



Shellfish Lease and Aquaculture Program

NC DEPARTMENT OF ENVIRONMENTAL QUALITY

NC Division of Marine Fisheries

Marine Fisheries Commission | February 2020



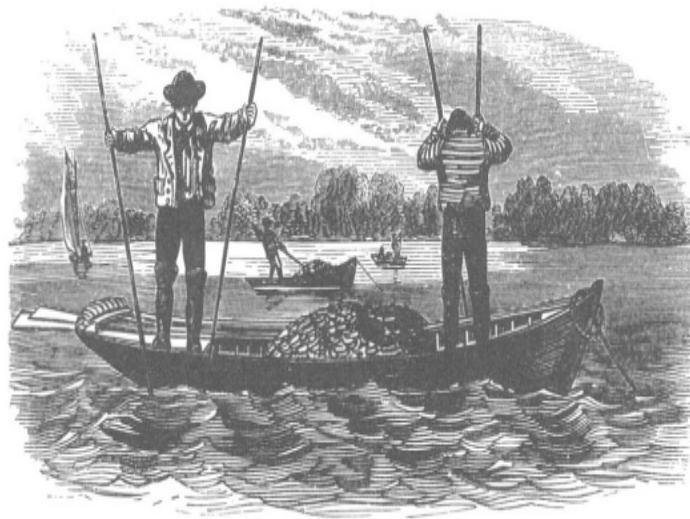
NC Shellfish Leases

- History
- Overview of the Shellfish Lease and Aquaculture Program
- Shellfish Lease Standards and Types
- Application Process
- Challenges
- Legislative Changes
- User Conflict Study Update



NC Shellfish Leases

- North Carolina has provided for the private use of public trust waters for shellfish cultivation for over 150 years.
- 1989 legislation expanded that role to include shellfish water column leases above existing shellfish bottom leases.





Public Trust Doctrine

- Generally, all “navigable waters” and the lands beneath them are subject to the Public Trust Doctrine.
- Public trust rights are in North Carolina General Statute and are memorialized in the North Carolina Constitution.
- The state can create certain exceptions for uses of public trust waters.



Types of Shellfish Leases



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 inches off bottom
- Higher yield/acre, higher cost
- Significant equipment needs
- Intensive labor
- Volume market/bushel
- Potential navigation limitation



Types of Shellfish Leases

Shellfish Water Column Lease

Intensive

- Amends a bottom lease
- Gear >18 inches 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



NC Shellfish Leases



Lease Type	Total	Total Acreage
Franchise	50	517
Shellfish Bottom Lease	224	1,219
Shellfish Water Column Lease	88	255
Totals ¹	362	1,736 ²

¹ Current as of Oct. 8, 2019

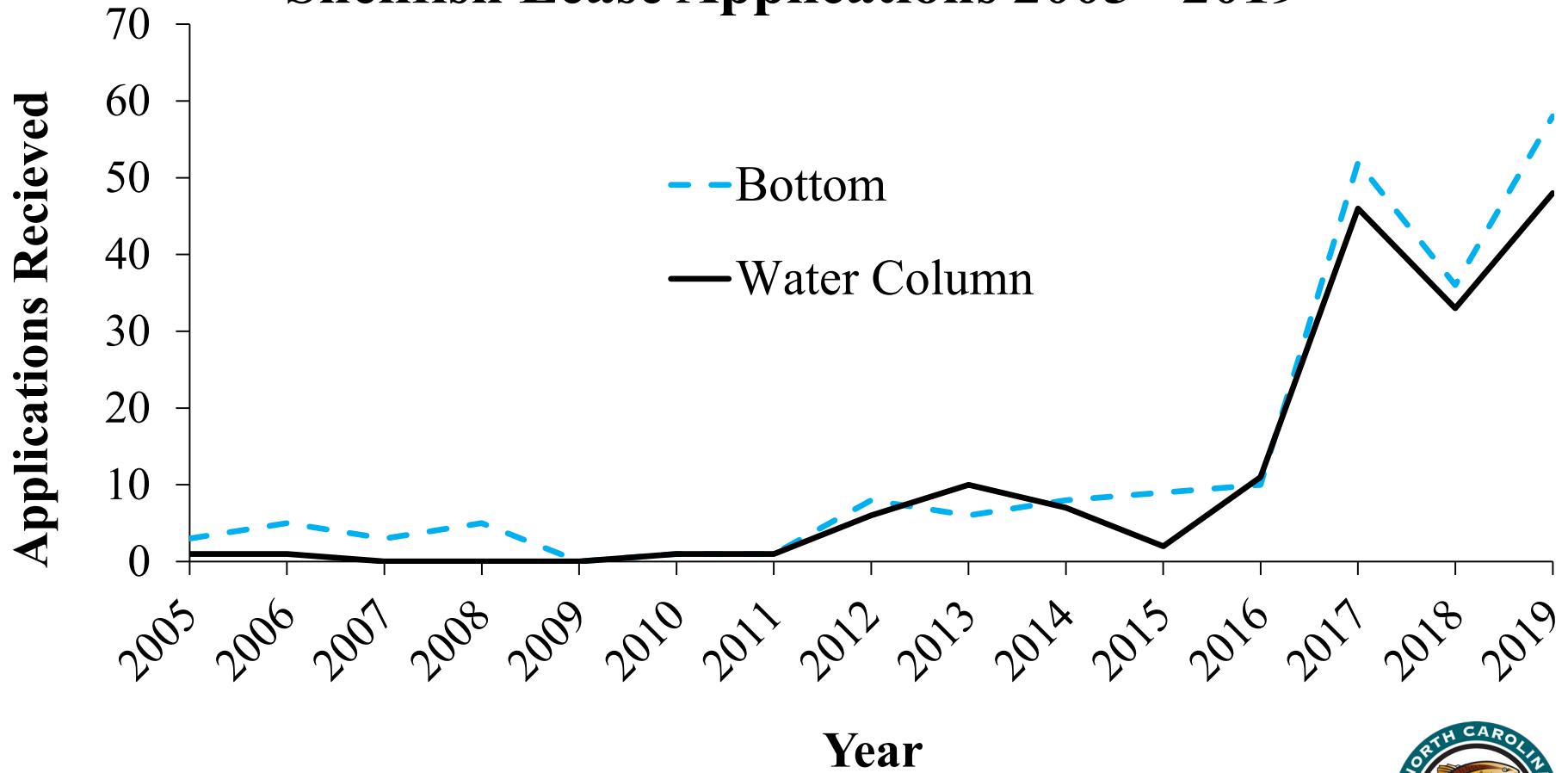
² Total acreage only includes bottom and franchise because water column leases are over bottom leases.



Status of Shellfish Leases



Shellfish Lease Applications 2005 - 2019



Federal Permitting for Aquaculture



US Army Corps of Engineers (USACE) Nationwide 48 Regional Conditions:

- Prior Notice of Construction (PCN)
- 1/3 of waterbody
- SAV - Submerged aquatic vegetation
- 250 feet minimum from USCG navigational aid
- Not in USACE setbacks or marked/unmarked channels
- Consistency/applicable CAMA permits
- 20-foot buffer from marsh for water column/cage use





N.C.G.S. 113-202, 202.1 – Shellfish Bottom and Water Column Lease Minimum Standards

- Suitable for the cultivation and harvesting of shellfish in commercial quantities
- Must not contain a natural shellfish bed
- Will be compatible with other public uses including navigation, fishing and recreation
- Will not impinge upon the rights of riparian owners
- Any additional standards, established by the Commission in duly adopted rules
- Must not include an area closed to shellfish harvest





MFC Rules 15A NCAC 03O .0200 – Shellfish Leases and Franchises

- Standards and definitions
- Application processing
- Production requirements
- Marking
- Riparian property consent for leases within 100 feet of developed shoreline
- Renewal
- Reporting
- Cancellation/termination
- Transfer
- Protection of private shellfish interest



Shellfish Lease Application



Process

1. Site Selection – Applicant picks site
2. Complete and submit Application Package
 - a. Application fee – \$200 for bottom lease, \$100 for water column
3. Site marked properly with temporary signs provided by DMF
4. Formal biological site investigation *April – October only*
5. Review by state and federal agencies
6. Recommendation to Fisheries Director on site suitability
 - a. Public Hearing request



Shellfish Lease Application



Process (Continued)

7. Public Comment and Public Hearing (4-6 weeks)
 - a. Two legal notices in local paper, 30-day public comment period
8. Director approves; approves w/conditions; denies proposed lease based on compliance with standards, internal review, and public comment
 - a. Any change in corner markers verified by DMF (adds time)
 - b. NWP #48 - PCN with Corps
9. Contract issued
10. Site Verification (30 days after approval)



Shellfish Lease Challenges

- General Assembly's legislative findings and declaration of policy:
 - Shellfish cultivation provides economic and ecological benefits to North Carolina.
 - Policy is to encourage the development of private shellfish cultivation in ways that are **compatible** with other public uses.
- Shellfish leases often conflict with public trust uses (i.e., navigation, fishing, and recreation) making balancing these issues and determining compatibility challenging.



Shellfish Leases Challenges

- Substantial increase in user conflicts coinciding with the recent expansion (five years) of the shellfish aquaculture industry
- Increase in the number of contested cases and other legal challenges
- Many user conflict cases brought by riparian owners driven by concern for impairment of view, also known as “viewshed”
- Viewshed is not a public trust right acknowledged under North Carolina common law.



Legislative Changes

Current and future studies and directives mandated by the Shellfish Aquaculture Bill (S.L. 2019-37)

- Implement User Conflict Study and subsequent rule changes
- Evaluate and identify areas suitable for Shellfish Aquaculture Enterprise Areas (SEAs), including in moratorium areas
- Assess Pamlico Sound Shellfish Aquaculture Pilot Project
- Implement Shellfish Cultivation Lease Review Committee for shellfish lease appeals



User Conflict Study Update

Study Recommendations

1. Regulatory Reform
2. Program Evaluation
3. Collaboration
4. Resource Assessment



User Conflict Study Update



November 2019

- MFC voted to approve MFC/DMF User Conflict Study
- Study sent to DEQ and then legislature

January 2020

DMF began work on study recommendations, including proposed rule amendments

February 2020

- Update MFC and request approval of proposed rule language
- DMF begin drafting fiscal analysis of proposed rules

May 2020

Request MFC approval to begin rulemaking process



User Conflict Study Update

August 2020

Publication of proposed rules in *N.C. Register*

September-October 2020

Public comment period and public hearing

November 2020

MFC consider approval of final adoption of rules

March 1, 2021

Legislatively required deadline for MFC to adopt rules



User Conflict Study Update



MFC Rule Amendments: Years 2020 and 2021

Rule	Year
03O .0201 - Requirements	2020
03O .0202 - Applications	2020
03O .0203 - Application Processing	2021
03O .0204 - Marking	2020
03O .0205 - Renewal	2021
03O .0206 - Protest	2021
03O .0207 - Production Reports	2021
03O .0208 - Termination	2021
03O .0209 - Transfer of Interest	2021
03O .0210 - Franchises	2021
03O .0211 - Protection	2021

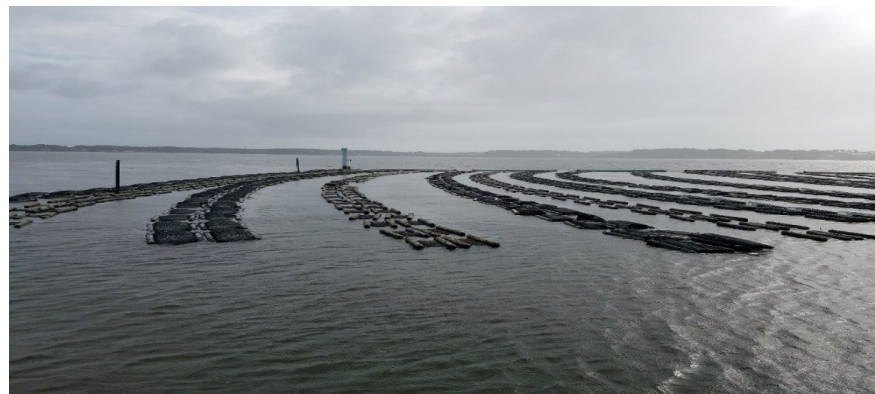




MFC Rule 15A NCAC 030 .0201

Standards and Requirements for Shellfish Bottom Leases and Franchises and Water Column Leases

- Add 250-foot setback requirement between shellfish leases
- Modify the setback requirement of 100 feet from a developed shoreline to 250 feet
- Add cumulative impact language



MFC Rule 15A NCAC 030 .0202

Shellfish Bottom and Water Column Lease Applications

- Modify marking requirements for shellfish leases and franchises to include a maximum of eight corner markers
- Build on existing rule to enhance training requirements including information about user conflicts and the public trust





MFC Rule 15A NCAC 030 .0204

Marking Shellfish Leases and Franchises

- Increase current 3-inch diameter allowance for corner markers to accommodate larger-diameter markers up to 12 inches.
- Add corner marking requirements (yellow light reflective tape or devices) to ensure visibility to alleviate navigation concerns.





MFC vote to approve proposed language for rulemaking to address user conflicts, as required by the Shellfish Aquaculture Bill (Session Law 2019-37)

Questions?

Shellfish Lease and Aquaculture Program

<http://portal.ncdenr.org/web/mf/habitat/enhancement/shellfish-leases>

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