

SECTION .0200 – SHELLFISH LEASES AND FRANCHISES

15A NCAC 030 .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES

(a) For the purpose of this Section:

- (1) "extensive shellfish culture" shall mean shellfish grown on the bottom without the use of cages, racks, bags, or floats.
- (2) "intensive shellfish culture" shall mean shellfish grown on the bottom or in the water column using cages, racks, bags, or floats.
- (3) "plant" shall mean providing evidence of purchasing shellfish seed or planting shellfish seed or authorized cultch materials on a shellfish lease or franchise.
- (4) "produce" shall mean the culture and harvest of oysters, clams, scallops, or mussels from a shellfish lease or franchise and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.

(b) All areas of the public bottom underlying Coastal Fishing Waters shall meet the following standards and requirements, in addition to the standards in G.S. 113-202, in order to be deemed suitable for leasing for shellfish aquaculture purposes:

- (1) the proposed shellfish lease area shall not contain a "natural shellfish bed," as defined in G.S. 113-201.1, or have 10 bushels or more of shellfish per acre;
- (2) the proposed shellfish lease area shall not be closer than 250 feet from a developed shoreline or a water-dependent shore-based structure, except no minimum setback is required when the area to be leased borders the applicant's property, the property of "riparian owners" as defined in G.S. 113-201.1 who have consented in a notarized statement, or is in an area bordered by undeveloped shoreline. For the purpose of this Rule, a water-dependent shore-based structure shall include docks, wharves, boat ramps, bridges, bulkheads, and groins;
- (3) the proposed shellfish lease area shall not be closer than 250 feet to an existing lease;
- (4) the proposed shellfish lease area, either alone or when considered cumulatively with other existing lease areas in the vicinity, shall not interfere with navigation or with existing, traditional uses of the area; and
- (5) the proposed shellfish lease area shall not be less than one-half acre and shall not exceed 10 acres.

(c) To be suitable for leasing for shellfish aquaculture purposes, shellfish water column leases superjacent to a shellfish bottom lease shall meet the standards in G.S. 113-202.1 and shellfish water column leases superjacent to franchises shall meet the standards in G.S. 113-202.2.

(d) Shellfish bottom leases and franchises granted on or before July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202:

- (1) they produce 10 bushels of shellfish per acre per year; and
- (2) they are planted with 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre per year, or a combination of cultch and seed shellfish where the percentage of required cultch planted and the percentage of required seed shellfish planted totals at least 100 percent.

(e) Shellfish water column leases granted on or before July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and G.S. 113-202.2:

- (1) they produce 40 bushels of shellfish per acre per year; or
- (2) the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.

(f) Shellfish bottom leases and franchises granted after July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202:

- (1) they produce a minimum of 20 bushels of shellfish per acre averaged over the previous three-year period beginning in year five of the shellfish bottom lease or franchise; or
- (2) for intensive culture bottom operations, the holder of the shellfish bottom lease or franchise provides evidence of purchasing a minimum of 23,000 shellfish seed per acre annually and for extensive culture bottom operations, the holder of the lease or franchise plants a minimum of 15,000 shellfish seed per acre per year.

(g) Shellfish water column leases granted after July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and 113-202.2:

- (1) they produce a minimum of 50 bushels of shellfish per acre averaged over the previous three-year period beginning in year five of the shellfish water column lease; or

- (2) the holder of the shellfish water column lease provides evidence of purchasing a minimum of 23,000 shellfish seed per acre annually.
- (h) The following standards shall be applied to determine compliance with Paragraphs (d), (e), (f), and (g) of this Rule:
- (1) only shellfish planted or produced as defined in Paragraph (a) of this Rule shall be included in the annual shellfish lease and franchise production reports required by Rule .0207 of this Section.
 - (2) if more than one shellfish lease or franchise is used in the production of shellfish, one of the leases or franchises used in the production of the shellfish shall be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish shall be produced by only one shellfish lease or franchise. Shellfish transplanted between shellfish leases or franchises shall be credited as planting effort on only one lease or franchise.
 - (3) production information and planting effort information shall be compiled and averaged separately to assess compliance with the requirements of this Rule. Shellfish bottom leases and franchises granted on or before July 1, 2019 shall meet both the production requirement and the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in compliance. Shellfish bottom leases and franchises granted after July 1, 2019 and shellfish water column leases shall meet either the production requirement or the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in compliance.
 - (4) all bushel measurements shall be in standard U.S. bushels.
 - (5) in determining production and marketing averages and planting effort averages for information not reported in bushel measurements, the following conversion factors shall be used:
 - (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
 - (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds of fossil stone equal one bushel.
 - (6) production rate averages shall be computed irrespective of transfer of the shellfish lease or franchise. The production rates shall be averaged for the following situations using the time periods described:
 - (A) for an initial shellfish bottom lease or franchise, over the consecutive full calendar years remaining on the bottom lease or franchise contract after December 31 following the second anniversary of the initial bottom lease or franchise;
 - (B) for a renewal shellfish bottom lease or franchise, over the consecutive full calendar years beginning January 1 of the final year of the previous bottom lease or franchise term and ending December 31 of the final year of the current bottom lease or franchise contract;
 - (C) for a shellfish water column lease, over the first five-year period for an initial water column lease and over the most recent five-year period thereafter for a renewal water column lease; or
 - (D) for a shellfish bottom lease or franchise issued an extension period under Rule .0208 of this Section, over the most recent five-year period.
 - (7) in the event that a portion of an existing shellfish lease or franchise is obtained by a new lease or franchise holder, the production history for the portion obtained shall be a percentage of the originating lease or franchise production equal to the percentage of the area of lease or franchise site obtained to the area of the originating lease or franchise.
- (i) To be eligible for additional shellfish lease acreage, persons holding any acres under a shellfish lease or franchise shall meet the requirements established in:
- (1) Paragraphs (d), (e), (f), and (g) of this Rule;
 - (2) Rule .0204 of this Section; and
 - (3) Rule .0503(a) of this Subchapter.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52; S.L. 2019-37, s. 3;
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