

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

Virtual Meeting, Web and Conference Call
Tuesday, July 28, 2020
5:00 PM

Present were: Council: 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: Bureau of Shellfisheries:
Russ Babb Craig Tomlin
Andrew Hassall Conor Davis
Jenny Tomko Megan Kelly
Bob Schuster, Bureau of Marine Water Monitoring

Haskin Lab: David Bushek, Director
Jennifer Gius, Laboratory Researcher

General Public

Compliance with the Sunshine Law

Notice of this meeting was posted July 22, 2020 with the Secretary of State's Office, State House, Trenton, NJ and the Bridgeton Evening News, and Daily Journal pursuant to L. 1975 c. 231.

Mr. Babb welcomed everyone to the meeting, and performed roll call. He read the above compliance and reviewed how the virtual meeting management and etiquette would be conducted.

1. General

1.1. Introduction of New Council Member – Scott Sheppard

Mr. Babb introduced Scott Sheppard as the new councilman. He announced that Councilman Sheppard was a long-time commercial oyster fisherman and was appointed to the Council on June 29, 2020 to fill one of the three Cumberland County seats. He was appointed by Governor Murphy and with the advice and consent of the Senate for a term of 4 years and shall serve until a successor was appointed or class qualified. Mr. Babb said the Bureau had always enjoyed an excellent relationship with Mr. Sheppard and welcomed him aboard.

1.2. Approval of May 12, 2020 minutes

Councilman Fleetwood motioned to approve the May 12, 2020 minutes. Councilman Malinowski seconded the motion. All were in favor and the motion passed.

1.3. Oyster Resource Development Account (ORDA)

Councilman Fleetwood posed a question about the minutes and asked if the Bureau had heard anything about the encumbered money. Mr. Babb said, as he explained to the Council in May, the State had just over \$185,000 from the ORDA placed into reserve since April 2020. He said that the State historically did this during bad budget crunches, and they did a clean sweep of the dedicated accounts without discretion of which they would hit. He said in the past the money had

always been released back into the ORDA due to the source of the funds. He informed that in April, approximately \$1 billion in State dedicated accounts were reserved so the ORDA was not targeted. Mr. Babb said that any monies released from reserve had to be for a COVID emergency plan that spent funds right away and were considered urgent. The Bureau was advised by the Division's fiscal analyst to wait to see what happened until early September since the fiscal year ends at the end of September. If the funds were reverted or lapsed, then they were removed from the budget but not carried forward. Mr. Babb showed a screenshot of the appropriation inquiry of the ORDA that summarized the account information. He said it was unlikely the money would be taken from the account and deferred to the Council if they wanted to raise the issue to the Administration or legislators. Councilman Hollinger asked if anything was taken out of the Bur. of Marine Fisheries (BMF) accounts. Mr. Babb said the Bureau had about seven accounts that all had 50% of funds frozen and have not been able to release the money. He explained the BMF had been looking at line items, but that mainly covered dedicated accounts. After some discussion, **Councilman Hollinger made a motion that if no decisions were made on the ORDA by September 1, 2020 to send a letter to the DEP Commissioner and State Treasury to inquire about whether the ORDA money was at risk of being taken. Councilman Sheppard seconded the motion. All were in favor and the motion passed.**

2. Old Business

2.1. Direct Market Update

Mr. Davis reported that the quota of 33,903 bushels (bu.) for the High Mortality region was reached and was closed that day. He said the average catch per unit effort (CPUE) for that region was about 111 bu. per boat per day. Mr. Davis gave a breakdown by seedbed of Nantuxent, Bennies Sand, Hog Shoal, and Bennies. He reported that most of the High Mortality region harvest was from Nantuxent at about 25,300 bu. (75% of harvest) and had a CPUE of 117. He reported that 6,975 bu. (27.5%) of Nantuxent harvest was replanted on leased grounds. Bennies Sand had 5,737 bu. (17%) of quota harvested with 122 CPUE, and 417 bu. (7%) were planted on leased grounds. Hog shoal had 2,336 bu. (7%) with a CPUE of 111, and Bennies 60 bu. with a CPUE of 60. He also reported that Shell Rock region quota was 46,984 bu. of which about 9,000 (19%) was harvested with a CPUE of 161. Of that harvest, about 1,300 bu. were replanted to leased grounds. There was no harvest on the Medium Mortality region, and total boat days were 344 with 285 on the High Mortality and 59 on Shell Rock.

Mr. Davis also gave a comparison of 2020 against the previous three years. He reported the 2020 harvested was about 60% of the average from the previous 3 years. The 2020 boat days were 59% of the average number of boat days. The CPUE had increased, which was probably due to increased transplant activity. Comparing the 2020 harvest against the 2019 harvest, Mr. Davis reported that at the end of July 2019, approximately 42,000 bu. were harvested, which meant there was a 20% decrease in 2020 harvest at the end of July. Making the same comparison, for Shell Rock had about 23,000 bu. harvested in 2019 with a 60% decrease in 2020, and the Medium Mortality region had 610 bu. harvested in 2019 with no harvest so far in 2020. Overall, by the end of July 2019, 65,630 bu. had been harvested under the 2019 Direct Market Program. Whereas, a total of 42,948 bu. had been harvested by July during the 2020 Direct Market Program. This results in approximately 35% decrease in harvest for the year 2020.

Mr. Babb recalled that early in the season Councilman Fleetwood made a motion to harvest 35,000 bu. from each of the High Mortality and Shell Rock regional quotas, and then close them until the Medium Mortality quota was harvested. They would then be reopened to harvest the larger oysters when they would be more marketable and to try to utilize that resource. He said that this could not be done on the High Mortality region since it was closed and there was no

Intermediate Transplant to add to its quota, but that it could still have been done on Shell Rock. He reported that at current harvest rates of about 3,400 bu. per week, the 35,000 bu. limit would be hit in seven to eight weeks which would be after Labor Day. He also said that looking at the Stock Assessment data, there were a lot of large oysters on Shell Rock as well. Using harvest averages, weekly harvest generally reduced in September and into the end of the season, which meant it was possible to not harvest the entire quota. He added that it could mean the entire Shell rock quota may not be harvested and they would be leaving the big oysters to get bigger. Staff recommendation was to leave beds open and see how the season played out. Through discussion, **Councilman Fleetwood made a motion to let the harvest play out on Shell Rock and the Medium Mortality regions and keep them open until their quotas are harvested or the season ends. Councilman Malinowski seconded the motion. All were in favor and the motion passed.**

2.2. License Consolidation Committee

Mr. Babb said that in May there was interest in having the Committee meet virtually, which did not happen in July due to furloughs. He said a meeting could be held in August. He added that there was discussion of placing these rule changes into the housekeeping rule changes that were proposed, but he thought these were too different than what was proposed and may not make it through legal affairs and may have to be a stand-alone rule making process. Councilman Hollinger asked if a Doodle poll could be set up to schedule a meeting, and Mr. Babb said the Bureau could set something up.

2.3. Vibrio Plan/Season Update

Bob Schuster said everything had been going well with a significant decrease in the number of cases, even out of NY. He reported one case in which NJ was implicated so far this year. He described it as a multiple source case where product was from two places, and it was the first report which was received that day. He speculated that with restaurants not being open, the cases may be due to how restaurants handle product and should be evaluated in circumstances like this. He said cases reported went back five weeks, so reporting and its timeliness was still an issue. This case occurred during the peak time of year in late June to early July. He reported his Bureau continued routine ambient monitoring of shellfish that started in mid-June and sampled through that past Monday. Councilman Fleetwood said than NJ continued to be on top in their Vibrio control among the states, and thanked Mr. Shuster for all the work he did.

Lisa Calvo asked how relative consumption numbers compared with previous years. Mr. Schuster said that was something his Bureau would have to do later in the year because they do not receive the aquaculture harvest data until after the season. Ned Gaine asked Mr. Schuster if while recording data on aquaculture they were considering and collecting data for product being moved via retail directly to the consumer. Mr. Schuster replied yes, and the one case this year had left NJ to one dealer, which went directly to the consumer. He added that typically cases arise from a restaurant or moving from a dealer to a restaurant. Mr. Gaine asked if that data was collected nationally. Mr. Schuster said he obtained the information from reading a national report and that information would be available, but he was not sure if other states were recording that information. *Further discussion ensued.*

2.4. 2020 Intermediate Transplant Program (ITP)

Mr. Babb revisited the ITP from May with the Council's decision to postpone the program. He said the MFA's concern was largely about total removals from the seed beds, so it was a market

and financial decision the Council would have to make. He added that given uncertainties with the market and fiscal concerns with the cultch account it may make sense to not conduct a transplant in 2020, but he ultimately deferred to the Council.

Councilman Hollinger said he did not think it would help to move anything, and it was such a small number that it may not help with the survey in 2021. He added that he did not think the industry would catch their entire quota and thought it was best not to conduct the ITP. Councilman Fleetwood said he was hoping things were better by then, but he had not seen much improvement and agreed with Councilman Hollinger to not conduct the transplant. Councilman Sheppard agreed, and added that there were some people that had not even started their quota yet and he would like to see everyone be able to get their initial quotas first. **Councilman Malinowski made a motion to cancel the ITP until 2021. Councilman Sheppard seconded. The floor was opened up for public comment, of which there were none. A roll call was conducted, and all were in favor and the motion passed.**

Councilman Hollinger asked Mr. Davis if the Bureau could put numbers together that would show the loss of the transplant to the industry for 2020 so it could be put into the CAREs act numbers. Mr. Davis said that the Bureau could come up with something to reflect the loss.

2.5. Shell Plant Program Update

Mr. Davis said there would be three barges of about 20,000 bushels of shell each for a total of 60,000 bu. Two barges were going to Bennies Sand, and the third will go to Shell Rock. He said the first barge was being planted during the meeting, and that Mr. Tomlin and Mr. Hassall were out monitoring and overseeing the planting efforts. Mr. Babb commented that the Bureau always had concerns with logistics such as the tide, scheduling, or break downs. Since the shell plants were being conducted and the Council would not have a meeting before the program ends, Mr. Babb asked the Council if they would want to continue planting if any significant delays came up that pushed the plantings back a few weeks after the main spawn. Councilman Hollinger said to keep planting because sometimes there was a late September set, the planted shell catches year after year, and it will put more cultch back in the water. After a brief discussion, the Council said to move forward with the shell plant if issues did arise.

Mr. Babb said he would like to have a meeting with the shell contractor to explain what kind of moneys are brought forth each year, how state contract was set up, and remind them how important it is to this industry that it has a consistent shell planting program every year. He said we have money to spend, and it was a shame to see the shell being shipped off for other uses when it could be used for this project.

2.6. Red Knot Stakeholder Committee Update

Councilman Hollinger reported that the Committee held a meeting June 25, 2020. They discussed the horseshoe crab (HSC) update, and that it was a strange year with cold weather in the spring. The water did not warm up to 59°F early on, and there was a HSC spawn but the red knots did not appear at that time. He said there were roughly 6,500 red knots counted on the Atlantic Coast. Another 18,000 knots were counted in Riggins Ditch on May 24, and 5,400 on May 26. He informed that the knots did not have enough eggs, and that this year seemed similar to 2016 when the birds took off early and the crabs came in behind them. He said the Committee discussed the population number for HSC. All of the environmental groups thought the HSC numbers were low, or steady and not increasing, but everyone had been seeing so many crabs that it did not seem like that could be the case. He noted that it seemed the numbers the Adaptive Resource

Management from the ASMFC had not been updated in a few years, so the numbers may have been off and may not be the true numbers. He said the Committee decided to review the Conservation Measures (CM) to see if there was anything else that needed to be changed, and that if anyone had ideas of what needed to be changed to let them know so it can be brought up at a meeting. The Committee may have a meeting in September, for which there was no date, and the Aquaculture Working Group was to meet in November during which everything will be reviewed.

Ned Gaine wanted to reiterate his comment from May's meeting that deployment of gear prior to the season and the CM of non-deployment during a period of time while the birds were here and well after they had left was a hazard to the birds, the HSC, and the farmers. He exemplified that he had more gear out than was needed because of the limitations in the CM and would have brought things out as needed. Ned Gaine also commented that Endangered and Nongame Species (ENSP), who dictated when the CMs were listed, did the industry a favor by opening the CMs the Friday before Memorial Day weekend. He said they did not have to do that and gave the industry extra working days. He requested that the Council write a letter to ENSP to thank them for the consideration to the industry to allow them to go to work in a timely matter. After some discussion, Mr. Babb said the Bureau would draft a letter for the Council to review and send that would thank ENSP and highlight their appreciation and how important their timeliness was. Councilman Hollinger added that he would look into having the CM changed for the time restrictions for moving gear.

2.7. Aquaculture Development Plan (ADP)

Mr. Babb said there was a significant amount of conversation during the May meeting about the Council submitting comments on the ADP. He reported that nothing further happened and asked for feedback from the Council on the outstanding issue so it could be addressed and closed out. He explained that Mr. Gaine submitted comments and there was discussion of the Council submitting comments. Councilman Fleetwood asked what the status of the ADP was, and Councilman Hollinger and Mr. Babb said it was still open for comments due to the pandemic but could verify with Ms. Wenzel in the Dept. of Agriculture (DOA). Councilman Hollinger said the recent Aquaculture Advisory Council (AAC) meeting was canceled, but the next one would not be until the fall. Councilman Fleetwood said his big issue was marketing, that there were a few comments in the ADP about the Council that were inaccurate, and he would still like to make comments. Mr. Gaine said that he did not agree that the DOA canceled their AAC meeting since they should be gathering current feedback from the industry and the industry could have provided timely comments at that meeting. He opined that the Council should say they need to be given the opportunity to comment on the ADP at least in the final draft before it was approved and felt that the AAC should gear the plan more towards marketing instead of regulation. Councilman Hollinger said he did not disagree, and the Council sent a letter to the DOA to hold up the ADP so the Council could provide comments, to which the DOA obliged. Councilman Hollinger asked the Bureau to redistribute the ADP to the Council, including Councilman Sheppard for his first review, and for everyone to submit comments to Mr. Babb who would assemble them into one document for the DOA.

2.8. Nantuxent Channel Dredging Project Update

Mr. Babb reported that the contract extension to increase Stockton's working period from March to September 2020 and to restructure the project budget with no change in total cost was executed by Assistant Commissioner Bukowski's office. The Bureau was waiting to hear if it was fully executed and ready to send to Stockton. Stockton sampled the four core samples required by the

Sediment Sampling and Analysis Plan on June 29, 2020, and grain size analysis has been received from the 3rd party lab.

Core 1 in the creek was mostly sand and gravel. Sand was less than 90% sand, but ODST said with gravel included it was 96.5% sand and would not require further testing. The lab already performed the testing before it could be canceled and will only be charging 50% of the analysis fees. Cores 2, 3, and 4 on a shoal within the cove appeared to have significantly less sand than anticipated. The sand was less than 90% for all three core samples and the samples were required to be composited, retested for Tier 1 testing, and Tier 2 chemical testing. The lab testing is still being performed for the composite of Cores 2, 3, and 4. The Bureau was expecting a report for all of the Core 1 tests, and the Tier 1 tests for the individual Cores 2, 3, and 4 before they were composited into one sample. Since the cores from the shoal did not have more than 90% sand, there is a chance they may not be suitable for beach replenishment. In anticipation of that possibility, a conference call with the Bureau, Stockton, NJDOT, and Dave Fanz is scheduled for tomorrow, July 29th at 10 AM to discuss these findings and discuss the possible need for an alternative to beach replenishment.

Once the lab tests are completed, the sampling results along with the dredging plan will be used to apply for dredging permits, which will likely be a 5-year permit with an application for 5-year extension to ensure it is permitted for the possibility of future maintenance dredging by DOT. If all goes as planned, the dredging may occur in the fall via hydraulic dredging by DOT, and possible mechanical dredging if the sediment requires that method. The channel will be dredged to remove 19,330 cubic yards of sediment to make the channel 9 feet below mean low water to allow the oyster dredge boats to navigate. The dredge materials are planned to be used for beach replenishment on Nantuxent Beach in coordination with NJDOT and the Blue Acres Program. If the sediment is determined to not be suitable for beach replenishment, they will be used elsewhere once a new plan is determined and finalized.

Councilman Malinowski asked if Mr. Babb knew when the starting date was for dredging. Mr. Babb replied that it may possibly start in the fall, but the Bureau did not know. He said that at the time it was dependent on the sampling and whether or not the dredged sediment could be used. Councilman Fleetwood added that the project would be held up until the sediment disposal problem was resolved. He discussed with Dave Fanz that instead of trying to change the placement of the channel that they may be able to find an alternative placement for the dredged sediments, but would find out more the following day when a meeting to discuss the project was scheduled.

2.9. CARES Act – Fishery Disaster Relief Update

Mr. Cimino said the MFA was still working on a spending plan. He said they did not know what the west coast or gulf coast states were doing for their plans. For the Atlantic Coast states, he reported that three states submitted a draft plan and received comments, which helped NJ develop their spending plan. He said the MFA wanted to submit the plan in July to NOAA, which was not going to happen. He reported the plan was in the Governor's office and expected it would be available soon for comments. Mr. Cimino highlighted tentative parts of the plan which were that individuals and businesses would apply and be placed into a tier that sets up how much they would be eligible to receive. He said the application period would be whenever approval was granted by NOAA, by which time the plan would hopefully be ready to go with the Economic Development Authority. He explained that applicants would use the period of March 1 – June 30 of 2020 to compare losses to the previous five years. A five-year average was required by the CARES Act, which must show at least a 35% loss in revenue for 2020 compared to the previous

five years. He added that if a business was not in operation for all five years they could still apply. Mr. Cimino explained there were three main sectors in the plan that included commercial fisheries sector which aquaculture was grouped into, a dealer/processor sector, and a recreational sector. The recreational sector included charter/head boat captains and bait and tackle shops which would be eligible. Furthermore, if a Department of Health license was required, the applicant would be required to have obtained their 2020 licenses and permits as well as within at least one year from 2015-2019.

Mr. Cimino said he was hopeful that the spending plan would be ready to submit in the next two weeks, and fully through the submittal process and approved within the next month to accept applications. Councilman Hollinger asked if the plan would be presented to the stakeholder committee before it was submitted. Mr. Cimino said he would like to get it back to the stakeholders and would run that by the Commissioner's office.

Lisa Calvo asked how the tiers were established. Mr. Cimino said the tiers were based on the total amount of loss. He said that some sectors had better indicators of predicted loss than others when setting the tier thresholds.

2.10. Maurice River Cove – Dredging and Basket Flats

Mr. Babb said a meeting with Congressman Van Drew was held two weeks ago when Bureau staff was furloughed and could not attend and asked for the Council to report. Councilman Hollinger reported that it was the same meeting Councilman Fleetwood and he attended over the years, but with different people. He said the meeting was held with the Army Corps of Engineers (ACE), Jason Hearon with the Bur. of Land Management, and Maurice River and Commercial Twp. representatives. He said that the meeting went well at Matt's Landing which gave an opportunity to show the dangers present to the river and communities to Congressman Van Drew. The Congressman seemed interested and wanted to see if money could be put into the ACE budget. Councilman Fleetwood said he appreciated the Congressman coming down, and that Monica from ACE was optimistic about some options for the dredge spoil. *Further discussion ensued.*

3. New Business

3.1. Sea Grant – Oyster Exchange Program

Ms. Calvo said she mentioned this program at the last meeting. Rutgers and NJ Sea Grant were preparing a proposal for a program that NOAA Sea Grant to release supplemental funds to serve aquaculture. She reported a quick turn around on the proposals and were fortunate to receive funding for their submitted proposal. A central piece of the proposal was to provide the immediate alternative market of habitat restoration for the large, overgrown, farm raised oysters. The program was viewed as a proof of concept on how well the large oysters would do in a restoration setting. It would also develop a framework for future opportunities to connect shellfish farmers with the restoration sector on various projects by developing a broker potentially called the Shellfish Aquaculture Exchange to facilitate commerce of farm raised shellfish products for habitat restoration initiatives. The bulk of the funding was going towards purchasing oysters from farmers. A final component was to develop a shellfish farm directory to connect consumers with NJ shellfish farmers and educate about aquaculture and how farmed shellfish was serving ecological enhancement and ecosystem values. She acknowledged the project partners as the NJDEP to provide logistics, Stockton University, the Barnegat Bay Partnership, the Partnership for the Delaware Estuary, the PEW Trust, and the NJ Aquaculture Association. The groups would also meet to think about the exchange and how it could function moving forward and have the

program in place if future funding opportunities became available. She reported that the program would purchase 76,000 oysters at wholesale price from growers. To qualify, farmers would need a valid commercial aquaculture permit from the Bur. of Marine Water Monitoring for 2019-2020, a valid 2020 commercial shellfish license, proof of hatcher seed purchase, and a valid NJ business registration. She hoped to purchase oysters and initiate restoration by mid-September.

Councilman Hollinger asked if the program would buy triploids and diploids, to which Ms. Calvo replied yes. Councilman Fleetwood asked if the areas the oysters would be planted on would be harvestable. Ms. Calvo said not necessarily and said one site was the Stockton research site called the Tuckerton Reef because there was a lot of research already conducted. Stockton also had the capacity to monitor and follow up and had other ongoing restoration projects in the area that would give a basis for comparison for project success. Mr. Babb said other sites could be in the mouth of the Mullica River called Oyster Bed Point, Reef Bed, and Fitney Bit. He explained that the Bureau could control and limit harvest of those beds at some point if restoration occurred. Councilman Fleetwood clarified that he was concerned why triploids would be used for restoration if they can not reproduce and may be better suited for a harvestable area. *Further discussion ensued.*

3.2. Hope Creek Port – Offshore Wind

Colleen Brust, the MFA lead for offshore wind, provided an update for Hope Creek. She reported that in mid-June Gov. Murphy announced what was called the NJ Wind Port, which was intended to be the hub of offshore wind production on the east coast. Ms. Brust showed the location of the port, which was adjacent to the Hope Creek nuclear generating station, or Lower Alloways, along with a map reflecting the oyster resource distribution. The project was a \$100 billion project and was intended to support the 25 GW of planned offshore wind to provide power to about 17 million homes. The project was headed by the NJ Economic Development Authority, and was supported by the NJDEP, Governor's office, and the Board of Public Utilities. She said the project was to be permitted by the state and local governments, and that the permitting was underway. Ms. Brust displayed the wind port state webpage, <https://www.nj.gov/windport/>, and explained the project plans. The project included dredging a channel from the site to the main channel for larger ships to navigate and building staging areas for wind turbine parts that were to be imported from Europe. These parts may be built in the USA as the project progressed. Some of the project was to coincide with the decommissioning of the nuclear plant. Councilman Hollinger started a discussion about his concerns of relocating any oyster resource in the proposed dredging area out of that area, so it did not end up on the shore with the dredge spoils. Mr. Babb and Mr. Tomlin explained that the Bureau was tasked with reviewing the proposed dredging area for potential impacts to the oyster resource, and how they determined that it would likely not significantly affect the oyster population with low abundance in that area. The Bureau and Council agreed that Bureau staff would survey the area to see what resource was present. *Further discussion ensued.*

4. Through discussion, the next meeting was tentatively scheduled for September 1, 2020.

Councilman Fleetwood motioned to adjourn the meeting. Councilman Sheppard seconded the motion. All were in favor and the meeting was adjourned.

The NJ Shellfisheries Council, Delaware Bay Section meeting adjourned at 7:16 PM.