

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

*January 28, 2022*

*Present:* Owen Mulvey-McFerron – Program Coordinator, Shellfish Lease Program

Teri Dane – Shellfish Lease Biologist

Marla Chuffo – Administrative Specialist I

Tina Moore - Staff

Dustin Walters – Staff

Anthony Frost - Staff

Scottie Tripp – Staff

Elizabeth McCormick – Staff

Patricia Smith - Staff

*Attendees:*

Benjamin Davey, Burr McLawhorn, Justine Davey, Matt Davey, Matthew Schwab, Thomas Cody Faison, Joshua Dunn, Tripp Murray, Holden Davanzo, Mike Davanzo, Allen Jernigan, Ray Brittain, Stephanie Rosenberger, Michael Rosenberger, Mandy Uticone, Kyle Breuer, Helen Herbert, Robert Graham, Keith Wells

*Meeting:* 27 January 2022, 6:04-6:38 PM via WebEx for Onslow County proposed shellfish lease

*Applicant(s):* Benjamin Davey, Burr McLawhorn, Matthew Schwab, Thomas Cody Faison, Joshua Dunn, Holden Davanzo, Robert Graham, James Hargrove (Not in attendance)

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**I. Meeting**

At 6:04 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. Tonight’s hearing is being conducted in a new format to minimize personal contact, and to maximize social distancing protocols in order to promote public health concerns related to the COVID-19 pandemic. We have folks participating both by telephone and through the WebEx virtual meeting application. PowerPoint slides presented here on WebEx are also available on the division’s website for those participating by telephone. We would like to thank everyone participating in this adjusted format and appreciate your patience. Before we get started, we would like to explain how tonight’s hearing will work. Our first order will be a roll call to identify participants in these proceedings. Please be advised, all callers will be recorded. Patricia Smith will now go over the information on how to participate and will do the roll call.”

Patricia Smith gave instructions for the WebEx and telephone participation and then took roll call of the participants on the call. (The attendees are listed in the above section)

Owen Mulvey-McFerron continued with the following statement:

“Now I will go over important information for tonight’s hearing. No decisions will be made at tonight’s hearing. All public comment received tonight and during the comment period will be taken into consideration. Once the applicants have had an opportunity to speak, I will open comments to anyone else who wishes to be heard. I will call on commentators by name in the order in which they were listed during roll call.”

“The purpose of this public hearing is to receive public comment on one proposed shellfish lease in Onslow County. Applicable investigations by division staff have determined that this 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.”

“I will give each of the shellfish lease applicants an opportunity to speak first and then will open the floor for public comment on these proposed sites.”

“First, I would like to review some hearing guidelines with you.”

- “This hearing is held in compliance with SL 704 Section 4.31 PUBLIC BODIES/REMOTE MEETINGS DURING DECLARED EMERGENCIES”
- “This hearing is a formalized process where we take only public comment on proposed shellfish leases that have been noticed in **The Jacksonville Daily News** newspaper on **December 17<sup>th</sup> and December 26<sup>th</sup>, 2021, January 26<sup>th</sup>, 2022**, and on the division’s website.”
- “This hearing is being recorded and is a public record. All chats, instant messages, texts, or other written communications between members of the public body regarding the transaction of the public business during the remote meeting are deemed a public record.”
- “Written comments on these shellfish leases can be submitted to the division up to 24 hours after the public hearing.”
- “Comments from all speakers including the shellfish lease applicants should be limited to no more than three minutes. If a speaker exceeds this timeframe, they will be asked to wrap up their remarks. Once you have made your comments for the record, please mute your phone or microphone to allow someone else an opportunity to speak.”
- “Once called, please state your name, where you are from, if you are representing any organization, what shellfish lease or leases you are commenting on, and whether you support, oppose, or have other comments on the advertised shellfish lease sites.”
- “Please be courteous and respect all persons who wish to speak.”
- “If hearing participants have questions about issues not directly related to the proposed shellfish leases, staff and I will be happy to meet with you after the hearing.”

“And with that, I will read the information on the proposed shellfish leases:”

- (1) A shellfish **bottom** lease applied for on **March 6th, 2020**, by **Middle Sound Mariculture, agent James Hargrove**, located in **Permuda Island Bay**, and as proposed will cover approximately **5.04** acres. The management plan indicates the use of **bottom gear** for the commercial production of **oysters**.

Division staff conducted a site investigation on **April 13, 26, 27, and 29th, 2021**. The results of that investigation found **3.79** bushels of shellfish per acre and **zero** submerged aquatic vegetation.

- (2) A shellfish **bottom and water column** lease applied for on **March 1st, 2021**, by **Burr McLawhorn** located **Mainland Areas near Topsail Sound**, and as proposed will cover approximately **4.11** acres. The management plan indicates the use of **floating and bottom gear** for the commercial production of **oysters**.

Division staff conducted a site investigation on **April 6th, 2021**. The results of that investigation found **0.72** bushels of shellfish per acre and **zero** submerged aquatic vegetation.

- (3) A shellfish **bottom and water column** lease applied for on **March 1st, 2021**, by **Joshua Dunn** located **in Mainland Areas near Topsail Sound**, and as proposed will cover approximately **3.52** acres. The management plan indicates the use of **floating and bottom gear** for the commercial production of **oysters**.

Division staff conducted a site investigation on **May 5th, 2021**. The results of that investigation found **0.36** bushels of shellfish per acre and **zero** submerged aquatic vegetation.

- (4) A shellfish **bottom and water column** lease applied for on **March 1st, 2021**, by **8<sup>th</sup> Wonder Oyster Company, Agent Robert Graham** located **in Permuda Island Bay**, and as proposed will cover approximately **8.60** acres. The management plan indicates the use of **bottom and floating gear** for the commercial production of **oysters**.

Division staff conducted a site investigation on **May 10 and 11th, 2021**. The results of that investigation found **0.46** bushels of shellfish per acre and **zero** submerged aquatic vegetation.

- (5) A shellfish **bottom and water column** lease applied for on **March 3rd, 2021**, by **White Oak Oyster Company, Agent Benjamin Davey** located **in Bogue Inlet**, and as proposed will cover approximately **1.09** acres. The management plan indicates the use of **bottom gear** for the commercial production of **oysters**.

Division staff conducted a site investigation on **May 5th, 2021**. The results of that investigation found **zero** bushels of shellfish per acre and **zero** submerged aquatic vegetation.

- (6) A shellfish **water column** lease applied for on **March 24th, 2021**, by **Matthew Schwab** located **in the New River below the 172 Bridge**, and as proposed will cover approximately **3.30** acres. The management plan indicates the use of **floating and bottom gear** for the commercial production of **oysters**.

Division staff conducted a site investigation on **June 1st and August 26th, 2021**. No samples were collected because the proposed water column lease overlies an existing shellfish bottom lease.

- (7) A shellfish **water column** lease applied for on **April 6th, 2021**, by **Anchored Life Oyster Farm, Agent Holden Davanzo** located **in New River below the 172 Bridge**, and as proposed will cover approximately **5.11** acres. The management plan indicates the use of **floating gear** for the commercial production of **oysters and clams**.

Division staff conducted a site investigation on **June 16th, 2021**. No samples were collected because the proposed water column lease overlies an existing shellfish bottom lease.

- (8) A shellfish **bottom and water column** lease applied for on **June 15th, 2021**, by **Ghost Fleet Oyster Company, Agents Thomas and Rachel Faison**, located **in New River below the 172 Bridge**, and as proposed will cover approximately **4.08** acres. The management plan indicates the use of **floating and bottom gear** for the commercial production of **oysters and clams**.

Division staff conducted a site investigation on **July 20 and 21st, 2021**. The results of that investigation found **1.67** bushels of shellfish per acre and **1%** of the samples contained submerged aquatic vegetation.

“Now, I will call on each applicant and give them an opportunity if they wish to speak to their proposed shellfish lease. This is not a requirement of the applicant. Please limit your comments to three minutes. Patricia will unmute each applicant after their name is called. Once the three minutes are up, I will inform the applicant and you will be muted for the next speaker. I would like to call James Hargrove to present his proposed shellfish lease.”

James Hargrove: not in attendance

Owen: “I would now like to call on Burr McLawhorn to present his proposed shellfish lease.”

Burr McLawhorn: “I’m applying for water column and bottom lease on 4.11 acres in Topsail Sound. To start, I would like to say that I support everyone here tonight and applying for new garden space in Onslow County. The area in which I’m applying is in a shallow Bay of Topsail Sound. I picked this spot after spending several years working nearby leases and this spot is where I would like to build a farm of my own. The lease area will be out of the way from all marked and unmarked channels. The lease area will be clearly visible and intuitively navigable for all approaching recreational, commercial vessels. Concerned citizens, recreational boaters, commercial fishermen, crabbers, and real estate agents, alike. They will find my lease passable, inviting, and productive for all the community. Thank you, to everyone here that helped process our leases and put all this together tonight at DMF and thank you for your time. Bye.”

Owen: “All right, thank you Mr. McLawhorn. I would now like to call on Joshua Dunn to present his proposed shellfish lease.”

Joshua Dunn: “Hello awesome. Hello, my name is Joshua Dunn. I’m applying for a water column bottom lease on 3.52 acres in Topsail Sound. I also would like to say that I support everyone here that is applying for new garden space in Onslow County. The area in which I’m applying is in a shallow bay of Topsail Sound. I chose this spot as a site that I would like to start a farm of my own after becoming familiar with the area by spending several years working nearby leases and through research on the computer as well. The lease is located away from all marked in unmarked channels. The lease area itself will be easily navigable for recreational and commercial boats. The lease area will be clearly visible and intuitively navigable for all of approaching vessels. I’m confident that any concerned citizens, recreational, boaters, commercial fishermen, crabbers and even real estate agents alike will find my lease passable, productive, and overall positive for the entire community. Thanks to everyone at DMF and to everyone who’s processed this lease and for putting this on together tonight. Thanks, y’all and have a good night.”

Owen: “All right. Thank you, Mr. Dunn. I would like to call on Robert Graham to present on their proposed shellfish lease.”

Robert Graham: “Good evening, everybody. My name is Robert Graham with 8th Wonder Oyster Company. We are applying for a lease in Permuda Bay, 8.6 acres. I would like to first of all, agree and say that we also support everyone else here applying for a lease in Onslow County. We are personally choosing the area where we are due to its location in Permuda Bay, it is nowhere near the major channel, so it is very difficult to get in the back especially at low tide with a draft area around 18 inches. It would be a minimal impact to any commercial fishermen with any V hull boats because it’s virtually impossible at low tide, in the back. There are already established farms, including some wonderfully helpful, oyster farmers, who I have worked with for the

past year and a half, that have trained us in the area as well as what is happening around the Stump Sound neighborhood. So, I want to say thank you all for hearing us. Thank you to the state for the time that we have been spending and applying this. And I look forward to further communication with everybody.”

Owen: “All right. Thank you, Mr. Graham. Now I would like to call on Benjamin Davey to present on their proposed lease.”

Benjamin Davey: “Hi everyone. I'm Benjamin Davey, representing White Oak Oyster Company. I've applied for a lease near the Bogue Inlet, near Swansboro. The lease is a partially intertidal location. It is fairly, there is not any leases in the surrounding area except for my own in the White Oak River and with another one underneath the bridge. I just want to say thank you for, you know, giving me the opportunity to apply for this lease. I support all other leases in this application. So, thank you.”

Owen: “All right. Thank you, Mr. Davey. So next up, I would like to call on Matthew Schwab to present on their proposed shellfish lease.”

Matthew Schwab: “Thank you. Yes. As Owen stated earlier it is an existing bottom lease, I'm applying for the water column amendment. Been working this bottom lease for almost a year, so it's pretty straightforward. I do encourage recreational fishing on my lease. In the past month or two, I've been catching some monster black drum out there. So, if anybody wants to come out and fish you're more than welcome, get it. Thank you.”

Owen: “All right. Thank you, Mr. Schwab. So now I'd like to call on Holden Davanzo to present on their proposed shellfish.”

Holden Davanzo: “Okay, can you hear me? Holden Davanzo, Anchored Life Oyster Farm and we support everybody in the local oyster farming in this area. This is an existing farm that's already been farmed as a bottom lease for two years and we're applying to make it a floating farm and it is already marked and is easy to navigate.”

Owen: “All right. Thank you, Ms. Davanzo. And finally, I would like to call on Thomas and/or Rachel Faison to present on their proposed shellfish lease. Go ahead Mr. Faison.”

Thomas Cody Faison: “This is Thomas Faison and I go by Cody. Rachel's here as well. We want to thank everybody for putting this on. We're really grateful. It just means a tremendous amount to us. So, Rachel and I are applying for a lease in Traps Bay near the New River Inlet going upriver, just a little bit there. We own Ghost Fleet Oyster Company with a mission to protect the environment with just one simple, real statement. We're growing oysters and clams with respect, and we're trying to sustain them with the future. So, we focus on the shellfish in the environment, through education and growing oysters. This lease for us provides a tremendous opportunity. When citing the Traps Bay lease, we're looking for a space that was pretty clear and all surrounding areas because we've had some extensive conversations with charter captains and other fishermen about needing a little bit more space around our lease. So, our other two leases so we, you know, we listened to them. We tried to try to get that lease off the bank a little bit. Tried to make sure we weren't impacting anyone's lifestyle home or public, you know, interest or use. So, yes. So, we also just want to say, we support all our fellow farmers here and we just, we also just want to make sure that we have expressed a little interest and support for those charter captains and commercial fishermen and anyone of the public did that also is just trying

to use this water. So, like Matt said, hey if you want to come out to our lease, check it out, fish. Hey, we welcome you as well. So come. So, thank you.”

Owen: “Alright, thank you, Mr. Faison. So now Patricia will call the first speaker. I would like to remind speakers to limit their comments to three minutes. As a reminder, please state your name, where you are from, if you are representing any organizations, and comments indicating whether you support opposed or have other comments on the shellfish lease sites. Any questions can be answered after the hearing has concluded.”

Patricia Smith: “So, I will go down the list of those who indicated that they wanted to speak. When I call your name, I will unmute you so that you can speak, we'll start with Mr. Tripp Murray. Go ahead, you're unmuted.”

Tripp Murray: “Thank you Tricia. I'm Tripp Murray. I'm from Topsail Beach. And I support all recreational fisherman who are having fishing spots taken away by water column leases and equipment, had boat gear cases damage by derelict gear that's being left unattended and not cleaned up after a storm. First lease I'd like to talk about, Mr. Graham, your lease in Permuda Bay. Permuda Bay is already overrun with oyster leases. Public access to fishing locations in this area have been substantially reduced as a result. This particular lease is directly on top of one of the few remaining consistently productive redfish locations in Permuda Bay. It also highlights one of the most glaring problems with the shellfish leases in the Topsail Island area, which is that these leases are routinely approved, right up against the bank. The bank is where recreational anglers most often fish for redfish. So leases such as this eliminates this area as a fishing location. Why can we not put the shellfish leases out in the middle of a large body of water, where they will have less impact on public access to recreational fishing. Butting them up against the bank puts our back up against the wall as recreational fishermen, you've taken our opportunities away. Regarding proposed lease 385: the location of this lease will block the very narrow channel to an often use redfish location and will effectively eliminate redfishing in that area. This is another example of shellfish leases too close to the bank. This is the part that's really being the, the biggest hardships to recreational fishing in my opinion. On a more general note, I have concerns about all the PVC pipe that's being used to anchor these leases. Has anybody studied what all this plastic in the water is going to do? PVC is not a UV stable compound over a long period of time. What's going to happen when this stuff starts breaking down? I'm also concerned that these leases are not covered by any sort of liability insurance. If somebody gets hurt, somebody runs into something and tears up a gear case on a boat, who's responsible for that? It doesn't make sense to me that you can run a business and not have liability insurance. As a business owner, I've had liability insurance the whole time and been required to have it by the state. Why is it not the case here? In the Topsail Island area, we have been overrun with shellfish leases in the last few years. It's like we're being singled out for this program. Website says Carteret County has the most leases. If you look at Carteret County, it's bordered on three sides by water. Carteret County has got a lot more water to put leases in than Onslow County does probably eight or ten times more or better. Pender County has even less water in the county than the Onslow does. So, we need to start looking for places that have more wide open spaces, (Owen: “**You're coming right up on your three minute mark.**”) Thank you, Owen. Let's try to find some other places folks. We're overrun here in the Topsail Island area. Thank you.”

Patricia Smith: "Okay, the next person on my list is Helen Herbert, just a moment. Go ahead and you are unmuted."

Helen Herbert: "My name is Helen Herbert; I live in Wilmington, and I work for Mark Maynard. Mr. Maynard owns the property, you know, Topsail Sound adjacent to where Mr. McLawhorn's shellfish lease is located. Mr. Maynard just purchased the property a few months ago in September. The land has been vacant, and he has plans to put a dock in. The concern is that where the dock would go would be very close to where the current lease is shown, the proposed lease is shown, and that if the shellfish lease is allowed there where designated, it could create user conflicts as well as navigational and public safety hazards as well as we believe that the proposed shellfish operation will interfere with exercising riparian rights by the adjacent shoreline property owner, that is Mr. Maynard and public and the public means of water access. So, a request is that the lease location be moved 800 feet north along the shore and then that's our request."

Patricia Smith: "The next person I have is Allen Jernigan, go ahead."

Allen Jernigan: "First of all, I'd like to say guys, I hope you guys have success with the leases and everything, I'm not against it. The only issue I have is like others have stressed that they are too close to the banks. I'll give you an example. Alligator Bay water column lease 21-060. This lease has been a bottom column lease as long as I can remember. You know, other than having to dodge all the tires in the water, and the broken poles and PVC, it's fishable, it is accessible. Lots of recreational anglers use it. I use this bank in my guide business. If that lease is approved, we're going to lose a third to half of the entire west bank of the shoreline in that bay. This area is important to me as it is hundreds of other recreational anglers and kayak anglers who paddle to this area from the public boat ramps, less than a mile from this lease. I mean, I just don't, I don't see how this is, right and to the public trust doctrine in North Carolina. Lease number 21-006 BL, 21-007WC, this is the one behind Permuda Island, this is a very large one. This lease is approved on the biggest shoal that runs behind Permuda island. This leases' current setback requirements will cut off access to this shoal. It has been important to me for many years in regards to recreational fishing charters, recreational fishing, and commercial flounder fishing. This lease will also further restrict access to Permuda Island for those that want to explore the wildlife preserve. You know, if this lease was 150 yards off the bank, I wouldn't have a problem with it, just like the leases in Traps Bay. One or two of the first leases that were there were kind of too close, but the newest proposed leases I have no issue with. I can still navigate the area with those leases, we can still fish those areas. I mean, that's my biggest, my biggest issue is how close they're being approved to the bank and how saturated some of the areas are becoming like Permuda Island. Another lease in Permuda Bay, this is number 385 in South Permuda Bay, and first of all, to the Robert Graham lease I was just commenting on that whole area is passable on low tide if you have a shallow draft boat any tide you know if you know what you're doing back there, if you have a lifetime back there like I have you can navigate that whole area, where his lease is on any tide. Lease 385 this is South Permuda Bay, this lease is approved in the deepest part of the bay and this is this is the James Hargrove lease. It's going to restrict access to entire sections of marsh back there and if this lease goes in, we will not be able to navigate to hundreds of acres. We will not be able to access hundreds of acres of that marsh for recreational access and recreational fishing. (Owen: "Mr. Jernigan you are right on the three-minute mark.") Okay, on this particular lease you have two and a half feet of water on high tide. You cannot pass it to the left to the east side because of a shoal that runs for about a nautical mile, you can only pass that shoal on high tide. To the west side of this lease, you have a natural oyster rock and natural shoal, and you have derelict shellfish gear from a previous shellfish activity in that area. So, you cannot pass this lease to the west either."

Owen: “Mr. Jernigan, we're over three minutes, so I am going to have to stop you there. I'll mention that if folks don't get a chance to finish their public comments, we are accepting written comments through tomorrow. You are welcome to go to the Divisions website and submit written comment as well and those will also be taken into account.”

Patricia Smith: “The next person I have is Justine Davey. You are unmuted.”

Justine Davey: “Okay, ma'am. No, I have nothing to say. Thank you.”

Patricia Smith: “Okay, apologize, I must of miss marked you. The next person I have is Ray Brittain, just a moment. Let me find you here on the list. Oh, go ahead. Mr. Brittain.”

Ray Brittain: “Okay, can you hear me? Okay, I want to first start with, I'm Ray Brittain operating Spring Tide Guide Service out of Topsail Island. I want to start by commending the guys who are pushing them out into the center to give us room. That's really, it has been my biggest concern. I mean, I've got a lot of concerns, but as far as what impacts me and my back pocket, not gonna lie, that's you know, my main concern right now because if all of these proposed leases go through in the areas, they're trying to put them, we're looking at being pushed into all of us, being pushed into smaller areas. Guides, recreational, anglers, there's a lot more recreational anglers nowadays in our area, a lot, and it'll put a lot more pressure on smaller areas. So, I appreciate the guys who are taking the initiative to move them out and give us room. I think they're a great thing to clean the water., that's wonderful. But we out of the ones that are proposed, I do have 21-060WC, Alligator Bay. That is a, that would be a huge detrimental loss to us, to me especially. I know a lot of people that fish that, we fished that for years. Those ditches in that area are really good at times, that's one of our better spots to fish. As it was mentioned, that is close to a public ramp for kayakers to be able to launch. They loved to navigate those ditches in there and work that area. So that will be a huge loss and the way, you know, that one is so close to the bank. we basically lose that entire area. There are a lot of times where that's the only place those fish will be, is that side. And that will definitely hinder that. So, that's a huge, that would be a huge loss to the fishing community and this area, if that one goes there. For example, the other guy moved his out, you know, that's an option there. That's a big bay, there is a channel that runs down the center but there is room to move those out. You know, give a hundred or so yards or even 150 yards on that bank and I think that would work. So, to offer a compromise there, lease, 21-006 BL, 21-007WC. the one behind Permuda Island, I disagree with that, not out of the way. That's a main thoroughfare that we run when we're fishing that area. That shoal is a huge shoal for me and my charter business. Being that it's a big shoal, the red drum really enjoyed sitting on that spot for, they'll sit there for days at a time. (Owen: “**Mr. Brittain you are right on the three-minute mark.**”) Okay. And lease 385 South Permuda, I'll echo the statements earlier, it's a very hard one to pass. It'll be unpassable if that goes in and we will lose lots of acreage. It'll cut off our access to a lot of places in the back. That's all I got. Thank you.”

Patricia Smith: “Okay. We had one other person sign in after we did roll call, Keith Wells. I've got you unmuted, are you wanting to speak during this public comment, period?”

Keith Wells: “Not at this time. Thank you.”

Patricia Smith: “Okay. So that gets everyone who indicated they wanted to speak. If there was anyone I missed or anyone who's changed their mind about wanting to speak, if so, I'm gonna need you to raise your hand. So,



the way you raise your hand, it depends on the device you're using to attend the meeting. If you're attending this meeting online on a regular computer, you raise your hand by clicking 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 and it may be at the bottom or the top of your screen and click on that icon, and that should bring up the participant's panel. If you are attending online with a mobile device, such as a smartphone, you will need to click on the three little dots and then the hand icon there. Either way, once you've finished speaking, you'll need to click on the hand icon, again, to lower your hand. And if you are calling in on the meeting by telephone only and do not see a screen, you can raise your hand, by dialing, star, three, and you'll need to hit star, three again to lower your hand. So was there anyone else that I missed who or who's changed their mind? Mr. Schwab has his hand raised.”

Owen: “So we only allow participants to speak once. If you have any further questions, please reach out to us. Our contact information is displayed here on this last slide, or you can find it on the division website. And again, we're accepting written comment through tomorrow. So, if you didn't get a chance to finish your spoken public comment, you know, please go to the website and let us know, let us know your comment in written form. All right, so since we have captured everybody who would like to speak, I will close this public hearing. I would like to thank you for your time and participation in the process. The time of closure is 6:38.”

**Closure: 6:38 P.M.**