

Task: Provide recommendations to DNR on the establishment of a regulatory criteria that can be used to create new Public Shellfish Fishery Areas (PSFA) and/or expand existing PSFAs when physical, biological and economic conditions warrant protecting these areas for public access to shellfish resources.

Background: Existing PSFAs were identified and established in 2009 to set aside areas for the public fishery. The law required the department to establish PSFAs (based on data and surveys) and to do so by regulation. The regulation: a) specified the 2009 PSFAs; and b) set up a process and criteria to declassify PSFAs in the event of an aquaculture lease. However, the regulation did not include a process to add new PSFAs should this be supported. This gap in the Department's PSFA authority is being addressed by the information presented below and is needed to fulfill the intent of the law. Additionally, some sites were missed in the 2009 establishment of PSFAs and other sites may have developed within the public fishery through spat set and growth of oysters since 2009. A regulatory change is needed to add such areas if supported by data and surveys.

Regarding aquaculture, leasing can only occur within PSFAs if certain regulatory criteria are met, and then only when that portion of the PSFA is declassified. Leasing can also occur outside of PSFAs, again when legal requirements are met, but there are instances where wild oyster resources available to the public fishery exist on the proposed lease bottom. This has created a dilemma whereby these public oysters become available only to the leaseholder for harvest and sale, if the lease is granted. The public fishery no longer has access to these oysters. When PSFAs were established in 2009 there were no regulatory criteria or guidelines for adding new PSFAs or expanding existing ones. Criteria are needed to add new PSFA bottom for the public fishery.

In summary, the criteria options below will complete the department's authority to establish and manage PSFAs by providing a process to add PSFAs in situations where it is supported.

Issues: Recognizing the lack of a regulatory criteria for creating new PSFA areas, the department does not have a clear, legal pathway for protecting productive oyster bars, which exist outside of existing PSFAs from being privately leased. Consequently, areas proposed for lease, which contain significant wild shellfish resources, can be leased with those resources becoming exclusively available to the leaseholder. The following issues/challenges were taken into consideration while determining options for an appropriate regulatory criteria.

- What characteristics support survivability and productivity of an oyster bar?
- What biological factors at a particular site should be used to determine value?

- What minimum size of a PSFA makes sense in terms of value to the environment/public?
- What conditions warrant allowing an area to be leased rather than being made a PSFA?
- Is the existing PSFA declassification criteria appropriate?
- Leaseholders are required to plant leases at 200,000 oysters per acre or 50 oysters/sq. meter.

In all cases, the department will only require a survey on a proposed lease area which is located outside of an oyster sanctuary and outside of a PSFA when suitable evidence has been provided indicating the presence of oyster resources which warrant investigation (existing surveys, harvest records, etc).

When survey results are evaluated, we must strive to take into consideration the productivity of the area, benefit to the environment, commercial fishery and other members of the public versus leasing the area and providing for possible increase in productivity through aquaculture investment.

Criteria for expanding existing PSFAs and creating new, standalone PSFAs based on density surveys and presence of habitat.

1. **For areas adjacent to existing PSFAs** – Areas with an average oyster density >5 oysters per m^2 will be considered for inclusion. Areas with an average oyster density <5 oysters per m^2 will not be considered unless other conditions are present which support the existence of a productive oyster bar such as exposed cultch, multiple year classes and recent harvest records showing the area has been productive.
2. **For areas not adjacent to PSFAs** – Areas of suitable habitat with an average oyster density >5 oyster per m^2 will be considered for establishment as a new PSFA. Areas with an average oyster density <5 oysters per m^2 will only be considered when other conditions are present which support the existence of a productive oyster bar such as exposed cultch, multiple year classes and recent harvest reports from the area.
3. **For areas adjacent to existing PSFAs and areas not adjacent to PSFAs**, where there are a significant number of market size wild oysters present but there is a limited amount of suitable habitat and no year class variability, live oysters could be moved to a more productive area and the site made available for lease.
4. **Identify a mechanism that would preclude leaseholders** from harvesting and selling wild oysters from newly acquired leases until they have invested in planting the lease area and complied with the active use requirements for at least one year. This could serve to deter the intent of pursuing a lease site to harvest and sell off existing wild oysters.