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SHELLFISH BOTTOM LEASE APPLICATION PROCESS

Lease Application Fee - $200.00
Lease Rental Fee - $10 per acre per year
Lease Renewal Fee - $100.00 (every five years from original year of granting)

1. Individuals interested in obtaining a shellfish lease should read and understand the North Carolina Marine Fisheries Rules for Shellfish Leases 15A NCAC 03O.0201 - .0211 (pages 11-15 of this application package) prior to submitting an application.

2. Applicants should select a site for a possible lease and complete the attached application package and submit the package along with a two hundred dollar ($200) filing fee (only if application is approved) to:

   North Carolina Division of Marine Fisheries
   Resource Enhancement Section
   Post Office Box 769
   Morehead City, NC   28557-0769

3. DMF will review lease application to determine if application complies with standards as per rule 15A NCAC 03O.0201 and if application is completed as per rule 15A NCAC 03O.0202.

4. If the application is approved the $200 check will be processed and the applicant will be notified by letter. Enclosed with the letter will be signs to be posted at the proposed lease site.

5. If the application is denied a letter will be sent to the applicant stating why application was denied and the unprocessed $200 lease application fee check will be returned.

6. Applicant should notify the Resource Enhancement Section of the Division of Marine Fisheries (252-808-8047/1-800-682-2632 x8047) once the proposed lease signs have been posted. Proposed lease area should be kept posted with proper signs throughout application process.

7. Division biologists will conduct an investigation of the proposed lease site. A report will be submitted to the Director of the Division for his approval.

8. If specific criteria are met and the Director recommends approval, a public hearing will be held in the general area where the proposed lease is located. The public is invited to make comments concerning the proposed lease at that time.

9. The Director will then consider the application and reports from the shellfish biologist(s), the Shellfish Sanitation Section, the DMF District Manager, Marine Patrol Officers, and the public comments and then makes a decision to either grant or deny the lease.

10. Upon the granting of the lease by the Director, the applicant will be required to provide to the Division, at his or her expense, a survey and written description of the lease site by a licensed surveyor. If the survey is found to be acceptable, the applicant will pay all fees and rents due in advance and mark his or her lease with permanent lease signs.

11. Within six months of an approved lease application or lease transfer, applicants and transferees not currently holding a shellfish cultivation lease, and applicants and transferees holding one or more shellfish cultivation leases which are not meeting production requirements, shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries. The examination shall demonstrate the applicant's knowledge of: the shellfish lease application process; shellfish lease planting and production requirements; lease marking requirements; lease fees; shellfish harvest area closures due to pollution; safe handling practices; lease contracts and renewals; lease termination criteria; and shellfish cultivation techniques.
APPLICATION FOR LEASE OF SHELLFISH BOTTOM BY INDIVIDUAL
(Article 16 of Chapter 113)

I, ___________________________________, a citizen of the State of North Carolina, permanently residing at __________________________________________________              _________________________ Street City Zip County

do hereby apply for a lease of the bottom covered by navigable water in ____________________(Water Body), __________________________(County), such lease being requested for the sole purpose of cultivating shellfish.

The bottom for which this lease application is made is particularly described as follows:

______________________________________________________________________

___________________________________________________________________________________________

I attach hereto applicant's Exhibit No. 1, which is a map or diagram of the proposed lease area;

And I, the said ________________________, do swear that I am a citizen of the State of North Carolina, that I have resided in the State for more than six months next preceding the date of this application, and that I intend to reside in North Carolina indefinitely; and that if granted said lease, I will comply with all the laws, rules and regulations governing shellfish leases of the State of North Carolina now existing or hereafter adopted.

This the _____ day of _________________, _________.

_____________________________________________ ________________________________
APPLICANT DATE OF BIRTH

SWORN to a subscribed before me

This _______ day of _____________________, ________

_______________________________________________
NOTARY PUBLIC

My Commission Expires: __________________________
RIPARIAN OWNER INFORMATION

AT THE TIME OF APPLICATION FOR THE SHELLFISH BOTTOM LEASE:

Please check the statement that applies:

(  ) I declare that the proposed lease is not within 100 feet of a developed shoreline.

(  ) The proposed lease is within 100 feet of a developed shoreline, but I am the owner of the shoreline property.

(  ) The proposed lease is within 100 feet of a developed shoreline, and I have attached a sworn statement from the riparian owner(s) that he/she/they have no objection to the granting of this proposed shellfish bottom lease.

___________________________________________
APPLICANT

___________________________________________
DATE
CONSENT FORM FOR RIPARIAN OWNERS
SHELLFISH LEASE APPLICATION

I/We, the undersigned, hereby give my/our consent to:

Name: __________________________________________________________________________________

Address: __________________________________________

Street or Post Office Box  City  State  Zip

to lease shellfish bottom lands within 100 feet of my/our shoreline.

____________________________________  ______________________________
SIGNATURE  NAME (PLEASE PRINT)

____________________________________  ______________________________
SIGNATURE  NAME (PLEASE PRINT)

Street or Post Office Box  City  State  Zip

Telephone Number: ______________________________

SWORN to and subscribed before me

This the _____ day of _________________.

________________________________________________
NOTARY PUBLIC

My Commission Expires: __________________________
MANAGEMENT PLAN FOR PROPOSED SHELLFISH LEASE

NAME ________________________________

ADDRESS ________________________________ LEASE SIZE ________________________________

______________________________ WATER BODY ________________________________

PHONE NUMBER ________________________ COUNTY ________________________________

DO YOU CURRENTLY HOLD A SHELLFISH LEASE? ( ) YES (Lease No. _________) ( ) NO

ARE YOU RELATED BY BLOOD OR MARRIAGE TO ANY PERSON NOW WORKING FOR THE NORTH CAROLINA DIVISION OF MARINE FISHERIES?

( ) YES (Name and Relationship: __________________________________________________________)

( ) NO

<table>
<thead>
<tr>
<th>PRODUCTION PLANS FOR:</th>
<th>CURRENT YEAR</th>
<th>FUTURE YEARS</th>
</tr>
</thead>
<tbody>
<tr>
<td>CULTCH/SEED SOURCE:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>VOLUME TO BE PLANTED</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PER ACRE:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PLANNED PLANTING DATES:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EXPECTED HARVEST IN BUSHELS PER ACRE:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MARKET POTENTIAL:</td>
<td></td>
<td></td>
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<tr>
<td>EQUIPMENT AVAILABLE:</td>
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<tr>
<td>LABOR AVAILABLE:</td>
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<td>CAPITAL INVESTMENT:</td>
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<td></td>
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<tr>
<td>ESTIMATED RETURNS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MARKING/IDENTIFICATION PLANS:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

ADDITIONAL COMMENTS CONCERNING THE MANAGEMENT OF THIS LEASE:

_________________________________________________________________________________________

_________________________________________________________________________________________

SIGNATURE: ___________________________ DATE: ______________________________
EXAMPLE  EXAMPLE  EXAMPLE  EXAMPLE
MANAGEMENT PLAN FOR PROPOSED SHELLFISH LEASE EXAMPLE

NAME  I. M. CLAMMER

ADDRESS  100 Shellfish Road  LEASE SIZE  3.4 Acres
Beaufort, NC  28516  WATER BODY  Virginia Creek

PHONE NUMBER  252-728-0000  COUNTY  Pender

DO YOU CURRENTLY HOLD A SHELLFISH LEASE? ( ) YES (Lease No. __________)  (X) NO

ARE YOU RELATED BY BLOOD OR MARRIAGE TO ANY PERSON NOW WORKING FOR THE NORTH CAROLINA DIVISION OF MARINE FISHERIES?

( ) YES  (Name and Relationship: __________________________________________________________)  (X) NO

### PRODUCTION PLANS

<table>
<thead>
<tr>
<th>FOR:</th>
<th>CURRENT YEAR</th>
<th>FUTURE YEARS</th>
</tr>
</thead>
<tbody>
<tr>
<td>CULTCH/SEED SOURCE:</td>
<td>Hatchery reared seed clams and oyster shells obtained locally</td>
<td>Same</td>
</tr>
<tr>
<td>VOLUME TO BE PLANTED PER ACRE:</td>
<td>200 bushels of shell and 150 bushels of seed</td>
<td>Same or more</td>
</tr>
<tr>
<td>PLANNED PLANTING DATES:</td>
<td>May through June: November for seed clams</td>
<td>Same</td>
</tr>
<tr>
<td>EXPECTED HARVEST IN BUSHELS PER ACRE:</td>
<td>10+ bushels per acre</td>
<td>15+ bushel per acre per year</td>
</tr>
<tr>
<td>MARKET POTENTIAL:</td>
<td>Local Markets</td>
<td>Same</td>
</tr>
<tr>
<td>EQUIPMENT AVAILABLE:</td>
<td>16', 18', and 26' boats, hand rakes, tongs</td>
<td>Same - dredge</td>
</tr>
<tr>
<td>LABOR AVAILABLE:</td>
<td>Three family members and myself</td>
<td>Same: May hire</td>
</tr>
<tr>
<td>CAPITAL INVESTMENT:</td>
<td>$2,500 to $3,000</td>
<td>Reinvestment</td>
</tr>
<tr>
<td>ESTIMATED RETURNS:</td>
<td>Up to $35 per bushel</td>
<td>Same or more</td>
</tr>
<tr>
<td>MARKING/IDENTIFICATION PLANS:</td>
<td>6 foot 4&quot; PVC poles on all corners with signs with name and lease number, in accordance with 15A NCAC 03o .0204 MARKING SHELLFISH LEASES AND FRANCHISES</td>
<td>Same</td>
</tr>
</tbody>
</table>

ADDITIONAL COMMENTS CONCERNING THE MANAGEMENT OF THIS LEASE:
My family and I plan to commercially produce oysters and clams on this lease. We will relay from polluted areas during the regular relay season. We will relay from seed oyster management areas during the season. We will ensure that we obtain all necessary permits for these activities.

SIGNATURE:  I. M. Clammer         DATE:  November 15, 2011
SHELLFISH LEASE MAP
(PROPOSED LEASE APPLICATION)

NAME ________________________________________________________________

WATER BODY ____________________ COUNTY __________________

DRAW MAP OF PROPOSED SHELLFISH LEASE BELOW (SEE EXAMPLE MAP)

---------------------------------------------------------------------------------------------------------------------------------
NAME I. M. Clammer

WATER BODY: Virginia Creek
COUNTY: Pender

VIRGINIA CREEK, PENDER CO.

Proposed Lease

Sloop Pt.

Proposed Shellfish Lease Map

I. M. Clammer
100 Shellfish Road
Beaufort, NC  28516

Virginia Creek, Pender Co.
3.4 acres (approximate)
November 15, 2011
NORTH CAROLINA MARINE FISHERIES COMMISSION RULES 2011

Section .0200 - Leases and Franchises

15A NCAC 030. 0201 STANDARDS FOR SHELLFISH BOTTOM AND WATER COLUMN LEASES
(a) All areas of the public bottoms underlying coastal fishing waters shall meet the following standards in addition to the standards in G.S. 113-202 in order to be deemed suitable for leasing for shellfish cultivation purposes:

(1) The lease area must not contain a natural shellfish bed which is defined as 10 bushels or more of shellfish per acre.
(2) The lease area must not be closer than 100 feet to a developed shoreline, except no minimum setback is required when the area to be leased borders the applicant's property or the property of riparian owners who have consented in a notarized statement. In an area bordered by undeveloped shoreline, no minimum setback is required.
(3) The proposed lease area shall not be less than one-half acre and shall not exceed five acres for all areas except those areas open to the mechanical harvest of oysters where proposed lease area shall not exceed 10 acres.

This Subparagraph shall not be applied to reduce any holdings as of July 1, 1983.

(b) Persons holding five or more acres under shellfish lease or franchise shall meet the standards established in Paragraph (c) of this Rule prior to acceptance of applications for additional shellfish lease acreage.

(c) Franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases shall meet the following standards in addition to the standards in G.S. 113-202. In order to avoid termination, franchises and shellfish bottom leases shall:

(1) Produce and market 10 bushels of shellfish per acre per year; and
(2) Plant 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.

(d) The following standards shall be applied to determine compliance with Subparagraphs (1) and (2) of Paragraph (c) of this Rule:

(1) Only shellfish planted, produced or marketed according to the definitions in 15A NCAC 03I. 0101 shall be submitted on production/utilization forms for shellfish leases and franchises.
(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 must be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish may be produced by only one shellfish lease or franchise. Shellfish transplanted between leases or franchises may be credited as planting effort on only one lease or franchise.
(3) Production and marketing information and planting effort information shall be compiled and averaged separately to assess compliance with the standards. The lease or franchise must meet the production requirement and the planting effort requirement within the dates set forth to be judged in compliance with these standards.
(4) 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 and 90 pounds of fossil stone equal one bushel.

(5) In the event that a portion of an existing lease or franchise is obtained by a new owner, 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.

(6) The production and marketing rates shall be averaged:

(A) over the consecutive full calendar years remaining on the lease contract after December 31 following the second anniversary of initial bottom leases and franchises.
(B) over the consecutive full calendar years beginning January 1 of the final year of the previous lease term and ending December 31 of the final year of the current lease contract for renewal leases.
(C) over the first five year period for initial water column leases and over the most recent five year period thereafter for renewal water column leases.

Production and marketing rate averages shall be computed irrespective of transfer of the shellfish lease or franchise.

(7) All bushel measurements shall be in U.S. Standard Bushels.

(e) Water columns superjacent to leased bottoms shall meet the standards in G.S. 113-202.1 in order to be deemed suitable for leasing for aquaculture purposes.

(f) Water columns superjacent to franchises recognized pursuant to G.S. 113-206 shall meet the standards in G.S. 113-202.2 in order to be deemed suitable for leasing for aquaculture purposes.

(g) Water column leases must produce and market 40 bushels of shellfish per acre per year to meet the minimum commercial production requirement or plant 100 bushels of cultch or seed shellfish per acre per year to meet commercial production by planting effort. The standards for determining production and marketing averages and planting effort averages shall be the same for water column leases as for bottom leases and franchises set forth in Paragraph (d) of this Rule except that either the produce and market requirement or the planting requirement must be met.

History Note: Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.52;
Eff. January 1, 1991;
15A NCAC 03O .0202 SHELLFISH BOTTOM AND WATER COLUMN LEASE APPLICATIONS

(a) Application forms are available from the Division's office headquarters at 3441 Arendell Street, Morehead City, NC  28557 for persons desiring to apply for shellfish bottom and water column leases. Each application shall be accompanied by a map or diagram prepared at the applicant's expense including an inset vicinity map showing the location of the proposed lease with detail sufficient to permit on-site identification and must meet the information requirements pursuant to G.S. 113-202(d).

(b) As a part of the application, the applicant shall submit a management plan for the area to be leased on a form provided by the Division which meets the following standards:

1. States the methods through which the applicant will cultivate and produce shellfish consistent with the minimum requirements set forth in 15A NCAC 03O .0201;
2. States the time intervals during which various phases of the cultivation and production plan will be achieved;
3. States the materials and techniques that will be utilized in management of the lease;
4. Forecasts the results expected to be achieved by the management activities; and
5. Describes the productivity of any other leases or franchises held by the applicant.

(c) The completed application, map or diagram, and management plan for the requested lease shall be accompanied by the non-refundable filing fee set forth in G.S. 113-202(d1). An incomplete application shall be returned and not considered further until re-submitted complete with all required information.

(d) Applicants and transferees not currently holding a shellfish cultivation lease, and applicants and transferees holding one or more shellfish cultivation leases which are not meeting production requirements, shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries. The examination shall demonstrate the applicant's knowledge of:

1. the shellfish lease application process;
2. shellfish lease planting and production requirements;
3. lease marking requirements;
4. lease fees;
5. shellfish harvest area closures due to pollution;
6. safe handling practices;
7. lease contracts and renewals;
8. lease termination criteria; and
9. shellfish cultivation techniques.

(e) After an application is deemed to have met all requirements and is accepted by the Division, the applicant shall identify the area for which a lease is requested with stakes at each corner in accordance with 15A NCAC 03O .0204(a)(1)(A). The applicant shall attach to each stake a sign, provided by the Division containing the name of the applicant, the date the application was filed, and the estimated acres.

History Note:  
Authority G.S. 113-134; 113-201; 113-202; 143B-289.52;  
Eff. January 1, 1991; 
Amended Eff. April 1, 2011; September 1, 2005; May 1, 1997; September 1, 1991.

15A NCAC 03O .0203 SHELLFISH LEASE APPLICATION PROCESSING

(a) Upon acceptance of a completed application, the proposed lease area shall be inspected by agents of the Division. Proposed lease areas inconsistent with applicable standards contained or referenced in 15A NCAC 3O .0201 shall result in the return of applications for amendment to remove the inconsistencies. If the boundaries of the proposed lease area are modified, the stakes identifying such areas shall be relocated accordingly by the applicant. The failure of applicants to amend applications or modify lease area identification, when required, shall result in denial of such applications.

(b) If the initial or amended lease application is deemed consistent with all applicable requirements, the Secretary or his designee shall notify the applicant and publish notices of intention to lease in accordance with standards in G.S. 113-202(f).

(c) The Secretary shall consider the lease application, the Division's proposed lease area analysis, and public comments, and may in his discretion lease or decline to lease the proposed lease area or any part thereof. Special conditions may be imposed so that leases may be issued which would otherwise be denied. Should an applicant decide not to accept any special condition imposed on the lease by the Secretary, the application shall be considered denied.

(d) Upon approval of leases by the Secretary, applicants shall mark the shellfish bottom leases in accordance with 15A NCAC 3O .0204(a)(1), water column leases in accordance with 15A NCAC 3O .0204(a)(2), and shall within 90 days submit to the Division acceptable surveys of the areas approved for leasing except that a water column lease which entirely covers a shellfish bottom lease or franchise with an accepted survey on file does not require another survey. Such surveys shall be made at the expense of applicants and must meet the following standards:

1. Surveys and maps shall meet all the requirements of 21 NCAC 56 .1600, Standards of Practice for Land Surveying in North Carolina, which is hereby incorporated by reference including subsequent amendments and editions. This
material is available for inspection and copies may be obtained from the Marine Fisheries Division, Marine Fisheries Building, 3441 Arendell St., P.O. Box 769, Morehead City, North Carolina 28557, at no cost.

(2) Maps shall bear the certificate:
"I ________________________ certify that this map was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision); that the error of closure as calculated by latitudes and departures is 1: ____________, that the area is ___________ acres. Witness my hand and seal this ___________ day of __________ AD __________."

Surveyor or Engineer

(3) The phrase "other appropriate natural monuments or landmarks" in 21 NCAC 56 .1604(e)(9) shall include bridges, roads, highways, intersections, publicly maintained aids to navigation, houses and other permanent buildings, radio, telephone, TV, and water towers; docks; piers, and bulkheads; but does not include stakes marking the boundaries of adjoining leases, points of marsh, junctions of streams, or other landmarks which are particularly subject to change through natural processes, storms, or the effect of man.

(4) A written description of the survey suitable for official documents shall be provided with the survey.

(5) Locations of all corner markers in latitude and longitude shall be provided with the survey and presented in an eight digit format. The relative accuracy of the corner marker locations shall be equal to or less than two meters. Information on the method of measurement, make and model of equipment, and coordinate system used to determine the latitude and longitude shall be included.

(e) Proposed shellfish bottom lease areas remain public bottom until a lease contract has been executed by the Secretary.

(f) Proposed water column lease areas superjacent to shellfish bottom leases and recognized perpetual franchises remain public water until a lease contract has been executed by the Secretary.

History Note:  
Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008; March 1, 1994; September 1, 1991.

15A NCAC 030 .0204 MARKING SHELLFISH LEASES AND FRANCHISES

(a) All shellfish bottom leases, franchises, and water column leases shall be marked as follows:

(1) Shellfish bottom leases and franchises shall be marked by:

(A) Stakes of wood or plastic material at least three inches in diameter at the water level and extending at least four feet above the high water mark. The stakes shall be firmly jetted or driven into the bottom at each corner.

(B) Signs displaying the number of the lease or franchise and the name of the owner printed in letters at least three inches high must be firmly attached to each corner stake.

(C) Supplementary stakes of wood or plastic material, not farther apart than 50 yards or closer together than 50 feet and extending at least four feet above the high water mark, must be placed along each boundary, except when such would interfere with the use of traditional navigation channels.

(2) Water column leases shall be marked by anchoring two yellow buoys, meeting the material and minimum size requirements specified in 15A NCAC 3J .0103(b) at each corner of the area or by larger buoys, posts and signs as identified and approved by the Secretary in the Management Plan.

(b) Stakes marking areas of management within shellfish bottom leases or franchises, as approved in the management plan, must conform to Subparagraph (a)(1)(C) of this Rule and may not exceed one for each 1,200 square feet. Marking at concentrations greater than one for each 1,200 square feet constitutes use of the water column and a water column lease is required in accordance with G.S. 113-202.1 or G.S. 113-202.2.

(c) All areas claimed in filings made pursuant to G.S. 113-205 as deeded bottoms through oyster grants issued by the county clerk of court or as private bottoms through perpetual franchises issued by the Shellfish Commission shall be marked in accordance with Paragraph (a) of this Rule, except the sign shall include the number of the franchise rather than the number of the lease. However, claimed areas not being managed and cultivated shall not be marked.

(d) It is unlawful to fail to remove all stakes, signs, and markers within 30 days of receipt of notice from the Secretary pursuant to Departmental Rule 15A NCAC 1G .0207 that a G.S. 113-205 claim to a marked area has been denied.

(e) It is unlawful to exclude or attempt to exclude the public from allowable public trust use of navigable waters on shellfish leases and franchises including, but not limited to, fishing, hunting, swimming, wading and navigation.

(f) The Division has no duty to protect any shellfish bottom lease, franchise, or water column lease not marked in accordance with Paragraph (a) of this Rule.

History Note:  
Authority G.S. 76-40; 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. September 1, 1997; March 1, 1994; October 1, 1992; September 1, 1991.
15A NCAC 03O .0205 LEASE RENEWAL

(a) Lease renewal applications shall be provided to lessees as follows:
   (1) For shellfish bottom leases, renewal applications shall be provided in January of the year of expiration.
   (2) For water column leases, renewal applications shall be provided at least 90 days prior to expiration dates.

(b) Lease renewal applications shall be accompanied by management plans meeting the requirements of 15A NCAC 03O .0202(b). The non-refundable filing fee set forth in G.S. 113-202(j) shall accompany each renewal application for shellfish bottom leases.

(c) A survey for renewal leases shall be required at the applicant's expense when the Division determines that the area leased to the renewal applicant is inconsistent with the survey on file.

(d) When it is determined, after due notice to the lessee, and after opportunity for the lessee to be heard, that the lessee has not complied with the requirements of this Section or that the lease as issued is inconsistent with this Section, the Secretary may decline to renew, at the end of the current terms, any shellfish bottom or water column lease. The lessee may appeal the Secretary's decision by initiating a contested case as outlined in 15A NCAC 03P .0102.

(e) Pursuant to G.S. 113-202(a)(6), the Secretary is not authorized to recommend approval of renewal of a shellfish lease in an area closed to shellfishing by reason of pollution. Shellfish leases partially closed due to pollution must be amended to exclude the area closed to shellfishing prior to renewal. For purposes of lease renewal determinations, an area shall be considered closed to shellfish harvest by reason of pollution when the area has been classified by the State Health Director as prohibited or has been closed for more than 50 percent of the days during the final four years prior to renewal except shellfish leases in areas which have been closed for more than 50 percent of the days during the final four years prior to renewal and continue to meet established production requirements by sale of shellfish through relay periods or other depuration methods shall not be considered closed due to pollution for renewal purposes.

(f) If the Secretary declines to renew a lease that has been determined to be inconsistent with the standards of this Section, the Secretary, with the agreement of the lessee, may issue a renewal lease for all or part of the area previously leased to the lessee that contains conditions necessary to conform the renewal lease to the requirements of this Section for new leases.

History Note:  Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.52;
               Eff. January 1, 1991;
               Amended Eff. September 1, 2005; May 1, 1997; March 1, 1995; March 1, 1994; October 1, 1992; September 1, 1991.

15A NCAC 03O .0206 LEASE PROTEST

(a) Should any person object to the granting of any initial or renewal lease, he has the right to protest its issuance prior to the granting of the lease by the Secretary. The protestant may file a sworn statement of protest with the Division stating the grounds for protest. The Secretary shall notify both the prospective lessee and the protestant upon receipt of a protest, and shall conduct such investigation as he deems necessary, and shall notify both parties of the outcome of his investigation. Protestants or applicants receiving an adverse recommendation on the lease application from the Secretary may appeal this decision as outlined in G.S. 113-202(g).

(b) Any member of the public shall be allowed an opportunity to comment on any lease application during the public hearing at which the lease application is being considered by the Secretary.

History Note:  Authority G.S. 113-134; 113-201; 113-202; 143B-289.52;
               Eff. January 1, 1991;

15A NCAC 03O .0207 PRODUCTION REPORTS

(a) The owners of shellfish leases and franchises shall provide annual production reports to the Division showing the amounts of material planted and harvested in connection with management for commercial production. Reporting forms will be provided to owners of shellfish bottom leases and recognized franchises during the period that annual notices of rent due are provided to owners of shellfish bottom leases in accordance with G.S. 113-202(j). Reporting forms will be provided to owners of water column leases prior to each annual anniversary date.

(b) Failure to furnish the required production report, correct and in detail requested, or filing a report containing false information, can constitute grounds for termination.

History Note:  Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.52;
               Eff. January 1, 1991;

15A NCAC 03O .0208 CANCELLATION

(a) In addition to the grounds established by G.S. 113-202, the Secretary shall begin action to terminate leases and franchises for failure to produce and market shellfish or for failure to maintain a planting effort of cultch or seed shellfish in accordance with 15A NCAC 03O .0201.

(b) Action to terminate a shellfish franchise shall begin when there is reason to believe that the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters patent were granted, or have by any other
means forfeited the interest acquired under the same. The Division shall investigate all such rights issued in perpetuity to determine whether the Secretary should request that the Attorney General initiate an action pursuant to G.S. 146-63 to vacate or annul the letters patent granted by the state.

(c) Action to terminate a shellfish lease or franchise shall begin when the Fisheries Director has cause to believe the holder of private shellfish rights has encroached or usurped the legal rights of the public to access public trust resources in navigable waters.

(d) In the event action to terminate a lease is begun, the owner shall be notified by registered mail and given a period of 30 days in which to correct the situation. Petitions to review the Secretary's decision must be filed with the Office of Administrative Hearings as outlined in 15A NCAC 03P .0102.

(e) The Secretary's decision to terminate a lease may be appealed by initiating a contested case as outlined in 15A NCAC 03P .0102.

History Note: Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 134B-289.52;
Eff. January 1, 1991;
Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; October 1, 1992; September 1, 1991;
Temporary Amendment Eff. January 1, 2002; October 1, 2001;

15A NCAC 03O .0209 TRANSFER OF INTEREST

(a) Within 30 days after transfer of ownership of all or any portion of interest in a shellfish lease or franchise, the new owner shall notify the Division, and provide the number of the lease or franchise and the county in which it is located. Such notification shall be accompanied by a management plan prepared by the new owner in accordance with 15A NCAC 03O .0202(b).

(b) If the new owner obtains a portion of an existing shellfish bottom lease or franchise, it shall not contain less than one-half acre and the required notification to the Division shall be accompanied by a survey prepared in accordance with the standards in 15A NCAC 03O .0203(d).

(c) Within six months after transfer of ownership, the new owner shall complete shellfish cultivation lease training as specified in 15A NCAC 03O .0202(d).

(d) Water column leases are not transferrable except when the Secretary approves such transfer in accordance with G.S. 113-202.1(f) and G.S. 113-202.2(t).

(e) In the event the transferee involved in a lease is a nonresident, the Secretary must initiate termination proceedings.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. April 1, 2011; March 1, 1994; September 1, 1991.

15A NCAC 03O .0210 SHELLFISH FRANCHISES

(a) The resolution of claims filed under G.S. 113-205 is governed by standards in Departmental Rules 15A NCAC 1G .0200 and .0300. Following receipt of notification that a claim has a valid chain of title, the owner shall provide to the Division within 90 days a survey prepared in accordance with the standards in 15A NCAC 03O .0203(d). Failure to provide the required survey within the time period specified will result in denial of the claim.

(b) Acceptable management plans, prepared in accordance with the standards in 15A NCAC 03O .0202(b), shall be provided to the Division within 30 days following formal recognition of a valid chain of title and at ten-year intervals thereafter.

(c) The survey and management plan requirements in Paragraphs (a) and (b) of this Rule, and all other requirements and conditions of this Section affecting management of franchises, shall apply to all valid shellfish franchises recognized prior to September 1, 1989.

(d) Commercial production requirements for franchises shall be identical to that required for leases in 15A NCAC 03O .0201(c) averaged over the most recent three-year period after January 1 following the second anniversary of the dates of recognition of claims as valid shellfish franchises and continuing throughout the term of management plans required in Paragraph (b) of this Rule. Annual reporting of commercial production shall be submitted upon receipt of forms provided by the Division for that purpose.

History Note: Authority G.S. 113-134; 113-201; 113-202; 113-205; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008; September 1, 1991.

15A NCAC 03O .0211 PROTECTION OF PRIVATE SHELLFISH INTEREST

It is unlawful to use any trawl net, long haul seine, swipe net, dredge, or mechanical method for clams or oysters on any shellfish lease or franchise unless it has been duly authorized by the Fisheries Director as provided in 15A NCAC 3K .0206 and .0303.

History Note: Authority G.S. 113-134; 113-182; 113-201;
Eff. October 1, 1992;