

Aquaculture Advisory Council

April 15, 2011

Meeting Minutes

Attendees: Secretary Douglas H. Fisher, Mr. Rich Ritota (Acting Commissioner Mary O'Dowd), Dr. John Kraeuter (Dr. Dave Bushek), Mr. George Saridakis, Mr. Gef Flimlin (Dr. Robert Goodman), Mr. Bill Avery (Mr. Oliver Twist), Mr. Mike DeLuca (Mr. Steve Carnahan), Mr. James Tweed, Mr. George Mathis (Mr. John Maxwell), Mr. Paul Waterman, Mr. Walter J. Canzonier (Mr. Robert Munson)

In Absentia: Mr. Dave Chanda (Commissioner Bob Martin), Mr. Joe Constance (Ms. Caren Franzini), Ms. Jeanette Vreeland, Mr. Gilbert Ewing Jr.

Public in Attendance: Mr. Russ Babb, Mr. Rick Bushnell, Dr. Gustavo Calvo, Ms. Betsy Haskin, Mr. Joseph J. Myers, Mr. Tony Ni

Secretary Fisher called the meeting to order. Mr. Myers performed roll call. There is quorum for this meeting.

Sec. Fisher asked for a motion to approve the minutes from the January 2011 meeting. Mr. Canzonier made the motion, which was seconded by Dr. Kraeuter. All voted in favor and the motion passed.

Sec. Fisher presented the Update of the Aquaculture Development Plan for discussion and vote by the Council. Mr. Avery said he would like more time to review the document before voting. Mr. Myers said that the latest version only includes edits from a few members and is not drastically different than the previous versions that have circulated for the past year. Sec. Fisher said the vote would proceed following discussion. Mr. Flimlin questioned the wording of 4.2.2.2. Tidelands to verify that the information is still accurate. Dr. Kraeuter suggested reordering challenges putting no cost options first. Add a challenge to reinvigorate efforts of Bureau of Water Quality Monitoring to find and fix pollution problems. Mr. Flimlin said that in section 5.1.1.2 intertidal bay under consideration, the area is approved and not under consideration anymore.

Mr. Ritota said that in 4.3.2 Vacancies of the Councils should more accurately reflect whether vacancies are from lack of participation or from slow appointments. Mr. Canzonier said that vacancies are due to lack of confirmation by the appointed state office in charge of that appointment. Mr. Flimlin said that appointments go through the Governor's Appointment Office. Mr. Mathis said he has been official awaiting appointment since being assured last December. Mr. Ritota said that the wording should be more specific to identify where the action is needed. Mr. Myers said that three appointing entities fill seats on the AAC: the Governor, the Speaker of the Assembly, and the President of the Senate. Mr. Canzonier said that a similar problem is happening with the State Board of Agriculture. Sec. Fisher said there is a different set of circumstances with the State Board of Agriculture. Mr. Ritota said that the lack of participation from the Economic Development Authority should be addressed. Additional comments would be submitted about shellfish sanitation in the Executive Summary 4.3.5., local health enforcement 5.2.2.5 and changing the wording of New Jersey Sea Grant, which was formerly an NJ Marine Sciences Consortium. Mr. Flimlin suggested a note from the Commissioners/secretary to the Governor's Appointment Secretary wanting to have various Council vacancies filled. Mr. Ritota could help expedite that letter. Dr. Kraeuter said the document should be proofread to be sure challenges are compatible with the body of the document. Sec. Fisher asked for a vote. All voted in favor, except for Mr. Avery who voted no. The motion passed. Mr. Myers explained how both the print and online production of the Update of the Aquaculture Development Plan would progress.

Mr. Babb gave an overview of the historical involvement of Land Use and Tidelands in aquaculture, starting with army Corps of Engineers implementation of Nationwide Permit #48 in 2007. Tidelands passed a resolution implementing charge of one penny per square foot. This ceased progress of establishing Aquaculture Development Zones. The Shellfisheries Councils asked for ruling by Office of the Attorney General. The

OAG determined that Tidelands does have authority. There had since been a series of positive meetings led by the Commissioner and another would occur at the Tidelands Resource Council on May 19 in three weeks.

Mr. Tweed asked if there would be an approval through Land Use for traditional activities. Mr. Babb said that an approval process through Land Use is only needed for lines, cages and structures. Mr. Tweed asked if a Tidelands License would also be needed. Mr. Babb said that, at the present time, Tidelands would require a License for aquaculture structures. He did not know whether a license or an instrument is the appropriate name of what Tidelands required. The size of ADZ has been reduced to 40 acres because of refusal of upland landowners to sign waivers. The distance to which upland landowner rights extend is unclear. Mr. Flimlin asked if upland landowner rights only applied to those who hold riparian grants. Mr. Babb said all upland landowners have rights. Mr. Canzonier said the distance to which upland landowner rights extend needs to be defined. Mr. Avery said that Tidelands jurisdiction over structure is confusing. Mr. Tweed said that crab pots could be considered structure if oyster cages of the same size were also considered structure. Mr. Babb said there is an issue of the permanence of structure. Mr. Flimlin asked if Tidelands/Land Use Licenses are required for pound nets. Mr. Canzonier said there is no requirement for pound nets. Mr. Avery asked why Nationwide Permit #48 was not accepted. Mr. Babb said all Nationwide Permits are being revised and comments are due next week. Mr. Babb said that comments due by Monday and his office is preparing comments. His office is also working with Land Use to help the permit-by-rule and general permit process progress. Dr. Calvo said that the distance of landowner rights is being discussed in terms of navigation. Sec. Fisher said that now that Tidelands jurisdiction has been set, the distance of authority needs to be set. Both the upland landowner and the aquaculture operator need protection. Mr. Babb said the Tidelands staff claims authority out to 3 miles. ADZ-1 near East Point is essentially gone because of navigation, historic use and refusal of landowners to sign waivers. Mr. Flimlin said that landowner is allowed to claim of exclusive use of the water, but not paying for this claim. The State should therefore be compensated for revenue the State is not able to generate. Mr. Babb said that the fees apply to large shellfish structures, but there is no fee for transient or non-permanent. It would not be practical for the Bureau of Shellfisheries to internally challenge these decisions in light of the OAG ruling, so the goal is to make it work within the parameters. Dr. Krauter said that management could render all racks, cages, and longlines as transient gear. Sec. Fisher said that he was told if it was known that the 18 property owners would have refused to sign waivers, ADZ-1 would have been moved. Mr. Babb said that would not have been possible because the surrounding area had existing leases. Mr. Myers said that blanket denial of Nationwide Permits by the State is standard procedure.

Mr. Avery said it seemed like nationwide permit denial was tied to dredging. Mr. Babb added it is common practice to blanket deny coverage. Mr. Myers said that discussions are also happening to have structure associated with clam hatcheries to be treated the same way as structural aquaculture. Mr. Avery said this would be positive for him. Mr. Babb said NJDEP is taking a comprehensive approach to aquaculture. Moving to permit-by-rule and general permit process is a positive step. The Director of Land Use receptive to this process. Mr. Tweed asked if receiving a Tidelands Instrument is conditional upon having a shellfish lease. Mr. Babb said a Land Use Permit is conditional to obtaining a Tidelands Permit, but not to a shellfish lease. Mr. Tweed asked if the Tidelands was trying to create an alternative way to lease bottom. Mr. Canzonier said that the statute confines leasing to the Shellfisheries Council. Mr. Babb said that copies of the OAG ruling are available and able to be distributed to the AAC. Dr. Krauter asked where Tidelands authority stops and starts with respect to the size of aggregate shellfish structures and the transiency of the gear.

Mr. Avery said that returning more natural flow to the bay by using a tidal power station would bring life back to the bay.

Dr. Krauter said that his request remains outstanding for a report from NJDEP Enforcement on a strategy to solve pollution problems that are keeping people from making a living from shellfishing and aquaculture. Additionally, the marketing working group or task force to address marketing issues remains outstanding. Mr. Myers added that he received no follow-up communication about the marketing task force. Dr. Krauter made

a motion requesting a report from NJDEP Enforcement outlining how documented pollution problems in conditional shellfish waters will be addressed. This motion was seconded by Mr. Flimlin. Mr. Avery asked that Enforcement's charge be clarified. Dr. Kraeuter said that someone must be in charge of enforcing the laws against pollution in New Jersey and his motion seeks to address their plan. He believes Enforcement Plan is to choose to ignore the pollution problem. Mr. Ritota said that he is hearing quite a bit about non-point sources pollution and fertilizer regulation. Mr. Flimlin said that is true, but what is the plan. Dr. Kraeuter said that shellfish planting to restore the estuaries is not allowed because the water is polluted. The first action is to close the polluted areas. The second action is not known and this plan should describe those subsequent actions. The pressure needs to be maintained on this issue to help restore water quality. He suspects there is no plan. Sec. Fisher asked to what standard does water quality need to be restored. Dr. Kraeuter said to the standard of waters open to shellfishing. Sec. Fisher asked if waters open for shellfishing is NJDEP's stated goal. Dr. Kraeuter said that he does not know, but the report he is requesting should state NJDEP's intended goal. It is illegal to pollute in New Jersey. Mr. Ritota said that in order to get more water open for shellfish harvesting, we need get a specific question on which we can have discussion. Dr. Kraeuter said he wants to know what the plan is for upgrading waters so they can be used for shellfishing and aquaculture. Sec. Fisher said that is the question: What is the current plan to restore waters to a level approved for aquaculture and shellfishing? Mr. Tweed said that the standard by Bureau of Marine Water Monitoring is "approved waters." Dr. Kraeuter said that is there are areas that cannot be upgraded, then it should be in the plan. Mr. Flimlin said there are some areas that are not evaluated. Sec. Fisher suggested that the question be further narrowed to bringing back areas designated as able to be upgraded. Mr. Flimlin said he does not believe there has been much of a downgrade in recent years. Mr. Canzonier said there has actually been a net gain. Dr. Kraeuter said that there has been a good job done, but what remains are areas that are more difficult to restore. Mr. Flimlin said the net gain is sometimes in area where there is no shellfish. Dr. Kraeuter said those areas could be used for aquaculture because aquaculture is regulated to where there is no natural shellfish. Sec. Fisher said that the AAC will draft a letter to NJDEP Enforcement. He does not believe a response will be an absolute blueprint, but at least the discussion will be initiated. Dr. Kraeuter said that will at least begin the discussion, but there is currently not enough information to have a good decision. Mr. Babb said that based on the discussion so far, John Plonski, Assistant Commissioner for Water Resources Management may be a good contact, but really no one person is wholly in charge of this issue. Dr. Kraeuter said that the water monitoring staff personnel should not address this issue, it should be enforcement. Mr. Ritota suggested sending the letter to the Commissioner and letting him decide who should respond. Sec. Fisher recommended sending the letter from the AAC only to the Commissioner, but staff can be notified in advance. Mr. Ritota said it would be helpful to make a link to the relevance of this issue to the AAC.

Mr. Canzonier said the AAC has a mandate to promote aquaculture. Aquaculture is impeded by waters that are less than approved waters impede aquaculture. The question should be what is his strategy for recovering those areas that have been removed from productivity from closure. Mr. Flimlin suggested that mandate applies to all relevant agencies that have Commissioner-level status on the AAC. Mr. Avery said there is a line in Atlantic City, behind Harrah's that is the border between closed and open waters. Dr. Connell stated that there is a discharge pipe that comes from Atlantic City which prohibits that line from being removed. If hatcheries could be located in approved waters, it would completely change the business.

Mr. Ritota said it is not typical for the AAC to write to the Commissioner. While this is an important issue, is it the most important issue or is it more important to have a clearer regulatory path in aquaculture. Mr. Tweed said that it may be more helpful to have someone from Marine Water Monitoring to answer specific questions. Some areas would be impossible to clean. Sometimes downgrades occur only on the potential to be polluted. A presentation was made by Water Quality Monitoring of one waterway and those changes that were made as a result of their work

Dr. Kraeuter said that is not his intention with this issue. Water Quality Monitoring is doing a good job within their mandate. The question is what Enforcement is doing within their mandate. Mr. Ritota said that this letter

may be a good opportunity to address other issues that have been routinely discussed in the AAC, such as encouraging a one-stop user-friendly process. Mr. Canzonier said that the pollution issue is more of a philosophical issue, whereas the aquaculture management issues are more real-world. It is important not to dilute intent or mislead the Commissioner into believing pollution is the most pressing issue for the AAC. Mr. Flimlin said that moving forward the Update to the Aquaculture Plan addresses is the attempt by the AAC to address the aquaculture management issues. Mr. Canzonier said that with EPA having oversight of the state's administration and management of water quality, there must be a plan in place. Mr. Flimlin said if so, the letter to the Commissioner would reveal that plan.

Sec. Fisher said that this is an opportunity for NJDEP to express their vision for restoring water quality, while not being accusatory. Mr. Ritota said that the letter should touch on the importance of encouraging better aquaculture industry regulation. Sec. Fisher said there is nothing wrong with sending a letter asking about a vision for water quality improvement. Mr. Flimlin said that the Governor has a ten-point plan for what he would like to see for Barnegat Bay. Although the plan only relates to Barnegat Bay, there are likely many aspects of the Barnegat Bay plan that apply to improving water classification in every other part of the State.

Sec. Fisher asked if there was any further discussion then asked for a vote. Mr. Myers repeated the motion for sending a letter from the AAC to the Commissioner of NJDEP asking him to outline his vision for improving water quality classification to approved status to enable aquaculture and shellfishing, and what needs to be accomplished in both the long-term and short-term. Sec. Fisher asked for a vote. All voted in favor. The motion passed.

Dr. Kraeuter made a motion to organize a subcommittee, which includes Extension, which will formulate a marketing and promotion campaign for aquaculture. Develop a promotion. The motion which was seconded by Mr. Flimlin. All voted in favor. The motion passed.

Mr. Flimlin distributed a press release about the Sandy Hook Waterman's Alliance filing a lawsuit in federal court under the Clean Water Act against Monmouth Park for not abiding by the parameters as a confined animal feeding operation. The case went to federal court because the existing regulatory process failed to resolve the issue. One contributing factors is that there are no swimming beaches along the Shrewsbury or Navesink Rivers and if there were more swimming beaches, it would have limited access.

Dr. Kraeuter announced that Dr. Rich Lutz is new director of the Institute of Marine and Coastal Sciences. Dr. Dave Bushek is the new Director at the Haskin Shellfish Research Lab. Dr. Bushek plans to attend the next meeting.

Mr. DeLuca gave an update on the strategic planning of the former Multispecies Aquaculture Demonstration Facility and the near term activities planned for the next 2-3 years. New activities will increase the portfolio of aquaculture-related activities and support that the Center can provide to the industry. Rutgers is developing new private-public partnership and exploring new ideas for partnership. A new extension specialist will be hired to develop these projects. He would like comments on the strategic plan document by May 2. Sec. Fisher said that the existence of the Center was in question only a few months ago. Part of the strategic planning is to give the Center a new name to reflect the innovative nature of these projects, modeled after the Food Innovation Center. Mr. Flimlin said that the Center is a world-class facility.

Mr. Myers gave an overview of the workshop, "The Four P's of a Safe and Sustainable Aquaculture Industry: Practices, Presentation, Promotion and the Press" that was organized by the National Aquaculture Association (NAA) and the United Soybean Board and locally sponsored by the NJDA, Rutgers extension of Ocean County, the School of Business at Stockton, and Schering-Plough/Intervet. The workshop provided fish and shellfish producers with the knowledge and skills to market their products more successfully, grow their businesses, help shape the public's perception of aquaculture. Mr. Canzonier said the workshop was surprisingly effective at

delivering quality information and should be retooled locally in a less formal manner for the benefit of the shellfish producer community.

Mr. Myers said that one of the take-home messages is that US aquaculture should not subject itself to the various sustainability seals because these regimes are the foreign producer's way to show they meet the regulatory standards that US growers must abide by. In the long-run, sustainability seals would devalue products of the USA. Dr. Krauter said that the workshop was a good stepping stone for the ideas that the marketing subcommittee can use. Mr. Tweed said that finfish health not as relevant for New Jersey growers as the human health issues with consuming shellfish. Producers need to communicate the extensive requirements needed to grow and sell shellfish. Mr. Flimlin said that the 4Ps idea can be better adapted for shellfish growers. Dr. Krauter said that finfish issues and problems with the image can come back and haunt you if producers do not do things as they should. Mr. Avery said he was overwhelmed by the number of government agencies involved in regulating aquaculture

Mr. Myers announced that the Special Census of Aquaculture has been reinstated by NASS at the request of the NASS advisory board. The NJDA played a role in keeping this issue elevated when many other state agencies were content to let the Census discontinue. The response to this issue from the National Association of State Aquaculture Coordinators was equally anemic and disappointing. The efforts of the NJDA were acknowledged by Carol Engle, whose recent appointment to the NASS Advisory Board was equally as important to getting the Census reinstated. Sec. Fisher took the message of the importance to the agriculture agencies in the Northeast and to Washington D.C.

Mr. Myers said that a bill proposed by Representative Courtney in Connecticut would add "farmed shellfish" to the definition of specialty crops, thereby making farmed shellfish eligible for marketing funds through the specialty crop provision of the Farm Bill.

Dr. Krauter requested that a letter be sent to legislators in DC that represent New Jersey asking for their support and possibly their co-sponsorship. Dr. Krauter provided the motion which was seconded by Mr. Flimlin. Mr. Tweed asked if there was any disadvantage to being listed as a specialty crop. Sec. Fisher said that specialty crops include everything except major row crops such as corn, soybeans, cotton, and rice. He cannot foresee any disadvantage because there are still very large commodity groups that are considered specialty crops. Mr. Myers said that he doubts that any specialty production sector has gone through as rigorous of a process as the problem solving exercise that hard clam producers have been through over the past year. He believes that this process would be a strong factor in attracting marketing funds because there is a good chance those funds would be well spent. Mr. Ritota asked why the term was limited to "farmed shellfish" and not to a broader term such as aquaculture. Mr. Myers said that aquaculture was previously considered but ended up being a deal killer because the horticulture sector believed US farm-raise catfish, which has tremendous political clout, would take a significant part of the specialty crop funding. Sec. Fisher said that catfish received almost all of the feed grant funding. Mr. Myers also added that shellfish, although animals are far more crop-like than finfish which would be more like livestock. Sec. Fisher asked for a vote. All voted in favor. The motion passed.

Mr. Myers announced that the NOAA Aquaculture Program recently closed their comment period on how to draft national policy for marine and offshore aquaculture. This has been discussed before with the AAC and could be a potential new industry for New Jersey given our coastal resources and working waterfront infrastructure. Dr. Krauter said that the East Coast Shellfish Growers Association has their comments posted on their website.

Mr. Myers discussed the seafood trade deficit that he performs annually from US Census data. He reported that the US seafood trade deficit surpassed \$10 billion in 2010. Secondly, China is historically a net seafood exporter. With the emergence of the economic middle class, China is projected to shift from a net exporter to a

net importer of seafood. Given that China accounts for \$2.5 billion of the roughly \$14 billion of seafood imports into the US, this could have a drastic effect on future seafood prices. While this may be bad for seafood consumers in the US, this global shift may be a positive development for seafood producers as prices will likely increase over the next few years. Mr. Tweed said that the amount of US imports coming in from other countries could also be shifted to China. Mr. Avery believes that any price increase to producers will be eaten away by regulatory fees.

Mr. Flimlin said he is developing a Fisheries, Aquaculture and Seafood Work Group at Rutgers. Regarding the press release discussed earlier, Mr. Kavanaugh's goal is to have water that is clean enough for shellfish aquaculture in Monmouth County.

Mr. Bushnell of ReClam the Bay said that much of what the AAC is trying to accomplish is also what ReClam the Bay is trying to accomplish. RCTB has involvement with a shellfish in the classroom. RCTB and the AAC should be working much closer in the future. He had a discussion with Ernie Panacek at Viking Village and the idea surfaced to shift sustainable fisheries to responsible fisheries.

Mr. Avery said he has heard from people visiting the docks about interest in a daily or weekly recreational shellfish license. He said a "dig your own" venture would be a good idea. Dr. Kraeuter said that the "dig your own clams" idea has been looked at in the past, but the problem is that waters are closed in the areas where there are the most tourists. Mr. Myers said that it is a very interesting business model for New Jersey. Mr. Mathis said that another problem is obtaining liability insurance. Mr. Myers said that selling clams at 60 to 75 cents a piece can go along way to covering insurance premiums. Mr. Mathis said that the problem is finding an underwriter other than Lloyds of London. Mr. Myers said there have been some recent discussions with insurers relating to the ADZs that may overcome the insurance limitation for "dig your own clam" operations.

Mr. Ni said that he is still growing oysters at the former Biosphere with a new cage design. He is interested in farm loans. Mr. Myers said he would refer Mr. Ni to the NJ FSA Office for information on agricultural financing.

Mr. Babb reminded the AAC that comments on Nationwide Permits were due soon and he would forward the Federal Register notice to AAC. NWP 27 covers shellfish restoration and NWP 48 covers shellfish aquaculture. Mr. Canzonier said that the proposed changes seemed very reasonable. Mr. Babb said the ACOE has had five years to develop an understanding of shellfish aquaculture.

The next AAC meeting is tentatively scheduled for July 15, 2011 and October 14, 2011. He is open to any recommendation for venue. Mr. Myers asked for a motion to adjourn. Dr. Kraeuter provided the motion which was seconded by Mr. Canzonier. All voted in favor and the motion passed.