



JOSH STEIN  
Governor

D. REID WILSON  
Secretary

KATHY B. RAWLS  
Director

## SHELLFISH CULTIVATION LEASE THIRD PARTY APPEALS DETERMINATION REQUEST FORM

PETITIONER'S NAME: **Merleon Godwin Creech**

COUNTY AND GENERAL LOCATION OF THE SHELLFISH LEASE(S) (i.e., WATERBODY):  
**Carteret County; 0535200000/Adams Creek**

PROPOSED SHELLFISH LEASE NUMBER(S) AND APPLICANT NAME:  
**Bottom and Water Column, 24-005BL/24-006WC; Jacob Milchuck**

*Please complete the blanks above to make clear the shellfish lease(s) you are challenging.*

PLEASE TAKE NOTE that the undersigned Petitioner, a person other than the applicant who is aggrieved by the decision of the Secretary of the Department of Environmental Quality (DEQ) and delegated to the Division of Marine Fisheries' (DMF) Director, to grant a shellfish lease, hereby requests permission from the Marine Fisheries Commission's (MFC) Shellfish Cultivation Lease Review Committee (SCLRC) to file an appeal to determine the appropriateness of a contested case hearing pursuant to N.C.G.S. § 113-202(g). Requests are reviewed and a determination is made by the SCLRC whether a contested case hearing is appropriate. If the SCLRC determines that a contested case hearing is appropriate, the Petitioner must file a contested case petition with the Office of Administrative Hearings within thirty (30) days of receiving notice of the SCLRC's determination. A determination by the SCLRC that the Petitioner may not commence a contested case is a final agency decision which may be appealed to Superior Court as a Petition for Judicial Review under N.C.G.S. § 113-202(g) and Chapter 150B in accordance with N.C.G.S. § 113-202(g).

For this application to be complete, the Petitioner must address each of the three factors from N.C.G.S. § 113-202(g) listed below. The SCLRC's decision to grant a hearing will be based on whether the Petitioner: *(Please answer these questions on a separate page or e-document and submit with this form).*

- (1) Has alleged that the decision is contrary to a statute or rule;** *(Please cite the relevant statute or regulation allegedly violated by the shellfish lease decision.)*
- (2) Is directly affected by the decision; and** *(Please describe how you are directly affected by the shellfish lease decision. Persons directly affected by a decision may include persons who can demonstrate a history of substantial use of public resources in the area directly affected by the shellfish lease.)*
- (3) Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.** *(Please summarize the evidence and arguments you would present at a hearing in support of your appeal explaining why the shellfish lease was improperly approved.)*



JOSH STEIN  
Governor

D. REID WILSON  
Secretary

KATHY B. RAWLS  
Director

*The MFC notes that there are some opinions of the State Bar which indicate that non-attorneys or attorneys not licensed to practice law in the state may not represent other people or corporate bodies at quasi-judicial proceedings such as this Third Party Hearing Request before the Review Committee. These opinions note that the practice of non-lawyers representing others in quasi-judicial proceedings through written argument may be considered the practice of law. Before you proceed with this hearing request, you may wish to seek the advice of counsel before having a non-lawyer represent your interests through preparation of this Petition.*

### DELIVERY OF THIS HEARING REQUEST

The law requires that this request must be **received by** (not postmarked by) the SCLRC, in care of the DMF, within thirty (30) days of the date of the disputed shellfish lease decision in accordance with N.C.G.S. § 113-202(g). Failure to do so constitutes waiver of the right to request a hearing. Please also provide a courtesy copy of this request to NC Department of Justice (DOJ).

#### Contact Information for DMF Office:

##### **By U.S. Mail:**

NC Division of Marine Fisheries  
MFC Office  
PO Box 769  
Morehead City, NC 28557

##### **By express mail or hand delivery:**

NC Division of Marine Fisheries  
MFC Office  
3441 Arendell Street  
Morehead City, NC 28557

##### **By Email:**

[MFC@deq.nc.gov](mailto:MFC@deq.nc.gov)

#### Contact Information for DOJ:

##### **By U.S. Mail:**

Environmental Division  
MFC Counsel  
9001 Mail Service Center  
Raleigh, NC 27699-9001

##### **By express mail or hand delivery:**

Environmental Division  
MFC Counsel  
114 W. Edenton Street  
Raleigh, NC 27603

[szambon@ncdoj.gov](mailto:szambon@ncdoj.gov)

**Based on the attached responses to the above factors, the undersigned hereby requests a third party appeal determination.**

Jessica Humphries, Attorney  
Signature of Petitioner or Attorney

5/15/25  
Date

Jessica Humphries  
Printed Name of Petitioner or Attorney

jhumphries@fsofirm.com  
Email address of Petitioner or Attorney

321 N. Front Street, Suite 104  
Mailing Address of Petitioner or Attorney

(910) 216-4298  
Telephone number of Petitioner or Attorney

Wilmington      NC      28401  
City                      State                      Zip



David J. Farrell, Jr.\*◇  
David S. Smith \*■◇  
Liam T. O'Connell \*◇  
Kirby L. Aarsheim \*◆◇  
Olaf Aprans \*◇  
Jason R. Harris †□  
Jessica Humphries †△  
Parker Zelle \*●◇  
Melanie Huffines †  
Katie Cusack †▲°  
Thomas Alger \*◇

\* Admitted in MA  
■ Admitted in ME  
◆ Admitted in RI  
● Admitted in NH  
† Admitted in NC  
□ Admitted in TX & VA  
△ Admitted in SC  
▲ Admitted in MD & Washington D.C.  
° Of Counsel  
◇ Not Admitted in NC

ATTORNEYS AT LAW & PROCTORS IN ADMIRALTY

May 15, 2025

**Via Email Only**

NC Division of Marine Fisheries  
MFC Office  
PO Box 769  
Morehead City, NC 28557  
[MFC@deq.nc.gov](mailto:MFC@deq.nc.gov)

and

Environmental Division  
MFC Counsel  
9001 Mail Service Center  
Raleigh, NC 27699-9001  
[szambon@ncdoj.gov](mailto:szambon@ncdoj.gov)

RE: Proposed Shellfish Leases:  
**Bottom and Water Column,**  
**24-005BL/24-006WC; Jacob Milchuck**

To whom it may concern:

Enclosed please find the Shellfish Cultivation Lease Third Party Appeals Determination Request Form on behalf of Merleon Godwin Creech, regarding the Shellfish leases referenced therein and above.

---

FARRELL SMITH O'CONNELL AARSHEIM APRANS LLP  
Offices in Massachusetts, Rhode Island and North Carolina

27 Congress Street, Suite 508, Salem, MA 01970 (all mail) | T: 978-744-8918 | F: 978-666-0383  
321 North Front Street, Suite 104, Wilmington, NC 28401 | T: 910-836-1752 | F: 978-666-0383  
[www.fsosfirm.com](http://www.fsosfirm.com)



Please let me know if you have any questions or concerns or need additional information to evaluate this appeal.

Sincerely,



Jessica S. Humphries

JSH/dn

Enclosure

CC: Zach Harrison ([zach.harrison@deq.nc.gov](mailto:zach.harrison@deq.nc.gov))

**Attachment to Shellfish Cultivation Lease**  
**Third Party Appeals Determination Request Form**

**(1) The decision is contrary to *at least* the following statutes or rules:**

i. NC Gen Stat. § 113-202 – New and Renewal leases for shellfish cultivation . . .

(a) . . . Suitable areas for the production of shellfish shall meet the following minimum standards:

. . .

(3) Cultivation of shellfish in the leased area will be compatible with lawful utilization by the public of other marine and estuarine resources. Other public uses which may be considered include, but are not limited to, navigation, fishing and recreation

(4) Cultivation of shellfish in the leased area will not impinge upon the rights of riparian owners

**The Lease violates section (3) above because it is incompatible with other lawful public uses in the area of the Lease. The Lease hinders Ms. Creech's access to open water for boating, fishing, or other recreational activities. The Lease also hinders recreational activities from the shore, including, but not limited to, swimming, hunting, and fishing from the bank due to its proximity to the shoreline.**

**Further, cultivation of shellfish in the leased area will impinge on Ms. Creech's riparian rights in violation of Section (4). Ms. Creech is a riparian owner, as defined in NC Gen Stat. § 113-201.1. She holds fee title to the land bordered by the portion of water in which the Lease area is located. In addition to the ways the Lease hinders Ms. Creech's riparian rights listed in the paragraph above, the Lease impinges on Ms. Creech's right to construct a dock or pier extending from her property. Ms. Creech recently obtained a quote to begin the process of constructing a dock.**

ii. NC Gen Stat. § 113-202.1 – Water column leases for aquaculture

. . .

(b) Suitable areas for the authorization of water column use shall meet the following minimum standards:

(1) Aquaculture use of the leased area must not significantly impair navigation;

...

(3) The leased area must not be within an area traditionally used and available for fishing or hunting activities incompatible with the activities proposed by the leaseholder, such as trawling or seining;

(4) Aquaculture use of the leased area must not significantly interfere with the exercise of riparian rights by adjacent property owners including access to navigation channels from piers or other means of access;

...

**The Lease violates Section (1) above because it significantly impairs Ms. Creech's navigation from her shoreline due to its scope and proximity to the shoreline. It hinders her access to open water for boating, fishing, or other recreational activities. In addition, Ms. Creech intends to construct a dock in the near future, and the Lease will impair her ability to proceed as planned.**

**The Lease violates Section (3) above because the Lease is within an area traditionally used for fishing or hunting activities incompatible with the activities proposed by the leaseholder. The Lease will prevent Ms. Creech and her family from engaging in these types of activities traditionally enjoyed on or around the property.**

**The Lease violates Section (4) above because it significantly interferes with Ms. Creech's exercise of riparian rights as set out in section (1)i. above.**

- iii. NC Gen Stat. § 113-202(g) After consideration of the public comment received and any additional investigations the Secretary orders to evaluate the comments, the Secretary shall notify the applicant in person or by certified or registered mail of the decision on the lease application. *The Secretary shall also notify persons who submitted comments at the public hearing and requested notice of the lease decision. . . .*

**The Lease violates this statute section because Ms. Creech, through her daughter with power of attorney, submitted comments at the public hearing regarding the Lease and requested notice of the Lease decision but did not receive notice of the decision on the Lease.**

- iv. 15A NCAC 03O .0201 Standards and Requirements for Shellfish Leases and Franchises

...

- (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:

...

(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;

(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.

**The Lease violates Section (2) above because it is closer than 250 feet to Ms. Creech's shoreline, and she did not consent to the Lease in a notarized statement. Ms. Creech's property is developed and should be considered a developed shoreline; therefore, the Lease area must be at least 250 feet from her shoreline. Upon information and belief, the Lease area encroaches on Ms. Creech's property as close as approximately 65 feet.**

**The following activities have been performed on Ms. Creech's property that qualify as development:**

- 1. Cut timber on the property;**
- 2. Planted trees;**
- 3. Constructed a road; and**
- 4. Initiated the process of constructing a dock.**

**Ms. Creech has plans for future development of the property. The property was purchased as an investment to develop in 2022. This Lease would impair her investment in the property by hindering its development potential.**

**Further, the Lease violates Section (4) of this rule because it interferes with navigation or with existing, traditional uses of the area, as explained above.**

- v. **Required Notice to and Consent from Riparian Property Owners within 250 feet of the Lease**

**According to DMF policy and Page 15 of the Checklist to the applicable 2023 N.C. Division of Marine Fisheries Shellfish Lease Application, if a lease application is approved for hearing, DMF staff is supposed to notify adjacent riparian property owners within 250 feet from the proposed location of the shellfish lease. Ms. Creech did not receive notice of the Lease application from DMF. Ms. Creech only learned of this Lease from her neighbor.**

**In addition, the Lease applicant failed to obtain Ms. Creech's consent to the Lease. According to the statute cited above and page 17 of the Checklist to the Shellfish Lease Application, the Lease applicant needed written and notarized consent of riparian property owners if the Lease was within 250 feet of a developed shoreline. As explained in section (1)iv. above, Ms. Creech's shoreline is developed, and she has plans for additional development in the near future. The Lease applicant did not contact Ms. Creech regarding the proposed Lease or provide any documentation related to the Lease during the application process. Ms. Creech did not, and does not, consent to the Lease.**

**A public records request was made to DMF of the entire lease file, which has not yet been produced. Ms. Creech reserves the right to rely on any other statutes, rules or regulations to contest the Lease at any subsequent hearing regarding this Lease.**

- (2) Ms. Creech is directly affected by the decision because she is a riparian owner as defined in NC Gen Stat. § 113-201.1. She holds fee title to the land bordered by the portion of water in which the Lease area is located. For all the reasons stated above, the Lease will significantly impact her and her riparian rights.**
- (3) This appeal alleges facts and makes legal arguments that demonstrate that the request for the hearing is not frivolous.**

**Based on the foregoing information, the hearing will not be frivolous. At the hearing, we will present testimony regarding recreational activities historically enjoyed on the property. Ms. Creech and/or her family members will explain how granting this Lease will hinder or impinge on their ability to continue those activities.**



**We will present evidence of development on the property, through testimony and/or supporting documentation. Ms. Creech and/or her family members will testify to the continued development plans on the property, including the plan to construct a dock on the property, and how this Lease hinders her ability to proceed.**