



# HOUSE BILL 361: Support Shellfish Industry.

2017-2018 General Assembly

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<b>Committee:</b> Senate Finance	<b>Date:</b> June 7, 2018
<b>Introduced by:</b> Reps. Shepard, McElraft, White, Strickland	<b>Prepared by:</b> Jeff Hudson
<b>Analysis of:</b> Second Edition	Staff Attorney

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**OVERVIEW:** *House Bill 361 would make various changes to State law governing shellfish aquaculture and harvest.*

## **BILL ANALYSIS:**

### **SHELLFISH BOTTOM LEASING AMENDMENTS**

Section 1.1.(a) would make various changes to the shellfish cultivation leasing statute as follows:

- Provides a definition of natural shellfish bed that includes a 10 bushels of shellfish per acre threshold.
- Provide that shellfish leasing will be compatible with other uses of marine and estuarine resources near the leased area. Under current law, shellfish leasing must be compatible with other marine and estuarine resources and the statute is silent as to proximity to the shellfish leasing.
- Provide that shellfish leasing will not unreasonably conflict with the riparian rights of adjacent property owners. Under current law, shellfish leasing must not impinge upon the rights of riparian owners.
- Provide a new requirement that shellfish leasing must be a minimum of 100 feet from the shoreline of any private property. The 100-foot minimum would not apply when (i) the adjacent private property is owned by the lease applicant or (ii) the owner of the private property has provided written, notarized consent.
- Provide that shellfish leasing may not occur in waters that have been classified as prohibited, restricted, or conditionally approved closed with respect to shellfish harvesting at the time of filing of the lease application. Under current law, shellfish leasing may not occur in waters that the State Health Director has recommended be closed to shellfish harvest due to pollution.
- Provide that acreage limits for shellfish leasing will be as follows:
  - For coastal fishing waters located in and south of Core Sound, no person, business, or family may hold more than 50 acres of shellfish leases and no individual lease may be more than 10 acres.
  - For other coastal fishing waters, no person, business, or family may hold more than 300 acres of shellfish leases and no individual lease may be more than 50 acres.

Under current law, the limit is 50 acres for all coastal fishing waters.

- Provide that upon termination of shellfish leases, the Secretary may either:

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- Re-lease the area to the first qualified applicant to file an application.
- Designate the area as a Shellfish Aquaculture Enterprise Area.
- Establish a new process by which parties, other than the permit applicant, affected by the issuance of a shellfish leasing permit could appeal the permit decision. Such parties could only file a contested case if the new Shellfish Cultivation Lease Review Committee determined that a contested case hearing would be appropriate.
- Establish a specific definition of resident for the purposes of shellfish leasing. The definition is the same as the existing definition except that for business entities and organizations they would not be required to have their principal place of business in North Carolina.

Section 1.1.(b) and (c) would direct the North Carolina Policy Collaboratory (Collaboratory) and the Division of Marine Fisheries of the Department of Environmental Quality (Division) to:

- Study and recommend whether a Shellfish Mariculture Commission should be established to oversee shellfish bottom leasing and other aspects of shellfish aquaculture in the State.
- Establish a stakeholder process to study and recommend whether the shellfish leasing moratoria in Brunswick County and Core Sound should apply to Shellfish Aquaculture Enterprise Areas.

## **ADMINISTRATIVE REMEDY FOR SHELLFISH BOTTOM LEASING APPEALS**

Section 1.2 would direct the Chair of the Marine Fisheries Commission to establish the Shellfish Cultivation Lease Review Committee and authorize the Commission to adopt rules for the appeals process.

## **EXPAND SHELLFISH NURSERY AREAS AND UNDER DOCK OYSTER CULTURE SITING**

Section 1.3.(a) would allow for the transport of seed oysters and seed clams from aquaculture operations in prohibited waters unless the Secretary of Environmental Quality determined that it would be a risk to public health. Under current law, such transport is not allowed.

Section 1.3.(b) would allow for the issuance of an Under Dock Oyster Culture Permit in polluted waters if the owner of the dock signs a written acknowledgement that the oysters are intended only for restoration purposes and not consumption.

## **SHELLFISH AQUACULTURE ENTERPRISE AREAS**

Section 1.4 defines "Shellfish Aquaculture Enterprise Area" to mean an area designated and permitted by the Department of Environmental Quality that is made available for shellfish leasing.

## **MORATORIUM ON SHELLFISH LEASING IN THE NEW HANOVER COUNTY AREA**

Section 1.5 would provide that until July 1, 2020, a moratorium on new shellfish cultivation leases and new water column leases for aquaculture would be established from the Wrightsville Beach Bridge south to Myrtle Grove Sound.

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## **MORATORIUM ON SHELLFISH LEASING IN BOGUE SOUND**

Section 1.6 would provide that until July 1, 2020, a moratorium on new shellfish cultivation leases and new water column leases for aquaculture would be established for Bogue Sound. During the moratorium, the Division will identify areas in Bogue Sound where there are fewer anticipated user conflicts with shellfish leases. The Division will report its findings to the General Assembly no later than July 1, 2019.

## **REVISE OYSTER STUDIES REPORTING DATES**

Section 2.1.(a) would provide that the study that directs the Chief Sustainability Officer of the University of North Carolina at Chapel Hill to convene a stakeholder working group to study and advance efforts to ecologically restore and achieve economic stability of the shellfish aquaculture industry may be extended from December 31, 2018 to June 30, 2019, if the University determines that additional time is needed to complete the study.

Section 2.1.(b) would provide that the deadline for the Collaboratory to prepare and deliver a Shellfish Mariculture Plan may be extended from December 31, 2018 to June 30, 2019, if the University determines that additional time is needed to complete the study.

Section 2.1.(c) would provide that the deadline for the Collaboratory and stakeholders to develop plans and recommendations for economic development related to promotion of the State's shellfish harvesting heritage may be extended from December 31, 2018 to June 30, 2019, if the Collaboratory and stakeholders determine that additional time is needed to complete the study.

**EFFECTIVE DATE:** The act would become effective July 1, 2018.