

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

BEFORE THE SHELLFISH
CULTIVATION LEASE REVIEW
COMMITTEE
25-01

IN THE MATTER OF THE THIRD-
PARTY HEARING REQUEST BY:
THOMAS PERALTO

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DECISION

I. PROCEDURAL BACKGROUND

Petitioner Thomas Peralto submitted a Third Party Hearing request to the North Carolina Division of Marine Fisheries (DMF) dated April 23, 2025 seeking permission to file a petition in the North Carolina Office of Administrative Hearings (OAH) for a contested case hearing pursuant to N.C.G.S. § 113A-202(g). Petitioner seeks to challenge the April 14, 2025 decision by DMF Director Kathy Rawls to grant a bottom shellfish lease and water column lease (“lease area”) to C.I. Salts Oyster Company, LLC (“Applicant”). The lease requested by the Applicant is in North Bay near Cedar Island in Carteret County. Petitioner owns property to the north and east of the lease area.

In reviewing the request, the undersigned considered the following documents provided by or on behalf of Petitioner, DMF, and Applicant, which constitute the official record on which this decision was made:

1. Petitioner Peralto’s Third Party Hearing Request email submitted April 23, 2025 and subsequent Third Party Hearing form dated April 25, 2025
2. Articles of Organization for C.I. Salts Oyster Company, LLC filed with the North Carolina Secretary of State dated January 29, 2025
3. Deed to Ralph Brittingham and wife recorded in the Carteret County Register of Deeds in Book 1473 Page 253 dated March 7, 2014
4. 2025 Carteret County Tax card for 415 Hwy 70 Smyrna, NC 28759 (Brittingham property)

5. Aerial photos 415 Highway 70, Smyrna including distance to lease area
6. Aerial/Ground images of lease area
7. Aerial from lease tool showing distance of 30' waterward from shoreline
8. Aerial from lease tool showing distance from proposed lease to existing lease
9. Aerial from lease tool showing distance from proposed lease to Petitioner's house
10. 2025 Carteret County Tax cards for properties owned by Petitioner (26 pages)
11. CAMA Major 144-21 to Petitioner for Major Development and Excavation and/or Filling dated October 28, 2021 and associated documents
 - a. Notice letters to adjacent property owners
 - b. Objection emails from Rodney Farnsworth III dated September 23, 2021 and Division of Coastal Management (DCM) response
 - c. Objection letter from Rodney Farnsworth III dated October 13, 2021
 - d. Application for Major Development Permit received August 27, 2021
12. Deed to Thomas Peralto recorded in the Carteret County Register of Deeds in Book 1063 Page 135 dated July 1, 2004
13. Aerial image from lease tool showing no recognized submerged lands claims in area (1 page)
14. GIS showing Petitioner's 13 parcels
15. Aerial from lease tool showing nearby closure line dated February 5, 2025
16. GIS of distance from proposed lease to Petitioner's duck blinds
17. Ground images of Petitioner's two duck blinds (2 pages)
18. Two ground-level photos showing two duck blinds nearest lease area
19. February 5, 1985 DOJ memo re: duck blinds to Vernon Bevill from Allen Jernigan

20. December 4, 1984 letter to Leigh Winslow Jr. from Allen Jernigan
21. North Carolina Session Law SL 1981-581
22. Final OAH decision in *8 ½ Marina Village v DEQ and Samuel Boyd* dated May 11, 2018
23. Staff recommendation dated 11 June 2025
24. Letter to Shawn Maier from Dallas Goodwin
25. Email from Petitioner dated June 17, 2025 in response to staff's report
26. Presentation to the Shellfish Lease Review Committee on June 25, 2025.

II. STANDARD OF REVIEW

Pursuant to N.C.G.S. § 113A-202(g), the North Carolina Shellfish Cultivation Lease Review Committee (Committee) serves as a “gate-keeper” to determine whether it is appropriate for a third party, such as Petitioner, to challenge a lease decision issued to another. In order for the Committee to determine if a petition can move forward as a contested case in OAH, the Committee must determine if the Petitioner:

- (1) Has alleged the decision is contrary to a statute or rule;
- (2) That the Petitioner is directly affected by the decision;
- (3) Petitioner must allege facts or make legal arguments that demonstrate that the request for a hearing is not frivolous.

N.C.G.S. § 113A-202(g). A third party whose hearing request is granted may file a petition for a contested case hearing in OAH pursuant to N.C.G.S. §113A-121.1(b). A third party whose hearing request is denied may seek judicial review under the procedures set forth in the North Carolina Administrative Procedure Act at N.C.G.S. § 150B-45.

III. FINDING OF FACTS

A. The Petitioner Thomas Peralto is a North Carolina resident. The Petitioner owns property at 301 Soundview Drive, Cedar Island, Carteret County, North Carolina. The Petitioner purchased property on Cedar Island on July 1, 2004

B. Petitioner owns a total of 21 parcels of property on Cedar Island according to Carteret County tax and GIS records. Eight parcels are not in the vicinity of the lease area.

C. Petitioner owns eleven lots on Soundview Drive. The lots include road access, upland and marsh and have shoreline on the Pamlico Sound.

D. Petitioner's parcel at 301 Soundview Drive is developed with a single-family residence. The remaining lots are undeveloped. To the northeast of the eleven parcels on Soundview Drive, Petitioner also owns two parcels classified as marshland with a combined area of approximately 50 acres with 3,795 feet of shoreline on the Pamlico Sound and 4,700 feet on North Bay. The marshland lot borders on North Bay and is adjacent to the lease.

E. Petitioner received a Coastal Area Management Act (CAMA) Major Development Permit on October 28, 2021 authorizing development of a living shoreline on the Pamlico Sound side of the parcels at 301 Soundview Drive, Cedar Island including excavation and filling.

F. Based on a review of the permits, GIS data, and aerial photos, DMF Staff determined Petitioner's property was not considered a developed shoreline.

G. Petitioner has built two duck blind structures on his property. The closest duck blind to the lease area is located approximately 189 feet to the southeast of the lease area. The other duck blind is approximately 316 feet to the northwest of the lease area.

H. The Applicant, C.I. Salts Oyster Company is a North Carolina Limited Liability Corporation established in January 2025. Ralph W. Brittingham, Jr. is the registered agent. The registered office address, principal office and mailing address, is 218

415 Highway 70, Smyrna, North Carolina. Articles of Organization filed with the North Carolina Secretary of State describe the Applicant's business as "home improvement."

I. Mr. Brittingham owns the property at 415 Highway 70, Smyrna, Carteret County, North Carolina. He and his wife purchased the property on March 7, 2014

J. The Applicant does not hold any other shellfish leases.

K. The proposed lease area is an estimated 4.22 acres within North Bay behind an undeveloped area of beach and marsh on the northern shore of Cedar Island. The water depth in the proposed lease area is 1.98 to 3.28 feet.

L. The lease area and surrounding North Bay are classified as Coastal SA Waters, High Quality Waters (HQW), and Nutrient Sensitive Waters (NSW) by the Environmental Management Commission (EMC).

M. The Marine Fisheries Commission (MFC) has not classified the lease area as a Primary Nursery Area (PNA), Secondary Nursery Area (SNA), or Special Secondary Nursery Area (SSNA). The waters at the proposed lease area are an approved harvest area for shellfish harvesting and are in the F3 Growing Area in the Central Region.

N. There are no submerged lands claims near the proposed lease area.

O. On March 8, 2024, DMF received an application from the Applicant through its registered agent Ralph W. Brittingham, Jr. for a Bottom Shellfish Lease and a Water Column Shellfish Lease on the North Bay in the proposed lease area.

P. Per the shellfish lease application process delineated in N.C.G.S. §113-201 and 202.2 and MFC rules at 15A NCAC 03O.0201 through .0211, DMF began to evaluate the application including review and comments from related sections and agencies.

Q. Comments were received from Tina Moore at DMF Fisheries Management on October 22, 2024, Officer Justin Lott and Officer Zachary Nelson of DMF Marine Patrol on

December 4, 2024 and Andrew Haines of DMF Shellfish Sanitation Section on October 24, 2024.

R. A shellfish lease must also meet federal requirements with the U.S. Army Corps of Engineers (USACE). A shellfish lease application to DMF can serve as a joint application with USACE

S. Biological site investigations at the proposed lease area took place on May 22 and May 23, 2024. No Submerged Aquatic Vegetation or any bushels per acre of natural shellfish were found by DMF.

T. DMC Habitat and Enhancement Section Chief Zach Harrison prepared a memo dated December 9, 2024 for DMF Director Kathy Rawls summarizing the proposed lease and proposed lease area including the provided comments and the biological site investigation.

U. Upon receipt and review of the memo, Director Rawls determined the application should move forward with a 30-day public comment period followed by a public hearing.

V. A public hearing was held on March 13, 2025 at 6:00pm at DMF's Central District Office in Morehead City and via WebEx virtual hearing.

W. At the public hearing, the Petitioner, Petitioner's wife Cathy Peralto, Dallas Goodwin, Hayden Owens, and Ed Wheatly spoke against the Potential Lease.

X. Following the public hearing and public comment, and upon a review of information collected regarding the proposed lease application, Director Rawls made the decision to grant the proposed lease on April 14, 2025. Director Rawls sent mailed notice to the Applicant through its registered agent Mr. Allen on April 16, 2025.

Y. On April 23, 2025, DMF received the Petitioner's third-party hearing request. This request was received within 30 days of the lease decision as required under N.C.G.S. §113-202(g).

Z. On May 28, 2025, counsel for SCLRC, Sarah Zambon, sent a letter to the Petitioner, Applicant, and DMF regarding the process for the hearing to address Petitioner's third party hearing request. No parties objected to the process as outlined in the letter.

AA. DMF did not receive a written response from the Applicant by the June 4, 2025 deadline indicated by the Committee's Counsel in his letter of May 28, 2025.

IV. CONCLUSIONS OF LAW

A. The Marine Fisheries Commission (MFC) is tasked with taking "all steps necessary to develop and improve mariculture" including harvesting and cultivating shellfish on public grounds and private beds. N.C.G.S. §143B-289.52(a)(d). To do this, the MFC can make standards and adopt rules to "manage the leasing of public grounds for mariculture" and has the quasi-judicial powers in order to "accomplish the purposes for which it was created." N.C.G.S. §143B-289.52(b)(7) and (g).

B. Pursuant to N.C.G.S. §143B-289.57(f), the Chair of the MFC appoints three members to the Shellfish Cultivation Lease Review Committee (SCLRC) to hear appeals of shellfish lease decisions. One member of the SCLRC shall be a MFC member. One member of the SCLRC shall have experience with shellfish aquaculture. The third member of the SCLRC shall have experience with coastal property or property assessment.

C. A person other than the applicant who is aggrieved by the lease decision may request a third-party hearing within 30 days after the lease decision is made N. C. Gen .Stat. § 113A-202(g). In the present case, Petitioner's petition was received by SCLRC on April 23,

2025, which was within 8 days of when the shellfish lease was approved. Therefore, the Commission affirmatively finds that the Petition is timely and addresses the factors set forth in N.C.G.S. § 113A-202(g)(1)-(3) as follows:

1. Petitioner has alleged that DMF's shellfish lease decision is contrary to a statute or rule within the jurisdiction of the MFC and DMF.

In considering whether a petitioner is entitled to a contested case hearing, the first factor to consider is whether a petitioner has alleged that the lease decision made by the DMF is contrary to the Marine Fisheries statutes or one of the MFC's rules. The first factor requires that petitioners explain why they claim the DMF's lease decision is inconsistent with the Marine Fisheries statute or the MFC's rules. Without deciding whether Petitioner's argument is correct, this requirement provides a roadmap for the SCLRC to use to determine if the allegations raised by Petitioner are within the MFC's jurisdiction. A petitioner is simply required to identify the specific rules and statutory provisions upon which the request is based. In this case, the Petitioner has identified statutes and rules that meet this requirement.

The Petitioner cited the following statutes and rules in its third-party hearing request:

- a. N.C.G.S. 113-202.1 requires the lease area not be within an area traditionally used and available for fishing or hunting activities incompatible with the activities proposed by the lease holder, such as trawling or seining;
- b. N. C. Gen. Stat. § 14-399 mandates it illegal to litter on public or private lands or waters and notes limited exceptions;
- c. 15A NCAC 03O. 0201(b)(2) requires a 250-foot setback from developed shoreline.

In its Staff Recommendation, DMF agrees that Petitioner has “alleged that the decision is contrary to a statute or rule” over which DMF and the SLRC have jurisdiction. Specifically, the Petitioner identified N. C. Gen. Stat. § 113-202.1 and 15A NCAC 03O.0201(b) and provided arguments on how the lease decision may be contrary to this statute and regulation. However, N. C. Gen. Stat. § 114-399 is not within SCLRC’s jurisdiction. DMF does not dispute that Petitioner has identified at least one statute or Commission rule which they claim is inconsistent with the shellfish lease decision.

In considering this issue, the SLRC does not determine whether DMF’s leasing decision is inconsistent with the statutes or the Commission’s rules identified by the Petitioner. The sole purpose here is to determine whether a petitioner has met the burden of identifying a rule or statutory provision within the Commission's jurisdiction as a basis to challenge the lease decision. Based on Petitioners’ reference to the statutes and the Commission’s rules, SLRC affirmatively finds that Petitioners’ Hearing Request meets the first requirement of N.C.G.S. § 113A-202(g)(1).

The Petitioner has the burden to explain how the shellfish lease was contrary to the stated statute or law they allege. Without evaluating the merit or substance of the Petitioner’s legal arguments, the SCLRC finds that the Petitioner has met its burden to allege a statute or rule to which the lease decision is contrary as to N. C. Gen. Stat. § 113-202.1, N. C. Gen. Stat. § 114-399 and 15A NCAC 03O.0201(b).

2. Petitioner has shown it is directly affected by the decision to issue the Shellfish Lease.

In determining whether Petitioner is entitled to a contested case hearing, the second factor the Commission considers is whether a petitioner has shown that he or she is directly

affected by the approval of the shellfish lease. Essentially, a petitioner is required to demonstrate standing to request a third party hearing. In the foundational case of *Empire Power Co. v. N.C. of Environment, Health and Natural Resources*, the North Carolina Supreme Court held that to demonstrate person-aggrieved status under the North Carolina Administrative Procedure Act (“NCAPA”), a petitioner must have “alleged sufficient injury in fact to interests within the zone of those to be protected and regulated by the statute” at the pleading stage 337 N.C. 569, 589, 447 S.E.2d 768, 780 (1994). The Court also emphasized that the injury a petitioner had allegedly suffered must have been “caused” by the agency’s permitting decision, and that a ruling for petitioner “would substantially eliminate or redress the injury” at issue. *Id.* at 591; 447 S.E.2d at 780. As explained in *Empire Power*, “[t]he organic statute may confer procedural rights and impose procedural duties in addition to those conferred and imposed by the NCAPA [.]” 337 N.C. at 583, 447 S.E.2d at 776-77.

In determining whether Petitioner is entitled to a contested case hearing, the second factor to consider is whether Petitioner has shown that he is directly affected by the lease decision. N.C.G.S. § 113A-202(g)(2). Petitioner argues that there has been a duck lease on for the duck blinds on the Petitioner’s property that has been in place the last 10 years. Petitioner receives payment from Dallas Goodwin for this lease. Petitioner contends that if the shellfish lease is allowed, Mr. Goodwin will not renew the duck lease and the Petitioner will lose that income. Petitioner alleges that the lease is 29 feet off the Petitioner’s shoreline and is visible from the Petitioner’s residence. Petitioner argues the lease area will result in debris that the Petitioner will be have to dispose of and will create a hardship for him.

DMF staff agree with the Petitioner that the Petitioner is directly impacted by the shellfish lease. DMF finds that the Petitioner does have duck blinds in the area of the lease and that the Petitioner leases the blinds to Mr. Goodwin. DMF state that public comment has described a history of hunting in the area surrounding the shellfish lease area. Staff

argue that because the Petitioner's property is within 250 ft of the lease area, the Petitioner is directly affected by the shellfish lease. However, Staff disagree that the Petitioner's property constitutes a developed shoreline for the purposes of 15A NCAC 03O. 0201(b)(2). DMF disagrees that the potential for littering stemming from the granting of the shellfish lease directly affects Petitioner.

For the limited purpose of this request, the SCLRC agrees and affirmatively finds that Petitioner has shown that he is directly affected by the lease decision. However, the SCLRC explicitly finds that Petitioner's demonstration of standing does not equate to proof of substantial prejudice. *See CaroMont Health, Inc. v. N.C. Dep't of Health & Human Servs. Div. of Health Serv.*, 231 N.C. App. 1, 751 S.E.2d 244 (2013). Substantial prejudice is an essential element of any claim brought under the Administrative Procedure Act. N.C.G.S. § 150B-23; *see also, Parkway Urology, P.O. v. N.C. Dep't of Health & Human Servs.*, 205 N.C. App. 529, 539, 696 S.E.2d 187, 194-95 (2010). This preliminary determination regarding standing is not intended to nor does it waive any argument that the Commission may make in any future proceeding that Petitioner is not substantially prejudiced by the lease decision.

For the above stated reasons, the SCLRC affirmatively finds that Petitioner has met the requirements of N.C.G.S. § 113A-202(g)(2).

3. Petitioner has alleged facts and made legal arguments demonstrating that there is a nonfrivolous basis for a hearing.

In determining whether Petitioner is entitled to a contested case hearing, the third and last factor to consider is whether Petitioner has shown that the request for a hearing is not frivolous. The frivolous standard relieves a petitioner of the burden of presenting sufficient evidence before discovery or a hearing to demonstrate a "substantial likelihood of

prevailing.” Now, a petitioner must simply show, through some demonstration of alleged facts or argument, that a hearing would not be “frivolous.”

The Court of Appeals has explained,

A claim is frivolous if a proponent can present no rational argument based upon the evidence or law in support of [it]. In determining whether a complaint is frivolous, the standard is not the same as in a ruling on a motion under Rule 12(b)(6). Instead, we look with a far more forgiving eye in examining whether a claim rests on a meritless legal theory.

Griffith v. N.C. Dep't of Corr., 196 N.C. App. 173, 174, 675 S.E.2d 72, 73 (2009).

A claim may be barred as frivolous where a petitioner fails to allege facts or provide a legal basis for a contested case hearing in the OAH to challenge a shellfish lease decision. Neither the provisions of the statute providing the process for third-party appeals, nor any other relevant provisions of law or rule authorize the SCLRC to assess the ultimate weight or to make a final determination as to the accuracy of Petitioner’s allegations. The governing statute asks nothing more of Petitioner at this stage than that it identify and allege one or more non-frivolous lease decision violations and then demonstrate facts in support of that argument.

The SCLRC is charged with using its knowledge of shellfish cultivation leases to determine whether a third-party hearing request is appropriate. N.C.G.S. § 113A-202(g). Application of the frivolous standard may bar a claim where Petitioner fails to carry its burden to allege facts or provide a legal basis sufficient to justify holding a contested case hearing in OAH to challenge the lease decision. By evaluating the proposed challenge to a lease decision before the petition is filed, the SCLRC, in its role as gatekeeper can preserve judicial resources and prevent cases that do not have a rational basis in fact or law from negatively impacting the docket at the OAH.

a. Petitioner has alleged facts or made legal arguments that the shellfish lease is inconsistent with N.C.G.S. 113-202.1.

Petitioner asserts that granting the lease is contrary to three statutes and rules. Petitioner asserts under N.C.G.S. §113-202.1 the lease is not compatible with the lawful utilization by the public of other marine and estuarine resources, including, but not limited to, navigation, fishing and recreation and that the lease is within an area traditionally used and available for fishing and hunting activity. Petitioner and other members of the public provided public comment during the lease period describing the hunting activity that has traditionally taken place in the vicinity of the lease area. Petitioner's request described a longstanding duck lease Mr. Goodwin had with the Petitioner that was not renewed as a result of this shellfish lease. There are two duck blinds near the lease that Petitioner contends are affected by the proximity of the lease.

DMF staff agree that a hearing on the compatibility of the shellfish lease with lawful uses of marine and estuarine resources and the traditional use of the area surrounding the lease area for hunting would not be frivolous.

The SLRC finds that the Petitioner has alleged facts or made legal arguments that the shellfish lease is inconsistent with N.C.G.S. §113-202.1. Therefore it would not be frivolous to hold a contested case on this issue.

b. Petitioner has failed to allege facts or make legal arguments that the shellfish lease is inconsistent with N.C.G.S. §14-399 because criminal statutes are not under the authority of DMF nor the Commission.

Second, Petitioner alleges that the potential shellfish lease was approved contrary to N.C.G.S. §14-399, which defines the crime of littering. Petitioner asserts that due to prevailing weather conditions and geographic characteristics at the lease location, littering is likely and will affect Petitioner's property.

DMF argues that shellfish leases authorized by DMF are to utilize the lease area for shellfish production, they do not exempt the leaseholder from penalties for breaking criminal law. DMF contends that the potential for a criminal violation is not a reason that DMF can deny a shellfish lease. The statute the Petitioner cited, N.C.G.S. §14-399, is outside of the authority of DMF, therefore having a contested case on the issue would be frivolous.

SLRC find that the Commission nor DMF have authority to enforce N.C.G.S. §14-399 as it is a criminal statute. As the statute is not applicable to the shellfish lease process, a contested case hearing on the issue would be frivolous.

c. Petitioner has failed to allege facts or make legal arguments that the shellfish lease is contrary to 15A NCAC 03O.0201(b).

Petitioner asserts that a 250-foot setback is required because his property has a developed shoreline under 15A NCAC 03O.0201(b). Petitioner argues that the lease is 29 feet off the shoreline from the Petitioner's property. Petitioner contends that he can see the lease area from the porch and bedroom window of his single family home. Petitioner asserts he has plans to build more houses and those structures will be even closer to the shellfish lease area.

DMF argues there is no evidence that Petitioner's property along North Bay constitutes a developed shoreline that would require a 250-foot setback. DMF contends that having a contested case on the issue of whether Petitioner's property constitutes a developed shoreline would be frivolous and that this argument does not meet the requirements of G.S. 113-202(g)(3).

Petitioner owns numerous parcels in the vicinity of the lease area. The two parcels immediately adjacent to the shellfish lease location are undeveloped, and no CAMA permits have been applied for on these parcels. Petitioner also owns several lots to the southeast of the lease location that include road access and upland. Only one lot includes a structure, a

single-family residence, and this lot is not on the shoreline nor is contiguous with any of Petitioner's lots that have shoreline on North Bay. Petitioner's lot with the structure is separated from Petitioner's other properties to the west by a lot owned by a third party. Petitioner's single-family residence is more than 2,500 feet away from the shellfish lease location. As none of the Petitioner's shoreline lots are developed, contain no structures, have no CAMA permits, and there is no evidence of development, having a contested case on 15A NCAC 03O.0201(b) would be frivolous.

* * * * *

For the reasons sets forth above, the SLRC affirmatively finds that Petitioner has alleged facts and made legal arguments sufficient to demonstrate that an appeal of the shellfish lease decision would not be frivolous under his first argument regarding N.C.G.S. 113-202.1. Therefore, the Petitioner has met the third criteria set forth in N.C.G.S. § 113A-202(g).

V. DECISION

Petitioner has established all three criteria upon which a third-party hearing determination must be made. Accordingly, Petitioner is entitled to a third-party hearing under N.C.G.S. §113-202(g), the statute creating this administrative procedural safeguard for issuance of shellfish lease. For the reasons stated herein, Petitioner's request for a hearing in the Office of Administrative Hearings is **GRANTED**.

This the 18th day of July, 2025.



Sammy Corbett, Chair

N.C. Marine Fisheries Commission,
Shellfish Cultivation Lease Review Committee

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the Agency Decision on Petitioner and other interested persons by the means specified below:

Method of Service:

Thomas Peralto, Petitioner

CERTIFIED MAIL, RETURN
RECEIPT REQUESTED

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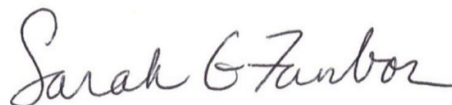
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This the 18th day of July, 2025.



Sarah G. Zambon
Assistant Attorney General

Counsel for the Shellfish Cultivation Lease Review
Committee