Coast Shellfish Growers Association we highlighted the importance of an efficient and inexpensive certification process to ensure seamless and rapid processing of our highly perishable products through customs on both sides. We will be working with NOAA's Seafood Inspection Service to make the process as painless as possible for exporters.

We expect that since both the ISSC and the EU have nationwide phytosanitary protocols with uniform requirements, additional states and countries will be able to ship relatively quickly. FDA Commissioner Scott Gottlieb has assured Congress that new states will be added in six months or less. We remain hopeful that the EU will represent a significant expansion of robust markets in the face of rapidly increasing production. With the eye-popping prices oysters are fetching in European restaurants, we hope to be taking advantage of these lucrative opportunities in the near future.

Crop insurance

The ECSCGA also has been working hard to expand crop insurance opportunities for shellfish farmers. Most growers have been limited

to the Farm Service Agency's Non-Insured Crop Disaster Assistance Program (NAP). Although inexpensive, NAP is far from perfect. I am pinning my hopes on improving access to another tool that could work for our industry: the USDA's Whole Farm Revenue Program (WFRP), a revenue-based policy as opposed to an inventory-based product.

With the help of our lobbyist, Matt Mullin, we had report language inserted into the next Farm Bill that should improve our access to WFRP policies. It's our hope that Congress will find a way to overcome partisan bickering and pass a Farm Bill reasonably quickly.

Shellfish research

Most recently our allies on the Senate Agricultural Appropriations Committee put the following report language into the appropriations bill:

"Shellfish Research. The Committee encourages the Agricultural Research Service to increase its investment in partnerships with research institutions on research to improve shellfish survival and growth rates and to classify and preserve natural genetic variation. Therefore, the Committee includes an increase of \$500,000 to support shellfish genetics research."

"Vibrio. The Committee is aware of the public health challenge related to the naturally occurring bacteria called Vibrio parahaemolyticus that can accumulate in shellfish and believes that more scientific research is necessary to develop proper controls that will reduce the risk to consumers and sustain a healthy domestic shellfish industry. The Committee encourages the Food and Drug Administration [FDA] to increase funding for research into Vibrio illnesses associated with the consumption of raw molluscan shellfish, improve risk assessment models, and develop improved rapid detection methods for virulent Vibrio strains."

"Aquaculture Research. The Committee recognizes the importance of the domestic aquaculture industry to the U.S. economy. The Committee recommendation includes \$2,000,000 for aquaculture research to address issues related to genetics, disease, systems, and economics."

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