

March 8 ANER Committee Meeting Follow-up

Department of Environmental Quality: Division of Marine Fisheries (DMF)

1) Shellfish Leasing Program Background

The NC Shellfish Leasing Program allows individuals and businesses to lease public bottom or a recognized submerged land claim for the purpose of the commercial production of shellfish.

- In 1990 the law was amended to allow the use of the water column above a bottom lease, thereby creating “column leases.”
- In 2015 the law was amended to (1) allow gear up to 18 inches off the bottom on bottom leases, thus allowing cage and rack and bag culture of oysters and (2) remove the survey requirement for lease applicants.

Annual lease rent: \$10/acre for a bottom lease / \$100/acre for a water column amendment

Contract Term: Ten years

Other Terms:

- Bottom & Column treated in law as real property and are subject to all laws relating to taxation, sale, devise, inheritance, gift, seizure and sale under execution or other legal process.
- Lessees must meet minimum production standards for sale and planting
- Leases must meet several standards listed in statute and rule:
 - May not be sited in polluted areas, over a natural shellfish bed, in navigational channels, or in management or other restricted areas.
 - Cultivation of shellfish in the leased area must be compatible with the lawful utilization by the public of other marine and estuarine resources including, but not limited to, navigation, fishing and recreation.
 - This compatibility is often difficult to ascertain and use conflict is the primary obstacle to leasing in many areas of the state. The law allows the Secretary (delegated to the DMF director) to condition or delete a portion of a lease that would otherwise be denied to protect the public interest.
 - Marine Fisheries Commission may limit the number of acres in any area that may be granted as shellfish cultivation leases.
- Federal requirements also apply through the US Army Corps of Engineers (USACE).
 - To prevent applicants from having to seek an individual USACE permit for a shellfish lease, North Carolina uses the Nationwide Permit #48 for Shellfish Aquaculture. To be granted under this permit, lease applicants must meet additional criteria listed in both the Nationwide and regional conditions.
 - All USACE Nationwide Permits will renew March 17, 2017.

2) Can the DMF give priority to NC residents/ companies on oyster leases?

Under G.S. 113-202(a) only residents of NC may apply for a shellfish lease.

Last year saw a **four-fold increase in interest of shellfish leasing**. Around 50 lease applications were received by the division, most using either bottom cage, rack and bag, or floating cage culture methods. DMF created a new application to:

- Capture information needed by the USACE for the Nationwide Permit 48,

- Allow the division to evaluate the requested acreage with the lease management plan,
- Identify areas the might cause use conflict, and
- Identify possible activities not covered under the USACE permit that might need additional state permitting.

3) Are there conflicts between column leases and tourism?

There can be conflicts between many different users and shellfish leases including tourism on both bottom and water column leases. Many use conflicts are possible, including recreation and boating, commercial or recreational fishing, view shed issues, and public opinion on the use of public trust areas for cultivation.

4) Is boating allowed through a column leases?

Boating is allowed through and over a water column lease. However, navigation can also be restricted depending upon the type of bottom and water column gear. The General Statutes for both bottom and water column leases address use of the water over or around the lease:

5) Are there measures to address conflicts between tourism and column leases?

Yes. The MFC has the authority to limit the number of acres in any area that may be granted as shellfish cultivation leases. However, the DMF division director does not know of any time when this authority has been exercised. The Secretary or division director may also condition or reduce acreage on a proposed lease as a condition of granting. The applicant must accept the conditions or acreage reduction or the lease is denied, but they may appeal that decision.

Other states, such as Florida, have developed Aquaculture Enterprise Zones where large areas are permitted by the state through normal federal-state processes and then subdivided and issued to growers through a permit system. Currently, DMF does not have the authority to grant leases as non-transferrable permits. Other options may be to limit some areas to traditional bottom aquaculture methods (oyster cultch or spat-on shell, or bottom clam culture) only where the only visible structures would be corner markers and smaller markers across the lease site.

6) How much money has been made from the sale of equipment authorized in S.L. 2016-94?

S.L. 2016-94, Sec. 14.9 directed DMF to sell the certain aircraft and water vessels from its fleet and to use the proceeds of those sales on new equipment to support the Marine Patrol's enforcement efforts.

As of March 15, 2017, DMF has sold 3 of the 4 aircraft and vessels for proceeds of \$66,778: A breakdown of these proceeds is provided below:

- 1999 48' Sea Ark – patrol vessel "Roanoke." – *not yet sold*.
 - Marine Patrol has been unsuccessful with several attempts to sell this vessel. The highest bid received was \$125,000 against a \$167,000 reserve. Thus, Marine Patrol is still in possession of this vessel.
- 1995 Husky airplane: Sold.

- The proceeds of the sale, **\$52,532**, are going towards the total purchase price of a 23-foot Parker boat, motor, and trailer (total price: \$68,425). This new vessel will replace an older patrol vessel currently still in service.
- 1998 25' Parker boat hull with trailer.
- 1993 18' Parker boat with engine and trailer.
 - Shellfish Sanitation sold both of these boats for a total of **\$14,246**. The proceeds from this sale will be used to subsidize the purchase of a Ford F-250 towing vehicle to be used to tow vessels to sample shellfish harvest waters and support observation of shellfish harvest activity by the Marine Patrol.

Department of Natural and Cultural Resources: Division of Parks & Recreation

1) Why does the Division not use NC Forest Service for controlled/ prescribed burns?

NC Forest Service, DACS

According to the Department of Agriculture and Consumer Services (DACS), this is a matter of capacity; the NC Forest Service *does not have the capacity* to assist with burns. There are a limited number of days in which prescribed burns can be done, and DACS already has a backlog / waiting list for prescribed burns for private landowners. Plus, DACS and the NC Forest Service have State property that requires burns as well, including DACS' State Forests and forests on their Research Stations.

Land & Water Access, WRC

The Land & Water Access Division within WRC also conducts prescribed burns. WRC has an agreement with the State Parks and The Nature Conservancy (TNC) to assist them with prescribed fires "when requested and available".

However, the problem is that WRC typically *does not have the capacity* to assist with a burn on State Park property when a burn is also planned on a Game Land. WRC has occasionally helped construct fire lines or other related activities when staff was available. Further, in terms of capacity for prescribed fire, WRC does not have the capacity to complete the staff-recommended burns on WRC-managed Game Lands in a given year and, the Commission seeks assistance from TNC's burn crews to help meet WRC goals. WRC contracts with temporary burn crews from TNC and private entities, and has an agreement with the NC Forest Service for aerial ignitions.

2) What is being done at the State Capital?

The sidewalk project that is underway at the State Capital officially began in December 2016 and was expected to take 90 days and cost \$417,465. However, the sidewalks were barricaded starting in November so that contractors could provide the required mock-ups. The project has been delayed by weather (you cannot pour concrete when it is near freezing), bad soils, tree roots (additional efforts had to be taken to avoid damaging roots and killing trees), and other historic preservation concerns. At this time, it is expected that another 8 weeks are needed to complete the project.