

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

Nacote Creek Law Enforcement  
Port Republic, NJ  
May 18, 2009

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

Absent was: Vice Chairman Walter Hughes (Monmouth)

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

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 March 2009: \$2,810.05  
Shellfisheries Law Enforcement Fund: \$1,830.00

Total Revenue collected for April 2009: \$2,690.80  
Shellfisheries Law Enforcement Fund: \$1,838.00

2. February 9, 2009 and March 16, 2009 Minutes

The minutes of the February 9, 2009 and March 16, 2009 meeting were approved on a motion by Mr. Johnson and a second by Mr. Maxwell.

3. Applications for Transfer

<u>LESSEE</u>	<u>APPLICANT</u>	<u>LOT #</u>	<u>SEC</u>	<u>ACRES</u>	<u>LOCATION</u>	<u>MAP</u>
Joseph Brooke	Ronald Hammell	2262	B	2.31	Dry Bay	24.2
John O'Mara	Robert Yorke	2312	B	2.00	Dry Bay	24.2
John O'Mara	Robert Yorke	2262.1	B	1.02	Dry Bay	24.2
John O'Mara	Robert Yorke	2262.2	B	1.02	Dry Bay	24.2
John O'Mara	Robert Yorke	2204	B	6.51	Dry Bay	24.2

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

4. Old Business

Barnegat Bay Lease

Mr. Maxwell inquired on Mr. John Aubin's lease proposal in Barnegat Bay. Mr. Joseph stated that Mr. Aubin had come into the office and applied for a lease parcel adjacent to existing leases off Swan Point in the upper portion of Barnegat Bay. Mr. Joseph also stated that he had applied for his permits from the US Army Corps of Engineers and NJDEP. Mr. Normant stated that the Bureau needed to conduct the biological survey.

### Garden State Parkway Widening Project – Mullica River Bridge

Mr. Maxwell inquired on the status of the Garden State Parkway Widening Project-Mullica River bridge construction. Mr. Normant stated that he had attended a pre-construction meeting on May 7<sup>th</sup>. He stated that the in-water work would begin around July 1<sup>st</sup> due to environmental restrictions. Mr. Normant stated that they had taken four sets of samples from December 2008 to April 2009. He stated that once the NJ Turnpike Authority began in-water construction, the Bureau would be sampling once every two weeks to monitor the oyster seed beds in the Mullica River. Mr. Normant also stated that he reiterated at the May 7<sup>th</sup> meeting that the barges needed to be secured and not operate in the area of the leases. Mr. Maxwell inquired on the time frame of the project. Mr. Normant said that the project proposal indicated that the work should take about a year, but the in-water work of installing the bridge supports and piers should only take a few months. The work would then shift to the actual construction of the bridge span and roadway, which would be out of the water.

### Aquaculture Rule Proposal

Mr. Joseph Myers from the NJ Department of Agriculture informed the Council that the Aquaculture Rule proposal was nearly complete. He stated that there were some changes to the current rule, such as the section that dealt with aquatic animal health and a format change in the aquaculture license application. The current rule would remain in effect until the new rule proposal was adopted. Mr. Myers anticipated that the new rule proposal would be adopted by the end of this year.

### Jenny's Creek and Little Thorofare

Mr. John Rutherford inquired on the status of the leases in Jenny's Creek and Little Thorofare, in which several were mistakenly established in waters classified as Special Restricted. Mr. Normant stated that in January 2009, it was discovered that the waters of Jenny's Creek and Little Thorofare were classified as Special Restricted and not Approved. The waters were classified as Special Restricted due to the close proximity of an existing marina and the required buffer zone. Leases that were established after September 18, 1989 (as per the Leasing Regulations NJAC 7:25-24.12(a)) would have to be vacated. \*\*After a review of the waters by the Bureau of Marine Water Monitoring (BMWM), it was found that the waters of these creeks could immediately be reclassified to Seasonal waters. A recent dye test study was also conducted by the BMWM to find out whether the waters could be further upgraded to Approved. Mr. Normant stated that he had talked to the BMWM that day and was told that the results of the dye study indicated that the waters could be upgraded to Approved and would go into effect when the regulations were adopted in January 2010. \*\*Since the waters were currently classified as Seasonal, they would be closed to harvest until the waters re-open in November. Further discussion on the matter ensued. **\*\*NOTE: As discussed at the July 20, 2009 Council meeting during approval of the May 18, 2009 minutes, Jenny's Creek could not be reclassified as Seasonal immediately and not subject to opening in November. Any upgrade in classification must be implemented via the regulatory process.\*\***

### Council Members Financial Disclosure

Mr. Johnson stated that he had meet with Mr. Normant to attempt to fill out the Financial Disclosure form on the computer, which was required for all shellfisheries council members. After attempts fill out the form on the computer was unsuccessful, Mr. Johnson said that Mr. Normant had printed out the form on his computer and that he filled it out by hand. The form was then mailed to the Ethics Commission on March 17, 2009. Mr. Johnson then stated that he had recently received a phone call that they would not accept his disclosure and he had to fill it out on-line or be fined \$50 per day that it was past due. Mr. Johnson stated that he had called Senator Connors' Office. The ethics commission had decided that they might accept pen and paper, but in the mean time, Mr. Johnson would still have to complete the form on-line at Senator Conner's office. Mr. Joseph stated that he would look further into the matter.

## 5. New Business

### Navesink River Sewage Spill

Mr. Maxwell initiated discussions on the recent Navesink River sewage spill that occurred in April 2009. Mr. Maxwell stated there were issues in the way the shellfishermen were notified. Mr. Maxwell stated that there was a delay in notifying the shellfishermen during the first day of the closure and subsequently all the clams harvested had to be either quarantined or destroyed. He stated that there were three agencies involved, the NJDEP Bureau of Marine Water Monitoring (BMWM), the Bureau of Law Enforcement and the NJ Department of Health and Human Services (NJDHHS). He opined that the three agencies seemed to handle the situation differently. Mr. Maxwell stated some of the product that he had received was embargoed and destroyed under orders from the NJDHHS health inspector. However, some product sold to other dealers was allowed to be put back in the water. The depuration plants were notified around 11:00 am, but the shellfishermen that were harvesting in Seasonal waters of the Navesink River were not notified on the day of the closure and attempted to clam the next day. He stated that Captain Chicketano from the Bureau of Law Enforcement was not notified until 5:30 pm in the afternoon. Mr. Johnson stated that Capt. Chicketano suggested that the appropriate course of action was to either place the clams on a relay lot or return the clams back into the area they were originally harvested from. Mr. Johnson stated that it was impossible to get a hold of someone at the BMWM. Mr. Johnson suggested that a coordinated response to these situations was needed. Mr. Joseph stated the water classifications for shellfish growing waters was the responsibility of the BMWM, while the embargoing of product was the responsibility of the NJDHHS. Mr. Joseph stated that he would talk to all three agencies.

Mr. Joseph Rizzo suggested that there should be a meeting with the three agencies involved with this issue. Mr. Rizzo's lawyers suggested that the Council should investigate. He said that a letter should be sent to Mr. Connell inquiring on when the BMWM was notified and when they notified the Bureau of Law Enforcement. He also stated the letter should inquire on the water sample results. Mr. Rizzo then suggested that the Council draft a letter to the Bureau of Law Enforcement (Capt. Chicketano) to find out when they were notified, the number of shellfishermen involved and approximately how many clams were harvested. The third letter would go to the NJDHHS (Ms. Cali Alexander) requesting her report of the incident. He would then like to have a meeting with all the information and discuss the issue to resolve the problem in the future. Mr. Maxwell stated that this was the third closure in that region this year.

Mr. Rizzo stated that he had talked to Ms. Alexander and inquired on a mechanism for restitution for the shellfishermen affected by the closures. He stated that Ms. Alexander stated that there was no mechanism and that the shellfishermen would have to take the loss. Ms. Alexander suggested that the shellfishermen would have to file suit against the sewage treatment plant. Mr. Rizzo had requested that Ms. Alexander send him a fax for the sewerage entities address; however, he never received any information. He stated that he had also contacted NJDEP and was not given any information. Mr. Rizzo suggested that the Council also send a letter to the Attorney Generals Office to inquire if an Enforcement officer could walk on private property and just take clams out of his cooler without a warrant. Mr. Joseph stated that he would discuss this issue with Mr. Connell and would get back to Mr. Rizzo. Mr. Steve Baugh stated that he regularly clammed in the Navesink River and had seen numerous closures in the past, but the past incident was the strangest he had encountered. He stated that typically when there was a closure, they were either notified by a posting at the ramp or by someone personally informing them. During this closure, the shellfishermen harvested their product and sold it without ever knowing the waters had been closed. He said the next day, someone finally showed up as they were launching their boats to notify them of the closure. Mr. Baugh stated that his clams sat at the dealer for 10 days before they were destroyed. He questioned how this incident was different than those in the past. He said that Enforcement told him that they did not have the manpower to inform the shellfishermen. He said that they could have at least contacted the Rumson Police to let them know since they come by the ramp all the time. Mr. Joseph reiterated that he would contact the three agencies and try to find out their position and then contact Mr. Maxwell. Mr. Rizzo inquired if Mr. Joseph could get him the address of the sewage plant so he could also pursue restitution on his own. Further discussion on the matter ensued. Mr. Maxwell and Mr. Johnson reiterated the need for a coordinated response. Further discussion on the matter ensued.

Delaware Bay Aquaculture Development Zones

Messrs Maxwell and Johnson attended the last Delaware Bay Section of the New Jersey Shellfisheries Council meeting and met with some the council members to discuss the Aquaculture Development Zone (ADZ) plan from the Delaware Bay Council's Leasing Committee. He said that the Atlantic Coast Section of the NJ Shellfisheries Council would endorse the Delaware Bay Council's ADZ plan. The Atlantic Coast Council's Leasing Committee would use the Delaware Bay Council's version as a template for developing an ADZ on the Atlantic Coast. Mr. Joseph stated that originally, both sections of the Council's leasing committees were going to combine their committee reports into one document. Mr. Maxwell stated that due to logistics and the fact that there were different issues being addressed, each section of the Council would create their own report.

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

6. Date, time and place of next meeting:

DATE: June 15, 2009  
TIME: 7:00 PM  
LOCATION: Nacote Creek Law Enforcement Office  
360 N. Rt. 9  
Port Republic, NJ 08241