



To: South Carolina Sea Grant

From: Terra Bowling, Research Counsel II, National Sea Grant Law Center, University of Mississippi School of Law

Re: Shellfish Mariculture Lease Termination (NSGLC-22-04-03)¹

Date: May 10, 2022

Advisory Summary

South Carolina Sea Grant requested information on possible remedies for revoked mariculture permits due to nonpayment of annual water-bottom rent to the South Carolina Department of Natural Resources. Any mariculturist who has a permit revoked would be able to appeal in accordance with the terms of their permit or the state Administrative Procedure Act.

Appeal

Pursuant to state law, a permittee must pay an annual fee for a mariculture permit. If the fee is not paid by March 1, the SCDNR may add a late penalty fee of 10%. If the fee plus penalty is not received by April 1, the permit is void.²

The language in the state statute is clear that SCDNR may revoke the mariculture permit for failure to pay the annual fee by the deadline. Terms of the revocation should be set forth in the permit, and that language will control resolution.³ Individuals who have their state permits revoked are entitled to an administrative appeal pursuant to the South Carolina Administrative Procedure Act (APA).⁴

The [Administrative Law Court](#) (ALC) is the forum for permittees to file a “contested case” appealing an administrative decision. “Contested case” means “a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law or by Article I, Section 22, Constitution of the State of South Carolina, 1895, to be determined by an agency or the Administrative Law Court after an

¹ This product was prepared by the National Sea Grant Law Center under award number NA18OAR4170079 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the authors and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.

² S.C. Code Ann. § 50-5-935.

³ S.C. Code Ann. Regs. 123-34.

⁴ S.C. Code Ann. § 1-23-10; S.C. Code Ann. § 1-23-380.



opportunity for hearing.”⁵ “License” includes “the whole or part of any agency permit, franchise, certificate, approval, registration, charter, or similar form of permission required by law, but does not include a license required solely for revenue purposes.”⁶

Individuals may represent themselves before the ALC or obtain representation by an attorney. To determine whether an attorney is required or to obtain a referral, please see [Do I Need an Attorney?](#). Administrative Law Court rules are available [here](#).

Generally, a hearing request must be filed and served within thirty days after notice of the agency’s decision.⁷ In reviewing the case, the ALC will consider the evidence on the record. The record must include the following: 1) All pleadings, motions, and intermediate rulings; 2) All evidence received or considered; 3) A statement of matters judicially noticed; 4) All proffers of proof of excluded evidence; 5) The final order or decision which is subject to review; 6) The transcript of the testimony taken during the proceeding.⁸ The ALC will defer to the agency’s interpretation of the statute regarding revocation following failure to pay permit fees unless one of the below applies.

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;*
- (b) in excess of the statutory authority of the agency;*
- (c) made upon unlawful procedure;*
- (d) affected by other error of law;*
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or*
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.⁹*

A party may appeal a judgment of the ALC to state court, and that court will base its opinion on the record. The court may affirm the decision or remand the case for further proceedings. The

⁵ S.C. Code Ann. § 1-23-310.

⁶ S.C. Code Ann. § 1-23-310.

⁷ ALC Rule 11.

⁸ S.C. Code Ann. § 1-23-320.

⁹ S.C. Code Ann. § 1-23-380.



court may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is based on the factors that the ALC uses in reviewing an agency decision (see above).¹⁰

In summary, an individual may file a contested case and request a hearing. The permittee must establish that the DNR's decision to revoke the permit violated one of the six elements above. We found no court cases related to a revocation of a permit due to nonpayment of fees.

¹⁰ S.C. Code Ann. § 1-23-610. See *Schwiers v. South Carolina Department of Health and Environmental Control*, 837 S.E.2d 730 (S.C.App. 2019).