

MINUTES OF THE MEETING OF THE ATLANTIC COAST SECTION OF THE
NEW JERSEY SHELLFISHERIES COUNCIL

Meeting was held at the Atlantic County Library - Galloway Twp Branch (306 E Jimmie Leeds Road, Galloway Twp NJ 08205) Attend in-person or online via
Microsoft TEAMS

Monday, July 10, 2023

Present were: Chairman: Walter L. Johnson III (Ocean County)
Vice Chairman: George Mathis Jr. (Burlington County)
Councilman: Paul T. Felder (Cape May County)
Councilman: Vacant (Monmouth County)
Councilman: Vacant (Atlantic County)

DEP Representatives: Russell Babb, Bureau of Marine Habitat & Shellfisheries
Jeff Normant, Bureau of Marine Habitat & Shellfisheries
Jenny Tomko, Bureau of Marine Habitat & Shellfisheries
Scott Stueber, Bureau of Marine Habitat & Shellfisheries
Richard DiVaccaro, Bureau of Marine Habitat & Shellfisheries
Nina Colagiovanni, Bureau of Marine Habitat & Shellfisheries
Robert Schuster, Bureau of Marine Water Monitoring

Mr. Normant read the State's compliance with the Open Public Meetings Act, and notice was filed with the Secretary of State Office and sent to the Atlantic City Press and NJ Advanced Media outlets. He announced that the meeting would be recorded.

1. Total Revenue for June 2023 \$ 15,097.10
Shellfisheries Law Enforcement Fund \$ 419.00
2. Presentation of June 12, 2023 minutes for approval.

Mr. Normant explained that the minutes from the June 12, 2023 Council meeting were presented to the Council on the day of the meeting. The Council determined they did not have enough time to review them and would be presented for approval at the August meeting.

3. Applications for Consideration

LESSEE	LOT #	SECTION	ACRES/FT	LOCATION	MAP #
Joseph McGee	1114	A	2.11	Great Sound	5A

Mr. McGee was not present at the meeting. Pursuant to N.J.A.C 7:25-24.6, lease applicants shall attend at least one of the two meetings at which the Council reviews their applications. If the applicant fails to attend at least one of the meetings, the lease application would be denied, and the area applied for shall revert to public bottom. Mr. Normant stated that a letter would be sent to Mr. McGee to inform him that he needed to attend the next meeting.

4. Applications for Transfer

LESSEE	APPLICANT	LOT #	SECTION	ACRES/FT	LOCATION	MAP #
W. Scott Card, Jr.	Brian McNamee & Jarod Caporino	9	D	2.00	Swan Point-BB	1
W. Scott Card, Jr.	Brian McNamee & Jarod Caporino	19	D	2.00	Swan Point - BB	1
W. Scott Card, Jr.	Brian McNamee & Jarod Caporino	29	D	2.00	Swan Point - BB	1

The transfer applications were approved on a motion made by Mr. Mathis and seconded by Mr. Felder. Mr. Normant stated that the approved transfer applicant would be required to come into the office to sign their lease agreement and pay fees.

5. Old Business:

Sunday Harvest Bill

Mr. Babb presented the legislative history of the Sunday Harvest Bill. The Assembly Committee passed the Bill on June 30th. Mr. Babb explained that the Bill was sent to the Governor's office and that the Governor could either sign it, conditionally veto it, or veto it absolutely. The Bill would become law upon the Governor's signature or after 45 days if the Governor's office took no action.

Mr. Babb stated that the Department would not implement any control measures or management if the Bill passed at this time. Mr. Babb added that the Delaware Bay Council's Sunday Harvest Committee had previously proposed a potential framework for Sunday harvest of oysters in Delaware Bay. Pursuant to N.J.A.C. 50:2-11, the Council can make recommendations to the Commissioner for the harvest of oysters on Sunday, which in Delaware Bay, would include dredging on leases. Mr. Babb stated that the Delaware Bay Council would revisit the proposal.

Structural Aquaculture Committee

Mr. Normant informed the Council that the committee member application was sent again to any individuals who noted the use of structure on their 2023 Commercial Shellfish Aquaculture Permit. Five additional applications were received, making seven total applications received for the Committee.

Mr. Normant asked Mr. Mathis if he wanted to discuss the applications with the Bureau before a decision was made to ensure there were no conflicts. After a lengthy discussion, Mr. Babb stated that the Committee could be seated *conditionally* for the interim and that if any conflicts arose, adjustments could be made if necessary.

A motion was made by Mr. Mathis and seconded by Mr. Felder to seat the Committee conditionally. Mr. Mathis read the names of the applicants that would be on this committee:

- Dale Parsons
- Matthew Matusky
- Jordan LoPinto

- Matthew Hender
- Chuck Gehman
- Matthew Gregg
- Thomas Burke

Mr. Johnson asked when the Bureau could meet with the Committee. Mr. Normant said it was up to the Council to establish a preferred schedule. Mr. Mathis said he would call the Bureau to schedule.

General Permit 30 Structure Deployment Notification

Mr. Babb informed the Council that the Bureau made changes to the GP30 notification form based in large part on the feedback it had received on the draft form at the last Council meeting. The purpose of the form was to identify where gear was actually deployed on leases and fulfill the requirements pursuant to NJAC 7:7-6.30. Mr. Babb explained that after the last meeting, staff reviewed the form and was able to remove the portion of the form that required the reporting of the specific amounts of gear. The updated form focused on where gear was located and the type of gear, not the amount, which was the original purpose. Mr. Babb added that the form does not need to be completed annually but would have to be completed for each lease where structure was deployed. The form only needed to be updated by the lease holder if the gear type or lease location changed.

Mr. Normant stated that a form would have to be filled out for each individual lease when gear was deployed on it and provided an example that if gear was deployed one year on three leases, three forms would have to be filled out, and that if gear was deployed on another lease the following year, they would need to fill out an additional form for that fourth lease. Mr. Babb stated that the notification form would also be available online.

Mr. Felder asked if the form needed to be filled out if gear was being removed from a lease or if it was only for deployment. Mr. Babb concurred that it was only for deployment unless gear was being removed from a lease permanently. This would allow the DEP to remove that lease from the deployment database.

Mr. Babb stated that the alternative was that the Division of Land Resource Protection could consider only issuing permits for where gear was deployed rather than broadly covering multiple leases. The condition in the GP-30 and the notification process was a way to keep flexibility with the permit. The information on the form would allow enforcement to concentrate mandated patrols to where gear was actually located.

Mr. Johnson opened the topic for public comment.

Mr. Scales asked if the GP-30 included clam-growing screens. Mr. Normant responded that clam screens were covered under a permit by rule. If something were done beyond the scope of the permit by rule, a general permit would be required.

Mr. Parsons added that gear was not always brought out in bulk and asked if a new form was required if additional gear was added to a lease. Mr. Normant responded that an additional form would not be necessary and clarified that the notification was for where gear was located, not the amount. A form would be required if placing gear on an individual lease for the first time or if your previous notification did not include a certain gear type. We are looking for a true accounting of what type of gear is deployed on what lease.

Mr. Parsons asked if the Sunday Harvest Bill could be misinterpreted and include clams in structural aquaculture. Mr. Babb stated that the Bureau believed it was strictly for structural systems, not clam screens. Mr. Babb noted that the Bureau had made that position clear at every opportunity. He added that the concern was that it could lead to an interpretation that clam screens were considered as structure, which would make them ineligible for the permit-by-rule and thereby required to obtain a general permit. Mr. Babb stated that he believed the legislative intent was clear and that the risk of this happening was very low.

Shellfish Lease Agreement

Mr. Babb reminded the Council that the need for a new lease agreement had been discussed for several years. However, more recent concerns about insurance and indemnification for the State recently sped up the timeline. From a legal perspective, the current lease agreement has been viewed to be inadequate from a legal perspective. Mr. Babb added that the new agreement was similar to the agreement already established for the Aquaculture Development Zones in Delaware Bay and many other agreements used by the State in other lease interest areas (e.g., upland property, state parks, agricultural).

Mr. Babb introduced NJDEP Fish & Wildlife's Regulatory Officer, Ms. Monteschio, who attended the meeting to answer questions on the lease agreement. Mr. Babb explained that the Bureau requested that a draft be presented to the Council for feedback once it was completed. This draft had been sent to the Council approximately one week prior to this meeting. The Bureau received feedback and discussed the document with some members who reached out. Regarding the next steps, it was the Bureau's intention to send a letter notifying all leaseholders of the new lease agreement for the October renewal period. The Bureau would let the industry know that the new agreement would be posted on the NJ Fish and Wildlife's website so that they could review it and be prepared for October renewals. Mr. Babb stated that since a number of questions were expected, the Bureau would attempt to develop a Frequently Asked Questions document.

Mr. Johnson expressed numerous concerns about the document, in particular, it needing to be more specific to the industry. The Council discussed the document and raised general concerns over several sections during a lengthy discussion. Staff attempted to answer questions during the meeting, but some concerns were referred to Ms. Monteschio and the Bureau for review, consideration, and follow-up. The primary areas of concern expressed by the Council were outlined below:

- Lease Default

Mr. Mathis expressed concern with the lease default process, mainly that there was no recourse for the leaseholder should a lease be lost due to default. Ms. Monteschio responded that the start of the default process would not result in the loss of a lease. A notice would be sent to the leaseholder that identified a problem. The leaseholder would be given fifteen days to begin to cure the problem. If the leaseholder was attempting to resolve the issue, an additional fifteen days would be granted. The goal was to obtain compliance, not to take away leases, and additional time to resolve problems would be attainable, and discretion was available to the Department throughout the process.

Mr. Mathis identified that the document gave the Department the right to terminate an agreement with a lessee due to default and the right not to enter into another agreement with the lessee. He agreed that the agreement could be terminated if a serious infraction occurred. However, Mr. Mathis was not in favor of preventing someone from entering a lease in the future. He recommended that a time frame be set, or a distinction be made that refusal to enter an agreement would be solely for egregious offenses. Other members of the Council concurred.

Ms. Monteschio clarified that this was not an absolute, just a right that was held, but that there was a great deal of discretion built into this process.

Mr. Johnson requested that default notices and any communication from the Bureau be sent via certified mail. Ms. Monteschio added that the agreement states that if there were a default notice, it would have to be sent by certified mail with the return receipt requested.

- Inspection of Lease Grounds

Mr. Mathis pointed to the section of the agreement that discussed the Department's right to lease inspection and voiced concerns about responsibility for any damage an inspection could cause. Mr. Johnson concurred with Mr. Mathis and provided an example that the Department should be responsible for damage if an adjacent lease was being inspected and an anchor was dragged, resulting in damaged nursery screens on his lease. Mr. Normant stated that leases were public bottom and state lands but concurred with Mr. Johnson that it is reasonable that the state personnel should bear responsibility for damages and that it should be outlined in the document. Ms. Monteschio said that it could be investigated.

Mr. Johnson requested that the lessee be present for lease ground inspections. Mr. Normant responded that Title 50 does not prohibit public access, including the Department, and that the lessee's presence would not be required.

Mr. Felder asked what the protocol was for lease inspections. Mr. Normant responded that an inspection could result from gear being seen outside of the bounds of a lease by hydrographic survey or satellite imagery, staking issues as well as not having the proper permits. The section also addressed access to lease areas by enforcement (Coastal Enforcement as well as Law Enforcement).

- Security

Mr. Mathis asked for clarification on what the "security" language meant relative to the Bureau of Law Enforcement's traditional role. Mr. Babb explained that there is no change to the Bureau of Law Enforcement's traditional role. Ms. Monteschio added that the purpose of this was to identify that the Department would not be responsible for preventing crime from occurring. Still, if a crime did occur, enforcement would investigate. Mr. Johnson added that some areas are required to be patrolled by enforcement. Mr. Normant concurred that enforcement does oversee the entire shellfish program. Mr. Babb reiterated that Law Enforcement's role would not change.

- Local Government Regulations

Mr. Johnson requested clarification on what local government regulations shellfish leaseholders were subject to. Ms. Monteschio explained that this was left in since what local governments may require is unknown. Mr. Johnson expressed concern about being subject to local government and requested that the section be removed from the agreement.

- Permitted Signage on a Lease

Mr. Johnson asked for clarification on the section prohibiting signage and stated that some leases, such as relay lots, were required to post signage. Mr. Normant suggested language be added that clarified signage was prohibited unless required by State regulation. Mr. Normant explained that the signage language was partly due

to the posting of no-trespassing signs and reiterated that the waters are owned by the public, and no trespassing signs cannot be posted. Ms. Monteschio offered that this was meant to address signage such as but not limited to political signs, business advertising, etc.

Council expressed concerns along with the public regarding poaching issues and suggested that signage would help alleviate poaching concerns.

- Insurance Requirements

Mr. Johnson asked for clarification on insurance requirements. Mr. Babb and Mr. Normant stated that insurance would be required for any operation using structure and added that the exception to this requirement would be for on-bottom shelling, seeding, or for clam screens.

- Report of Injury

Mr. Johnson questioned the reporting of injury should the lessee not be present. Ms. Monteschio clarified that the reporting would only be required for instances where the lessee is aware of an injury on a lease.

Public Comment

Mr. Rizzo commented that the general public was unaware that corner stakes represent a commercial shellfish aquaculture lease. He continued that signage on the lease was necessary to make people aware and requested that some signage be permissible within the new lease agreement. Ms. Monteschio noted that signage to that end had not made a difference on Wildlife Management Areas for similar issues. Mr. Rizzo stated that no trespassing signs have worked for him and others in the past. Mr. Normant noted that no trespassing or keep-out signs could not be used due to the public's right to access tidal waters, particularly for the taking of free-swimming fish. However, Mr. Normant added that he did see Mr. Rizzo's point (based on shared experience) and that DEP would discuss further to find some language that would work.

Mr. Rizzo opined that if signage said "no shellfishing" it could act as an attractant.

Mr. Gainé requested clarification on why language for no signage needed to be included in the agreement. He asked for a list of prohibited signage, so leaseholders could work within the bounds of what was not allowed. Ms. Monteschio explained that the intent was not to allow billboards, advertising, and inappropriate or political signage on state lands. She expressed that a better understanding of the regulatory intent could be added.

Mr. Lennox asked if there was an opportunity to extend the lease period while the lease agreement was being developed. Mr. Lennox cited examples of other states that allowed multi-year leases and expressed frustration with one-year leases and made it more challenging to run a business. Mr. Babb noted that the lease term was fixed by the Council's recommendation to the Commissioner under NJAC 50: 1-27 and would require a regulatory change. Mr. Babb noted that this issue had been discussed internally in the past. Mr. Johnson expressed the desire to discuss lease terms and have the ability to change that. Mr. Johnson agreed with Mr. Lennox that it made business more challenging.

Mr. Babb said the Bureau would be open to the discussion and stated that the Bureau wanted to help the industry move forward but needed more assistance from the Council and the industry on a number of lease management issues that the Bureau has repeatedly raised in the past. For example, Mr. Babb stated that the

Bureau was being pressured to expand leasing for new entrants but opined that under the current system, the Bureau could not effectively manage leases under the traditional regulatory framework in place. He asked for an honest effort to look at these issues and actually move on them to help the Bureau and the industry in the long term. Mr. Babb added that if no movement was made, we have seen that issues could be processed legislatively and then get quickly beyond the industry's and Bureau's control.

Mr. Burke asked where members of the public could view the draft lease agreement. Mr. Babb reiterated that the plan was to send a letter to leaseholders to notify them that there was a new lease agreement and that it would be posted on the website for their review.

Mr. Lennox asked that the lease size be considered in addition to the lease term and stated that for leases in New York, leaseholders had a ten-year, ten-acre lease. Mr. Babb added that this was true, but those were likely "town rule" programs and that when people raise other states as examples, he suggested that all aspects of those other leasing programs needed to be considered when comparing and cautioned that some programs did things very differently than New Jersey; for example, things that would be unpopular here. For instance, some states issued their lease grounds out for those lengthy terms but did so based on a competitive highest bid or through a lottery system.

Mr. Gaine clarified that the insurance requirement that was raised was due to the structure being in public waters and asked if other users of public waters, such as living shorelines, were also required to have insurance. Mr. Babb responded that he did not know if there were conditions within a permit for a living shoreline that required insurance.

Mr. Parsons asked that clarification of the protections for structural aquaculture be incorporated into the lease agreement. Mr. Parsons cited an instance when law enforcement told him he did not have protection for structural aquaculture. Mr. Normant stated that he believed that this may have been a misinterpretation. Mr. Normant added that per Title 50, a leaseholder had exclusive rights to the shellfish on their lease, and that structure was attached in some manner to the lease.

Mr. Gaine asked for clarification on the default process within the agreement and what would happen to the shellfish he had purchased that were on his lease. Mr. Normant said the lease would be canceled, and the area

would revert to public bottom. Mr. Gaine asked if he would have an opportunity to get the shellfish off the lease. Mr. Babb stated that if the exclusive rights to the shellfish on the lease remained after a lease was in full default, it would in effect, still be granting private access to that area (effectively retaining the lease in private use after default). Mr. Gaine responded that the shellfish were personal property before being placed on the lease and that it could be contested. Mr. Babb added that if a leaseholder were going through a default process, it would not result in an immediate loss of lease. The process would take some time and would not be a surprise to the leaseholder. He added that the leaseholder would be notified in writing formally and would have ample opportunity to resolve the issue or remove their product prior to default. Mr. Babb continued that the Department has discretion if the leaseholder has made a good faith effort to resolve the issue and that the Department had no desire to revoke a lease. Lastly, he added that at minimum, if the issue at hand was related to permit-requiring structures, the leaseholder could always remove the structure, thereby removing the "issue" and the lease would no longer be at risk.

Mr. Felder asked if a lease was defaulted, how long it would be before the area would be leased again. Mr. Normant stated that in the past, it could be applied for the very next day. Mr. Johnson noted that at renewal, a leaseholder could appeal to the Council for hardship at the end of the year but, in default, could not. Mr. Babb

again added that it would take a lot for someone's lease to be revoked, and that was where discretion could be exercised by the Department.

Mr. Babb stated that the lease agreement is similar to what had already been established in the Aquaculture Development Zone and pointed out that leases had not been revoked over the last decade when it has been in place. Mr. Gaine responded that the ADZ leaseholders never had an opportunity to review the agreement and commended the review process for the current document that was being provided by the Department and Council.

Mr. Gaine asked if the Council reviewing the lease agreement is the consultation process outlined in Title 50 and if the lease agreement was the execution of a lease. Mr. Babb stated that this meeting was not held to meet the "consultation" process in the statute. He added that frankly he did not expect many changes to be made to the document at this point and that the Bureau, with Ms. Monteschio's help, had already made a number of amendments to the original lease document that was offered by the Department's legal counsel.

Mr. Rizzo asked what the next step for the document would be and if questions should be brought to the next Council meeting. Mr. Babb stated that questions can be brought to the next Council meeting and sent to the contact on the notice once sent out. Mr. Babb suggested both. Mr. Johnson suggested that comments be submitted to the Council and the Bureau.

Mr. Parsons asked if the insurance requirements were the same as those in the ADZ. Ms. Monteschio said they were the same. Mr. Parsons asked if the industry could be provided with written requirements to present to insurance providers. Mr. Normant stated it was one million dollars in liability coverage. Mr. Gaine said that he had had problems obtaining insurance before and that it was a complex process.

Mr. Rizzo asked if anyone had seen the final version of the Sunday Harvest Bill and asked if the Council had jurisdiction or authority under the Bill. Mr. Babb stated that it was posted online. Mr. Gaine responded that it was still the Council that set forward policy. Mr. Babb indicated that it would not preclude the Council from making any recommendation to the Department to manage via regulations for Sunday harvest moving forward. He added that both sections of the Council had already commented on the Bill previously. Mr. Gaine stated that the Council should write to the Governor now to express that the stakeholders were not listened to throughout this process.

6. New Business

Mr. Johnson asked about the audit of the CARES Act. Mr. Babb did not have a detailed update on the audit's findings.

A motion to adjourn the meeting was made by Mr. Mathis and seconded by Mr. Felder.

7. Date, time, and place of next meeting:

DATE: August 14, 2023
TIME: 6:00 PM
LOCATION: Atlantic County Library – Galloway Township Branch with virtual option
306 E Jimmie Leeds Road, Galloway Twp NJ 08205

