Shellfish Lease Program

NC DEPARTMENT OF ENVIRONMENTAL QUALITY

Jacob Boyd | NC Division of Marine Fisheries

NCBIWA | Wilmington, NC | Nov. 12, 2019
Shellfish Leases North Carolina

Overview

• History
• Program
• Authority
• Partners
• Types
• Application process
• Status
• Legislative updates

Department of Environmental Quality
• Since 1858, private use of public trust waters for the production of shellfish by leasing to residents of North Carolina
• Traditionally used for bottom only, clams and oysters
• In 1989, legislation was enacted to allow the use of the water column above existing shellfish leases (1st water column lease issued in 1991)
• MFC authority to issue leases until circa 1995 when authority transferred to DEQ
<table>
<thead>
<tr>
<th>Shellfish Lease Type 1</th>
<th>Total</th>
<th>Total Acreage 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Franchise</td>
<td>50</td>
<td>517</td>
</tr>
<tr>
<td>Bottom Lease</td>
<td>224</td>
<td>1,219</td>
</tr>
<tr>
<td>Water Column</td>
<td>88</td>
<td>255</td>
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<tr>
<td><strong>Totals</strong></td>
<td><strong>362</strong></td>
<td><strong>1,736</strong></td>
</tr>
</tbody>
</table>

1. Current as of Oct 8, 2019
2. Total acreage only includes bottom and franchise because water column leases are over bottom lease
Authority
NCGA and MFC

N.C.G.S. §113 – 201 – 208

- Authority to MFC for rule making to develop and improve the cultivation, harvesting, and marketing of shellfish for commercial production in North Carolina including:
  - Limit the number of acres of shellfish leases in any area
  - Minimum standards for suitability of areas for the production of shellfish
    - Compatibility, closures, cannot contain natural shellfish bed (≤10 bu./acre)

15A NCAC 03O .0200 – Leases and Franchises

- Standards and definitions
- Application processing
- Production requirements
- Marking
- Riparian property consent for leases within 100 ft. of developed shoreline
- Renewal
- Reporting
- Cancellation/termination
- Transfer
- Protection of private shellfish interest
Shellfish Aquaculture North Carolina
Partners

- DMF: Rule Making, FMPs
  - Administration, Inspection, Records
- MFC: Rule Making, FMPs
- DCM/DWR: Comment, Review
- USACE: NW #48
- NCGA: Statutes, Studies
- UNC: Collaboratory, State Shellfish Mariculture Plan
- NC Coastal Federation: Advocacy, Coordination
- NC Sea Grant: Extension, Education
- Community Colleges: Training
- UNCW: Siting Tool, Research, Hatchery
- NOAA: Support, Education, Planning
- Industry: Advocacy, Investment, Sales
- NOAA: Support, Education, Planning

North Carolina Marine Fisheries
Types of Shellfish Leases
Shellfish Lease vs Franchise

Lease (Bottom or Water Column)
- Over public trust waters
- Cannot be on productive bottom
- Rent charged

Franchise (Bottom)
- Over recognized submerged lands claim
- Can be on productive bottom
- No rent for bottom lease
Types of Shellfish Leases
Bottom Lease

Shellfish Bottom Lease

• Extensive (spat on shell, cultch)
  • Low yield/acre, lower cost
  • Minimal equipment
  • Moderate labor
  • Volume market/bushel
  • Highly navigable

• Intensive (bottom cages)
  • Gear ≤18 in. off bottom
  • Higher yield/acre, higher cost
  • Significant equipment needs
  • Intensive labor
  • Volume market/bushel
  • Purchase oyster seed for grow out
  • Potential navigation limitation
Types of Shellfish Leases

Extensive Bottom Lease

Shell cultch

Spat on shell

Cultch on bottom

Clam netting
Types of Shellfish Leases

Intensive Bottom Lease

Bottom Cages

Rack and Bag
Shellfish Water Column Lease

- Intensive
  - Amends a bottom lease
  - Gear >18 in. off bottom; or
  - Floating gear
  - Mostly oysters
  - High yield/acre, higher cost
  - Significant equipment needs
  - Intensive labor
  - Half-shell market/count
  - Limits navigation
  - Purchase oyster seed for grow out

Floating gear
**Types of Shellfish Leases**

*Water Column Lease*

- **Flip Bags**
- **Lentz system**
- **LowPro Grow Floating Cage**
- **OysterGro™**

*Adjustable Long Line*
Shellfish Lease Application Process

Steps

Application
- Spatial data layer review
- Data entry and fee
- Management plan

Temporary Signs
- Mailed to applicant
- Notifies DMF when marked

Formal Site Investigation
- Field sampling
- Verify marking/size

Compile Field Data
- Mapping
- Siting issues
- Issue resolution

Internal Review
- DMF Sections
- DCM
- DWR
- Other

Internal Comments Summary
- Director
- Approves for public hearing
- Requests modification or additional information

Public Comment
- 30 day public comment period
- 2-legal notices
- Formal public hearing

Final Consideration
- Summarize comments
- Address USACE concerns
- Submit to Director

Decision (Director)
- Approves
- Approves w/ conditions
- Denies

Aquaculture Permits Needed?
Shellfish Lease Application Process
USACE Nationwide #48 Regional Conditions

• Authorizes
  • Installation of gear/equipment
  • Discharges of dredged or fill material
• Conditions
  • 1/3 of waterbody for water column
  • SAV:
    • \( \leq 15\% \) samples (Apr. – Oct.)
    • 250 ft. min from USCG navigational aid
    • Not in marked/unmarked navigation channels or USACE setbacks
  • Markers >4 in. diameter require CAMA permit
  • 20 ft. buffer from marsh for water column/cage use

Floating upwelling system (FLUPSY)
Shellfish Lease Applications 2005 - 2019

Applications Received

Year

- Bottom
- Water Column
Status of Shellfish Leases

Challenges

- Conflicts with other public trust uses
- Navigation hazard over bottom gear/cages
- Theft
- Lacking economic information on growth potential
- Increasing litigation expenses
- Public health issues
- Limited staff and funding
- Experience level of applicants varies
- Seed/nursery availability
July 1, 2019

• Session Law 2019-37; Senate Bill 648 (Shellfish Aquaculture Bill)
  • An act to provide further support to the shellfish aquaculture industry in North Carolina

• Includes requirements for adopting rules
Legislative Update
Shellfish Aquaculture Bill

1. Authorize Establishment Shellfish Aquaculture Enterprise Areas (SEA)
2. Establish Pamlico Sound Shellfish Aquaculture Pilot Project
3. Increase Production and Planting Requirements for Shellfish Leases
4. Facilitate the Transition of Terminated Leases to Productive Uses
5. Allow Transplanting of Seed Oysters/Clams from Permitted Aquaculture Operation Nursery Facilities in Prohibited Waters
6. Administrative Remedy for Shellfish Leasing Appeals
Legislative Update
Shellfish Aquaculture Bill

7. Moratorium on Shellfish Leasing in the New Hanover County Area
8. Moratorium on Shellfish Leasing in Bogue Sound
9. Study How to Reduce User Conflict Related to Shellfish Cultivation Leases
10. Study Penalties Associated with Violations of Laws Regarding Taking Shellfish and Shellfish Aquaculture Operations
11. Study of Shellfish Loan Program – NC Coastal Federation
12. Study Crop Insurance for Shellfish Aquaculture – NC Dept. of Agriculture and Consumer Services
Existing statute and rule impacts

Statutes impacted:
• N.C.G.S. § 113-202, 202.1, 203; 143B-289.57

Statutes potentially impacted:
• N.C.G.S. § 113-187, 207, 208, 209, 218, 269

Rules impacted:
• 15A NCAC 03O .0201 - .0208
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<tr>
<th>Responsible Party</th>
<th>Study</th>
<th>Deadline</th>
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<tr>
<td>DMF, MFC</td>
<td>User conflict Study</td>
<td>1/1/2020</td>
</tr>
<tr>
<td>DMF, DOJ, SPAC</td>
<td>Violations</td>
<td>3/1/2020</td>
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<tr>
<td>DMF</td>
<td>SEA moratorium areas</td>
<td>4/1/2020</td>
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<tr>
<td>DMF, MFC</td>
<td>User conflict (Rules/Policies)</td>
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<tr>
<td>DMF</td>
<td>Pamlico Sound Project (Interim)</td>
<td>1/1/2025</td>
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<td>DMF</td>
<td>Pamlico Sound Project (Final)</td>
<td>1/1/2030</td>
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<tr>
<td>NCCF</td>
<td>Loan program</td>
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<tr>
<td>NCDA</td>
<td>Insurance program</td>
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User Conflict Study

• DMF and MFC to study how to reduce user conflict related to shellfish cultivation leases

• Recommendations (draft):
  1. Regulatory Reform
  2. Program Evaluation
  3. Collaboration
  4. Resource Assessment
Future studies and directives

- Shellfish Aquaculture Enterprise Areas (SEAs)
- SEAs in moratorium areas
- Pamlico Sound Shellfish Aquaculture Pilot Project
- Further recommendations for rule and/or statute revisions
  - Continue working with DCM/Coastal Resources Commission
Questions?
Contact

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