

MINUTES OF THE MEETING OF THE ATLANTIC COAST SECTION OF THE
NEW JERSEY SHELLFISHERIES COUNCIL

Virtual Meeting
Monday, January 10, 2022

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

DEP Representatives:	Joseph Cimino, Marine Fisheries Administration Russell Babb, Bureau of Shellfisheries Jeffrey Normant, Bureau of Shellfisheries Kira Dacanay, Bureau of Shellfisheries Jenny Tomko, Bureau of Shellfisheries Megan Kelly, Bureau of Shellfisheries Scott Stueber, Bureau of Shellfisheries Colleen Brust, Marine Fisheries Administration Robert Schuster, Bureau of Marine Water Monitoring
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Mr. Normant read the State's compliance with the Open Public Meetings Act and notice was filed with the Secretary of State Office. He announced that the meeting would be recorded.

1. Total Revenue for November 2021	\$ 14,018.57
Shellfisheries Law Enforcement Fund	\$ 3,830.00
Total Revenue for December 2021	\$ 19,219.48
Shellfisheries Law Enforcement Fund	\$ 6,332.00

2. Presentation of November 15, 2021 minutes for approval.

The November 15, 2021 minutes of the meeting were approved on a motion by Mr. Johnson and seconded by Mr. Mathis.

- ### 3. Annual Election of Chair and Vice-Chair

A motion was made by Mr. Johnson and seconded by Mr. Mathis to nominate Mr. Maxwell as Chairman. The motion was unanimously approved. A motion was made by Mr. Felder and seconded by Mr. Maxwell to nominate Mr. Johnson as Vice-Chair. The motion was unanimously approved.

- #### **4. Leases Vacated- By Lessee**

LESSEE	LOT #	SECTION	ACRES/FT	LOCATION	MAP #
Richard Mathews	125	B	2.10	Graveling Point	1
Richard Mathews	2274	B	2.25	Dry Bay	24.2
Richard Mathews	2290.1	B	1.38	Dry Bay	24.2
Richard Mathews	2302	B	1.45	Dry Bay	24.2
Stephen Gerike – Great Bay	404.1	B	2.00	Big Creek	10

Mr. Normant informed the Council that the Messrs. Mathews and Gerike opted not to renew their leases as listed in the table above.

5. Relay Lease Vacated by Lessee

LESSEE	LOT #	SECTION	ACRES/FT	LOCATION	MAP #
Robert Mayer	2400.74	B	1.50	Great Bay	24.1

Mr. Normant informed the Council that Mr. Mayer opted to not renew his relay lease as listed in the table above.

6. Leases Vacated – Non-Payment

LESSEE	LOT #	SECTION	ACRES/FT	LOCATION	MAP #
Brent Buzby	71	B	2.00	Graveling Point	1
Christian Palmisano	804	B	2.00	Rose Cove	7

Mr. Normant informed the Council that the Nacote Creek Shellfish Office did not receive a renewal for Messrs. Buzby and Palmisano. All lessees were required to renew their leases and pay lease fees for the following calendar year by December 31, 2021. However, if illness or extenuating circumstances prevent a lessee from renewing by December 31 deadline, the Council may extend the payment deadline by one month at the January meeting (as per N.J.A.C. 7:25-24.8). If a lessee does not renew the lease by the payment deadline or receive an extension of the payment deadline from the Council, the lease shall be terminated at the January Council meeting and revert to the public bottom. Mr. Buzby was not present at the meeting but was represented by his agent Mr. Parsons. Mr. Parsons explained that extenuating circumstances resulted in Mr. Buzby's renewal packet not being submitted on time and requested an extension to renew his lease. A motion was made by Mr. Mathis and seconded by Mr. Felder to grant a one-month extension to Mr. Buzby to submit his renewal package and pay appropriate fees.

Mr. Palmisano joined the meeting after the offshore wind update. A motion was made by Mr. Johnson and seconded by Mr. Felder to re-open the discussion on leases vacated for non-payment. A motion was then made by Mr. Johnson and seconded by Mr. Mathis to grant a one-month extension to Mr. Palmisano to submit his renewal package and pay appropriate fees.

7. Applications for Consideration

LESSEE	LOT #	SECTION	ACRES/FT	LOCATION	MAP #
Edward Gaine	2810	B	2.00	Steelman Bay (Scullville)	27.1

Mr. Gaine was present and fulfilled his obligation to attend one of two meetings. Pursuant to N.J.A.C. 7:25 24.6, lease applicants shall attend at least one of the two meetings at which the

Council reviews their applications. If the applicant fails to attend at least one of the meetings, the lease application would be denied, and the area applied for shall revert to public bottom.

8. Applications for Decision

LESSEE	LOT #	SECTION	ACRES/FT	LOCATION	MAP #
Salt Meadow Oyster Farm LLC Matthew Hender*	868	B	0.62	Middle Creek/ Rose Cove	7

*Attended the November 15, 2021 meeting

Mr. Hender attended the November 15, 2021 meeting. A motion was made by Mr. Johnson and seconded by Mr. Mathis to approve the above application. Mr. Normant informed Mr. Hender that he would receive a letter explaining that he will have 30-days to sign his lease agreement and pay appropriate lease fees.

9. Applications for Transfer

LESSEE	APPLICANT	LOT #	SECTION	ACRES/FT	LOCATION	MAP #
Steven Mastro, Sr.	Nathan Robinson	2064	B	2.30	Absecon Bay	22

The application for transfer was approved on a motion by Mr. Johnson and seconded by Mr. Mathis. Mr. Normant stated that the Bureau will contact Mr. Robinson to set up an appointment to sign his lease agreement and pay his lease fees.

10. Old Business:

Offshore Wind

Ms. Brust provided the Council with an update on Offshore Wind development in New Jersey.

In June, the Joint Governors letter (CT, ME, MD, MA, NJ, NH, NY, RI, VA) was sent to the President Biden Administration requesting consideration for potential fisheries impacts from offshore wind. In July, the Administration responded stating that they were considering ways to ensure that the U.S. commercial fishing industry was compensated for any losses it incurs from offshore wind.

The Bureau of Ocean Energy Management (BOEM) created a working group including some of these states and federal partners to develop a regional approach to offshore wind and a mitigation framework. BOEM issued a "Request for Information" to obtain input from the public, particularly from the fishing community on avoiding, minimizing, and compensating for impacts from offshore wind energy projects to commercial and recreational fisheries. The current timeline for the final guidance for the mitigation framework document was anticipated in the Summer of 2022.

BOEM has proposed new wind energy areas in the mid-Atlantic. This was the third wave of wind energy areas proposed. The large areas were narrowed down as other user groups of these proposed leases were brought forward. BOEM recognized Delaware, Maryland, and Virginia as affected States. A Taskforce was scheduled to meet virtually on February 16, 2022 and was open to the public for comment. Potential leasing was anticipated in mid-2023.

The New Jersey Research and Monitoring Initiative meetings with NJ stakeholders, federal partners, NYSERDA, and regional organizations had refined its priorities. The initiative was directing its research efforts toward better understanding existing conditions of the marine environment including physical, chemical, and biological components. Studies (not yet funded) being considered included:

- The socio-economic value of recreational fishing in NJ
- Novel surf clam dredge
- Passive acoustic monitoring for large whales
- Turbine-mounted Ocean sensing
- Glider mounted ocean sensing
- Data housing and visualization

Lease Policy Committee Update:

Mr. Mathis read The November 8, 2021 Lease Policy Committee's summary (Attachment 1) into the record. No additional discussion ensued.

Hard Clam Management Plan

Mr. Mathis presented the Council with a draft outline for the Hard Clam Management Plan.

Mr. Normant informed the Council that staff had begun to compile information needed to start the process of developing a management plan.

New Jersey COVID-19 Assistance Program

Mr. Babb provided an update on the COVID-19 Assistance Program stating that it was believed that checks would be sent out soon. No other updates were given.

Aquaculture Advisory Council Update

Ms. Wenczel stated that the next Aquaculture Advisory Council meeting would be held virtually on Friday, January 21 at 10 AM. All meetings would be held via the Teams virtual platform.

Rutgers Sea Grant Project: GIS-Based Spatial Tool for Shellfish Aquaculture:

Mr. Normant stated that there was an upcoming meeting with NJDEP and Rutgers on the Shellfish Aquaculture Spatial Planning Tool. No other updates were given.

Sea Grant/SOAR Oyster Restoration Program

Dr. Lisa Calvo, a representative of the Rutgers University Sea Grant program, presented an update on the Sea Grant Shellfish Aquaculture Exchange and explained the origins of the program and its intent to provide immediate relief to oyster farms in response to the effects on the oyster market during the COVID-19 pandemic. The exchange purchased a total of 79,750 oysters working with sixteen growers in New Jersey. Additional results presented from the 2020 effort, included the average size of the oysters purchased, the average payment to growers, and restoration sites selected. Ms. Calvo also expressed that there was evidence of predation at the Stockton University's Tuckerton Reef site. At the other planting locations, there were minimal signs of mortality, but it was difficult to distinguish between native and planted oysters at those locations. Mr. Normant concurred that the same challenges in distinguishing between native and planted oysters were found on the locations sampled by the Bureau.

Mr. Zack Greenberg of the PEW Charitable Trust provided an update on the PEW/The Nature Conservatory "Supporting Oyster Aquaculture & Restoration Program" (SOAR). The SOAR program spanned over seven states and purchased over 3.5 million oysters. A total of 616,000 oysters were purchased in New Jersey, working with 24 growers across the State. Mr. Normant asked how the oysters used at the NY/NJ Baykeeper site fared. Mr. Greenberg was awaiting some additional data on that site and would share it with the Council once available.

Mr. Parsons added that the oysters placed at the Tuckerton Reef survived well over the winter and that predation was the primary issue in the spring. Mr. Parsons stated that adjacent to the planted oysters was planted spat on shell and that it was well intact compared to the single oysters planted.

Legislative Update

Mr. Babb informed the Council that the Bureau planned to provide legislative updates to both sections of the Council on a bi-monthly basis, similar to what was done with the Marine Fisheries Council. Three Bills, including Right to Farm, Sunday Harvesting, and Aquaculture Marketing for New Jersey Fresh made it out of committee in early December but did not move forward prior to the end of the legislative session. It was believed that the Bills would be reintroduced in the new legislative session.

Mr. Maxwell asked Mr. Babb for further explanation on the Bills (A6096, A6147, S4085) that proposed shellfish harvesting on Sunday. Mr. Babb stated that the final A6096 Bill was focused strictly on the harvest of shellfish from leases. The Bill went through the Assembly Agriculture Committee and had a second reading in the Assembly on December 9th. It was not carried through to full enactment. Additional information regarding these Bills was requested by the Council.

Mr. Maxwell noted that neither of the Bills had any language regarding recreational harvest. Mr. Maxwell asked how this would tie into the Bureau's Hard Clam Management Plan. Mr. Normant stated that if a Bill were to pass, it would be addressed as a part of the Hard Clam Management Plan.

Mr. Babb clarified that the last version of the Bill seen by the Bureau was strictly for harvest from leases and no wild harvest was included.

Discussion ensued on the language of the Bill and whether it was limited to harvest on lease grounds or open to anyone who holds a Commercial Shellfish License.

Mr. Johnson noted that the language of this Bill would change and that the Bureau, Council, and industry should remain informed.

Mr. Gaine noted that it was unclear if this Bill would be reintroduced. Additionally, he requested the Council weigh in and endorse the Right to Farm legislature. Mr. Maxwell responded that the Council would need to be polled if they are comfortable endorsing the Right to Farm bill.

Mr. Gregg asked for clarification regarding the selling of shellfish seed on Sundays. Mr. Normant stated that he would check the rules and that it would be discussed at the next meeting.

11. New Business:

Suspension of 2022 Hard Clam Relay Program

The 2022 Hard Clam Relay Program was suspended on a motion by Mr. Johnson and seconded by Mr. Mathis.

Shellfish Water Classification Downgrade-Ludlum Bay

Mr. Normant informed the Council that there will be a downgrade in the Shellfish Growing Waters Classification to "Suspended" in a portion of Ludlum Bay in which several leases will be impacted. This would be effective upon a written Administrative Order by the Commissioner. This status will also be carried over to the proposed Shellfish Growing Waters Classification rule amendment with a status of "Restricted". The leasing regulations condemn leases that were issued after September 18, 1989, in which shellfish growing waters downgrade to "Restricted or Prohibited". Mr. Normant stated he had been in contact with the leaseholders that would be impacted and would work to either modify or move their leases to "Approved" waters adjacent to the existing block of leases.

Mr. Schuster confirmed a downgrade of water quality was in progress and that the quality would likely be classified as "Restricted.". Mr. Johnson asked Mr. Schuster what the suspected cause of the downgrade in water quality was? Mr. Schuster stated that special tests would be needed and that the cause will be further evaluated.

2021 Mullica Seed Bed Sampling

Ms. Dacanay provided a brief update on the 2021 Mullica seed bed sampling and clarified this was qualitative sampling to evaluate seed bed conditions. Ms. Dacanay noted that the results from Moss Point needed to be interpreted with caution due to portions of the bed being planted with recycled surf clam and oyster shell during the summer of 2021. Additionally, it was noted that spat was observed on the planted shell and that there were significant numbers of ribbed mussels present in the samples this year. There will be additional updates to the Council once the pathology report comes back.

Mr. Schuster noted that the Department with Rutgers was working on a New Jersey specific monitoring plan for ocean acidification and may reach out to the Council to present on this in the future.

Mr. Parsons commented that clams did not grow well in 2021 and suspected that it was food related. Mr. Parsons requested looking into the types of phytoplankton in the water to document trends of food availability. Mr. Schuster said he would inquire about what data was available.

Council Meeting Schedule*

February 14 (**cancelled**)

March 21

April 18

May 16

June 20

July 18

August 15

September 19

October 17

November 21

December 19

*All meetings will be held virtually until otherwise noted

The Council cancelled the February 14, 2022 meeting.

The Meeting was adjourned on a motion by Mr. Johnson and seconded by Mr. Mathis.

12. Date Time and Place of Next Meeting:

DATE: March 21, 2022
TIME: 6:00 PM
LOCATION: Virtual

Attachment 1.

ATLANTIC COAST LEASE POLICY COMMITTEE
A COMMITTEE OF
ATLANTIC COAST SECTION OF THE NEW JERSEY SHELLFISHERIES COUNCIL

Meeting Summary
Virtual Meeting, Web/Conference Call Via GoToMeeting
Monday, November 8, 2021
2:00 PM

Council Attendees: Vice Chairman: Walter L. Johnson III (Ocean County)
Councilman: George Mathis Jr. (Burlington County)

Committee Attendees: Edward Gaine, Matthew Gregg, William Avery

Absent Committee Members: Raymond Crema, Peter McCarthy, Douglas Zemeckis

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
Lloyd Lomelino, Bureau of Shellfisheries
Amanda Wenczel, Department of Agriculture

Committee Charge – Final Report & Timeline:

Bureau of Shellfisheries staff (Bureau) presented a potential timeline to submit a final report to the Council for their review by the March 2022. The committee has been meeting for some time and it was felt that it was best not to let this slip beyond the industry's 2022 busy season. The final report would be developed by the Bureau with the intent to capture the range of issues discussed for the Council and the industry's benefit. The goal of the report was to summarize the issues and capture the industry's current position on these longstanding issues.

Bureau staff also presented the current committee structures as set by Council in forming a *Lease Policy Committee* and a *Regulatory Committee* and reviewed their respective charges. In addition, Bureau staff provided a brief overview of what was discussed at the previous five (5) committee meetings.

Agency – Bureau Perspective:

Bureau staff (Russ Babb) provided an overview of the Bureau's perspective on their responsibility for implementing and managing the shellfish leasing program. To the Bureau, 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 state, a bureaucrat, attorney or legislator. Staff added that the

Bureau was seeing far 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. There was significant interest that would explore all aspects of the program to identify critical issues or impediments to growth and industry expansion. Staff felt this review would invariably focus on those program challenges and impediments to industry expansion. Staff felt it was important for the final report to capture the industry's perspective regarding what growth looked like.

Committee members asked for more explanation on the role of the Office of Economic Development, especially how it related to shellfish aquaculture. Bureau staff agreed to ask for more clarification regarding that office's charge and/or mission and relay that back to the Lease Policy Committee.

Bureau staff also 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 is issued by the Bureau of Marine Water Monitoring and is required to conduct shellfish aquaculture activities on leases. There were concerns raised regarding lease utilization and overall lack of reporting for leases. It was discussed that if the Bureau was asked to provide data on the level of activity of shellfish aquaculture industry (e.g., for federal disaster review, etc.) there would be limited information available. Discussion also ensued on potential ways to improve permit and license compliance by the industry. Bureau staff stated that industry compliance would be an issue in 2022 and was something that needed to be addressed. Committee members opined that some of the compliance issues may be from lack of communication on the part of the agencies and the industry needed to be more informed of what was required. It was agreed that the overall issue of industry compliance would likely be discussed at the Council level.

Additional data (Table 1) was presented by staff that 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 %

In addition to the CSAP permitting data, Bureau staff presented on how lease utilization was being assessed by other states in the mid-Atlantic region (NY,DE,MD,VA). With the exception of New Jersey, all of the states had some sort of utilization reporting requirements using minimum harvest and/or planting thresholds, which were required to be met in order to maintain their lease holding(s). There was discussion from the committee that harvest information was already being collected from other state agencies (i.e., Dept. of Health) and there was concern regarding submitting the same information multiple times. Bureau staff stated that the Department of Health does not routinely collect those harvest data (unless there is an incident) but agreed that redundant reporting should be avoided wherever possible.

It was also noted that the reporting requirements established in Virginia were actually driven and requested by the industry in order to protect themselves from other stakeholders and to demonstrate the industry's economic importance. There was a suggestion that there be a further discussion on the value of reporting (regardless of it being used in the lease utilization discussion).

Lease Utilization Discussion

Based on the data shared, Bureau staff presented a few questions to assess committee positions on these topics for the final report. These questions were meant to generate discussion.

- **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 committee members that the Council and the DEP had a statutory role in ensuring leases are used. Discussion ensued regarding the public trust in relation to the leasing program and public resources. A comment was made that unused leases probably were not staked and therefore the public would have no way of knowing there was a lease there (and could use said area). In contrast, not staking leases essentially shows that areas aren't being used by the lease holder. Unused leases may inhibit someone who wanted to expand their operation or start a shellfish aquaculture business. A committee member opined that the shellfish leasing program should not be compared to a land-based agriculture farm due to the ability for the public to continue to have access to other public resources on a lease. Note: some access to land-based state-owned agricultural leases is restricted to the crop area but those surrounding areas can still be accessed (e.g., for hunting, etc.).

In addition, there was discussion regarding the leasing agreement as a contract between the State and lessee to use state owned bottom for exclusive ownership of a shellfish resource therein. A committee member opined that the State is the one making the contract, which would put responsibility on the State to ensure the lessee was fulfilling that agreement. Council had a role in advising on matters in regard to shellfish aquaculture and the ability to issue a lease, but the State was the sovereign of the lease and the landlord listed on the agreement. Therefore, ultimately it was the state's responsibility to ensure use, not the Council's.

- **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***

There was agreement by the committee that the listed set of examples (above) were all potential reasons for a lease to not be actively used. 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. Lastly, a committee member stated that there really was no incentive for a leaseholder to vacate a lease. There was a discussion on the uncertainty in where the industry was going and its impact on the leasing program.

- ***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?***

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 remains: how would you re-allocate existing lease areas to other industry members or new entrants.

- ***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?***

Committee members agreed there should be a minimum 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 of what threshold would determine an active member. A committee member added the industry should be proactive and determine some sort of minimum criteria before they were told what that criterion was. Discussion ensued on utilization criteria and potential ways to define an active member without placing undue burden on bona fide members of the aquaculture industry (e.g., setting even a nominal threshold).

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

Committee members agreed that unused lease lots being held permanently could be viewed as inhibiting the growth of the industry. Further discussion ensued.

Date & Time of Next Meeting:

Given the preceding discussion and the apparent overlap between the leasing program, leasing policy, and regulations, Bureau staff asked if it would make sense to hold a joint meeting of the lease policy and the regulatory committees. Lease policy committee members agreed that having a joint meeting with the two committees would make sense. This approach would get more industry voices and a broader perspective into these important discussions. and allow more members to provide ideas and opinions.

A joint meeting with the lease policy and regulatory committee was scheduled for December 1, 2021 (time to be determined).