

NEW JERSEY SHELLFISHERIES COUNCIL		Delaware Bay Section
<i>Meeting Minutes</i>		

Meeting Name	Special Meeting of NJ Shellfisheries Council - Delaware Bay Section		
Meeting Date	Thursday, July 1, 2010		
Meeting Time	6:00 PM		
Venue	Haskin Shellfish Research Laboratory	City	Bivalve, NJ
Attendees	General Public		

Council	State Representatives	Haskin Research Lab
Scott Bailey, Cumberland Co.	James Joseph, DFW Shellfisheries	David Bushek, Research Professor
Warren Hollinger, Cumberland Co	Russell Babb, DFW Shellfisheries	
Steven Fleetwood, Cumberland Co.	Craig Tomlin, DFW Shellfisheries	
Richard Malinowski, Salem Co.		
Cape May / Salem Co. – Vacant		

Compliance with the Sunshine Law	Notice of the July 6, 2010 meeting was posted 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 on June 15, 2010.	June 15, 2010 Revised – June 30, 2010
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New Business		Bureau Staff
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1. **Special Meeting Only - Interim Oyster License Consolidation Option and Administrative Consent Order**

Mr. Joseph stated that this was a special meeting and that only the license consolidation proposal would be discussed. No general business would be handled during his meeting. He described the purpose of the meeting and stated that Mr. Babb would be providing an overview of a license consolidation proposal. He added that Mr. Babb had been working with the Assistant Commissioner's office and Department legal staff on this proposal and that this interim proposal would allow for consolidation to occur in an expedited manner while the rule proposal followed the legal procedures in accordance with the Administrative Procedures Act, which can be a lengthy process.

Mr. Babb stated that he had been having discussions regarding the development of this option with the Delaware Bay Section of the New Jersey Shell Fisheries Council (hereinafter Council) over the last few weeks. He stated that the Department and Council felt it would be best to have a special meeting to hear what the option was and how it would work. He stated that the Department was presenting this as an interim opportunity to the Council and industry. He stated that

the concept of consolidating oyster licenses had been discussed for better than 20 years. He added that Council appointed a committee a few years ago to develop a framework of recommendations for future amendments to the oyster rules at N.J.A.C. 7:25A. The Division worked with the Council and oyster industry representatives on the committee to undertake revisions to the Oyster Rules. This is an ongoing process which will culminate in the formal proposal and adoption of amendments to the Oyster Rules in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-4 et seq. Until that process is complete, the Council and the Department felt that it was in the interest of the industry and the current oyster management system to implement an interim administrative change prior to a final rule adoption in order to allow for a specific modification to oyster licenses at this time. He added that the interim administrative change is consistent with the intent of N.J.A.C. 7:25A-1.4 and involves the Department's consent to permit oyster harvesters to consolidate licenses and annual tag allotments by amending a harvester's current oyster dredge vessel license(s) through an ACO until such time as the current rules are amended. A harvester electing to consolidate will be authorized through an ACO to combine up to three (3) licenses and tag allotments per one (1) oyster dredge vessel legally documented as being owned by one "person" under the certain terms and conditions (see attachment for specific details).

Mr. Babb felt that, given the significance of the proposed changes, it would make sense to go section by section through the Administrative Consent Order (hereinafter ACO) so that the Council and industry members present fully understood the terms and conditions spelled out within the ACO. Mr. Babb read and summarized each section of the ACO as follows:

Mr. Babb stated that the ACO could be established pursuant to the authority vested in the Commissioner of the Department of Environmental Protection (hereinafter NJDEP or the Department) by N.J.S.A. 13:1D-1 et seq., and N.J.S.A. 23:2B-14, N.J.S.A. 50:1-1 et seq., including 50:2-7 through 50:2-12, and 50:3-1 et seq., the authority of which has been duly delegated to the Assistant Commissioner of Natural and Historic Resources and her assignees pursuant to N.J.S.A.13:1B-4.

Mr. Babb specifically noted that a harvester electing to consolidate will be authorized through an ACO to combine up to three (3) licenses and tag allotments per one (1) oyster dredge vessel legally documented as being owned by one "person". For the purposes of this ACO, "person" is defined to include, but not be limited to individuals, corporations, companies, associations, societies including nonprofit organizations, firms, partnerships, joint stock companies and government entities. The main point here is that whatever documentation was used to demonstrate ownership, each document had to have the same exact name. All of the oyster dredge vessels involved in an ACO must be documented as wholly owned by the same person in order to be eligible for consolidation of licenses and allocations. A vessel is wholly owned or under "single ownership," when the oyster dredge vessel can be legally documented as being owned by one person. For example, John Doe, Fisheries LLC would not be the same as John Doe.

An ACO may only consolidate up to three existing licenses onto a single designated harvest vessel and a person may enter into multiple ACOs. For example, if one "person" owned nine vessels, that person could enter into three separate ACOs. A person owning more than one licensed oyster dredge vessel would be authorized to transfer all or part of his or her assigned annual tag allotment (up to three licenses) to a single designated harvest vessel once the proper and complete documentation was submitted to the Department and the requirements of the ACO were satisfied. He explained that this "all or part of" language simply provided for a re-designation to occur should a vessel break down or become inoperable. It was not the Department's intention to allow for partial consolidations.

He stated that for this program to be manageable for the office, license holders had to operate on one annual tag allotment at a time until the current allotment was "effectively exhausted". He described effectively exhausted as meaning that if a designated harvest vessel had only a nominal amount of tags left, that boat could move on to its next quota prior to completing that initial quota. Tags for each allotment shall be used sequentially as issued for the specific oyster harvest license. This was an important point, because if the consolidation program were deemed unmanageable, it would have to be terminated.

Mr. Babb explained that an applicant would have fourteen (14) calendar days (of execution of an ACO) to submit the required documentation and to satisfy the conditions set forth within an ACO, such as the following, which is identified on an "Oyster Dredge Vessel License Consolidation Form". The form identifies the license number, boat name, gross registered tonnage, USCG Documentation number or NJ Registration number, where applicable, and an accounting of the oyster dredge vessel(s) that will be taken out of service and the associated license(s) that will be combined with the designated harvest vessel. Mr. Babb stated that documentation of ownership and vessel tonnage (to prove the vessels involved in the consolidation were under single ownership) are established in accordance with the existing regulations and will continue to include: a valid Certificate of Title, or a current New Jersey Motor Vehicle Registration; or if the vessel is eligible for a United States Coast Guard Certificate of Documentation, a current copy of the Certificate; or, if applicable, if a license is

currently in a Division-approved one or two year replacement period that was issued pursuant to current regulations, ownership and gross registered tonnage (GRT) for a consolidated license will be determined based on the documentation on file at the Delaware Bay Office when the replacement period was originally approved.

Mr. Babb reminded those in attendance that a designated harvest vessel could only be re-designated one (1) time during the term of the license. In addition, he noted that the Division would not approve a transfer of ownership of any designated harvest vessel that currently holds more than one license. In order to change ownership of a license that has been consolidated, the license must be placed onto a vessel of equal or less gross tonnage than the vessel to which the license was issued prior to consolidation. This vessel must also be documented as being owned by the current license holder prior to transfer of ownership. This was, again, in accordance with the recommendations of the Council's consolidation committee.

Mr. Babb stated that, as of now, the consolidation of licenses authorized through the ACO process is effective only for a period of twenty-four (24) months from the date of issuance of the consolidated licenses and that appropriate license fees for all consolidated licenses will still be due and payable as required pursuant to N.J.S.A. 50:3-2, despite there being consolidated. He explained that the Department reserved the right to unilaterally terminate the ACO program in the event a person violated the terms of the ACO or the Oysters Rules. In the event the Department terminated an ACO, the Department would notify the person in writing of the violations and its obligations, and the person would have reasonable time under the circumstances as determined by the Department, but not to exceed thirty (30) calendar days, to perform said obligations and have the ACO reinstated.

Mr. Babb went on to remind the Council that at the time of license application or renewal, the Oyster Rules require that all vessel owners file a notarized Statement of Intent with the Department indicating that oyster dredge vessels licensed pursuant to N.J.S.A. 50:3-1 were mechanically capable of dredging oysters during the previous calendar year. He stated that initially this could have been problematic for the ACO program. For example, if a licensed vessel was consolidated and was no longer in the possession of the harvester or had not been operable for the previous calendar year, the vessel owner would be unable to file the required statement of intent indicating that the vessel had been mechanically capable of dredging within the previous calendar year. Thankfully, there was some flexibility to the authority granted at N.J.A.C. 7:25A-1.4, where licenses consolidated under an approved ACO may be exempted from meeting this requirement by the Commissioner, upon the recommendation of the Council and its finding that exigent circumstances warranted such recommendation. In practice, Mr. Babb stated that much like other housekeeping items that are taken care of each winter, the Council might have to make such a recommendation to the Commissioner on behalf of holders of consolidated licenses (i.e., that exigent circumstances exist).

Mr. Babb spent a considerable amount of time when Section 20 of the ACO, which states, "Upon execution of this ACO, [Oystermen or Company] hereby acknowledge their understanding of its terms and provisions, including the condition that a consolidated license obtained through the ACO process is only valid for twenty-four months or two years. [Oystermen or Company] also understand(s) that when the Oyster Rules (N.J.A.C. 7:25A) are amended to allow for license consolidation, the license consolidation program under those new rules could be different from the process allowed through this ACO. Therefore, any actions taken by [Oystermen or Company] to consolidate licenses under this ACO, such as decommissioning or retiring vessels, are undertaken with the knowledge of potential changes in future rulemaking. Finally, [Oystermen or Company] agree not to contest the authority or jurisdiction of the Department to issue this ACO and also agree not to contest the terms of this ACO in any legal action to enforce its provisions." To summarize this, Mr. Babb stated the take-home message was that the entire ACO process was only an interim provision and that proposed rules – even if they were written to mirror the ACO – could be change. It is possible that any adopted rule in its final form could be different, possibly significantly so, when compared to the terms in the ACO. Therefore, it was reiterated that harvesters need to understand that actions such as decommissioning or retiring vessels, are undertaken with the knowledge of potential changes in future rulemaking. Mr. Babb continued to summarize the ACO by going over the compliance sections. For additional details, please see the attached ACO.

Mr. Riggan stated that he would like to thank the Council, the Department and the local staff for their efforts in making this happen in an expedited manner. He added that he is hopeful that the Department can adopt the rules prior to the 24-month expiration of the ACO program. Mr. Fleetwood stated that he was also appreciative and that this was much needed by the industry and will reduce costs and make for a more productive, efficient harvest fleet.

A section of the tape near the end was inaudible. In closing, Mr. Babb stated that it was important that the Council, on behalf of the industry, was 100 percent on board with this proposed process. He added that he did not believe that the

Department would move forward with this program without the full consent and endorsement of the Council. A few questions were raised and **the Council made a motion to endorse the ACO program as proposed. All were in favor.**

Mr. Babb stated that the Bureau would send a letter to license holders summarizing the main points of this meeting and that the Council had endorsed the ACO program. He added that he believed that the office would begin accepting applications on July 12, 2010.

Adjourn	@ ~8:00 PM	
The next meeting of the Council will be tentatively held on:	Tuesday, Aug 3, 2010	In the library of the Haskin Shellfish Laboratory