

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

Haskin Shellfish Research Laboratory
Bivalve, NJ
Tuesday, January 7, 2020
6:00 PM

Present were: Chairman: Warren Hollinger (Cumberland County)
Vice Chairman: Steven Fleetwood (Cumberland County)
Councilman: Richard Malinowski (Salem County)
Councilman: Vacant (Cumberland County)
Councilman: Vacant (Cape May/Salem County)

State/Fed Reps: Russ Babb, Bureau of Shellfisheries
Craig Tomlin, Bureau of Shellfisheries
Andrew Hassall, Bureau of Shellfisheries

Haskin Lab: David Bushek, Director
Jason Morson, Laboratory Researcher

General Public

Compliance with the Sunshine Law

Notice of this meeting was posted December 7, 2019 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. Tomlin welcomed everyone to the meeting, performed roll call, then read the above compliance.

1. Revenue collected for November totaled \$15,094.02 and is summarized as follows:

| License Type | Total | License Type | Total |
|---------------------|----------|----------------------|------------|
| Commercial Crab Pot | \$800.00 | Dredge Boat Renewal | \$300.00 |
| Nets | \$543.00 | Commercial Shellfish | \$400.00 |
| Application Fees | \$36.00 | Assign Fees | \$4,807.00 |
| DB & AC Crab Dredge | \$400.00 | Lease Fees | \$7,108.02 |
| Tonging Tags | \$700.00 | | |

Revenue collected for December totaled \$44,807.58 and is summarized as follows:

| License Type | Total | License Type | Total |
|---------------------|------------|---------------------|-------------|
| Commercial Crab Pot | \$5,600.00 | Dredge Boat Renewal | \$2,022.00 |
| Nets | \$9,179.00 | Tonging Tags | \$600.00 |
| Application Fees | \$460.00 | Assign Fees | \$6,000.00 |
| Menhaden | \$1,188.00 | Lease Fees | \$11,364.58 |
| Dealer | 600.00 | Commercial SF | \$1,150.00 |
| DB & AC Crab Dredge | \$6,604.00 | Recreational | \$40.00 |

Oyster Resource Development Account (082):

(as of 01/07/20)

| | | |
|--|--|---|
| Unexpended | \$ 358,044.38 | Budget authority less expenditures (<i>total spendable dollars currently in account</i>) |
| Pre-Encumbered 2018-2019 Fiscal Year June 24, 2019 | \$ 24,693.79 (Nantuxent Channel Survey) | Total outstanding requisitions processed against the appropriation (<i>Amount previously set-aside for preparation of term contracts – since cancelled</i>) |

Councilman Hollinger reviewed the above account information. Mr. Tomlin informed the Council that before the meeting he noticed that \$50,000 was not transferred from the Mitigation Account to the Oyster Resource Development Account for the 2019 shell planting project. Mr. Tomlin said he would look into it the following day to either transfer the \$50,000 from the Mitigation Account to the Oyster Resource Development Account or to plant an extra \$50,000 worth of shell using the Mitigation Account for the 2020 shell plant project.

2. Oyster Lease Ground Renewals/Non-Renewals:

2.1 Approval of 2020 lease extensions

Councilman Hollinger made a motion to approve all 2020 lease extensions. Councilman Malinowski seconded the motion. All were in favor and the motion passed.

2.2 Non renewed leases

Mr. Tomlin informed the Council that there were two leases that were not renewed. If the lessees had a hardship that prevented their renewal by December 31, they must attend the subsequent January meeting to request an extension to renew their leases. The leases that were not renewed were held by Harry Barraclough II and Joseph Haase.

Mr. Tomlin informed the Council that Mr. Barraclough II had passed, and that his son Harry Barraclough III was present at the meeting to ask for the leases to be renewed. Mr. Haase was not present at the meeting, however Mr. Tomlin said that Mr. Haase had not renewed his leases because he had been very ill. He further explained that Mr. Haase had not yet received the message via certified mail stating he needed to attend this meeting to ask for a renewal and suggested that the Council could table the vote until the next Council meeting. The Council agreed to table the decision until the next meeting.

Councilman Hollinger asked Mr. Barraclough III to confirm that he wanted to take up his father's leases. Mr. Barraclough III said he did. **Councilman Hollinger motioned to allow Harry Barraclough III to go to the Bureau of Shellfisheries office to take over Harry Barraclough II's leases. Councilman Fleetwood seconded the motion. All were in favor and the motion passed.**

3. Lease Ground Transactions:

3.1 Lease Ground Transfers (previously Applications for Council's Decision on agenda):

Transfer from Cape May Salt Oyster Co LLC to Elder Point (c/o B Hollinger)

| Section | Lot Number | Acres | Fee |
|---------|------------|-------|--------|
| A | 21 | 96 | \$5.00 |
| A | 22 | 45 | \$1.00 |
| A | 24 | 96 | \$1.00 |
| Total | | 249 | \$7.00 |

Mr. Tomlin reviewed the lease transfer details to the Council. Councilman Hollinger abstained from voting since he was involved with the lease transfer. **Councilman Malinowski motioned to approve the lease transfer. Councilman Fleetwood seconded the motion. The motion passed.**

Transfer from Elder Point Oyster LLC to Atlantic Cape Fisheries LLC (c/o B Hollinger)

| Section | Lot Number | Acres | Fee |
|---------|------------|-------|--------|
| C | 313 | 26 | \$5.00 |

Mr. Tomlin reviewed the lease transfer details to the Council. **Councilman Malinowski motioned to approve the lease transfer. Councilman Fleetwood seconded the motion.** Councilman Hollinger abstained from voting since he was involved with the lease transfer. **The motion passed.**

4. Old Business

4.1. Red Knot/Aquaculture Update

Mr. Babb said that Wendy Walsh from the US Fish and Wildlife Service sent the Services' response to the Aquaculture Working Group regarding the Stakeholder Committee recommendations for updates to the conservation measures in the Programmatic Biological Opinion. She was asking for comments on the draft by the end of the week and would transmit the final draft back to the Stakeholder Committee.

4.2. Nantuxent Dredging Update

Mr. Hassall reminded the Council that Stockton received the contract to survey Nantuxent Creek and apply for dredging permits back in November 2019. He stated that Stockton scheduled dates to survey in December and January. Stockton was not able to survey in December due to weather and planned to survey the following week dependent upon the weather. Councilman Hollinger asked if the Bureau surveyed Nantuxent Creek for the oyster resource. Mr. Tomlin said it was not surveyed, but that surveying was started in Cohansey Cove. He informed the Council that oysters were present in the tongers area in both unapproved waters and waters that could become approved in the future. *Further discussion ensued.*

4.3. Approval of Meeting Minutes

Councilman Hollinger said he read through the three sets of minutes from March, September, and November 2019 and had just one question. He explained that at the March 5th meeting, it was decided that a letter of support would be written from the Council to the Commissioner of DEP to allow changes to the shellfish growing water classification rules in N.J.A.C. 7:12 from the Bureau of Marine Water Monitoring to move forward but allow the industry to open and discuss changes to the other rules. He could not find a record of a response and was asking if there was a response to their letter as the topic was coming up again at various meetings. Mr. Tomlin said he remembered writing the letter but would look to see if there were any responses.

Councilman Hollinger confirmed that the Council was satisfied with the minutes. **Councilman Hollinger made a motion to approve the March, September, and October 2019 minutes. Councilman Fleetwood seconded the motion. All were in favor and the motion passed.**

5. New Business

5.1 Annual Election of Council Chairman and Vice Chairman

Councilman Malinowski made a motion to keep Councilman Hollinger as Chairman and Councilman Fleetwood as Vice Chairman. Councilman Fleetwood seconded the motion. All were in favor and the motion passed.

5.2 Tonging Update

Mr. Hassall informed that there were 323 bushels of oysters harvested from the tongers beds as of Friday, January 3rd. Councilman Hollinger asked where most of the harvest was from, to which Mr. Hassall responded Nantuxent. Mr. Tomlin commented that the Bureau had surveyed Cohansey Cove, which was mentioned earlier, and that Conor Davis had a schedule for surveying all tongers areas cited in Title 50 for the spring and fall of 2020. Councilman Hollinger mentioned that everyone should receive a letter about the tongers area surveys.

Councilman Hollinger asked if the Bureau had any numbers for the shell planting efforts in the Maurice River Cove tongers area. Mr. Tomlin said the Bureau surveyed the planting site and observed spat on both shell that was replanted from the Cape Shore area and shell that was direct planted. He said there was about 4,000 bushels of shell that was direct planted, and about 1,500 bushels that was from the replant. The money for the project came out of the tongers account (part of the Oyster Resource Development Account), and some of the shell bags were donated by Project PORTS. Councilman Hollinger commented that it was decided at a previous tongers meeting that there wasn't enough return with spending the money to do another transplant. *Further discussion ensued.*

5.3 Leasing Committee

Mr. Tomlin said the Leasing Committee had been brought up at a few previous meetings and he would like to set a hard and fast date for a Committee meeting. He said the Council had discussed who was on the last Committee and who should be on it moving forward. Mr. Tomlin said that Councilman Hollinger wanted to move forward with the previous Committee members and add one more person. He then listed the previous Committee members which were Brian Harmen, Ned Gaine, Councilman Hollinger and added that Councilman Fleetwood and Bobby Robbins attended some meetings. Mr. Tomlin said he wanted to add a member that used their leases for traditional uses. Mr. Tomlin explained that if more than one member of the Council attended, the meeting would be publicly announced and allow for a public audience in accordance with the Sunshine Law.

Mr. Gaine asked if the Committee would have an issue with meeting a quorum requirement with the number of people on the Committee. Councilman Hollinger replied that since the Council would not be voting then a quorum was not needed. He added that anything voted on by the Committee was to be called a consensus. Mr. Tomlin agreed that he did not believe quorums were required in the committee setting. Mr. Babb informed that a quorum was not needed unless official actions and decisions were being made by the Council.

Councilman Fleetwood asked what the Atlantic Coast Section's Leasing Committee was working on and what the charge was for the Delaware Bay Leasing Committee. Mr. Babb said they would use the first meeting to talk generally about what the Committee would like to accomplish, but overall would address the issues that were being debated in 2015, many of which were deferred. He explained that getting the Committees back together would allow the Council and Bureau to catch up to these issues that need to be addressed. He noted that there had been a lot of pressure on the Department (i.e., the MFA and Bureau) about lease expansion, and that the Bureau's unofficial position was to put off the development of entirely new lease areas that did not yet exist. He clarified that he only meant holding back on new lease areas and added that new leases within existing lease areas were readily available through the usual leasing process. Mr. Babb explained that opening new lease areas come with a myriad of issues including conflicts with navigation, resource impacts, commercial and recreational fishing, and potential or unforeseen interactions with threatened, endangered, or protected species. He stated that the Bureau had been very open about this concern. He added that the Atlantic Coast Council were attempting to use their lease policy to address these siting concerns. Mr. Tomlin added that there was also pressure from other State agencies within the Department as well because they often ask the Bureau to explain what the Council's or industry's opinion/position was on a number of leasing and permitting issues.

Other topics Mr. Babb said the Bureau wanted to discuss was lease utilization, current leasing demographics, transfers etc. He added that lessees changing their activity from traditional bottom culture to intensive aquaculture using structural systems was probably the biggest issue. He stated that a prime example was that traditional oyster or clam leases that had been leased for decades without issues were viewed as benign. He stated that changing from on-bottom to structure with an array of cages, buoys and floats are viewed differently and raise different concerns. He explained that could cause a lot of issues with other public users that utilize those areas as well as threatened and endangered issues with entanglement of protected species (e.g., Atlantic sturgeon). Councilman Hollinger asked if any lease that falls within the white zone off East Point Lighthouse in Delaware Bay would automatically be denied structural aquaculture permits. Mr. Babb replied that the Delaware Bay Section could build a leasing policy similar to the Atlantic Coast's policy, and that they could address recommendations relative to navigation.

Mr. Gaine asked if the Council was looking to make another leasing policy for the Delaware Bay because that was a big lift that took many meetings for the Atlantic Coast. He also expressed that he had an issue with the Council regulating activities on someone's lease and asked if they had the authority to do so. Mr. Babb said they can advise the Bureau as duly appointed advisors put in place by the Governor and the legislature as the primary advisory body to the Department. He then explained that the current decision-making process for lease applications and permitting was the Council and the Department. *Further discussion ensued.* Mr. Babb explained that the Atlantic Coast had approximately 2,500 acres and the Delaware Bay had about 33,000. He described how potential applicants want new lease areas, and that they come into the office and are set on a certain specific area they want to lease regardless of potential conflicts issues including water quality, ecological and public resources, navigational issues, user issues such as jet ski areas, and other general "nimby" issues. Mr. Babb said the leasing policy, while imperfect and still being improved, helped filter out a lot of initial issues for new leases or new lease applicants for the Bureau and gave all parties with a in-writing rationale and procedure to consent to new leases in appropriate areas. Mr. Babb also stated that the Bureau felt strongly that the Councils and their leasing committees were the appropriate parties to have these discussions. He added that these kinds of discussions and any changes needed to be industry-driven, not government driven. *Further discussion ensued.*

Mr. Babb and Mr. Tomlin summarized that the Committee was needed to inform the Bureau on how aquaculture should fit into the current regulations, and to clarify the Council's position on

many leasing issues, and better defining the Council's role in the leasing process. **Mr. Tomlin and the Council looked at dates for the first Leasing Committee meeting and scheduled it for Wednesday, January 29, 2020 at 2 PM.** Mr. Babb said if there were two or more Council members present then there is a quorum. Mr. Tomlin responded saying that a letter would be sent to the public about the meeting.

5.4 2020 Council Meeting Schedule

Mr. Tomlin presented a list of dates to the Council that the Bureau drafted based off the previous year's bi-monthly schedule. Councilman Fleetwood asked if there were any issues or concerns with having the meeting every other month. Mr. Babb said that the Atlantic Coast Section tried to meet every month, but had many more lease applications than the Delaware Bay Section. He added that there were only two Atlantic Coast Council members so if one person couldn't make the meeting then it was canceled. This should not be an issue for the Delaware Bay Section to hold meetings every other month. The Council agreed to hold their meetings every other month starting with the January meeting.

5.5 Aquaculture Development Zone (ADZ) Pilot Program Status

Councilman Hollinger asked when the status of the ADZ would no longer be a pilot project. Mr. Babb said the project was in its second five-year period. He explained the Bureau had to develop ADZ regulations, and the ADZ would become an official program once they were in place. Mr. Gainé asked why regulations were being made specifically for the ADZ if at the end of the pilot period the lessee would be responsible to maintain all permits and responsibility. Mr. Babb said the original intent was that the area would be a turn-key area to lease that was permitted by the State which made it easier to regulate. Mr. Babb said the Bureau would ideally prefer if the permitting and compliance responsibilities were transferred to the lease holders, but he was not sure how it would ultimately go. Councilman Hollinger asked if the ADZ went the route of being the lease holder's responsibility, would they then have conflicts with the red knot issues and conservationists. To answer both of the preceding questions, Mr. Babb replied that the ADZ was governed by the Programmatic Biological Opinion (PBO) and Conservation Measures, but he was not sure how it would work through the lens of the PBO and would probably have to go through a legal process to get clarification. *Further discussion ensued.*

Mr. Gainé said that he had heard that since the ADZ program was a pilot it could be pulled at any time. He asked that if the ADZ was pulled, would he be left without a lease. Mr. Babb said that he would argue that would not be the case with all the effort that was put into the ADZ. He provided a number of examples to support this position including developing the PBO, hosting the stakeholder process, adding bayfront property to ensure ingress and egress to the site, creating shed lots, and battling all the issues that opposed the ADZ over the years, should provide some relief to growers. He also made the point that even though it would be a very rare occurrence, at any time the Commissioner could revoke or not renew a lease if warranted - so that potential outcome was not limited to the ADZ. *Further discussion ensued.*

5.6 Invitation to Senator Michael Testa Jr.

Councilman Fleetwood asked the other Council members if he could reach out to Senator Testa and invite him to a Council meeting to make introductions and to make him aware of any concerns with the industry, specifically Money Island. The Council agreed, and Councilman Fleetwood said he would invite him next time they spoke.

5.7 Consolidation Regulations and Committee

Councilman Fleetwood stated that he had been asked why the industry was still working under the same rules from when consolidation was first made. He pointed out that when the fisheries went to limited entry tonnage caps were put into effect, and with consolidation it seemed like those rules didn't matter anymore. He inquired how consolidation could be restructured since everyone in the industry had already worked through the consolidation process and tried to figure out how to make changes work with the tonnage limitations. Councilman Hollinger said he thought the Bureau was talking about opening rules to change. Mr. Babb said the Bureau wanted to create a shellfish aquaculture leasing subchapter just like N.J.A.C. 7:24, and there were other housekeeping rules to address so the Bureau could make a request that they be permitted to open the consolidation rule as well. However, he could not guarantee that this would be allowed. Mr. Tomlin said the consolidation rule changes went into effect in 2015. Mr. Babb said he thought there was an opportunity to go into the rule if the Council was so inclined, but it may have to be a separate rule effort. He recapped that the Bureau purposely stepped aside the last time the rule was visited to let the Council and industry dictate how the licenses should be managed through consolidation. Councilman Hollinger opined that he felt a license was a license and that tonnage should be removed from the rules. Councilman Hollinger said he would like to see the consolidation rule opened again for changes. *Further discussion ensued.* Mr. Tomlin said the Bureau would send a letter to all the oyster dredge boat license holders to reinstate the Consolidation Committee to discuss rules changes. Additionally, a letter would be sent to invite the license holders to the Council meeting following the Committee meeting to comment on the matter.

5.8 March 3rd Meeting: Direct Market Harvest Quota

Dr. Bushek commented that the direct market harvest quota would be discussed at the March meeting for a vote. After a brief discussion, Mr. Morson said that the Haskin Lab would send the Stock Assessment Workshop draft summary to the Council members when it was complete.

Councilman Malinowski motioned to adjourn the meeting. Councilman Hollinger seconded the motion. All were in favor.

6. The NJ Shellfisheries Council, Delaware Bay Section meeting adjourned at 7:06 PM. The tentative date, time and place of the next Council meeting will be:

Date: March 3, 2020
Time: 6:00 PM
Place: Haskin Shellfish Research Laboratory
6959 Miller Ave,
Port Norris, NJ 08349