



# *Authority for Shellfish Cultivation in NC*

*DMF's Administration of Shellfish Leases and Franchises*

Zach Harrison | NC Division of Marine Fisheries





# Outline

- How and Where Leases are Defined
- How DMF Processes Leases
- What Can the MFC Do?
- Addressing User Conflicts

How Are  
Leases Defined?

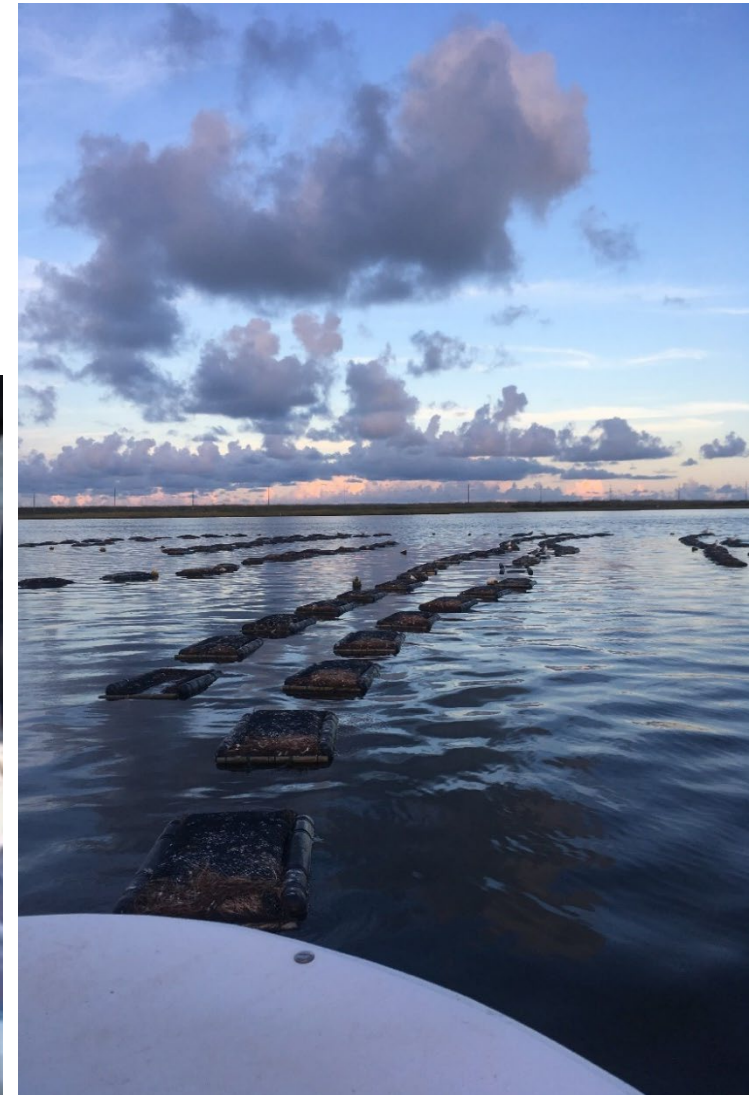
How DMF  
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# Shellfish Leases Basics

- Public Trust Waters Leased for Shellfish Aquaculture
  - Artificially Propagated Stocks
  - Reared in “Controlled Environment”



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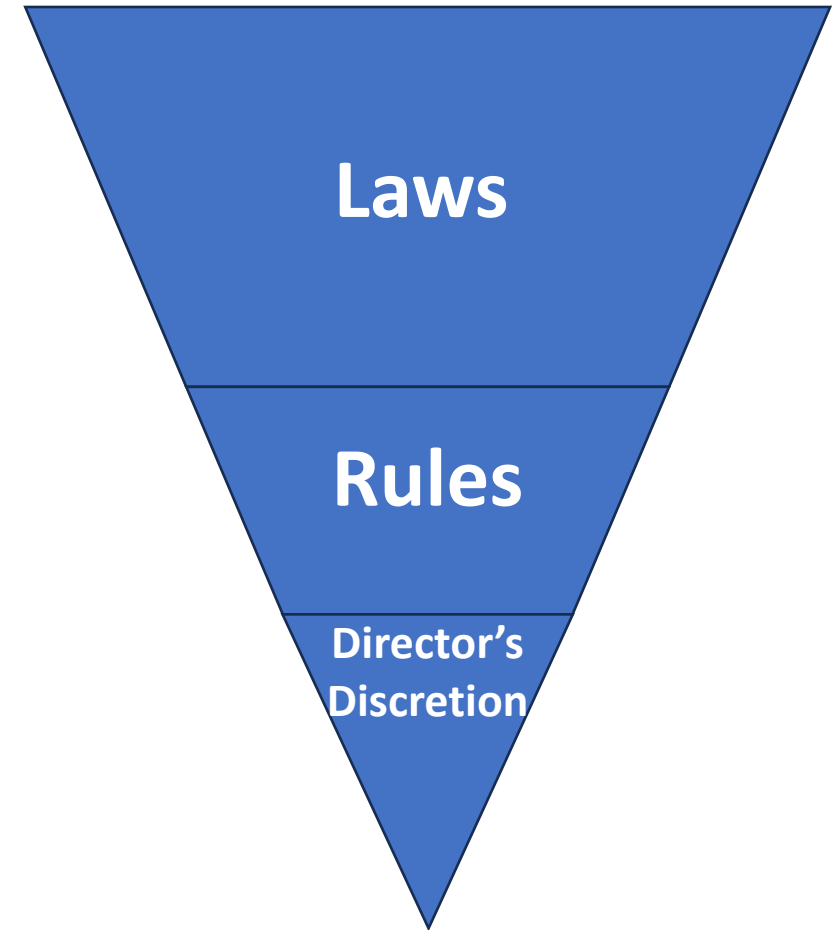
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# Shellfish Leases are Governed by Law

- Shellfish Leases in General Statutes
  - NCGS Chapter 113 Article 16
    - Changes to Shellfish Leases
      - 24 Session Laws Since 1997 (FRA)
      - 46 Total Changes to General Statutes
- Shellfish Leases in MFC Rules
  - NCAC 15A 030 .0201-.0210



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- All MFC Rulemaking Granted for Specific Functions
- Adopt Rules “Substantively Identical” to SL’s

(b) The Marine Fisheries Commission is empowered to make rules and take all steps necessary to develop and improve the cultivation, harvesting, and marketing of shellfish in North Carolina both from public grounds and private beds. In order to assure

(1) The Marine Fisheries Commission is authorized to make rules defining commercial production of shellfish, based upon the productive

**SECTION 3.(d) Additional Rule-Making Authority.** – The Commission shall adopt a rule to amend the Shellfish Production Requirements Rule consistent with subsection (c) of this

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# Shellfish Leases and Franchises

- Shellfish Lease - N.C.G.S. §§ 113-201-202.2
  - Over public trust waters
  - Cannot be on productive bottom
  - Rent charged
  - Must meet annual production requirements
- Franchise - N.C.G.S. § 113-206
  - Over recognized Submerged Lands Claim
  - Can be on productive bottom
  - No rent charged
  - \*Must meet annual production requirements\*
- Research Lease - N.C.G.S. § 113-202.1(i)
  - 5 Year Terms
  - Production Under \$5,000 Annually
  - One Renewal



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# Shellfish Leases Siting Standards

- Statute Defined
  - No Natural Shellfish Beds
  - Compatible with Public Trust
- MFC Rule Defined
  - Lease Size
  - Renewal Schedule
- USACE Defined (NWP #48 Regional Conditions)
  - Less than 1/3 of Width of Waterbody
  - Less than 15% SAV



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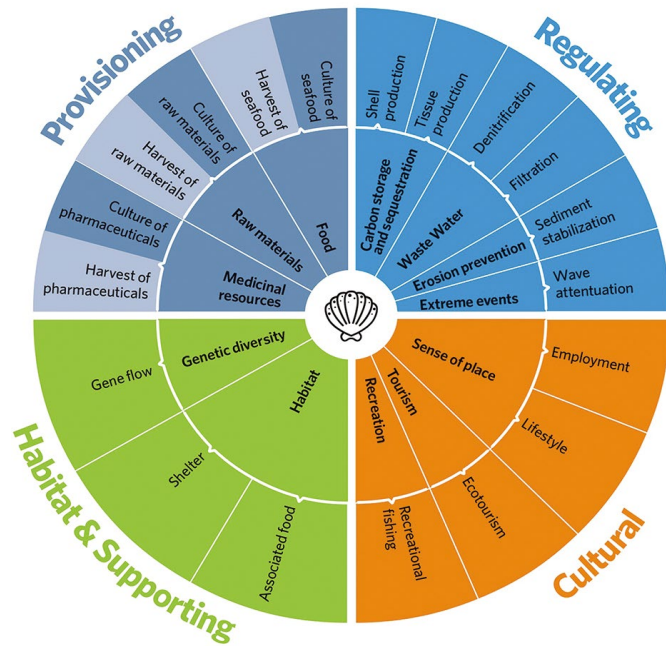
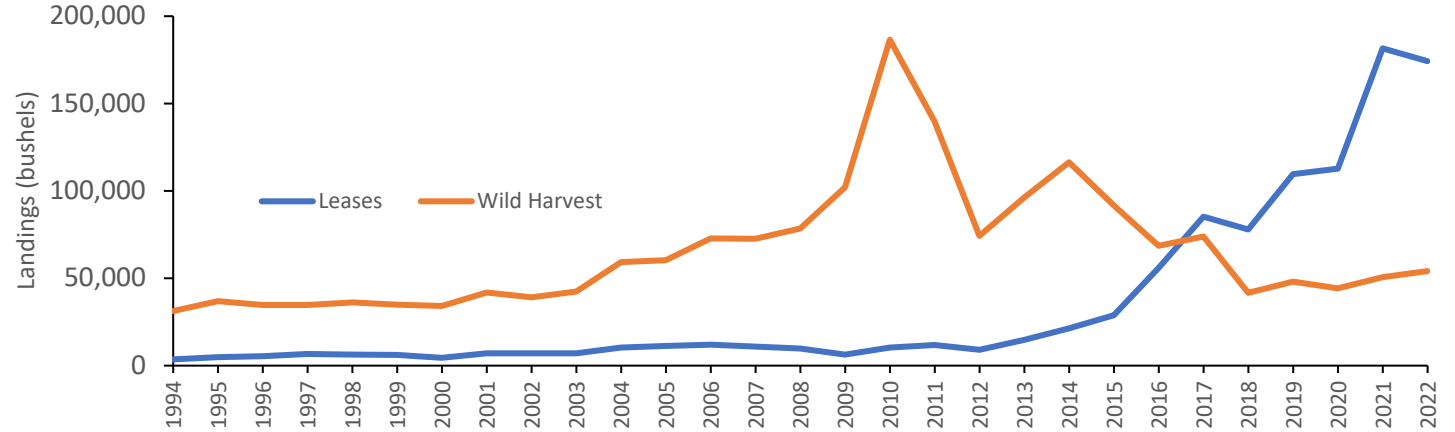
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# Why is Aquaculture Important?

- Leases vs. Wild Harvest
- Ecosystem Services
- Direct Economic Stimulus
- Indirect Economic Benefits



Shellfish ecosystems



Shellfish mariculture



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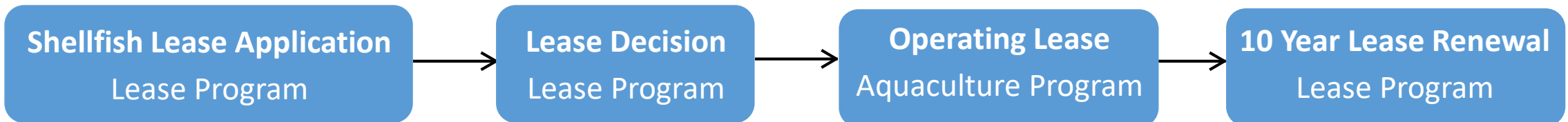
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# Lease and Aquaculture Programs

- Shellfish Lease Program
  - Granting/Denying Shellfish Leases
    - Public Trust, SAV, Navigation, etc.
  - Managing Existing Lease and Franchises
    - Rent and Production Requirements
    - 10 Year Renewals of Lease Contract
    - Transfers
- Aquaculture Permits Program (15A NCAC 03I .0101, 03O .0501-.0504)
  - Annual Permitting for Shellfish Leases and Land-Based Aquaculture
    - Operating and Additional Activities (e.g., Out of State Purchases, Restoration)



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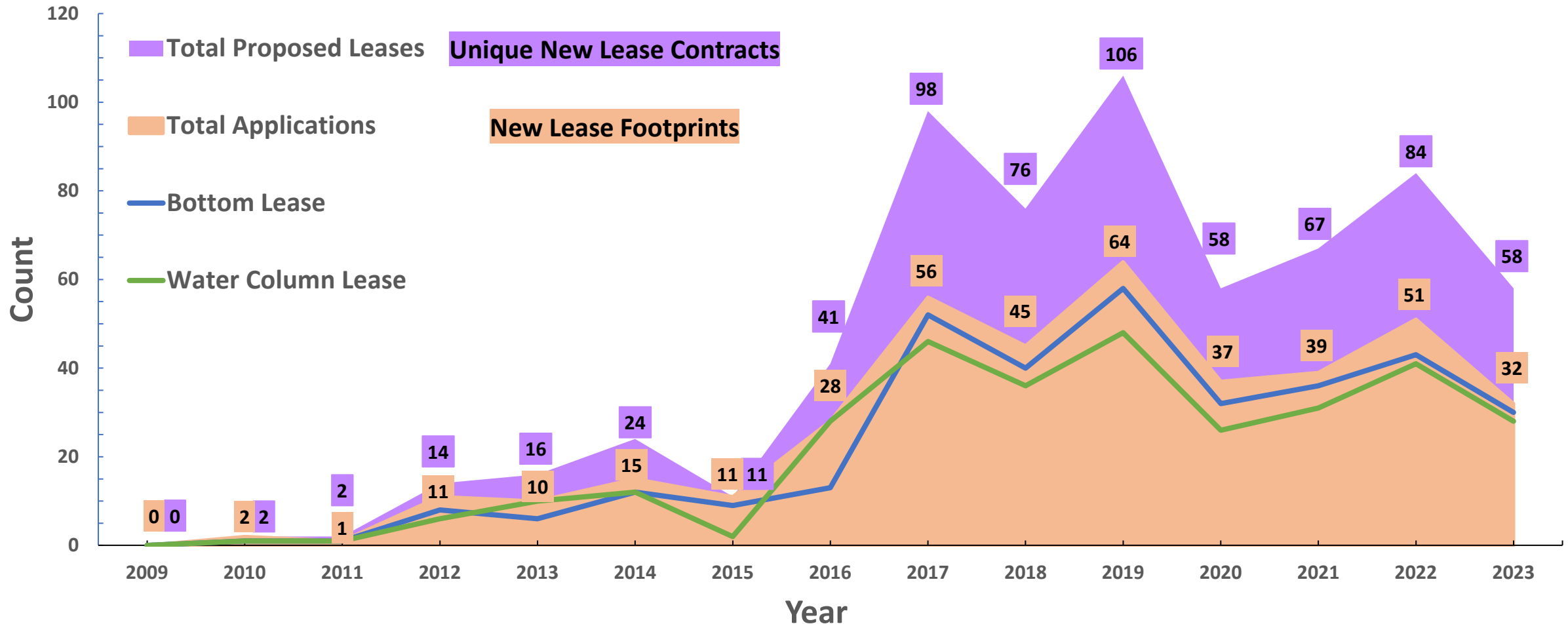
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# Shellfish Lease Applications by Year

## Number of New Annual Shellfish Lease Applications



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# Upcoming Lease Contracts



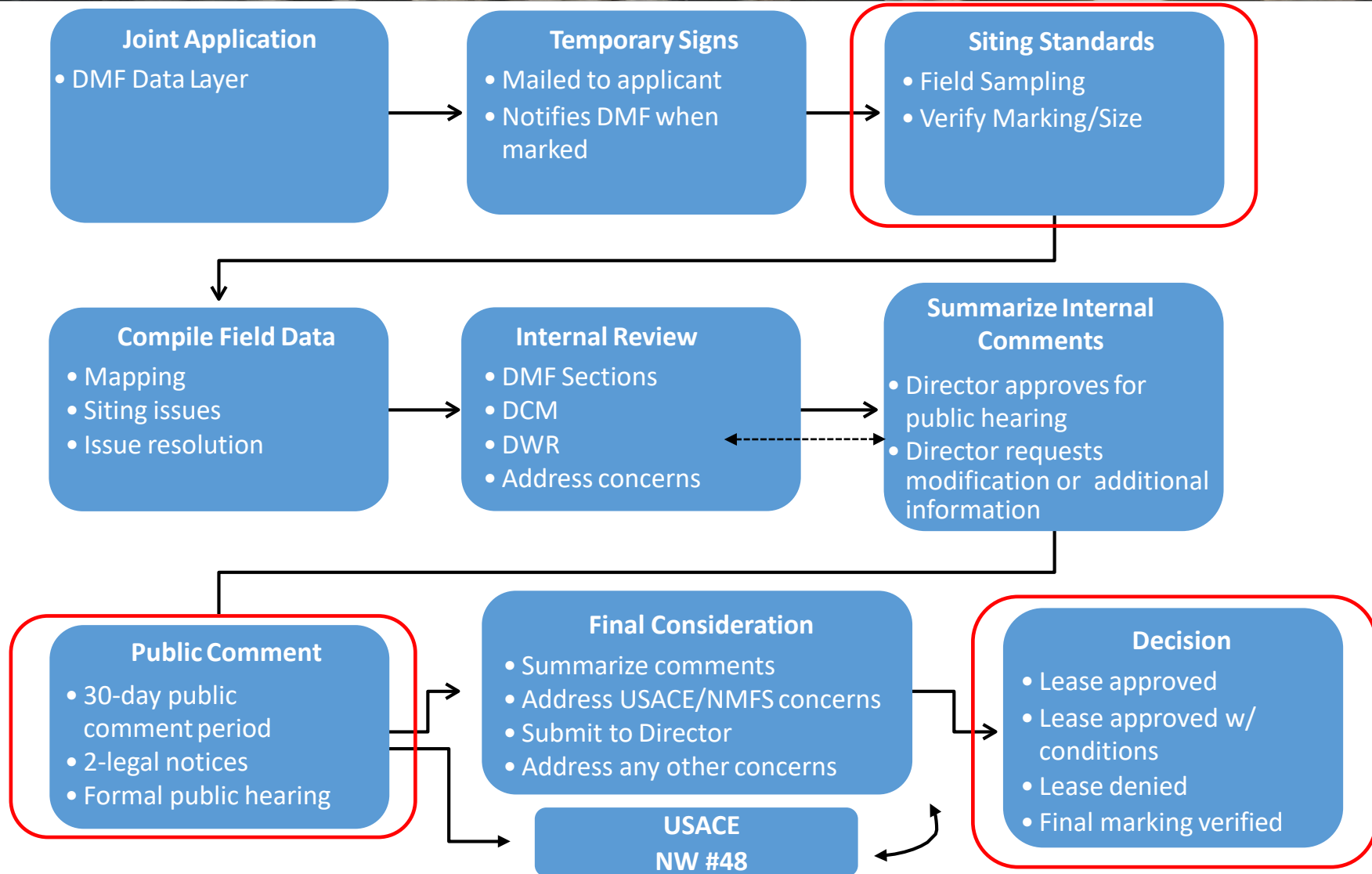
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# Shellfish Lease Application Process



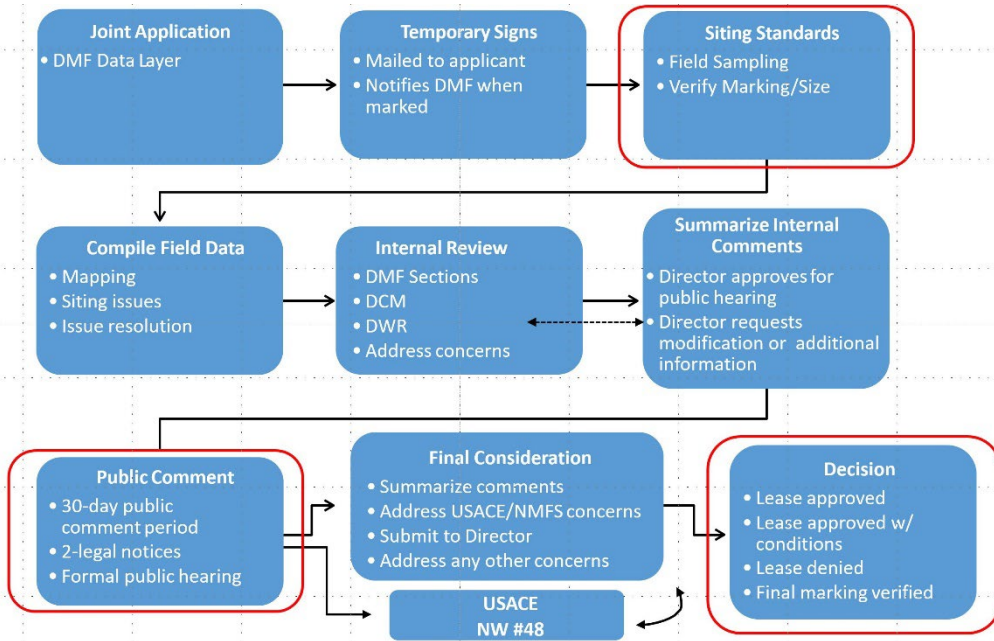
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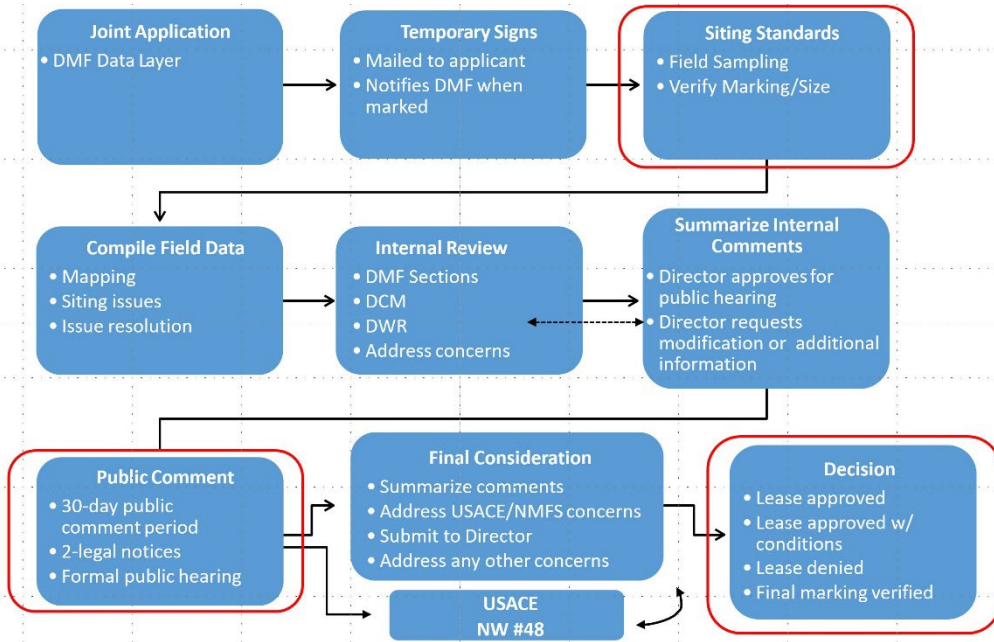
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# Shellfish Lease Application Process



# Shellfish Lease Investigation

- Marking Poles and Acreage
  - MFC Change
- Biological (SAV/Natural Shellfish)
- Navigation and Depth



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# Public Comment

- Evaluate Compatibility
  - Determine Effects on Public Trust Usage
  - Direct Impacts
- What's Required by Law
  - 2 Notices in Local Newspaper
  - Public Hearing in County
- Additional Outreach

## Public Comments from May 2024 MFC Meeting

## Public Comments from February 2024 MFC Meeting

“interfering with recreational fishing and charter business” “better method of notifying for proposed leases”

“[need a] study of what’s going on...effect on turtlegrass and other seagrasses”

“we need a number for density” “basically off-limits to fishing”

“mortality in wild caught oysters” “[technicians say] a bay with 2-3 feet of water is too shallow to fish in”

“no rule or statute for density” “we are at capacity in our area”

“take a look at the water column density in the topsail area”

“far too many taking up valuable fishing space”



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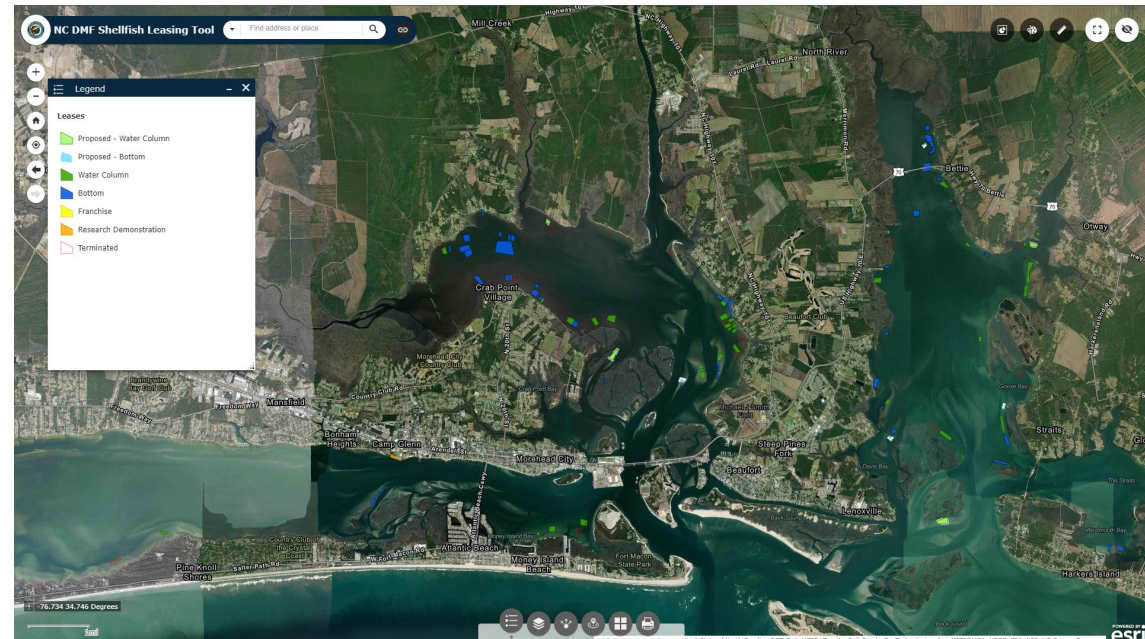
# Public Comment

- Evaluate Compatibility
  - Determine Effects on Public Trust Usage
  - Direct Impacts
- What's Required
  - 2 Notices in Local Newspaper
  - Public Hearing in County
- Additional Outreach
  - Shellfish Lease Website
  - Shellfish Leasing Tool
  - Press Release
  - Proclamations Mailing/Email List
  - Social Media Posts

## Shellfish Lease Hearings

The public hearing/public comment process is a requirement for all proposed shellfish leases in North Carolina. The Upcoming Lease Hearings accordion lists scheduled hearings and includes links to information about proposed shellfish leases. The Previous Lease Hearings accordion contains the hearing minutes and comments received during the public comment period.

### Upcoming Lease Hearings



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# Current Shellfish Leases

Leases By County					
	Bottom	Water Column	Franchise	Research	Total
Beaufort	2	1	0	0	3
Brunswick	1	1	0	0	2
Carteret	128	68	2	1	199
Dare	15	15	0	1	31
Hyde	27	14	9	0	50
New Hanover	4	1	1	1	7
Onslow	55	26	28	0	109
Pamlico	11	10	7	0	28
Pender	51	19	0	0	70

Lease Acres By County							
	Bottom	Water Column	Franchise	Research	Combined	Total	Potential Acres
Beaufort	7.24	2.24	0	0	9.48	7.24	26,874
Brunswick	3.39	3.39	0	0	6.78	3.39	0*
Carteret	458.56	212.3	2.38	2.57	675.81	463.51	248,445*
Dare	57.11	57.11	0	1	115.22	58.11	439,171
Hyde	241.11	40.26	236.49	0	517.86	477.6	443,844
New Hanover	4.84	1.05	3.13	2.75	11.77	10.72	3,330*
Onslow	364.1	90.55	203.8	0	658.45	567.9	29,409
Pamlico	65.08	60.61	52.18	0	177.87	117.26	118,346
Pender	228.92	36.77	0	0	265.69	228.92	11,218

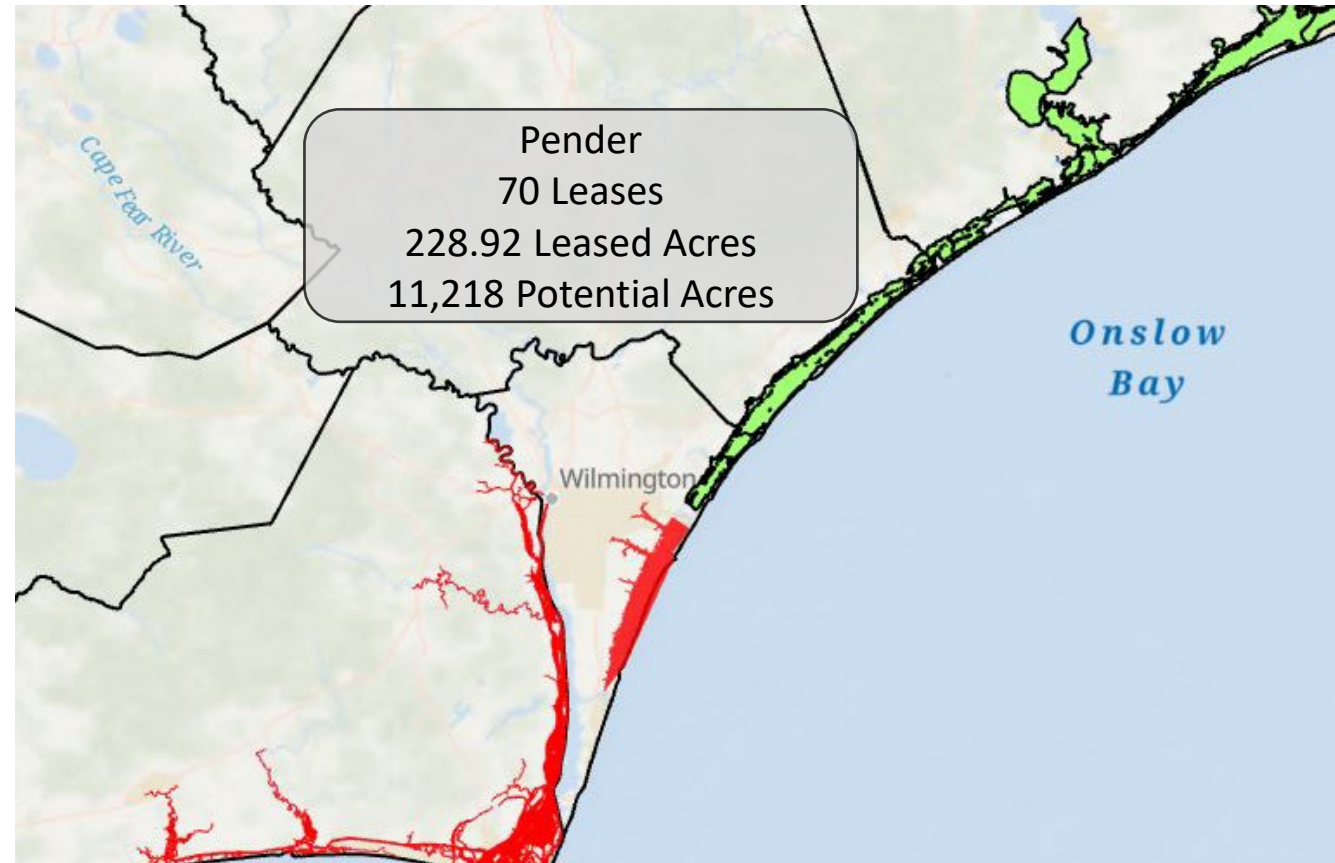
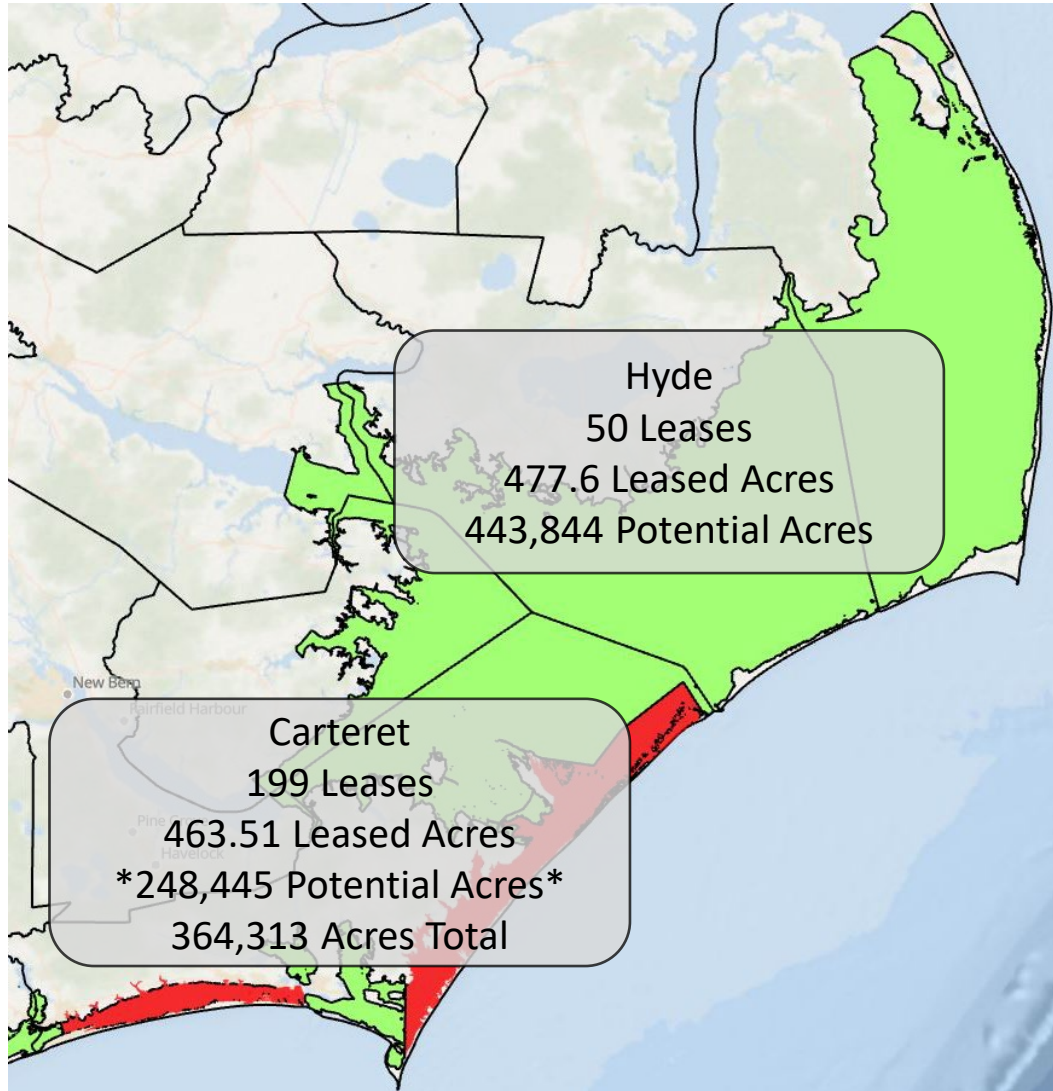
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# Current Shellfish Leases



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# Current Shellfish Leases



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# Director's Decision

- Compatibility with Public Trust Usage
  - Navigation
  - Commercial Fishing
  - Recreational Fishing
  - Other Recreation



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# Director's Decision

- Compatibility with Public Trust Usage
  - Navigation
  - Commercial Fishing
  - Recreational Fishing
  - Other Recreation
- Director's Decision
  - Approve
  - Approve with Conditions
  - Deny



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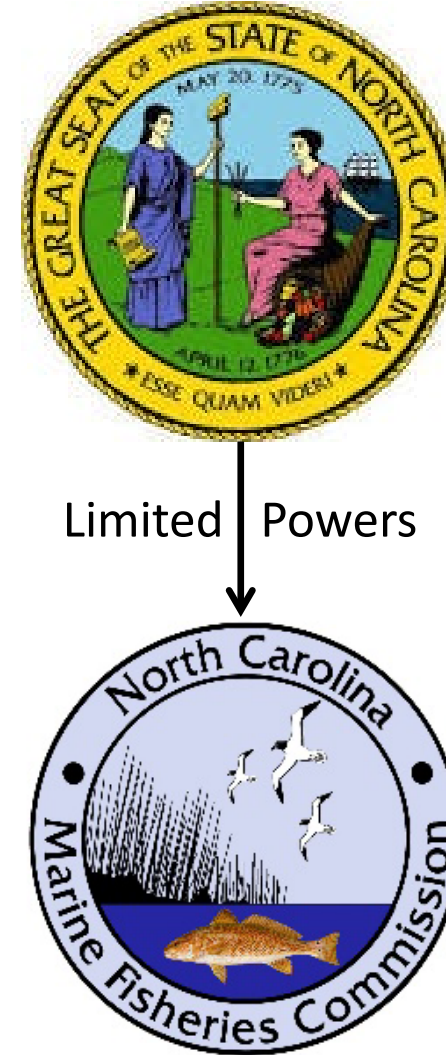
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# Challenges to a Decision

- Challenge a Denial
  - Shellfish Lease Applicant
  - Office of Administrative Hearing
  - DMF Must Defend Our Review Process
    - Not Whether There Should be a Lease
- Challenge an Approval
  - General Public
  - Shellfish Cultivation Lease Review Committee
  - DMF Must Defend Our Review Process
    - Not Whether There Should be a Lease

# What Can MFC Do?

- Shellfish Leases are Governed by Law
- MFC Rulemaking Powers are Prescriptive
  - All MFC Rulemaking Granted for Specific Functions
  - Adopt Rules “Substantively Identical” to SL’s
- 2019 Aquaculture Bill
  - User Conflicts Study
    - Lease Rule Changes
      - Buffers
      - Training Requirements
      - Marking Pole Changes
      - Shellfish Lease Cultivation Review Committee
      - **Cumulative Impacts**





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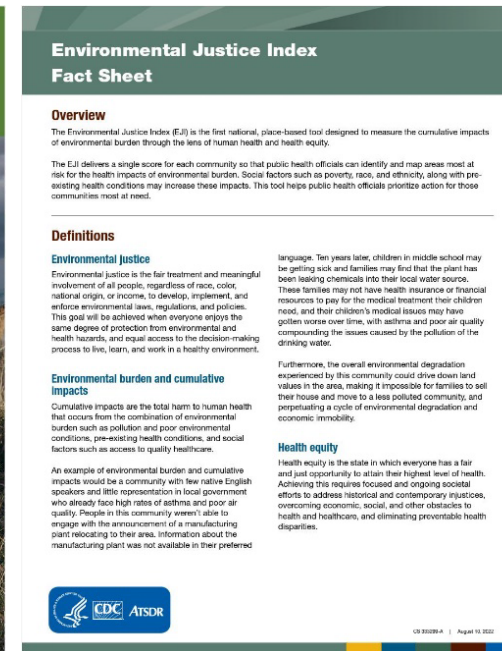
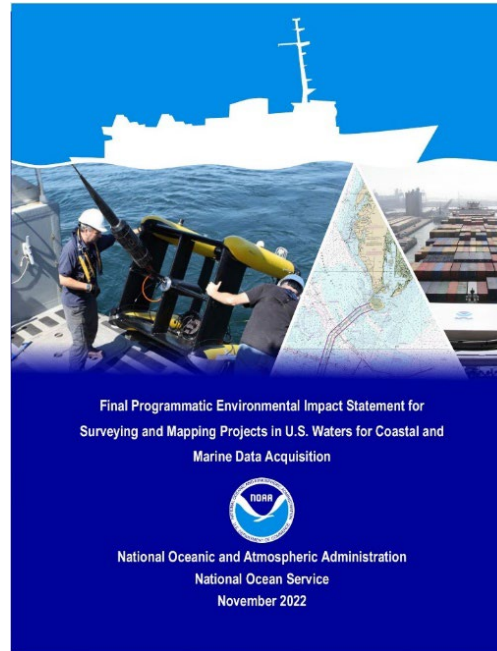
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# Cumulative Impacts Policy

- Cumulative Impacts
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  - NOAA Aquaculture
  - Other State Regulators
  - Counsel
- CIA Guidance Document
  - Internal Review Committee
  - Public Comment
- Outcome of Possible Litigation?





# Summary

- Shellfish Leases and Franchises are Defined in General Statute
- MFC Rulemaking Powers are Specifically Prescribed and Limited
- DMF Evaluates Shellfish Leases Based on Complex and Continually Changing Laws
- DMF's Biggest Tool to Address User Conflicts is Public Comment
- DMF is now Enacting the Cumulative Impacts Policy to Address High Density Areas

# Questions?

**Zach Harrison**

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**Shellfish Lease and Aquaculture Program:**

<https://deq.nc.gov/shellfish-lease>

**Shellfish Aquaculture Tool:**

<https://arcg.is/0LD5zS>



# Cumulative Impacts – Next Application Season

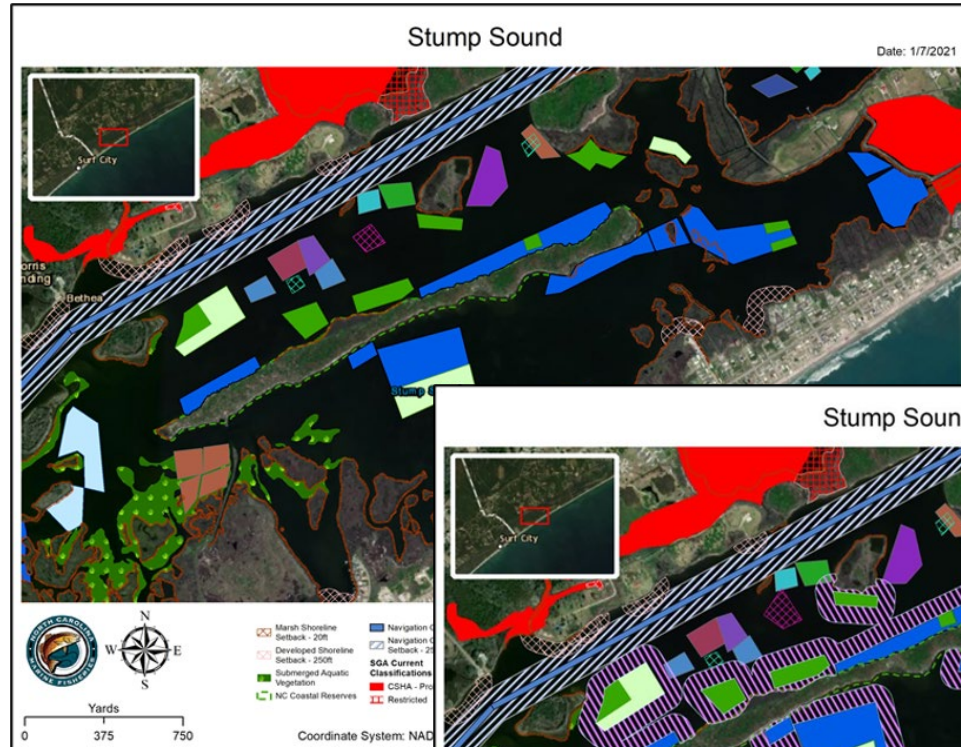
- CMU Highlighted as CI Noted Area
  - Future Leases Have CIA Conducted Prior to Public Comment
  - CIA Can Be Addressed at Public Comment Approval by Director





# Limiting Acres N.C.G.S. § 113-201(b)

- N.C.G.S. §§ 113-201(b) “[MFC] may limit the number of acres in any area...”
- February 2021 Presentation
  - MFC was in Rulemaking Process for User Conflicts Rule Changes
    - Agreed to Wait and See How Rule Changes Affected Leasing Process
    - Rule Changes Include Cumulative Impacts Now Being Applied
- Any Rules Made Must Conform to APA Language
  - Must be Clear Defined Terms
  - RRC Review



Total Shellfish Leases = 14.2%

Total Shellfish Leases w/ Buffer = 36.7%

