

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)

Monday, August 14, 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:

Joseph Cimino, Marine Resources Administration
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
Nina Colagiovanni, Bureau of Marine Habitat & Shellfisheries
Richard DiVaccaro, Bureau of Marine Habitat & Shellfisheries
Liia Carpenter, Bureau of Marine Habitat & Shellfisheries
Robert Schuster, Bureau of Marine Water Monitoring
Lisa DiElmo, Bureau of Marine Water Monitoring

Mr. Normant outlined the State's compliance with the Open Public Meetings Act. He stated that notice had been 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: \$ 343.00
Shellfisheries Law Enforcement Fund: \$ 296.00
2. Presentation of June 12 and July 10, 2023 minutes for approval.

Mr. Normant stated that both the June 12, 2023, and July 10, 2023, meeting minutes were up for approval. The June 12, 2023 minutes were not voted upon at the last meeting, as they were received at the time of the meeting, and the Council did not have a chance to review them. The June 12, 2023 minutes were approved on a motion by Mr. Mathis and seconded by Mr. Felder. The Council did not approve the July 10, 2023 minutes at this time. Mr. Mathis requested that more detail on the Council's specific concerns about the Shellfish Lease Agreement be included and reflected in the record. Mr. Mathis made a motion to hold the July minutes until the revisions were made. Mr. Felder seconded that motion. Mr. Normant reminded the Council that the minutes are a summary and are not a verbatim transcript of what was discussed, but he added that the Bureau would review the minutes and revise where appropriate.

3. Applications for Decision

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

Mr. Normant presented the application for decision. Mr. McGee was present at this meeting, fulfilling his requirement to attend at least one of the two meetings at which the Council reviews applications, pursuant to N.J.A.C. 7:25-24.6.

Mr. Normant stated that he had discussed an issue with Mr. McGee that the Bureau had become aware that there was gear/structure present on lot 1114 (the lease in question). Mr. Normant stated that he tried to contact the adjacent leaseholder to no avail. Mr. Normant suggested that the Council could either defer the lease decision to the next meeting or approve the application on the condition that the Department would be delaying the final execution of the lease until more information was obtained regarding the gear. Mr. Johnson stated that the prospective leaseholder should not be held responsible for gear that does not belong to them. Mr. Normant agreed but stated that the Bureau would not be in a position to execute a lease agreement where we knew potentially illegal gear was already deployed, even though it was not owned by the applicant. He opined that the best solution was to simply wait until the issue was resolved. Further discussion ensued.

A motion was made by Mr. Mathis to approve Mr. McGee's lease application with a second by Mr. Felder. Mr. Normant stated that the Bureau will hold off on officially executing the lease until the gear issue was settled. Once resolved, the Bureau will execute the lease and inform Mr. McGee. Mr. Mathis asked if the Bureau could still execute the lease. Mr. Normant replied that the Bureau would hold the lease until the owner of the gear is identified and the issue was resolved. Mr. Normant stated that he spoke with Mr. McGee, who informed him that he would not begin to work on the lease until next year.

4. Applications for Transfer

LESSEE	APPLICANT	LOT #	SECTION	ACRES/FT	LOCATION	MAP #
Kevin Westervelt	Paul Felder	1053	A	2.18	Great Sound	5A
Kevin Westervelt	Paul Felder	1055	A	2.11	Great Sound	5A
Kevin Westervelt	Paul Felder	1056	A	2.05	Great Sound	5A
Kevin Westervelt	Paul Felder	1061	A	2.00	Great Sound	5A
Kevin Westervelt	Paul Felder	1067	A	2.17	Great Sound	5A
Charles Esher	John Daffin	1041	A	2.15	Great Sound	5A

The transfer applications from Mr. Westervelt to Mr. Felder were approved on a motion made by Mr. Mathis and seconded by Mr. Johnson. Mr. Felder abstained. The transfer application from Mr. Esler to Mr. Daffin was approved on a motion by Mr. Mathis and seconded by Mr. Felder. Mr. Normant stated that the approved transfer applicants would be required to come into the office to sign their lease agreement and pay the fees.

5. Old Business:

GP-30 Shellfish Aquaculture Activity Notification

Mr. Normant informed the Council that notification was sent to all leaseholders regarding the need for General Permit No. 30 permit holders to report gear deployments. If gear was present on their lease, under their GP-30 for structural aquaculture, the leaseholders are required to notify the Bureau that gear was deployed on that lease. Mr. Normant added that the form must be completed for each individual lease where gear was deployed and submitted to the Bureau. Mr. Normant clarified that reporting the amount of gear was not required, just that gear was deployed. It was added that as long as the activities were unchanged (e.g., no new gear types added/removed) there was no requirement to report annually. If the type of gear changed, then a new form should be submitted to update the notification.

Shellfish Lease Agreement

Mr. Babb stated that the Bureau had posted the final, approved lease agreement on the website as well as a letter of notice to the leaseholders. Mr. Babb asked the Council if they would prefer that he go through the new changes or straight to public comment. Mr. Johnson expressed concerns with the new lease agreement and asked Mr. Babb to go over what was changed.

Mr. Babb stated that the biggest change was related to the term "Lessor." Previously, "Lessor" was defined as the "Council" and "Department," collectively. Various questions were raised related to how administrative processes were handled (day to day). Mr. Babb provided an example related to fees. In the lease agreement, "the lessee shall pay to the lessor a fee in the amount as shown in Exhibit A and shall submit the fee to the lessor." In this example, this is clearly the Department handling this action. Mr. Babb stated that the thought was if the Council did not have an actual or distinct role in an action or process, the term "Department" might be a better fit to represent who was actually doing what. That was the thought process behind the change. Mr. Babb conveyed that it was not the Department's intent to strip the Council's authority, but to focus on the administrative process. However, Mr. Babb also stated that he understood how that could be the Council/industry's perception of the change. He added that in his opinion, not much was to be gained from the changes, and that he could go back and request that the changes be reverted to the original "Lessor" language.

Mr. Johnson suggested that "Bureau" be used rather than Department in the language because the Council works more directly with the Bureau rather than the Department. Mr. Babb explained that the question the Council was asking related to who was handling a precise role in a certain process, such as fee collection (as the Council does not accept the fees). Mr. Johnson added the fee is made out to the Treasurer of the State of New Jersey not the Department. Mr. Normant clarified that it was a question of whether the Council received the fees to give to the Bureau to pass to the Treasury, or if it was the Bureau who takes the fees. Again, Mr. Babb expressed that the Bureau was given this direction from a

legal perspective, but that the Bureau is willing to go back and suggest that this change not be made to the lease agreement.

Mr. Mathis stated that there are certain rules already in place where the Council is charged with making recommendations to the Commissioner, not the other way around and that there is no language “at the discretion of the Department.” He added that there are other places where additional language is not needed. Mr. Babb agreed with Mr. Mathis’ specific example and that changing the term back to Lessor should solve that issue as well. Mr. Babb stated that the Bureau would push back on the lessor language specifically if it was the Council’s pleasure. Mr. Mathis also stated that he had concerns that one of the sections for “right of inspection” was citing the water quality statute and that the Lessee should be contacted before any inspection. Further discussion ensued.

Mr. Babb proceeded onto another section of the lease agreement. He provided an example regarding Mr. Rizzo’s comments about signage on a lease and that this had been discussed with legal staff. Mr. Johnson asked about clarity being added to the agreement. Mr. Babb replied that the added language in the lease agreement was not meant to add clarity per se, but discretion, as there may be certain situations, such as signage, where the discretion would be helpful. Mr. Johnson added that signs on a lease are beneficial and asked about relay signs being added specifically. Mr. Normant added that relay lease signage was already outlined in the relay regulation. Mr. Johnson replied that it was not accounted for in the lease agreement.

Mr. Johnson opened the topic up for public comment.

Public Comment

Mr. Gaine expressed concerns with the language including “Council.” He suggested that “Department” once again be replaced by “Lessor,” since the agreement defines “Lessor” as including both the Council and Commissioner. Mr. Gaine added that if the new lease agreement were to move forward, it should be enforced fairly to everyone. He was appreciative that the additionally insured was reduced from five to two entities. Mr. Gaine said, in his opinion, that this is an okay agreement at this stage, but the Council must be involved. Mr. Gaine stated that he appreciated the Bureau and the Council for bringing the new lease agreement to where it is now from its earlier versions.

Mr. Wills stated that he previously worked for the DEP and had seen land lease agreements before. He expressed concern with it being modified from a land lease to a shellfish lease agreement. He also brought up public access and stated that he had witnessed lease areas be destroyed by the public. He appreciated that the new lease agreement be enacted in a form that everyone agreed with.

Mr. Normant stated that these are public tidal waters and are leased similarly to a riparian grant that is for the building docks, wharfs, or piers, but the difference being that the granting of a shellfish lease was taken from the authority of Tidelands and given to the Shellfisheries Council. Mr. Normant added that Title 50 does not prohibit public access, but Title 50 states that if damage to gear or livestock occurs, the lessee could file criminal or civil actions. Mr. Normant said this would hold true to the Department. The Bureau does surveys and inspections all the time and has never had any issues. Mr. Normant also said that if any staff were to damage gear, they would contact the lessee immediately.

Mr. Wills brought up the topic of crab pots in Dry Bay. Mr. Normant stated that the Marine Fisheries Council prohibited placement of crab pots in Dry Bay sometime in the 1980s. Mr. Avery asked about the

delineation of Dry Bay. Mr. Normant replied that he is not certain what the formal delineation had been, only what represented on the charts now. Mr. Babb read the right of inspection section language in question and explained that the lessee shall have no claim against the Department for inspecting. He added that this did not mean if damage was done, the leaseholder could not pursue damages. Mr. Johnson added that the lessee should be present for all inspections. Mr. Babb replied that this is unrealistic and added that it can be very difficult to get in contact with leaseholders - especially in a timely manner - like setting up a formal appointment to inspect a lease for lands owned by the state. He added that it was not necessary for leaseholders to be present when inspecting a lease or for checking a simply staking issue, etc. Mr. Normant reiterated that it is the responsibility of the Bureau to make sure that there is no damage to gear when an inspection is completed. Mr. Normant added that the Bureau is not obligated to have a leaseholder present when inspecting a lease, as they are public tidal waters. Further discussion on inspection ensued.

Mr. Rizzo added that the Bureau and the Council should take their time with the new lease agreement. He expressed concerns with the phrases like the "Department" and "our attorney." Mr. Rizzo suggested that the Council consider hiring an attorney. Mr. Johnson added that the Council was allowed to seek legal advice. Mr. Babb added that any entity could review the lease agreement. Mr. Mathis expressed some interest in the Council having an attorney look at the lease agreement on the Council's behalf.

Mr. Gaine stated that the language in the lease agreement was generally fair, and that the points about Dry Bay were excellent. He recommended that a policy be created to address specific issues separate from the lease agreement moving forward. Mr. Mathis and Mr. Johnson asked the Bureau if an attempt to make some of these discussed changes would be made. Mr. Johnson stated that the Bureau should attempt to make some changes to comments that were raised in the July Council meeting as well.

Mr. Mathis stated that his primary concern with the changes at this time centered around the "Lessor" and "Department" issue. He said he hoped that this could be changed back. Mr. Johnson added that the Council would not vote on the new lease agreement at this meeting. Mr. Babb suggested that the Council draft a letter with their specific suggestions of potential changes to the document as well as any other grievances raised at this meeting. Mr. Johnson stated that the Council had already raised concerns and would not be doing so again. In response, Mr. Babb replied that the Bureau would do its best to once again raise the new comments as well summarizing previous Council comments. Mr. Johnson asked if it was necessary to go to the "next level." Mr. Babb replied that whatever action the Council took, it needed to be taken quickly (i.e., before September). Mr. Babb added that, in his opinion, changes to sections that were considered "standard lease agreement language" were unlikely. Mr. Johnson asked if changes needed to be available by mid-October and, if so, that it would realistically have to be completed by the end of September. Mr. Babb agreed with that timeline.

Mr. Mathis made the motion to send a letter to the Commissioner outlining the Council's concerns that they had at the July and August meetings, which was seconded by Mr. Felder. Mr. Burke asked if that included the "Lessor/Department" issue. Mr. Johnson clarified that it would be included in the letter.

Mr. Avery inquired if the Council and Department could consider making the lease agreement for multiple years, not just one year. Mr. Normant informed Mr. Avery that if the lease agreement was signed, there would be normal renewal every year, which was a much more streamlined process.

6. New Business:

Council Appointments Letter

Mr. Normant noted that the Marine Fisheries Council asked the Shellfisheries Council to write a letter on the need for Council appointments. Mr. Johnson stated that he had signed a letter. Mr. Normant replied that once he knew that the entire Council had approved the letter, it would be sent the following day. Mr. Mathis made a motion to send a letter to the Governor concerning the Shellfish Council appointment. Mr. Felder seconded the motion.

Permission to Work Authorization

Mr. Normant discussed the Permission to Work (PTW) authorization. Mr. Normant explained that in previous years, leaseholders would come to the office to complete a form to let the Bureau and Law Enforcement know who was working on their lease in their absence. Mr. Normant added that within Title 50, under the section pertaining to invasion of lease grounds, a leaseholder was permitted to allow a licensed shellfisherman to utilize their lease. Mr. Normant added that this also comes into play in terms of Commercial Shellfish Aquaculture Permits (CSAP) and General Permit 30. Mr. Normant informed the Council and those in attendance that a letter was sent out by the Bureau to all leaseholders, which included a copy of the form. The new form was available on the website and would also be included in the lease renewal package.

Mr. Normant clarified that if a leaseholder was present on the lease, anyone could work with the lessee, but if the leaseholder was not present, someone should be designated under a PTW. The PTW protects the leaseholder by informing Law Enforcement that someone was not “invading” the lease ground. Mr. Normant added that the PTW was involved where a person was seeking structural permits if the person was not the leaseholder.

2024 Lease Renewal Reminder and Temporary Freeze on Transfers

Mr. Normant stated that the annual lease renewal process would begin on Monday, October 16th. Mr. Normant also stated that currently there were not enough staff to handle transfers once lease renewals commenced. When this happens, a lot of paperwork and application packets need to be redone. The Bureau advised the Council that there would be a temporary hold on transfers beginning October 16th through the first of the year. Mr. Babb stated that the Bureau was working on refilling its administrative position at Nacote Creek and that he did not envision this being an annual event. He stated that once we rehire staff, this should not be a problem in future years.

Sign In Sheet & Future Meeting Venues

Mr. Johnson asked if the Council meetings could have a sign-in sheet for who attends the meetings, such as done at the Marine Fisheries Council, and if they could be included in the meeting minutes. Mr. Normant replied that the Bureau would try to add a list of attendees to the meeting minutes and provide a sign-in sheet for future meetings.

Mr. Johnson also asked about bringing meetings back to the 3rd Monday of the month. The Bureau explained that the dates had been discussed last year and the need to move them to another night due to the library not being available on the third Monday of each month. Mr. Babb stated that the only venue

the Bureau could locate for the third Monday of each month was at Batsto State Park. This location seemed generally acceptable by the Council, and the Bureau stated that they would investigate it further. The Bureau and Council agreed to begin looking for other venues and consider returning to the 3rd of the month.

Public Comment

Mr. Wills asked if the office would be open on the 16th even though it was a Monday, as the office was typically closed. Mr. Normant replied that while the Nacote office was closed on Mondays for general license sales, he added that any leaseholder could still contact the office ahead of time and attempt to make an appointment for Mondays. Mr. Johnson asked if lease agreement signatures would be completed in-person or via mail. Mr. Normant replied that this year they would be completed in-person due to the new Lease Agreement.

Mr. Babb read Mr. Burke's public comment from the chat. Mr. Burke stated that he would like to emphasize his support for the Council and their taking a hard look at the lease agreement. Mr. Burke stated that he would like to know what the attorney's directive was when drafting the lease agreement, and that calling leases "public water" was not a fair description, as there was an investment put into it by the leaseholders. He added that there should be some protection of their rights to these leased waters. Mr. Burke strongly encouraged that the Council recommend the discussed revisions to the new lease agreement and emphasized the value that aquaculture provides. Mr. Burke requested that his comment be included in the meeting minutes. Mr. Babb also read Mr. Mayer's chat comment, which was stated in support of Mr. Burke's statement.

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: Wednesday, September 13, 2023

TIME: 6:00 PM

LOCATION: Atlantic County Library – Galloway Township Branch with virtual option
306 E Jimmie Leeds Road, Galloway Twp NJ 08205

Attendees:	Virtual Attendees:
Mr. Gaines	Mr. McGee
Mr. Parsons	Mr. Burke
Mr. Wills	Mr. Mayer
Mr. Rizzo	Mr. Moore
Mr. Avery	Mr. Matusky
Mr. Fleetwood	Ms. Wenczel