

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

Meeting was held at the Atlantic County Library - Galloway Twp Branch (306 E Jimmie Leeds Road, Galloway Twp NJ 08205)

Wednesday, September 13, 2023

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

DEP Representatives: Joseph Cimino, Marine Resources Administration
Russell Babb, Bureau of Marine Habitat & Shellfisheries
Jenny Tomko, Bureau of Marine Habitat & Shellfisheries
Scott Stueber, Bureau of Marine Habitat & Shellfisheries
Alissa Wilson, Bureau of Marine Habitat & Shellfisheries
Richard DiVaccaro, Bureau of Marine Habitat & Shellfisheries
Nina Colagiovanni, Bureau of Marine Habitat & Shellfisheries
Sarah Gentile, Bureau of Marine Water Monitoring

Mr. Babb outlined the State's compliance with the Open Public Meetings Act. He stated that notice had been filed with the Secretary of State Office and sent to the Atlantic City Press and NJ Advanced Media outlets. He announced that the meeting would be recorded.

1. Total Revenue for August 2023: \$ 266.02
Shellfisheries Law Enforcement Fund: \$ 110.00
2. Presentation of the July 10, 2023 and the August 14, 2023 minutes for approval.

Mr. Babb noted that the July 10, 2023, minutes were revised following Council feedback at the August meeting and were being presented again for approval. The August 14, 2023 meeting minutes were also presented for approval (sent to Council prior to the meeting). Chairman Johnson proposed that the two sets of council minutes be considered separately. He stated that he was pleased with the revised July 10th draft minutes. The July 10th minutes were approved on a motion made by Mr. Mathis and seconded by Mr. Felder.

Mr. Johnson requested a list of meeting attendees (both virtual & in-person) be recorded in the council minutes and to include the DEP representatives in that list. Mr. Babb agreed to the suggestion and will include DEP staff to be listed in the meeting minutes.

Mr. Mathis made a motion to approve the August 14, 2023 minutes, and Mr. Felder seconded the motion.

3. Applications for Consideration

LESSEE	LOT #	SECTION	ACRES/FT	LOCATION	MAP #
Raymond D’Amico Jr	2535	B	2.16	Scull Bay	27

Mr. Babb presented the preceding application for decision and the council reviewed the biological report. Mr. D’Amico Jr. was present at the meeting, fulfilling his requirement to attend at least one of the two meetings at which the Council reviews their applications, pursuant to N.J.A.C. 7:25-24.6. Mr. Johnson suggested removing the comment in the biological report that stated: “data collected during this and previous investigations indicate that this area of Scull Bay to be potentially productive in terms of natural hard clam recruitment.” Mr. Johnson offered that since the area being investigated was located within the middle of an existing lease area, therefore the comment may not be necessary. Mr. Babb stated that he understood his point considering that the lot was located within an established lease and that staff would discuss this further.

4. Applications for Transfer

LESSEE	APPLICANT	LOT #	SECTION	ACRES /FT	LOCATION	MAP #
Salt Meadow Oysters LLC Matt Hender	Rose Cove Leasing LLC Matt Hender	868	B	0.62	LEHB Rose Cove Middle creek	7
Nicola McGee	Raymond J Damico Jr.	2527	B	1.97	Scull Bay	27
Dale S. Parsons	Parsons Mariculture, LLC Dale S. Parsons	39.1 56 66 71 72 74 75 82.1 82.2	B	2.72 2.85 5.73 1.93 1.93 1.99 2.11 2.36 2.30	Great Bay Graveling Pt	1
Dale S. Parsons	Parsons Mariculture, LLC Dale S. Parsons	164 174 176	B	5.42 1.96 3.19	Ballanger Creek	1.1
Dale S. Parsons	Parsons Mariculture, LLC Dale S. Parsons	253 262	B	400 ft 300 ft	Bass River	1.1
Dale S. Parsons	Parsons Mariculture, LLC Dale S. Parsons	352 359 360 361 364 387 416.1	B	4.45 18.08 2.20 2.11 2.20 10.88 1.45	Great Bay Cape Horn	10

Dale S. Parsons	Parsons Mariculture, LLC Dale S. Parsons	511	B	0.72	LEHB Tuckerton Cove Gaunt Point Jeremy Point Thompson Creek	6
		522		9.35		
		523		2.53		
		525		3.75		
		526		2.90		
		527		7.42		
		528		3.33		
		529		3.56		
		530		1.18		
		531		7.27		
		539		2.10		
		540		2.22		
		551		4.85		
		552		14.51		
		558		3.88		
		569		21.77		
		583		1.30		
		590		6.85		
		602		3.58		
		616		2.01		
626	0.79					
627	0.81					
628	0.90					
637	0.52					
646	2.47					
651	2.31					
Dale S. Parsons	Parsons Mariculture, LLC Dale S. Parsons	1400	B	1.50	LEHB Middle Island	6.1
		1403		2.00		
		1405		2.00		
		1408		1.73		
		1409		1.54		
		1411		2.00		
		1412		1.72		
		1414		2.00		
		1415		2.00		
		1416.1		1.00		
		1418		1.00		
		1421		2.00		
		1423		2.00		
		1425		2.00		
		1426		2.00		
		1429		1.75		
		1430		1.31		
		1431		2.00		
		1432		1.92		
		1433		2.00		
1435	2.00					
1436	2.00					

		1439		2.00		
		1440		1.99		
		1441		2.00		
		1442		2.00		
Dale S. Parsons	Parsons Mariculture, LLC Dale S. Parsons	2282 2306 2338 2344	B	2.35 1.89 2.71 0.59	Dry Bay	24.2
Dale S. Parsons	Parsons Mariculture, LLC Dale S. Parsons	2743	B	2.00	Great Bay Great Thorofare	25

The above transfers were approved on a motion by Mr. Mathis and seconded by Mr. Felder.

5. Old Business:

Shellfish Lease Agreement Update

Mr. Babb stated that a number of changes had been made to the shellfish lease agreement since the Council had last met. He read through the lease agreement and outlined what those changes were and offered to take comments and questions. He stated that many of the changes that had been made were directly the result of comments received by both sections of the Council at their meetings over the past few months, suggestions made in the Council’s recent letter to the DEP, comments made by the public and from suggestions offered by the New Jersey Shellfisheries Association.

Department to Lessor

In total, the most significant change was reverting of the wording from “Department” back to “Lessor” as defined in the lease agreement. Mr. Babb stated that the wording of "Department" was not meant to undermine the Council’s authority, rather it was meant to be more representative of who was actually handling the administrative process.

Condition of Leased Premises

Mr. Babb reminded those in attendance of comments made regarding the posting of signage on a lease. The amended language was similar to the language that the Council and the New Jersey Shellfish Association had suggested.

“Lessee may request from the Department, and the Department may grant, in the Department’s sole discretion, approval to post signage that states the following: This area is for the private cultivation of shellfish. It is not open for the harvest of shellfish by the public. Violators will be prosecuted.”

Access to Leased Premises

Mr. Babb stated that the access to lease premises revision should address the concerns raised about potential damage to lease gear and livestock. The amended language changes were as follows:

“Nothing in this paragraph shall be construed as preventing or prohibiting the Lessee from pursuing an action for damages to authorized aquaculture gear and cultivated shellfish located on the leased premises.”

Default

Mr. Babb explained that the term “Default” was originally based on standard language for the leasing of State lands generally. It does not mean that the state would not lease to a person who had previously defaulted on a lease, it just meant that the state could choose to not lease in that circumstance. He further states, for instance, that the state could choose not to lease to someone if they have proven to be a bad actor in the past.

Waiver of Trial by Jury

Mr. Babb addressed the concerns of legal recourse that would be available to a leaseholder, if needed. He stated that per the lease agreement language, both the Lessor and Lessee agree to waive the jury trial process. Legally, all that meant was that a judge would preside over and be the trier of the facts of a case and not a jury. Further explanation over the trial by jury ensued. Mr. Babb stated that jury trials are expensive and time-consuming and there were still plenty of legal avenues to explore for any case.

Security

On the topic of security, Mr. Babb clarified that while this agreement never lessened the obligation of the state’s Marine Enforcement to patrol lease grounds, the following language was added to address those concerns:

“Nothing in this section shall preclude the Department's Bureau of Law Enforcement from patrolling leased premises as part of the Bureau's regular duties.”

Mr. Johnson suggested that the administrative code references be added to the document for relay leases. Mr. Babb explained that the regulatory references for relay lease signage was not added to that section because the existing administrative rules already cover that concern. Further discussion between Mr. Johnson and Mr. Babb continued, referencing the rules and why they were not written as a reference in the agreement.

General Discussion

Overall, Mr. Mathis expressed his appreciation with the DEP making the requested revisions to the lease agreement, in particular with “lessor” being placed back into the language as well as the other changes and additions. Mr. Felder agreed with Mr. Mathis’ sentiments.

Mr. Johnson expressed his apprehension about signing the agreement without addressing language that, while understood by legal counsel, was confusing to the leaseholders. Mr. Mathis added that the Council, at any time, could reserve the right to be able to revisit this document with the department and make additional comments.

Mr. Johnson opened the topic up for public comment.

Public Comment

Mr. Gaine thanked the Department and all other contributing parties for considering the comments made in the letter from the NJ Shellfish Association and coming up with an amicable compromise. Mr. Gaine said that he was pleased to see the suggested changes that were incorporated in the lease agreement. Mr. Gaine expressed that he was happy to see “a regulatory agency working with the industry” and appreciated all the hard work put forth by the Department, Bureau, Council, and the public.

Mr. Fleetwood reiterated what Mr. Gaine said in regard to the changes seen in the final draft of the document. Mr. Fleetwood stated that he sought legal counsel to better understand the document, to which his attorney explained that it was fairly standard language. He said that it was time to move on with this lease agreement and appreciated the accommodations that were taken with the concerns that were raised.

Mr. Johnson stated that he would like a motion that allows the Council to look at this agreement to make sure that it was working as intended and that nothing was saddling future Councils. Mr. Mathis made a motion to accept the agreement with a contingency that the agreement could be revisited in the future. Mr. Mathis suggested that next spring [2024] the Council raise issues if there were any perceived problems that needed to be discussed. Mr. Felder suggested an approximate six-month period starting to revisit the agreement (e.g., April time frame) and seconded the motion. The Council approved the lease agreement with the contingency that the Council could re-visit the issue in the spring of 2024.

2024 Lease Renewals – October 16th

Mr. Babb reminded the Council and the public that the annual lease renewal process would begin on October 16, 2023, and recommended calling ahead to schedule an appointment so that renewal packets were ready to go in advance. All leaseholders would receive a notification letter with instructions and were advised that if they have any questions, call the office. Mr. Babb reminded the Council that in September the Bureau advised the Council of the need to temporarily freeze lease transfers after October 1st until January 2, 2024 (following lease renewal and the holiday). This freeze was needed due to continued inadequate staffing in the front office. On a related note, Mr. Babb announced that Ms. Lauren Strazzeri would be returning to the Marine Resources Administration and with her assistance he did not foresee needing to request lease transfer freezes in the future.

Mr. Johnson asked to clarify if renewals could be mailed in or if they would all have to be completed in person. Mr. Babb stated that with the new lease agreement, all renewals would be completed in person. Mr. Johnson questioned why the mail-in lease renewal process couldn't continue and asked if a notary could be used for a mail-in renewal process. Mr. Babb states that the state would continue with the in-person renewal process, like years prior; he added that mail-in could be considered in future years for the renewal process. A person in the audience added that the in-person requirement was in the regulations and that the relaxation had been due to COVID-19.

Mr. Mathis made a motion to freeze lease transfers, and Mr. Felder seconded the motion.

6. New Business:

2023-2024 Surf Clam Quota

Mr. Babb stated that Mr. Normant had talked to the surf clam industry and the advisory body and they are interested in keeping the minimal quota the same as in years prior. The minimal quota serves as a “placeholder” in case the stock should recover in the future. The quota is set at less than 10% of the estimated stock of 32 bushels per license (1,824 bushels in total). Mr. Babb referred N.J.A.C. 7:25-12 and stated that the formal quota setting process was required each year. Mr. Mathis made a motion to approve the 2023-2024 season quota to be 1,824 bushels of Surf clams, and the motion was seconded by Mr. Felder. Mr. Babb stated that a public notice would be put forward following this approval.

Mr. Parson asked if there was any record of the inshore surf clam fishery. Mr. Babb stated that there was likely some nominal harvest, but he did not know the number off the top of his head and it was likely bait clam harvest. Mr. Babb said that in the past, occasionally some license holders would go out and try to fish for surf clams, however, the records indicate that the trip was not worth the harvest. Mr. Parsons asked if there were any plans to continue the survey and Mr. Babb explained that a lot of the funding was converted into the hard clam stock assessment survey in Raritan/Sand Hook bays. However, that grant money source was fairly flexible long term and it could be reverted back to a surf clam survey if the data warrants a change. Further discussion ensued.

Retail Training (Gary Wolf, USFDA and Virginia Wheatley, NJDOH)

Mr. Wolf of the USFDA and Ms. Wheatley of NJDOH provided an overview of seafood retail training on a national and local New Jersey level, respectively. Mr. Wolf said that the illness reports that he receives from major seafood markets are often confounded due to the lack of illness reported summaries and traceability to where the shellfish were harvested. This lack in traceability was due to restaurants not keeping the tags or disposing of them prematurely. Mr. Wolf noted that this information was critical to trace the illness back to its origin due to concern of an illness outbreak in the water.

Mr. Johnson asked Mr. Wolf if there would be retail training required for aquaculture growers, stating that most of the fisherman already have HASA (Health and Sanitation Safety Awareness) training. Mr. Wolf said no, adding that this training would be different. Further discussion about harvester tags ensued.

Following that discussion, Mr. Wolf handed over the presentation to Ms. Wheatley. Ms. Wheatley explained that the retail training was geared towards local and county health departments. Ms. Wheatley went over the retail topics of avoiding commingling of harvested shellfish, wet storage, record keeping/traceback, temperature control, and other various good practices. Ms. Wheatley concluded by giving thanks to the shellfish surveillance staff, industry, and everyone who made the educational training possible.

Mr. Johnson asked Mr. Wolf if there would be a certificate issued following the completion of the training. Ms. Wheatley stated that there would not be a certificate issued to those individuals. Ms. Wheatley said that she wished there was a way to reach out to every restaurant/seafood market in the state to require this training, but that would be impossible to enact. Further discussion ensued.

Mr. Johnson opened the floor for public comment.

Public Comment

Mrs. Gentile, Section Chief for the Bureau of Marine Water Monitoring, addressed the change in the review process for issuing the Commercial Shellfish Aquaculture Permits (CSAP). There was no change for those growers using on-bottom predator screens to grow hard clams, but there would be a change for those doing structural aquaculture. Mrs. Gentile stated that going forward, her office would be checking that the applicant had all the necessary permits before issuing a CSAP permit and that growers would be required to provide her with their structural permit numbers so that it may be verified in order to process the CSAP application as soon as possible.

Mr. Johnson asked Mrs. Gentile if it would be possible to send out a letter to all structural aquaculture licensed individuals to notify them of this change. Mrs. Gentile agreed and said that there would be additional wording added to the notification letter that is sent to all those individuals as a reminder to re-apply. Mrs. Gentile informed the Council that Mr. Schuster had accepted a new position within the Department and would still be available as a resource but was no longer coordinating the marine water monitoring program.

Mr. Gaine brought up the topic of in-person lease renewals, and how the only way to change it to a mail-in (or process by other means) would be to change the regulation itself. As a follow-up, Mr. Gaine suggested the Council send a letter to the Department thanking them for working with the Council on the agreement and incorporating many of the requested changes. Mr. Johnson said that the Council was obligated to send the original letter to the Department voicing their concerns and it has been done in a professional manner. A lengthy discussion ensued.

Mr. Fleetwood opined that a way for the industry to have their opinion heard in the rule making process was by joining a committee and/or participating through the Interstate Shellfish Sanitation Conference (ISSC). Overall, Mr. Fleetwood complimented state representatives in New Jersey's shellfish program as being very helpful and industry friendly. Mr. Fleetwood provided the information for the ISSC committee and encouraged people to sign up to have their voices heard.

Mr. Acquafredda introduced himself to the Council as the aquaculture specialist with the Rutgers University Sea Grant program. He would be taking over the position held previously by Lisa Calvo and explained the goal of his job to promote the sustainable expansion of NJ's aquaculture industry through research and extension services provided. Mr. Acquafredda said that he planned to be a regular at these meetings and urged anyone to reach out to him as a resource for help with anything that he, or his colleagues at Rutgers, could provide.

Mr. Babb reminded the Council that the next meeting would be held at the New Jersey Agricultural Experiment Station in Toms River. Mr. Babb would like to form a plan to secure our meeting locations for the next year and brought up the possibility of hosting the meeting at Batasto's main auditorium. The current location (Galloway Township Library) was not always available on the third Monday of the month for next year and the Council had expressed concern over this. Mr. Johnson suggested the Stafford Firehouse as another location option.

Mr. Johnson inquired about the hearing on the endangered non-game species and shoreline public access meeting on September 19th, 2023. Mr. Babb said the meeting pertained to shoreline access statewide, but that he believed that this meeting would be particularly focused on the Delaware Bay side of New Jersey's

shoreline. He opined that he thought that the purpose of the action was meant to strengthen what was already set in place (i.e., beach closures/restrictions each spring).

The meeting was adjourned by Mr. Mathis and a second by Mr. Felder.

7. Date, time, and place of next meeting:

DATE: Wednesday, October 16th, 2023

TIME: 6:00 PM

LOCATION: New Jersey Agricultural Experiment Station Auditorium (virtual option)

1623 Whitesville Road, Toms River NJ, 08755

Attendees:	Virtual Attendees:	Dep Staff Virtual:	NJDA:	FDA:	NJDOH:
Mr. Gaines	Mr. McGee	Mr. Moore	Ms. Wenczel	Mr. Wolf	Mrs. Wheatley
Mr. Parsons	Mr. Burke	Mrs. DiElmo			
Mr. Wills	Mr. Mayer				
Mr. Rizzo	Mr. Lennox				
Mr. Acquafredda	Mr. Lo Pinto				
Mr. D'Amico Jr	Mr. Carroll				
Mr. Fleetwood	Mr. Mayer				
	Mr. Avery				