

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

Haskin Shellfish Research Laboratory
MS Teams Conference Call
Bivalve, NJ
Tuesday, July 9, 2024
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 & Shellfisheries
Jeff Normant, Bureau of Marine Habitat & Shellfisheries
Craig Tomlin, Bureau of Marine Habitat & Shellfisheries
Andrew Hassall, Bureau of Marine Habitat & Shellfisheries
Alissa Wilson, Bureau of Marine Habitat & Shellfisheries
Michael Lindner, Bureau of Marine Habitat & Shellfisheries
Megan Swain, Bureau of Marine Habitat & Shellfisheries
Michael Auriemma, Bureau of Marine Habitat & Shellfisheries
Karen Bates, Bureau of Marine Habitat & Shellfisheries
Amanda Wenzel, Department of Agriculture
Sarah Gentile, Bureau of Marine Water Monitoring
Bill Heddendorf, Bureau of Marine Water Monitoring

Haskin Lab: David Bushek, Director
Jennifer Gius, Laboratory Researcher IV
Iris Burt, Laboratory Technician

General Public

Mr. Tomlin 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 NJ Advanced Media news outlets. He announced that the meeting would be recorded.

1. Presentation of the March 2024 and May 2024 minutes for approval.
Council tabled the March and May 2024 minutes.
2. **Delaware Bay Office Revenue Collected in May and June 2024**

2.1 Revenue collected for May totaled \$45,473.00

License Type	Total	License Type	Total
Oyster Tags	\$42,644.00	AC Dredge	\$100.00
Nets	\$1,249.00	Commercial SF	\$100.00
Commercial Crab Pot	\$700.00	Application Fees	\$56.00
Menhaden	\$360.00	Recreational SF	\$10.00
Lease Fees	\$250.00	Duplicate License Fees	\$4.00

2.2 Revenue collected for June totaled \$16,799.00 and is summarized as follows:

License Type	Total	License Type	Total
Oyster Tags	\$10,908.00	Commercial SF	\$150.00
Assigned Fees	\$4,000.00	Application Fees	\$58.00
Nets	\$707.00	Rec SF Resident	\$40.00
Commercial Crab Pot	\$700.00	Rec SF Non-Resident	\$20.00
Menhaden	\$208.00	Rec SF Juvenile	\$8.00

3. Oyster Resource Development Account : *(as of 7/01/2024)*

Encumbered:	\$195,000.00
Expended:	\$245,727.89
Uncommitted:	\$163,432.19

4. Lease Ground Transactions

4.1 Lease Grounds for Decision

Applicant	Section	Lot	Acres
Creek Side Salts, LLC	ADZ-2	3A	10

Councilman Sheppard made a motion to accept. Councilman Fleetwood seconded the motion. All were in favor and the motion passed.

5. Old Business

5.1 Red Knot Stakeholder Committee Update

Mr. Tomlin informed the Council that the NJDEP has started a conversation with the US Fish and Wildlife Service to discuss the re issuance of the Programmatic Biological Opinion and that meetings are set but there is no further update.

5.2 Direct Market Update

Mr. Hassall reported that in May, a culled transplant was completed from three different bed regions. This transplant increased the direct market quota in all regions of the bay. All three harvest regions went from their median to their maximum exploitation rates, and received a transplant bushel bump. He then reminded the Audience that, due to the harvest scenario enacted at the March Council meeting each harvester for an individual quota is required to harvest 199 bushels from the Medium Mortality Market region. He noted that there was a temporary closure of the Nantuxent bed from June 24th until July 1st, which will be discussed later in the meeting. Mr. Hassall went on to note that the High Mortality region closed on July 8th with a total harvest of 32,703 bushels of which just over 50%, 17,521 bushels, came from Benny's. He then stated that two regions remain open, Shell Rock with approximately 17,500 bushels remaining, and Medium Mortality with approximately 5,500 bushels.

Mr. Reeves asked about the CPUE difference between this year and last year and was informed it was about the same.

5.3 Intermediate Transplant Program Update

Mr. Hassall gave this summary of the transplant that ran for 11 days from April 25th to May 9th. The Medium Mortality transplant took 7 days and moved 28,075 bushels from Middle/Sea Breeze to two sites on Bennies. This increased the exploitation rate from 7.49% to 9.82% with additional transplant bushels. The Low Mortality transplant took 3 days and moved 11,875 bushels from Arnolds/Upper Arnolds to two sites on Shell Rock. This increased the exploitation rate from 3.7% to 4.88% with transplant bushels. The Very Low Mortality transplant took one day with three boats and moved 3,800 bushels from Hope Creek to one site on Ship John. This increased the exploitation rate from 3.03% to 3.7%.

Councilman Fleetwood inquired about what the oysters looked like and mortality at Hope Creek. Mr. Hassall informed the Council that for the transplant overall there was a lot of smaller material. Mr. Tomlin said there was some mortality, but it was overshadowed by the amount of small spat.

5.4 Dermo Update

Mr. Bushek reported that dermo progressing as expected for a typical year. He noted that during the previous week, everything at Cape Shore was actively spawning, the oysters on the beds were quite ripe.

Councilman Hollinger asked if there was any information on the resurvey of Bennies seed bed. Ms. Guiss informed the Council that she was still looking at the data, making sure she is being thorough, but her overall impression is that the footprint of the oyster beds hasn't changed, which is expected. The densities look similar to what they saw in the fall, so they don't anticipate a huge change from what was presented at the annual stock assessment.

Mr. Gaine asked if Rutgers was going to continue to monitor spawning, if a second spawn were to occur, and is it possible to see if they do a complete spawn? He also asked if the dermo levels at the Cape Shore averages were over the entire length of time and if there is a way to tease out a wet year vs a dry year when talking about levels coming out of the river. Mr. Bushek stated that the lab would continue to monitor the spawn and they would look at river flow data and its relationship to dermo.

****Councilman Hollinger** noted that Shell planting was not on the agenda and asked if the barge is supposed to load tomorrow. **Mr. Tomlin** informed the Council that a barge is supposed to load tomorrow. In total the Bureau hopes to plant six barges, around 130,000 bushels. He noted that if there is enough shell the Bureau will try to do the tongs plant just outside of Cedar Creek.

5.5 Regulatory Committee Update

Ms. Wilson reported that at the request of the Council, letters had been sent to industry members and stakeholders at the end of May with an application deadline of the middle of June. At the halfway point, reminder emails were also sent out. She stated that at the time of the meeting five applications were received and were presented to the Council. Mr. Wilson then noted it was the Council's decision if they would like to move forward with those individuals who had applied.

Councilman Fleetwood made a motion to approve the five applicants plus Councilman Hollinger and Councilman Sheppard to the new Regulatory Committee. Mr. Malinowski abstained, and Mr. Sheppard seconded. The motion passed.

6. New Business

6.1 Nantuxent Closure

Mrs. Gentile informed the Council that there was a report of a possible PSP shellfish poisoning case in Wisconsin. The patient consumed oysters on June 19th with New Jersey being informed on June 20th. There were multiple states oyster tags on the bag – Maryland, New Jersey and Washington. She noted that usually when it comes to Vibrio trace back, that would indicate a mixed oyster case where it is difficult to determine where the oysters in question came from that made the patient sick. In this case, the restaurant insisted that they only use Delaware Bay oysters for their Oysters Rockefeller. The epidemiologist deemed it to be an outbreak (one case of PSP is considered an outbreak), and once that happens, it sets into motion a series of events where we must close waters if the FDA determines the oysters came from New Jersey. The Model Ordinance details what must be done. The State of NJ has never had a PSP case in and never seen anything that would cause the Bureau of Marine Water Monitoring (BMWWM) to think this came from New Jersey water. Out of an abundance of caution, the State worked to get the closure done quickly and reopened quickly. Mrs. Gentile noted that at the restaurant there were tags that could implicate states that have had recent recalls for PSP and have had recent outbreaks of PSP. The facts let everyone to believe that this was not a New Jersey case. The BMWWM argued with the FDA that in 20 years of testing for the species that produces saxitoxins, it has never been found in New Jersey. She noted that between June 10th and June 14th, 915 bushels were harvested from Nantuxent (roughly 237,900 oysters or 19,825 meals) without a single other illness or problem. The BMWWM collected samples and overnighted them to a lab in Maine, the lab worked very quickly, and the results returned nothing to note in the oysters. The results were used to reopen the bed immediately. BMWWM argued that no biotoxins were ever found, so there was no need to follow the repeat testing protocol, and demanded to reopen immediately. She reminded the Council that was important to note that this was determined to be a suspected PSP incident and not an official PSP case attributed to

New Jersey.

Mrs. Gentile also gave a Vibrio update stating that twelve oysters are tested biweekly from Delaware Bay for both Vp and Vv. The samples are collected from the beds where the industry is harvesting from, from May through October. She continued, the results so far are relatively low compared to previous years, but there was a small spike in May and then once again this week. Mrs. Gentile also stated that BMWB is testing on the Atlantic Coast in Barnegat Bay.

Councilman Hollinger asked if there were any updates about the bird deterrents. Mrs. Gentile replied that they had a meeting with Gary Wolf and his inspections have been limited to the Atlantic Coast so far. Mr. Wolf said it was better than in his assessments last year, but this isn't peak bird season, yet which is August into September. The message they were getting is that people were being more proactive. Councilman Hollinger also asked if a closure due to bird fecal matter would affect the entire state. Mrs. Gentile replied that if there were a closure based on water quality due to the bird issue, it would be a localized closure. Enforcement gave a lot of verbal and written warnings at the end of last year, at this point its going to be violations because everyone has been notified. Councilman Hollinger expanded that it was presented that if the growers didn't get their act together regarding bird deterrents, the state could be found out of compliance with the FDA and that could cause shipping out of state to cease. Mrs. Gentile noted that if it birds on floating gear is not addressed, it becomes a ding against the state for not doing what needs to be done to control a known source of pollution. They are going to do everything in their power to have that not happen, but it is a possible result.

Mr. Gaine asked, regarding the suspected PSP incident, if there was anything they could do in the future for trace back. Ms. Gentile recommended that at or before the next ISSC, someone should bring up that the word or statement of a restaurant, should not be enough to enforce a closure.

Councilman Fleetwood thanked the Bureau of Marine Water Monitoring for their handling of the situation.

Mr. Camp asked Ms. Gentile what he would need to submit to put an ice tub on his boat to submerge the oysters and take their core temperatures down. He was informed that is Department of Health and he can be put in contact with someone from there.

6.2 NJ REAL (Resilient Environments and Landscapes) Rule Proposal

Mr. Auriemma shared that NJ REAL is part of the New Jersey Pact Regulatory Reform aimed to reduce impacts on the environment from climate change. It includes a couple of big regulatory packages, one of which is aimed at reducing environmental pollutants and the other is REAL, which includes a lot of changes to coastal zone management rules with the intention of streamlining waterfront development permitting, but also keeping better track of coastal development and other activities in coastal waters. It incorporates a lot of nature-based solution activities and facilitates renewable energy, mainly offshore wind development.

Relevant changes include:

- Permit by rule will be known as permit by registration – users will need to register and submit compliance information to the department via its online portal to provide better tracking of regulated activities throughout the state. Examples include placement of

shellfish cages, formerly permit by rule 18 will now be permit by registration 12 which would need to be less 10 sq ft in size with anything larger needing a general permit, and placement of predator screens in aquaculture lease areas which used to be permit by rule 17 will now be permit by registration 11.

- Restoration shoreline stabilization and resilience related rules include general terminology changes, getting away from the living shoreline terminology and referring more broadly to nature-based solutions.
 - There is an added rule that nature-based solution projects cannot be located within a shellfish lease area with the stipulation that if it is necessary to protect public interests or upland resources, the DEP could modify a lease in consultation with a shellfish Council to accommodate that project.
- Special area rule 9.2 has expanded the exceptions to the prohibition of development in shellfish habitat areas to allow submarine cable installations to align with the states clean energy goals. More specifically, cable installation in shellfish and oyster reef habitat which is discouraged but acceptable under certain conditions, such as a need to demonstrate public interest, such as an offshore wind project, that no practicable or feasible alternative exists, that impacts to that habitat are minimized, and that mitigation is provided.
- Shellfish habitat mitigation requirements under rule 17.9 will have added subsections which includes offshore wind related cable installations. Specifically, monetary contributions to the shellfish habitat mitigation account based on the total area of impact, shellfish density, and commercial value of shellfish. There is also an added subsection specifically related to development in an oyster reef habitat including using physical restoration methods using the best available science, restoring the preconstruction bathymetric relief density, population conditions to the preexisting conditions before construction, and a monitoring program for at least three years.

This will most likely be published in August which will trigger a 90-day public comment period for the proposed rule. There will also be three public hearings, and it should be finalized and adopted by fall of 2025.

Councilman Hollinger asked once in effect, how many days do have to fill out the information to go from permit by rule to permit by registration. Mr. Normant replied that he believes that once the rules are adopted, it would be best to get the process started. Councilman Hollinger asked if the website was set up, at this point in time that question could not be answered. Councilman Hollinger expressed that he does not believe this is a good thing. Mr. Gaine disagreed and noted that this is cleaning up a lot of rules and its going to make the environment a lot more productive for shellfish. There is a lot that is positive for the shellfishery but there is some language that is uncomfortable. Mr. Gaines asked if the permit by registration needed to be renewed yearly as well as who would need to do the waterfront development permits for the ADZ. He also asked for clarification of the term oyster reef habitat? He was informed that the permit by regulation is a one time registration unless you change what your activity. The Bureau noted that it is to be determined who will need to do the permit by registration for the ADZ, Bureau staff added since shellfish habitat is very broad, oyster reef habitat was teased out from other shellfish habitat to provide additional protections. Councilman Hollinger expressed more concerns about the proposed rule stating that it will be harder to do anything to any of your existing buildings and that Port Norris and part of Maurice River Township are going to be considered a working waterfront according to the state plan when its endorsed and they have an 80% impervious cover. They are currently working with FEMA to set up more rules on working waterfront as well as Land Use to see what actions will be approved.

6.3 Oyster Management Discussion

A lengthy discussion ensued about the underutilization of parts of the High Mortality Seed Beds. The Council asked Rutgers and the State of NJ to look at ways to tease apart the high mortality bed regions including moving the seed bed known as Bennies Sand to the same management zone as the seed bed known as Shell Rock. The Bureau and Rutgers stated that they would work together and present scenarios at the 2025 Stock Assessment.

The Council asked for an update on the GPS trackers and were informed that because it is considered an IT purchase it is a very involved purchasing process. The Council offered to write a letter to help push it forward. **Councilman Fleetwood made a motion to accept. Councilman Sheppard seconded the motion. All were in favor and the motion passed.**

7. Meeting Schedule – Council

Date, time, and place of next meeting:

DATE: September 10, 2024

TIME: 6:00 PM

LOCATION: Haskin Shellfish Research Laboratory and MS Teams

8. Adjournment – Council

Councilman Sheppard made a motion to adjourn. Councilman Fleetwood seconded. The meeting ended at 7:30pm.