

**N.C. Division of Marine Fisheries – Habitat and Enhancement
Shellfish Lease and Aquaculture Program – Public Hearing**

May 25, 2023

Present: Owen Mulvey-McFerron – Program Coordinator, Shellfish Lease Program
Teri Dane – Shellfish Lease Biologist
Marla Chuffo – Administrative Specialist I
Dustin Walters – Staff
Anthony Frost - Staff
Scottie Tripp – Staff
George Stilson – Staff
Robert Farnell - Staff
Joe Guthrie - MPO

Attendees:

Gary Cannon, Al Dudley, John Clark, Bob Garrison, Scott Saylor, J. Michael Genest, Via WebEx: Mary Kirk, Jet Matthews, Mike Linz

Meeting: 23 May 2023, 6:01-6:33 PM via in Person and WebEx for Carteret County proposed shellfish lease. Location at Central District Office, 5285 Hwy 70 W, Morehead City

Applicant(s): Gary Cannon, George Johnson, David Eckberg (2)

I. Meeting

At 6:01 pm the public hearing was called to order by Owen Mulvey-McFerron:

“I’d like to call this Shellfish Lease Public Hearing to order. My name is Owen Mulvey-McFerron, and I am the Shellfish Lease and Aquaculture Program Coordinator of the North Carolina Division of Marine Fisheries. I will be serving as the hearing officer tonight. The purpose of this public hearing is to receive public comments on proposed shellfish leases in Carteret County. Site investigations by Division staff have determined that these proposed shellfish leases generally meet the standards for shellfish leasing under NC General Statutes and NC Marine Fisheries Commission rules. The director of the Division has authorized this hearing to receive public comment. Tonight’s hearing is also being conducted virtually, so we have folks participating by telephone and through the WebEx virtual meeting application. PowerPoint slides presented here tonight are also available on the Division’s website for those participating by telephone. This hearing is being recorded and is a public record. All verbal comments, or written communications between members of the public body regarding the transaction of the public business during this meeting are deemed a public record. This hearing is a formalized process where we only take public comment on the proposed shellfish leases that have been noticed in the Carteret News Times Newspaper on April 19th and April 30th, 2023, and on the Division’s website. No decisions will be made at tonight’s hearing. This hearing is also not a dialogue or forum. Any discussion or discourse should be held until after the hearing concludes. Written comments on these shellfish leases can be submitted to the Division up to 5 o’clock tomorrow

evening. If you wish to speak tonight and are not already on the speakers list, you will get a chance to speak after we have gone through the registered speakers. Now we will do a roll call of the folks participating on Webex or by phone. Please be advised, all participants will be recorded. Teri Dane has been taking attendance as people have signed into the meeting. Teri, is there anyone else that has since signed in that you haven't gotten to yet?"

Teri Dane: "Yes, one person called in (since meeting started), caller three, I just sent a request to unmute yourself. Ah, looks like they just signed off, so we can move forward."

Owen Mulvey-McFerron: "Later in the meeting, I will go down the list of those who indicated they wanted to speak. When I call your name, Teri will unmute you, and indicate that you can go ahead. You will be allowed to speak for 3 minutes. After everyone on the list has had a chance to speak, I will ask if anyone else wants to speak. If you do, you will need to raise your hand. Teri will post the instructions in the chat for how to do that."

Post in chat:

From a computer

To raise your hand, you will click on the little hand icon at the bottom of the Participants panel. If the Participants panel is not up on your screen, look for an icon of a person – it may be at the bottom or top of your screen, and click on it. That should bring up the Participants panel.

From a mobile device

If on a mobile device such as a smart phone, you will click on the three little dots and then the hand icon.

Once you have finished speaking, you will need to click on the hand icon again to lower your hand.

"First, I will go through the information for the proposed shellfish leases, then give each of the shellfish lease applicants an opportunity to speak, and then I will open comments to anyone else who wishes to be heard. I will call on commentators by name in the order they signed up to speak."

"With that, I will go through the information on the proposed shellfish leases:

First a 1.98-acre shellfish water column lease applied for on April 6th, 2022, by Gary Cannon, located in South River. The management plan indicates the use of cultch, bottom, and floating gear for the commercial production of oysters. Division staff conducted a site investigation on August 31st, 2022. Poles and signs were in place, and no samples were collected because there is an existing bottom lease.

Next a 1.53-acre shellfish water column lease applied for on April 19th, 2022, by George Johnson, located in Nelson Bay. The management plan indicates the use of cultch, clam seed, and floating gear for the commercial production of oysters and clams. Division staff conducted a site investigation on May 16th, 2022. Poles and signs were in place, and no samples were collected because there is an existing bottom lease.

Next is a 7.61-acre shellfish bottom and water column lease applied for July 29th, 2022, by David Eckberg, located in Long Bay. The management plan indicates the use of floating and bottom gear for the commercial production of oysters. Division staff conducted a site investigation on September 13th, 14th, and 19th, 2022, which found zero bushels of shellfish per acre and zero submerged aquatic vegetation, which I will refer to as SAV.

Lastly, we have a 1.33-acre shellfish bottom and water column lease applied for on July 29th, 2022, excuse me that is a 7.77-acre shellfish bottom and water column lease applied for on July 29th, 2022 by David Eckberg, located in North River. The management plan indicates the use of clam nets, bottom, and floating gear for the commercial production of oysters and clams. Division staff conducted a site investigation on September 13th, and 19th, 2022, which found zero bushels of shellfish per acre and zero SAV.

Now, I will call on the applicants and give them an opportunity if they wish to speak to their proposed shellfish lease. This is not a requirement of the applicants. You will have three minutes to speak. I will hold up a finger when you have one minute remaining, and my hand when you reach three minutes. As a reminder for all speakers this evening, please be courteous and respectful. If you are discourteous or disruptive, I will ask you to leave. So, when we're speaking, um, the podiums where you'll speak, this is a little bit of an unusual hearing setting. The whole point of this hearing is for public comments to be collected to then be relayed to the Director when she is making her decision on the shellfish leases. Please direct your remarks to me, and not to the rest of the audience. There is a microphone on the podium that you're going to need to direct your voice towards so that we can record it and then transcribe it and deliver those remarks to the director as accurately as possible.”

“So, with that, I would like to call on **Gary Cannon** to present on their proposed shellfish lease.”

Gary Cannon: “Gary Cannon. Proposing a lease upper water column lease in South River. Uh, I’ve had the lease for a right good while. Storms and my bottom plantings that I’ve had, I’ve had a lot of storm damage. So, I talked to several people they suggested I try an upper water column try, you know, so I can move them through a storm and it's a big investment. When you put a lot of oysters on there, and a storm comes and washes everything and sands everything up, that's seems to be our problem. It's sandy. So, I want to put the cages on one. Floating cages, I don't want to just go in there and fill it full of them being a nuisance to the neighborhood or anything

like that. I'm going to try to work with everybody. That's . . . I know there's some people to maybe not liking it, but I don't know, I want to get their advice, work with them. Just try to do everything I can to be fair about it and I hope they will be too. So, it's about all I got to say."

Owen: "All right, thank you. Next, I'll call on **George Johnson** to present on their proposed shellfish lease. No Mr. Johnson."

[Not Present]

Owen: "I will move one to call on **David Eckberg** to present their proposed shellfish lease. No Mr. Eckberg."

[Not Present]

Owen: "Now with that we will move to comments from the public. When I call your name, please come to the podium, state your name and organization you are representing, or where you are from, which lease or leases you are commenting on, and your comments. Like I said before, direct your comments to me, as the representative of the Division, and not the audience. Make sure you speak clearly into the microphone. If anybody has any questions, I'll be sticking around after the meeting as long as I need to and staff will be here and also happy to answer questions as well. Um, like I said, this is not a discourse, please deliver your remarks over the course, you know, over the 3 minute time. When your time expires, take your seat. And then, after the hearing is concluded if anybody wants to have a discussion or a conversation about something, we can have that then, right now we are just collecting the public comments.

So with that, I will first call **Al Dudley**.

Al Dudley: "My name is Al Dudley. I'm a seventh generation commercial fisherman from Carteret County. I live in a little community at the mouth of North River. I'm the fifth generation that's lived on the land. I'm here to oppose the Eckberg, North River, lower North River lease. I can see it from my house. And it's a place traditionally used by commercial fisherman, recreational fishermen, and tourism. In the summertime, it's unbelievable at the amount of people you'll see on this shoal, running their dogs, their children are swimming. And it's heavily used. I fish on it for mullet when the tides up and everything else. It's not a barren wasteland that's not used. It's used. I watched this lease thing in North River progress to a point where the river looks like a PVC forest, it's out of hand. It needs to be stopped. Everybody I talk to you would like to see a moratorium on it. It's got to end somewhere or it's not going to be any more public bottom. It's a big piece of land that's used by everybody and belongs to everybody. And it should not be given to an individual, uh, for unnatural purposes. It's used. Everybody sees it's used and if you're there in the summertime, you'll see it used and tourists, love it. That's what they come for. They got the right to use it, and it should not be taken away from 'em. All this, in my opinion, all

this public bottom that is being given away belongs to the public. And it should be preserved. Should be restored to its natural state and bring the oyster back like Virginia's done. It can be done. But I'm opposed to this lease especially because I look at it and it's in my heritage and I don't want my right taken away from me that I can't go on that shoal and do what my ancestors have been doing for 100 something years, it's not right. And I feel very strongly about it and, uh, not only do I oppose this lease. I oppose any further leases in North River. Should be a moratorium. That's what I'm thinking"

Owen Mulvey-McFerron: "Thank you Mr. Dudley. Next, I will call on **John Clark.**"

John Clark: "Thank you. I'm John Clark. I also live on North River, in the southern end of it and we've lived there for about 27 years and we're very close to the lease that we're talking about. And I'm, at this point, opposing it. During those years, my family and I used the proposed lease area for multiple recreation and water activities, and we would like to be able to continue to do that. You know, we are fortunate enough to live in an area that has national park and national seashore. Plus, a state preserve with wild horses. And it's very close to this proposed lease. These parks draw a lot of tourists to the area and therefore contribute a lot of local, a lot of money to the local economy. We would like to see this area kept pristine and something that would not detract from the natural beauty, and a water column lease has that affect, it does detract and I know you can't take and I think you call it viewshed, you're not supposed to take that into account but I mean we're dealing with a lot of tourists, we've become a tourist area. Fortunately, or unfortunately, we have. So, if this could be detrimental to the tourist industry because anybody that comes out with a tour boat or exits or enters Taylors Creek. They're going to run across, they're not going to run across it, but they're going to see this and it's going to detract from the pristine nature of our. Because of the proximity of the lease, Cape Lookout National Park, Shackleford National Seashore, and the boating traffic, exiting from Taylors Creek daily has the possibility of having a major impact on the economy of the area. Therefore, I would like to request an economic impact study be done before this lease is granted to see how it would affect the economy in that area. Lastly. It would also like to request that this southern end of North River and Back Sound, which encompasses all of these national seashores and national parks, be put in a moratorium restricting any leasing or anything that would detract from its natural beauty. Thank you."

Owen Mulvey-McFerron: "Thank you. Next, I'll call on **Bob Garrison.**"

Bob Garrison: "Thank you. I'm Bob Garrison. Uh, I've lived at Davis Bay which is just at the just past the mouth of North River, for about 25 years, and I opposed this lower North River water column lease. Because basically, it eliminates the public's use of that public trust water there. Despite what the report from the Marine Fisheries shows, it does get considerable

recreational use. I've personally used it for fishing for flounder, drifting over it, gigging flounder on it, and there's an old wreck on this sandbar that I've dove on for flounder. Um, it's a good place for collecting conch. I've gone wind surfing over there to stay out of that main channel. And this is a perfect location for wading in the water, which I've done with my grandchildren repeatedly. When, when the weather's out of the north, it's relatively protected. When Shackleford Banks is packed with people, you can go over here to this sandbar and it makes an ideal setting for that. I have many friends and neighbors who have used it for a much wider variety of recreational uses. Basically, to me, it comes down to this. For the state to deny the public's right to that particular area, so that one person can use it for a business venture, is a wrong use of that area. And I agree with what's been said so far. I think this whole North River area, Back Sound, uh, the area in front of Shackleford, all ought to be could be considered for a shellfish lease moratorium. That's all. Thank you."

Owen Mulvey-McFerron: "Thank you. Now, I'll call on **Scott Saylor.**"

Scott Saylor: "Hello and Good evening. My name is Scott Saylor. I appreciate the opportunity to comment tonight on this same lease of, not sure, seven or eight or almost nine acres of property. It's unclear in the record of exactly what the size is, because the posted signs say almost 9 acres, but the materials and listings of the meeting all say 7.7 acres. And that's a difference of over 60 thousand square feet of area. And that's something we don't have more information on. But having said that, my wife and I and family own a home on Lewis's creek, that also fronts on North River. Uh, we have owned the property for over 14 years and spent a lot of time on the water out in North River out around and on this shoal area. Um, we boat, we fish, we also duck hunt. Uh, particularly duck hunt directly adjacent to this site. And we are very concerned about the changeover of this property from public trust waters, public trust property to private water column or bottom etc. lease for a long period of time. I've submitted a written summary of my concerns raised about both this process. I think there are some defects in this process for this particular lease, and the lack of merit on the proposed lease. I don't believe the application meets the minimum requirements in the statute. So, I want to point out several highlights that will be in my written comments. I'll bring those to you after the meeting or after comment. Um, number one, this is a wonderful sandy beach area of the North River. It's readily accessible by the seven deep water channels that converge all in the lower North River, that's what makes this area so appealing. But probably also appealing to the applicant because there's a lot of water that moves through there. There are also a lot of people who move through there. Number two, the maritime patrol report of January 1st, 2023, is absolutely wrong. Um, it contains false information about how this property is used and I would urge you to look at that, my time is limited. So that is the reason for our pending public records request, to understand a whole lot more about the information on this applicant's proposed lease. Third, the marine life here, whales, porpoises, sea turtles, otters, you name it, they're all here. A lot of marine life there. You'll have photos of those in the materials. The seven channels of Beaufort Inlet, Taylors Creek, Harkers Island, North

River, North River thoroughfare, the channel to Cape Lookout, and the channels to Straits. Lastly, based upon everything we have learned and read, there are many, many, more reasons under the law to deny this application, rather than approve it. I would urge the Secretary to look deeply at all the issues raised here. Conditions in the lease will not solve our objectives. It should be denied. It is not state-owned property, it is public property. I appreciate the opportunity to comment.”

Owen Mulvey-McFerron: “Thank you very much, and I will remind, um, everybody speaking tonight that if there is additional comment, you wish to make, um, the Division is accepting written comments.”

Owen Mulvey-McFerron: “Thank you very much. And our last registered speaker is **J. Michael Genest.**”

J. Michael Genest: “Good evening and thank you, I'm Michael Genest of the Forge Law Group. I am here tonight on behalf of Lukens Island Timber Enterprises. And I'm here to register an objection to Mr. Cannon's lease application on South River. I don't know that I've ever given my full name within three minutes, much less a dissertation on legal points but I'll do my best. Fundamentally, and I'd like to start with this key point. Lukens is not opposed to oystering, not opposed to Mr. Cannon's, the right to do that, his ability to do that. We're opposed to the specific location that has been proposed for this water column amendment and the reasons for that are multitude, but I'll hit as many as I can within this three minutes. First, is the explicit wording of the statute, which states that within 250 feet of water dependent structure, the permit must be denied. And in this case, there are permanent structures, there are duck blinds on the shore, they are uh, without question, they are structures. They are without question water dependent to the extent that anybody who has a question about the water dependency of those structures, we've submitted a couple of affidavits from both prior federal and prior state regulators supporting the position that those are water dependent structures and that from just a statutory language perspective, the lease amendment cannot be granted. Related to that, second point is safety. In Carteret County, you can't hunt within 500 yards of a permanent duck blind. And an appropriate duck blind including the ones that are on Lukens' property. Lukens has a statutory right to have these duck blinds in place and it cannot be the will of the legislature to create a safety zone for hunters but not for oysterman, it's not okay to create a safety zone for one and not the other. The third point that I'll make tonight is the public's customary use of these waters, which include boating, tubing, skiing, fishing, hunting, all on these waters, all of which will be obstructed physically by these floating baskets. Uh, fourth point that I'll make, is that the property rights of the riparian owners, the rights to build docks, and piers, and duck blinds over this water are clarified under the law and they are in direct conflict with the proposed lease. The fifth point that I'll make is that the proposed lease creating a conflict between Mr. Cannon and Lukens is

unnecessary and it harms shell fishing in North Carolina. I'm being told I have to stop. We'll submit our additional comments in writing. Thank you."

Owen Mulvey-McFerron: "Thank you very much. So, now we will move on to the registered speakers who are on WebEx. Teri, if you wouldn't mind sending a request to unmute so Ms. Kirk can speak."

Teri Dane: "Mary, I sent you a request to unmute."

Mary Kirk: "Yes. Thank you. Can you hear me?"

Teri Dane: "Yes, we can."

Mary Kirk: "All right, thank you so much. I would like to make a comment on the 7.77 acres or the 8.97 acre, um, proposed lease by Mr. Eckberg and I do appreciate the opportunity to be able to speak. I am fortunate to live on Lennoxville Point Road, looking out over North River to Howland Rock, Shell Landing, Harkers Island, Straits, and even the Cape Lookout lighthouse from my dock. This property has been in family hands for generations. And also, were used to be living there, uncles and cousins who used to live there were commercial fishermen. General Statute 113-202 includes a sentence, 'the Secretary may not grant a new lease in an area heavily used for recreational purposes.' Every day, and I would say, all year long I witness boats negotiating North River using various channels to reach their destination. They may be coming from the north of the bridge, they may be coming from Straits, from Harkers Island, but they are negotiating North River to get to their various destinations. They come to drop and retrieve crab pots, fish for trout, bluefish, drum, netting for mullet and many like myself, enjoy the use of smaller boats to access the smaller channels around all the outlets listed above to search for conks, to be able to scallop when in season, and every day possible, to access the low shoals, the shoals at low tide to search for the treasures and splash and play in the water off the shoals. Sandy beach areas are used heavily and there are only limited areas in North River that provide such hard bottom areas. And when all these waterways converge, where all these waterways converge, is the proposed site for the 7.77-acre lease. It will be situated in an area heavily used for recreational purposes. Another great enjoyment is spending time on the water in my kayak and being able to access whatever channel I wish." [*WebEx cutting out sound*]

Teri Dane: "Thank you, Mary."

Mary Kirk: [*her voice is cutting out of the recording*] . . . "from our area for recreational enjoyment. This lease . . . [*voice cutting out*]. Finally, it must be understood this is one of the most used waterways from Straits, Howland Rock, Shellpoint Landing, and Harkers Island. Such a lease will greatly impact the recreational use of this area. I beseech the hearing committee to

deny this request, and to protect this area for all who use it from Beaufort, Straits and Harkers Island. Your consideration is greatly appreciated.”

Owen Mulvey-McFerron: “Thank you Ms. Kirk. I will say that you cut out a couple of times while giving your remarks towards the end. If you have a written copy of your remarks, you will be able to submit to us. That would be great, and it would allow us to make sure your full comments are able to be delivered to the director accurately.”

Mary Kirk: “Thank you very much sir. I did submit those comments on Monday.”

Owen Mulvey-McFerron: “Wonderful, thank you very much.”

(unmutes others to see if they want to speak, Mike Linz declines.)

Teri Dane: “Jet Matthews, I sent you a request to unmute. [*Unmuted and begins to speak*] Do you wish to speak?”

Jet Matthews: “Yes, I do.”

Teri Dane: “Okay. Go Ahead.”

Jet Matthews: “Yes, I’m one of the founding members of Lukens Island Land and Timber company. We have been on the property since 1991. We have been duck hunting there. There's 16 members and those 16 members have now grown to probably hundreds, as far as the numbers of children and now the children are having children. And we have three existing physical duck blinds on the shore in front of this proposed lease and we have two offshore blinds that were commercially built, we probably built 500 duck blinds out there and have had a lot of them destroyed by hurricanes but this is the traditional way that we have hunted that property. And, one of the things we submitted in the last lease that I attended, was we also have a hundred and forty-six, ten acre lots on the water through that area, that are available to the membership to purchase. Or, we are looking at possibly selling those and we have a development plan done by Stroud Engineering, it was actually with Ron Culiver and all that was submitted in the last time we were there and I don't think anything was, any relevance was given to that. And so, we're not opposed to Mr. Cannon. We're not opposed to him tonging oysters there, we would be happy to buy them from him, but we are in opposition to somebody putting floating bags all over the property so that when people get ready to build a house, then they're going to have to build a dock right through the middle of it. And we have a tremendous amount of property there and we've expressed it. We have property all the way up into Turnagain Bay. We have no problem at all with anything over in that area, but where we have 146, ten acre lots and existing duck blinds that we've used that are there. And I think there was somebody that stated that was a public trust

thing. The documents will be submitted tonight by our attorneys, and we have other attorneys that will be adjoining this case, are going to point out that there are laws on the books about this that have been overlooked by the department. And I really applaud some of the people in North River about what they're doing because, I think once this gets to the News & Observer and other things, I think people are gonna start looking at this. I think a lot of people don't know what's going on and as they start riding around in boats they will. So, we are in major opposition to this, and we would like our points to be heard and we would like people to really look at the legalities of what our attorney that's present there tonight said, and he's submitting a lot more than could be said in three minutes. I appreciate everybody's time. And we are not in opposition to commercial fishing at all. Thank you very much.”

Teri Dane: “Thank you. I believe that is everyone Owen.”

Owen Mulvey-McFerron: “Alright, thank you. Is there anyone else here that would like to speak?”

[Inaudible exchange, no additional speakers]

Owen Mulvey-McFerron: “Alright, if no one else wishes to speak I will close this public hearing. I would like to thank you all for your time, participation, and patience throughout the process. Time of closure is 6:33pm.”

Closure: 6:33 P.M.