

Aquaculture Advisory Council
April 30, 2021
Meeting Minutes- Conference Call Meeting

Members Present: Ms. Monique Purcell (Sec. Douglas Fisher), Mr. Joseph Cimino (Acting Comm. Shawn Latourette), Ms. Melanie Willoughby (Sec. Tahesha Way), Ms. Virginia Wheatley (Comm. Judith Persichilli), Dr. Dave Bushek, Dr. Douglas Zemeckis, Mr. Mike De Luca (Dr. Robert Goodman), Ms. Lisa Calvo, Mr. Barney Hollinger, Mr. Ned Gaine (John Maxwell), Ms. Elizabeth Haskin, Mr. Bob Rush, Dr. Amanda Wenczel.

Members Absent: Mr. Maury Sheets, Mr. Frank Virgilio

Public in Attendance: Roll call of attendees not taken; names were stated when making comment.

Ms. Purcell called the meeting to order; a quorum was present.

Approval of meeting minutes- January 2020. N. Gaine opposed meeting minutes due to lack of listing of votes per member for the roll call vote to approve minutes from the October 2020 meeting. Also opposed due to lack of inclusion of comments from industry members in the public comment section, represent industry and show they were in attendance.

Motion to table minutes, edit for approval at next meeting by N. Gaine was seconded by L. Calvo. Roll call vote on motion:

M. Purcell (Sec. Fisher) - Aye
J. Cimino (Act. Comm. LaTourette)- Aye
M. Willoughby (Sec. Way)- Aye
V. Wheatley (Comm. Persichilli)- Aye
D. Bushek- Aye
D. Zemeckis- Aye
M. De Luca (Interim Dean Lawson)- Aye
L. Calvo- Aye
B. Hollinger- Aye
N. Gaine (J. Maxwell)- Aye
E. Haskin- Aye

Motion carries.

Public Comment

B. Avery & M. Gregg asked how to access meeting minutes. M. Gregg- meeting minutes need to be on website for public to view so they can review & have productive meetings. No minutes from 2020. A. Wenczel- AAC website, minutes available after approved by AAC. M. Purcell- we will update website.

M. Williams- concern over public comments not included in the minutes. Clarify vote on previous minutes. A. Wenczel- need to review public comment from January meeting before addressing that matter. Clarified roll call vote on previous minutes.

M. Williams & N. Gaine continued discussion over meeting minutes. N. Gaine- AAC is for the public, need to record all public comments. No attendance taken, so without recording them in the meeting, they do not show up as attending.

M. Purcell- common to all public meetings, public provides written statements to be attached to the minutes. Solution to this issue. B. Haskin- good idea to capture public comments. M. Gregg- some comments arise during discussion. M. Purcell- those captured in minutes, but big items written prior to meeting. D. Zemeckis- provide option for both written and verbal comments. E. Haskin- state “for the record” prior to comment.

L. Calvo- we can do better capturing the public comments, not needed to be verbatim. Note issue or concern.

B. Avery- is the chat (in teams) included in the minutes? A. Wenczel- can be appended into meeting minutes. This is something new with virtual meetings. M. Purcell- include in this meeting, discuss later.

B. Avery- make a comment on the record. Does everyone in this meeting know that I am fired? M. Purcell- you are not fired; the person you were proxy for is no longer a member of the Council. Also noted that NJDA will look into status of pending appointments to AAC.

B. Rush- questioned if there had already been discussion on adding the Shellfish Council and the Marine Fisheries Council as voting members to the AAC. A. Wenczel- defer that conversation until the Aquaculture Development Plan is discussed in this meeting.

New Business

Right to Farm and Shellfish Aquaculture

M. Purcell prefaced discussion noting that we are looking for a solution to what is presented. Document is factual findings of Farmland Assessment and Right to Farm, and how they are intertwined. Aquaculture is not same as land-based operations applying for these programs. Looking for best solutions to provide right to farm protections to industry.

A. Wenczel led discussion on document previously emailed out to AAC and attendees.

1. Commercial Farm definition- based on acreage and production value relationships.
 - 5 acres or more, \$2,500 in production value
 - less than 5 acres, \$50,000 in production value
 - Calculated acreage total only based on contiguous parcels. Contiguous requirement in Farmland Assessment; must be eligible for Farmland Assessment to qualify as a Commercial Farm for Right to Farm.

B. Haskin- why if less land are you required to have more dollar value per year? Shellfish aquaculture is commonly done on the smaller areas. M. Purcell- Right to Farm Act was not developed with aquaculture in mind. It was developed with smaller acreage category for nursery industry knowing they use less area, greenhouses, but make more money on that acreage. Only want serious commercial businesses to be eligible.

M. Gregg- How do you decipher where the money is made? Shellfish- nursery to lease to dealer and sold wholesaler or retail. How is revenue associated with parcel/portion of operation? A. Wenczel- RTF program considers sales but will also look at land to determine production value at time of needed protection. Did not consider aquaculture needs. This is one of the discussion points where we need solutions to make RTF better for industry.

N. Gaine- How would this work with a terrestrial farm market? They are covered under RTF. To get to an answer for Matt's question (M. Gregg), we can look at a terrestrial situation. A. Wenczel- Farm market has a specific definition, and the market can have RTF protections. Not defined in document because definition requires market be on parcel that is producing horticultural or agricultural products. M. Purcell clarified that parcel for farm market generally producing at least \$2,500 in products.

Farmland Assessment Eligibility- required for RTF.

N. Gaine- requested public law reference for Farmland Assessment, similar to citations provided for RTF. Does not see the contiguous/noncontiguous statements in the Farmland Assessment materials. M. Purcell- Farmland Assessment Act and Farmland Assessment regulations- the regulations speak to contiguous requirement. N. Gaine- regulations are in NJDA? M. Purcell- Department of Treasure, Division of Taxation.

B. Hollinger- I have several leases that are greater than five acres, some smaller but contiguous leases. I put cages onto lease less than five acres. Is the new area less than five acres with cages still protected under RTF as part of the Farm Management Unit? A. Wenczel- Areas greater than five acres, having production value \$2,500 or more can all be considered within your Farm Management Unit. For smaller, less than five-acre parcel, if it is not producing products at a value of \$50,000 or greater is not considered part of the Farm Management Unit. This is figuring it is not contiguous to other eligible parcels. If \$50,000 from smaller parcel, it can be one parcel in your collective FMU. You can have groups of leases that are not contiguous, but each grouping needs to be eligible independent of other groups. Those eligible groupings &/or independently eligible parcels make up the FMU.

M. Purcell- clarified that the Sipos court case/decision cemented this opinion of FMU eligible parcels. Sipos decision- every parcel in FMU must be eligible on its own merits. This item has been identified as a potential barrier for aquaculture industry.

N. Gaine is there a way to fix this item without legislative change? What other barriers are there?
M. Purcell- barriers listed at the end of the document.

B. Avery read chat items: Tony Ni- I question: if beginning, that should 2-3 years growing term, 2-3 years farming, is the farm not farm eligible? M. Purcell- that is correct. For Farmland

Assessment, you must be farming for two years, and can be eligible in the third year, so long as you meet the income criteria. For terrestrial agriculture, if the land is already Farmland Assessed, and if the new owner continues the agriculture or horticulture use, that assessment can roll over to new owner (no need for two-year enrollment prior to eligibility).

B. Avery- regarding FMU, all leases are from the State so all leases are under one overarching management. All leases should be eligible. M. Purcell- that is similar to a farmer that rents land. Checked with Taxation and even though the leases are rented State lands they could still qualify for Farmland Assessment. The farmer that rents the land is the owner and operator of the FMU. N. Gaine- Taxation does not mind that first eligibility criteria that must own the land, but they keep the contiguous part? M. Purcell- for RTF you do not need to own the land. N. Gaine- it's odd that ownership is not an issue but the contiguous remains a criteria.

2. Location Requirement- Municipal zoning and municipal master plan inclusion. Unclear what implications there may be for aquaculture since it occurs on State leases without municipal zoning.

3. Agricultural Management Practice (AMPs)- there is an AMP for aquaculture, but if an AMP does not address the specific activity for which you are seeking RTF protection, the AMP does not apply. Look to see if following generally accepted agricultural practices if activity not within an AMP. If formal recognition of activity is needed, a Site-Specific AMP (SSAMP) can be developed and adopted. This is an item to review and possibly update, but not one where it would be barrier for aquaculture RTF eligibility.

M. Purcell- Aquaculture AMP exists because the Aquatic Organism Health Management Plan was needed.

B. Hollinger- so we need to adopt one for shellfish aquaculture? M. Purcell- may not be needed. We need to focus on answering, what are the things that need to be protected? B. Hollinger- East Coast Shellfish Growers Association has one, we could use that to start. N. Gaine- that document discussed in AAC meeting several years ago, formed subcommittee to review AMPs, made progress before halting because of red knot listing.

B. Avery read chat comments.

Scott Lennox- are leases that touch corners contiguous? B. Avery- Yes.

Tony Ni- like me, I lost my oysters in Cape May 2018, sell less than \$2500, my farm is not farm eligible? B. Avery explained that his property is zoned marine commercial and was operational prior to 1996 but have not been able to be Farmland Assessed.

Matt Gregg- Shellfish Aquaculture occurs on state leases (sometimes but not always). If you reference the definition of aquaculture as it's laid out by the State of NJ, putting oysters into a box at a facility is 'aquaculture'.

Scott Lennox- "Aquaculture" is a form of agriculture involving the propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging, and marketing..." Title 4, N.J.A.C. 17.12-1.12

Tommy Burke- Upland parcels are essential to aquaculture production. Are these parcels protected under RTF if they do not meet the definition of a commercial farm?

A.Wenczel clarified that the Location Requirement and zoning is part of the RTF program, not the Farmland Assessment program. The notes in the document about not having a municipal connection is the state leases not the upland. Upland may have appropriate zoning.

4. Compliance with state and federal law- must follow state and federal law and must not pose a direct threat to public safety.

A.Wenczel outlined the items that may be barriers for the industry. See document for additional details.

M. Purcell noted that the suggestion to add a paragraph to the regulations similar to what occurred for beekeeping may not be that simple. This has been briefly discussed with SADC legal staff and there are other portions of regulations to consider. What would be most helpful is to discuss what items the industry wants to see protected.

N. Gaine- we would like to be protected same as any other farmer. M. Purcell- yes, but what nuisance complaints have you received, or overly burdensome municipal ordinances have you had to overcome. Those are the RTF protections. Need specifics of where this program can be helpful.

B. Avery- knows of grower that had issue with pressure washing screens in driveway. New house built next door, complaints, grower had to buy another place to clean gear.

L. Calvo- what about seascape issues where new landowner does not want to look at a farm? ATV use, noise from power washers. M. Purcell- does Tidelands review landowner issues? A. Wenczel- Upland owner approval for Tidelands License issuance, but upland landowner can still complain about activity even though State approves use of the land.

B. Hollinger- land at ADZ, bought with Green Acres and open to the public, as more people begin to use the area, how will state respond to complaints from public about our use? and how can we keep people off our lots that we are renting? R. Babb- Statute (Title 50) is clear about public use of leased areas. Deal with complaints on a case-by-case basis. Craig (Tomlin) and Division staff worked with legal to ensure commercial activity was alright in public area. B. Hollinger- can see this area being one of potential future conflict needing RTF protection. R. Babb- leases would be viewed same as other leases for RTF, but the upland is separate issue.

B. Avery noted chat- Tommy Burke, upland facilities protections. A. Wenczel- operation must fit the definition of a Commercial Farm from the RTF Act, and if not for shellfish aquaculture is that something we (AAC) can be working to improve. B. Avery- catch-22 because get taxed on

amount of money you make but need to make the money for the protection. N. Gaine- for most of us, we do not have a problem with the definition of a commercial farm, we don't have a problem with the definition of FMU, the problem is the Farmland Assessment criteria.

Aquaculture Development Plan- A. Wenczel.

Began with discussion on Council membership, to ensure comment from B. Rush was addressed in this meeting.

B. Rush- Other Councils do not have say in this Council, but there is possible overlap in topics. This is Shellfisheries Council and Marine Fisheries Council. Possibility to have overlap with saltwater fisheries and aquaculture.

A. Wenczel- Since this was brought forward in other discussions, spoke with legal staff in Marine Fisheries Administration (NJDEP), to see if a vote in an AAC meeting would be a conflict with member voting in their role as Shellfish Councilmember or Marine Fisheries Councilmember. Advice received is that AAC as advisory could actually allow for a SFC or MFC representative to have greater flexibility in discussing issues and getting industry feedback. It would not be a detriment to serve as voting member on both.

B. Hollinger- Both Councils should be added, be voting members, and the Fish and Game Council should be voting, if they stay on. Never send a representative from FGC.

L. Calvo noted M. Gregg hand up. M. Gregg noted there were comments for the previous discussion item. Placed comment in the chat. Want a further discussion on the items included, online or offline. Chat comments in public meeting minutes [see chat feed at end of minutes].

B. Avery- Mentioned in the past that FGC would show up (to AAC meetings) if they have a vote.

B. Avery- is John Maxwell a Shellfish Council rep to the AAC? A. Wenczel- no, he is appointed under different classification, not as Shellfish Councilmember.

M. Purcell addressed M. Gregg's comment from the chat. It's not that no one wanted to call on you, no one saw the hand. This is the beginning of the discussion and we will keep moving this forward. Discussion with Council to gain input. M. Gregg- this is not the beginning, brought this up 18 months ago. M. Purcell- yes, you brought this up as a case that relates to you. We needed to look at this broader. M. Gregg- it was general 18 months ago via pamphlet handed to A. Wenczel.

N. Gaine- legislative change to have permanent position for MFC and SFC. This Council makes recommendations, if there is a vote and even if they oppose but it moved forward, it will appear that the representative is supporting the measure. Is this putting them under the jurisdiction of the AAC? Does this dilute the authority of either council? A. Wenczel- NJDA has not expressed an opinion on this matter, will defer to the Councils requesting a voting seat on the AAC.

L. Calvo- the SFC and MFC can come before the AAC with an opinion and the AAC would strongly consider those opinions in any action the AAC made. I don't know if it is necessary for them to be voting for that to happen. Ultimately those other Councils will have the opportunity to weigh an issue and then their opinions or decisions will weigh heavily on this (AAC) Council.

N. Gaine- Councils requesting seats provide a formal letter requesting voting seat.

B. Rush- One of the concerns is who has jurisdiction when aquaculture moved to beachfront or out three miles. Does SFC handle items on their end, MFC on their end, who is the overseer? Concern that if the Councils do not have a seat on AAC what that would mean. A. Wenczel- AAC is diverse group to ensure topics such as this can be addressed broadly. Industry is involved to advise on where the industry wants to go and what is needed. MFC brings forth the expertise of what could be occurring at a proposed site offshore. State agencies can inform on bounds of a project- where barriers may exist, timeframes for review, placing some realistic bounds on the discussion. The result of a discussion or motion from the AAC would be a letter with an opinion on a matter and it includes the opinions of those with a stake in aquaculture. The AAC is advisory only. The Council cannot change regulations, nor is there decision-making authority vested to the Council. B. Rush- that helps a little, but given the overlap, the MFC & SFC think there should be a seat with voting rights on this Council too.

B. Rush- the councils requesting a voting seat on the AAC still wish to have that role. B. Hollinger agreed. N. Gaine (proxy for J. Maxwell) disagreed. Should discuss this item at the Shellfish Council meetings. The ADP is also a strategic plan for aquaculture, so even if advisory, this is the plan for the next five years. B. Hollinger- just read a letter from John (as chairman of the Atlantic Coast Section of the Shellfish Council) and we sent a similar letter (Delaware Bay Section of the Shellfish Council). It does not explicitly say that, it was the intent, that both Councils need representation on the AAC.

G. Mathis- Member of the Atlantic Coast Shellfish Council, I brought this up to be on the agenda at the next Council meeting. As a member of the Council, I think there should be input, from the Atlantic side at least, on the AAC. We would not have needed the four hours of growers meetings if we had been involved with the AAC. I feel the Atlantic Coast Shellfish Council is more in touch with growers than any other entity.

Recap- MFC and SFC will send letters specifically requesting a voting seat. SFC needs to discuss at meetings prior to a more formal letter. This is a legislative change, so nothing will change immediately even with letters.

N. Gaine- motion for this request to go back to respective councils for discussion on formal letter transmitted to AAC. B. Hollinger- second. All in favor. Motion carries.

M. Gregg- Agritourism is in this version. It was in the original, then it was removed, now it's back. Why? A. Wenczel- moving text around, that text did not get copied right in a past version.

B. Avery- statement on page 15, Explore options, particularly those already supported by New Jersey Coastal Management Program to develop and enhance resilient working waterfronts that

can provide land-based infrastructure for shellfish aquaculture. What does that mean? A. Wenczel- including aquaculture within discussions on working waterfronts given the need for upland facilities noted by many in the industry.

D. Zemeckis- Maybe make a plan for the Plan. Committee was formed to draft the original document in 2019 but has not been active. Is one action to put this back to the Committee? A. Wenczel- ADP is at the Council level but welcome suggestions. D. Zemeckis- still a lot of comments, and even after growers meetings did not address them all. Is this something the Council takes on or go back to Committee. If this is to come to a Council vote, since it is a Council document, what number of votes are needed to approve?

M. Purcell- the Plan has been gone over thoroughly. It is now at the Council level, Councilmembers need to review it and bring any items forward to discuss at next meeting. This needs to move towards adoption.

N. Gaine- in two previous meetings we said we would go over the comments. Answer the questions posed in the comments and bring out discussion. It's good for industry to hear each other out with differences of opinion. No report, no minutes on the growers meetings. And how is it approved. M. Purcell- approved with majority of Council.

M. Purcell- unclear on why there is such animosity over the Plan. If there is no real consensus that this is the plan to put forward, I do not know what else is expected.

M. Williams- last meeting I kept asking about the 14 and half pages of comments and Secretary Fisher said we would go over them at the next meeting. Here we are and we have not begun to look at them. Comments from growers and Councilmembers. He said we would not ignore them and we are. Confused why this is not on the agenda, my comments from the last meeting were not in the minutes. A. Wenczel- decision at the last meeting was to have the growers meetings to discuss those comments.

M. Williams- I suggest someone listen back to the meeting because that is what Secretary Fisher said. The growers were brought into this very late. There was a survey, three years ago. No one ever asked what we wanted. I was in the meeting in the summer of 2019 and we got very bland answers. So here we are and you're not completely disregarding us, but the growers meetings did not cover everything. Explain to us why you wrote the things that you wrote or why you didn't incorporate our comments that would be beneficial. I don't understand why we cant go through the comments related to the Plan so everyone can understand the reasoning. I don't understand why no one is listening to the growers. M. Purcell- all comments were reviewed and the document was revised, once again, to reflect the comments that were received. There is not a Council or Committee in the State that goes through this excruciating process to this degree. Public provides feedback, document amended, reviewed.

M. Williams- when are we going to go through the comments like Secretary Fisher said? A. Wenczel- in the meeting Betsy suggested we have a growers meeting. The Secretary said lets have the growers meeting so we have the time to go through the comments.

M. Williams continued to state disagreement with process.

Aquaculture-Red Knot Stakeholder Committee- M. De Luca

Conservation Measure 13- installation of new gear during the red knot stopover season. The prohibition caused some growers to store gear on the farms prior to needing them since they could not install later. Stockpiling could lead to horseshoe crab impediments and adds wear to gear.

Agency Workgroup approved the proposed change to allow installation of new gear during red knot stopover, so long as there is no increased driving or disturbance to red knots.

Councilmember Comments

N. Gaine- pass to ENSP that he can help put up signs for beach closures. Public should be subject to closures since we are subject to them. R. Babb- pass along to ENSP.

L. Calvo- announced upcoming NJ Aquaculture Association meeting.

B. Avery- Suggested that Aquaculture Development Plan add the (NJDEP) Bureau of Marine Water Monitoring and the NJDA to make the yearly permit renewal to be a check box for “same as last year”. N. Gaine- brought this up at stakeholder meeting and was told that most permits are different from year-to-year. Completely agree with you, should be able to do renewal and should be able to say same as last year. To make one permit easier. S. Gentile- Take this comment under advisement. Language in the rule that this is a new permit yearly. Doesn’t mean we cannot look into it, but, this is a relatively easy permit to get and you get it quickly. E. Haskin- Maybe there is a way it’s a new permit, but still have a check box that everything is the same as last year for application. S. Gentile- still need monthly production numbers from year prior, so never that simple but good ideas, we will consider. I also see all the permits, and majority of them change yearly, especially since they are tied to the lease and any changes in leases (new ones, transfers) need to be in the application.

B. Hollinger motion to adjourn, E. Haskin second.
Meeting adjourned.

*Pertinent comments provided in the “chat” window during the meeting are included here. The chat is not moderated during the meeting to provide responses beyond acknowledging comments received.

[4/30 10:47 AM] tonyini (Guest)

I question: if beginning, that should 2-3 years growing term, 2-3years farming, is the farm not farm eligible?

[4/30 11:00 AM] Scott Lennox (Guest)

Are leases that touch at their corners considered contiguous?

[4/30 11:01 AM] tonyini (Guest)

like me, I lost my oysters in Cape May 2018, sell less than \$2500, my farm is not farm eligible?

[4/30 11:04 AM] Matt Gregg (Guest)

Shellfish Aquaculture occurs on state leases (sometimes but not always). If you reference the definition of aquaculture as it's laid out by the State of NJ, putting oysters into a box at a facility is 'aquaculture'.

[4/30 11:05 AM] Scott Lennox (Guest)

"Aquaculture" is a form of agriculture involving the propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging, and marketing..." [Title 4, N.J.A.C. 17.12-1.12](#)

2013 New Jersey Revised Statutes :: Title 4 - AGRICULTURE AND DOMESTIC ANIMALS :: Section 4:27-3 - Definitions relative to aquaculture.
law.justia.com

[4/30 11:09 AM] Tommy Burke (Guest)

Upland parcels are essential to aquaculture production. Are these parcels protected under RTF if they do not meet the definition of a commercial farm?

[4/30 11:21 AM] Tommy Burke (Guest)

Upland facilities protections

[4/30 11:27 AM] Scott Lennox (Guest)

What specifically are your next steps?

[4/30 11:30 AM] Dave Bushek (Guest)

I will simply put my comment in chat regarding nuisance issues I am aware of. First and I think Craig Tomlin has resolved this - Middle township has an ordinance against atv use on dunes and tidal areas but there is an exclusion I believe for aquaculture. Second is noise during tourist season and quiet hours between some time in the evening and 8 am. I don't know if this has been resolved but it was an issue pushed by the prior land owner of what the state purchased. Rutgers and the State Bureau of Shellfisheries legal offices protected the growers from this prior to the purchase but I don't know if this is resolved there or in other locations where there may be similar issues.

[4/30 11:33 AM] Matt Gregg (Guest)

My hand is raised but if you don't want to call on me, please put these comments into the public comment section of the minutes. We want the same protections as all other farms in NJ. And it's not just about nuisance complaints. It's about due process and recourse for conflicts, with the public, local and state governments and who is responsible for adjudicating conflicts. We have brought these issues up for over a year and have been mostly ignored.

[4/30 11:34 AM] Matt Gregg (Guest)

Also, what is the plan? If we don't hear a logical plan we will, as an industry, look for legislation.

[4/30 11:43 AM] Purcell, Monique (AG)

The NJDA also thoroughly explored a FA request regarding a nursery located at a marina. It was ultimately decided the primary use of the area was a marina, not a hatchery and was denied

[4/30 11:50 AM] tonyini (Guest)

Is it possible to develop a breeding area, because the seaside is occupied by the wharf

[4/30 11:51 AM] Bill Avery (Guest)

What are the accomplishments of the AAC?

[4/30 11:58 AM] Matt Gregg (Guest)

Can the Department and/or this Council check all appointments for this Council? Perhaps send a letter to the appropriate contacts...

[4/30 12:16 PM] Tommy Burke (Guest)

I just wanted to speak out in support of page 14/15 entitled "Support for Hatchery and Nursery Development." These recommendations will go a long way in advancing aquaculture in the state and I urge the council to do what they can to bring these goals to fruition. Please include this comment in the meeting minutes. Thank you for understanding our concerns on this issue.

Basic Right to Farm Eligibility Items & Applicability to Shellfish Aquaculture

1. Commercial Farm

The first measure of eligibility for right to farm is determining if the operation fulfills the Right to Farm Act definition of a Commercial Farm. The definition of a "Commercial Farm" and "Farm Management Unit" for the RTFA is found at N.J.S.A. 4:1C-3. Underlining in the text below added to highlight specific content.

"**Commercial farm**" means...

- (1) a farm management unit of no less than five acres producing agricultural or horticultural products worth \$2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.),

This can be achieved via:

- A single lease lot that is 5 acres in size or greater
 - Production of agriculture product worth \$2,500 or more from the single lease
- Multiple contiguous (adjacent) lease lots that sum to 5 or more acres
 - Production of agriculture product worth \$2,500 or more from the aggregate lease lots
 - Contiguous requirement is because of the eligibility criteria for Farmland Assessment (see below)

- (2) a farm management unit less than five acres, producing agricultural or horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.),

This can be achieved via:

- A single lease lot that is less than 5 acres in size
 - Production of agriculture product worth \$50,000 or more from single lease
- Multiple contiguous lease lots that sum to less than 5 acres
 - Production of agriculture product worth \$50,000 or more from aggregate of the contiguous lease lots
 - Contiguous requirement is because of the eligibility criteria for Farmland Assessment (see below)

"**Farm management unit**" means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

Farm Management Unit =

- 1 single lot that fulfills the above acreage-production levels and operated as a single enterprise.

- Multiple contiguous lots, fulfills above acreage-production value levels and operated as a single enterprise.
- Multiple non-contiguous lots that independently fulfill the above acreage-production value levels and operated as a single enterprise.

Farmland Assessment Eligibility...

- You must own at least 5 contiguous acres devoted to agricultural/horticultural use;
- Land must be devoted to agricultural/horticultural uses for at least two consecutive years prior to the tax year;
- You must apply for Farmland Assessment with the tax assessor on or before August 1 of the pretax year;
- Land must continue in agricultural/horticultural use to the end of the tax year for which application is made;
- Gross sales of crops or livestock must total at least \$1,000 per year for the first 5 acres, plus \$5 per acre for each additional acre;
- Must be single ownership: that is, a unified title meaning common ownership by one distinct legal entity of one or more contiguous parcels together (see FA-1 Form, page 2 of Instructions).

(see: <https://www.state.nj.us/treasury/taxation/lpt/lpt-farmland.shtml>)

2. Locational Requirement

- The area/parcel/lease lot where agriculture is occurring must have been in use (as agriculture) prior to December 31, 1997.
- After December 31, 1997, the activity must be a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan.
- Shellfish Aquaculture occurs on State leases, areas where there is NO municipal zoning, nor are the leases included in a municipal master plan. It is unclear what the lack of municipal zoning means for RTFA eligibility since no other case of this nature has been brought before a County Agriculture Development Board for review.

[Reference, N.J.S.A. 4:1C-9...the owner or operator of a commercial farm, located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or which commercial farm is in operation as of the effective date of P.L.1998, c.48 (C.4:1C-10.1 et al.),]

3. Agricultural Management Practices (AMP)

“The farmer must conduct his or her operation, or a specific agricultural activity at issue, in compliance with the standards contained in agricultural management practices that have been promulgated by the SADC, or with generally accepted agricultural practices.”

(see <https://www.nj.gov/agriculture/sadc/rtfprogram/eligibility/>)

- There is not an AMP for all possible agricultural practices.
- If an AMP that is applicable to the specific agricultural practice(s) has been adopted by SADC, then farmer must be following that AMP standard to receive right to farm protection.
- If there is an AMP for the industry- e.g., Aquaculture- but it does not address the specific activity, then the farmer must follow generally accepted agricultural practices for that activity.
- If a specific situation, where the farmer is following generally accepted agricultural practices, requires formal protections, then a Site-Specific Agricultural Management Practice (SSAMP) can be developed and adopted.

4. Compliance with State and Federal Law

(<https://www.nj.gov/agriculture/sadc/rtfprogram/eligibility/>)

- The operation must be in compliance with relevant state and federal statutes and rules.
 - Right to Farm cannot be used to avoid compliance with statute or rules.
 - Right to Farm eligibility requires farmers to be in compliance with all applicable statutes and rules.
- The operation must not pose a direct threat to public health and safety.

Applicability of above items to Shellfish Aquaculture

1. Contiguous- Farmland Assessment requirement for parcels to be contiguous in order to be considered a single area for acreage calculation
 - a. Not all leases within a shellfish aquaculture farming operation are contiguous; noncontiguous lease lots would need to be eligible independent of each other.
 - b. Lease lots not contiguous with upland facilities- Certified Dealer, Hatchery/Nursery
 - c. Lease lot for grow-out not contiguous with nursery systems
2. Farmland Assessment- Eligibility for Farmland Assessment not applicable to shellfish aquaculture
 - a. ...so long as all the criteria for Farmland Assessment are met (acreage, income, years of active devotion), a riparian parcel used for raising shellfish would otherwise qualify for Farmland Assessment.
 - b. Minimum of 5 acres per parcel, contiguous, and sole ownership requirements potential hurdles for shellfish aquaculture.
3. Single Ownership/Single Enterprise- Farmland Assessment and Right to Farm
 - a. Leases and upland portion of an aquaculture operation would need to show financially that it is operating as a single enterprise.
 - b. Certified Dealers that purchase from multiple growers not considered in this single enterprise requirement.

- c. Unclear how a Permission to Work would be viewed given the lease document (only legal document showing right to use the lease) is signed by another party/company.
4. AMP- Current Aquaculture AMP is limited in applicability to situations/common aquaculture practices where right to farm would apply.
5. Production Value- production value of \$50,000 for areas less than 5 acres
 - a. Combined with Contiguous requirement- Shellfish aquaculture operations with noncontiguous lease lots under 5 acres in size would need to report production values of \$50,000 or more for EACH lease area under 5 acres to be eligible for Right to Farm.
 - b. If there are multiple leases within a commercial shellfish operation, only those which comply with the acreage-production value requirements (above) will be eligible for right to farm.
 - c. Only those leases eligible for right to farm are considered in the Farm Management Unit, for right to farm purposes.
 - d. This is counter to an industry where crop production is diversified and may be located within multiple locations, but not at the acreage-production value levels currently within the Right to Farm Act.

**Based on the above listed items, the current Right to Farm Act language may not be the “right fit” for the shellfish aquaculture industry. It is suggested that the AAC explore a different option (or set of options) to provide the protections outlined in N.J.S.A. 4:1C-2 to the industry. **