

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

Nacote Creek Law Enforcement
Port Republic, NJ
November 15, 2010

Present were: Chairman: Walter L Johnson III (Ocean County)
 Councilman: John Maxwell (Atlantic County)
 Councilman: Oliver Twist III (Cape May County)

Absent was: Vice Chairman: Walter Hughes (Monmouth County)

State Representatives: James W. Joseph, Bureau of Shellfisheries
 Jeffrey Normant, Bureau of Shellfisheries
 Michael Celestino, Bureau of Shellfisheries
 Gustavo Calvo, Bureau of Shellfisheries

Mr. Johnson 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 for August 2010: \$ 1,166.95
 Shellfisheries Law Enforcement Fund: \$ 294.00

 Total Revenue for September 2010: \$ 531.00
 Shellfisheries Law Enforcement Fund: \$ 220.00

 Total Revenue for October 2010: \$ 925.78
 Shellfisheries Law Enforcement Fund \$ 410.00
2. The minutes of the August 16, 2010 meeting were approved on a motion by Mr. Maxwell and a second by Mr. Twist.

3. Applications for Transfer

| LESSEE | APPLICANT | LOT # | SECTION | ACRES | LOCATION | MAP# |
|---------------|-------------------|-------|---------|-------|----------------|------|
| John Geese | George Mathis Jr. | 2305 | B | 2.00 | Dry Bay | 24.2 |
| John Walls | William Mayer | 2012 | B | 2.12 | Obes Thorofare | 3 |
| William Mayer | John Walls | 2030 | B | 0.92 | Obes Thorfare | 3 |

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

4. Application for New Ground: Consideration

| APPLICANT | LOT # | SECTION | ACRES | LOCATION | MAP # |
|-----------------|-------|---------|-------|-------------|-------|
| William Avery | 1079 | A | 2.00 | Great Sound | 5 |
| George Simmons | 1094 | A | 2.00 | Great Sound | 5 |
| John Daffin | 1095 | A | 2.00 | Great Sound | 5 |
| James Hagelgans | 1076 | A | 1.81 | Great Sound | 5 |
| Paul Felder | 1093 | A | 2.00 | Great Sound | 5 |

| | | | | | |
|---------------------|------|---|------|---------------------|----|
| James M. Parker III | 1087 | A | 2.00 | Great Sound | 5 |
| Eric Parker | 1068 | A | 2.14 | Great Sound | 5 |
| Mathew Puskas Jr. | 133 | B | 2.00 | GB-Graveling Pt | 1 |
| Allan Morgan | 136 | B | 2.00 | GB-Graveling Pt | 1 |
| Bert Hendricks | 39 | B | 0.73 | GB-Graveling Pt | 1 |
| Richard Derrickson | 2031 | B | 0.55 | Obes Thorofare | 3 |
| Steven B. Frost | 2735 | B | 2.00 | GB-Great Thorofare | 24 |
| Adrian Schultz | 2724 | B | 1.40 | Shelter Is. Channel | 28 |
| Paul Seyler | 2727 | B | 1.44 | Shelter Is. Channel | 28 |

Mr. Normant provided the Council with copies of the lease applications and biological reports. Messrs. Avery, Simmons, Daffin, Hagelgans, Felder, James M. Parker III, Eric Parker, Puskas, Morgan, Hendricks, Frost, and Seyler were present. Messrs. Derrickson and Schultz were not present. Pursuant to leasing regulations, applicants must attend one of two meetings at which the Council would review their applications. A decision would be rendered at the next meeting.

Mr. Johnson inquired on the lease application pending in Shelter Island Channel (2724) that was vacated by Mr. Raymond Seyler for non-payment and subsequently applied for by Mr. Schultz. Mr. Joseph stated that in response to the request for legal advice that he made in February, NJDEP attorneys replied that Mr. Seyler had no legal recourse to reacquire his vacated lease. Not only did Mr. Seyler fail to renew his lease by the December 31, 2009 deadline, but also failed to request a hardship extension at the subsequent January meeting, as per the Atlantic Coast Leasing Regulations (NJAC 7:25-24). Mr. Joseph stated that the current applicant had fulfilled the application requirements and staked the lease within six months. Mr. Joseph stated that NJDEP attorneys confirmed that according to NJAC 7:25-24.8, shellfish leases must be renewed each year by December 31st and that if illness or extenuating circumstances prevented a lessee from renewing by the December 31st deadline, the Council could extend the payment deadline by one month provided the request was made at the January meeting. Mr. Joseph stated that the Council had received information that Mr. Seyler had requested an adjudicatory hearing to solicit Council not to act on the lease application for lot 2724. Mr. Johnson inquired on legal procedures for the Council to table the decision on lease application 2724. Mr. Joseph stated that on occasion, the Council had previously held applications in abeyance for various reasons. Mr. Joseph stated that he would reach out for guidance from DEP Office of Legal Affairs (OLA) as to how the Council should proceed in this case. Mr. Maxwell inquired if there was any aquaculture gear and/or product left by Mr. Seyler. Mr. Seyler stated that there were predator screens and product left on the lot. Mr. Johnson inquired on time frame for recovering gear and/or product. Mr. Joseph stated that the only provisions made for harvesting shellfish after a lease was vacated applies to relay leases only where the relay leaseholder has six months to remove gear and shellfish. If the Department terminates the relay program, the relay leaseholder would have 18 months to remove their clams. Mr. Johnson stated that the Council would make a determination on how to proceed in this issue pending guidance from OLA. Mr. Seyler inquired on the completeness of the documentation submitted to OLA. Mr. Johnson stated that a complete documentation package was being reviewed by OLA.

5. Old Business:

Update on Hard Clam Enhancement Activities

For the Council's information, Mr. Calvo stated that more than 500,000 hard clam seed (about ¾ inch to 1 inch in shell length) was planted in Barnegat Bay in the area of the Sedge Island Marine Conservation Zone between late October and early November 2010. He stated that including this seed planting, more than 2.5 million clam seed had been planted in Barnegat Bay since 2006. Mr. Calvo stated that one million hard clam seed of the same size was planted in Great Bay in May 2010. Mr. Johnson inquired on growth and mortality assessments for seed planted in Great Bay. Mr. Calvo stated that the first assessment was conducted in July and that a second assessment was due this fall, pending maintenance work on the R/V Jennings. Mr. Maxwell inquired if clam seeding was completed for this year. Mr. Calvo stated that provided weather permitted, he anticipated one more clam planting event before the end of this year. Mr.

Maxwell inquired on clam seeding plans for 2011. Focusing on Barnegat Bay, Mr. Calvo stated that clam seeding activities would resume in spring 2011. To facilitate the expansion of shellfish enhancement activities beyond the current purchasing limits, Mr. Joseph explained that the Bureau of Shellfisheries was pursuing a term contract for acquisition of clam seed, oyster seed and shellplanting. Mr. Normant stated that the Bureau would receive approximately 120,000 seed clams for planting in the Navesink River as part of mitigation that resulted from a dredging incident last December. The dredging contractor would be required to purchase the clams and deliver them to the Bureau. The Bureau anticipates planting the clams in the Navesink River in May 2011.

Aquaculture Advisory Council Meeting, October 22nd, 2010

Mr. Maxwell inquired on items discussed at the last Aquaculture Advisory Council's (AAC) meeting held on October 22, 2010. Mr. William Avery, who is a member of the AAC, stated that items discussed included the Tidelands Resource Council (TRC) assessment of \$0.01 lease fee issue per square foot for the placement of aquaculture structures. Mr. Joseph stated that the construction of piers, bulkheads and other similar structures placed in coastal waters requires a Tidelands grant, lease or license. During the permitting process to establish Aquaculture Development Zones in Delaware Bay, shellfish aquaculture issues were brought to the attention of the TRC. The waterfront development permit issued by NJDEP Division of Land Use Regulation was contingent on authorization by the Bureau of Tidelands. Mr. Joseph stated that on March 3, 2010, the TRC proposed a resolution to assess a fee in the amount of \$0.01 per square foot for areas occupied with aquaculture structure placed in the water rather than the \$0.49 per square foot fee assessed to areas occupied with piers, docks, bulkheads and other similar structures. Mr. Joseph stated that at 43,560 square foot per acre, the \$0.01 per square foot amounted to \$435.60 per acre. Mr. Joseph stated that the Bureau of Tidelands was still considering the proposed fees and that predator exclusion screens were not being considered structure. Mr. Joseph stated that apparently the TRC did not realize the implications and ramifications of the proposed fee for aquaculture structure. Mr. Joseph stated that he would brief the Council on this subject as more information became available from on-going discussions. Mr. Joseph stated that a letter from the Delaware Bay Section of the Shellfisheries Council, seeking legal clarification on the authority of the Shellfisheries Council to that of the TRC had been sent to the Attorney General's Office. Mr. Joseph cited NJS 50:1-24, in which the Council has the exclusive authority to lease lands under tidal waters of the State for the planting and culture of shellfish and that no other State agency may lease lands under tidewater, except for the purpose of building wharves, bulkheads or piers. Mr. Joseph stated that a legal determination would resolve this matter.

Mr. Avery also noted that a special meeting of the AAC has been scheduled for December 17th to discuss the Aquaculture Plan Update, the proposed Technical Committee and Coastal Zone Management Section 309 issues. Mr. Maxwell inquired on the status of the Technical Committee. Mr. Avery stated that the Chairman seemed inclined to have AAC members serve as on the Technical Committee, while other AAC members seemed opposed to that idea. Concerning Coastal Zone Management Section 309, Mr. Joseph stated that issues relating to aquaculture were being discussed and that he would provide more information as it became available.

Shellfish Gardening

From the floor, an individual inquired about Commissioner Martin's June 7, 2010 press release banning research-related shellfish gardening of commercial species in coastal waters not approved for shellfish harvest and questioned why the NY/NJ Baykeeper's oyster site at Keyport Harbor in Raritan Bay was not patrolled. Mr. Joseph stated that New Jersey has had a chronic problem in meeting the patrol frequency requirement mandated by FDA and that there was not enough man power to patrol the area. Mr. Joseph explained that FDA requires a certain patrol frequency based on the number of shellfish in an area, the water quality in the area, the ease of harvest and the ease of patrol. Mr. Joseph stated that New Jersey has about 130 miles of coastline and that there were only about 10 Conservation Officers to cover the entire area, including Delaware Bay. The individual inquired about patrol in depuration harvest areas. Mr. Joseph stated that designated depuration harvest areas were adequately patrolled and that the area of Keyport harbor was not a depuration area. The individual stated that NY/NJ Baykeeper's oyster restoration

activities at Keyport Harbor had been going on for over 10 years and he questioned the reason that prompted the decision to stop the project. Mr. Joseph explained that the State had developed a policy to allow for shellfish gardening and restoration activities by environmental and other groups in Approved or Seasonally Approved waters out of concern for illegal harvest and human health concerns. Mr. Joseph stated that the policy was now being incorporated into regulations developed by the Bureau of Marine Water Monitoring.

6. New Business:

Mullica River Oyster Season

Mr. Normant solicited Council input regarding a limited oyster harvest season this fall on the Mullica River. He stated that samples collected in the fall showed bed conditions ranging from 25% to 40% oyster with a large percentage of the oysters around market size. After consulting with Marine Law Enforcement, Mr. Normant suggested the week of either November 29th or December 13th. After some discussion on tides, Mr. Maxwell made a motion recommending a harvest season starting on Monday, November 29th and ending on Saturday, December 4th. Mr. Twist seconded the motion and the motion was approved by the Council. For clarification, Mr. Normant stated that the harvest area would be limited to Fitney Bit and Oyster Bed Point only and that the Reef Bed would remain closed. Mr. Joseph explained that the Reef bed would remain closed until the fall of 2011 as per the 5-year no harvest agreement associated with the grant received from the FishAmerica Foundation. Mr. Normant stated that notice for the Mullica River Oyster Season would be posted on the Division web site.

Reminder to renew leases by December 30th, 2010

Mr. Joseph reminded leaseholders that leases must be renewed by December 31 each year and that because of staffing issues, the Nacote Creek Office would be closed on Mondays. The office would also be closed on Friday December 31st, 2010, in lieu of the January 1st New Year's holiday. Mr. Johnson inquired on the availability of Shellfish Lease Utilization Report forms. Mr. Normant stated that copies of the form were available at the Nacote Creek Office. Mr. Normant stated that he would contact the Division web site coordinator to request the posting of the form online.

7. Date, time and place of next meeting:

DATE: December 20, 2010
TIME: 7:00 PM
LOCATION: Law Enforcement Office
360 New York Rd. Rte. 9
Port Republic, NJ 08241