

Maryland Aquaculture Coordinating Council Minutes – July 9, 2015

Members Attending:

Don Webster	Tony O'Donnell	Joanna Kille
Erin Butler	Terry Witt	Kathy Brohawn
Karl Roscher	Stacy Kubofcik	Jon Farrington
Reggie Harrell	Kathy Klausmeier	Mutt Meritt
Mike Sewell (For Chris Sherman)		

Guests Attending:

JD Blackwell (38 ^o North Oysters)	Ward Slacum (ORP)
Rob Witt (Witt Seafood)	Jordan Shockley (HIOAC)
Chris Aiken (Self)	Hal McBee (Self)
Kim Coulbourne (DHMH)	Brian Connelly (SCSF)
Steve Schneider (DNR)	Suzanne Bricker (NOAA)
Maude Morris (DNR)	Matt Parker (UMD)
Katie Busch (DNR)	Brian Russell (Shore Thing Shellfish)
Alyssa Cranska (DNR)	Sheldon Russell (Shore Thing Shellfish)
Rebecca Thur (DNR)	Robin Henderson (DHMH)
Ben Grumbles (MDE)	Linda Arnold (MARBIDCO)
Mark Belton (DNR)	Bill Cox (Honga River Oysters)
George O'Donnell (DNR)	Larry Jennings (CCA)
Shannon Hood (Self)	Clifford Mitchell (DHMH)
Julie Reichert (ORP)	Donald Marsh (Self)

Call to Order:

Vice-Chair Butler called the meeting to order at 6:41 pm. Chairman Buck was unable to attend tonight's meeting due to prior work commitments.

Announcements

- Vice-Chair Butler welcomed invited guests including DNR Secretary Mark Belton, MDE Secretary Ben Grumbles and George O'Donnell who serves as DNR Constituent Services representative. She also welcomed the newest Council member, Dr. Don (Mutt) Meritt from Horn Point Laboratory, who was recently designated by Dr. Boesch to serve as the UMCES representative on the Council.

Administrative:

Rotation of Officers

Vice-Chair Butler announced that, in accordance with Council practice, the Vice-Chair assumed the Chair position, with a new Vice-Chair being elected, and that traditionally the offices rotated between government/institution and industry/TFL representatives. Vice-Chair Butler assumed the Chairperson role and opened the floor for nominations of a Vice-Chair. With no industry members willing to accept a nomination, Mr. Webster nominated Dr. Harrell with Delegate O'Donnell seconding. Dr. Harrell was unanimously elected Vice-Chair by the members.

Presentation

Nutrient Pollution & Shellfish Aquaculture: Shellfish can help the Bay!

Dr. Suzanne Bricker (NOAA) and Mr. Matt Parker (University of Maryland Extension) gave a presentation entitled “Nutrient Pollution & Shellfish Aquaculture: Shellfish can help the Bay!” which explained the benefits shellfish provide in improving water quality through bio-extraction. Using research and development modeling, they want to quantify benefits and assign value to nutrient removal by shellfish. Once these are determined they hope nutrient credit trading programs can be developed for shellfish growers. For a copy of the presentation or information, contact Dr. Bricker at suzanne.bricker@noaa.gov or Mr. Parker at mparker11@umd.edu.

After the presentation Ms. Brohawn informed the presenters that the ORP is organizing an expert panel to investigate oysters as a BMP for nitrogen removal only and how nutrient trading may be tied with TMDLs. Dr. Meritt commented that the study would be a disservice if it does not quantify the benefits that other organisms within the oyster reef community provide in improving water quality and nutrient reductions.

Delegate O’Donnell commented that the Council previously passed a motion for MDE to gather and compile relevant scientific studies, data and other evidence concerning the viability of using shellfish aquaculture for nutrient credit trading. Now it looks like much of this information is being compiled through the BMP research and NOAA modeling that will provide a basis for nutrient trading.

Both Secretary Grumbles and Secretary Belton mentioned nutrient trading as a topic that has been discussed multiple times in the Governor’s Office. Secretary Grumbles requested that ORP share details and the results of their research so he can provide it to the Governor and policy staff to move forward with a potential trading program. Ms. Brohawn said she will work with Mr. Roscher and ORP to get Secretary Grumbles the information.

Delegate O’Donnell stated that much research has been done and we now need to work with industry and policy makers to come up with a proper plan to develop a trading system.

Senator Klausmeier recognized the importance of aquaculture to our State and appreciated Secretary Belton and Secretary Grumbles attending the meeting.

Chair Butler thanked Ms. Bricker and Mr. Parker for the presentation.

Administrative:

Approve May Minutes

A motion to approve the May 14, 2015 Council meeting minutes as written was made (Webster/Roscher) and passed unanimously.

Reports:

Mr. Roscher began by informing the council that the Army Corps of Engineers is having difficulty processing the volume of shellfish aquaculture lease applications that the State is receiving through the Joint State/Federal application process. He indicated that there continues to be strong interest in shellfish aquaculture leasing.

Mr. Farrington asked for a summary of current protests. Ms. Thur informed him that besides adjacent landowner concerns, many protests are over conflicts with commercial clambers. Mr. Webster noted that two watermen, including the President of the Maryland Waterman’s Association, had brought these concerns to the council over a

year ago and agreed to develop charts to identify areas of concern but that they were never received. Delegate O'Donnell reminded members that there is a process identified in law for members of the public to use when protesting a lease application. Protests are processed on a case-by-case basis before an independent arbitrator who does not have bias towards one resource. Mr. Roscher stated that the public comment period is a necessary part of the review process and provides a way to find out if there are concerns or conflicts that need to be addressed. Also, because a project is protested that does not mean it will go to the Office of Administrative Hearings. Delegate O'Donnell closed by saying interveners know how to delay the process and that we have three watermen on the Council to help move these types of issues forward.

Aquaculture Division Report (Mr. Roscher)

The Aquaculture Division received ten new shellfish lease applications since the last ACC meeting, four of which are incomplete. A total of 35 new lease applications have been received so far in 2015 with 17 of these for water column leases. Seven new lease agreements have been issued and four leases are pending issuance. Hydrographic surveys are pending for 15 lease applications. Once complete, these move to public notice and are forwarded to the Corps of Engineers. Eight proposed leases are on public notice with comment period ending dates from mid-July to mid-August. One has already received protest petitions. Since the May ACC meeting, public notice periods for 15 leases have concluded, four of which received protests. A total of 15 projects are in stages of protest at this time while 16 new application packets were prepared and forwarded to the Corps of Engineers for review.

Since the last meeting, four new shellfish import applications were received and 10 import permits issued. Permits for seed requests are held until health certification is received and evaluated. Four new Shellfish Nursery Permit applications were received and 11 new Shellfish Nursery Permits issued. No new lease transfer requests were received and two lease transfers were fully executed. 29 lease transfer requests are pending.

From September 2010 through July 9, 2015, 315 lease applications have been received with 237 since August 1, 2011 when the Department began accepting applications for water column leases and leases in sanctuaries. The State has issued 136 new commercial shellfish aquaculture leases totaling approximately 2,600 acres. An additional 116 lease applications are in process, four of which are incomplete.

Thus far in 2015, there have been a total of 1,635 Shellfish Aquaculture Harvester Permits and Registration Cards issued, comprised of 438 Permittee and 1197 Registration cards. This represents 544 distinct individuals who are permitted to work in the industry.

After Mr. Roscher completed the first part of his report, he informed that Council that the Department was scoping ideas for six regulatory changes that affect shellfish aquaculture. He indicated that these are on the Department's webpage and that feedback is requested by July 19th, 2015. He summarized the following regulatory ideas:

- Liberalization of Shellfish Aquaculture Harvester Permit (SAHP) registration requirements
- Requiring workers to be in possession of SAHP cards when handling shellfish
- Requiring leases adjacent to oyster sanctuaries to follow a call-in procedure when using a dredge to harvest
- Update PSFA #109 to include a declassification for a lease area that was completed in 2012
- Establish a fixed lease rental rate for leases that are equal to or less than 1 acre in size.
- Correct a mistake in regulation whereas water column lease rental rate only applies to leases in an AEZ.

Following his summary, Mr. Roscher asked the Council for comments on the possible regulatory changes. Members had no comments.

Next Mr. Roscher gave a presentation on Shellfish Aquaculture Lease Application Processing Time, updated from the March 12, 2015 Council meeting. He indicated that the Department is continuing to improve the average processing time for standard applications. Since the last update, the Department has further reduced the period between the start of the public notice period to the lease agreement being sent for signature by an average of 22 work days. They also reduced total average processing time of all applications versus those complete as of 4/1/2014 by 128 work days. Applications are still being submitted at a steady volume, with 109 in process.

Secretary Belton asked if having additional staff would help the program. Mr. Roscher replied that adding more staff in the past helped improve processing time and the Division just recently lost two staff members. Secretary Belton said to address the issue with him if additional help was needed.

Delegate O'Donnell asked why the public notice process is so long and Mr. Roscher replied that the metric includes the protest time line.

Dr. Meritt commented that having the metric in work days instead of including weekends and holidays is misleading and that it should be based on total calendar days so that applicants have a better idea of how long the processing time actually is. Mr. Farrington indicated that it is good to have this information regardless of how it is calculated and that if someone wanted to adjust to total days, it would just take a multiplier.

Shellfish Aquaculture Financing Program Status (Ms. Arnold, MARBIDCO)

No new loans have been received or processed since the last meeting. There are a total of 62 projects (58 Regular and 4 Remote Setting) in ten counties with 42 loans fully drawn. Ms. Arnold indicated that funds are still available and some seed and shell funding has reverted back into the program. Currently there is about \$14,500 left to lend for shell and substrate and \$179,000 left for seed.

Delegate O'Donnell pointed out that 83% of the projects are by TFL holders.

Mr. Webster informed the council that a new agreement is in development between DNR and the Maryland Port Administration and he suggested to the Department that it was time to remove the TFL restriction for Remote Setting Loan Program applicants; however he is not sure of the status of that request.

Continuing Business:

Shellfish Closure Area Book (Mr. Roscher)

Mr. Roscher summarized the information he had gathered about this long running topic. He provided the issues, past actions, advantages, disadvantages and options for listing leases in the Closure book. These ranged from an insert in the packet associated with including commercial shellfish aquaculture leases to other possible options. Mr. Roscher stated we need to move quickly on receiving recommendations and guidance from the council and industry on what to do because information is due to the Shellfish Program by April for inclusion in the Closure Book. After his summary a lengthy discussion occurred between members of the council and attending public.

Mr. Webster stated that the issue has been around for a long time and he's not sure how we should act. Information from the OAG stated that in prosecuting theft all leases would have to be in the book, which adds a new topic of theft on leases. Vice-Chairman Harrell commented that it is very important to meet with NRP to see if the book is

enforceable and Mr. Farrington commented that, with everything moving to electronic dissemination, would it be enough to reference the Aquaculture Siting Tool in the book?

Mr. Roscher raised the issue of leaseholders marking their leases. It would help if leaseholders were diligent in maintaining markers. He understands that there are issues such as storms, boating damage, and people intentionally removing the markers, but the maintenance of markers must be considered along with the closure book. Dr. Meritt commented that it is difficult to lump all situations together since there are people who want to abide by the law and others who want to violate it. Mr. Blackwell also commented that the issue is different for submerged land leases versus water column leases since one cannot accidentally harvest from a cage.

Major Sewell commented that NRP uses many different tools to prosecute criminals, but the closure book helps a lot. Mrs. Witt said she keeps a book on the boat to reference if they are in an unfamiliar area, but the issue of moving markers still needs to be addressed. Mr. Webster said the topic should be included at a future meeting with meetings in the meantime to discuss this with the industry for their input.

Chair Butler questioned if including the leases in the book would even make it an effective tool. If adding all leases would make for a thicker, unwieldy book, how would one expect a person on the water to use it?

Major Sewell commented that a meeting would be useful to determine the marker situation and Delegate O'Donnell followed by saying the industry should tell us how they want us to hold people accountable and how to catch them.

Ms. Kubofcik suggested the Department try an electronic opt-in for the closure book. Major Sewell suggested the Department include a site disclaimer in the book for next year.

Chair Butler stated that we do not have solutions upon which to make a motion or establish a Council position.

Motion: (Webster/Harrell) - Passed Unanimously

To include a disclaimer in the closure book indicating that leases are not depicted and referencing a link to the Aquaculture Siting Tool where maps of leases can be found

Active Use Requirements, Verification Training (Mr. Webster)

Mr. Webster informed the Council that UMD is working to organize workshops to train leaseholders who are in areas that receive natural set on procedures to evaluate them. This will assist leaseholders with management and planning and provide information to the Department as part of their annual active use reports. When developed, letters will be sent to all leaseholders.

ACC Letter to Senator Mikulski (Mr. Roscher)

Mr. Roscher informed the council that he has not yet received comments back from Senator Mikulski regarding the request the Council sent to her in April to gain information on ACOE lease application processing time. However, he said that there have been efforts by Senator Cardin to look into the issue as well. Senator Cardin met with incoming Commander Chamberlayne to express his concerns over the federal review process and Mr. Roscher said he will keep everyone informed on the changes and updates.

ACC 2015 Legislative Report (Mr. Roscher)

Mr. Roscher informed the council the summary of recommendations approved by the Coordinating Council for inclusion in its 2015 Legislative Report was provided in their information packet. He requested that members review the summary and provide him with questions or comments as quickly as possible.

Mr. Webster commented that Delegate O'Donnell addressed the topic of the ecosystem service credit earlier, but we do not want to modify the motion at this time. He suggested that we use the available data on nutrient trading from the NOAA report for interagency review and development of the program. Delegate O'Donnell stated that the Council should be a major force to develop a workable program and that we should use the information NOAA and other agencies are bringing to us. He also specified keeping the Department of Agriculture involved because it provides benefits to people in the agricultural community as well.

Ms. Brohawn suggested we rephrase the language in the report and provide new language for funding as well.

Motion: (O'Donnell/Webster) - Passed

To amend the current language in the recommendation section under the "Ecosystem Service Credit for Shellfish Aquaculture" issue of the Council's 2015 Legislative Report. The language should be modified to include ORP's research and funding of the project.

New Business

Hatchery Capacity (Delegate O'Donnell)

Delegate O'Donnell explained to the Council that, in the past, finding shell had been an ongoing issue for the industry. However, now it looks as though hatchery production and remote setting capacity is limiting growth in the aquaculture industry. He expressed a need for a western shore hatchery to keep up with the growing industry and said that in future we should discuss hatchery capacity and ongoing industry expansion as an agenda item at the next meeting.

Leaseholder Letter (Mr. Webster)

Mr. Webster read a letter addressed to the Council on behalf of Mr. John Barnette, a longtime leaseholder. The letter explained how Mr. Barnette has had problems with theft from his leases and the difficulty he has had in working with NRP to catch thieves. The letter related how Mr. Barnette saw poachers on his lease multiple times and reported it to the NRP. Once, after reporting the theft, NRP came to his lease site but not in time to catch the illegal harvesters. However, once on his lease, NRP wrote him a violation for not having all of corners marked.

After the letter was read, discussion took place between members of the council and public. Mr. Webster said the letter brings up the issue of active use. Mr. Barnette has stated that he will not continue to plant if he cannot gain protection for his product. He suggested NRP and leaseholders work together to best determine how to address this concern because it will continue to be an issue. Major Sewell noted that NRP needs to be notified of theft every time it occurs. Ms. Brohawn mentioned that we could potentially put trackers on the offender's vessels. Delegate O'Donnell followed Major Sewell's comment by saying law enforcement does not know how prevalent theft is and that we need to quantify how big the problem has become to determine solutions. Secretary Belton stated that documenting need for officers is critical in the legislature and data must be provided to receive resources. Delegate

O'Donnell requested that the Maryland Shellfish Growers Association, a newly forming organization, be contacted to calculate approximate losses from theft on shellfish leases.

Motion: (O'Donnell/ Klausmeier) - Passed

For the Chairman of the ACC to send a letter to the President of the MSGA to compose numbers on product loss from theft and other actions as well as movement of markers.

Public Comments:

Chair Butler thanked everyone for coming.

Mr. Blackwell thanked the Secretaries for coming and taking interest in the industry.

Mr. Donald Marsh presented an issue he has been having with the ACOE to the Council. Mr. Marsh explained he is the longest standing lease applicant and has yet to put any oysters on his lease because he cannot get his permit authorization out of the ACOE. He requested that the Council review a letter he wrote to get the ACOE moving on his permit. Secretary Belton commented that he is going to the ACOE Change of Command ceremony and will bring up the issue with the new commander.

Motion: (O'Donnell/ Butler) – Passed

For the Council to forward Mr. Marsh's letter concerning the Corps, Baltimore district to Senators Cardin and Mikulski.

Vice-Chair Harrell asked if there was a way for the State to support Mr. Marsh's claims and send the letter to the ACOE. Delegate O'Donnell replied that we need to be careful and should just forward the letters to the Senators for their consideration.

Motion to Adjourn: (Webster/Butler) - Passed

There being no further business, the motion was passed at 9:28 pm with the next regular meeting to be Thursday, September 10, 2015 at 6:30 pm in the Maryland Department of Natural Resources, C-1 Conference Room.