

MINUTES OF THE MEETING
OF THE
ATLANTIC COAST SECTION OF THE SHELL FISHERIES COUNCIL

Nacote Creek Law Enforcement
Port Republic, NJ
June 18, 2007

Present were: Chairman John Maxwell (Atlantic)
Councilman Walter L. Johnson III (Ocean)

Absent was: Councilman Walter Hughes (Monmouth)

State Representatives: James W. Joseph, Bureau of Shellfisheries
Jeffrey C. Normant, Bureau of Shellfisheries
Michael Celestino, Bureau of Shellfisheries
Joseph Myers, Department of Agriculture

Mr. Maxwell 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 collected for May 2007: \$ 4,952.15
Shellfisheries Law Enforcement Fund: \$ 1,986.00

2. May 21, 2007 Minutes

The minutes of the May 21, 2007 meeting were approved on a motion by Mr. Johnson and a second by Mr. Maxwell.

3. Applications for New Ground – Decision

<u>APPLICANT</u>	<u>LOT #</u>	<u>SEC.</u>	<u>ACRES</u>	<u>LOCATION</u>	<u>MAP</u>
				Unnamed Creek off	
Peter MacAvoy Sr.	486	B	2.00	Marsholders Channel	24.2
William K. Avery	2535	B	2.00	Scull Bay	27
Peter Drukas, Jr.	2543	B	2.00	Scull Bay	27
Robert Mayer	101	B	2.00	Peck Bay	4

All applicants were present at the last meeting. Without further discussion, the lease applications of Messrs. MacAvoy, Avery, Drukas and Mayer were approved on a motion by Mr. Johnson and a second by Mr. Maxwell.

4. Applications for Transfer

<u>LESSEE</u>	<u>APPLICANT</u>	<u>LOT #</u>	<u>SEC</u>	<u>ACRES</u>	<u>LOCATION</u>	<u>MAP</u>
Carl R. Allen	Scott Shreaves	311	B	3.26	GB-Cape Horn	10
Carl R. Allen	Scott Shreaves	312	B	2.98	GB-Cape Horn	10

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

5. Old Business

Aquaculture Permitting

Mr. Joseph briefly summarized key points to the new US Army Corps of Engineers (USACE) Nationwide Permit (NWP) # 48, which regulates commercial aquaculture activities. NWP # 48 had become valid as of March 12, 2007. Leases that existed prior to March 12, 2007 and were less than 100 acres would be subject to a reporting requirement to the USACE. If a lease existed prior to March 12, 2007 and was greater than 100 acres, the leaseholder would have to submit a pre-construction notification. Leases obtained after March 12, 2007 would require an individual permit by the leaseholder. In an effort to ease the burden on the majority of the leaseholders, Bureau staff submitted a report to the USACE on behalf of all the leaseholders on the Atlantic coast of New Jersey and Delaware Bay for those leases held prior to March 12, 2007. Mr. Joseph stated that the Bureau had a meeting with the NJDEP Land Use Regulation Program (LURP) and the USACE on June 14, 2007 and it appeared the report submitted by the Bureau satisfied the reporting requirement for those leases that existed prior to March 12, 2007. For leases that were acquired subsequent to March 12, 2007, the leaseholder would be responsible to obtaining the permits. Contact information for LURP and USACE would be made available through the Bureau.

Mr. Joseph stated that at the June 14, 2007 meeting between the Bureau, LURP and USACE, it was discussed that as a result of the change to the federal permits, each leaseholder might be required to obtain an individual Waterfront Development Permit (WDP) for each lease or for each leaseholder with multiple leases. Mr. Joseph stated that the Bureau was working with LURP and other NJDEP agencies to see if there was a different mechanism that could be explored. Various options were discussed, such as the Bureau submitting a report to cover all leases to LURP, as had been done previously with the NWPs. The USACE was not sure if it would work since the state permits determine federal consistency with the Coastal Zone Management Regulations. It was also learned that if the Bureau were to take responsibility for obtaining the state permits, the Bureau would be responsible if a leaseholder violated the conditions of the permit – a situation the Bureau could not consider. Mr. Joseph stated that he had also discussed the matter with the Director of LURP and was told that LURP was still exploring other mechanisms to satisfy the state and federal permitting requirements. Mr. Joseph stated that if anyone wanted to contact LURP, the Bureau had prepared a handout with the address and phone number of the LURP technical support center. Mr. Joseph stated that he would keep the Council apprised of the situation.

Mr. Maxwell inquired if there was anything in the lease agreement that could address this issue. Mr. Joseph stated the lease agreement was discussed to see if it could be amended to ensure any liability issues would be directed to the lessee and not to an intermediary permit holder, such as the Bureau. Mr. Joseph stated that this concept would have to be reviewed by the Department's legal staff. Mr. Maxwell stated that the ideal solution would be to have the Bureau serve as the permit holder with the lessee held liable for permit violations. Mr. Maxwell stated these issues could threaten the aquaculture industry in New Jersey. Mr. Maxwell inquired on why a WDP would be necessary now when it was not required in the past. Mr. Joseph stated that all NWPs require a standardized response from NJDEP and the standard response from NJDEP was to require individual WDPs. Mr. Joseph also stated that besides the leaseholders obtaining a WDP, the Bureau also has to obtain permits from LURP for all its shellfish restoration work since they were covered by new NWP #27, which addresses shellfish restoration.

Mr. Joseph opined that the best solution to satisfy the Department's role as it relates to the new federal requirement would be implanting a "Permit by Rule". If the rule was implemented, it would cover all traditional shellfish aquaculture that had existed in the State for numerous years and no one would have to apply for permits. Mr. Joseph stated that problem with implementing a "Permit by Rule" was the backlog of regulatory proposals currently in the system and it could take as much as two years to get the proposal through. Further discussion on the matter ensued.

EQIP Program

Mr. Fred Kelly from the US Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) and Mr. Myers from the NJ Department of Agriculture (NJDA) provided the Council with an overview of the 2008 Environmental Quality Incentives Program (EQIP). Mr. Kelly stated that several

years ago, shellfishermen from Massachusetts inquired if the NRCS could provide cost sharing services through the EQIP program, as had been done for land based farming operations. This program had been successful for land-based farmers in implanting various conservation practices. Subsequently, NRCS worked with the aquaculture industry in Massachusetts and then a year later with Rhode Island aquaculturists to develop a group of practices that were applicable to the shellfish industry. They would qualify for the incentives if they modified their current aquaculture practices to have improved benefits to water quality. Mr. Myers stated that Mr. Barney Hollinger, Chairman of the Delaware Bay Section of the New Jersey Shell Fisheries Council, initiated interest in the program after forwarding him an e-mail announcement that he had received from the program in Massachusetts. Mr. Myers stated that he had started off by talking to New Jersey shellfish industry members about the program using Massachusetts's guidelines and had been modifying it to fit in with New Jersey's shellfish aquaculture practices. Mr. Kelly stated that for every conservation program, a "technical guide standard" needs to be developed to determine eligibility for the program. He said the aquaculture practices differ in each state, so criteria for each state's program would be different. Mr. Kelly distributed a draft document that listed conservation practices that would be eligible for the EQIP cost-sharing program. Mr. Kelly stated that he was presenting information about this program to the Council to try to solicit more input for the EQIP program in New Jersey. Mr. Kelly stated that he was also looking for information on cost, i.e. cost for an outboard engine exchange from a two-stroke engine to a more efficient four-stroke engine, cost of using ethanol or B-20 diesel instead of standard fuel. Mr. Kelly stated that in Massachusetts, if an aquaculturist exchanged their two-stroke engine to a four cylinder engine, then that person would receive \$3,000 to offset the cost of the engine exchange.

Mr. Joseph stated that Mr. Myers had been talking about this program for a while and had not seen a lot of interest. Mr. Joseph suggested that it appeared shellfishermen need to see someone involved with the program and the benefits that person has received before they would become involved. Mr. Maxwell stated that past programs have never really done that well. Mr. Maxwell stated that in the 1990s, he was involved with a crop insurance program that was so draconian, it was not worth the effort and he eventually abandoned the program. Mr. Maxwell stated that the process of getting into these types of programs was too time consuming. Mr. Maxwell then stated that the engine exchange was the most attractive incentive for the EQIP program. Mr. Johnson agreed that the application process was what turns everyone off to the various programs.

Mr. Myers introduced Ms. Hillary Barile, also from the NJDA. Ms. Barile would serve as the liaison between the shellfishermen and the EQIP program and would provide technical assistance for the application process to those interested in the program. Mr. Maxwell stated that many of the shellfishermen already have four-stroke engines, himself included. Mr. Joseph inquired that if the bulk of the shellfishermen already have four-stroke engines, does this program benefit the shellfishermen. Mr. Kelly stated that the outboard engine exchange incentive may not benefit NJ aquaculturists, but there might be some other practice that could benefit the shellfishermen. Mr. Maxwell suggested that Mr. Myers contact Mr. Robert Fenton, who had been involved with shellfish aquaculture for many years. Mr. Joseph inquired if Mr. Kelly, Mr. Myers and or Ms. Barile could do a hypothetical application packet to demonstrate to the shellfish aquaculturist the involvement in filling out the application packet. Mr. Myers emphasized that the EQIP program was designed to provide enough incentive to get someone to change their practices for better conservation, but at the same time not make it so large that it would be considered a "handout" and put other industry members at a competitive disadvantage. Further discussion on the matter ensued.

Garden State Parkway Widening Project-Mullica River Bridge Update

Mr. Johnson inquired if there was any updated information on the Garden State Parkway Widening Project-Mullica River Bridge construction. Mr. Joseph that he did not have any updated information since Mr. Normant, who was involved with the project, had to leave the meeting. However, he stated that he had recently read some articles in the newspaper regarding permitting issues. Mr. Joseph stated that he would check to see if Mr. Normant had any updated information and if so, provide that information to the Council.

6. New Business

West Creek Dredging Project

Mr. Johnson inquired on a proposed dredging project in West Creek. Mr. Johnson stated that there might be some concerns and inquired if there was any shellfish sampling conducted in the mouth of West Creek. Mr. Celestino stated that there probably was a station outside the mouth of the Creek in the general vicinity.

Aquaculture Advisory Council Meeting

Mr. Maxwell inquired on the next Aquaculture Advisory Council (AAC) meeting. Mr. Myers stated that the next meeting was tentatively scheduled for July 20, 2007. Mr. Maxwell inquired if there was any role for the AAC on the permitting issue. Mr. Joseph stated anyone was welcome to comment.

There being no further business, the meeting was adjourned on a motion by Mr. Johnson and a second by Mr. Maxwell.

7. Date, time and place of next meeting:

DATE: July 16, 2007
TIME: 7:00 PM
LOCATION: Nacote Creek Law Enforcement Office
360 N. Rt. 9
Port Republic, NJ 08241