

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

Nacote Creek Law Enforcement
Port Republic, NJ
June 16, 2008

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

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 May 2008: \$ 5,458.35
Shellfisheries Law Enforcement Fund: \$ 1,954.00

2. May 19, 2008 Minutes

The minutes of the May 19, 2008 meeting were approved on a motion by Mr. Johnson and a second by Mr. Hughes.

3. Applications for New Grounds – Consideration

<u>APPLICANT</u>	<u>LOT #</u>	<u>SEC.</u>	<u>ACRES</u>	<u>LOCATION</u>	<u>MAP</u>
Mark Onofrio	2547	B	2.00	Scull Bay	27
Richard Went	2515	B	2.00	Scull Bay	27
Lawrence Went	2560	B	2.00	Scull Bay	27

Mr. Normant provided the Council with copies of the applicants lease applications and biological reports. Messrs. Richard Went and Lawrence Went were present at this meeting. Mr. Onofrio was not present at this meeting and must attend the next meeting to fulfill his requirement of attending one of two meetings at which the Council would review his application. Pursuant to the leasing regulations, a decision will be rendered at the next meeting.

4. Applications for New Grounds – Decision

<u>APPLICANT</u>	<u>LOT #</u>	<u>SEC.</u>	<u>ACRES</u>	<u>LOCATION</u>	<u>MAP</u>
Bradley Bowe	203	A	2.00	Corson Sound	1A
John Daffin	1066	A	2.00	Great Sound	5
Eric Parker	1080	A	2.00	Great Sound	5
William Avery	1082	A	2.00	Great Sound	5
Paul Felder	1084	A	2.00	Great Sound	5

All of the above lease applicants were present at the last meeting. The lease applications of Messrs. Bowe, Daffin, Parker, Avery and Felder were approved on a motion by Mr. Johnson and a second by Mr. Hughes.

5. Applications for Transfer

<u>LESSEE</u>	<u>APPLICANT</u>	<u>LOT #</u>	<u>SEC</u>	<u>ACRES</u>	<u>LOCATION</u>	<u>MAP</u>
James O'Keefe	Richard Crema	2232	B	1.35	Dry Bay	24.2
James O'Keefe	Joseph Brooke	2252	B	1.95	Dry Bay	24.2
James O'Keefe	Joseph Brooke	2252.1	B	0.50	Dry Bay	24.2

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

6. Old Business

State and Federal Permits for Shellfish Leases

Mr. Maxwell inquired if the Council granted a lease, would the lessee be covered under a blanket US Army Corps of Engineers (USACE) and NJDEP permit. Mr. Joseph stated that new lessees would need an individual permit. He stated that the Bureau was working with the Division of Land Use Regulation (DLUR) on that issue. Mr. Maxwell inquired on the types of permits a new lessees would need, such as the five leases that were granted by Council at this meeting. Mr. Normant stated they would have to acquire individual Federal and State permits. He stated that he had talked to Sam Reynolds of the USACE to clarify some issues last week regarding Nationwide Permit #48 (NWP #48). Mr. Normant stated that he was told that the lessee would have to get an individual permit from the USACE if the lease was vacated and then acquired by the new lessee, even if the vacated lease was initially covered under NWP #48. An exception would be if an individual held a lease before March 12, 2007, lost it to extenuating circumstances and then re-acquired the same lease. That individual would still be covered under NWP #48 since there were no changes in ownership or activity.

Mr. Maxwell inquired if a lessee wanted to put shell (cultch) on his lease for oyster culture, would the lessee have obtain individual permits. Mr. Joseph stated that the leaseholder would have to obtain the permits. Mr. Joseph stated that the Bureau also has to obtain permits to plant shell for shellfish restoration efforts. Mr. Normant added that if the lease existed before March 12, 2007, shell planting would be an acceptable activity under NWP # 48. However, the lessee would still have to obtain a state DLUR permit. Mr. Joseph stated that the Bureau should have the state DLUR permit for leases acquired before March 12, 2007 in place soon. Mr. Maxwell expressed displeasure in the way aquaculture was being handled in the State. Mr. Joseph explained that the Bureau had made the argument that the permitting requirements would be detrimental to shellfish aquaculture. Mr. Joseph stated that the requirement of permits was out the Bureau's control and that the Bureau was working with the state and federal permitting agencies involved to address the new permitting requirements which arose when the US Army Corps of Engineers (USACE) adopted changes to the Nationwide Permits on March 12, 2007.

Mr. Johnson stated that when Mr. Reynolds came to a Council meeting last year, he had made it sound as if everything would work out, however, these issues still exist a year later. Mr. Joseph reiterated that the Bureau was doing everything in its power on the shellfishermen's behalf. Ms. Linda O'Dierno from the NJ Department of Agriculture (NJDA) stated that the reason the shellfishermen were facing this dilemma was because the State of New Jersey opted out of the exemption for CZM Consistency Certification/401 Water Quality Certificate approval. With the federal consistency, the leaseholders could have planted their cultch since it was an approved activity under NWP #48. Ms. O'Dierno stated that she was not sure who decided to opt out since many issues go on that were not transparent, which was why this problem exists. Ms. O'Dierno stated that if a state permit was passed on to the USACE, the USACE usually assumes consistency. Ms. O'Dierno assumed that since the Bureau had forwarded these leases to the USACE and were NWP #48 eligible, they should have had tacit approval from NJDEP. Ms. O'Dierno suggested that maybe there was miscommunication between DLUR and the Bureau. Mr. Joseph stated that it was not the case. Mr. Joseph stated that the issue was that historically the Department, rather than giving blanket approval, prefers to review each application individually. This leasing issue was a result of a change in the Nationwide Permit system. DLUR had followed the same course of action by issuing a blanket denial. Mr. Maxwell inquired if DLUR had authority over the Bureau. Mr. Joseph stated that DLUR had permitting authority. Ms. O'Dierno stated that when DLUR Director Tom Micai had attended the October 26, 2007

meeting of the Aquaculture Advisory Council (AAC), he had discussed a general permit by rule and that it would be a relatively simple process, however, he indicated that it would take a minimum of 1 ½ to 2 years to move it through. Ms. O'Dierno stated that NJDEP has to make a decision on whether this was an industry that the State wants to foster or not.

Mr. Joseph stated that a draft document, now under legal review, would have the Bureau apply for the DLUR permits on behalf of the leaseholder and the lessee would sign the document agreeing to follow all the conditions of the permit. The Bureau was working with DLUR staff get this procedure in place. Mr. Joseph stated it would take some time to get the document in place and that until that time, leaseholders would have to apply for individual permits.

Mr. Maxwell expressed concerns regarding individuals trying to establish a new leases and for those that want to plant cultch material on their oyster grounds. Mr. Joseph stated that the Bureau had raised those same concerns to the USACE in the fall of 2006 regarding the implications of NWP #48. Ms. O'Dierno suggested that it was the State that has the problem, not the USACE. Mr. Joseph stated that the USACE action triggered the State action. Ms. O'Dierno stated that the NJDA had been asking for a general permit for at least seven years at the leasing committee meetings. Mr. Maxwell stated someone in NJDEP failed and this permitting issue could hurt the industry. Mr. Maxwell inquired if the NJDA could resolve this issue. Ms. O'Dierno stated that she had talked to the Secretary about this issue and he was going to communicate with NJDEP. She also announced that there would be an AAC meeting on July 18, 2008. Ms. O'Dierno stated that she had just came back from a shellfish symposium in Rhode Island where they were looking to develop a national policy for shellfish aquaculture and a lot of the problems discussed seem to be endemic to New Jersey. She felt that there should be a commitment made to support this industry. Ms. O'Dierno opined that maybe the legislature needs to step in to give a clear direction.

Mr. Johnson inquired on whether DLUR rules were made to be "more stricter" than the federal government. Mr. Joseph stated it was not whether the rules were stricter, but on how DLUR handles blanket permits. Mr. Joseph state that DLUR has two options, they could give a blanket approval and not look at individual activities or they could give a blanket denial and look at each individual application independently to ensure that there were no environmental concerns. They opted to give a blanket denial. Mr. Joseph stated that the Bureau was working to resolve that issue as the Bureau had done with NWP #48 in regard all leases that existed prior to March 12, 2007.

Mr. Maxwell inquired if leasing would be back to "business as usual" in the foreseeable future. Mr. Joseph stated that he believed so. He said that DLUR was being cooperative, but they must go through a process. Mr. Maxwell inquired if the Bureau was behind the general permit. Mr. Joseph stated that the Bureau was doing everything possible for the industry. Mr. Maxwell stated that it was too late for a permit this year since they would miss the window for planting cultch material. Mr. Dale Parsons stated that when you miss a planting, it could be detrimental to business. Mr. Joseph stated that the two options were to wait and see how the current discussions pan out or to apply for an individual permit. Mr. Parsons inquired why the Bureau forwarded the information to the USACE for the blanket approval and could not duplicate the same process to DLUR. Mr. Joseph stated that the Bureau had done that and it was still in the process. Mr. Joseph reiterated that there would be a blanket process in which each individual leaseholder would sign a document recognizing that the Bureau was applying for the waterfront development permit and that the leaseholder would have to abide by the conditions within the agreement. Ms. O'Derno questioned whether the document was contingent upon rule making. Mr. Joseph stated that it was not dependent upon rule making. The document was an interim way of resolving the issue so it would not get dragged out with the rule making process.

Ms. O'Derno stated the Aquaculture Development Act was to have the NJDEP and NJDA work jointly on leasing policies. She stated that there were things happening in which the NJDA was not apprised and there seems to be a lack of transparency between the agencies. Mr. Joseph disagreed.

Mr. Parsons inquired if there was a time line on the leasing document from DLUR. Mr. Joseph could not give a timeline on when the document would be issued, however, he stated that DLUR had been supportive in resolving this issue. He then stated that he Bureau was going through the same process with its shellfish restoration work in having to apply for permits.

Shellfish Habitat Mitigation Fund

Mr. Maxwell inquired on the balance of the Shellfish Habitat Mitigation Fund. Mr. Joseph provided the Council on a brief overview of the Fund. Mr. Joseph explained that in the late 1990's, the Shellfish Habitat rule was changed in the Rules on Coastal Zone Management. Before that time period, it was prohibited to construct a dock in shellfish habitat. The change allowed for the construction of a single recreational dock in shellfish habitat provided that the dock met certain criteria, which may include payment into the Shellfish Habitat Mitigation Fund. The fund was dedicated to the Bureau for shellfish mitigation and enhancement work. The money has been used for the Barnegat Bay Shellfish Restoration Program, Mullica River Oyster Restoration Program and was suggested to be used for oyster work in the Maurice River. Mr. Joseph stated that there was approximately \$1.1million in the fund. Mr. Maxwell inquired as to what procedure the Council would need to follow to request use of the funds. Mr. Joseph stated that the Council could suggest shellfish restoration/enhancement ideas and if logistically feasible, the Bureau could move forward with them. Mr. Maxwell inquired on how much money goes into the fund each year. Mr. Joseph stated that initially, there was a quick influx of revenue due to large number of dock applications. However, now that most areas have been developed, revenue has slowed down considerably. Mr. Joseph stated that he would look into annual revenue generated for the fund.

Oyster Restoration Efforts

Mr. Parsons inquired if the Bureau used local Mullica River seed oysters rather than buying hatchery seed for some restoration efforts. Mr. Normant stated that the Bureau does use the Mullica River seed oysters for restoration efforts on the Atlantic coast. Using local oysters increases the chance of success. Mr. Joseph stated that the Bureau also uses hatchery oysters and seed collected from Delaware Bay. Mr. Parsons stated that he had heard that hatchery seed being grown at Barnegat Light was going to be planted in Great Bay. Mr. Joseph stated that in 2007 the hatchery oysters were going to be planted on some extant beds in Barnegat Bay. However, because the Bureau did not have the permits to plant required shell, the oysters that were raised in the upwellers and Taylor Floats had to be planted on Oyster Bed Point in Great Bay since they out grew the nursery devices and the bed in Great Bay did not require shell to be planted. The Bureau is working with the state and federal agencies to satisfy the new permitting requirements for shellfish restoration work as well as those related to aquaculture leasing.

Mr. Maxwell expressed frustration that the shellfish industry and the Bureau have to acquire permits to do traditional shellfish culture and restoration effort, respectively.

7. New Business

Budget Update

Mr. Hughes inquired on an update of the budget. Mr. Joseph stated that the budget for the Marine Fisheries Administration, which includes the Bureau of Shellfisheries, would have a flat State appropriation that would be the same as last year's (FY 2008). Mr. Joseph stated that the Administration's budget was \$500,000 to \$600,000 in the red last year and they had to find other revenue to fill in the shortfalls. Mr. Joseph stated that the State's budget in general looks bleak. In addition, over the last five years, the Marine Fisheries Administration has lost about a third of its staff due to retirements and not being able to back fill the positions due to hiring freezes.

Great Bay Oyster Damage

Mr. Maxwell inquired if the Bureau had been seeing the same damage to the oysters on the Reef Bed that he had been seeing on his leases. The damage looked like bite marks taken out of the oyster shell. Mr. Normant stated that the Bureau had taken a sample off the Reef Bed in response to Mr. Maxwell's observation of damaged oysters and dead sponges. Mr. Normant stated that no dead sponges were found and that there were a few of the oysters with chips resembling bite marks on them. However, Mr. Normant stated that the Reef Bed oysters looked healthy. There was speculation the cause could be either blowfish or sheepshead. Mr. Normant stated that the Bureau would keep a lookout for it when they sample the beds.

Lease Proposal in Little Egg Harbor Bay

Mr. Parsons requested that the Council consider a proposal for a new traditional lease area near the Goose Bar area of Little Egg Harbor Bay. Mr. Parsons stated that there were about 15 to 18 individuals that expressed interest in the new lease area. He stated that there had not been any new lease areas in a number of years and it would be pro-active to the industry. He stated that he had previously discussed this with the Bureau. Mr. Joseph stated that he had spoken with Assistant Commissioner Amy Cradic on the issue and she had ask if Mr. Parsons could hold off on the proposed for six to eight weeks until some of the other leasing issues could be resolved. Mr. Joseph stated that for the past 15 years, the Bureau had asked new lease applicants to apply for parcels adjacent to existing leases for reasons of enforcement and user group conflicts. That was the Bureau's initial response. However, Mr. Parsons had moved the proposed new area to avoid conflicts such as submerged aquatic vegetation and the Goose Bar area that was prohibited from leasing by regulations. (N.J.A.C. 7:25-24). Assuming that the proposal moves forward, the Bureau would have to perform a biological investigation. Mr. Normant stated that he had measured out the proposed lease area using ArcView GIS and the proposed area was approximately 36 acres.

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

8. Date, time and place of next meeting:

DATE: June 16, 2008
TIME: 7:00 PM
LOCATION: Nacote Creek Law Enforcement Office
360 N. Rt. 9
Port Republic, NJ 08241