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Governor

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MEMORANDUM

TO: JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS
The Honorable Tim Moore, Co-Chair
The Honorable Phil Berger, Co-Chair

FROM: Mollie Young, Director of Legislative Affairs

SUBJECT: Core Sound Oyster Leasing Report

DATE: April 7, 2016

Pursuant to Session Law 2015-241, section 14.8, “The Division of Marine Fisheries of the Department of Environment and Natural Resources shall, in consultation with representatives of the commercial fishing industry, representatives of the shellfish aquaculture industry, and relevant federal agencies, create a proposal to open to shellfish cultivation leasing certain areas of Core Sound that are currently subject to a moratorium on shellfish leasing. The Division shall submit a report regarding the plan no later than April 1, 2016, to the Joint Legislative Commission on Governmental Operations.” The attached document satisfies this reporting requirement.

If you have any questions or need additional information, please contact me by phone at 919-707-8618 or via email at Mollie.Young@ncdenr.gov.

cc: John Evans, Chief Deputy Secretary, DEQ
Col. Jim Kelley, Acting Director of Marine Fisheries, DEQ



Division of Marine Fisheries
Report on Core Sound Shellfish Aquaculture Leasing

Introduction: Session Law 2015-241, Section 14.8 requires the N.C. Division of Marine Fisheries to create a proposal to open to shellfish cultivation leasing certain areas of Core Sound that are currently subject to a moratorium on shellfish leasing. The proposal shall be developed following consultation with representatives of the commercial fishing industry, aquaculture industry, and relevant federal agencies.

To develop our proposal, division staff met with the Carteret County Fisheries Association which represents commercial fishing interests, the president of the N.C. Shellfish Growers Association, and aquaculture experts from the National Oceanic and Atmospheric Administration. This proposal is a conservative, methodical approach to reopening limited areas of Core Sound to shellfish leasing.

Background: Core Sound is a 65,340-acre body of relatively shallow water, spanning over 26 miles between Carteret County's rural Down East communities and the lower Outer Banks. These waters are known for high water quality that support important commercial and recreational fisheries. The eastern side of the sound is bordered by an undeveloped barrier island system that is part of the Cape Lookout National Seashore. The western shoreline is bordered by small fishing communities and the Cedar Island Wildlife Refuge. A significant portion of a large 40,000-acre farm operation in eastern Carteret County is included in the Core Sound watershed.

Aquaculture of clams and oysters has been practiced in the waters and tributaries of Core Sound for many years. Conflicts over the use of public trust waters in Core Sound for shellfish leasing have been evident since the early 1990s and perhaps even earlier. Although the level of participation in commercial fisheries has declined in the Core Sound communities since a shellfish lease moratorium was put into place, there is still local concern over proliferation of shellfish leases that would restrict use of existing public trust waters. However, in talking with the industry, there appears to be an opportunity to gradually expand shellfish leasing, while protecting public trust and addressing the concerns of the public. The following brief history summarizes the events that resulted in the current moratorium and hopefully provides perspective on the division's proposal to open portions of the sound to shellfish leasing.

Legislative action restricting shellfish leases began after a 7-acre lease was applied for in 1993. Following this application, a petition with over 875 names was received by the Marine Fisheries Commission protesting the lease, but the proposed lease met the criteria in rule and the commission approved the lease. This action was soon followed by legislation implementing a two-year moratorium on leases in Core Sound (House Bill 416, 1993 Session). When the moratorium was lifted in 1995, the division received eight applications for leases in eastern Core Sound. These applications resulted in over 400 protests and the legislature placed an indefinite moratorium on leases in eastern Core Sound, a two-year temporary ban on leases in western Core Sound, and required a study be conducted on the shellfish lease program (House Bill 1074, 1995 Session). In 1997, further legislation modified the 1995 western Core Sound moratorium by extending the expiration date from Aug. 15, 1997 to Aug. 22, 1997.

As required by the 1995 legislation, an in-depth study was conducted on shellfish leasing. The results of that study were presented to the Marine Fisheries Commission in early 2001. The study identified three

options including keeping western Core Sound closed to leasing, opening 1 percent to 3 percent of western Core Sound with an acreage cap, and opening western Core Sound under normal leasing conditions. In November 2001, the Marine Fisheries Commission formed a Core Sound Stakeholder Committee to develop recommendations. This committee recommended opening the western Core Sound with a 1-percent cap on leased bottom and a maximum of 5 acres per lease.

In 2002, the Marine Fisheries Commission unanimously approved the recommendations of the stakeholder committee and added a provision to restrict any one entity to a maximum of 50 acres. Following this decision another petition with over 500 names was sent to the legislature opposing any new leases in Core Sound. This resulted in Session Law 2003-64, that again placed a moratorium on any new leases in western Core Sound. The eastern portion of Core Sound remained closed to new leasing based on the 1995 legislation. These shellfish lease moratoriums remain in place today in Core Sound. Based on the current boundaries of the moratoriums, there are approximately 28,880 acres within the eastern portion of Core Sound and 36,460 acres within the western portion (Figure 1).

Although the moratorium legislation allowed the transfer of existing shellfish leases within the Core Sound area, the acreage has declined since the initial moratorium. In 2003, when the final moratorium legislation was passed, there were 33 leases in western Core Sound covering 92.4 acres and one lease in eastern Core Sound covering 7 acres. At the time of this report, there are 25 leases in western Core Sound covering 62 acres and the one remaining 7-acre lease in eastern Core Sound.

The primary use of shellfish leases prior to the Core Sound moratorium was to raise hard clams by either seeding or using wild caught product. Since that time, other than niche markets, the hard clam market has remained flat, with prices close to what they were a decade ago. The depressed price of hard clams may have contributed to some of the lease acreage reduction since 2003, as lease holders allowed leases to expire or were unable to meet production requirements.

Today, many of the remaining lease holders in Core Sound have transitioned from hard clams to oysters. Oyster markets have been relatively strong compared to hard clams and the experience of growers in other states such as Virginia, Maryland and Gulf states have proved that oysters can be a high value product. Many of the remaining Core Sound leases have adopted intensive methods of oyster culture. These intensive culture methods typically use a portion of the water column with various gears to greatly increase the number of oysters that can be grown per acre. The increasing use of triploid oysters also enhances production with faster grow-out of market-size oysters.

Division of Marine Fisheries Proposal:

After discussions with stakeholders, the division has developed a proposal to open portions of western Core Sound to shellfish leasing in a controlled manner with oversight from the Marine Fisheries Commission through its Shellfish and Crustacean Advisory Committee. The eastern portion of Core Sound contains high densities of submerged aquatic vegetation that make most areas unsuitable for shellfish cultivation under the current U.S. Army Corps of Engineers nationwide permitting process for aquaculture. In addition, the location of the Cape Lookout National Seashore, existing pound net fishery and other commercial and recreational uses may be problematic.

While there is approximately 34,000 acres of western Core Sound not impacted by submerged aquatic vegetation, existing leases or natural shell bottom, many areas are not suitable for shellfish leasing due to existing commercial and recreational uses, polluted shellfish areas, navigation or other conflicts. The open waters of the sound are also subject to high energy wave action from storms or sustained seasonal winds and would not be conducive to water column uses. Although no specific suitability mapping exists for Core Sound, successful shellfish aquaculture operations would probably be sited in the protected bays along the western Core Sound (Figures 2 and 3). The National Ocean Service Coastal Aquaculture Planning and Environmental Sustainability Program may provide tools and guidance to help assess long term lease planning in Core Sound in the future. Existing tools, such as University of North Carolina – Wilmington’s shellfish lease siting tool, are also useful for identifying suitable sites.

The division proposes that the following plan be adopted to allowed limited shellfish leases in Core Sound.

1. Year one:

- Allow residents of Carteret County to apply for shellfish leases in western Core Sound.
- In the order in which they are received, process applications for up to a combined total of 40 acres of new shellfish leases in western Core Sound. This would allow leases in year one to gain back slightly more acreage that was lost between the 2003 moratorium and the present.
- Restrict new lease applications to a maximum of 5 acres in western Core Sound.
- Keep eastern Core Sound closed to new shellfish leasing.
- Allow use of lease footprints in western Core Sound from leases that have expired or been terminated since the original 1993 moratorium by new applicants. This would require exempting these sites from the 10-bushel per acre restriction for new lease applicants for one year.

2. Year two and beyond:

- On an annual basis, the Marine Fisheries Commission shall direct either its Shellfish and Crustacean Advisory Committee, or an appointed committee with balanced representation from the shellfish industry, local commercial fishing industry, and recreational fisherman, to review lease activities in Core Sound. The committee shall consider:
 - Total lease production for Core Sound;
 - Reported user conflicts; and
 - Percentage of leases not in compliance with production, marking requirements, and payment of annual rent.
- The division shall provide all pertinent information required for this review.
- The committee shall make recommendations to the commission on:
 - Annual acreage caps for lease applications;
 - Any conditions or restrictions on new leases in western Core Sound; and
 - Suggestions for potential legislative recommendations to lift the moratorium in eastern Core Sound.

The prospective annual acreage allowance is anticipated to equal or exceed the year one acreage increase; however, that would ultimately be up to the commission.

- In making these recommendations the committee shall consult with representatives of the commercial fishing industry in Carteret County and the N.C. Shellfish Growers Association if they are not represented on the committee.

Policy and Statutory Changes Needed to Support These Recommendations:

The Marine Fisheries Commission has the authority to limit the number of acres in any area that may be granted as shellfish leases under G.S. 113-201. In addition, the Department of Environmental Quality secretary, and by delegation the Marine Fisheries director, has the authority to condition or amend leases that would otherwise be denied under G.S. 113-202. Changes would be required to amend or re-write Session Law 2003-64 AN ACT TO LIMIT THE AREA OF WESTERN CORE SOUND THAT MAY BE LEASED FOR THE CULTIVATION OF SHELLFISH AND TO DIRECT THE DIVISION OF MARINE FISHERIES TO REPORT TO THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE ON THE IMPLEMENTATION OF THIS ACT.

Marine Fisheries Commission rule or legislative changes may also be needed to exempt the 10-bushels per acre restriction for new lease applicants for one year when applying for expired lease sites in Core Sound. If not exempted, older lease footprints that had residual shellfish averaging one or more shellfish per square meter would not be allowed to be leased. Submerged aquatic vegetation allowances would have to comply with the U.S. Army Corps of Engineers Nationwide Permit for Aquaculture (NWP 48) with regional conditions and any interim measures.

Figure 1. Current Core Sound Moratorium Boundary Designations

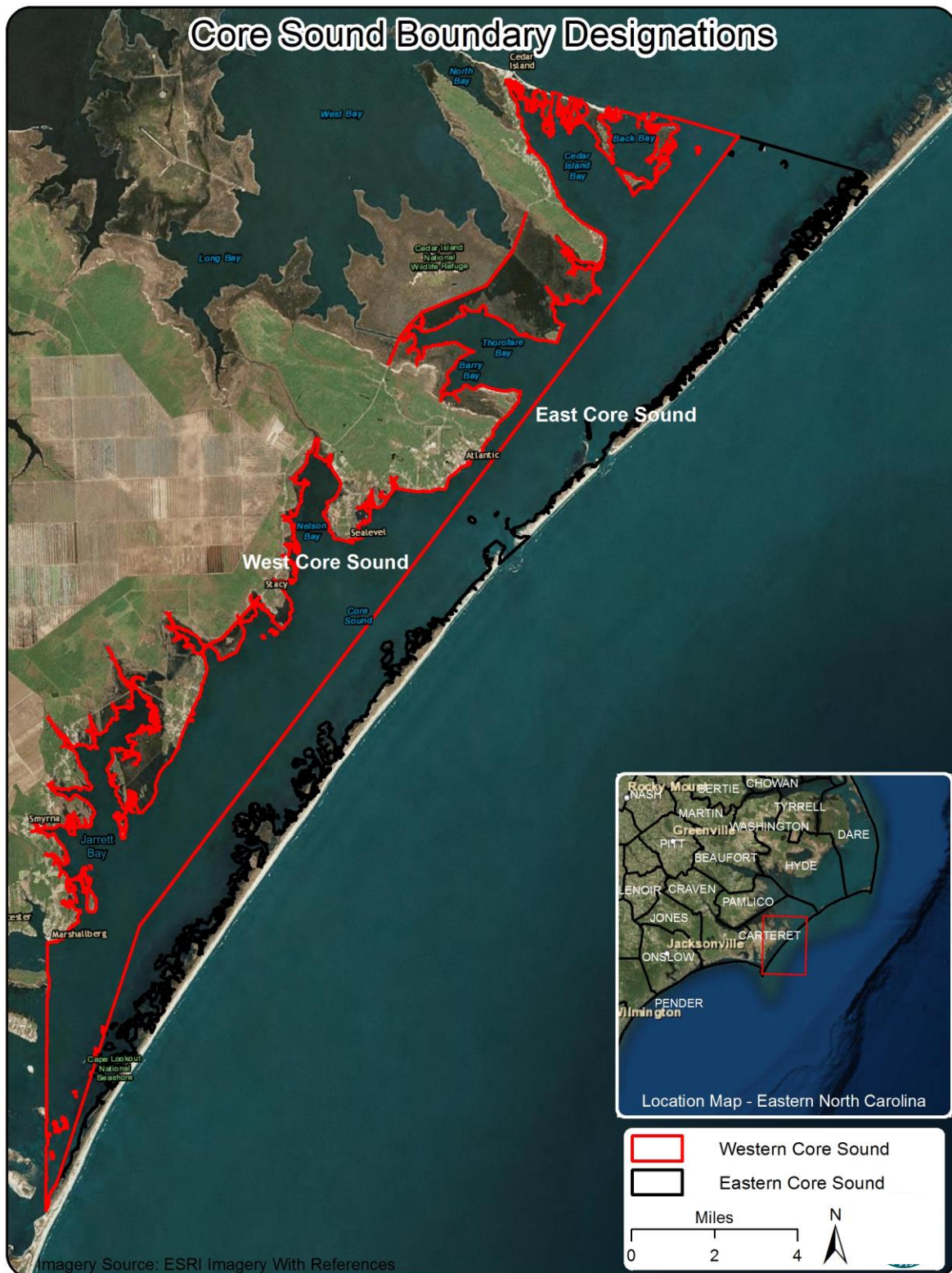


Figure 2. Northern Core Sound areas unsuitable for shellfish leasing

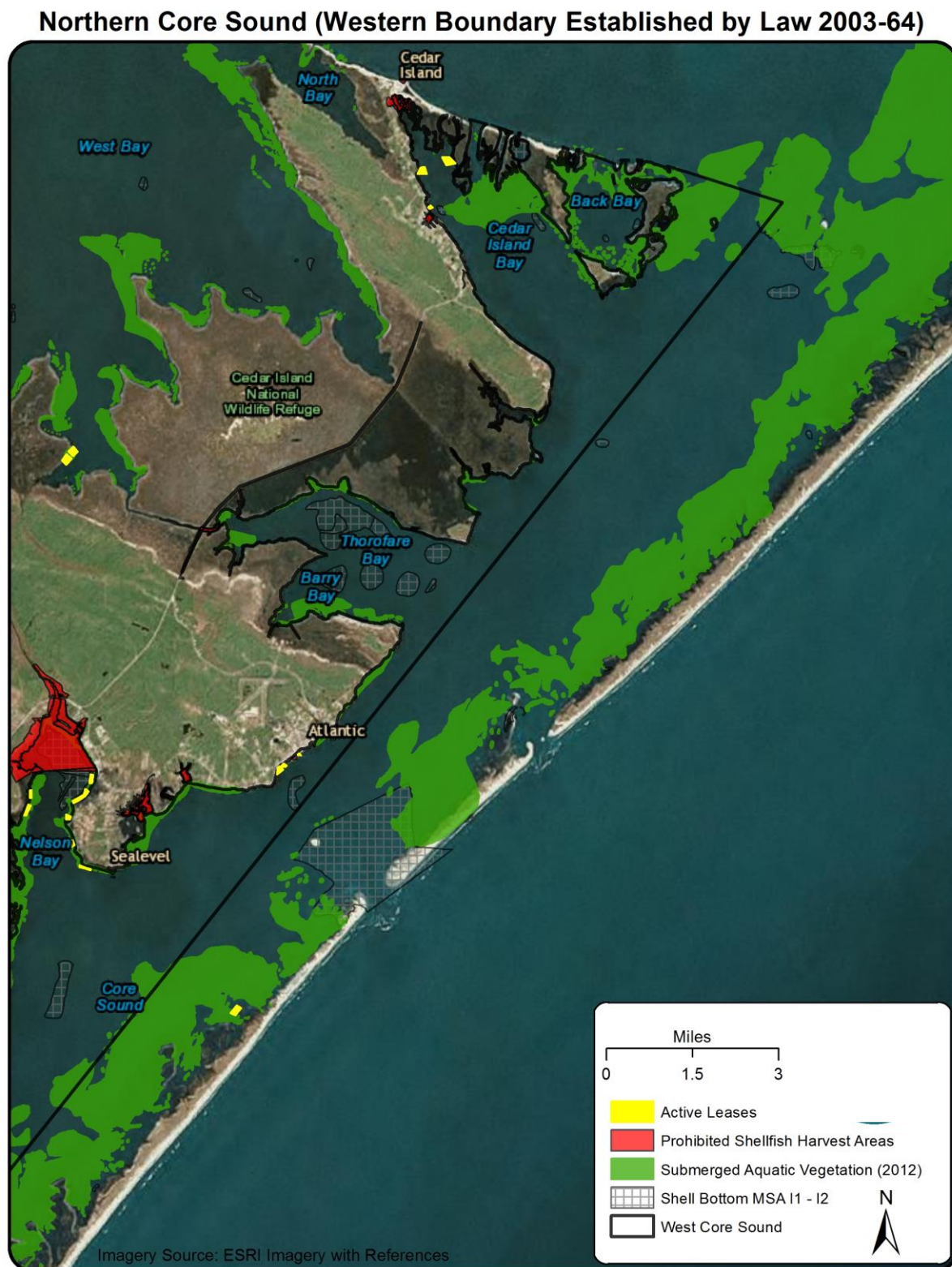


Figure 3. Southern Core Sound areas unsuitable for shellfish leasing

