

Maryland Aquaculture Coordinating Council

Meeting Summary – November 14, 2013

Members Attending:

Don Webster
Tony O'Donnell
Kathy Klausmeier
Kathy Brohawn
Karl Roscher
Erin Butler
Andy Lazur

Reggie Harrell
Stacy Kubofcik
Craig Mask
Jon Farrington
Terry Witt
Capt. Charles Vernon

Guests:

Joe Gill, Secretary-DNR
Steve McHenry, MARBIDCO
Lt. Chris Sherman, NRP
Maj. Michael Sewell, NRP
Kim Coulbourne, DHMH
Maude Morris, DNR
Steve Schneider, DNR
Rebecca Thur, DNR
Katie Busch, DNR
Stephanie Richards, DNR

Alyssa Cranska, DNR
Rob Witt, Industry
Jillian Parisi, ORP
Larry Jennings, CCA
Jay Fowler, Fowler Shellfish
Bill Cox, Honga Oyster Co.
Jack Devine, Barren Island Oysters
John VanAlstine, Industry
Daniel Strain, MD Sea Grant
Tal Petty, Hollywood Oysters

Call to Order at 6:30 pm

Administrative

Approve September Minutes – The September minutes were approved as written.

Announcements – Chairman Webster and members:

- Copies of the summer issue of the East Coast Shellfish Growers Association (ECSGA) newsletter were made available to interested members/guests at the meeting.
- Chairman Webster introduced Maj. Michael Sewell who is the new NRP Commander of the Eastern Shore.
- It was announced that after serving on the ACC Board for two years, Capt. Chuck Vernon will be replaced by Lt. Chris Sherman effective 11/27/2013. Lt. Sherman was present and introduced to the Council by Capt. Vernon.

Reports

Aquaculture Division Report – Mr. Roscher, DNR Aquaculture Division (DNR-AD)

Mr. Roscher discussed lease harvest activity for 2012 indicating that a total of 63 leases had reported harvest. Results for the 2013 harvest season will be presented to the Council at a future meeting once all data has been collected.

The Division's leasing activity to date was reviewed (see table below):

	Lease Site Totals	Acres
200	Submitted since 9/7/10 (SLL + WC)	4334.393
44	Executed since 9/7/10 (SLL only)	1439.55
46	Executed since 9/7/10 (WC only)	174.75
90	All executed by State since 9/7/10	1614.3
0	Pending Execution (SLL + WC)	0
49	Applications Terminated/Withdrawn	1358
64	Still in process since 9/7/10 (SLL + WC)	1,409.60
6	In-process applications that are incomplete	110.3228
138	All applications submitted since 8/1/11	1771.011
76	Water Column submitted since 8/1/11	878.6
41	Water Column executed since 8/1/11	150.08
5	*In-water nursery (upweller) apps since 8/1/11	0.0239
36	Sanctuary submitted since 8/1/11	406.1
11	Sanctuary executed since 8/1/11	92.71
114	TFL holders named on apps submitted since 9/7/10	
46	TFL holders named on apps executed since 9/7/10	
46	TFL holders named on apps still in process	
84	Permitted by ACOE	1483.279

From September to October 2013:

- Received 7 new shellfish aquaculture lease applications (6 for submerged land leases and one for a water column lease).
- Issued 9 new leases and additional two Shellfish Lease Agreements that were mailed out to leaseholders for signatures in August are still pending.
- Five hydrographic surveys were completed. 3 public, notice periods concluded with no comments received. 4 public notices were initiated. 3 new lease applications packets were forwarded to the Corps of Engineers for review.
- 7 lease renewal agreements were executed and recorded.
- 3 Shellfish Import Permit applications were received, 2 were issued and 1 is pending.
- Shellfish Aquaculture Harvester Permittee Cards were issued to 42 individuals and Registrant Cards were issued to 88 individuals, bringing the total number of SAHP registration cards issued from January to October 2013 to 1,223.
- From September 2010 through November 13, 2013 the Department has received 200 lease applications, 138 of which have been received since August 1, 2011 when the Department began accepting application for water column leases.
- The State has issued 90 new commercial shellfish aquaculture leases totaling 1,614 acres. An additional 64 lease applications are in process, six of which are incomplete.
- Current shellfish aquaculture leases: 276 Submerged Land Leases – 3451 acres
51 Water Column Leases – 190 acres
327 total shellfish leases – 3641 acres

Addressing the lease application backlog, Mr. Roscher explained that backlog total is rolling and includes any application that has been determined to be complete and in the review process six months or longer and is awaiting action by the Department to complete issuance. He indicated that through October 31st, the number of lease applications meeting those criteria totaled 21, not including those on hold in the St. Mary's River Sanctuary (11).

Delegate O' Donnell asked what the mean time to process an application was and Mr. Roscher responded by saying that the mean is now 250 – 300 days, with a shorter lag time on applications entering into the review process once submitted (from 6 months prior to 4 weeks now) because the process is being expedited by the presence of new staff. Those applications submitted more recently will have a significantly different processing time overall. Mr. Roscher commented that the expectation of the Division is that they will meet the 4 – 6 month issuance goal with the current time of 8 months to be improved upon soon. Mr. Roscher continued, describing that delays have improved and stated that the Division is waiting on the return of documents from some applicants (in one case as long as 6 months). As suggested at the last ACC meeting, the Department has instituted a 30 day turn-around requirement on lease agreements that are mailed out to applicants for signatures.

Next, Mr. Roscher discussed the State Ethics Commission, saying that he will be working with the commission to determine which Council members are required to submit financial disclosure forms to the Commission.

Nominations are being requested from Council members for the (TFL) Tidal Fishery License appointed member seat currently held by Mr. Mask. Mr. Mask's term has expired and he has agreed to serve until replaced. Council members can forward the names of nominees to Karl Roscher. The deadline for submission of nominations is COB Friday, December 27, 2013.

Staffing for the Aquaculture Division is about to increase again as two new positions, Natural Resource Biologist II and a Natural Resource Biologist IV, have been posted and closed with 40 applications each. The Division is currently working with the HR Department to review the applicants and anticipates scheduling interviews starting the second week of December.

Mr. Roscher continued the Aquaculture Division Report by highlighting three regulatory proposals related to shellfish aquaculture that are expected to be effective in the near term. Complete information on the regs can be viewed online at:

<http://www.dnr.maryland.gov/fisheries/regulations/regindex.asp>

1. COMAR 08.02.04.04 and 08.02.23.04 – [Public Comment Deadline was 11/18/2013 with a Scheduled Effective Date of 12/23/2013], the purpose of this action is to increase tagging flexibility. Beginning in 2011, the Department responded to new requirements from the Food and Drug Administration/National Shellfish Sanitation Program's shellstock identification and traceability mandate by implementing regulations requiring that bushels of oysters be tagged. By allowing some flexibility in tagging the Department is trying to prevent a tag shortage, conserve resources, prevent inconveniences to the watermen, and ensure that oystermen have an opportunity to fish. The proposed action is currently in place by emergency regulation; however, this action will remove the tagging and container requirements for shellfish aquaculture from the oyster chapter and place them into the more appropriate shellfish aquaculture and leasing chapter. This will clarify the chapters since the requirements are slightly different.

2. COMAR 08.02.04.15 – [Public Comment Deadline of 11/18/2013 with a Scheduled Effective Date of 12/23/2013], the purpose of this action is to add criteria for leasing in the St. Mary's Sanctuary. Revisions to the lease law allowed leasing in sanctuaries that is compatible with oyster restoration. Specific rules put in place to ensure restoration compatibility included that leases shall not occur on or within 150 feet of historic Yates oyster bars and that the total acreage of leased area shall not exceed 10% of the total sanctuary area. The St. Mary's sanctuary is unique in that substantial areas outside the Yates bars have a high density of oysters. For this reason, the Department is seeking to establish criteria by regulation to ensure that leasing is compatible with oyster restoration in the St. Mary's River sanctuary.
3. COMAR 08.02.23.08 – Currently exists as an emergency regulation [Public Comment Deadline 10/20/2013 with a Scheduled Effective Date of 9/23/2013-3/22/2014], the purpose of this action is to implement House Bill 306 to allow individuals to grow shellfish seed outside of a leased area when issued a Shellfish Nursery Permit by the Department. These nurseries may be located on shore or in State waters. This regulation implements the restrictions pertaining to in-water structures used in shellfish nurseries, as delineated in HB 306, as well as additional restrictions the Department believes are necessary for health and safety purposes. This action also sets the application fee for these permits at \$100. The Aquaculture Coordinating Council recommended a fee of \$100 or less. Finally, the action establishes reporting requirements and the penalties for failure to comply with the regulations.

Delegate O'Donnell asked how the proposed regulations will affect St. Mary's County applications. Mr. Roscher indicated that after the public comment period the Division will be able to evaluate the applications and determine which might need to be modified before being accepted for further processing.

Mr. Roscher next discussed the annual leaseholder mailing that would be mailed tomorrow, November 15th. The packet will include: the Annual Usage Report, SAHP Renewal Form, Rent Invoice, Tagging FAQ Sheet (and pick-up information), 2014 Summer Landing Declaration Form, an informational flyer from MARBIDCO, and the Lease Coordinate Data Sharing Survey. Concerning the Lease Coordinate Data Sharing Survey, Mr. Roscher stated that there have been a number of requests from the public for lease location data. This information has been shared with sister agencies, but the Department wants to know how industry feels about providing limited information for release to other interested entities. The results of the survey will be compiled and presented at a future ACC meeting.

A discussion followed where it was mentioned that the information, as addressed by the survey, could be accessed under a Public Information Act request and while leases are visible on the aquaculture siting tool, they are not otherwise available online. Mr. Harrell commented that it is important to communicate that the information cannot be tied back to the leaseholder since understanding that aspect might increase participation in the survey.

The next topic concerned a proposed Shellfish Aquaculture Harvester Permit (SAHP) regulatory change that would allow the Department to deny a SAHP based on current commercial fisheries violations, not just related to the oyster fishery. This regulatory proposal would also provide an appeals process for anyone who is denied a SAHP under these circumstances. The purpose of this proposed regulation would be to keep violators out of the shellfish aquaculture industry. Ms. Butler expressed concern that this regulatory change could potentially deny a leaseholder the ability to harvest off of their own lease and asked if this was the same as taking away their lease. Mr. Roscher explained that other SAHP permittees on the same lease would be able to continue to manage harvest activity.

Mr. Roscher completed his report on the Aquaculture Division by discussing a Fisheries Service workgroup on habitat issues and concerns that is being formed. This workgroup will look into land use and how it affects our fisheries and management decisions. This workgroup would include members from the Department's Tidal Fish and Sport Fish Advisory Committees as well as other groups. Two members of the ACC are needed to sit on the committee. Dr. Harrell commented that these should be voting members and the committee would appreciate having the aquaculture side of things represented. Interested members should email Mr. Roscher. He indicated that at least one of the Council members should be from the aquaculture industry.

Shellfish Aquaculture Financing Programs – Mr. McHenry, MARBIDCO

Mr. McHenry started his presentation by showing the new flyer MARBIDCO created to highlight the two loan fund programs to support aquaculture business growth. This flyer is included in the Annual Mailing Packet being sent by the Aquaculture Division this week. The two programs are: Maryland Shellfish Aquaculture Loan Fund and the Remote Setting Shellfish Aquaculture Loan Fund. The flyer is available on the DNR – Aquaculture website homepage.

Reviewing the current numbers, Mr. McHenry reported that thus far \$1,794,874.86 has been disbursed in the regular Shellfish Aquaculture Financing Program and \$60,000 in the Remote Setting Program. In cases where borrowers have returned unused funds those funds are folded back into the program. In addition, there are seven NRCS EQIP assignments totaling about \$123,000 that have been contracted with the NRCS as of 11/14/2013.

There are currently 50 aquaculture projects in 10 counties with:

21 Number of On Bottom Projects	10 Number of Loans Approved
20 Number of Water Column Projects	7 Number of Loans Settled
4 Number of Combo Projects	32 Number of Loans Fully Drawn
4 Number of Remote Setting Projects	39 TFL Holders (10 Non-TFL Holders)
15 Number of Shellfish Aqua borrowers awarded multiple loans (one or both programs)	
3 Number of Remote Setting borrowers awarded multiple loans (one or both programs)	
5 Number of Approved Loans subsequently withdrawn	

For the new calendar year, Mr. McHenry indicated that the decision has been made that it is time to ratchet down the loan forgiveness feature of the Program from 40% to 25%. The industry itself is maturing and the return of an additional 15% of funding can be invested back into the program and made available to other borrowers. In the Summary of Approved MARBIDCO Aquaculture Loans the Loan Status indicates that many of the outstanding loans are fully drawn. For FY2014, there are two loans approved and eight pending totaling \$800,000. If all of the loans in the hopper are approved then they would use the full funding resources available.

Delegate O'Donnell asked how MARBIDCO measures the success rate of loan recipients and Mr. McHenry answered that success is measured by repayment. They are still in the interest only phase and the loans are pretty much current. Currently, there is no way to indicate who is selling product, but once the loans start amortizing then MARBIDCO will be able to analyze success more completely. In the ensuing discussion the point was made that the increased number of leases reporting harvest demonstrates growth and that success stories help justify and encourage participation in the loan program.

Mr. McHenry also indicated that if one leaseholder is approved for multiple loans, then there is a \$200,000 cap in total loan funding for each individual borrower that qualifies to receive a percentage of loan funding forgiveness. After reaching that cap, borrowers can still apply for additional funding under the program but they do not receive the loan forgiveness benefit for funding in excess of \$200k.

Workgroup Report – Industry Development Priorities – Dr. Lazur

The industry development priorities survey questions are being integrated into an online survey after the first of the year.

Oyster Aquaculture Development Programs – Chairman Webster

Chairman Webster touched on several topics regarding aquaculture development programs commenting that the Governor supports funding and the last three years have been very successful. He mentioned that no-cost extensions have been approved by NOAA (into 2014 for remaining funds) and that ORP has secured additional funding, from a private source, to support future remote setting and educational programs. Chairman Webster indicated that this funding could be used for strengthening risk management strategies including how to best utilize a lease, having a lease surveyed using side-scan sonar to determine bottom suitability and the availability of Paynter Labs to provide Dermo screening services for leaseholders. In addition, ORP has data from analyses due shortly and will provide more information on how to address disease.

Dr. Harrell discussed Paynter Labs and the overhead rate for Dermo testing. The first sample is free and \$100 for each subsequent sample. It was discussed that Oxford does not have the resources and DNR is not able to do testing on a continuing basis at current levels of staffing. Dr. Harrell addressed his next question to Secretary Gill, Senator Klausmeier and Delegate O'Donnell to see if there can be more support for Horn Point Labs to be able to accommodate testing. He asked if the Council/Board could request assistance to overcome this staffing/resource issue.

Special Guest

Secretary Joe Gill, Maryland Department of Natural Resources

Secretary Gill addressed the members. He stated that the Department supports leaseholder's efforts and the future development of this industry. He also related that he spent 10 years previously as lead counsel with the Department's Office of the Attorney General and in that capacity experienced a situation where it took from 2002 – 2010 to settle a proposed shellfish lease case. He also commended the DNR Aquaculture staff and Natural Resources Police for their roles in supporting and protecting this industry and our State's oyster resources. He commented on the need for increased staffing, especially for the NRP. In 3 years there have been 30 suspensions associated with oyster enforcement actions. This kind of concentration of enforcement efforts helps to protect leaseholders from illegal activities. Chairman Webster commented that the Attorney General's Office is extremely effective and has represented leaseholder's and applicant's interests for years.

Secretary Gill continued by adding that aquaculture businesses enhance our rural communities and the success stories should be highlighted through public relations. In Maryland, Governor O'Malley decided that change was needed and Secretary Gill was a participant in rewriting the lease laws and removing many impediments to shellfish aquaculture.

He feels that the Maryland aquaculture business environment is one of the best in the country. Senator Klausmeier added that perhaps the Governor could be asked to mention how well Maryland Aquaculture is doing in the State of the State address.

The tracking of Probation Before Judgment (PBJ) decisions in the court system was discussed. This topic included: going back to look at court records, continuing efforts to ensure that District Court judges are familiar with cases and trained on oyster laws, and confirming that judges had access to past offenses via computer. Secretary Gill stated that he would check to see if judges have the ability to check on past fisheries violations and will get back to Delegate O'Donnell on that point.

A discussion regarding the American Eel as an endangered species followed and touched on how it would affect oyster restoration, mesh size on nets for baby Glass Eels and habitat issues. Secretary Gill said that he would look into it and will work with Karl Roscher to address the issue.

The dialogue continued with Mr. Farrington raising the question of how to overcome the gap in cash flow faced by new aquaculture businesses. What do you do to generate income while waiting for oysters to mature to market size? He suggested that new leases could be recruited into the oyster restoration program; in that way the industry could supply public oyster bars by selling seed oysters. Mr. Roscher commented that Mike Naylor would be a good contact to work with the County Oyster Committees to determine demand and forward producer information and other specifics. Council members and Secretary Gill encouraged the idea of having the Oyster Committees utilize products raised through private oyster aquaculture. Craig Mask explained that it is possible to purchase product from certified growers (spat on shell) for restoration. This can be from private businesses, but they need certification first.

Chairman Webster thanked Secretary Gill for his long standing support of aquaculture and for attending the meeting tonight.

Unfinished Business

Aquaculture Enterprise Zones (AEZ)

Open discussion on whether the ACC supports AEZ and the positive and negatives of the “quick start to get a business moving” concept. Sen. Klausmeier raised the question as to how was the decision made to move away from the AEZ model. It was highlighted that the revised lease laws were a major factor in reducing the demand for AEZs because of the way they affected the AEZ concept. In addition, the DNR – Aquaculture Division staff had been concentrating on the priority of processing the submitted lease applications and managing the rapidly evolving and growing industry. Chairman Webster added that the wait time for lease approval has diminished making it easier to obtain a lease.

Delegate O'Donnell asked if the AEZ was something that should still be pursued as a way to encourage the watermen community and others to become involved without having to make a full commitment. In-depth evaluation of the AEZ concept continued with several members of the Board and attendees adding to the discussion. Various locations (Anne Arundel, Calvert and St. Mary's), factors (theft prevention, historical conflict and permitting issues) and viewpoints on relevancy were taken into consideration. These ranged from feeling that AEZs were no longer needed, to citing the inherent value in an incubator area to get experience before investing in shellfish aquaculture. It was suggested that proposing a site with consistent

use throughout and manageable size (all spat on shell or all water column) might facilitate things with the Corps and be more feasible to establish.

When Dr. Lazur asked what would be involved in approving such an “incubator” location (possibly in the Patuxent) Mr. Roscher explained that such a site would have to go through the regular approval process. A potential lease site in the Patuxent River area was discussed including scoping results and existing research that has already been completed.

***Motion:** (moved by Dr. Lazur, seconded by Dr. Harrell)

To move forward on establishing the original 50 acre Patuxent River site as an AEZ.

Dr. Harrell elaborated that his original purpose in seconding the AEZ motion was to continue the dialogue on the topic so that it could be an on-going discussion. Mr. Roscher offered to put together information on AEZ (not limited to the Patuxent River) and the incubator system. This summary would include analysis of the pros and cons, changes from past situations and what the requirements would be. Delegate O’Donnell asked that information on the Corps stand in the past be included and he mentioned the possibility of discussing the matter with the Corps at an Aquaculture Review Board meeting. Mr. Mask recommended keeping the 50 acre size and bottom use options open as part of this review.

***Motion Retracted:** (retracted by Dr. Lazur, seconded by Mr. Harrell)

Given the additional information and further consideration Dr. Lazur retracted his motion.

Active Use Requirements

It was felt that more input was required for discussion of the Active Use Requirements and a workgroup was proposed to work with the Aquaculture Division. Mr. Webster asked Mr. Roscher to Chair the workgroup. Additional members would be: Jon Farrington, Terry Witt and Kathy Brohawn. A reporting date for the March ACC Meeting was set and individuals interested in participating in the workgroup should contact Mr. Roscher.

New Business

Oyster Shell Price Input (Market Price Proposal) – Mr. Roscher

An overview of background of the Shell Purchase Price in Maryland was presented by Mr. Roscher. The Department is required by law to annually assess the market price for shell, and to set the price paid to shucking houses based upon this assessment. The Department is proposing to increase the price paid for shells from \$0.50 per bushel to \$2.00 per bushel (average of current prices and max can be adjusted if needed). The Department has tried to acquire new shell in order to keep up with the increasing demand. During the 2012/2013 oyster season the Department was unable to purchase oyster shells. Personal communications with officials in Virginia, Maryland shucking house owners, and leaseholders revealed that the price being paid to shucking house during the season ranged from \$2.00 to \$2.50 per bushel, making it unlikely that MD would have an opportunity to purchase shells unless we increased the price paid.

There is a substantial need and shortage of oyster shell to support Maryland’s oyster sanctuary restoration program, oyster hatchery production, aquaculture industry and public oyster fishery. Current supply is 409,000 bushels (stored in Crisfield and Grasonville) with Maryland shucking houses producing 125,000-200,000 bushels annually. The annual demand for shell is driven by sanctuary restoration, aquaculture industry and hatcheries. Demand can be higher than

production when shell is imported from Virginia or Delaware. Supplemental materials regarding fresh shell availability and projected demand were provided by Mr. Roscher to the Board for further review.

Discussion of the oyster shell price proposal continued with input from Mr. Farrington on competition with DNR for shell and what is available from packing houses. Mr. Webster added that the larger shucking houses have contracted with buyers already so there is limited availability from these sources in the near future. Mr. Mask suggested the idea that in the future shucking houses should give your shell back as part of the business transaction. He also approved of the price increases as realistic. Dr. Harrell brought up the concern that with supply and demand there is a risk of price inflation and wondered if we are artificially inflating the prices and the economic effect to growers and the agency. This was underscored by Mr. Farrington as he described the current demand for shell from the government and Corps for restoration efforts.

At the end of the discussion, Mr. Roscher emphasized that to formally respond to this market price proposal comments would need to be forwarded to Tammy O'Connell by tomorrow, November 15th.

Public Comments

Tal Petty from Hollywood Oysters raised the topic that there needs to be a better understanding the lease terms from the Corps agreements and its effect on loans.

Meeting Adjourned at 8:15 (moved by Mr. Roscher, seconded by Ms. Butler)

Next regular meeting will be Thursday, January 9th, at 6:30 p.m. at the Maryland Department of Natural Resources, C-1 Conference Room.

Respectfully Submitted,

Stephanie Richards
Maryland DNR – Aquaculture Division