

§ 113-202.1. Water column leases for aquaculture.

(a) To increase the productivity of leases for shellfish culture issued under G.S. 113-202, the Secretary may amend shellfish cultivation leases to authorize use of the water column superjacent to the leased bottom under the terms of this section when he determines the public interest will benefit from amendment of the leases. Leases with water column amendments must produce shellfish in commercial quantities at four times the minimum production rate of leases issued under G.S. 113-202, or any higher quantity required by the Marine Fisheries Commission through duly adopted rules.

(b) Suitable areas for the authorization of water column use shall meet the following minimum standards:

- (1) Aquaculture use of the leased area must not significantly impair navigation;
- (2) The leased area must not be within a navigation channel marked or maintained by a state or federal agency;
- (3) The leased area must not be within an area traditionally used and available for fishing or hunting activities incompatible with the activities proposed by the leaseholder, such as trawling or seining;
- (4) Aquaculture use of the leased area must not significantly interfere with the exercise of riparian rights by adjacent property owners including access to navigation channels from piers or other means of access; and
- (5) Any additional standards, established by the Commission in duly adopted rules, to protect the public interest in coastal fishing waters.

(c) The Secretary shall not amend shellfish cultivation leases to authorize uses of the water column involving devices or equipment not resting on the bottom or that extend more than 18 inches above the bottom unless:

- (1) The leaseholder submits an application, accompanied by a nonrefundable application fee of one hundred dollars (\$100.00), which conforms to the standards for lease applications in G.S. 113-202(d) and the duly adopted rules of the Commission;
- (2) The proposed amendment has been noticed consistent with G.S. 113-202(f);
- (3) Public hearings have been conducted consistent with G.S. 113-202(g);
- (4) The aspects of the proposals which require use and dedication of the water column have been documented and are recognized by the Secretary as commercially feasible forms of aquaculture which will enhance shellfish production on the leased area;
- (5) It is not feasible to undertake the aquaculture activity outside of coastal fishing waters; and
- (6) The authorized water column use has the least disruptive effect on other public trust uses of the waters of any available technology to produce the shellfish identified in the proposal.

(d) Amendments of shellfish cultivation leases to authorize use of the water column are issued for a period of 10 years or the remainder of the term of the lease, whichever is shorter. The annual rental for a new or renewal water column amendment is one hundred dollars (\$100.00) an acre. If a water column amendment is issued for less than a 12-month period, the rental shall be prorated based on the number of months remaining in the year. The annual rental for an amendment is payable at the beginning of the year. The rental is in addition to that required in G.S. 113-202.

(e) Amendments of shellfish cultivation leases to authorize use of the water column are subject to termination in accordance with the procedures established in G.S. 113-202 for the termination of shellfish cultivation leases. Additionally, such amendments may be terminated for

unauthorized or unlawful interference with the exercise of public trust rights by the leaseholder, agents and employees of the leaseholder.

(f) Amendments of shellfish cultivation leases to authorize use of the water column may be transferred only with the superincumbent bottom lease for the remainder of the term of the amendment at the same rental rate and term as set forth in subsection (d) of this section and so long as notice of the transfer is provided to the Secretary as required by G.S. 113-202(k).

(g) After public notice and hearing consistent with subsection (c) of this section, the Secretary may renew an amendment, in whole or in part, when the leaseholder has produced commercial quantities of shellfish and has otherwise complied with the rules of the Commission. Renewals may be denied or reduced in scope when the public interest so requires. Appeal of renewal decisions shall be conducted in accordance with G.S. 113-202(p). Renewals are subject to the lease terms and rates established in subsection (d) of this section.

(h) The procedures and requirements of G.S. 113-202 shall apply to proposed amendments or amendments of shellfish cultivation leases considered under this section except more specific provisions of this section control conflicts between the two sections.

(i) To the extent required by demonstration or research aquaculture development projects, the Secretary may amend existing leases and issue leases that authorize use of the bottom and the water column. Demonstration or research aquaculture development projects may be authorized for five years with no more than one renewal and when the project is proposed or formally sponsored by an educational institution which conducts research or demonstration of aquaculture. Production of shellfish with a sales value in excess of five thousand dollars (\$5,000) per acre per year shall constitute commercial production. Demonstration or research aquaculture development projects shall be exempt for the rental rate in subsection (d) of this section unless commercial production occurs as a result of the project.

(j) The Secretary may establish Shellfish Aquaculture Enterprise Areas for water column leasing pursuant to this subsection. The Secretary may establish one or more Shellfish Aquaculture Enterprise Areas that comply with the requirements of this section, including the notice, public hearing, and public comment requirements; any other State requirements for shellfish leasing; and any applicable federal requirements. Requirements under this section include the notice, public hearing, and public comment requirements of this section. Leases issued in a Shellfish Aquaculture Enterprise Area shall be nontransferable and shall revert to the State upon relinquishment or termination. The Marine Fisheries Commission may adopt any rules necessary to implement this subsection. (1989, c. 423, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 4; c. 1024, s. 22; 1993, c. 322, s. 1; c. 466, s. 2; 2004-150, s. 5; 2015-241, s. 14.10C(c); 2015-268, s. 5.6; 2016-94, s. 14.11(b); 2016-123, s. 6.1(a); 2017-102, s. 33.4(a); 2019-37, s. 1(c).)