

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

Meeting was held at the Ocean City Public Library (1735 Simpson Ave, Ocean City, NJ 08226)
Attendance was in-person or online via Microsoft Teams

Monday, October 21, 2024

ROLL CALL: Chairman: Walter L. Johnson III (Ocean County)
 Vice-Chairman: George Mathis Jr. (Burlington County)
 Councilman: Paul T. Felder* (Cape May County)
 Councilman: Vacant (Atlantic County)
 Councilman: Vacant (Monmouth County)
 **Denotes Virtual Attendance*

DEP Representatives: Russell Babb, Bureau of Marine Habitat & Shellfisheries*
 Jeff Normant, Bureau of Marine Habitat & Shellfisheries
 Megan Swain, Bureau of Marine Habitat & Shellfisheries
 Scott Stueber, Bureau of Marine Habitat & Shellfisheries
 Richard DiVaccaro, Bureau of Marine Habitat & Shellfisheries
 Michael Auriemma, Bureau of Marine Habitat & Shellfisheries*
 Sarah Gentile, Bureau of Marine Water Monitoring*
 **Denotes Virtual Attendance*

Ms. Swain read the State's compliance with the Open Public Meetings Act and that a notice of the meeting was filed with the Secretary of State's Office, State House, Trenton, NJ, and sent to the Atlantic City Press and NJ Advanced Media news outlets. The meeting was recorded.

1. Total Revenue for September 2024 \$ 1,923.34
 Shellfisheries Law Enforcement Fund \$ 64.00
2. Presentation of September 16, 2024 minutes for approval.

The minutes of the September 16th meeting were approved on a motion by Mr. Mathis and seconded by Mr. Felder.

3. Applications for Decision

LESSEE	LOT	SEC	ACRES/FT	LOCATION	MAP	Species	Proposed Activity
Robert Lee	2516	B	2.24	Scull Bay	27	Hard Clam	Traditional On-Bottom Planting
Joseph McGee	2519	B	2.01	Scull Bay	27	Hard Clam	Traditional On-Bottom Planting
Shannon Harrison	2521	B	2.18	Scull Bay	27	Hard Clam	Traditional On-Bottom Planting
Thomas Glenn*	2536	B	2.38	Scull Bay	27	Hard Clam	Traditional On-Bottom Planting
Nicola McGee	2538	B	2.14	Scull Bay	27	Hard Clam	Traditional On-Bottom Planting

Buttercup Farms Oyster (Craig Stoneking)*	2549	B	2.19	Scull Bay	27	Oyster	Floating Cages/Bags
Chuck Gehman	238	A	2.00	Ludlam Bay	1	Oyster	Floating Cages/Bags
Michael Whiteside	239	A	2.00	Ludlam Bay	1	Oyster	Floating Cages/Bags

*In attendance at the September 16, 2024 meeting

Messrs. Gehman, Whiteside, McGee and Mses. McGee and Harrison attended this meeting. Messrs. Stoneking (Butter Cup Farms) and Glenn attended last month's meeting. Mr. Lee was not in attendance for this meeting and last month's meeting. The above applications were approved on a motion by Mr. Mathis and seconded by Mr. Felder. Mr. Lee's application was denied for not fulfilling the regulatory requirement, at N.J.A.C. 7:25-24.6(f), to attend one of two meetings his application was discussed. The approved applicants would receive a letter stating they had 30-days to sign their lease agreement and pay fees. Mr. Normant mentioned that that applications can also renew their leases for 2025 when they come in.

4. Applications for Transfer

LESSEE	APPLICANT	LOT	SEC	ACRES/FT	LOCATION	MAP	Species	Proposed Activity
Michael Ward	Kenneth Hanson	408.1	B	2.00	Great Bay – Big Creek	10	Oyster	Floating Cages/Bags, Bottom Cages
Estate of Fred Hickman	Michael Hickman	230	A	2.00	Ludlam Bay	1	Hard Clam	Traditional On- Bottom Planting
Jordan LoPinto	Ebb N Flow Seafood LLC (Thomas Ertle)	654	B	2.00	Little Egg Harbor Bay – Jeremy Point	6	Oysters, Hard Clam, Bay Scallop	Floating Cages/Bags, Bottom Cages
Robert Wilson	Joseph Brooke	2259	B	4.39	Dry Bay	24.2	Hard Clam	Traditional On- Bottom Planting
Robert Wilson	Joseph Brooke	2458	B	1.12	Great Bay	26	Hard Clam	Traditional On- Bottom Planting
Steve Mastro Sr.	William Mayer	2042	B	3.30	Broad Creek	2	Hard Clam	Traditional On- Bottom Panting
Matthew Gregg	Rose Cove Leasing, LLC Matthew Hender	887	B	1.35	Rose Cove	7	Oyster	Floating Cages/Bags, Bottom Cages

The applications for transfer were approved on a motion made by Mr. Mathis and seconded by Mr. Felder. Mr. Normant stated that the approved applicants would receive a letter to sign their lease agreement and pay fees. Mr. Normant added that no hydrographic surveys were required for any of the approved transfers.

5. Old Business

Regulatory Committee

The Regulatory Committee met on September 26th and a summary would be sent to the Council once completed. The committee discussed concepts on leasing regulations which included applications for new ground and lease

considerations. Date of the next meeting was to be determined with a potential date at the end of October or in November.

NJ REAL

The NJ REAL rule proposal's 90-day public comment period was set to end on November 3rd. The proposal included NJDEP updates to the Division of Land Resource Protection rules and a copy of the proposal was available online. Mr. Gaine sought input from the New Jersey Shellfisheries Association and developed formal comments for the Council which was directed by the Council at the September 16th meeting. There were no additional comments from the public.

The comments were approved to be added to Council letterhead and sent formally by the Council to NJDEP for consideration on a motion made by Mr. Mathis and a second by Mr. Felder. (Attachment 1)

Mr. Johnson noted that the NJ REAL proposal was difficult to follow, and that items related to shellfish were not all in one location. He noted that comments should be available to the public if someone wanted a copy.

2025 Lease Renewal

The 2025 lease renewal period was open and the deadline to renew was December 31, 2024. Leaseholders were required to submit payment of lease fees for 2025, lease renewal fee, sign all required documents, and corporate entities had to submit an updated business entity report. Leases that required insurance per the lease agreement had to submit proof of insurance (certificate of liability insurance). Ms. Swain encouraged leaseholders to contact the Bureau if they had any questions regarding lease renewal.

It was questioned whether a lease impacted by the recent suspension due to shellfish growing waters downgrade to "Suspended" should be renewed (See discussion below under New Business in regard to "Notice of Suspension for Shellfish Harvest"). It was clarified that the impacted leases were suspended from harvesting, but there was an Administrative Order (A.O.) being developed that would outline next steps for growers to remove aquaculture gear (floating bags/cages) from those leases. Any product from the lease would be required to purge on a lease in Approved waters per provisions with the Bureau of Marine Water Monitoring and overseen by Marine Enforcement before the sale of product. Per leasing regulations (N.J.A.C. 7:25-24.13), the lessee was given two years to move shellfish product to a lease in Approved waters, after which the lease would be terminated. Mr. Normant encouraged that the leaseholders renew their lease(s) during the two-year period in case water quality improved and the suspension of harvest was lifted.

Great Egg Harbor Lease

At the September 16th meeting, Mr. Schlembach asked the Council to review his hardship with two existing leases in Great Egg Harbor Bay (lots 106 & 107, section A) as they were unusable due to water being too shallow for his aquaculture operation. It was proposed at the last meeting add a lease off lots 106 and 107 and to relinquish lots 106 and 107. Mr. Normant stated that adding a new lease in this area was contrary to the leasing policy and that the proposal should be referred to the leasing committee, which was in the process of being reformed. Mr. Johnson stated that the Council often granted exceptions based on extenuating circumstances, and that this was well within the purview of the Council's authority to remedy the situation. Mr. Normant stated that he had received some comments from industry members after the September meeting which raised concerns on setting a precedent which could lead to other leaseholders wanting to reconfigure unusable leases and developing a lease contrary to lease policy. Mr. Normant recommended that the topic be referred to a Leasing Committee. Mr. Schlembach stated that they were willing to give up portions of the lease, and compromise however was necessary. It was noted that there would be industry interest in expansion and the potential for a new lease block within Great Egg Harbor as a whole and could be a topic of discussion for the Leasing Committee. Mr. Mathis recommended that the issue be referred to the Leasing Committee to keep it within normal Council procedure. The Leasing Committee would be able to set forth criteria for the lease siting specific to the extenuating circumstance as

has been done in the past, such as the proposed overwintering leases in Waretown. The discussion of a new lease proposal to remedy the hardship for Mr. Schlembach was referred to the Leasing Committee on a motion by Mr. Mathis and seconded by Mr. Felder.

Hard Clam Management Plan Update

Mr. Auriemma stated the Advisory Committee for the Hard Clam Management Plan consisted of eight members from various sectors. A meeting was scheduled for November 15th to discuss the development of the plan. Mr. Auriemma encouraged any members of the public interested in joining the Committee to contact the Bureau as that there were still vacant seats on the for wild commercial harvesters, and the depuration fishery. Current members of the committee are listed below:

Sector Representation	Name
Aquaculture	George Mathis
Aquaculture	Billy Mayer, Jr.
Depuration	Kevin Kirk
NGO (BBP)	Andrew McGowan
NGO (RCTB)	Deb Licato-Meiman
Academia	Dr. Doug Zemeckis
Academia	Dr. Daphne Munroe
Academia	Dr. John Wiedenmann
Recreational	Vacant
Depuration	Vacant
Wild Harvest (Commercial)	Vacant
Wild Harvest (Commercial)	Vacant

Mullica River Shell Plant Update

The Bureau had continued monitoring the 2024 shell plant site within the Mullica River, and that spat counts from October's sampling effort have remained high at over 1,500 spat per bushel. Mr. Johnson expressed concern that a die-off could be coming but was encouraged with the numbers. Mr. Stueber emphasized the value of the newly planted clean shell, noting that the 2024 shell plant site demonstrated an increase in recruitment success when compared to the natural reef and previous shell plant sites. Mr. Stueber said that based upon the counts taken on both the plant site and the Bureau's spat bags that he believed there had been a second late season set. Mr. Stueber stated that he could look at the spat bag data and provide an estimate of when the secondary spatfall took place. Mr. Stueber responded to questions regarding salinity levels and that the levels within the river vary significantly depending on rain fall and seasonality, but most recent salinity reading at Moss Point was 24 Parts Per Thousand.

6. New Business

Hydrographic Survey Update – Stites Sound

Mr. DiVaccaro informed the Council that the Bureau conducted a hydrographic survey within Stites Sound on October 9th. Mr. DiVaccaro stated that only minor adjustments were needed, and that the leaseholders were notified that they would have 30-days to adjust the corners.

Leasing Committee

Mr. Normant recommended the reformation of the Leasing Committee to update the Leasing Policy for the Atlantic Coast Section on a variety of important topics including the siting of structural aquaculture, lease expansion, and lease utilization. Mr. Normant recommended that the committee should not exceed 8-10 members per the Council Guidelines. The Council did not want to put a limit on the number of committee members to apply and would review the number once they received applications. The Leasing Committee was formed to review lease policy on a motion made by Mr. Mathis and seconded by Mr. Felder.

Mr. Gaine raised concerns that having too many members would lead to quorum issues and advocated for a strong and active committee. He added that everything would come back to the Council, where the public would also be able to provide comments and feedback. Mr. Normant concurred and added that too many members led to the previous Leasing Committee not accomplishing what the committee was tasked with.

Notice of Suspension for Shellfish Harvest

High Bar Harbor (221.9 acres)

Ludlam Bay (33.7 acres)

Ms. Gentile provided an overview of the downgraded shellfish growing water classifications to “Suspended” that were announced for Ludlam Bay and High Bar Harbor section in Barnegat Bay. It was suspected that the source of the suspension was a result of ineffective or nonexistent use of bird deterrents on floating gear. It was noted that it was a suspension of harvest, so husbandry and maintenance were still permissible. An Administrative Order from the Commissioner was forthcoming to set criteria for the grower impacted by the closure to move their gear and product from their leases. The A.O. would require the removal of gear, which could be accomplished by relocating or sinking the gear within 30 days of the order. The product from impacted leases would be required to purge for 30 days prior to sale, in consultation with marine law enforcement. The 30-day period may not be impacted by the water temperature and Bureau of Marine Water Monitoring was working with the Food & Drug Administration (FDA) to permit 30 days regardless of water temperature. Discussion ensued on the history of relay programs, and the differences between the historical hard clam relay program and the current oyster relay permits. Ms. Gentile clarified that this movement of product was similar but not the same as the oyster relay permits since remediation was being conducted through an A.O.. Ms. Gentile stated that she was confident that birds on floating cages contributed to fecal coliform in the water. She was optimistic that water quality would improve once the gear was removed but was not able to provide a timeline for when the suspension could be lifted.

High Bar Harbor water quality data was derived from a National Shellfish Sanitation Program (NSSP) sampling point, while Ludlam Bay was not. High Bar Harbor, per NSSP guidelines, required a three-year sampling period of ten samples per year prior to reopening. The Ludlam Bay suspension was not based on a NSSP sampling point but was an additional sampling point related to a known pollution source (birds on floating gear) that the FDA instructed the Bureau of Marine Water Monitoring to conduct based on a previous suspension in the area. This resulted in a buffer around the sampling point to create the suspension area. This is why some leases within Ludlam Bay were not impacted by the suspension since there was no existing gear. Therefore, the Ludlam Bay site was not required to meet the same three-year sampling period, but Ms. Gentile stated that there had to be confidence in enough data to lift the suspension, in consultation with FDA. She added that the Bureau of Marine Water Monitoring wants to lift the suspension as soon as possible, but the data had to support that decision.

Mr. Normant stated that there were five active growers that were within the impacted area in Ludlam Bay, and only one had another lease to transport product to. Mr. Normant suggested that the remaining growers contact other leaseholders within the Ludlam Bay area that were not impacted by the suspension to try and obtain permission to work on those leases. In addition, modification of permits and insurance to allow gear may be required. There were concerns raised

about establishing additional leases within Ludlam Bay that could potentially lead to additional closures. Mr. Normant recommended that growers that were impacted by the suspension work together to find a solution. It was advised not to move Atlantic Coast oysters to the Delaware Bay.

Discussion ensued about potential alternative sources of pollution that could have impacted the suspension including high tides, local landfills, and septic systems. Ms. Gentile said the water quality data consisted of fecal coliform and that birds were the main factor. Ms. Gentile could not specify which bird species had the greatest impact but noted that the area and the tidal flushing had an impact. Ms. Gentile noted the greatest impact was birds that sat on the floating gear, and that birds flying overhead was a lesser concern.

Mr. Normant noted the importance of increased public awareness regarding the siting of aquaculture leases that propose to use floating gear. Adjacent leaseholders currently are not required to be notified of use, but proposed activity for new leases and transfers was recently added to Council agendas and minutes as part of the public process.

Mr. Johnson asked if there was any update on the water classification downgrade that was just imposed in Barnegat Bay near Berkely Township. Ms. Gentile stated that it was a precautionary closure due to a detected sewerage leak in routine testing and that the process was started to identify and fix the leak but could take upwards of a month. Ms. Gentile added that the leak was of secondary treated effluent, not raw sewage but the closure, out of an abundance of caution, was implemented until the leak was fixed. Mr. Normant stated that the Bureau's shellfish assessment of the area indicated hard clam abundances of low to none.

Leaseholders impacted by the suspension were encouraged contact either Bureau if they had questions or needed assistance in resolving the situation.

The meeting was adjourned on a motion made by Mr. Mathis and seconded by Mr. Johnson.

7. Date time and place of next meeting:

DATE: November 18, 2024

TIME: 6:00 PM

LOCATION: Hybrid in-person/virtual

Nacote Creek Research Station, Port Republic

Public Attendees (In-Person)	Public Attendees (Virtual)	Other DEP Attendees (Virtual)
Bill Avery	Amanda Wenczel	Alissa Wilson
Chuck Gehman	Dale Parsons	Chris Kunz
Craig Stoneking	Matt Hender	Jenny Tomko
Dan Grace	Shannon Vasquez (Harrison)	Joseph Cimino
Don Otto	Tommy Burke	Lauren Strazzeri
Jordan LoPinto	Joseph McGee	Les Frie
Keith Zammit	Nicola McGee	Liia Carpenter
Martin Schlembach		Lisa DiElmo
Michael Acquafredda		Michael Auriemma
Michael Whiteside		Natalie Dragos
Nate Bellwoar		Nina Colagiovanni
Ned Gaine		
Steve Fleetwood		
Tom Bellwoar		

**NEW JERSEY SHELLFISHERIES COUNCIL
— ATLANTIC COAST SECTION —
P.O. BOX 418
PORT REPUBLIC, NJ 08241**

**WALTER L. JOHNSON III, CHAIRMAN
GEORGE W. MATHIS JR., VICE CHAIRMAN
PAUL T. FELDER, COUNCILMAN**

10/24/2024

Melissa Abatemarco, Esq.
Attention: DEP Docket No. 05-24-05
Office of Legal Affairs
New Jersey Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, NJ 08625-0402

Dear Ms. Abatemarco,

Please consider the comments below from the Atlantic Coast Section of the New Jersey Shellfisheries Council regarding the New Jersey's Protecting Against Climate Threats (NJPACT) Resilient Environments and Landscape (REAL) rule proposals.

The elevation of flood zones and the expansion of CAFRA areas will be a severe limitation to the expansion and growth of the shellfish industry. The commercial industry is intrinsically involved with coastal areas and as such our businesses have attenuated shoreside structures such as nurseries and hatcheries that will be affected by the proposed rule changes. Mandates of increased height above Mean High Water will cost extra money in equipment to move water to additional heights and in some cases may limit our ability to build soft infrastructure in the first place.

The industry applauds the addition of funds provided to the shellfish mitigation fund for unavoidable structures built through shellfish habitat and oyster reefs. As the funds are provided as mitigation to impacted commercial areas, we request the Shellfisheries Council be updated and their advice considered in the mitigation fund and its expenditures. Furthermore, we request that such funds received, in mitigation to the reduction of the state's natural resources and the reduction of the availability to commercial production, be procured to in-state residents and entities only.

In regard to proposed rule 7:7 Permit-by-registration 11, we request the time limit for the removal of screens and oyster spat attraction device upon expiration or termination of the lease be extended from 5 days to 30 days. As our business is very weather and condition dependent, we feel 5 days does not sufficiently provide enough time to remove structures should unforeseen circumstances occur.

The industry is fully opposed to the incorporation of live shell for use in living shoreline or nature-based solutions in permit-by-rule or permit-by-certification. The

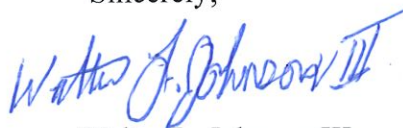
placement of live shellfish, particularly oyster, in such areas that are of easy access (within 10 feet of MHWL) to the general public in areas of compromised or unspecified shellfish growing waters, as defined by the National Shellfish Sanitation Program (NSSP), pose a threat to the public health of the residents of our state. As mandated by the NSSP a risk assessment calculator is used to determine the patrol requirements of enforcement for shellfish areas, this risk assessment is directly correlated to the ease of access to the shellfish. The higher the risk assessment, the higher the required frequency of patrol. Placement of live shellfish in such easy access will stretch an already stretched patrol regiment to the point that we feel may jeopardize the public health of the residents as well as puts constraints and possible repercussions to the eligibility of New Jersey to comply with federal mandates that allow us the ability to ship shellfish interstate.

The shellfish industry is cautious of the use of (non-live) shells for incorporation into living shorelines and nature-based solutions. The proposed rules have no procedure or practice to ensure the shells are cured and free of contamination and/or organic soft tissues. The proposed rules allow the use of shells for such nature-based solutions, however these shells without a mandated curing procedure or treatment pose a threat to the natural shellfish resources of the state. Shells may be sourced from anywhere regardless of the waters they came from, be in another state or even another country and there is not a specified time limit for curing. As proposed, the extreme case of day of consumption shells are eligible. These shells without a defined procedure may carry viral strains, cysts, bacterial contaminations or other parasites and may introduce such biological contaminants to our natural system affecting not only our enterprises but the shellfish natural resources of the state. A curing or other contaminant reduction procedure must be utilized and mandated for the use of shells in nature-based solutions. This threat is of such consequence to the resource and our industry we request the advice and consent of the New Jersey Shellfish Council be sought before final approval of any proposed projects. Additionally, we request, in addition to the post completion report delivered after construction, some monitoring and accountability be added to these proposed structures.

In regard to the displacement of shellfish leases by nature-based solutions in 7:7-5. (12, 24 & 33) General permit-by-certification 12, 24 & 33, we request that the NJ Shellfisheries Council not only receive consultation but also give its consent. This is especially the case if the upland proposed protected structure is private and not deemed essential as defined in the proposed rule. In some cases, the displaced lease may not find an equitable available lease ground for such a displacement. Moreover, the leaseholder themselves, while not authorized to participate in a nature-based solution, may already be providing habitat services such as wave attenuation.

Thank you for your attention in this matter.

Sincerely,



Walter L. Johnson III,
Chairman