

MINUTES OF THE MEETING  
OF THE  
ATLANTIC COAST SECTION OF THE NJ SHELLFISHERIES COUNCIL

Nacote Creek Law Enforcement  
Port Republic, NJ  
July 20, 2009

Present were: Chairman John Maxwell (Atlantic County)  
Vice Chairman Walter Hughes (Monmouth County)  
Councilman Walter L. Johnson III (Ocean County)

State Representatives: James W. Joseph, Bureau of Shellfisheries  
Jeffrey C. Normant, Bureau of Shellfisheries  
Michael Celestino, Bureau of Shellfisheries  
Gustavo Calvo, Bureau of Shellfisheries  
Robert Connell, Bureau of Marine Water Monitoring

Mr. Maxwell called the meeting to order. Mr. Joseph read the State's compliance with Sunshine Law. He announced that the meeting would be recorded.

- 1. Total Revenue collected for May 2009: \$4,746.35  
Shellfisheries Law Enforcement Fund: \$1,940.00
- Total Revenue collected for June 2009: \$41,384.35  
Shellfisheries Law Enforcement Fund: \$2,140.00

2. May 18, 2009 Minutes

With respect to the shellfish growing water classification in Jenny's Creek, Mr. Joseph stated that due to a miscommunication the minutes indicated that the area in question would go to a Seasonal Approved classification immediately and that was not the case. Mr. Joseph explained that, by regulation the Bureau of Marine Water Monitoring (BMWWM) can downgrade a classification at any time to protect human health; however, changes to upgrade a classification are part of an annual event that occurs in January. Mr. Connell stated that the original rule proposal submitted by BMWWM to upgrade the classification to Seasonal had been recently revised to grant fully Approved classification status to the area of Jenny's Creek effective in January 2010. With the changes noted as described above, the minutes of the May 18, 2009 meeting were approved on a motion by Mr. Johnson and a second by Mr. Hughes.

3. Applications for Transfer

<u>LESSEE</u>	<u>APPLICANT</u>	<u>LOT #</u>	<u>SECTION</u>	<u>ACRES</u>	<u>LOCATION</u>	<u>MAP#</u>
Michael Mayer	William Mayer	2030	B	0.92	Obes Thoro	3
Michael Mayer	William Mayer	2031.1	B	0.55	Obes Thoro	3

Without discussion, the lease transfers were approved on a motion by Mr. Johnson and a second by Mr. Hughes.

4. Applications for New Ground: Consideration

<u>APPLICANT</u>	<u>LOT #</u>	<u>SECTION</u>	<u>ACRES</u>	<u>LOCATION</u>	<u>MAP#</u>
John Aubin	11	D	2.00	Swan Point	

Mr. Normant provided the Council with copies of the applicant's lease application and biological report. Mr. Aubin was present at this meeting. Pursuant to the leasing regulations, a decision will be rendered at the next meeting.

## 5. Old Business

### Navesink River Sewage Spill

Mr. Hughes followed-up on discussions concerning the Navesink River sewage spill that occurred in April 2009 as reported at the Council meeting on May 18, 2009. Mr. Hughes stated that shellfishermen had some issues with delays in the notification process. While recognizing that the problem was hard to fix and that the system currently in place was certainly not perfect, Mr. Hughes stated that the State was successful in responding to the spill in a timely manner and that most of the clams were recalled or stopped within hours of the spill.

Mr. Joseph stated that NJDEP Bureau of Shellfisheries, Bureau of Marine Water Monitoring and Bureau of Law Enforcement had responded to this particular incident in accordance to the same protocol followed in similar situations in the past. Mr. Connell explained the various steps involved from the time a spill is first reported to the time when shellfishermen are notified. In case there was another problem, Mr. Maxwell asked if there was a more effective way to deal with it. Mr. Connell stated that text messaging was an idea that was being considered by NJDEP to quickly contact all harvesters in the event of a spill and possibly alert them ahead of time that shellfish harvest may be subject to a recall pending the official closure order under consideration.

### Jenny's Creek and Little Thorofare

Mr. John Rutherford, a shellfisherman who works a lease in Jenny's Creek obtained in 1986, revisited an issue that had been originally been discussed at the February 2009 meeting: the downgrading of waters in portions of Jenny's Creek to Special Restricted without notification of lease holders. Mr. Rutherford asked who was responsible for the mistake. Mr. Joseph accepted responsibility for the mistake and explained that the problem arose due to an error in the graphic representation of the shellfish growing water classification even though a correct description was available in text form for the area in question. To prevent this type of problems in the future, Mr. Joseph stated that GIS maps with lease charts will be provided to the Bureau of Marine Water Monitoring so that, for example, if a shellfish growing water re-classification action is being considered for a particular area, the potential implications to shellfish leases can be quickly relayed to the Bureau of Shellfisheries. Mr. Rutherford wanted the record to show that in his case, and for all the years since 1986, the leaseholder had been mistakenly charged lease fees and that he had been mistakenly issued permission to work. To clear any misunderstanding, Mr. Maxwell stated that there was never a water quality issue in the area in question. Mr. Connell explained that the reason for the initial Special Restricted water classification was in accordance to standard buffer requirements to guard against potential spills from an existing marina in proximity to the area in question and that based on a more recent dye test an upgrade to Approved water classification would become effective for that particular area in January 2010. Mr. Dale Parsons Jr. asked about the dye test and Mr. Connell explained that the dye test was a means to assess dilution and water movement.

### Garden State Parkway Widening Project – Mullica River Bridge

Mr. Normant reported that as per the oyster sampling cycle, recently entering into the more frequent phase while in-water bridge construction work was being performed, the condition of the oyster seedbeds was okay. Mr. Maxwell asked if there were any changes noted. Mr. Normant replied that no changes were observed other than a little bit of mud in samples collected on the day of the Council meeting (July 20, 2009) at the tip of French's Point. Mr. Normant explained that while samples were still being processed the mud was likely not attributable to bridge construction work but rather to debris washed down from the surrounding marsh.

Mr. Dale Parsons Jr. asked how long the bridge construction work was supposed to last. Mr. Normant replied that the in-water construction part was scheduled to last for a couple of months while the overall project timeframe was 1 year or more. Mr. Parsons was concerned that other parts of the construction work could have unforeseen and potentially adverse environmental impacts. Mr. Normant stated that the contractor assured him that no additional dredging or other work that could potentially impact the banks of the river was going to be performed. Mr. Normant also noted that there was a BMWM station recording

turbidity at Chestnut Neck and that additional monitoring by the Bureau of Shellfisheries was going to continue beyond the in-water construction phase.

#### Aquaculture Advisory Council

Mr. Joseph Myers (N.J. Dept. of Agriculture) stated that the last meeting occurred on July 10, 2009 and that appointing new Council members was one important issue still under consideration because all the appointments had expired. Mr. Myers encouraged anyone interested in a candidacy to submit a resume to the Department of Agriculture. Concerning the shellfish census being considered for implementation in New Jersey, Mr. Myers stated that there was currently a 6-page draft on the basis of the USDA format that was being re-worked to fit a 4-page format more suited for use in New Jersey. Once the draft was finalized, Mr. Myers committed to provide a copy of the proposed census form for consideration by the Council.

#### Council Members Financial Disclosure

After some preliminary discussion on this subject Mr. Joseph explained Council members were required to complete Financial Disclosure Forms on the computer before the end of the year, as required by the Ethics Commission for all members of a council, board or commission. Mr. Joseph stated that as more information became available he would pass it along to the Council.

#### Middle Island Channel

Mr. Parsons requested an update on progress with the lease surveys. Mr. Joseph replied that almost all the SAV sampling and about half of the clam sampling had been completed to date. Mr. Parsons asked when the survey would be completed and Mr. Normant replied that the target date was by the next Council meeting and depending when it was feasible to complete the remaining sampling.

#### Delaware Bay Aquaculture Development Zones

Mr. Myers referred to the last meeting of the Aquaculture Advisory Council (AAC) where Mr. Babb provided an update on progress with the ADZ Leasing Committee Report that was approved by the AAC and the Delaware Bay Section of the Shellfisheries Council. Mr. Maxwell indicated that the matter was still under consideration by the Atlantic Coast Section of the Shellfisheries Council and that work was expected to resume hopefully next month after some slow progress during the summer.

### 6. New Business

#### ReClam the Bay

Mr. Rick Bushnell, president of the volunteer organization ReClam the Bay introduced himself and his organization. Mr. Bushnell listed shellfish gardening policy and leasing as two issues of interest to ReClam the Bay. Concerning shellfish gardening and the draft policy now under consideration by NJDEP, Mr. Bushnell stated that ReClam the Bay used shellfish as a teaching tool to educate the public about the importance of water quality and the ecosystem in Barnegat Bay from Mantolokin to Holgate. Concerning leases, Mr. Bushnell stated that with some limited success ReClam the Bay had been operating two leases established at Waretown and Sedge Island by NJ Division of Fish and Wildlife and that as amateurs, ReClam the Bay volunteers were interested in establishing other lease locations and in the process learning more from professional shellfishermen. Mr. Maxwell asked how many people participated in ReClam the Bay. Mr. Bushnell responded that there were about 115 volunteers, half of which had probably completed the 7 week training (3 hours at night once every week) covering various topics including basic shellfish biology, shellfish husbandry, water quality and regulations. Concerning shellfish gardening, Mr. Joseph indicated that the draft policy now under consideration by NJDEP basically addressed the culture of shellfish by a non-government organization to typically rear juvenile clams or oysters for placement out in the wild or a full blown shellfish restoration project in waters that were not classified as Approved. Mr. Joseph explained that public health protection is the number one concern in the policy and that ReClam the Bay and Barnegat Bay folks were in a good position because most of the areas in Barnegat Bay, aside from adjacent lagoons or other similar areas, had Approved shellfish growing waters while some other coastal bays where people had been doing the same type of work for a number of years had Special Restricted or Prohibited waters and if someone got sick from eating any shellfish the public was not likely to discriminate if the shellfish was raided from shellfish gardening Taylor floats in Prohibited waters or from commercial sources and that as a consequence the shellfish business would suffer. Mr. Joseph emphasized

that protection of public health and the potential ramifications to the commercial shellfish industry, as stated before by members of the Delaware Bay Shellfisheries Council, were the two main concerns and policy drivers. Mr. Joseph noted that policy development work continued under a conservative approach that was warranted for the protection of public health and that the draft policy was being finalized considering Federal guidelines and the ISSC Model Ordinance including specific provisions: for example, the one requiring that all shellfish must be removed from non-approved waters at least 6 months before they reach market size. Mr. Joseph re-iterated that the policy addressed various items including public health concerns, when shellfish gardening can and can't occur in waters that are not Approved, provided alternatives to allow for people to conduct pilot projects or educational projects while reducing the potential for public health concerns. As per the latest information available, Mr. Joseph stated that the hope was for the policy to be finalized by August. Mr. Maxwell inquired who had been working on the policy. Mr. Joseph replied that NJDEP Bureau of Shellfisheries, Bureau of Marine Water Monitoring and Bureau of Law Enforcement had been working on the policy with input from the NJ Department of Health and Human Services and FDA. Mr. Maxwell asked if the policy was specific to someone interested in growing shellfish in a small area or if the policy applied to anything else. Mr. Connell responded that the policy applied to shellfish restoration within State waters. Mr. Flimlin stated that the Barnegat Bay Shellfish Restoration Program (BBSRP), of which ReClam the Bay is part, requested to have its volunteers grow juvenile hatchery produced clam and oyster seed in less than Approved waters only from the middle of July until November when all the seed is planted. Mr. Maxwell asked about the specific areas where seed was planted. Mr. Joseph stated that the seed was planted within the lease at Sedge Island where water is classified as Approved and within the lease at Waretown where water is classified as Seasonal. Mr. Maxwell asked Mr. Flimlin to describe the typical BBSRP activities. Mr. Flimlin explained that the reason for BBSRP to have shellfish seed placed in Taylor floats was that it provided a teaching moment and that BBSRP standard operating practice was to dispose of the seed before the end of the year and not to carry it over to the next year. Mr. Flimlin noted that the problem under a comprehensive policy was that unlike BBSRP, there was another organization that handled the seed for over a year. Mr. Connell stated that ReClam the Bay was one of several organizations from which applications were received for different areas and that he wanted to make sure that the gardeners understand the public health implications of growing shellfish in less than Approved waters and also that they understand the potential that they have to affect the industry. Secondly, Mr. Connell stated that the challenge was to have enough law enforcement patrol to make sure there was no temptation for bad players to poach. Mr. Connell stated BBSRP was considered a model with a great educational program and that there were vast regional differences in the other applications, including one proposal to put oysters in the western end of Raritan Bay where the shellfish growing water classification is Prohibited. In closing, Mr. Connell stated that the purpose was for the policy to set clear expectations up-front so that prospective applicants don't waste time by knowing what is and is not going to be permitted. Mr. Joseph provided an example of how BBSRP/ReClam the Bay standard operating procedures would be in compliance with one particular provision of the draft policy. Subsequently, Mr. Joseph proceeded to elaborate on other cases where shellfish had been either illegally harvested or removed without documentation from shellfish gardening sites as examples of problems with enforcement of the policy and also to explain the reason for a fairly conservative policy. Mr. Joseph also indicated that as best as possible the draft policy was trying to accommodate the needs of shellfish gardening and related projects. In closing, Mr. Joseph reiterated that protection of public health and the potential ramifications to the commercial shellfish industry were the two main concerns. Mr. Johnson asked Mr. Bushnell to describe the process after clam seed was placed in plots within the leases. Mr. Bushnell replied that the seed was placed under predator control screens for overwintering and that the process involved cleaning of screens while seed continued to grow until the fall when it was harvested after 1 year under screening. At that time Mr. Bushnell pointed out that the seed, at least most of them, was still one year away from reaching market size. As the experience with ReClam the Bay having seed completing the cycle has been limited so far, Mr. Bushnell added that once clam seed undergoing the process was released into the wild, ReClam the Bay was interested in learning more about how the seed was performing and what is happening out there to the seed considering that the plantings needed to be at low enough density to discourage predation and poaching while not too low a density as to allow for reproduction. Concerning shellfish gardening, Mr. Bushnell reasoned that to some extent ReClam the Bay may not even fit the definition because they are only moving seed around. Mr. Bushnell also indicated that one of the main concerns was for ReClam the Bay not to burden anybody with their own educational and hobby activities or for ReClam the Bay to be subject to abusive permitting. Mr. Bushnell noted that ReClam the Bay was as concerned as anybody else about the health and the safety of the shellfish and that ReClam the

Bay members were shellfish eaters and also commercial clambers that really understood the issues being discussed. Concerning the shellfish gardening policy, Mr. Bushnell stated that language in the policy should be clear enough to exclude applicability to ReClam the Bay because its activities were basically limited to grow seed in Seasonal water only for a limited time until planting in an Approved area. Mr. Johnson asked where ReClam the Bay would be broadcasting the seed after the phase under screening. Mr. Bushnell indicated that they would like to do that in the area where seed would have the best chance of survival and establish a bed. Mr. Joseph stated that according to regulations, a research lease may be established by a research institution and that Rutgers University or NJ Division of Fish and Wildlife could possibly apply for a research lease much in the same way that NJ Division of Fish and Wildlife established the leases at Waretown for operation by BBSRP and ReClam the Bay. Alternatively, as previously proposed by Mr. Bushnell, Mr. Joseph indicated that another option for ReClam the Bay was to obtain a permission to work slip from an established leaseholder that would allow volunteers to work within his/her lease. Further discussion ensued primarily concerning alternative areas for establishing leases or areas for restoration purposes. Mr. Bushnell closed by thanking the Council for the opportunity to introduce ReClam the Bay. Mr. Johnson thanked Mr. Bushnell as well.

#### Laurel Harbor Relay Lots

Mr. Normant reported a complaint that stakes in the area of the old relay lots at Laurel Harbor were an eyesore because they were apparently scattered all over and broken or otherwise not properly maintained. Mr. Joseph noted that there are only 8 current active leases in that area and that some of stakes may be from former leaseholders. Mr. Joseph noted that a proactive group of leaseholders had performed clean-up of the Swan Point relay area prior to the shift to Laurel Harbor some time ago. Mr. Hughes described some of the clean-up activities that had been performed in the area. To address the current situation, Mr. Joseph stated that Mr. Normant had recently sent letters reminding all current leaseholders that stakes had to be maintained in accordance to the regulations. To reduce occurrence of this problem in the future, Mr. Joseph noted that it may be necessary to amend regulations to require that upon vacating a lease the leaseholder has six months to remove all stakes. Mr. Johnson noted that one year ago he had received complaints from leaseholders reporting that stakes had been broken by poachers invading into the leases. Mr. Johnson also noted that the relay program was in suspension and that the rule still applies. Mr. Maxwell added that a permit was still needed to remove clams from relay lots. Mr. Joseph and Mr. Connell specified that permit 5A was applicable for removing clams from relay lots.

#### Other items

Mr. Flimlin briefly reported that Monmouth County Clean Water Act lawsuits are in the process of being separated into three different lawsuits. Concerning coastal regulations and aquaculture permitting, Mr. Flimlin reported on the meeting held in Tuckerton in May 2009 involving representatives from NJDEP Division of Land Use Regulation (DLUR), Division of Fish and Wildlife Bureau of Shellfisheries, NJDA and members of the shellfish industry. Mr. Flimlin stated that the meeting was very productive and allowed him to provide a lot of suggestions concerning commercial shellfish aquaculture gear for consideration by DLUR staff to use in addressing shellfish aquaculture permitting in the revision of coastal regulations now underway. Mr. Flimlin also reported that he was preparing a project proposal to determine the carrying capacity for clam farms in Dry Bay for submission to USDA at the end of the month. The proposal would involve determination of water flow and chlorophyll and address best management practices. As a last item Mr. Flimlin reported that earlier that day oyster larvae procured by NJDEP Bureau of Shellfisheries from the Haskin Shellfish Research Laboratory had been remotely set on shellbags placed in a tank at Ocean Gate Marina for deployment later this year at the BBSRP restoration site established in Approved waters off Good Luck Point. Concerning leasing nearby relay leases, Mr. Aubin inquired why the relay lots had been moved out from the area off Swan Point. Mr. Joseph replied that basically the reason was marginal water quality in the area off Swan Point. Mr. Connell elaborated on this issue and explained that purging had not been consistent for clams transferred into the relay lots. Mr. Aubin was concerned because he had recently applied for a lease in the area off Swan Point. A discussion ensued aimed at explaining to Mr. Aubin that the process involving relay leases and purging was not applicable to regular leases.

There being no further business, the meeting was adjourned on a motion by Mr. Johnson and a second by Mr. Hughes.

7. Date, time and place of next meeting:

DATE: August 17, 2009  
TIME: 7:00 PM  
LOCATION: Nacote Creek Law Enforcement Office  
360 N. Rt. 9  
Port Republic, NJ 08241