

MINUTES OF THE MEETING  
OF THE  
DELAWARE BAY SECTION OF THE NEW JERSEY SHELLFISHERIES COUNCIL

Haskin Shellfish Research Laboratory  
6959 Miller Ave, Bivalve, NJ 08349  
MS Teams Conference Call

Tuesday, September 5, 2023  
6:00 PM

Present were: Chairman: Warren Hollinger (Cumberland County)  
Vice Chairman: Steven Fleetwood (Cumberland County)  
Councilman: Richard Malinowski (Salem County)  
Councilman: Scott Sheppard (Cumberland County)  
Councilman: Vacant (Cape May/Salem County)

State/Fed Reps: Russ Babb, Bureau of Marine Habitat and Shellfisheries  
Jeff Normant, Bureau of Marine Habitat and Shellfisheries  
Craig Tomlin, Bureau of Marine Habitat and Shellfisheries  
Robert Shuster, Bureau of Marine Water Monitoring

Haskin Lab: David Bushek, Director

General Public

Mr. Tomlin welcomed everyone to the meeting and stated that a Notice of this meeting was posted September 1, 2023, with the Secretary of State's Office, State House, Trenton, NJ pursuant to N.J.S.A. 13:1B-30 et seq, then he performed roll call for all Councilman as-well as mentioning representatives NJDEP and Haskin Shellfish Research Lab are present.

**The March and May 2023 Council minutes were approved by the Council.**

**1. July and August 2023 Revenue**

Chairman Hollinger present the revenue from New Jerseys Delaware Bay Bureau of Shellfisheries office for the months of July and August. July totaled \$16,615.00 and August revenue totaled \$20,280.00 from renewals, lease fees, tags, equipment, and commercial/recreational licenses.

**Revenue collected for July totaled \$16,615.00 and is summarized as follows:**

License Type	Total	License Type	Total
Commercial Crab Pot	\$700.00	Menhaden	\$154.00
Nets	\$341.00	Commercial SF	\$50.00
Application Fees	\$52.00	Recreational SF	\$10.00
Oyster Tags	\$15,180.00	Juvenile SF	\$8.00
Lease Fees	\$100.00	Non-Res SF	\$20.00

**Revenue collected for August totaled \$20,280.00 and is summarized as follows:**

License Type	Total	License Type	Total
Commercial Crab Pot	\$500.00	Menhaden	\$104.00

Nets	\$211.00	Commercial SF	\$100.00
Application Fees	\$58.00	Recreational SF	\$30.00
Oyster Tags	\$19,168.00	Dredge Boat Renewal	\$102.00
Lease Transfer Fees	\$5.00	Juvenile SF	\$2.00

## 2. Oyster Development Account:(as of 9/1/2023)

Encumbered	\$0.00
Expended	\$0.00
Unexpended/Uncommitted	\$448,316.80

Chairman Hollinger presents the table above stating there is no encumbered or expended expenses and the unexpended balance in the Oyster Development account is \$448,316.80.

## 3. Lease Transactions

For Councils approval: Transfer from Edward Gaine to Olga Gaine

Lease Holder	Applicant	Section	Lot	Acres
Edward Gaine	Olga Gaine	B	281	200

Mr. Tomlin details a lease transfer from Edward Gaine to Olga Gaine, the leased area is 200 Acres falling under section B lot 281. Chairman Hollinger motions the decision to allow the transfer to the council members and the motion passes.

## 4. Old Business

### 4.1 Red Knot Stakeholder Committee Update

Chairman Hollinger stated that this committee has not met but states last he heard the red knots have flown from Egg Island heading North for the season.

### 4.2 2023 Shell Plant Update

Mr. Tomlin gave an update on the 2023 Shell Plant program that was conducted in July. A total of 149,000 bushels of shell were planted; 10,000 bushels being planted in the Maurice River Cove tonging Area and the remaining 139,000 bushels being planted on 3 natural seed beds in the Bay. The three natural seed beds being Shell Rock, Ship John, and Bennies. Mr. Tomlin went on to explain that during last month's bed monitoring efforts there was spat present on the planted beds, but total spat numbers have not been acquired yet. Councilman Sheppard asks Mr. Tomlin to elaborate on the location on the shell planting and transplanting efforts in the tongers areas. Mr. Tomlin shared that the 10,000-bushel plant was close to the mouth of the Maurice River in seasonally approved waters, He went on to say that the transplants occurred near the shore in Nantuxent cove and on a bed in Back creek. Mr. Tomlin then added the transplant receiver beds were in seasonally approved water. Councilman Sheppard starts to expand on this section and asks Mr. Tomlin about spat presence on the recently planted beds. Ms. Gius fields this question by stating there was some spat seen but the main monitoring for shell plant sites won't begin until later in the month of September. This sparked a discussion between Ms. Gius and Councilman Fleetwood about increasing analysis in the future to obtain more data on spawning time frame. Mr. Fleetwood states while the monthly monitoring of growth, vibrio, dermo, and mortality are all useful information for the council and the commercial industry, the most valuable information would be increased comprehension for

spatfall data. Ms. Gius adds that for the upcoming monitoring season in 2024 and early start to monitoring efforts in April/May would be beneficial to see when the oysters start to accumulate mass relative to spawning events.

#### 4.3 2023 Direct Market Update

Mr. Tomlin presented the Direct Harvest Program update (with the table below) as of 9/1/2023 stating 75,627 bushels have been harvested in 2023 from the Direct Market oyster beds. 38,283 bushels have been harvested from the High Mortality beds, which temporarily closed June 12<sup>th</sup>. 22,951 bushels have been harvested from the Shell Rock bed, which temporarily closed on July 24<sup>th</sup>. So far 14,393 bushels have been harvested and 14,163 bushels have yet to be harvested from the Medium Mortality region.

Bed Name	Region	Boat Days	Total Bushels	CPUE
Ship John	MMM	86	10,056	117
Cohansey	MMM	35	4,337	124
			14,163	
Total MMM		121	14,393	119
Total SR		162	22,951	142
Total HMM		283	38,283	163
Total		415	75,627	133

Adding to this Mr. Tomlin stated a majority of this quota needs to be harvested before the Delaware bay commercial oyster fleet can return to harvesting from Shell Rock or the High Mortality beds. Representatives from the Council noted the remaining harvest quota (noted as number in red 14,163) from the Medium Mortality region was higher than expected for the time of year and the fleet will be harvesting the Medium Mortality beds (Ship John and Cohansey) for a while.

#### 4.4 Commercial Shellfish Lease Agreement

Mr. Babb begins the discussion of the Commercial Shellfish Lease Agreement by stating there has obtained constructive comments from the public, New Jersey Shellfisheries Association, previous council meetings and the Aquaculture Advisory Council. During this commentary period the department representatives met with Mary Monteschio (legal representative for New Jersey Fish and Wildlife) and discussed concerns with the lease agreement from the various groups.

Mr. Babb elaborates on one area of public comment being the previous change from “Lessor” to “Department” in the lease agreement. Mr. Babb goes on to explain that while the change was initially made to capture the administrative process it was interpreted as taking power from the respective councils (Atlantic Coast and Delaware Bay). The language change was reverted as a result. Additional language was introduced to the lease agreement after concern was raised from the Atlantic Coast Shellfish Council asking for additional signage for leases in shallow water areas. This concern was raised due to individuals unaware of the lease grounds and/or poachers who were harvesting shellfish from said lease areas. This verbiage reads “A lessee may request from the department and the department may grant in the department’s sole discretion approval to post additional signage that states: This area is for the private cultivation of shellfish it is not open for the harvest of shellfish by the public. Violators will be prosecuted.” Mr. Babb explains while this is less relevant to leaseholders on the Delaware bay coast it is also an option for them if needed.

Another concern that was brought to the attention of the department via public comment was the department's access to the lease premises in the case the department causes damage to the lease or the wildlife on the lease. Added to the lease agreement was a section detailing the lessee's right to pursue action against the department in the case that the department damages authorized aquaculture equipment or cultivated shellfish. Additionally, if a lease holder is in default on their lease agreement the department, the council and board of the lessor can choose not to lease to that individual again.

Mr. Babb states security pertaining to the leaseholder is now better recognized in the terms of the lease agreement. The department is not held accountable for stolen property on a lease but that does not preclude the Bureau of Law Enforcement from patrolling the leased premises. There was also concern from the public that by signing the lease agreement the lessee and the department are waiving their right to trial by jury. Mr. Babb explained this is standard practice for all state leases and if a case were to go to trial the judge would be the trier of fact, resulting in a hastened trial and less financial fees for said trial for both parties. The final section for public comment on the new lease agreement detailed lease holder concern over an omission of public access rights for said lease holder on their respective lease grounds. Mr. Babb explains the current lease agreement states that the right of public access isn't excluded but when the leaseholder signs for the right to cultivate shellfish they are also granted the right of public access for said lease ground.

Mr. Babb after stating the changes to the lease agreement reiterates that the latest version of the lease agreement is currently available on the department's website along with a frequently asked questions sheet. The Council members personally thanking Mr. Babb and other department representatives for their time put into the new lease agreement terms before opening the floor to any additional questions about the lease agreement moving forward. Mr. Babb finishes this section of the meeting stating these changes are not construed in a way to revoke leases from the lessee, it was constructed in a way to provide enhanced tools for the lease holder and how to comply with the new regulations that have been set forth and the departments representatives are more than willing to help with questions or concerns that come from the changes mentioned above.

## **5. New Business**

### **5.1 Temporary Lease Transfer Freeze- October 1st**

Chairman Hollinger introduces the lease transfer freeze section and Mr. Babb explain that during the latest Atlantic Coast Shellfish Council meeting the department has asked to put a temporary freeze on Shellfish lease transfers until January 1<sup>st</sup>, 2024. He elaborates on a department staffing issue with employees who handled the documentation in previous years no longer being with the department or some who are now performing a different role for the department. Mr. Hollinger asks if this pertains to new leases as well and Mr. Babb confirms this only pertains to lease transfers and there's no freeze on new lease applications.

### **5.2 Retail Shellfish Training- G. Wolf & V. Wheatley**

Chairman Hollinger leads the conversation stating since vibrio cases were first documented in Delaware Bay Shellfish, the council has gotten out in front to document and obtain as much information per case as they occur. The Chairman shows concern with the amount of vibrio cases to humans in recent times and questions the Council and Mr. Tomlin on how to reduce this number. Chairman Hollinger also introduces Gary Wolf with New Jersey department of Health.

Mr. Wolf elaborates on the trace back process for vibrio cases including where the oyster was harvested, what tag it was harvested under, when it was served and how the shellfish was kept prior to consumption. Mr. Wolf also highlights the importance of the retail food regulations stating the risk of severe illness from shellfish kept in poor conditions or that weren't handled properly. He continues with defining that different counties in the state of New Jersey have varying degrees of health inspection training as it is to accommodate the industry they revolve around; while some counties have fewer health inspectors that are trained specifically for inspection of shellfish some counties have larger staff and there's a lack of representation of shellfish training in some of these counties. The disconnect between these groups is what prompted a training session set up by Mr. Wolf, to train individuals for proper inspection procedures as well as inviting the shellfish industry members to participate. This will be done to highlight tagging requirements, shellfish handling, and proper temperature control for shellfish. Vice Chairman Fleetwood asks Mr. Wolf if the training is mandatory and how many inspectors will be able to attend. This introduces Ms. Wheatley who states the class cannot be mandated but is incentivized by an inspector's yearly class credit quota; health inspectors must renew their license in November and as the class is planned to be held in November the credit will count toward their future renewal. Ms. Wheatley adds that health inspectors are severely overloaded, constantly changing staff and understaffed in their respective municipalities, and it can make tracking vibrio cases back challenging. Ms. Wheatley also commends Ocean, Atlantic, Cape May and Monmouth County health officials for their frequent involvement and knowledge of vibrio investigations when they occur. She adds that the collaborative efforts between New Jersey's Health Department, Shellfish Authority and the FDA is reshaping the model ordinance and food code pertaining to shellfish and vibrio outbreaks for Chapter 24.

Ms. Wheatley reiterates the importance of the content that will be covered in the upcoming training class that including tag retention, shellfish retention in standing water at restaurants, what to look out for at a restaurant, how to sell to retailers, interstate certified shellfish shippers list, how to work with restaurants to comply with tag retention and how to spot cross contamination. For compliance issues Ms. Wheatley stated local law enforcement, and Fish and Wildlife are contacted for how to handle their respective duties whether it be returning shellfish to an area or civil action.

Chairman Hollinger thanks Ms. Wheatley for taking time to talk with the council and asks for additional comments from the rest of the Council. Vice Chairman Fleetwood adds that this is the livelihood for many individuals in the shellfish industry but once the product leaves their control it is hard to trace back to find the cause of illness. Mr. Hollinger adds that there needs to be an emphasis in the news for individuals who are immunocompromised and at heightened risk; Mr. Fleetwood, and Ms. Wheatley both agree that the takeaway isn't to not consume shellfish; but it's to be cautious if you are an individual at higher risk. All Council members thank Ms. Wheatley for the time she took today to talk with the Council to stay ahead of Vibrio cases and get a better understanding on how to mitigate risk in the future.

### **5.3 2024 Vibrio Planning- B. Hollinger**

Mr. Tomlin begins this section by stating that Chairman Hollinger and other Council has asked him about the 2024 vibrio plan. Mr. Tomlin states the human contracted illnesses that have occurred from shellfish harvested from the direct market fishery are below the threshold of concern. Mr. Tomlin continues to state that the council and the department continue to use the best science practices to advise the shellfish industry on future risk reduction from vibrio illnesses. He also states there is a plan for all advisory members to come together in October equipped with current data and see how the management practices have changed over the years and where there is insight to reduce risk.

Chairman Hollinger, Mr. Tomlin, and Mr. Babb discuss harvesting being allowed to start half an hour earlier in the summer months to reduce the risk of vibrio. Mr. Schuster adds to this conversation by stating this discussion was brought up in the past between Mr. Schuster and Mr. Tomlin. Mr. Schuster explains that the earlier the harvest start time the quicker the fleet gets back, lowering the exposure of the increased temperature and impact the exposure has on oysters. Mr. Schuster also adds that this matter should be addressed to the Bureau of Law Enforcement. Chairman Hollinger and Mr. Tomlin agreed it's good to investigate and a document should be composed before the next meeting so it can be voted on by the Council.

#### **5.4 Letter Regarding Council Appointments – B. Hollinger**

Chairman Hollinger introduces the Council Appointments letter that was penned by the Council. The idea for this letter was brought to Chairman Hollinger by members of the Marine Fisheries Council as they were planning to send a notice to the Governor to address the issue of a lack of council appointees in the past. The letter is addressed to Governor Phil Murphy and describes the vacancy of a Cape May/Salem County representative. It goes on to say some Council members are running on expired terms and there are members of the industry that have put in appointment applications with the Appointments Office and the State Senate Judiciary Committee; there is yet to be movement with these applications. Chairman Hollinger asks for suggestions from the Council and the audience for this letter. Mr. Gaine asks for Sam Parker, Director of Staff, to be included in the cc list on page 2. Chairman Hollinger motions for the letter to be sent to Governor Murphy with the proposed change to add Sam Parker and the motion passes.

#### **5.5 Leasing Discussion**

Mr. Gaine states that now the new lease agreement is finalizing there should be a discussion about lengthening the lease period. He continues by explaining the lease terms have historically been for that year and once the lease expires the lease holder must do their paperwork again for the following year. Mr. Babb addresses Mr. Gaine statement by stating this conversation was also brought up at the most recent Atlantic Coast Shellfisheries Council meeting and the Council members along with members of the public agreed they would like to visit this topic again. Mr. Babb states the department isn't married to the idea of an annual lease renewal process, but for the time being the lease period will stay a yearly renewal process until the department has ample time to look at paperwork side of the renewals and meet with attorneys.

Mr. Babb refers to a back to harvesting before sunrise citing NJ Admin Code 7:25A-2.3. This statute states harvest of oyster from direct market natural seed beds can only take place Monday-Friday from sunrise to 3:30pm unless otherwise determined by the department in consultation with the council. Mr. Babb elaborates on this point and says there might be a way to write earlier harvest into regulation but will also need to work within NJ Title 58 to work with the commercial industry on this matter.

Mr. Babb mentions the lease renewal process will begin on October 16<sup>th</sup>, all lease holders should have received a letter from the department stating this and a copy of this letter is on the department's website. He also invites any lease holder to reach out with questions or concerns about the upcoming lease renewal process.

### **6. Meeting Schedule**

DATE: January 9, 2024

TIME: 6:00 PM

LOCATION: Haskin Shellfish Research Laboratory and online via MS Teams