

SPECIAL MEETING OF THE ATLANTIC COAST SECTION OF THE NEW JERSEY SHELLFISHERIES COUNCIL'S
LEASING POLICY & REGULATORY COMMITTEES

Meeting Minutes

Virtual Meeting, Web/Conference Call Via GoToMeeting

Wednesday, December 1, 2021

3:00 PM

Present were: Chairman: John J. Maxwell (Atlantic County)
 Vice Chairman Walter Johnson III (Ocean County)
 Councilman: Paul T. Felder (Cape May County)
 Councilman: George Mathis Jr. (Burlington County)
 Councilman: Vacant (Monmouth County)

2021 Lease Policy Committee Membership: Mr. Walter Johnson III[^], Mr. George Mathis Jr[^], Mr. William Avery, Mr. Raymond Crema (*absent*), Mr. Ned Gaine, Mr. Peter McCarthy (*absent*), Mr. Matt Gregg, Dr. Douglas Zemeckis

2021 Regulatory Committee Membership: Mr. John Maxwell[^], Mr. Paul Felder[^], Mr. Steve Mastro Sr. (*absent*), Mr. Dale Parsons, Mr. Joseph Rizzo (*absent*), Mr. Thomas Glenn (*absent*), Dr. Douglas Zemeckis
[^]*Shellfisheries Council member*

State Reps. Attendees: Joseph Cimino, Marine Fisheries Administration
 Russell Babb, Bureau of Shellfisheries
 Jeffrey Normant, Bureau of Shellfisheries
 Craig Tomlin, Bureau of Shellfisheries
 Kira Dacanay, Bureau of Shellfisheries
 Megan Kelly, Bureau of Shellfisheries
 Conor Davis, Bureau of Shellfisheries
 Amanda Wenczel, Department of Agriculture

Mr. Normant read the State's compliance with the Open Public Meetings Act. He announced that the meeting would be recorded and notice was filed with the Secretary of State Office.

Ms. Kelly explained that as a special joint committee meeting of the Shellfisheries Council, there was no general or routine business on the agenda. The goal of the meeting was to get a broader perspective on leasing topics since there was potential overlap between the two Committees. In addition, there was time allotted for public comment at the end of the meeting.

Committee Charge:

Mr. Normant presented the current committee structures as set by Council in forming a *Lease Policy Committee* and a *Regulatory Committee* and reviewed their respective charges. The Lease Policy Committee makes recommendations on leasing policy, lease area development, and provides recommendations on management of shellfish leases for Council. The Regulatory Committee provides input and recommendations to the Council on revisions to shellfish management and leasing regulations

developed by the Bureau of Shellfisheries (Bureau). The Policy Committee also provides recommendations on policy decisions that could be incorporated into regulations.

Agency Perspective & Focus Areas

Mr. Babb provided an overview of the Bureau’s perspective on their responsibility for implementing and managing the shellfish leasing program. It has been apparent for some time that a number of updates to the program were overdue. He also opined that the Bureau felt that it was also in the industry’s best interest to be the ones to guide these changes – not the Department or a Legislator . Mr. Babb added that the Bureau was seeing more interest from the Commissioner’s Office and legal staff particularly following some recent legislative initiatives. Further, the recent formation of a new DEP Office of Economic Development was ranking aquaculture on their list of initial priority projects. Permitting compliance and liability to the State were some of the topics raised.

Mr. Normant presented a snapshot of what the industry was producing by summarizing the data collected from the 2019-2020 Commercial Shellfish Aquaculture Permit (CSAP). This permit was issued by the Bureau of Marine Water Monitoring and was required to conduct shellfish aquaculture activities on leases. There were concerns raised regarding lease utilization and overall lack of reporting for leases. Mr. Normant explained this was the best available data to provide a current assessment of the industry.

Table 1 below compared the total number of leases and lessees in New Jersey that had a valid commercial shellfish aquaculture permit associated with them. This comparison showed low compliance in obtaining the permit (per lessee) and low participation of harvest reporting from lessees who held a CSAP.

Table 1:

Year	Total Leases	Leases included in a CSAP	Total Lessees	Lessees with a valid CSAP	Lessees that Reported Harvest
2019	909	54.6 %	182	31.3 %	18 %
2020	921	56.9 %	190	30.5 %	20 %

Mr. Gaine requested data to compare the percentage increase of the number of leases per year to be able to distinguish leasing trends and determine the average rate of new leases added per year. Mr. Maxwell asked for a breakdown of this data by waterbody to have a better idea of the trends per area.

Mr. Babb explained that Bureau staff was compiling a list of the various required state and federal permits/licenses currently held by for shellfish aquaculturists in order to provide an overall overview of industry compliance. However, industry compliance would be discussed at future Council meeting. Dr. Zemeckis added there may be some benefits to comparing data on the Atlantic Coast and the Delaware Bay, new leases compared to older leases, as well as clams compared to oyster growers. Mr. Johnson opined that part of the problem was that it was not clear to industry what permits were required from various agencies. Mr. Normant added that the Council recently sent a letter to all leaseholders to encourage permit compliance and the Bureau would be following up on a letter to explained permit

requirements and provided appropriate contact information. Mr. Babb also added that the Shellfish Aquaculture Working Group was developing of a website for shellfish aquaculture in New Jersey.

In addition to the CSAP permitting data, Ms. Kelly presented on how lease utilization was being assessed by other states in the mid-Atlantic region (NY,DE,MD,VA) in order to provide a regional perspective in shellfish lease utilization. All states, except for New Jersey, had some sort of utilization reporting requirements using minimum harvest and/or planting thresholds. These minimal requirements had to be met in order to maintain a lease holding(s). Ms. Kelly noted that even though there was reporting in place with other NJ state agencies, those reports were not currently being used to assess active use on leases. The current lease utilization form required during the lease renewal process does not provide uniform reporting since its subjective and open-ended. In addition, some leaseholders do not report any activity with no consequences.

Reporting requirements varied between states. New York required reporting annually, but Delaware, Maryland and Virginia all required monthly reporting. Delaware had two monthly reporting forms; one for harvest and one for planting. Ms. Kelly added that the other States required reporting to the individual lease. Discussion ensued regarding how other states differentiated between on-bottom and water column activities.

Discussion on Leases

Mr. Babb gave a brief summary of what was discussed at the November 8, 2021 Lease Policy Committee meeting. Bureau staff presented a few questions to assess the Committee's positions on these topics for the final report, which were meant to generate discussion. The goal of this meeting was to broaden the discussion by bringing in additional industry members. Mr. Babb presented the questions, provided a brief summary of what was discussed at the last Policy Committee meeting for the Regulatory Committee members to consider and have an opportunity to discuss and provide comments.

➤ **Q1: Do you believe that the Council/DEP has a statutory role or responsibility in ensuring that leases are used – to any degree?**

There was general agreement among lease policy committee members that the Council and the DEP had a statutory role in ensuring leases are used. Mr. Babb presented additional comments that were made by Lease Policy Committee members as noted in the November 8, 2021 meeting summary.

Mr. Johnson asked for clarification on the Council's statutory responsibility that a lease was being used within Title 50, especially since there was a potential someone could lose their lease because of lease utilization policy. Mr. Normant stated that the Council's responsibility stems from the exclusive authority to issue leases for the growing and planting of shellfish (N.J.S.A. 50:1:23). In addition, Council has a role along with the Department of Agriculture to advise the DEP in establishing appropriate policies for the use of aquaculture leases which include, but is not limited to lease specifications, fees, and assignability and termination of lease agreements (N.J.S.A. 50:1-18).

Mr. Maxwell stated that it was an implied charge of the Council to look after the leases they are issuing to make sure they are being used and agreed that he believed that the Council/DEP had a statutory role in ensuring that a lease was being used. Mr. Gaine agreed that the Council had the prerogative to set the parameters for which leases can be used but questioned if Title 50 gave the Council the responsibility to

ensure the use of it. Mr. Babb stated that the Bureau believed the importance of the Council and their liaison role. Mr. Babb also added that he believed the Council role was broad and agreed that it was an implied role that the Council should ensure leases are used.

As a result of questions raised, Mr. Babb explained he would discuss with the State's attorneys for clarification on the Council's statutory role.

- **Q2: Early data shows that a large portion of shellfish leases are not likely being used. What are some of the primary reasons for them not being used that the Committee should capture in the final report?**
 - **Some examples might include:**
 - **biological conditions or physical parameters (depth/bottom type) not conducive**
 - **location**
 - **user group conflicts**
 - **inability to obtain permits**
 - **prospective holding by lessee**

At the November 8, 2021 Lease Policy Committee meeting, there was agreement by the Policy Committee that the listed examples (above) were all potential reasons for a lease to not be actively used. Lease Policy Committee members also added: allowing time for fallowing of bottom, legacy leases, previous difficulty in acquiring leases, limitations of expansion, economic/market changes, part-timers, and potential retirement investment.

Mr. Maxwell agreed with what was discussed at the November 8, 2021 Committee meeting. No additional comments from the Regulatory Committee.

- **Q3: Of the 2,300+ acres of existing leases on the Atlantic coast, do you believe that currently unused leases could be used by other industry members or new entrants?**

At the November 8, 2021 Lease Policy Committee it was stated that it was generally fair to state that unused leases could be used by other industry members or new entrants. However, the main question remained: how would you re-allocate existing lease areas to other industry members or new entrants?

Mr. Maxwell agreed that lease allocation would need to be addressed. There would need to be a defined criterion. Mr. Gaine clarified that the question did not suggest that all 2,300 acres were not being used and added that of those acres that are not being used it would be beneficial to know what type of leases they were (old style leases with larger acres, newer leases etc.). Mr. Gaine suggested to make that clear in future policy that a larger lease lot, if vacated, would be divided to allow more opportunity for the industry.

- **Q4: Do you think the State/Council/industry should determine a minimum threshold to be considered an "active member" in the aquaculture industry? If not, why?**

At the November 8, 2021 Lease Policy Committee meeting, members agreed there should be a minimum threshold to be considered an active member in the shellfish aquaculture industry. What that threshold would look like would have to be determined through a series of meetings focused specifically on the

question. Mr. Babb summarized additional comments from Committee as outlined in the November 8, 2021 meeting summary.

Mr. Maxwell agreed there should be some sort of minimum requirement. Mr. Parsons suggested to compile the reported harvest numbers that were collected through the Commercial Shellfish Aquaculture Permit to get an idea of what average production looked like right now. There was discussion on leaseholder participation in providing harvest numbers and how it varied. Setting a minimum reporting threshold would at least get information from those who are currently not reporting.

➤ **Q5: Do you think that unused lease lots being held permanently could be viewed by some as inhibiting growth of the industry?**

At the November 8, 2021 meeting, Policy Committee members agreed that unused lease being held permanently could be viewed as inhibiting the growth of the industry. Mr. Avery suggested to convey to the industry that a larger lease lot, if vacated could be divided to smaller 2-acre lots to create more opportunities for leasing.

No other questions were added by the Regulatory Committee.

Lease Committee Report

Committee members discussed the development of a Lease Policy Committee report, with the goal to have a draft by January 2022. Once the report was finalized it would be presented to the Council at an upcoming meeting. The goal was to have a report complete before industry gets busy. Mr. Babb added that this did not necessarily mean the discussions would be done, but to have a document that described the scope of the previous meetings.

Mr. Johnson suggested that the Lease Policy and Regulatory Committee continue to have joint meetings moving forward and membership should be expanded. Discussion ensued regarding the virtual meeting platform and how some industry members may not have adequate access to attend the meetings.

Mr. Avery asked about the weight of this report. Mr. Babb explained this report was just to capture the integrity of the discussions so that he did not have to speak on the industries behalf in meetings. A report would show that the Council, the Committees, and the industry were actively discussing these issues.

Other Potential Lease Policy & Regulatory Committee Topics

Mr. Babb explained that there were additional topics with the potential for Lease Policy and Regulatory Committee crossover. This included permitting and licensing compliance issues, which may have to be accomplished at the Council level. Also, potential applications of the Rutgers-DEP Aquaculture Spatial Planning Tool, updated shellfish management and leasing regulations, and discussions on updated to the lease agreement.

Discussion ensued on the application of the Spatial Planning Tool and on the options in presenting to the joint committee level and Council level. Mr. Babb clarified that the project team was looking for feedback from the councils prior to pursuing other stakeholder engagements.

Mr. Normant explained that a lot of the updates to the regulations include general housekeeping items. Mr. Babb added that the Bureau would provide an overview and outline of potential regulation updates. Mr. Maxwell and Mr. Johnson added that this would be done at the joint committee level and noted that this topic should be on upcoming agendas. Mr. Babb explained the Bureau would have a better idea of the status of regulations by mid-2022. Mr. Babb clarified that the Bureau would be able to present topics and summaries for Committee feedback but would not be able to present a draft rule to be edited line by line.

Discussion ensued regarding a draft lease agreement currently in development. The Committee would have the opportunity to read and highlight major red flags which could be brought back to the State attorneys for discussion. Mr. Babb noted that the new agreement would have standard State lease language that would not be able to be significantly adjusted. A draft agreement would be available in the first quarter of 2022. Mr. Gaine emphasized the importance of receiving a draft as early as possible to be able to provide adequate feedback.

Public Comment:

No public comments were made.

Other Comments:

Mr. Gregg asked for clarification on the process of applying for a new lease and if it always went to Lease Policy Committee for review or if some were vetted by the DEP. Mr. Normant added that generally, lease applications are sent to the Bureau for review to determine if it should be discussed at the Committee level if a new area was proposed. Mr. Babb added that it was common procedure and the ideal path in that a proposal for a new lease area would be submitted to the Bureau and then reviewed at the Committee level. Also, someone could make a proposal to the Council, but it would then subsequently be reviewed by the Bureau and the Committee. Mr. Gregg noted that all new lease area proposals should be presented to the Committee regardless of the Bureau's stance on the lease area. Mr. Normant agreed that new lease areas should be presented to Committee and added that Bureau staff had been keeping a log when a new lease inquiry was made. The Council was then updated quarterly. Mr. Parsons agreed that a log was necessary to track such proposals.

Mr. Parsons asked if it was possible to connect each individual CID number with harvest/activity/use report on a monthly basis. Mr. Normant agreed that could be a point of discussion.

The meeting adjourned on a motion by Mr. Johnson and a second by Mr. Mathis.