



Potential Solutions to Address Shellfish Lease Conflicts

Marine Fisheries Commission

February 14-15

*Department of Environmental Quality
Division of Marine Fisheries*



Shellfish Lease Challenges

- Lease siting and conflicting uses
- Potential for increasing litigation expenses
- Navigation hazards over bottom gear/cages
- Experience level of applicants varies
- Gear cleanup/abandonment
- Seed/nursery availability
- Theft

Conflicting Uses



Lease Exclusion Areas

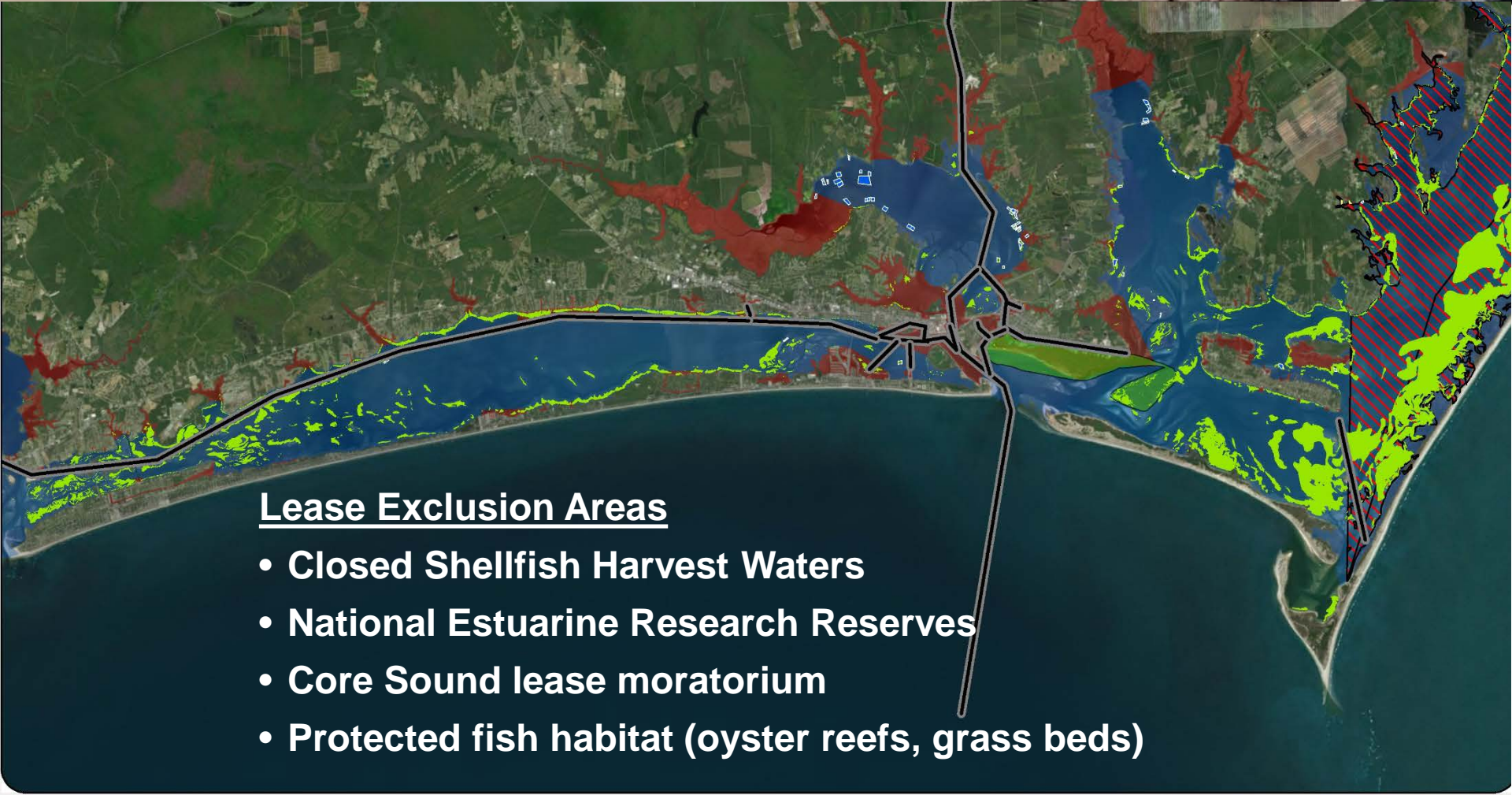
- Closed Shellfish Harvest Waters
- Recognized Submerged Lands Claims
- National Estuarine Research Reserves
- Protected fish habitat (oyster reefs, grass beds)



- DCM_Coastal_Reserve_Boundary
- Submerged Lands
- Approved Harvest
- Prohibited Harvest

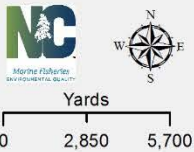


Conflicting Uses



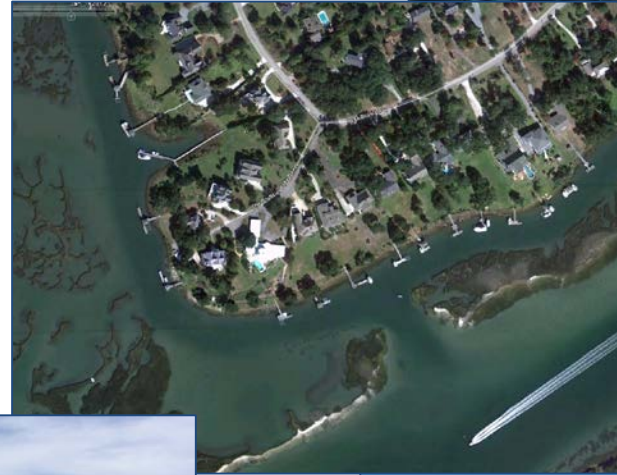
Lease Exclusion Areas

- Closed Shellfish Harvest Waters
- National Estuarine Research Reserves
- Core Sound lease moratorium
- Protected fish habitat (oyster reefs, grass beds)



Conflicting Uses

- Navigation - boating
- Fishing - commercial or recreational
- Recreation - swimming, kayaking, etc.
- Hunting - duck blinds
- Waterfront development



Differing Perspectives

Salt Magazine November 2017

PORT CITY JOURNAL

Free, Wild and Beautiful

The life of a Cape Fear oysterman



On an Elysian autumn day in late September, I find myself perched on the bow seat of a jon boat, rocking down the waterway behind Masonboro Island. The boat is green and solid, covered with a shining splinterweb of scuffs and scratches; its floor is buried under small white buoys and rough black mesh bags and long lengths of PVC pipe. A shimmering rainbow reflects in the cascading bow spray above the ink-black water. The sky above is Carolina blue, scattered with pulled-outen clouds that march northwest on the breeze that ripples the channel's face.

The man at the oysterman's side is tall, lanky, Tom Canning, oyster farmer. The green sea in the water from behind a pair of blue jeans, looking from the sea towards a long-haired dog and a row of sea turtles that stretch across the water behind him. We are going to the Oysterman's Oyster Farm, his last one before he retires, in hopes of speaking with him and his crew, from the sea through the Division of Marine Fisheries. There, he is working on more 400,000 oyster farms. It's a common sight from public oyster farms on public fishing wharfs, ready for work.

In North Carolina, oyster aquaculture is growing rapidly, with 200 boats on 1,875 acres in 2015.

28 Salt • www.saltmag.com







Star News paid advertisement,
Dec. 27, 2017

A Message From Masonboro Sound

A public hearing will be held on Thursday, January 4, 2018 at 6:00 PM at the NC Division of Environmental Quality, Division of Marine Fisheries, 127 Cardinal Drive Ext., Wilmington, NC 28405.

Masonboro Sound Before Oyster Farming in 2016



Masonboro Sound After Oyster Farming



The NC Fishery Department leased many acres of submerged marshland in Masonboro Sound to individuals for commercial oyster farming last year without the consent or permission of the owners of the marshland and the adjacent neighbors. This has resulted in the construction of metal grids, cages and baskets in the sound, which has significantly interfered with fishing, canoeing, water skiing and boating, as well as clamming and shrimping. This also has interfered with the natural habitat for pelicans, osprey and winter migrating ducks.

They are in the process of leasing more acres for commercial oyster farming this year.

We believe that this activity will harm the bird habitat as well as recreational water activities.

This will also have a negative effect on the value of adjacent real estate.

We therefore cordially request Governor Cooper and the County Commissioners to stop this harmful activity.

All public are invited to attend.

Marine Fisheries Commission Authority



G.S. 113-201 (b)

- Authority to make rules and take all steps necessary to develop and improve the cultivation, harvesting, and marketing of shellfish in North Carolina from public grounds and private beds.
- May limit the number of acres in any area that may be granted as shellfish cultivation leases

Lease Rules under 15A NCAC 03O .0201 address:

- 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





15A NCAC 03H .0103 Proclamation Authority

Authority to delegate to the fisheries director the ability to issue proclamations, suspending or implementing particular commission rules that may be affected by variable conditions.

(b) Unless specific variable conditions are set forth in a rule granting proclamation authority to the Fisheries Director, variable conditions triggering the use of the Fisheries Director's proclamation authority may include any of the following:

- (1) compliance with changes mandated by the Fisheries Reform Act and its amendments;
- (2) biological impacts;
- (3) environmental conditions;
- (4) compliance with Fishery Management Plans;
- (5) user conflicts;
- (6) bycatch issues; and
- (7) variable spatial distributions.



Potential Solutions

User Conflicts*

- Establish a board or use the commission as a preemptive administrative remedy prior to the Office of Administrative Hearings appeal for contested cases.
- Create a hold on new leasing in the following areas until implementation of the state shellfish mariculture plan currently under development by the UNC Collaboratory:
 - **New Hanover and Pender counties – mainland to the Intracoastal Waterway**
 - **Bogue Sound in Carteret County**
 - **Other high conflict areas identified by the commission**

** Items on this slide may require legislative change.*



Potential Solutions



User Conflicts

- Restrict the siting of new shellfish leases within 500 yards (or other safe distance) of duck blinds existing at the time of the lease investigation.
- Conduct a spatial planning analysis for shellfish lease siting in public trust waters and use the results to improve the lease siting process.
- Place into law or rule requirements for looking at cumulative impacts of multiple leases in a given area when considering new shellfish leases.



Potential Solutions



Navigation Hazards

Condition new leases to maintain a minimum clearance at mean low water over any aquaculture gear for bottom leases that do not have a water column amendment.

Leaseholder Training

Develop rules for training in 113-201(c) that address eligibility of new and transfer applicants. Current rule only requires a written test on regulation but does not require demonstration of aquaculture experience.

Derelict Gear

Explore the requirement of a performance bond or proof of insurance to address liability to the public and for derelict gear from and on a lease.



Potential Solutions

Seed/Nursery availability

Modify statutes to allow the nursery of shellfish seed in marinas and closed areas. The aquaculture industry needs to be able to relay seed shellfish (up to 0.5 inch and 1 inch for clams and oysters, respectively) from prohibited areas including marinas. The division director should consider this on a case-by-case basis to address any public health issues. Many East Coast states now allow this practice.

Theft

Increase fines for theft and damage to shellfish aquaculture leases.





Questions?

Bottom lease – cultch on bottom



Mariculture Gear used with Water Column Amendment



Floating Gear

Taylor Float



LowProGrow Floating Cage



OysterGro™



Flip Bags



Mariculture Gear used with Water Column Amendment



Floating gear



Lentz system



Adjustable Long Line



Bottom Cages

Bottom Cages
(Triple stack configuration is 18 inches)



Rack and Bag

