

**Aquaculture Advisory Council  
August 05, 2016  
Jacques Cousteau Coastal Center  
JCNERR, Tuckerton, Ocean County  
Meeting Minutes**

**Members Present:** Mr. Dave Chanda (Commissioner Bob Martin), Mr. Loel Muetter (Commissioner Cathleen D. Bennett), Ms. Lisa Calvo (Mr. Gef Flimlin), Mr. Mike DeLuca (Dr. Robert Goodman), Mr. Ned Gainé, Mr. Steve Carnahan, Mr. John Maxwell, Ms. Amanda Wenczel

**Members Absent:** Secretary Douglas Fisher, Ms. Nancy Belonzi (Lt. Gov. Kim Guadagno), Dr. Dave Bushek, Mr. George Saridakis, Mr. Paul Waterman, Mr. Richard Herb, Mr. Dave Burke

**Public in Attendance:** Mr. Barney Hollinger (Shellfish Council), Mr. Bill Riggin, Mr. Craig Tomlin (NJDEP), Mr. Brian Harman, Mr. James W. Allen III, Mr. Pete Rowe, Mr. Tony Ni, Mr. Tracy Fay (NJDEP), Mr. Bruce Friedman (NJDEP), Ms. Jenny Tomko (NJDEP), Mr. Bob Schuster (NJDEP), Ms. Virginia Wheatley (NJDOH).

Mr. Dave Chanda served as meeting chair; Secretary Fisher was unable to attend the meeting.

Mr. Chanda called the meeting to order. Ms. Wenczel performed roll call. There was a quorum present.

Mr. Chanda called for a motion to approve April 08, 2016 meeting minutes. Approval of the minutes was motioned by Mr. Steve Carnahan, seconded by Mr. Loel Muetter; all voted in favor and the motion passed.

Ms. Wenczel noted that the NJDEP, Bureau of Marine Water Monitoring (BMWM) rules which contain the Shellfish Aquaculture permit are still pending adoption; they are currently in the Governor's Office for review. Mr. Bruce Friedman with Division of Water Monitoring provided additional details. The rules went to the Governor's Office on July 20<sup>th</sup> with the target filing [with Office of Administrative Law] of August 8<sup>th</sup> for publication in NJ register on September 6<sup>th</sup>. If those dates are not met, the next dates are August 25<sup>th</sup> with a publication date of September 19<sup>th</sup>. The rules are effective on date of publication. There is a set timeframe after adoption within which applications for permits can be supplied to the Bureau. There are currently 80 registered aquaculture operations who will receive notice of need to apply for permits once the rules are adopted. Mr. Chanda expressed that typically the Governor's Office is quick with reviewing rules, so he does not expect a significant delay at this stage.

Mr. Hollinger asked if changes made to the rules could be provided to growers/public. Mr. Friedman noted that since the rules are not approved or official, those changes cannot yet be discussed. All changes will be noted in the final rule, adopted through the NJ Register.

Ms. Wenczel provided an update on the Office of Aquaculture Coordination, Aquatic Farmer License rule re-adoption. The rules expire November 25, 2016. Based on several items, the Office and NJDA have determined it is best to re-adopt the rules without amendments at this time. The full amendment process, as desired, would include a review and feedback from the AAC and this cannot be successfully achieved in the timeframe between now and the expiration, as well as allow for the rules to consider other items currently pending (e.g. rules and legislation).

Mr. Gaine questioned what was holding up amending the rules as the Aquatic Farmer License is in need of changes. Ms. Wenczel noted that one of the biggest items is bill S317/A794, which requires rule-making and weighs heavily on the Office of Aquaculture Coordination. The requirements in the bill are similar to that of the Aquatic Farmer License. The Office and NJDA are concerned that going through rule-making now for the Aquatic Farmer License and then going through it again, should the bill become law, would be a lengthy duplicate process. Mr. Gaine is concerned that the Aquatic Farmer License re-adoption is not being discussed until the very last minute, very short notice. This is typical that everything seems to keep waiting until the last minute (e.g. PBO, BMW rules). To simply re-adopt without amendments is an unwise move. Mr. Chanda noted that while he cannot speak for Secretary Fisher, if this seems to be the most expedient process, he is sure the Secretary has given this adequate consideration.

Mr. Gaine stated that this should have been considered earlier. Ms. Lisa Calvo seconded the sentiment of Mr. Gaine in that the discussion needs to begin now regarding the Aquatic Farmer License. These bills may not even pass, and the revisions are just the beginning of what the bill is requesting. It could be advancement and discussion before the deadline.

Mr. John Maxwell questioned if the rule expiration could be moved back or if the discussion could be tabled until the new year when the bills are likely resolved. He also agreed with Ned that this seems to always take a secondary priority to whatever “fire” becomes more important and needs to be a high priority. Ms. Wenczel clarified that bill expiration cannot be moved but re-adoption without amendments is serving that role. Mr. Friedman added that it is not uncommon to re-adoption with changes when near expiration even though you are working on changes to it. It’s a matter of getting the people that prioritize rule-making to see this as a priority, specifically within NJDEP, there is a rule-making priority list, but cannot speak to process within NJDA. To make the changes to this rule, it would have had to have started 18 months to 2 years ago to make this expiration date. It’s a lengthy process with drafting the rule language, internal review, public comments, revisions, final adoption.

Mr. Gaine expressed that part of his concern is that this is basically going to be 2 years of the rules still being the same [based on the process Mr. Friedman explained]. It is also the only aquaculture-specific rule for the industry. It needs to have been worked on before now. Mr. Chanda suggested that this discussion be expressed to NJDA to receive further feedback from Secretary Fisher.

Discussion on S317/A794 began with Mr. Mike DeLuca describing testimony he and Ms. Calvo provided regarding the two bills (S317 and S316). Mr. DeLuca thought this was a good faith effort to reduce bureaucracy and increase visibility to the shellfish aquaculture industry and

permitting issues growers currently face. Slight difference between Senate and Assembly bills- Senate uses the word “coordinated” and Assembly bill used “joint” permit review. The idea was to foster closer coordination in review of permit applications. Ms. Calvo noted that support for the bill was also provided by Garden State Seafood and the Farm Bureau, with opposition from Environmental NGOS (Audubon, American Littoral Society, Conserve Wildlife, Sierra Club). The changes to the bill are a result of the NGO efforts, and “coordinated” is what we have now. The use of joint was to require a closer review process, but perhaps it would all be in the interpretation, so the wording change may not be as critical as stated today.

Mr. Gaine noted that the first paragraph of the bill is almost identical to sections of the current Aquaculture Development Act. Unclear how the bill will change any items and how the bill will change rule-making as was expressed previously. The only difference is mentioning the Office of Aquaculture Coordination versus the Secretary of Agriculture. Mr. Chanda noted that change is critical because it places the priority of rule-making onto the head of the Department and not an Office which was likely not given many resources to act on your behalf. This is an important document in that it elevates rule-making to a priority.

Mr. Maxwell questioned what would happen if the bill is passed; would funding be associated. Mr. Chanda expressed that often mandates similar to this, from State and Federal level, are passed onto agencies without the resources necessary to successfully enact the mandate. Mr. Maxwell furthered his question, stating that he knows plenty of folks in NJDEP are already maxed out with workload, so how would this all be realistic or even feasible within 180 days. Mr. Chanda stated that the Council and the Industry can act on this matter, but State employees cannot go to the Legislature to request additional funding or resources.

Mr. Gaine further stated that aquaculture needs to have its own packet of rules, not a set of rules to navigate through, but its own set of rules just for aquaculture. This still places us in the same place we are now.

Mr. Maxwell posed to the Council, should a letter to the appropriate Senators be made to request funding. Mr. Chanda stated that would not be a detriment in requesting staffing and funding specifically for this need. Mr. Maxwell made a motion to write a letter to sponsors of S317, Senator Van Drew and Senator Connors, copy Secretary Fisher and Commissioner Martin, and to also send letter to Assembly bill sponsors; seconded by Mr. Gaine. Cc'd to appropriate parties- this was deferred to Secretary Fisher. All in Favor, motion was approved.

Before completion of discussion on S317, Ms. Wenczel noted to the Council that from NJDA perspective the concerns with the bill stem from the requirement for rule-making related to “any” aquaculture. This means the bill is not just for shellfish aquaculture, and so the full permitting process for shellfish aquaculture, finfish aquaculture, and the culture of aquatic plants would have to be outlined in the rules and coordinated with all State and Federal partner agencies within 180 days. Since most of the responsibility is placed into NJDA in the bill, this task will mainly reside with NJDA, and the timeframe allocated for rule-making for any type of aquaculture within the State of NJ is daunting given current resources.

Moving onto S316, Mr. Gaine expressed full support for this bill because it moves the responsibility for working with the US Army Corps of Engineers (USACE) from each individual grower onto the State. Mr. Craig Tomlin (NJDEP) commented that he spoke with USACE reps in Baltimore and that they are moving away from this sort of joint permitting process due to endangered species. The NJ permitting staff within USACE are unclear as to how it would work. Ms. Calvo noted that this type of process is working in Virginia. Mr. Gaine also noted that this has no requirements for the USACE to participate. Mr. Loel Muetter clarified the language is simply “seek” the process, not even require the process.

Mr. Maxwell questioned which of the bills (S317 versus S316) will take precedence. Mr. DeLuca responded that this is not an either-or; they can both be favorably passed. Ms. Wenczel noted that these bills have been moved through both houses as a pair of bills, moved through committees in tandem.

A non-agenda item was next discussed- the revised Aquatic Farmer License Application for Molluscan Bivalve Shellfish Only. This application is a streamlining of the permitting process by the AFL application serving as the Operational Plan requirements within the pending rule-adoption Commercial Shellfish Aquaculture Permit. To apply for the Commercial Shellfish Aquaculture Permit it will require- 1) the AFL application that serves as the Operational Plan and 2) the BMW application for the permit. Mr. DeLuca noted that comments throughout the rule-making process were directed at redundancy and the burden of additional application requirements on the industry. This is a nice example of listening to those comments and a streamlining to reduce those issues. Ms. Calvo noted it is a much better format than the current AFL application and that it would be a good idea to run this past the USACE to see if this could also serve as their application. The USACE does not have a set application, and so maybe if they need a few more items included, this could serve an additional purpose.

Ms. Calvo questioned the Aquatic Farmer License renewal. Ms. Wenczel noted that the renewal for the AFL is 5 years, but the Commercial Shellfish Permit is on a 1 year renewal. One suggestion is that the application will be used yearly to ensure the Permit Operational Plan is reviewed yearly and the Permit is renewed, but the License may not need to be reissued yearly. It can be used to provide updates to operations as well as obtain yearly production numbers.

Mr. Gaine questioned if the “any” in bill S317 would change the application since this application is for shellfish only, but would the bill require the application go back to including information for any type of aquaculture. Ms. Wenczel noted that while it is unclear at this time exactly what the statute would mean for rule-making and the application, the NJDA is set on moving forward with distinct applications and guidance for shellfish aquaculture versus finfish and plant aquaculture. If the bill is passed, the path as is currently will be continued.

Mr. Gaine questioned if the Aquatic Farmer License would be required if operation on a lease via permission to use/permission to work. After discussion, it was clear that the issue was obtaining insurance and tax issues with the licenses under one business. This situation will be discussed further outside the Council meeting and any pertinent items will be brought back to the Council for review.

Mr. Hollinger asked if the Operational Plan is the plan the yearly inspections will be based on. Mr. Friedman noted that the Operational Plan will be referenced for the inspections to see if the grower is following what they stated they would be doing.

Mr. Chanda opened the discussion on Old Business- Red Knots. Few issues were observed during the 2016 season, and coordinating staff are planning to meet in late August. Mr. Gaine added that based on his calculations, the time restrictions for the Southern Segment lead to a loss of 1.5 hours on either side of the tide, 2 days per weekend for 5 weeks, it comes to 140 work hours, which is ~25 days of work that this industry is behind. A little leeway on either side of the tide is a big difference and to be placed that far behind in the spring can really change a business. The Northern Segment was even more impacted.

Mr. DeLuca added that Rutgers has received a grant to convene a panel of experts to review shorebird, horseshoe crab, Delaware Bay ecology. Another proposal is pending for a broader meeting. The one planned is tentatively being set for some time in late September.

Mr. Tomlin noted that the USACE has released a rule proposal outlining the rules and permit language related to their nationwide permits. Nationwide 48, commercial shellfish aquaculture, language has changed.

Mr. Gaine reiterated comments from last (April) meeting, requesting that the Council be briefed on the State Wildlife Action Plan and how the industry is effecting or impacted by endangered species.

Mr. Chanda updated the Council on the Blue Ribbon Panel on Sustaining America's Fish and Wildlife. At the national level, the capacity issues noted in this meeting, are recognized. The SWAPs are one way to receive funding from the federal USFWS to tackle species issues before they reach the level of threatened and endangered. The Blue Ribbon Panel is a joining of conservation groups and effected industry, significant business players (e.g. Shell Oil, Hess Oil, landowners). Their most significant recommendation is for Congress to appropriate \$1.3B to state Fish and Wildlife agencies to advance the work to conserve species that impact businesses. This would be oil tax money taken from the general fund (not currently set aside for any other user) to protect species of concern. It is a bill in the Senate, but the impacts are broad and unclear right now. Reflecting back onto the SWAP, an appropriation of \$500,000 is just the tip of the iceberg since there are many species that need to be addressed through these plans and management actions. For the Congressional appropriations, it is likely 2-3 years before any action occurs, but to have conservation groups showing a joint effort with oil and gas industry is a strong showing.

Motion to adjourn was approved; meeting adjourned.