

**N.C. Division of Marine Fisheries – Habitat and Enhancement
Shellfish Lease and Aquaculture Program – Public Hearing**

March 15, 2023

Present: Owen Mulvey-McFerron – Program Coordinator, Shellfish Lease Program
Teri Dane – Shellfish Lease Biologist
Marla Chuffo – Administrative Specialist I
Elizabeth McCormick – Staff
Stephen Johnson – Staff
Dustin Walters – Staff
Anthony Frost - Staff
Scottie Tripp – Staff
George Stilson – Staff
Robert Farnell - Staff
Zach Harrison - Staff
Josh McDaniel - MPO

Attendees:

Dr. Henry Murray, DDS, Raymond Brittan, William Snyder, Nelson Bullock, Jim McDougal, Richard Thomas, Grant Steadman, Justine Tuttle, Betsy Johnson, John Gunter, Josh Thomas, Richard Thomas, Ryan Gleason, Robert Jackson, Roger Jones, Adam Wallace, Lee Parsons, Steve Smith, John Workman, Tim Wilson, Jim McDougall (via WebEx/phone) Jan Farmer, James Clower, Nick Palczuk, Kevin Frank, Aaron (signed out)

Meeting: 15 March 2023, 6:02-6:33 PM via in Person for Pender County proposed shellfish lease. Location at Topsail Beach Town Hall, 820 S. Anderson Blvd, Topsail Beach

Applicant(s): Gator Bay Oyster Company, LLC, Nelson Bullock, Southeast Shellfish, LLC, Grant Steadman and Justin Tuttle, Richard D. Thomas

I. Meeting

At 6:02 pm the public hearing was called to order by Owen Mulvey-McFerron:
“I’d like to call this Shellfish Lease Public Hearing to order. My name is Owen Mulvey-McFerron, and I am the Shellfish Lease and Aquaculture Program Coordinator of the North Carolina Division of Marine Fisheries. I will be serving as the hearing officer for tonight’s meeting.

The purpose of this public hearing is to receive public comment on proposed shellfish leases in Pender County. Site investigations by Division staff have determined that these proposed shellfish lease sites generally meet the standards for shellfish leasing under NC General Statutes

and NC Marine Fisheries Commission rules. The director of the Division has authorized this hearing to receive public comment.

Tonight's hearing is also being conducted virtually, so we have folks participating by telephone and through the WebEx virtual meeting application. PowerPoint slides presented here tonight are also available on the Division's website for those participating by phone.

This hearing is being recorded and is a public record. All verbal comments, or written communications between members of the public body regarding the transaction of business during this meeting are deemed a public record. This hearing is a formalized process where we take only public comment on the proposed shellfish leases that have been noticed in the Pender Post Newspaper on February 9th, and February 16th, 2023, and on the Division's website. No decisions will be made at tonight's hearing. This hearing is also not a dialogue or forum. Any discussion or discourse should be held until after the hearing concludes. Written comments on these shellfish leases can be submitted to the Division until 5pm tomorrow. If you wish to speak tonight and have not already on the speakers list, you will get a chance to speak after we have gone through the registered speakers. Now we will do a roll call of the folks participating on Webex or by phone. Again, please be advised, everything is being recorded this evening. Teri, do you want to run thru to the two folks that popped on?"

Teri Dane: "Yep, I sure can. Good evening, Kevin Frank, would you like to speak tonight? You are unmuted. Kevin? We can circle back to him. Nick Palczuk, would you like to speak tonight? Nick? No, thank you. Thank you. And that is all I've seen come in so far."

Owen: "Thank you, Teri. So, first, I will go through the information for the proposed shellfish leases, then give the lease applicants an opportunity to speak, and then I will open up the comments for anyone else who wishes to be heard. I will call the commentors by name in the order they signed up to speak. So now I'm going to go through the information on the proposed shellfish leases: First we have a 0.80-acre shellfish bottom lease applied for on July 28th, 2022, by Gator Bay Oyster Company, LLC, agent Nelson Bullock, located in Banks Channel. The management plan indicates the use of bottom gear and predator netting for the commercial production of oysters and clams. Division staff conducted a site investigation on August 30th, 2022, which found zero bushels of shellfish per acre and zero submerged aquatic vegetation, which I will refer to as SAV. Next, we have a 0.97-acre shellfish bottom column lease applied for on July 28th, 2022, by Southeast Shellfish, LLC, agents Grant Steadman and Justin Tuttle, located in Banks Channel. The management plan indicates the use of bottom gear for the commercial production of oysters. Division staff conducted a site investigation on September 12th, 2022, which found zero bushels of shellfish per acre and zero SAV. Last, we have a 1.3-acre shellfish water column lease applied for on October 13th, 2022, by Richard Thomas, located in Waters Bay. The management plan indicates the use of cultch, floating, and bottom gear for the commercial production of oysters and clams. Division staff conducted a site investigation on November 15th, 2022. No samples were collected because the proposed water column lease overlies an existing shellfish bottom lease.

So, now, I will call on the applicants and give them an opportunity if they wish to speak to their proposed shellfish lease. This is not a requirement of the applicants. You will have three minutes

to speak. I will hold up one finger when you have one minute left, and my hand when you reach your three minutes. At which point please wrap up your remarks and return to your seat. As a reminder for all speakers this evening, please be courteous and respectful. If you are discourteous or disruptive, I will ask you to leave. So first, I'll call on Nelson Bullock to present on their proposed shellfish lease."

Nelson Bullock: "So, I am Nelson Bullock."

Owen: "Mr Bullock could you go to the podium please. I just want to . . . since we're recording everything so we can better transcribe it. Got the microphone up there."

Nelson Bullock: "So, I am Nelson Bullock. I run a small family-owned business. It's me and my wife and my father-in-law. I got my first private lease 2021, it's in Alligator Bay. It's pretty small too. I try to keep the footprint small as possible. Really, really narrow, so I didn't know, impede too much, navigation, or use. I am going to mainly be doing clams on the bottom, and also soft top bags on the bottom, mainly to keep out predators and stuff. It's bottom. I'm not trying to have any like big gear that's going to interfere and hopefully that increases fishing and makes it better around there. But yeah, that's pretty much it."

Owen: "All right. Thank you very much. So next I'll call on a grant Steadman or Justin Tuttle to present on their proposed shellfish lease."

Justin Tuttle: "Hi, my name is Justin Tuttle. This will be my first lease. I have had a great deal of education with this through UNC Wilmington. But then like a mariculture in and outside the lab and really just kind of wanted to get my toes into this and really get going on the commercial side of that. And everything is going to be bottom gear. So do racks and bags under 18 inches so it should be no issue when it comes to props or anything like that, and the locations tucked back away from that inner coastal. So hopefully that would keep allay any kind of issues that user interface, things like that. But thank you for your time."

Owen: "All right. Thank you very much. Last, I would like to call on Richard Thomas to present on their proposed shellfish lease."

Josh Thomas: "Hi everyone, Josh, Thomas, speaking on lease 631 here. I am here today with . . . 432, 631's the other one. I am here today with my granddad and my dad who I work the lease with. We are proposing a, 1.3 acre water column on our 30-acre bottom lease. This is a low boat traffic area. The bottom lease has existed and has been with my family since the 80s since then, we've done wild oysters and maintained the lease through relaying oysters into the area. And we found that it's not, we're not able to continue to do that and we're having to bring in seed oysters now to meet the requirements from the state which is we have to plant so many oysters every year and new regulations from the relaying have made that difficult where we've had maybe if Owen could speak a little bit, just help me out. But we've had to, they switched it so that instead of just being able to take oysters from anywhere, you have to go from day to day and an officer has to be present whenever you're relaying to document everything. And that's made it very hard for us to maintain. It's a large lease, which requires more oysters. And so, this water column amendment, which is out of the way of main boat traffic, if there is any in the area."

Which is very unlikely besides crabbers and few recreational fishermen. Came up here pretty unprepared, but that's all I really want to say is we're proposing the 1.3 water column and planning on using a mix of floating cages and floating bags. We already use bottom gear in this lease and it's proved no issue for anyone in the area. And we've actually got along (say one), we've actually got along well with the crabbers because the gear has attracted mined crabs and it's helping to repopulate them because we're feeding them oysters. But that's all I say tonight."

Owen: "Thank you. Now we will move to comments from the public. So, when I call you, please come to the podium, state your name, any organization you are representing, where you are from, and then which lease or leases you are commenting on, and then your comments on those leases. I will remind you, this is a little different than the way other public hearings may work. Please direct your comments to me, as the representative of the Division. Like I said we are recording through the microphone. All of this stuff all of this stuff is going to be transcribed and then passed along to the Director. So please do speak into the microphone clearly as you can. As a reminder, you will have three minutes to speak. I will hold up one finger when you have one minute remaining, and my hand when you reach three minutes. At which point please wrap up your comments and return to your seat. If people have questions or want to discuss something, staff and I will be happy to stick around after the meeting. I'll be here as long as y'all have questions or y'all want to talk about stuff. They might head out a little bit before then. So, let's see, with that, we we'll look at our list here, Lee you're up first."

Lee Parsons: "Thank y'all for allowing us to speak tonight. I'm here representing the for hire sector and the recreational fishermen's sector. And I'm not really opposed to most of the bottom leases. For the most part, I think spat is a really good thing and a good way to produce oysters over the years. The only one that I'm not in opposition to on this lease or on this list I should say, is the bank's channel lease that they're talking about. I don't have a number of that lease. I don't know which one it is. The other two I'm highly opposed to. One of them sitting in a resting area for the red drum in the wintertime and it's sitting right on the edge of it and I know the noise it's going to keep them out of there, and it's one more place they don't have to go. They're going to lose that spot, and we're going to lose that spot. It's not going to be a fun thing to have happen. On the Banks channel leases the areas in there seem to be a better, what's the word I'm looking for, a better option. than putting them up in the marshes. I think the marshes are really wrong place to put them and until we see environmental impact studies done on it, I'm going to have to oppose a lot of it. But anyway, the cage leases, I'm just not in favor for at all anymore. I've seen what happens to the fish. I've seen what happens to the water. And what happens to the bottom and it's not good for what's going on in our area. So, that's it. Short and sweet. Thank you."

Owen: "All right, thanks Lee. So next, I've got Steve Smith."

Steve Smith: "Good evening. I'm Steve Smith Mayor of Topsail Beach. We are talking about proposed shellfish leases for Gator Bay Oyster Company, LLC Nelson Bullock. Lease number 22-053BL and the Southeast shellfish LLC Grant Steadman and Justin Tuttle lease number 22-056BL. The above proposed . . . these proposed shellfish leases would be within the town limits of Topsail Beach. As outlined in the state code, the areas requested will need to follow local codes of that Town. North Carolina Attorney General's Opinion provides that under

G.S. 113A-110 of CAMA dealing with land use plans and former G.S. 160A-360, a town may exercise zoning ordinance powers over waters of adjacent creeks, not only within its municipal boundaries, but also within its one (1) mile of extraterrestrial [extraterritorial] zoning jurisdiction. 52 Op Attorney General 11, Sermon, Aug. 12, 1982. Moreover, the General Assembly [can] continue this municipal jurisdiction over agriculture and aquaculture activities through the recent passage of Chapter 160D (NCGS § 160D-903). In the exercise of its statutory jurisdiction, the Town of Topsail Beach through its zoning ordinance prohibits agriculture and aquaculture anywhere within the Town limits. And that's outlined in town ordinance, (Sec. 16-86(b)(2)a). These two leases besides violating the Town's ordinance will also interfere with kayaking, fishing and paddle boarding of visitors and tourists who use this area. The shellfish lease Number 22-053BL will also impact boaters who use this sandy beach area to swim and sunbathe by anchoring their boats in this area. The sandbar in this area is actively used during our tourist season. Because of the number of visitors and tourists that use these proposed lease areas, we feel there will be conflict and possible damage to watercraft and to the shellfish equipment. These 2 leases should not be granted due to conflict it may bring, because of location. We request that N.C. Division of Marine Fisheries follow municipal and state regulations that allow control of activities within the Topsail Beach's jurisdiction and understand the conflict these leases may bring if granted. The Town of Topsail Beach opposes the granting of Lease Number 22-053BL and 22-056BL. Thank you."

Owen: "All right, thank you very much. And the last, I've got John Workman."

John Workman: "My name is John Workman I'm a Recreational Fisherman in the area and a real estate, real estate agent here on the Island. I also spent a lot of time in UNCW getting my undergrad degree and I remember working with Mr. Nelson over at the Center for Marine Science Aquaculture Lab doing the shellfish research. Nice to see you again. Today, I come in opposition to lease 22-074WC. I believe that the water column leases inhibit traffic more than they are actually worth to the lease holders. Now, you brought up a different point today in saying that the state was kind of requiring y'all to bring in some more oysters that changes, my mind a little bit. But, one issue I do have, is that lease applications have increased by almost 1500% from 2005 to 2011 and 5200% from 2011 to 2019. Now, if we can extrapolate that data and assume that is going to continue on the same path, in the next decade, y'all are looking at almost 18,000 lease applications. I don't know if y'all have the staff."

Owen: "I sure hope not."

John Workman: "Yeah, I hope not too.... but just based on the numbers that I read y'all's publications that would be over 18,000 applications in the next 10 years. And if that correlates at all to approved leases [inaudible] not every lease applied for is approved. But that would go from the last number I could find was 1800 acres. So approved leases in North Carolina to over 90,000. So, we gotta ask with the moratoriums in Brunswick County, New Hanover County, Bogue Sound, Core sounds, the only thing left in Onslow Bay really is Onslow and Pender County. So where are all these leases gonna go? Do y'all have a plan in place for that? And my last comment is the purpose of aquaculture because I've studied this in college, and I wanted to go into aquaculture when I got out. And obviously, I didn't. But using triploid spat in cages"

doesn't really help the environment that much in my opinion. The purpose of aquaculture is to not only provide food and provide income for these people running the leases, but to also take pressure off of the local resident population of oysters. And when you're putting sterile oysters out there, they're not breeding, and I understand that that gives you all the summer months to probably get some more income and get a higher price for them at the market. But I would like to see something put in place to allow some actual spawning brood into these leases, to help out the natural population here. That's all I got to say.”

Owen: “All right. Thank you very much. Okay, so I don't have anybody else who signed up to speak? But is there anybody else here tonight that would like to comment?”

Ray Britain: “I’m Ray Britain, I operate Springtime Guide Service out of Topsoil Island. The only one that I oppose, you know, putting clams on the bottom, along that bank out there. I think that could be a good thing and see how it goes. You know, there was a lot of them we opposed at last meeting because of the size of ’em. The one in Water's Bay, that's on the upper end. That's in a spot that the fish don't really like to hang in that much. They go in there but, you know, going along with what we were saying, last time. That's a lease that's been there for years. We've been catching fish on because this guys have had oysters on the bottom and it's really benefited us and the size that they're wanting to put in there is not going to hurt a thing. So that's an example of no problems, you know, and we can work around that one no problem at all. I think the concern we still have is where does it end? We don't have a number on density from you guys. On how many are going to have. And I think that would benefit the growers as well to know, how many can go in. I mean, if they get inundated, I mean, there’s guys that have had oysters on the bottom for years and they go into this thing and then, you know, 10 years down the road, here's many people doing it. They can't make any money at it. I don't know much about it, but I'm hearing from other growers that we’re at capacity. I mean, this is coming from the guys that I do speak with. The only one I have a problem with personally, as far as fishing goes in my business, would be the one in . . . it’s in Harvey's Cut. I don't have the number, though it’s not the Gator Bay, it’s not the Water's Bay. What's the other one? It's in that small bay off of Kings Creek. That's a, that's a big wintering ground for the reds and, you know, I'm really, I like the bottom leases because we catch a lot of fish around those cages on the bottom, they're really good for fishing. Any of those in open bay, and it makes it, it's great. I'm concerned about this small area that it's going in and the reds go in that small area and it's a place we do catch ’em and they like to inter in there and sun in there in the summer. So it's, it's one of the local hot spots especially for a lot of flats fisherman coming out of Wilmington, coming out of that area. A lot of times, I can't get in there because there's already guys in there. So, it is a hotspot, for fishing. That's one where I would see a, and I do fish at myself personally. And I know that the fish stay there, but the other two, I think rock and roll. That’s all I got.”

Owen: “All right, thank you. Anybody else who would like to make a comment this evening? Alright, we got one more.”

Robert Jackson: “Afternoon, my name is Robert Jackson from Topsail Beach. I would just like to briefly comment regarding that lease here adjacent to Banks Channel. But also, the coastal management of marine fisheries in general, I guess roll out of these leases. I'm in favor of the aquaculture. However, I've been 30 years working with the Division of Coastal Management and

Marine Fisheries. And in that process, I've figured out that thousands of staff members and attorneys have very succinctly described the necessary rules and regulations around coastal development. In this particular case, I don't see, it's beneficial to towns and adjacent landowners or the lease holders because I feel like they're infringing upon private property rights and public trust waters. And in doing that if I were an oyster. . . . leasing an oyster lease, I'd be concerned about my lease being upset in court legally because of the premises of where it is, and what potentially could impinge. And then likewise, if I'm a private landowner with riparian rights on a undeveloped piece of property, I would be concerned about the proximity, of an oyster lease to the landowner and how that would affect my riparian rights. So, as an oyster man, I would think my lease could be in jeopardy, legally down the road, after I've invested my money, put my gear out and maybe have a profitable business. Again in the private sector, I've been concerned that the research has not been done to make certain, like the Mayor brought up, that wherever the lease is located has been vetted out, so all parties are equally represented. So, my charge to the state would be tread carefully. Make sure that all parties are represented both legally and practically, and my final comment would be that we've spent millions of dollars with FEMA to make sure that flood plain management is exercising a way to protect the environment in the case of, in many cases with the case of a storm, and I do think there should be, and maybe there is I'm not 100% sure I've not researched it entirely, but there should be a very succinct policy regarding the gear and what, where the gear is after a storm, who it belongs to, the time period to clean it up. What would happen legally if that gear gets tangled up and a kid water skiing drowns, a boat gets hung up or whatever the case may be. That's important to me because we've spent millions of dollars worrying about a refrigerator floating out there, but we could have 10,000 acres of equipment on the ground, that could be much more detrimental to the to the boating safety. That's all I've gotta say. Thank you."

Owen: "All right, thank you. And before you head out, if I could get your phone number or email address that sort of contact information from you, that would be great. Is there anyone else who wants to speak this evening?"

William Snyder: "I'm William Snyder here in Topsail Beach and I guess my comment is that the recreational activities here on this part of the island are increasing dramatically. In Banks Channel, for instance, their countless number of boats are going and coming, all during the day lots of kayakers and paddle boarders, especially on that lease on banks channel there're people there a lot and I will also reiterate what Mayor Smith said is that there is a beach right next to that lease on Banks Channel that is used heavily. I mean, anytime we get a nice warm day there're two, or three boats, tied up there all the time. So, I think you really need to give some strong consideration to the conflict of interest in the conflict of activities on these leases, and especially in Topsoil Beach."

Owen: "All right, thank you. Anybody else? We have anybody else sign in online?"

Jim McDougall?: "How 'bout one more."

Owen: "Have at it."

Jim McDougall: “I’m Nelson’s father-in-law and I’ve been out to this proposed lease many times and it is not right on top of that beach. And it’s a narrow section, It’s not way out in the water. I don’t really see where it’s in way of that beach at all. No one’s going to walk from that beach, or they could go to the other way or then go inland. But, it doesn’t interfere with the beach itself. And also Nelson, I don’t think you mentioned, he’s been in the oyster program with UNC for how long?, Ten years so, it’s not like he’s gonna do anything rash, he knows what he’s doing. That’s all. Thank you.”

Owen: “All right, thank you very much. And for the for the last four people that spoke Ray, Robert, William and I didn’t get your first name. Before y’all head out if I could get you to sign in here, just in case, for whatever reason, when we’re transcribing the comments, we need to clarify something. We can get in touch with you. To make sure that we are capturing what you’re saying. Yes?”

Unknown speaker: “Can I say . . . Can I take my last 10 seconds I left an item out?”

Owen: “All right.”

Unknown speaker: “It actually goes to this gentleman’s comment. It would be helpful in these forums, if we actually had a surveyed map of where these leases are. The water depths the distance from the shore. I’m sure you maybe you’re the State has that but the maps we’ve been provided here. If I put a pier out there, I’ve got an Engineer. I’m down to the inch, and this is unacceptable for the public to comment professionally on the exact location, the depths, and how it may impede. So, my suggestion would be to help all parties good or bad that the material be more specific. Thank you.”

Owen: “Thanks. So, we’ve got more maps on our website that are available. We just didn’t print out all of those and bring them here tonight, but I appreciate that feedback and we might look into doing that in the future so that information is more available. But we do we do have that. It’s not like we’re, you know, we are estimating stuff here. We use survey grade GPSs all that information been taken and it is publicly available for folks that are interested in that. All right, so we don’t have anybody else who wishes to comment online? We haven’t gotten anybody. So, can we talk after the meeting since you already spoke?”

Unknown speaker: [inaudible]

Owen: “Ok, alright we can chat then. Alright. Since that’s everybody. That wished . . . Did you wish to speak tonight sir?”

Tim Wilson: “Yeah. I would”

Owen: “OK”

Tim Wilson: “My name’s Tim Wilson.”

Unknown Speaker: [inaudible]

Tim Wilson: “Sorry for being late. My name's Tim Wilson. I'm with Saltwater Angler online magazine. And a couple of questions I do have that may have already been asked, probably have. One of the questions is, the leases. I do understand that, if I understand currently, that the property that the leases on are actually considered community? Is, that correct?”

Owen: “Yes. So I'll answer your questions after the meeting the time you have now you've got three minutes if you have any specific comments or concerns about the leases that are the three leases that we're talking about tonight.”

Tim Wilson: “Okay. Here's the two questions I have. Number one, understand that this is actually, it is property of the community, the state, the residents. Why are we leasing property that doesn't belong. . . Why is property being leased that doesn't belong to outright those people? Why are we leasing property that most of these people want to utilize for other things like recreational fishing, like boating, things like this. Number two, one of the questions I have is who owns these leases? Are these going to be individuals? From local individuals? Or are they corporate companies are they corporate companies that are subleasing? Will subleasing be allowed? So, there's my two questions I would like an answer to.”

Owen: “Okay. Well, I can answer those questions after the hearing. Let's talk. OK. Perfect. Well, I believe that's everybody who wants to comment. You, good? Okay. Perfect. So, if nobody else wishes to speak, I will close this public hearing. I'd like to thank everybody for their time and participation in the process. The time of closure is 6:33 pm.”

Closure: 6:33 P.M.