

**Aquaculture Advisory Council  
January 23, 2015  
Atlantic County RCE Office  
Meeting Minutes**

**Members Present:** Secretary Douglas Fisher, Ms. Nancy Belonzi (Lt. Governor Guadagno), Ms. Cali Alexander (Commissioner Mary O’Dowd), Ms. Lisa Calvo (HSRL), Mr. Gef Flimlin, Mr. Mike Deluca (Rutgers, SEBS), Mr. Ned Gaine, Mr. Steve Carnahan, Mr. George Saridakis, Mr. John Maxwell, Mr. Paul Waterman, Ms. Monique Purcell.

**Members Absent:** Mr. Dave Chanda (Commissioner Bob Martin)

**Public in Attendance:** Mr. Dale Parsons, Mr. Bill Avery, Mr. Russ Babb, Mr. Craig Tomlin, Mr. Bill Riggin, Mr. Barney Hollinger, Mr. Eric Schradling, Ms. Wendy Walsh, Mr. Bruce Friedman, Mr. Neil Magnus, Ms. Cheryl Clarke, Ms. Amanda Wenczel, Mr. Gustavo Calvo, Mr. Jonathan Atwood, Ms. Betsy Haskin, Mr. Brian Harman, Mr. Matthew Gregg, Mr. Brandon Muffley, Ms. Tracy Fay, Mr. Bob Schuster, Ms. Jenny Tomko, Ms. Stephanie Cash, Mr. Richard Cash, Ms. Debby Watkins, Mr. Jeff Normant, Ms. Colleen Keller, Ms. Jessica Cobb.

Secretary Fisher called the meeting to order. Ms. Purcell performed a roll call. There was a quorum present.

Secretary Fisher then introduced Amanda Wenczel as the new Aquacultural Development Specialist for the Department, who is taking the place of Joe Myers. He noted that the Department is delighted to have her and that she will be starting her new position next week. He then asked Amanda to give a little background of her work history, which she provided.

Secretary Fisher then introduced the first agenda item – the Federal listing of the Red Knot. He introduced Eric Schradling from the US Fish & Wildlife Service and then noted his prior involvement with Red Knots when he was a legislator and as Secretary of Agriculture. The Secretary then discussed some specific behaviors and qualities of the Red Knot and the uniqueness of the aquaculture industry - hoping that we could provide a balance for both when addressing the parameters for protection needed due to the listing.

Steve Carnahan arrived at this time.

Mr. Schradling provided a brief description of the responsibilities of his office and the species under his purview including migratory birds and fish including those listed under the federal Endangered Species Act. He also noted the four primary areas that his office is involved in – private lands work, dam removal, grass plantings, riparian corridor work and habitat restoration. He then introduced Wendy Walsh Senior Wildlife Biologist. Ms. Walsh began by noting that New Jersey and Delaware share the tremendous phenomenon of the horseshoe crab spawning season that attracts a globally significant concentration of migratory shore birds that feed on the eggs to gain weight for their migration to the Arctic to raise their chicks. They then turn around and migrate back to South America. The spring stop-over in Delaware Bay is globally recognized. The F&WS was petitioned in the mid- 2000s to list one of the shorebirds- the Red

Knot due to the tremendous decline in numbers. Funding was received and the rule proposing the federal listing of the bird as threatened or endangered occurred in 2013. Over 15,000 public comments were received on the proposal. The rule went into effect this month. The listing of a threatened species prompts the need for regulations that prohibit a “take” which can include shooting or injuring the bird or a more subtle “disturbance”, such as habitat modification. It also requires any federal agency that is about to take a discretionary action to undertake a Section 7 review, that includes an informal or formal consultation process. In the case of aquaculture, the agency is the Army Corps of Engineers (General Permit #48). Currently the process is informal. The USF&WS started meeting with the Bureau of Shellfisheries and the growers in November 2014 to get a better understanding of the industry and to share information. USF&WS’s primary concern is “disturbance” to the Red Knot due to the intensive management activities required in oyster aquaculture operations. A working document of recommended practices was distributed to the growers in December 2014. The three permits that are pending with the Army Corps are being prioritized.

Secretary Fisher provided a conceptual overview of the situation. The core timeframe for Red Knot migration is May with the possibility of including the first two week of June. The three pending permits would be impacted by the recommendations this season while other existing operations most likely would not. Existing operations would continue under their existing permitting requirements. Monitoring will also begin in the spring to determine aquaculture activity impacts on the birds.

The Secretary then opened the floor for questions.

Ms. Walsh responded to questions about mapping and other specifics about the proposed monitoring program scheduled for the spring. She anticipated the delineation of only medium and high use areas due to the sheer number of birds that utilize the stop over area in NJ. She then provided a timeline as to how the informal consultation process will unfold. Ms. Walsh noted that the “recommendation” document was released in December 2014, mapping will be made available by early February 2015, as well as responses to questions from industry that were received via email. The previously scheduled site visit with Betsy Haskin will be rescheduled and discussions regarding the monitoring program between the state, F&W, Rutgers and other parties will begin in mid-February. She explained that this will be a learning process and there will be a need to implement adaptive management techniques as information is gathered through the monitoring program. In response to a comment from Mr. Calvo about the classification of moderate and high use areas, Ms. Walsh explained that an expert panel has been convened and had several webinars regarding the mapping methodology being developed, which is based upon criteria that is most biologically significant to Red Knots. The panel included staff from Rutgers. People with shore bird and aquaculture expertise will be included on the monitoring team. Mike Deluca expanded on how Rutgers staff biologists and aquaculture specialists were involved in the mapping methodology and have been discussing possible funding opportunities for the monitoring program. Mr. Ned Gaine asked whether the State has provided any documentation on the impact of aquaculture gear on the Red Knot. Ms. Walsh noted that the direct impacts would most likely be tending/harvesting and industry expansion. Mr. Gaine questioned if there was data available from the monitoring work that has already been done regarding potential impacts of aquaculture activities in the ADZs over the past several years. Ms. Walsh stated that some

monitoring information is available from a study that was conducted. Dave Jenkins stated that the monitoring program is not ongoing, but will be reinitiated. He noted that the location of the ADZ was partially influenced by previous monitoring data prior to the activities being conducted. There was agreement regarding the 4-hour timeframe at low tide and keeping ATVs at certain distances. However, there were a lot of non-observations in the data. Mr. Jenkins clarified after questioning that the activity at the ADZ was something that Endangered Non-Game Species Program (ENSP) could live with, prior to the federal listing of the Red Knot. Mr. Gaine asked for clarification regarding a possible second step in the federal listing process – critical habitat listing. Ms. Walsh explained that areas of the Delaware Bay could be identified as critical habitat. If so, it would be the first critical habitat determination that she has been involved with since her tenure with the Pleasantville USF&W field office. In practice, critical habitat determination puts one more requirement on federal agencies. She doesn't believe that it will have much impact on what USF&W will recommend to the industry, since disturbance is not connected to habitat conditions. The prohibition on "take" already does include habitat modification that would be severe enough to interfere with foraging.

Barney Hollinger asked some specific questions about the modifications to the "recommendations" document that addressed some of the grower concerns. He also questioned the State's required role of monitoring the ADZs when they were established, according to the signed agreement. Mr. Jenkins clarified that monitoring (observations) did take place but there wasn't a designed study to assess the impacts of aquaculture activities. Mr. Calvo commented on the perspective, context and scale of the oyster growing activities in the area, which is very small in comparison to the shoreline available. In response to some specific comments about the current Red Knot population, Ms. Walsh noted that the ADZ is located in a lower concentration area. Higher concentrations of the birds are further north of the ADZ. Mr. Jeff Normant asked about potential impacts of the Red Knot listing on the Atlantic coast. Ms. Walsh said that Red Knots move through the Atlantic side in the fall and there could be impacts but she isn't certain at this time. Betsy Haskin mentioned her invitation for a site visit that was cancelled due to weather and noted the value of a site visit to actually visualize the scale of the aquaculture activities. She said that there are alleyways for horseshoe crabs and that she never saw a horseshoe crab get hung up on a rack in all her years of farming. She also stated that some of the "recommendations" made by USF&W seem to be unworkable, like rack height. She suggested an idea of a specific "trigger" regarding Red Knot arrival - where growers would be notified that the birds have arrived and activities would be restricted, instead of having a six and a half week period of restricting grower activities, whether the birds were there or not. Ms. Walsh agreed about the importance of a site visit and stated that some of the recommendations have been changed based on grower input and that there will be continued back and forth exchanging information once the maps are released. Ms. Haskin confirmed that the maps are subject to change based upon the monitoring data. Ms. Walsh stated that ESA requires the use of best available data, which changes over time.

Mr. Gaine asked if there is a possibility that the industry as a whole could go through a permitting process and considered low impact by adopting BMPs, similar to an informal consultation process. Ms. Walsh explained that the State could decide to consolidate their operations and be the agent like they did with the ADZ and sublet their leases out. The formal consultation is much more efficient to do as one process or several larger ones. Longer term

though, it could be possible to have one process for the entire industry. She also mentioned the Habitat Conservation Plan (HCP) that is typically utilized if you do not have a federal nexus. It can be more flexible but it can also be more drawn out. There are not many in NJ. The Army Corp must agree to a formal consultation process as the primary permitting agency or the State may step up as the lead under a HCP. It depends upon who is the lead. Dave Jenkins added that the HCP process is a higher bar but it offers a much greater degree of assurance. Typically for the duration of the permit which is 10 years.

Steve Carnahan asked about the Red Knot population. Ms. Walsh noted that there are about 10 – 15,000 in South America.

Bill Avery asked about the number of fly-ways and whether they split off and change course. Ms. Walsh noted the Rocky Mountains as the central fly-way. Even though there are different sub species of Red Knots, the bird was listed as one species.

The Secretary clarified that we are at the beginning of the process – collecting data and developing maps. He asked “what was the most drastic thing that could happen to the growers this season”. Ms. Walsh and Mr. Schradling assured the growers that operations would not be prevented from operating and they will not be coming in at the eleventh hour with additional conditions. Most likely, operations will continue under existing permitting conditions for the 2015 season and pending applications with the ACOE will be prioritized. The Secretary noted that this is a big relief!

There will most likely be conditions in the 2016 permit that address Red Knot concerns which will be based on the mapping and monitoring data gathered this year. The Secretary complimented the presentation and comprehensive responses from the USF&W staff and noted that they really clarified where things were heading for the growers. The Secretary asked Ms. Walsh if they met with any of the conservation groups to discuss the ESA listing. Ms. Walsh noted again the panel of experts that will be involved in the monitoring program that were briefed on the process and the need to gather the best data possible. Mr. Jenkins noted the advisory committee of the ENSP. Most conservation organizations in NJ provided formal comments on the ESA listing proposal, which are available on Documents.gov website.

Barney Hollinger mentioned the article that was in the Atlantic City Press regarding Red Knots and aquaculture. Some of the comments made in the article were very negative. Steve Carnahan noted other issues including climate change, the local power plant and other world-wide issues that may be impacting the Red Knot as well and those concerns need to be included in the overall evaluation. Ms. Walsh agreed about the multi-faceted implications of climate change on the Red Knot population. Betsey Haskin asked a clarifying question on the “take” issue. Ms. Walsh explained the type of “take” at the individual bird level versus total population and the need for a flexible approach. The Secretary thanked USF&W staff again and emphasized the need to balance the needs of the industry and the protection of the Red Knot.

Bruce Friedman addressed the next agenda item – the revisions to the DEP Shellfish regulations. He noted the need to consult with the Council prior to amending the rules. The rule revisions are necessary due to the FDA audit in October and for compliance with the National Shellfish

Sanitation Program (NSSP). He outlined the responsibilities of the Bureau of Marine Water Monitoring. Due to the expansion of the aquaculture industry and some enforcement issues, the FDA is taking a closer look at the industry. The DEP was cited for non-conformance with FDA due to the lack of appropriate statutes and regulations, failure to issue specific aquaculture permits as required in the NSSP Model Ordinance, failure to review and approve operational plans at aquaculture facilities, failure to inspect facilities every 6 months, no definition of “seed” or “sub market size” and assurance of proper enforcement. The DEP was required to put together an Action Plan to address the non-conformance issues. If the issues are not addressed the DEP could be subject to sanctions, which could include the delisting of certified shellfish dealers. Although the rules may not ultimately be housed within the Shellfish Growing regulations (N.J.A.C. 7:12), they were the closest to rulemaking so it made sense for the issues to be addressed in these regulations to expedite the process. Efforts were coordinated with the ongoing work of the Shellfish Aquaculture Working Group so some of the major issues identified by the growers could be addressed during the rule making process – including the definition of husbandry and streamlining the permitting process. Shellfish hatcheries/nurseries in condemned waters must be legitimized as required by Title 58. Shellfish restoration or gardening has been stalled, but a few entities have been permitted under a scientific collection permit. They also want to allow for toxics monitoring in the regulations. A stakeholder meeting was held yesterday at Stockton State College to review the general scope of the rule changes. The DEP met with many entities individually to vet the rule amendments, including several AAC members. The DEP would like to get the changes in place before the next FDA audit in October 2015. The DEP is looking to have the rule amendments proposed in April and adopted by September 2015. Bill Avery asked if any of the hatcheries were involved with reviewing the proposed amendments. Mr. Friedman said the Rutgers has been involved, but there is no entity to contact regarding the Atlantic City hatcheries. Mr. Avery stated that after a quick review of the rule amendments, he believes that there is a lot of “double-dipping” in terms of required tags. It was decided that the best way to communicate comments back to the DEP would be through Amanda Wenzel once she is on board, instead of trying to set up a subcommittee, considering the short timeframe.

Ned Gaine added that he attended several meetings where the proposed amendments were discussed and the reoccurring theme seems to be the operational plan and the AFL. They need to be coordinated and not redundant. Mr. Friedman agreed with that and believes that will be the goal down the road. The urgency right now is to address the non-conformance with FDA.

Under old business Gef Flimlin discussed the East Coast Shellfish Growers BMP manual and the existing AMP. After the review of both documents it was agreed that the shellfish and finfish documents should be separate. Remaining issues include the status of the AFL, aquatic plants, and confusion regarding aquatic organism import. A few sections continue to be under review. The finfish section was reviewed by Lisa Barno from DEP Freshwater Fisheries. Mr. Flimlin also mentioned the Northeastern Aquaculture Management Guide. Mr. Flimlin noted that there are parallels between the AMP and the AFL. Monique Purcell explained that we need to sit down and merge the documents into one that makes the most sense. Discussion continued about the differences between the Aquaculture AMP, BMPs and Right-to-Farm protections. Mr. Gaine noted the importance of RTF protections for aquaculture. Next steps would be identified once the new Specialist was on board.

George Saridakis noted that we inadvertently skipped over the approval of the meeting minutes from September 2014. Steve Carnahan made the motion and the minutes were approved.

Finally, Russ Babb discussed the leasing policy of the leasing committees of the AAC and both shellfisheries councils. Shellfish leasing is fairly streamlined. The Atlantic Coast and Delaware Bay Councils will be reinvigorating their leasing committees and bring the issues back to their full Councils and the AAC leasing committee. Some of the issues to be review include leasing fees, lease allocations and guidance documents.

During public comments Dale Parsons questioned the proposed size of oyster seed and the FDA audit process. Mr. Friedman clarified why the seed size was proposed based upon the required minimum of 6 months of grow out prior to harvest in prohibited waters. Bruce Friedman and Cali Alexander provided examples of FDA audit protocol. Mr. Parson stated that the rule baseline can be dangerous as it limits the industry. Mr. Friedman clarified that the seed size pertains to prohibited waters only. Ms. Alexander noted that typically both the DOH & DEP programs are in conformance with FDA. Mr. Avery asked that the inter-agency representatives be careful not to overlap paperwork and requirements. Gef Flimlin noted the progress that has been made over the last two years and thanked the Secretary for his participation on the AAC.

Secretary Fisher adjourned the meeting.