

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

Virtual Meeting  
August 16, 2021

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

Absent was: Councilman: Paul T. Felder (Cape May County)

DEP Representatives: Russell Babb, Bureau of Shellfisheries  
 Jeffrey Normant, Bureau of Shellfisheries  
 Kira Dacanay, Bureau of Shellfisheries  
 Colleen Brust, Bureau of Shellfisheries  
 Megan Kelly, Bureau of Shellfisheries  
 Scott Stueber, Bureau of Shellfisheries

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

1.	Total Revenue for May 2021	\$ 826.86
	Shellfisheries Law Enforcement Fund	\$ 264.00
	 Total Revenue for June 2021	 \$ 22,225.00
	Shellfisheries Law Enforcement Fund	\$ 306.00
	 Total Revenue for July 2021	 \$ 390.00
	Shellfisheries Law Enforcement Fund	\$ 352.00

2. Presentation of April 19, 2021 and May 17, 2021 minutes for approval.

The April 19, 2021 minutes were approved on a motion by Mr. Johnson and seconded by Mr. Mathis. The May 17, 2021 minutes were approved on a motion by Mr. Mathis and seconded by Mr. Maxwell. Mr. Johnson abstained from the May 17, 2021 vote because he was not present during that meeting.

3. Applications for Consideration

LESSEE	LOT #	SECTION	ACRES/FT	LOCATION	MAP #
D. Christine Hartnett	1109	A	2.00	Great Sound	5
Donna Whiteside	1110	A	1.94	Great Sound	5
Robert Whiteside	1111	A	2.10	Great Sound	5
Michael Whiteside	1112	A	2.11	Great Sound	5
Fred Hickman, III	230	A	2.00	Ludlam Bay	1
Susan Foose	234	A	2.00	Ludlam Bay	1
Jersey Pearl Oyster Farm, LLC (Donald Otto)	235	A	2.00	Ludlam Bay	1
Lisa Gehman	236	A	2.00	Ludlam Bay	1
Chuck Gehman	237	A	2.00	Ludlam Bay	1

Ronald B. Nicklow	78	B	1.24	Graveling Point	1
Thomas Glenn	2547	B	1.74	Scull Bay	27
Elyssa Glenn	2551	B	1.84	Scull Bay	27
Sky Glenn	2554	B	1.92	Scull Bay	27
Edward W. Gaine	2809	B	2.00	Steelmans Bay (Scullville)	27.1

Mses. Hartnett, D. Whiteside, L. Gehman, E. Glenn and Messrs. R. Whiteside, M. Whiteside, Hickman, Foose, Otto, C. Gehman, T. Glenn, and Gaine were present at the August 16, 2021 meeting. Messrs. Ronald Nicklow and Sky Glenn were not present. Mr. Normant stated that 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.

#### 4. Applications for Decision

LESSEE	LOT #	SECTION	ACRES/FT	LOCATION	MAP #
Lucky Mother Shuckers (Virginia Millar)	232	A	2.08	Ludlam Bay	1
Clint Hunter	1113	A	2.53	Great Sound	5
Barbara Matthews	1114	A	2.11	Great Sound	5
Amber Glenn	1115	A	2.11	Great Sound	5
Olivia Rubillo	1116	A	2.00	Great Sound	5

Mr. Hunter and Mses. Matthews, A. Glenn, and Rubillo were present at the May 17, 2021 meeting. Ms. Millar was present at the August 16, 2021 meeting. A motion to approve the applications was made by Mr. Johnson and seconded by Mr. Mathis. Applicants would receive a letter that explained they have 30-days to sign their lease agreements and pay lease fees. The applicants would have to setup an appointment within the 30-day window with Bureau of Shellfisheries staff.

#### 5. Applications for Transfer

LESSEE	APPLICANT	LOT #	SECTION	ACRES/ FT	LOCATION	MAP #
Michael Joannides, Jr.	Great Bay Clam & Oyster, LLC. – John Smith	2728	B	1.94	GB/Great Thorofare	25
Michael Joannides, Jr.	Great Bay Clam & Oyster, LLC. – John Smith	2729	B	2.13	GB/Great Thorofare	25
Michael Joannides, Jr.	Great Bay Clam & Oyster, LLC. – John Smith	2732	B	2.06	GB/Great Thorofare	25
Michael Joannides, Jr.	Great Bay Clam & Oyster, LLC. – John Smith	2733	B	2.00	GB/Great Thorofare	25
Michael Joannides, Jr.	Great Bay Clam & Oyster, LLC. – John Smith	2734	B	2.02	GB/Great Thorofare	25
George Mathis, Jr.	Robert G. Lee	2511	B	1.59	Scull Bay	27
George Mathis, Jr.	Robert G. Lee	2539	B	2.03	Scull Bay	27
George Mathis, Jr.	Robert G. Lee	2545	B	2.08	Scull Bay	27
Steve Mastro, Sr.	William S. Wills, Jr.	2231	B	4.33	Dry Bay	24.2
Richard Beckley, Jr.	Dale S. Parsons	2338	B	2.71	Dry Bay	24.2

Mr. Normant explained that the leases considered for transfer from Mr. Michael Joannides, Jr. to Great Bay Clam & Oyster LLC (Mr. John Smith) were advertised for sale on Craigslist. Mr. Normant stated for the record that a shellfish lease are State owned public lands subject to the Public Trust. There was no additional discussion by Council.

All applications for transfer, except the applications from Mr. Mathis and Mr. Lee, were approved on a motion by Mr. Johnson and seconded by Mr. Mathis. The applications for transfer from Mr. Mathis to Mr. Lee were approved on a motion by Mr. Johnson and seconded by Mr. Maxwell.

6. Old Business:

Offshore Wind

Ms. Brust explained that on June 14, 2021, the Bureau of Energy Management (BOEM) published a Proposed Sales Notice (PSN) within the New York Bight. In July and August, BOEM hosted virtual meetings to solicit input from fisheries. The New York Bight PSN proposed the sale of up to eight leases, including 2.44 nautical mile transit corridors within the Hudson South lease areas, and incorporates several new lease stipulations related to stakeholder engagement and protected species measures.

State and Federal officials stated that the current administration was considering ways to ensure the U.S. commercial fishing industry was paid for any losses it may incur from the planned expansion of offshore wind power in the Atlantic Ocean. This new effort was prompted in part by a letter to the President from nine coastal states last month urging the federal government to lead the way in crafting mitigation frameworks for demonstrated negative impacts on fisheries from offshore wind projects.

On June 30, 2021, The NJ Board of Public Utilities awarded a combined 2,658 MW of offshore wind capacity to Atlantic Shores and Ocean Wind.

On June 24th, 2021, BOEM published a Notice of Intent to Prepare an Environmental Impact Statement for the Empire Wind project located offshore of New York. During the public comment period, BOEM hosted three virtual scoping meetings where stakeholders provided testimony.

Ms. Brust explained that the State was seeking potential options for four interrelated components of an open access offshore wind transmission solution. This program was being managed by consultant PJM with a State Agreement Approach (SAA) between the NJ Board of Public Utilities (NJBPU) and the Department of Environmental Protection (DEP).

Ms. Brust described what the state of New Jersey was doing to collaborate with other state and federal agencies which included various working groups.

New Jersey's Research and Monitoring Initiative, with funding provided by developers through New Jersey's 2<sup>nd</sup> Offshore Wind Solicitation, was part of a larger effort by the State to balance the continued protection and management of coastal and marine resources with offshore wind development.

Mr. Mathis read the May 13, 2021 Lease Policy Committee's summary report (Attachment 1) into the record. Ms. Kelly informed the Council that the summary was sent to all members of the Lease Policy Committee. Mr. Johnson stated he did not receive the summary document, Ms. Kelly stated she will re-mail the document to him.

Mr. Johnson commented that the discussions in the Lease Policy Committee were being driven by the oyster "bag" industry and he did not believe the current Committee membership was adequately represented by the oyster industry. Mr. Johnson opined that the current discussions were changing what was already accomplished in 2016, renegotiating a compromise with a different goal in mind. Mr. Johnson did not want to see the expansion of one industry to be at the expense of an already existing industry and that some committee restructuring may be appropriate. Mr. Normant explained that the Lease Policy Committee had already restructured in the spring, and this was the full committee charged with the goal of increasing efficiency in these discussions. Mr. Normant also added that everything listed in the summary presented only ideas for discussion, many of which were supplied by committee members. He stated that the committee did not make any formal recommendations or decisions. Mr. Mathis noted that the Council had already been periodically addressing the needs of the oyster aquaculture sector such as overwintering leases and the Creek leases at Rose Cove, as an example. Mr. Mathis stated that another committee was not necessary, just a better understanding of the needs of the oyster industry, which was evolving rapidly. Mr. Mathis noted that the current Lease Policy Committee was only in the discussion phase, and they have not made any recommendations.

There was discussion on where the Delaware Bay Section of the Shellfisheries Council was within this process. Mr. Normant added that the Delaware Bay Leasing Committee were having similar discussions and plan to reconvene in the fall 2021. Mr. Maxwell added that he would rather go through this process in unison with the Delaware Bay Council and Leasing Committee so that policy was consistent on both coasts. It was suggested to present the Lease Policy Committee summary to the Delaware Bay Section, so they are aware of the conversation.

Mr. Johnson added that it was difficult to compare the two coasts and that the Atlantic Coast section had developed a policy (2016) while the Delaware Bay section did not have one in place. Mr. Babb clarified to the Council that the Delaware Bay Council has had a lease policy, albeit less detailed, in place since 2011. Since it was only managing leases in a single bay, it was not as detailed as the Policy Document for the Atlantic Coast; nonetheless, he stated that the Leasing Committee was planning to make changes to that policy in the fall.

Mr. Edward Gaine added that the recent requests on specific lease area policy was important and were appropriately sent to a committee level discussion in more detail and then brought to the Council. In addition, he noted the importance of having broader conversations about utilization. Mr. Gaine was a member of both Leasing Committees on the Delaware Bay and Atlantic Coast and stated that the Committees were very different. The Atlantic Coast Lease Policy Committee discussed very specific issues in regard to the leasing policy that affect specific lease areas and the Delaware Bay Leasing Committee was discussing broader issues that affect the entire Bay. Mr. Gaine opined that the shellfish aquaculture industry was one whole industry regardless of if someone grew clams, oysters, or scallops or where they grew them. He stated the Committee should have various representatives to discuss these topics from a broad consensus of different aspects of the same industry.

Mr. Tom Glenn asked when Council minutes and Lease Policy Committee summaries are posted on the website. Mr. Normant explained that the Council minutes are posted on the Division website after they are approved at the Council meetings. If a Lease Policy Committee summary

was read into the record at a Council meeting, then the summary was attached to the meeting minutes and posted on the website.

Mr. Mathis recommended inviting specific industry members to the Lease Policy Committee meetings depending on the topics to be discussed if additional input is needed. He added that if the Council and the Committee are not on the same page, then nothing would get done.

It was discussed to have Council members on the Committee talk with Bureau staff to set up the next meeting, discuss the agenda and bring it back to Council. It was up to the Committee to have a limited or more expanded agenda, but the priority should be the immediate issues that specific industry members bring forth to the Committee and the open discussions on bigger issues can be done after that.

#### Hard Clam Management Plan

Mr. Normant explained that Ms. Dacanay completed the Raritan Bay hard clam survey and will be sampling in the Great Egg Harbor Bay this fall. There have been discussions within the Marine Fisheries Administration about how to approach fisheries management in general for in-state species which related to the development of a hard clam management plan.

#### Shell Recycling Program

Mr. Stueber provided an update on the shell recycling program in Atlantic City. In the first annual planting event 2,570 bushels were planted over a 2-acre parcel in the Mullica River. Monitoring plan was in development.

#### New Jersey COVID-19 Assistance Program

Mr. Babb presented that New Jersey's COVID-19 assistance program application was open August 18, 2021, through October 15, 2021, at 5:00 pm. Approximately \$1.3 million will be held for a marketing plan to support the industry in a broader sense. About \$8 million is available to eligible New Jersey fisheries-related businesses in the form of direct payments to make up for lost revenue from July 1, 2020, through December 31, 2020. Eligible businesses and program criteria were discussed.

#### Aquaculture Development Plan Discussion

Ms. Wenczel explained that the Aquaculture Advisory Council (AAC) met on July 23, 2021 and the Aquaculture Development Plan (ADP) update for 2021 was approved by the AAC. Ms. Wenczel noted that a Marketing Committee of the AAC and the Council was currently developing a charge. In addition, AAC member composition was being discussed to include members of the Shellfisheries and Marine Councils. Publication of the ADP was expected by the next AAC meeting in October.

#### Aquaculture Advisory Council (AAC) Seat Discussion

Mr. Mathis opined that the Shellfisheries Council did not need to appoint a Council member on the AAC, rather should designate a member of the shellfish industry. There were discussions on ensuring that both Sections stay consistent. Council members agreed that the designated AAC seat could be determined by Council but did not need to be a Council member.

## 7. New Business:

### 2020 Mullica River Disease Report

Mr. Normant explained that the 2020 Mullica River sampling was completed and received the disease report. 2019 had a better bed condition and spat counts were lower in 2019 than 2020. There was a plan to monitor again this year including the shell recycling planting site. MSX was reported as low prevalence. Dermo was reported as a moderate prevalence with some advanced infections.

It was asked if there would be samples taken from sites that received product from the oyster buyback program (SOAR and Sea Grant). Mr. Normant confirmed that staff will be taking samples to monitor those areas.

### Lease Transfer Procedures

Mr. Normant explained to the Council that current lease transfer procedures have not been consistent with the lease transfer regulations at N.J.A.C. 7:25-24.9. What has been done in the recent past was the lease agreement was signed by the proposed new lessee at the time when the lease transfer application was being signed by the transferrer and the transferee prior to Council approval. This may have been due to an effort to administratively make the process more convenient. There was concern from Bureau staff on the current process in that if a transfer application were to be denied by Council, it would be denied after the leaseholder has already signed the lease agreement. However, this procedure was not consistent with the lease transfer regulations, in which the Council must decide on the lease transfer application prior to the transferred leases being approved by the Department and the new lessee signing the lease agreement. Going forward, lease transfer procedures will be following the regulations.

Since the lease transfer regulations do not specify a timeline in which the lease agreement (for the leases being transferred) have to be signed. Mr. Normant requested that the Council make a policy recommendation to impose a 30-day time period in which the applicant must sign the lease agreement after the Council approves the lease transfer. This would be to be consistent with established procedures that are implemented for new lease applications. As it currently stands, the lease transfer regulations do not provide a timeline for the applicant to finalize the paperwork after Council approval.

The Council decided to take this topic under consideration to think about any unintended consequences before approving this policy.

### NJDOT Project – Route 9 Vegetation Removal

Mr. Johnson asked the Council to send a letter expressing concerns regarding the use of herbicide and machinery to remove vegetation near waterbodies along Route 9 in the Waretown. Mr. Normant noted that a similar letter was sent regarding this project.

The Council approved a motion by Mr. Johnson and seconded by Mr. Mathis to send a letter to the Commissioner, copying the NJDOT Commissioner and local legislative representatives on concerns regarding the spraying of herbicides along the Route 9 corridor in the Waretown area adjacent to creeks leading to Barnegat Bay.

## NJDOT Project – Big Creek and Tuckerton Creek Dredging

Mr. Johnson expressed concerns about a pipe being laid on his lease during a proposed dredging project in Big Creek and Tuckerton Creek after receiving a letter explaining that work would be completed on September 15, 2021. Ms. Dacanay explained that generally during the permitting process the Bureau provided comments recommending that the applicant contact all leaseholders in writing prior to the start of the project. Ms. Dacanay added that comments generally included recommendations to avoid staging equipment on shellfish leases. It was recommended to call the point of contact in the in the letter and/or Division of Land Resource Protection with concerns.

## US Fish and Wildlife Service Proposed Rufa Red Knot Critical Wildlife Habitat Rule

Mr. William Avery expressed concerns regarding the proposed Rufa Red Knot Critical Wildlife Habitat Rule designation. There was a public information meeting on Wednesday August 18, 2021 and the public comment period ends Monday September 13, 2021.

Mr. Babb explained the Rufa Red Knot was designated as threatened under the Endangered Species Act (ESA) Jan 12, 2015. ESA required the Service to identify the location of habitat essential to the conservation of the species – which was called critical habitat and was proposed across 13 states. Consultation to determine if projects would jeopardize the species would be required if an activity was under federal permit jurisdiction. It doesn't appear that the designation of critical habitat would change what has already been recommended by the Service in the past.

Mr. Babb referenced the Incremental Effects Memorandum for the Economic Analysis of the Proposed Rule to Designate Critical Habitat for the Rufa Red Knot for economic effects. Which read: "we anticipate the most substantially affected economic activities from the critical habitat designation will be coastal engineering (e.g., dredging, flood control, shoreline stabilization) and development". Other economic activities that may be affected to a less substantial degree include agriculture (mainly aquaculture), conservation/restoration, energy development/transport, transportation, and utilities.

Mr. Gaine advised that it should be taken into consideration how these constrictions could impact shellfish aquaculture economics such as regulating types of gear, access, and seasonality and work hours.

The Council requested to work with the Bureau to send a letter expressing concerns regarding the proposed rule.

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

### 8. Date, time, and place of next meeting:

DATE:	September 20, 2021
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  
Thursday, May 13, 2021  
10:00 AM

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

Committee Attendees: William Avery, Matthew Gregg, Raymond Crema, Douglas Zemeckis

Absent Committee Members: Edward Gaine, Peter McCarthy

State Reps. Attendees: Russell Babb, Bureau of Shellfisheries  
Jeffrey Normant, Bureau of Shellfisheries  
Kira Dacanay, Bureau of Shellfisheries  
Megan Kelly, Bureau of Shellfisheries  
Lloyd Lomelino, Bureau of Shellfisheries  
Amanda Wenczel, Department of Agriculture

**Rose Cove, Middle Creek Lease Area Request:**

Committee members discussed a new lease request in Middle Creek by the Rose Cove, Little Egg Harbor Bay lease block. The applicant was requesting this lease area because his offshore leases at Rose Cove were getting damaged by the southerly winds. He wanted to use the creek to protect gear and oyster seed for grow out. Committee members discussed navigation issues associated with this area and that the creek was surrounded by US Fish and Wildlife Refuge property. Mr. Johnson made a recommendation to accept an application for the lease to be used for grow out contingent on the applicant receiving all applicable permits which included review from the refuge manager. No other lease applications will be accepted in Middle Creek (Rose Cove). This recommendation was seconded by Mr. Mathis.

**Lease Utilization, Allocation, Transferability Discussion:**

Committee members were tasked to submit ideas on how to address lease utilization, allocation, and transferability for consideration and discussion.

It was noted that the Committee agreed to send the leaseholder's a letter regarding the responsibility as a best management practice and a benefit for the industry to actively use the lease. The purpose was to convey to leaseholders the importance of lease utilization rather than only focusing on how to take a lease back. It was also suggested that this type of statement could be sent via email and letter to all leaseholders, to explain that if someone is not using their lease to let the state and Council know so they can be provided information on their options whether it is to vacate or transfer their lease.

The following suggestions were determined to be potential criteria to be considered by the Committee for further discussion:

- A percentage of available new lease area applications first come first served and the balance would be a lottery system.
- Increase in application fees (\$500)
- Add a section to application or require a commercial production plan. Council can evaluate the intent of the lease.
- Limit transfer for 3 years.

The following suggestions were determined to not be feasible criteria at this time:

- Leaseholder must show a minimum dollar amount annually in farmed shellfish revenue.
- Leaseholder may apply for a temporary hardship status with the Council.
- Report a minimum of manhours every 4 years with a warning issued after three years without reported manhours or suffer non-renewal.
- If a leaseholder does not renew their lease on time, a new application is required.
- At the time of lease renewal, leaseholder must confirm they hold all required permits for operation.
- Leaseholder must attend one council meeting every number of years.
- Business plan evaluation.
- Limited entry industry.
- Limited term lease and after 5 years assessed use.
- Scaled renewal fees, higher fee for the first 2 acres.
- Required attendance to both council meetings instead of one of two meetings.
- No more shellfish transfers after 2025.

The next meeting of the Lease Policy Committee is to be determined.