



JOSH STEIN
Governor

D. REID WILSON
Secretary

KATHY B. RAWLS
Director

**SHELLFISH CULTIVATION LEASE THIRD PARTY
APPEALS DETERMINATION REQUEST FORM**

PETITIONER'S NAME: **Corey McMahon**

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.)*



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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

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

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
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■ 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

and

Environmental Division
MFC Counsel
9001 Mail Service Center
Raleigh, NC 27699-9001
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 Corey McMahon, regarding the Shellfish leases referenced therein and above.

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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)

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 navigation of Mr. McMahon's vessel to and from his shoreline due to the Lease's scope and proximity to his shoreline. Therefore, the Lease hinders Mr. McMahon'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, the Lease hinders duck hunting historically performed on the property. Mr. McMahon will no longer be able to operate a duck blind where traditionally located on his property. Mr. McMahon held a commercial fishing license from November 2002 through April 2012, which he utilized the shoreline crabbing in Adams Creek. In April of 2012 he obtained his Lifetime Unified Sportsman/Coastal Recreational Hunting and Fishing License, for which he continues to utilize his property and shore to hunt and fish.

Further, cultivation of shellfish in the leased area will impinge on Mr. McMahon's riparian rights in violation of Section (4). Mr. McMahon is a riparian owner, as defined in NC Gen Stat. § 113-201.1. He 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 Mr. McMahon's riparian rights listed in the paragraph above, the Lease impinges on Mr. McMahon's right to construct a dock or pier extending from his property.

- 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 Mr. McMahon's navigation from his shoreline due to its scope and proximity to the shoreline. It hinders his access to open water on his vessel for boating, fishing, or other recreational activities.

The Lease violates Section (3) above because the Lease is within an area traditionally used by Mr. McMahon for fishing or hunting activities incompatible with the activities proposed by the leaseholder. The property has traditionally been utilized for duck hunting, as evidenced by a duck blind that was installed in the waterway for at least four (4) years. The duck blind was destroyed a few years ago, and he has not yet had the opportunity to rebuild. Mr. McMahon planned to reconstruct the duck blind in the near future. The Lease will prevent him from proceeding as planned with his hunting activities and other activities traditionally enjoyed on the property.

The Lease violates Section (4) above because it significantly interferes with Mr. McMahon'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 Mr. McMahon 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 Mr. McMahon's shoreline, and he did not consent to the Lease in a notarized statement. Mr. McMahon's property is developed and should be considered a developed shoreline; therefore, the Lease area must be at least 250 feet from his shoreline. Upon information and belief, the Lease area encroaches on Mr. McMahon's shoreline as close as approximately 35 feet.

Mr. McMahon has performed the following activities on his property that qualify as development:

- 1. Installed a septic system in 2004 or 2006;**
- 2. Loggers cut timber on the property;**
- 3. Cleared a homesite;**
- 4. Constructed a road and ditches. A forestry mulcher maintains the road, ditches and grassy areas;**

- 5. Mr. McMahon has trees marked on the property for his reference in regard to CAMA regulations to determine boundaries allowed for development on the property; and**
- 6. Mr. McMahon has a camper he transports on to the property that he is able to drive onto the land and is able to utilize the septic system.**

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 Consent from Riparian Property Owners within 250 feet of the Lease**

The Lease applicant failed to obtain Mr. McMahon's consent to the Lease. According to page 17 of the Checklist to the N.C. Division of Marine Fisheries 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, Mr. Mahon's shoreline is developed, and he has plans for additional development in the near future. The Lease applicant did not contact Mr. McMahon regarding the proposed Lease or provide any documentation related to the Lease during the application process. Mr. McMahon did not, and does not, consent to the Lease.

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

- (2) Mr. McMahon is directly affected by the decision because he is a riparian owner as defined in NC Gen Stat. § 113-201.1. He 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 him and his 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, Mr. McMahon will testify to the navigational history to and from his property. He will also testify to his recreational activities historically enjoyed on the property, including boating, fishing, swimming, and hunting. He will explain how granting this Lease will

hinder or impinge his ability to continue those activities. We will present evidence of the duck blind historically on the property and he will explain how this Lease will prevent him from continuing to duck hunt as he has in the past.

We will present evidence of development on the property, including documentation supporting the logging on site, septic installation, and land and road clearing. This evidence will include permit documentation, contracts and invoices for development activity on his property. Mr. McMahon will testify to the continued development plans on the property, including his plan to construct a dock and pier on the property, and how this Lease hinders his ability to proceed.