

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1097

Committee Substitute Favorable 4/23/97

Committee Substitute #2 Favorable 5/15/97

Committee Substitute #3 Favorable 5/28/97

Fifth Edition Engrossed 6/10/97

Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/23/97

Senate Finance Committee Substitute #2 Adopted 8/4/97

Senate Appropriations Committee Substitute #3 Adopted 8/7/97

Short Title: Fisheries Reform Act-2.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE FISHERIES REFORM ACT OF 1997 TO PROTECT,
3 ENHANCE, AND BETTER MANAGE COASTAL FISHERIES IN NORTH
4 CAROLINA.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE; PERFORMANCE AUDIT; STUDIES

Section 1.1. This act shall be known as the "Fisheries Reform Act of 1997".

Section 1.2. The State Auditor shall conduct a performance audit, including a detailed operational review, of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources. The performance audit shall include an assessment of the capacity of the Division of Marine Fisheries to effectively implement the provisions of Part V of this act. The performance audit report shall be delivered to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 February 1998. The Joint Legislative Commission on Seafood and Aquaculture shall review the performance audit and make a specific recommendation to the 1998 Session of the 1997 General Assembly as to whether the provisions of Part V of this act should be implemented.

Section 1.3. The Joint Legislative Commission on Seafood and Aquaculture shall study issues relating to licensing coastal recreational fishing. The Joint Legislative Commission on Seafood and Aquaculture shall make specific findings as to whether a licensing system should be adopted for coastal recreational fishing and, if so, what that system should be and how it should be implemented. In conducting the study required by this section, the Joint Legislative Commission on Seafood and Aquaculture shall consider the findings and recommendations of the final report of the Fisheries Moratorium Steering Committee and the final report of the State Auditor on the performance audit of the Division of Marine Fisheries required by Section 1.2 of this act. The Joint Legislative Commission on Seafood and Aquaculture shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

Section 1.4. The Joint Legislative Commission on Seafood and Aquaculture shall study issues related to the establishment of a crew license for persons working aboard a vessel engaged in the taking of fish for sale. The Joint Legislative Commission on Seafood and Aquaculture shall make a specific determination as to whether a crew license should be established. The Joint Legislative Commission on Seafood and Aquaculture shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

1 Section 1.5. The Joint Legislative Commission on Seafood and Aquaculture
2 shall study issues relating to the enhancement and management of shellfish resources and
3 shall develop a set of comprehensive recommendations for the enhancement and
4 management of the shellfish resources of the State. The Joint Legislative Commission on
5 Seafood and Aquaculture shall present its findings and recommendations to the 1998
6 Regular Session of the General Assembly.

7 Section 1.6. The Joint Legislative Commission on Seafood and Aquaculture
8 shall study issues relating to whether either a limited shellfish license or an exemption
9 from shellfish license requirements should be established to allow students under the age
10 of 18 to take and sell shellfish during the summer months. The Joint Legislative
11 Commission on Seafood and Aquaculture shall report its findings and recommendations
12 to the 1998 Regular Session of the 1997 General Assembly.

13 Section 1.7. The Joint Legislative Commission on Seafood and Aquaculture
14 shall study the establishment of a comprehensive State program to acquire, preserve, and
15 restore habitats critical to marine and estuarine fisheries. The Joint Legislative
16 Commission on Seafood and Aquaculture shall report its findings and recommendations
17 to the 1998 Regular Session of the 1997 General Assembly.

18 Section 1.8. The Joint Legislative Commission on Seafood and Aquaculture
19 shall study procedures and rules used by the Appeals Panel established by subsection (d)
20 of Section 3 of Chapter 576 of the 1993 Session Laws (1994 Regular Session), as
21 amended by Section 1 of Chapter 770 of the 1993 Session Laws (1994 Regular Session)
22 in the review of license applications. The Appeals Panel shall prepare and submit a
23 detailed summary of its activities, including all decisions to issue or deny licenses, to the
24 Joint Legislative Commission on Seafood and Aquaculture no later than 1 December
25 1997. The Joint Legislative Commission on Seafood and Aquaculture shall report its
26 findings and recommendations to the 1998 Regular Session of the 1997 General
27 Assembly.

28 PART II. MARINE FISHERIES COMMISSION

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31 ♦ Section 2.1. Article 7 of Chapter 143B is amended by adding a new Part to
32 read:

33 **“PART 5B. MARINE FISHERIES COMMISSION.**

34 **“§ 143B-289.20. Definitions.**

35 (a) As used in this Part:

36 (1) ‘Commission’ means the Marine Fisheries Commission.

37 (2) ‘Department’ means the Department of Environment, Health, and
38 Natural Resources.

39 (3) ‘Fisheries Director’ means the Director of the Division of Marine
40 Fisheries of the Department of Environment, Health, and Natural
41 Resources.

42 (4) ‘Secretary’ means the Secretary of Environment, Health, and Natural
43 Resources.

1 (b) The definitions set out in G.S. 113-129 and G.S. 113-130 shall apply
2 throughout this Part.

3 **"§ 143B-289.21. Marine Fisheries Commission – creation; purposes.**

4 (a) There is hereby created the Marine Fisheries Commission in the Department of
5 Environment, Health, and Natural Resources.

6 (b) The functions, purposes, and duties of the Marine Fisheries Commission are to:

7 (1) Manage, restore, develop, cultivate, conserve, protect, and regulate the
8 marine and estuarine resources within its jurisdiction, as described in
9 G.S. 113-132.

10 (2) Implement the laws relating to coastal fisheries, coastal fishing,
11 shellfish, crustaceans, and other marine and estuarine resources enacted
12 by the General Assembly by the adoption of rules and policies, to
13 provide a sound, constructive, comprehensive, continuing, and
14 economical coastal fisheries program directed by citizens who are
15 knowledgeable in the protection, restoration, proper use, and
16 management of marine and estuarine resources.

17 (3) Implement management measures regarding ocean and marine fisheries
18 in the Atlantic Ocean consistent with the authority conferred on the
19 State by the United States.

20 (4) Advise the State regarding ocean and marine fisheries within the
21 jurisdiction of the Atlantic States Marine Fisheries Compact, the South
22 Atlantic Fishery Management Council, the Mid-Atlantic Fishery
23 Management Council, and other similar organizations established to
24 manage or regulate fishing in the Atlantic Ocean.

25 **"§ 143B-289.22. Marine Fisheries Commission – powers and duties.**

26 (a) The Marine Fisheries Commission shall adopt rules to be followed in the
27 management, protection, preservation, and enhancement of the marine and estuarine
28 resources within its jurisdiction, as described in G.S. 113-132, including commercial and
29 sports fisheries resources. The Marine Fisheries Commission shall have the power and
30 duty:

31 (1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms
32 of marine and estuarine resources in coastal fishing waters with respect
33 to:

34 a. Time, place, character, or dimensions of any methods or
35 equipment that may be employed in taking fish.

36 b. Seasons for taking fish.

37 c. Size limits on and maximum quantities of fish that may be taken,
38 possessed, bailed to another, transported, bought, sold, or given
39 away.

40 (2) To provide fair regulation of commercial and recreational fishing groups
41 in the interest of the public.

42 (3) To adopt rules and take all steps necessary to develop and improve
43 mariculture, including the cultivation, harvesting, and marketing of

- 1 shellfish and other marine resources in the State, involving the use of
2 public grounds and private beds as provided in G.S. 113-201.
- 3 (4) To close areas of public bottoms under coastal fishing waters for such
4 time as may be necessary in any program of propagation of shellfish as
5 provided in G.S. 113-204.
- 6 (5) In the interest of conservation of the marine and estuarine resources of
7 the State, to institute an action in the superior court to contest the claim
8 of title or claimed right of fishery in any navigable waters of the State
9 registered with the Department as provided in G.S. 113-206(d).
- 10 (6) To make reciprocal agreements with other jurisdictions respecting any
11 of the matters governed in this Subchapter as provided by G.S. 113-223.
- 12 (7) To adopt relevant provisions of federal laws and regulations as State
13 rules pursuant to G.S. 113-228.
- 14 (8) To delegate to the Fisheries Director the authority by proclamation to
15 suspend or implement, in whole or in part, a particular rule of the
16 Commission that may be affected by variable conditions as provided in
17 G.S. 113-221(e).
- 18 (9) To comment on and otherwise participate in the determination of permit
19 applications received by State agencies that may have an effect on the
20 marine and estuarine resources of the State.
- 21 (10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to
22 establish a Priority List to determine the order in which Fishery
23 Management Plans are developed, to establish a Schedule for the
24 development and adoption of each Fishery Management Plan, and to
25 establish guidance criteria as to the contents of Fishery Management
26 Plans.
- 27 (11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-
28 279.8.
- 29 (12) Except as may otherwise be provided, to make the final agency decision
30 in all contested cases involving matters within the jurisdiction of the
31 Commission.
- 32 (b) The Marine Fisheries Commission shall have the power and duty to establish
33 standards and adopt rules:
- 34 (1) To implement the provisions of Subchapter IV of Chapter 113 as
35 provided in G.S. 113-134.
- 36 (2) To manage the disposition of confiscated property as set forth in G.S.
37 113-137.
- 38 (3) To govern all license requirements and taxes prescribed in Article 14 of
39 Chapter 113 of the General Statutes.
- 40 (4) To regulate the importation and exportation of fish and equipment that
41 may be used in taking or processing fish as necessary to enhance the
42 conservation of marine and estuarine resources of the State, as provided
43 in G.S. 113-160.

- 1 (5) To regulate the possession, transportation, and disposition of seafood, as
2 provided in G.S. 113-164.
- 3 (6) To regulate the disposition of the young of edible fish, as provided by
4 G.S. 113-185.
- 5 (7) To manage the leasing of public grounds for mariculture, including
6 oysters and clam production, as provided in G.S. 113-202.
- 7 (8) To govern the utilization of private fisheries, as provided in G.S. 113-
8 205.
- 9 (9) To impose further restrictions upon the throwing of fish offal in any
10 coastal fishing waters, as provided in G.S. 113-265.
- 11 (10) To regulate the location and utilization of artificial reefs in coastal
12 waters.
- 13 (11) To regulate the placement of nets and other sports or commercial fishing
14 apparatus in coastal fishing waters with regard to navigational or
15 recreational safety as well as from a conservation standpoint.

16 (c) The Commission is authorized to authorize, license, prohibit, prescribe, or
17 restrict:

- 18 (1) The opening and closing of coastal fishing waters, except as to inland
19 game fish, whether entirely or only as to the taking of particular classes
20 of fish, use of particular equipment, or as to other activities.
- 21 (2) The possession, cultivation, transportation, importation, exportation,
22 sale, purchase, acquisition, and disposition of all marine and estuarine
23 resources and all related equipment, implements, vessels, and
24 conveyances as necessary to carry out its duties.

25 (d) The Commission may adopt rules required by the federal government for
26 grants-in-aid for coastal resource purposes that may be made available to the State by the
27 federal government. This section is to be liberally construed in order that the State and
28 its citizens may benefit from federal grants-in-aid.

29 (e) The Commission may adopt rules to implement or comply with a fisheries
30 management plan adopted by the Atlantic States Marine Fisheries Commission or an
31 interstate fisheries management council. Notwithstanding G.S. 150B-21.1(a), the
32 Commission may adopt temporary rules under this subsection at any time within six
33 months of the adoption of a fisheries management plan by the Atlantic States Marine
34 Fisheries Council or an interstate fisheries management council.

35 (f) The Commission shall adopt rules as provided in this Chapter. All rules
36 adopted by the Commission shall be enforced by the Department of Environment, Health,
37 and Natural Resources.

38 (g) As a quasi-judicial agency, the Commission, in accordance with Article IV,
39 Section 3 of the Constitution of North Carolina, has those judicial powers reasonably
40 necessary to accomplish the purposes for which it was created.

41 **"§ 143B-289.23. Marine Fisheries Commission – quasi-judicial powers; procedures.**

42 (a) With respect to those matters within its jurisdiction, the Marine Fisheries
43 Commission shall exercise quasi-judicial powers in accordance with the provisions of

1 Chapter 150B of the General Statutes. This section and any rules adopted by the Marine
2 Fisheries Commission shall govern the following proceedings:

- 3 (1) Exceptions to recommended decisions in contested cases shall be filed
4 with the Secretary within 30 days of the receipt by the Secretary of the
5 official record from the Office of Administrative Hearings, unless
6 additional time is allowed by the Chair of the Commission.
- 7 (2) Oral arguments by the parties may be allowed by the Chair of the
8 Commission upon request of the parties.
- 9 (3) Deliberations of the Commission shall be conducted in its public
10 meeting unless the Commission determines that consultation with its
11 counsel should be held in a closed session pursuant to G.S. 143-318.11.

12 (b) The final agency decision in contested cases that arise from civil penalty
13 assessments shall be made by the Commission. In the evaluation of each violation, the
14 Commission shall recognize that harm to the marine and estuarine resources within its
15 jurisdiction, as described in G.S. 113-132, arising from the violation of a statute or rule
16 enacted or adopted to protect those resources may be immediately observed through
17 damaged resources or may be incremental or cumulative with no damage that can be
18 immediately observed or documented. Penalties up to the maximum authorized may be
19 based on any one or combination of the following factors:

- 20 (1) The degree and extent of harm to the marine and estuarine resources
21 within the jurisdiction of the Commission, as described in G.S. 113-132;
22 to the public health; or to private property resulting from the violation.
- 23 (2) The frequency and gravity of the violation.
- 24 (3) The cost of rectifying the damage.
- 25 (4) Whether the violation was committed willfully or intentionally.
- 26 (5) The prior record of the violator in complying or failing to comply with
27 programs over which the Marine Fisheries Commission has regulatory
28 authority.
- 29 (6) The cost to the State of the enforcement procedures.

30 (c) The Chair shall appoint a Committee on Civil Penalty Remissions from the
31 members of the Commission. No member of the Committee on Civil Penalty Remissions
32 may hear or vote on any matter in which the member has an economic interest. The
33 Committee on Civil Penalty Remissions shall make the final agency decision on
34 remission requests. In determining whether a remission request will be approved, the
35 Committee shall consider the recommendation of the Secretary and the following factors:

- 36 (1) Whether one or more of the civil penalty assessment factors in
37 subsection (b) of this section were wrongly applied to the detriment of
38 the petitioner.
- 39 (2) Whether the violator promptly abated continuing environmental damage
40 resulting from the violation.
- 41 (3) Whether the violation was inadvertent.
- 42 (4) Whether the violator had been assessed civil penalties for any previous
43 violations.

1 (5) Whether payment of the civil penalty will prevent payment for the
2 remaining necessary remedial actions.

3 (d) The Committee on Civil Penalty Remissions may remit the entire amount of
4 the penalty only when the violator has not been assessed civil penalties for previous
5 violations and when payment of the civil penalty will prevent payment for the remaining
6 necessary remedial actions.

7 (e) If any civil penalty has not been paid within 30 days after the final agency
8 decision or court order has been served on the violator, the Secretary of Environment,
9 Health, and Natural Resources shall request the Attorney General to institute a civil
10 action in the superior court of any county in which the violator resides or has his or its
11 principal place of business to recover the amount of the assessment.

12 (f) The Secretary may delegate his powers and duties under this section to the
13 Fisheries Director.

14 **"§ 143B-289.24. Marine Fisheries Commission – members; appointment; term;**
15 **oath; ethical standards; removal; compensation; staff.**

16 (a) Members, Selection. – The Marine Fisheries Commission shall consist of nine
17 members appointed by the Governor as follows:

18 (1) One person actively engaged in, or recently retired from, commercial
19 fishing as demonstrated by currently or recently deriving at least fifty
20 percent (50%) of annual earned income from taking and selling fishery
21 resources in coastal fishing waters of the State. The spouse of a
22 commercial fisherman who meets the criteria of this subdivision may be
23 appointed under this subdivision.

24 (2) One person actively engaged in, or recently retired from, commercial
25 fishing as demonstrated by currently or recently deriving at least fifty
26 percent (50%) of annual earned income from taking and selling fishery
27 resources in coastal fishing waters of the State. The spouse of a
28 commercial fisherman who meets the criteria of this subdivision may be
29 appointed under this subdivision.

30 (3) One person actively connected with, and experienced as, a licensed fish
31 dealer or in seafood processing or distribution as demonstrated by
32 deriving at least fifty percent (50%) of annual earned income from
33 activities involving the buying, selling, processing, or distribution of
34 seafood landed in this State. The spouse of a person qualified under this
35 subdivision may be appointed provided that the spouse is actively
36 involved in the qualifying business.

37 (4) One person actively engaged in recreational sports fishing in coastal
38 waters in this State. An appointee under this subdivision may not derive
39 more than ten percent (10%) of annual earned income from sports
40 fishing activities.

41 (5) One person actively engaged in recreational sports fishing in coastal
42 waters in this State. An appointee under this subdivision may not derive

1 more than ten percent (10%) of annual earned income from sports
2 fishing activities.

3 (6) One person actively engaged in the sports fishing industry as
4 demonstrated by deriving at least fifty percent (50%) of annual earned
5 income from selling goods or services in this State. The spouse of a
6 person qualified under this subdivision may be appointed provided that
7 the spouse is actively involved in the qualifying business.

8 (7) One person having general knowledge of and experience related to
9 subjects and persons regulated by the Commission.

10 (8) One person having general knowledge of and experience related to
11 subjects and persons regulated by the Commission.

12 (9) One person who is a fisheries scientist having special training and
13 expertise in marine and estuarine fisheries biology, ecology, population
14 dynamics, water quality, habitat protection, or similar knowledge. A
15 person appointed under this subdivision may not receive more than ten
16 percent (10%) of annual earned income from either the commercial or
17 sports fishing industries, including the processing and distribution of
18 seafood.

19 (b) Residential Qualifications. – For purposes of providing regional representation
20 on the Commission, the following three coastal regions of the State are designated: (i)
21 Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates,
22 Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and
23 Washington Counties, (ii) Central Coastal Region comprised of Beaufort, Carteret,
24 Craven, Hyde, Jones, and Pamlico Counties; and (iii) Southeast Coastal Region
25 comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender
26 Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of subsection
27 (a) of this section shall be residents of one of the coastal regions of the State. The
28 membership of the Commission shall include at least one person who is a resident of each
29 of the three coastal regions of the State.

30 (c) Additional Considerations. – In making appointments to the Commission, the
31 Governor shall provide for appropriate representation of women and minorities on the
32 Commission.

33 (d) Terms. – The term of office of members of the Commission is three years. A
34 member may be reappointed to any number of successive three-year terms. Upon the
35 expiration of a three-year term, a member shall continue to serve until a successor is
36 appointed and duly qualified as provided by G.S. 128-7. The term of members appointed
37 under subdivisions (1), (2), and (3) of subsection (a) of this section shall expire on 30
38 June of years evenly divisible by three. The term of members appointed under
39 subdivisions (4), (5), and (6) of subsection (a) of this section shall expire on 30 June of
40 years that precede by one year those years that are evenly divisible by three. The term of
41 members appointed under subdivisions (7), (8), and (9) of subsection (a) of this section
42 shall expire on 30 June of years that follow by one year those years that are evenly
43 divisible by three.

1 (e) Vacancies. – An appointment to fill a vacancy shall be for the unexpired
2 balance of the term.

3 (f) Oath of Office. – Each member of the Commission, before assuming the duties
4 of office, shall take an oath of office as provided in Chapter 11 of the General Statutes.

5 (g) Ethical Standards. –

6 (1) Disclosure statements. – Any person under consideration for
7 appointment to the Commission shall provide both a financial disclosure
8 statement and a potential bias disclosure statement to the Governor. A
9 financial disclosure statement shall include statements of the nominee's
10 financial interests in and related to State fishery resources use, licenses
11 issued by the Division of Marine Fisheries held by the nominee or any
12 business in which the nominee has a financial interest, and uses made by
13 the nominee or by any business in which the nominee has a financial
14 interest of the regulated resources. A potential bias disclosure statement
15 shall include a statement of the nominee's membership or other
16 affiliation with, including offices held, in societies, organizations, or
17 advocacy groups pertaining to the management and use of the State's
18 coastal fishery resources. Disclosure statements shall be treated as
19 public records under Chapter 132 of the General Statutes and shall be
20 updated on an annual basis.

21 (2) Voting/conflict of interest. – A member of the Commission shall not
22 vote on any issue before the Commission that would have a 'significant
23 and predictable effect' on the member's financial interest. For purposes
24 of this subdivision, 'significant and predictable effect' means there is or
25 may be a close causal link between the decision of the Commission and
26 an expected disproportionate financial benefit to the member that is
27 shared only by a minority of persons within the same industry sector or
28 gear group. A member of the Commission shall also abstain from
29 voting on any petition submitted by an advocacy group of which the
30 member is an officer or sits as a member of the advocacy group's board
31 of directors. A member of the Commission shall not use the member's
32 official position as a member of the Commission to secure any special
33 privilege or exemption of substantial value for any person. No member
34 of the Commission shall, by the member's conduct, create an appearance
35 that any person could improperly influence the member in the
36 performance of the member's official duties.

37 (3) Regular attendance. – It shall be the duty of each member of the
38 Commission to regularly attend meetings of the Commission.

39 (h) Removal. – The Governor may remove, as provided in G.S. 143-13, any
40 member of the Commission for misfeasance, malfeasance, or nonfeasance.

41 (i) Office May Be Held Concurrently With Others. – The office of member of the
42 Marine Fisheries Commission may be held concurrently with any other elected or

1 appointed office, as authorized by Article VI, Section 9, of the Constitution of North
2 Carolina.

3 (j) Compensation. – Members of the Commission who are State officers or
4 employees shall receive no per diem compensation for serving on the Commission, but
5 shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the
6 Commission who are full-time salaried public officers or employees other than State
7 officers or employees shall receive no per diem compensation for serving on the
8 Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in
9 the same manner as State officers or employees. All other Commission members shall
10 receive per diem compensation and reimbursement in accordance with the compensation
11 rate established in G.S. 93B-5.

12 (k) Staff. – All clerical and other services required by the Commission shall be
13 supplied by the Fisheries Director and the Department.

14 (l) Legal Services. – The Attorney General shall: (i) act as attorney for the
15 Commission; (ii) at the request of the Commission, initiate actions in the name of the
16 Commission; and (iii) represent the Commission in any appeal or other review of any
17 order of the Commission.

18 **"§ 143B-289.25. Marine Fisheries Commission – officers; organization; seal.**

19 (a) The Governor shall appoint a member of the Commission to serve as Chair.
20 The Chair shall serve at the pleasure of the Governor. The Commission shall elect one of
21 its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year term
22 beginning 1 July and ending 30 June of the following year. The Vice-Chair may serve
23 any number of consecutive terms.

24 (b) The Chair shall guide and coordinate the activities of the Commission in
25 fulfilling its duties as set out in this Article. The Chair shall report to and advise the
26 Governor and the Secretary on the activities of the Commission, on marine and estuarine
27 conservation matters, and on all marine fisheries matters.

28 (c) The Commission shall determine its organization and procedure in accordance
29 with the provisions of this Article. The provisions of the most recent edition of Robert's
30 Rules of Order shall govern any procedural matter for which no other provision has been
31 made.

32 (d) The Commission may adopt a common seal and may alter it as necessary.

33 **"§ 143B-289.26. Marine Fisheries Commission – meetings; quorum.**

34 (a) The Commission shall meet at least once each calendar quarter and may hold
35 additional meetings at any time and place within the State at the call of the Chair or upon
36 the written request of at least four members. At least three of the four quarterly meetings
37 of the Commission shall be held in one of the coastal regions designated in G.S. 143B-
38 289.24.

39 (b) Five members of the Commission shall constitute a quorum for the transaction
40 of business.

41 **"§ 143B-289.27. Marine Fisheries Commission Advisory Committees established;**
42 **members; selection; duties.**

1 (a) The Commission shall be assisted in the performance of its duties by four
2 standing advisory committees and four regional advisory committees. Each standing and
3 regional advisory committee shall consist of no more than 11 members. The Chair of the
4 Commission shall designate one member of each advisory committee to serve as Chair of
5 the committee. Members shall serve staggered three-year terms as determined by the
6 Commission. The Commission shall establish other policies and procedures for standing
7 and regional advisory committees that are consistent with those governing the
8 Commission as set out in this Part.

9 (b) The Chair of the Commission shall appoint the following standing advisory
10 committees:

11 (1) The Finfish Committee, which shall consider matters concerning finfish.

12 (2) The Crustacean Committee, which shall consider matters concerning
13 shrimp and crabs.

14 (3) The Shellfish Committee, which shall consider matters concerning
15 oysters, clams, scallops, and other molluscan shellfish.

16 (4) The Habitat and Water Quality Committee, which shall consider matters
17 concerning habitat and water quality that may affect coastal fisheries
18 resources.

19 (c) Each standing advisory committee shall be composed of commercial and
20 recreational fishermen, scientists, and other persons who have expertise in the matters to
21 be considered by the advisory committee to which they are appointed. In making
22 appointments to advisory committees, the Chair of the Commission shall ensure that both
23 commercial and recreational fishing interests are fairly represented and shall consider for
24 appointment persons who are recommended by groups representing commercial fishing
25 interests, recreational fishing interests, environmental protection and conservation
26 interests, and other groups interested in coastal fisheries management.

27 (d) Each standing advisory committee shall review all matters referred to the
28 committee by the Commission and shall make findings and recommendations on these
29 matters. A standing advisory committee may, on its own motion, make findings and
30 recommendations as to any matter related to its subject area. The Commission, in the
31 performance of its duties, shall consider all findings and recommendations submitted by
32 standing advisory committees.

33 (e) The Chair of the Commission shall appoint a regional advisory committee for
34 each of the three coastal regions designated in G.S. 143B-289.24(b) and shall appoint a
35 regional advisory committee for that part of the State that is not included in the three
36 coastal regions. In making appointments to regional advisory committees, the Chair of
37 the Commission shall ensure that both commercial and recreational fishing interests are
38 fairly represented.

39 **"§ 143B-289.28. Marine Fisheries Endowment Fund.**

40 (a) Recognizing the inestimable importance to the State and its people of
41 conserving the marine and estuarine resources of the State, and for the purpose of
42 providing the opportunity for citizens and residents of the State to invest in the future of
43 its marine and estuarine resources, there is created the North Carolina Marine Fisheries

1 Endowment Fund, the income and principal of which shall be used only for the purpose
2 of supporting marine and estuarine resource conservation programs of the State in
3 accordance with this section.

4 (b) There is created the Board of Trustees of the Marine Fisheries Endowment
5 Fund of the Marine Fisheries Commission, with full authority over the administration of
6 the Marine Fisheries Endowment Fund, whose ex officio Chair, Vice-Chair, and
7 members shall be the Chair, Vice-Chair, and members of the Marine Fisheries
8 Commission. The State Treasurer shall be the custodian of the Marine Fisheries
9 Endowment Fund and shall invest its assets in accordance with the provisions of G.S.
10 147-69.2 and G.S. 147-69.3.

11 (c) The assets of the Marine Fisheries Endowment Fund shall be derived from the
12 following:

13 (1) The proceeds of any gifts, grants, and contributions to the State that are
14 specifically designated for inclusion in the Fund.

15 (2) Any other sources specified by law.

16 (d) The Marine Fisheries Endowment Fund is declared to constitute a special trust
17 derived from a contractual relationship between the State and the members of the public
18 whose investments contribute to the Fund. In recognition of this special trust, the
19 following limitations and restrictions are placed on expenditures from the Fund:

20 (1) Any limitations or restrictions specified by the donors on the uses of the
21 income derived from the gifts, grants, and voluntary contributions shall
22 be respected but shall not be binding.

23 (2) No expenditure or disbursement shall be made from the principal of the
24 Marine Fisheries Endowment Fund except as otherwise provided by
25 law.

26 (3) The income received and accruing from the investments of the Marine
27 Fisheries Endowment Fund must be spent only to further the
28 conservation of marine and estuarine resources.

29 (e) The Board of Trustees of the Marine Fisheries Endowment Fund may
30 accumulate the investment income of the Fund until the income, in the sole judgment of
31 the trustees, can provide a significant supplement to the budget for the conservation and
32 management of marine and estuarine resources. After that time the trustees, in their sole
33 discretion and authority, may direct expenditures from the income of the Fund for the
34 purposes set out in subdivision (3) of subsection (d) above.

35 (f) Expenditure of the income derived from the Marine Fisheries Endowment
36 Fund shall be made through the State budget accounts of the Marine Fisheries
37 Commission in accordance with the provisions of the Executive Budget Act. The Marine
38 Fisheries Endowment Fund is subject to the oversight of the State Auditor pursuant to
39 Article 5A of Chapter 147 of the General Statutes.

40 (g) The Marine Fisheries Endowment Fund and the income therefrom shall not
41 take the place of State appropriations, but any portion of the income of the Marine
42 Fisheries Endowment Fund available for the purpose set out in subdivision (3) of
43 subsection (d) above shall be used to supplement other income of and appropriations for

1 the conservation and management of marine and estuarine resources to the end that the
2 Commission may improve and increase its services and become more useful to a greater
3 number of people.

4 **"§ 143B-289.29. Conservation Fund; Commission may accept gifts.**

5 (a) The Marine Fisheries Commission may accept gifts, donations, or
6 contributions from any sources. These funds shall be held in a separate account and used
7 solely for the purposes of marine and estuarine conservation and management. These
8 funds shall be administered by the Marine Fisheries Commission and shall be used for
9 marine and estuarine resources management, including education about the importance of
10 conservation, in a manner consistent with marine and estuarine conservation management
11 principles.

12 (b) The Marine Fisheries Commission is hereby authorized to issue and sell
13 appropriate emblems by which to identify recipients thereof as contributors to a special
14 marine and estuarine resources Conservation Fund that shall be made available to the
15 Marine Fisheries Commission for conservation, protection, enhancement, preservation,
16 and perpetuation of marine and estuarine species that may be endangered or threatened
17 with extinction and for education about these issues. The special Conservation Fund is
18 subject to oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the
19 General Statutes. Emblems of different sizes, shapes, types, or designs may be used to
20 recognize contributions in different amounts, but no emblem shall be issued for a
21 contribution amounting in value to less than five dollars (\$5.00).

22 **"§ 143B-289.30. Article subject to Chapter 113.**

23 Nothing in this Article shall be construed to affect the jurisdictional division between
24 the Marine Fisheries Commission and the Wildlife Resources Commission contained in
25 Subchapter IV of Chapter 113 of the General Statutes or in any way to alter or abridge
26 the powers and duties of the two agencies conferred in that Subchapter.

27 **"§ 143B-289.31. Jurisdictional questions.**

28 In the event of any question arising between the Wildlife Resources Commission and
29 the Marine Fisheries Commission or between the Department of Environment, Health,
30 and Natural Resources and the Marine Fisheries Commission as to any duty,
31 responsibility, or authority imposed upon any of these bodies by law or with respect to
32 conflict involving rules or administrative practices, the question or conflict shall be
33 resolved by the Governor, whose decision shall be binding."

34 Section 2.2. G.S. 143B-289.22(b), as enacted by Section 2.1 of this act, reads
35 as rewritten:

36 "(b) The Marine Fisheries Commission shall have the power and duty to establish
37 standards and adopt rules:

- 38 (1) To implement the provisions of Subchapter IV of Chapter 113 as
39 provided in G.S. 113-134.
- 40 (2) To manage the disposition of confiscated property as set forth in G.S.
41 113-137.
- 42 (3) To govern all license requirements and taxes prescribed in Article 14
43 14A of Chapter 113 of the General Statutes.

- 1 (4) To regulate the importation and exportation of fish, and equipment that
2 may be used in taking or processing fish, as necessary to enhance the
3 conservation of marine and estuarine resources of the State as provided
4 in G.S. ~~113-160~~. 113-170.
- 5 (5) To regulate the possession, transportation, and disposition of seafood, as
6 provided in G.S. ~~113-164~~. 113-170.4.
- 7 (6) To regulate the disposition of the young of edible fish, as provided by
8 G.S. 113-185.
- 9 (7) To manage the leasing of public grounds for mariculture, including
10 oysters and clam production, as provided in G.S. 113-202.
- 11 (8) To govern the utilization of private fisheries, as provided in G.S. 113-
12 205.
- 13 (9) To impose further restrictions upon the throwing of fish offal in any
14 coastal fishing waters, as provided in G.S. 113-265.
- 15 (10) To regulate the location and utilization of artificial reefs in coastal
16 waters.
- 17 (11) To regulate the placement of nets and other sports or commercial fishing
18 apparatus in coastal fishing waters with regard to navigational or
19 recreational safety as well as from a conservation standpoint.
20

21 **PART III. COASTAL HABITAT PROTECTION PLANS;**
22 **FISHERY MANAGEMENT PLANS**
23

24 Section 3.1. Article 7 of Chapter 143B of the General Statutes is amended by
25 adding a new section to read:

26 **"§ 143B-279.8. Coastal Habitat Protection Plans.**

27 (a) The Department shall coordinate the preparation of draft Coastal Habitat
28 Protection Plans for critical fisheries habitats. The goal of the Plans shall be the long-
29 term enhancement of coastal fisheries associated with each coastal habitat identified in
30 subdivision (1) of this subsection. The Department shall use the staff of those divisions
31 within the Department that have jurisdiction over marine fisheries, water quality, and
32 coastal area management in the preparation of the Coastal Habitat Protection Plans and
33 shall request assistance from other federal and State agencies as necessary. The plans
34 shall:

- 35 (1) Describe and classify biological systems in the habitats, including
36 wetlands, fish spawning grounds, estuarine or aquatic endangered or
37 threatened species, primary or secondary nursery areas, shellfish beds,
38 submerged aquatic vegetation (SAV) beds, and habitats in outstanding
39 resource waters.
- 40 (2) Evaluate the function, value to coastal fisheries, status, and trends of the
41 habitats.
- 42 (3) Identify existing and potential threats to the habitats and the impact on
43 coastal fishing.

1 (4) Recommend actions to protect and restore the habitats.

2 (b) Once a draft Coastal Habitat Protection Plan has been prepared, the chairs of
3 the Coastal Resources Commission, the Environmental Management Commission, and
4 the Marine Fisheries Commission shall each appoint two members of the commission he
5 or she chairs to a six-member review committee. The six-member review committee, in
6 consultation with the Department, shall review the draft Plan and may revise the draft
7 Plan on a consensus basis. The draft Plan, as revised by the six-member review
8 committee, shall then be submitted to the Coastal Resources Commission, the
9 Environmental Management Commission, and the Marine Fisheries Commission, each of
10 which shall independently consider the Plan for adoption. If any of the three
11 commissions is unable to agree to any aspect of a Plan, the chair of each commission
12 shall refer that aspect of the Plan to a six-member conference committee to facilitate the
13 resolution of any differences. The six-member conference committee shall be appointed
14 in the same manner as a six-member review committee and may include members of the
15 six-member review committee that reviewed the Plan. Each final Coastal Habitat
16 Protection Plan shall consist of those provisions adopted by all three commissions. The
17 three commissions shall review and revise each Coastal Habitat Protection Plan at least
18 once every five years.

19 (c) In carrying out their powers and duties, the Coastal Resources Commission,
20 the Environmental Management Commission, and the Marine Fisheries Commission
21 shall ensure, to the maximum extent practicable, that their actions are consistent with the
22 Coastal Habitat Protection Plans as adopted by the three commissions. The obligation to
23 act in a manner consistent with a Coastal Habitat Protection Plan is prospective only and
24 does not oblige any commission to modify any rule adopted, permit decision made, or
25 other action taken prior to the adoption or revision of the Coastal Habitat Protection Plan
26 by the three commissions. The Coastal Resources Commission, the Environmental
27 Management Commission, and the Marine Fisheries Commission shall adopt rules to
28 implement Coastal Habitat Protection Plans in accordance with Chapter 150B of the
29 General Statutes.

30 (d) If any of the three commissions concludes that another commission has taken
31 an action that is inconsistent with a Coastal Habitat Protection Plan, that commission may
32 request a written explanation of the action from the other commission. A commission
33 shall provide a written explanation: (i) upon the written request of one of the other two
34 commissions, or (ii) upon its own motion if the commission determines that it must take
35 an action that is inconsistent with a Coastal Habitat Protection Plan.

36 (e) The Coastal Resources Commission, the Environmental Management
37 Commission, and the Marine Fisheries Commission shall report to the Joint Legislative
38 Commission on Seafood and Aquaculture and the Environmental Review Commission on
39 progress in developing and implementing the Coastal Habitat Protection Plans, including
40 the extent to which the actions of the three commissions are consistent with the Plans, on
41 or before 1 September of each year.

42 (f) The Secretary of Environment, Health, and Natural Resources shall report to
43 the Environmental Review Commission and the Joint Legislative Commission on

1 Seafood and Aquaculture within 30 days of the completion or substantial revision of each
2 draft Coastal Habitat Protection Plan. The Environmental Review Commission and the
3 Joint Legislative Commission on Seafood and Aquaculture shall concurrently review
4 each draft Coastal Habitat Protection Plan within 30 days of the date the draft Plan is
5 submitted by the Secretary. The Environmental Review Commission and the Joint
6 Legislative Commission on Seafood and Aquaculture may submit comments and
7 recommendations on the draft Plan to the Secretary within 30 days of the date the draft
8 Plan is submitted by the Secretary."

9 Section 3.2. G.S. 143B-282(a)(1) is amended by adding a new sub-subdivision
10 to read:

11 "v. To approve Coastal Habitat Protection Plans as provided in G.S.
12 143B-279.8."

13 Section 3.3. Part 1 of Article 7 of Chapter 113A of the General Statutes is
14 amended by adding a new section to read:

15 "**§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.**

16 The Commission shall approve Coastal Habitat Protection Plans as provided in G.S.
17 143B-279.8."

18 Section 3.4. Article 15 of Chapter 113 of the General Statutes is amended by
19 adding a new section to read:

20 "**§ 113-182.1. Fishery Management Plans.**

21 (a) The Department shall prepare proposed Fishery Management Plans for
22 adoption by the Marine Fisheries Commission for all commercially or recreationally
23 significant species or fisheries that comprise State marine or estuarine resources.
24 Proposed Fishery Management Plans shall be developed in accordance with the Priority
25 List, Schedule, and guidance criteria established by the Marine Fisheries Commission
26 under G.S. 143B-289.22.

27 (b) The goal of the plans shall be to ensure the long-term viability of the State's
28 commercially and recreationally significant species or fisheries. Each plan shall be
29 designed to reflect fishing practices so that one plan may apply to a specific fishery,
30 while other plans may be based on gear or geographic areas. Each plan shall:

31 (1) Contain necessary information pertaining to the fishery or fisheries,
32 including management goals and objectives, status of relevant fish
33 stocks, stock assessments for multiyear species, fishery habitat and
34 water quality considerations consistent with Coastal Habitat Protection
35 Plans adopted pursuant to G.S. 143B-279.8, social and economic impact
36 of the fishery to the State, and user conflicts.

37 (2) Recommend management actions pertaining to the fishery or fisheries.

38 (3) Include conservation and management measures that prevent
39 overfishing, while achieving, on a continuing basis, the optimal yield
40 from each fishery.

41 (c) To assist in the development of each Fishery Management Plan, the Chair of
42 the Marine Fisheries Commission shall appoint an Advisory Council. Each Advisory
43 Council shall be composed of commercial fishermen, recreational fishermen, and

1 scientists, all with expertise in the fishery for which the Fishery Management Plan is
2 being developed.

3 (d) Each Fishery Management Plan shall be revised at least once every three years.
4 The Marine Fisheries Commission may revise the Priority List and guidance criteria
5 whenever it determines that a revision of the Priority List or guidance criteria will
6 facilitate or improve the development of Fishery Management Plans or is necessary to
7 restore, conserve, or protect the marine and estuarine resources of the State. The Marine
8 Fisheries Commission may not revise the Schedule for the development of a Fisheries
9 Management Plan, once adopted, without the approval of the Secretary of Environment,
10 Health, and Natural Resources.

11 (e) The Secretary of Environment, Health, and Natural Resources shall monitor
12 progress in the development and adoption of Fishery Management Plans in relation to the
13 Schedule for development and adoption of the plans established by the Marine Fisheries
14 Commission. The Secretary of Environment, Health, and Natural Resources shall report
15 to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental
16 Review Commission on progress in developing and implementing the Fishery
17 Management Plans on or before 1 September of each year. The Secretary of
18 Environment, Health, and Natural Resources shall report to the Joint Legislative
19 Commission on Seafood and Aquaculture and the Environmental Review Commission
20 within 30 days of the completion or substantial revision of each proposed Fishery
21 Management Plan. The Joint Legislative Commission on Seafood and Aquaculture and
22 the Environmental Review Commission shall concurrently review each proposed Fishery
23 Management Plan within 30 days of the date the proposed Plan is submitted by the
24 Secretary. The Joint Legislative Commission on Seafood and Aquaculture and the
25 Environmental Review Commission may submit comments and recommendations on the
26 proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted
27 by the Secretary.

28 (f) The Marine Fisheries Commission shall adopt rules to implement Fishery
29 Management Plans in accordance with Chapter 150B of the General Statutes."

30 Section 3.5. G.S. 113-129 is amended by adding two new subdivisions to read:

31 "(12a) Optimal yield. – The amount of fish that:

- 32 a. Will provide the greatest overall benefit to the State, particularly
33 with respect to food production and recreational opportunities,
34 and taking into account the protection of marine ecosystems;
35 b. Is prescribed on the basis of the maximum sustainable yield from
36 the fishery, as reduced by any relevant economic, social, or
37 ecological factor; and
38 c. In the case of an overfished fishery, provides for rebuilding to a
39 level consistent with producing the maximum sustainable yield in
40 the fishery.

41 (12b) Overfishing or overfished. – A rate or level of fishing mortality that
42 jeopardizes the capacity of a fishery to produce the maximum
43 sustainable yield on a continuing basis."

1
2 **PART IV. MARINE FISHERIES LAW ENFORCEMENT**
3

4 Section 4.1. G.S. 113-187 reads as rewritten:

5 **"§ 113-187. Penalties for violations of Subchapter and rules.**

6 (a) Any person who participates in a commercial fishing operation conducted
7 in violation of any provision of this Subchapter and its implementing rules or in an
8 operation in connection with which any vessel is used in violation of any provision of this
9 Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

10 (b) Any owner of a vessel who knowingly permits it to be used in violation of any
11 provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1
12 misdemeanor.

13 (c) Any person in charge of a commercial fishing operation conducted in violation
14 of any provision of this Subchapter and its implementing rules or in charge of any vessel
15 used in violation of any provision of this Subchapter and its implementing rules is guilty
16 of a ~~Class 1~~ Class A1 misdemeanor.

17 (d) Any person in charge of a commercial fishing operation conducted in violation
18 of the following provisions of this Subchapter or the following rules of the Marine
19 Fisheries Commission; and any person in charge of any vessel used in violation of the
20 following provisions of the Subchapter or the following rules, shall be guilty of a ~~Class 2~~
21 Class A1 misdemeanor. The violations of the statute or the rules for which the penalty is
22 mandatory are:

- 23 (1) Taking or attempting to take, possess, sell, or offer for sale any oysters,
24 mussels, or clams taken from areas closed by statute, rule, or
25 proclamation because of suspected pollution.
- 26 (2) Taking or attempting to take or have in possession aboard a vessel,
27 shrimp taken by the use of a trawl net, in areas not opened to shrimping,
28 pulled by a vessel not showing lights required by G.S. 75A-6 after
29 sunset and before sunrise.
- 30 (3) Using a trawl net in any coastal fishing waters closed by proclamation
31 or rule to trawl nets.
- 32 (4) Violating the provisions of a special permit or gear license issued by the
33 Department.
- 34 (5) Using or attempting to use any trawl net, long haul seine, swipe net,
35 mechanical methods for oyster or clam harvest or dredge in designated
36 primary nursery areas."

37 Section 4.2. Article 15 of Chapter 113 of the General Statutes is amended by
38 adding a new section to read:

39 **"§ 113-190. Unlawful sale or purchase of fish; criminal and civil penalties.**

40 (a) Any person who sells fish in violation of G.S. 113-154.1 or a rule of the
41 Marine Fisheries Commission to implement that section is guilty of a Class A1
42 misdemeanor.

1 **(b)** Any person who purchases fish in violation of G.S. 113-156 or a rule of the
2 Marine Fisheries Commission to implement that section is guilty of a Class A1
3 misdemeanor.

4 **(c)** A civil penalty of not more than ten thousand dollars (\$10,000) may be
5 assessed by the Secretary against any person who sells fish in violation of G.S. 113-154.1
6 or purchases fish in violation of G.S. 113-156.

7 **(d)** In determining the amount of the penalty, the Secretary shall consider the
8 factors set out in G.S. 143B-289.23(b). The procedures set out in G.S. 143B-289.23 shall
9 apply to civil penalty assessments that are presented to the Commission for final agency
10 decision.

11 **(e)** The Secretary shall notify any person assessed a civil penalty of the assessment
12 and the specific reasons therefor by registered or certified mail or by any means
13 authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S.
14 150B-23 within 30 days of receipt of the notice of assessment.

15 **(f)** Requests for remission of civil penalties shall be filed with the Secretary.
16 Remission requests shall not be considered unless filed within 30 days of receipt of the
17 notice of assessment. Remission requests must be accompanied by a waiver of the right
18 to a contested case hearing pursuant to Chapter 150B of the General Statutes and a
19 stipulation of the facts on which the assessment was based. Consistent with the
20 limitations in G.S. 143B-289.23(c), remission requests may be resolved by the Secretary
21 and the violator. If the Secretary and the violator are unable to resolve the request, the
22 Secretary shall deliver remission requests and his recommended action to the Committee
23 on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to
24 G.S. 143B-289.23(c).

25 **(g)** If any civil penalty has not been paid within 30 days after notice of assessment
26 has been served on the violator, the Secretary shall request the Attorney General to
27 institute a civil action in the superior court of any county in which the violator resides or
28 has his or its principal place of business to recover the amount of the assessment, unless
29 the violator contests the assessment as provided in subsection (e) of this section, or
30 requests remission of the assessment in whole or in part as provided in subsection (f) of
31 this section. If any civil penalty has not been paid within 30 days after the final agency
32 decision or court order has been served on the violator, the Secretary shall request the
33 Attorney General to institute a civil action in the superior court of any county in which
34 the violator resides or has his or its principal place of business to recover the amount of
35 the assessment. Civil actions must be filed within three years of the date the final agency
36 decision or court order was served on the violator."

37 Section 4.3. G.S. 113-221(e) reads as rewritten:

38 **"(e)** The Marine Fisheries Commission may delegate to the Fisheries Director the
39 authority to issue proclamations suspending or implementing, in whole or in part,
40 particular rules of the Commission which may be affected by variable conditions. Such
41 proclamations are to be issued by the Fisheries Director or by a person designated by the
42 Fisheries Director. All proclamations must state the hour and date upon which they
43 become effective and must be issued at least 48 hours in advance of the effective date and

1 time. In those situations in which the proclamation prohibits the taking of certain
2 fisheries resources for reasons of public health, the proclamation can be made effective
3 immediately upon issuance. Notwithstanding any other provisions of this subsection, a
4 proclamation can be issued at least 12 hours in advance of the effective date and time to
5 reopen the taking of certain fisheries resources closed for reason of public health through
6 a prior proclamation made effective immediately upon issuance. Persons violating any
7 proclamation which is made effective immediately shall not be charged with a criminal
8 offense during the time between the issuance and 48 hours after such issuance unless
9 such person had actual notice of the issuance of such proclamation. Fisheries resources
10 taken or possessed by any person in violation of any proclamation may be seized
11 regardless of whether such person had actual notice of the proclamation. A permanent
12 file of the text of all proclamations shall be maintained in the office of the Fisheries
13 Director. Certified copies of proclamations are entitled to judicial notice in any civil or
14 criminal proceeding.

15 The Fisheries Director must make every reasonable effort to give actual notice of the
16 terms of any proclamation to the persons who may be affected thereby. ~~Such~~ Reasonable
17 effort includes press releases to communications media, posting of notices at docks and
18 other places where persons affected may gather, personal communication by inspectors
19 and other agents of the Fisheries Director, and such other measures designed to reach the
20 persons who may be affected. The Fisheries Director may determine, on a case-by-case
21 basis and at the Fisheries Director's sole discretion, that a proclamation did not apply to
22 an individual licensee when an act of God occurred that prevented the licensee from
23 receiving notice of the proclamation."

24 Section 4.4. The Marine Fisheries Commission shall develop a Violation
25 Points System applicable to the fishing licenses of all persons who violate marine
26 fisheries statutes or rules. In developing this system, the Marine Fisheries Commission
27 shall consider the recommendations made in the Final Report of the Moratorium Steering
28 Committee and the suspension, revocation, and reissuance procedures under G.S. 113-
29 166. The Marine Fisheries Commission shall also develop an implementation schedule
30 for the Violation Points System. The Marine Fisheries Commission shall report to the
31 Joint Legislative Commission on Seafood and Aquaculture no later than 1 July 1999, on
32 the development of the Violation Points System and the implementation schedule.

33 Section 4.5. G.S. 113-190, as enacted by Section 4.2 of this act, reads as
34 rewritten:

35 "**§ 113-190. Unlawful sale or purchase of fish; criminal and civil penalties.**

36 (a) Any person who sells fish in violation of G.S. ~~113-154.1~~ 113-168.4 or a rule of
37 the Marine Fisheries Commission to implement that section is guilty of a Class A1
38 misdemeanor.

39 (b) Any person who purchases fish in violation of G.S. ~~113-156~~ 113-169.3 or a
40 rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1
41 misdemeanor.

1 (c) A civil penalty of not more than ten thousand dollars (\$10,000) may be
2 assessed by the Secretary against any person who sells fish in violation of G.S. ~~113-154.1~~
3 113-168.4 or purchases fish in violation of G.S. ~~113-156-113-169.3~~.

4 (d) In determining the amount of the penalty, the Secretary shall consider the
5 factors set out in G.S. 143B-289.23(b). The procedures set out in G.S. 143B-289.23 shall
6 apply to civil penalty assessments that are presented to the Commission for final agency
7 decision.

8 (e) The Secretary shall notify any person assessed a civil penalty of the assessment
9 and the specific reasons therefor by registered or certified mail or by any means
10 authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S.
11 150B-23 within 30 days of receipt of the notice of assessment.

12 (f) Requests for remission of civil penalties shall be filed with the Secretary.
13 Remission requests shall not be considered unless filed within 30 days of receipt of the
14 notice of assessment. Remission requests must be accompanied by a waiver of the right
15 to a contested case hearing pursuant to Chapter 150B of the General Statutes and a
16 stipulation of the facts on which the assessment was based. Consistent with the
17 limitations in G.S. 143B-289.23(c), remission requests may be resolved by the Secretary
18 and the violator. If the Secretary and the violator are unable to resolve the request, the
19 Secretary shall deliver remission requests and his recommended action to the Committee
20 on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to
21 G.S. 143B-289.23(c).

22 (g) If any civil penalty has not been paid within 30 days after notice of assessment
23 has been served on the violator, the Secretary shall request the Attorney General to
24 institute a civil action in the superior court of any county in which the violator resides or
25 has his or its principal place of business to recover the amount of the assessment, unless
26 the violator contests the assessment as provided in subsection (e) of this section, or
27 requests remission of the assessment in whole or in part as provided in subsection (f) of
28 this section. If any civil penalty has not been paid within 30 days after the final agency
29 decision or court order has been served on the violator, the Secretary shall request the
30 Attorney General to institute a civil action in the superior court of any county in which
31 the violator resides or has his or its principal place of business to recover the amount of
32 the assessment. Civil actions must be filed within three years of the date the final agency
33 decision or court order was served on the violator."
34

35 **PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL** 36 **PROVISIONS**

37
38 Section 5.1. Chapter 113 of the General Statutes is amended by adding a new
39 Article to read:

40 **"ARTICLE 14A.**

41 **"COASTAL AND ESTUARINE COMMERCIAL FISHING LICENSES.**

42 **"§ 113-168. Definitions.**

43 As used in this Article:

- 1 (1) 'Commercial fishing operation' means any activity preparatory to,
2 during, or subsequent to the taking of any fish, the taking of which is
3 subject to regulation by the Commission, either with the use of
4 commercial fishing equipment or gear, or by any means if the purpose
5 of the taking is to obtain fish for sale. Commercial fishing operation
6 includes taking people fishing for hire.
- 7 (2) 'Commission' means the Marine Fisheries Commission.
- 8 (3) 'Division' means the Division of Marine Fisheries in the Department of
9 Environment, Health, and Natural Resources.
- 10 (4) 'License year' means the period beginning 1 July of a year and ending
11 on 30 June of the following year.
- 12 (5) 'North Carolina resident' means a person is a resident within the
13 meaning of G.S. 113-130(4) and who filed a State income tax return as a
14 resident of the State for the previous calendar or tax year.
- 15 (6) 'RCGL' means Recreational Commercial Gear License.
- 16 (7) 'RSCFL' means Retired Standard Commercial Fishing License.
- 17 (8) 'SCFL' means Standard Commercial Fishing License.

18 **"§ 113-168.1. General provisions for commercial licenses and endorsements.**

19 (a) Duration, Fees. – All licenses and endorsements issued under this Article
20 expire on the last day of the license year. An applicant for any license shall pay the full
21 annual license fee at the time the applicant applies for the license regardless of when
22 application is made.

23 (b) Licenses Required to Engage in Commercial Fishing. – It is unlawful for any
24 person to engage in a commercial fishing operation without being licensed as required by
25 this Article. It is unlawful for anyone to command a vessel engaged in a commercial
26 fishing operation without complying with the provisions of this Article and rules adopted
27 by the Commission under this Article.

28 (c) Licenses and Endorsements Available for Inspection. – It is unlawful for any
29 person to engage in a commercial fishing operation in the State without having ready at
30 hand for inspection all valid licenses and endorsements required under this Article. To
31 comply with this subsection, a person must have either a currently valid (i) license issued
32 in the person's true name and bearing the person's current address or (ii) an assignment of
33 a SCFL authorized under this Article. A licensee or assignee shall not refuse to exhibit
34 the licenses and endorsements upon the request of an inspector or any other law
35 enforcement officer authorized to enforce federal or State laws, regulations, or rules
36 relating to marine fisheries.

37 (d) No Dual Residency. – It is unlawful for any person to hold any currently valid
38 license issued under this Article to the person as a North Carolina resident if that person
39 holds any currently valid commercial or recreational fishing license issued by another
40 state to the person as a resident of that state.

41 (e) License Format. – Licenses issued under this Article shall be issued in the
42 name of the applicant. Each license shall show the type of license and any endorsements;
43 the name, address, and date of birth of the licensee; the date on which the license is

1 issued; the date on which the license expires; and any other information that the
2 Commission or the Division determines to be necessary to accomplish the purposes of
3 this Subchapter.

4 **"§ 113-168.2. Standard Commercial Fishing License.**

5 (a) Requirement. – No person shall engage in a commercial fishing operation in
6 the coastal fishing waters without holding a Standard Commercial Fishing License issued
7 by the Division. A person who works as a member of the crew of a vessel engaged in a
8 commercial fishing operation under the direction of a person who holds a valid SCFL or
9 RSCFL is not required to hold a SCFL or RSCFL.

10 (b) Purchase; Renewal. – A person may purchase a SCFL at any office of the
11 Division. The SCFL and endorsements may be renewed by mail by forwarding a
12 completed application, including applicable fees, to the Division's Morehead City office.
13 Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL or RSCFL
14 and any endorsements if the SCFL or RSCFL has not been suspended or revoked.

15 (c) Replacement License. – A licensee may obtain a replacement license for a lost
16 or destroyed license, including all endorsements, upon receipt of a proper application in
17 the offices of the Division together with a ten-dollar (\$10.00) fee. The Division shall not
18 accept an application for a replacement license unless the Division determines that the
19 applicant's current license has not been suspended or revoked. A copy of an application
20 duly filed with the Division shall serve as the license until the replacement license has
21 been received. The Commission may provide by rule for the replacement of lost,
22 obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the
23 original license receipt or upon other evidence that the Commission deems sufficient.

24 (d) Nonresident Certification Required. – Persons obtaining licenses who are not
25 North Carolina residents shall certify that their conviction record in their state of
26 residence is such that they would not be denied a license under the standards in G.S. 113-
27 171. When a license application is denied for violations of fisheries laws, whether the
28 violations occurred in North Carolina or another jurisdiction, the license fees shall not be
29 refunded and shall be applied to the costs of processing the application.

30 (e) Fees. – The annual SCFL fee for a North Carolina resident shall be two
31 hundred dollars (\$200.00). The annual SCFL fee for a person who is not a resident of
32 North Carolina shall be eight hundred dollars (\$800.00) or the amount charged to a North
33 Carolina resident in the nonresident's state, whichever is less. In no event, however, may
34 the fee be less than two hundred dollars (\$200.00).

35 (f) Assignment. – The holder of a SCFL may assign the SCFL to any individual,
36 provided that a SCFL or RSCFL issued to the individual is not suspended or revoked. If
37 the SCFL is endorsed for one or more vessels, each vessel endorsement may be assigned,
38 independently of the SCFL, to another holder of a SCFL. An assignment of a SCFL
39 vessel endorsement shall be valid only for use by a holder or assignee of a SCFL in the
40 operation of the vessel for which the SCFL is endorsed. The assignment shall be in
41 writing on a form provided by the Division and shall include the name of the licensee, the
42 license number, any endorsements, the assignee's name and mailing address, and the
43 duration of the assignment. A notarized copy of the assignment shall be filed with the

1 Division. The assignee shall carry the assignment on the assignee's person and have the
2 assignment available for inspection at all times while using the vessel. The assignment
3 may be revoked by: (i) written notification by the assignor that the assignment has been
4 terminated; or (ii) a determination by the Division that the assignee is operating in
5 violation of the terms and conditions applicable to the assignment.

6 (g) Transfer. – A SCFL may be transferred:

7 (1) By the license holder to a member of the license holder's immediate
8 family.

9 (2) By the State to the estate of the license holder upon the death of the
10 license holder.

11 (3) By a surviving family member to whom a license was transferred
12 pursuant to subdivision (2) of this subsection to a third-party purchaser
13 of the license holder's fishing vessel upon the death of the license
14 holder.

15 (4) By the license holder to a third-party purchaser of the license holder's
16 fishing vessel upon retirement of the license holder from commercial
17 fishing.

18 (5) Under any other circumstance authorized by rule of the Commission.

19 (h) Identification as Commercial Fisherman. – The receipt of a current and valid
20 SCFL, RSCFL, or shellfish license issued by the Division shall serve as proper
21 identification of the licensee as a commercial fisherman.

22 (i) Record-Keeping Requirements. – The fish dealer shall record each transaction
23 at the time and place of landing on a form provided by the Division. The transaction
24 form shall include the information on the SCFL, RSCFL, or shellfish license, the quantity
25 of the fish, the identity of the fish dealer, and other information as the Division deems
26 necessary to accomplish the purposes of this Subchapter. The person who records the
27 transaction shall provide a completed copy of the transaction form to the Division and to
28 the other party of the transaction. The Division's copy of each transaction form shall be
29 transmitted to the Division by the fish dealer on or before the tenth day of the month
30 following the transaction.

31 **"§ 113-168.3. Retired Standard Commercial Fishing License.**

32 (a) SCFL Provisions Applicable. – Except as provided in this section, the
33 provisions set forth in G.S. 113-168.2 concerning the SCFL shall apply to the RSCFL.

34 (b) Eligibility; Fees. – Any person who is 65 years of age or older and who is
35 otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL. Proof of
36 age shall be supplied at the time the application is made. The annual fee for a RSCFL for
37 a North Carolina resident shall be one hundred dollars (\$100.00). The annual fee for a
38 RSCFL for a person who is not a resident of North Carolina shall be eight hundred
39 dollars (\$800.00) or the amount charged to a North Carolina resident in the nonresident's
40 state, whichever is less. In no event, however, shall the fee be less than one hundred
41 dollars (\$100.00).

42 (c) Transfer. – The holder of a RSCFL may transfer the RSCFL as provided in
43 G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party purchaser of

1 the RSCFL holder's fishing vessel. If the third-party purchaser is less than 65 years of
2 age, that purchaser shall pay the fee for the SCFL set forth in G.S. 113-168.2.

3 (d) Assignment. – The RSCFL shall not be assignable.

4 **"§ 113-168.4. Regulations concerning the sale of fish.**

5 (a) Except as otherwise provided in this section, it is unlawful for any person who
6 takes or lands any species of fish under the authority of the Commission from coastal
7 fishing waters by any means whatever, including mariculture operations, to sell, offer for
8 sale, barter or exchange for merchandise these fish, without holding a current and valid
9 SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid shellfish
10 license issued under G.S. 113-169.2. It is unlawful for fish dealers to buy fish unless the
11 seller presents a current and valid SCFL, RSCFL, or shellfish license at the time of the
12 transaction. Any subsequent sale of fish shall be subject to the licensing requirements of
13 fish dealers under G.S. 113-169.3.

14 (b) It is unlawful for any person licensed under this section to sell fish taken
15 outside the territorial waters of the State or to sell fish taken from coastal fishing waters
16 except to:

17 (1) Fish dealers licensed under G.S. 113-169.3; or

18 (2) The public, if the seller is also licensed as a fish dealer under G.S. 113-
19 169.3.

20 (c) A person who organizes a nonprofit recreational fishing tournament may sell
21 fish taken in connection with the tournament pursuant to a recreational fishing
22 tournament license to sell fish. A person who organizes a nonprofit recreational fishing
23 tournament may obtain a recreational fishing tournament license to sell fish upon
24 application to the Division and payment of a fee of one hundred dollars (\$100.00). A
25 recreational fishing tournament is an organized fishing competition occurring within a
26 specified time period not to exceed one week and that is not a commercial fishing
27 operation. Proceeds derived from the sale of fish may be used only for charitable
28 purposes.

29 **"§ 113-168.5. License endorsements for Standard Commercial Fishing License and**
30 **Retired Standard Commercial Fishing License.**

31 (a) A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a
32 commercial fishing operation.

33 (b) Vessel Endorsements. –

34 (1) As used in this subsection, a North Carolina vessel is a vessel that has
35 its primary situs in the State. A vessel has its primary situs in the State
36 if:

37 a. A certificate of number has been issued for the vessel under
38 Article 1 of Chapter 75A of the General Statutes;

39 b. A certificate of title has been issued for the vessel under Article 4
40 of Chapter 75A of the General Statutes; or

41 c. A certification of documentation has been issued for the vessel
42 that lists a home port in the State under 42 U.S.C. § 12101, et
43 seq., as amended.

- 1 (2) It is unlawful to use a vessel in a commercial fishing operation in the
2 coastal fishing waters of the State without a vessel endorsement of the
3 license required under this Article for that commercial fishing operation.
4 It is unlawful to use a North Carolina vessel to land or sell fish in the
5 State that are taken during a commercial fishing operation outside the
6 coastal fishing waters of the State without a vessel endorsement of the
7 license required under this Article for that commercial fishing operation.
8 No endorsement is required, however, for a vessel of any length that
9 does not have a motor if the vessel is used only in connection with
10 another vessel for which the required license has been properly
11 endorsed.
- 12 (3) The fee for a vessel endorsement shall be determined by the length of
13 the vessel and shall be in addition to the fee for a SCFL, RSCFL, or
14 shellfish license. The length of a vessel shall be determined by
15 measuring the distance between the ends of the vessel along the deck
16 and through the cabin, excluding the sheer. The fee for a vessel
17 endorsement is:
- 18 a. One dollar (\$1.00) per foot for a vessel not over 18 feet in length.
19 b. One dollar and fifty cents (\$1.50) per foot for a vessel over 18
20 feet but not over 38 feet in length.
21 c. Three dollars (\$3.00) per foot for a vessel over 38 feet but not
22 over 50 feet in length.
23 d. Six dollars (\$6.00) per foot for a vessel over 50 feet in length.
- 24 (4) A vessel endorsement may be assigned as provided in G.S. 113-
25 168.2(f).
- 26 (5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish
27 license has been endorsed transfers ownership of the vessel to a holder
28 of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be
29 transferred from the former owner's SCFL, RSCFL, or shellfish license
30 to the new owner's SCFL, RSCFL, or shellfish license upon the request
31 of the new owner. The new owner of the vessel shall notify the
32 Division of the change in ownership and request that the vessel
33 endorsement be transferred within 30 days of the date on which the
34 transfer of ownership occurred. The notification of a change in the
35 ownership of a vessel and request that the vessel endorsement be
36 transferred shall be made on a form provided by the Division and shall
37 be accompanied by satisfactory proof of the transfer of vessel
38 ownership. Transfer of vessel ownership may be proven by a notarized
39 copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a
40 vessel documentation transfer.
- 41 (c) Menhaden Endorsements. – Except as provided in G.S. 113-169, it is unlawful
42 to use a vessel to take menhaden by purse seine in the coastal fishing waters of the State,
43 to land menhaden in the State, or to sell menhaden from a vessel in the State without

1 obtaining a menhaden endorsement of a SCFL or RSCFL. The fee for a menhaden
2 endorsement shall be two dollars (\$2.00) per ton, based on gross tonnage as determined
3 by the custom house measurement for the mother ship. The menhaden endorsement shall
4 be required for the mother ship but no separate endorsement shall be required for a purse
5 boat carrying a purse seine. The application for a menhaden endorsement must state the
6 name of the person in command of the vessel. Upon a change in command of a
7 menhaden vessel, the owner must notify the Division in writing within 30 days.

8 (d) Shellfish Endorsement for North Carolina Residents. – The Division shall issue
9 a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at no charge.

10 **"§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.**

11 A person who is not a resident of North Carolina, who is not eligible for a SCFL
12 under this Article, and who only seeks to engage in menhaden fishing is eligible to
13 purchase a menhaden license for nonresidents. The fee for the menhaden license for
14 nonresidents shall be two dollars (\$2.00) per ton, gross tonnage, customhouse
15 measurements for the mother ship. The menhaden license for nonresidents shall be
16 required for the mother ship to take, land, or sell menhaden in North Carolina taken by
17 purse seine. No separate endorsement shall be required for a purse boat carrying a purse
18 seine. The application for a menhaden license for nonresidents must state the name of the
19 person in command of the vessel. Upon change in command of a menhaden vessel, the
20 owner must notify the Division within 30 days.

21 **"§ 113-169.1. Permits for gear, equipment, and other specialized activities**
22 **authorized.**

23 The Commission may adopt rules to establish permits for gear, equipment, and
24 specialized activities, including commercial fishing operations that do not involve the use
25 of a vessel and transplanting oysters or clams. The Commission shall establish a fee for
26 each permit in an amount that compensates the Division for the actual administrative
27 costs associated with the permit but that does not exceed fifty dollars (\$50.00) per permit.

28 **"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

29 (a) License or Endorsement Necessary to Take or Sell Shellfish. – It is unlawful
30 for an individual to take shellfish from the public grounds of the State by mechanical
31 means or for commercial use by any means without holding either a shellfish license or a
32 shellfish endorsement of a SCFL or RSCFL. A North Carolina resident who seeks only
33 to take and sell shellfish shall be eligible to purchase a shellfish license without holding a
34 SCFL or RSCFL. The license includes the privilege to sell shellfish to a licensed fish
35 dealer.

36 (b) Purchase; Renewal. – A person may purchase a shellfish license at any office
37 of the Division. The shellfish license and endorsements may be renewed by mail by
38 forwarding a completed application, including applicable fees, to the Division's
39 Morehead City Office. Any person who is issued a shellfish license is eligible to renew
40 the shellfish license and any endorsements if the shellfish license has not been suspended
41 or revoked.

1 (c) Fees. – Shellfish licenses shall be issued annually upon payment of a fee of
2 twenty-five dollars (\$25.00) upon proof that the license applicant is a resident of North
3 Carolina.

4 (d) License Available for Inspection. – It is unlawful for any individual to take
5 shellfish for commercial use from the public grounds of the State without having ready at
6 hand for inspection a current and valid shellfish license issued to the licensee personally
7 and bearing the licensee's correct name and address. It is unlawful for any individual
8 taking or possessing freshly taken shellfish to refuse to exhibit the individual's license
9 upon the request of an officer authorized to enforce the fishing laws.

10 (e) Vessel Endorsement Required. – A license holder under this section shall be
11 required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the
12 take or sale of shellfish. A vessel endorsement of a shellfish license does not authorize
13 the use of the vessel for any commercial fishing operation other than the taking or selling
14 of shellfish.

15 (f) Name or Address Change. – In the event of a change in name or address or
16 upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for
17 a replacement shellfish license bearing the correct name and address. Upon a showing by
18 the individual that the name or address change occurred within the past 30 days, the trial
19 court or prosecutor shall dismiss any charges brought pursuant to this subsection.

20 (g) Transfer Prohibited. – It is unlawful for an individual issued a shellfish license
21 to transfer or offer to transfer the license, either temporarily or permanently, to another. It
22 is unlawful for an individual to secure or attempt to secure a shellfish license from a
23 source not authorized by the Commission.

24 (h) Exemption. – Persons under 16 years of age are exempt from the license
25 requirements of this section if accompanied by a parent, grandparent, or guardian who is
26 in compliance with the requirements of this section or if in possession of a parent's,
27 grandparent's or guardian's shellfish license.

28 (i) Taking Shellfish Without a License for Personal Use. –

29 (1) A person may take shellfish for personal use without obtaining a license
30 under this section in quantities up to:

31 a. One bushel of oysters per day.

32 b. One-half bushel of scallops per day.

33 c. One hundred clams per day.

34 (2) Two or more persons who are using a vessel to take shellfish may take
35 shellfish for personal use without obtaining a license under this section
36 in quantities up to:

37 a. Two bushels of oysters per day.

38 b. One bushel of scallops per day.

39 c. Two hundred clams per day.

40 **"§ 113-169.3. Licenses for fish dealers.**

41 (a) Eligibility. – A fish dealer license shall be issued to a North Carolina resident
42 upon receipt of a proper application in the Morehead City Office of the Division together
43 with all license fees including the total number of dealer categories set forth in this

1 section. The license shall be issued in the name of the applicant and shall include all
2 dealer categories on the license.

3 (b) Application for License. – Applications shall not be accepted from persons
4 ineligible to hold a license issued by the Division, including any applicant whose license
5 is suspended or revoked on the date of the application. The applicant shall be provided
6 with a copy of the application marked received. The copy shall serve as the fish dealer's
7 license until the license issued by the Division is received, or the Division determines that
8 the applicant is ineligible to hold a license. Where an applicant does not have an
9 established location for transacting the fisheries business within the State, the license
10 application shall be denied unless the applicant satisfies the Secretary that his residence,
11 or some other office or address within the State, is a suitable substitute for an established
12 location and that records kept in connection with licensing, sale, and purchase
13 requirements will be available for inspection when necessary. Fish dealers' licenses are
14 issued on a fiscal year basis upon payment of a fee as set forth herein upon proof,
15 satisfactory to the Secretary, that the license applicant is a North Carolina resident.

16 (c) License Requirement. – Except as otherwise provided in this section, it is
17 unlawful for any person not licensed pursuant to this article:

18 (1) To buy fish for resale from any person involved in a commercial fishing
19 operation that takes any species of fish from coastal fishing waters. For
20 purposes of this subdivision, a retailer who purchases fish from a fish
21 dealer shall not be liable if the fish dealer has not complied with the
22 licensing requirements of this section;

23 (2) To sell fish to the public; or

24 (3) To sell to the public any species of fish under the authority of the
25 Commission taken from coastal fishing waters.

26 Any person subject to the licensing requirements of this section is a fish dealer. Any
27 person subject to the licensing requirements of this section shall obtain a separate license
28 for each physical location conducting activities required to be licensed under this section.

29 (d) Exceptions to License Requirements. – The Commission may adopt rules to
30 implement this subsection including rules to clarify the status of the listed classes of
31 exempted persons, require submission of statistical data, and require that records be kept
32 in order to establish compliance with this section. Any person not licensed pursuant to
33 this section is exempt from the licensing requirements of this section if all fish handled
34 within any particular licensing category meet one or more of the following requirements:

35 (1) The fish are sold by persons whose dealings in fish are primarily
36 educational, scientific, or official, and who have been issued a permit by
37 the Division that authorizes the educational, scientific, or official agency
38 to sell fish taken or processed in connection with research or
39 demonstration projects;

40 (2) The fish are sold by individual employees of fish dealers when
41 transacting the business of their duly licensed employer;

42 (3) The fish are shipped to a person by a dealer from without the State;

1 (4) The fish are of a kind the sale of which is regulated exclusively by the
2 Wildlife Resources Commission; or

3 (5) The fish are purchased from a licensed dealer.

4 (e) Application Fee for New Fish Dealers. – An applicant for a new fish dealer
5 license shall pay a nonrefundable application fee of fifty dollars (\$50.00) in addition to
6 the license category fees set forth in this section.

7 (f) License Category Fees. – Every fish dealer subject to licensing requirements
8 shall secure an annual license at each established location for each of the following
9 activities transacted there, upon payment of the fee set out:

10 (1) Dealing in oysters: \$50.00;

11 (2) Dealing in scallops: \$50.00;

12 (3) Dealing in clams: \$50.00;

13 (4) Dealing in hard or soft crabs: \$50.00;

14 (5) Dealing in shrimp, including bait: \$50.00;

15 (6) Dealing in finfish, including bait: \$50.00;

16 (7) Operating menhaden or other fish-dehydrating or oil-extracting
17 processing plants: \$50.00; or

18 (8) Consolidated license (all categories): \$300.00.

19 Any person subject to fish dealer licensing requirements who deals in fish not
20 included in the above categories shall secure a finfish dealer license. The Commission
21 may adopt rules implementing and clarifying the dealer categories of this subsection.
22 Bait operations shall be licensed under either the finfish or shrimp dealer license
23 categories.

24 (g) License Format. – The format of the license shall include the name of the
25 licensee, date of birth, name and physical address of each business location, expiration
26 date of the license, and any other information the Division deems necessary to
27 accomplish the purposes of this Subchapter.

28 (h) Application for Replacement License. – A replacement license shall only be
29 obtained from an office of the Division. The Division shall not accept an application for a
30 replacement license unless the Division determines that the applicant's current license has
31 not been suspended or revoked. A copy of an application duly filed with the Division
32 shall serve as the license until the replacement license has been received.

33 (i) Purchase and Sale of Fish. – It is unlawful for a fish dealer to buy fish unless
34 the seller possesses a current and valid SCFL, RSCFL, shellfish license, menhaden
35 license for nonresidents, or a special fisheries sale permit issued under G.S. 113-168.4(c),
36 and the dealer records the transaction consistent with the record-keeping requirements of
37 G.S. 113-168.2(i). It is unlawful for any person to purchase, possess, or sell fish taken
38 from coastal fishing waters in violation of this Subchapter or the rules adopted by the
39 Commission implementing this Subchapter.

40 (j) Transfer Prohibited. – Any fish dealer license issued under this section is
41 nontransferable. It is unlawful to use a fish dealer license issued to another person in the
42 sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for
43 the purpose of circumventing the requirements of this section.

"§ 113-169.4. Licensing of ocean fishing piers; fees.

(a) The owner or operator of an ocean fishing pier within the coastal fishing waters who charges the public a fee to fish in any manner from the pier shall secure a current and valid pier license from the Division. An application for a pier license shall disclose the names of all parties involved in the pier operations, including the owner of the property, owner of the pier if different, and all leasehold or other corporate arrangements, and all persons with a substantial financial interest in the pier.

(b) Within 30 days following a change of ownership of a pier, or a change as to the manager, the manager or new manager shall secure a replacement pier license from the Division. The replacement license is issued without charge.

(c) Pier licenses are issued upon payment of fifty cents (50¢) per linear foot, to the nearest foot, that the pier extends into coastal fishing waters beyond the mean high waterline. The length of the pier shall be measured to include all extensions of the pier.

(d) The manager who secures the pier license shall be the individual with the duty of executive-level supervision of pier operations.

"§ 113-169.5. Land or sell license; vessels fishing beyond territorial waters.

(a) Persons aboard vessels not having their primary situs in the State that are carrying a cargo of fish taken outside the waters of the State may land or sell their catch in the State by purchasing a land or sell license as set forth in this section with respect to the vessel in question. The Commission may by rule modify the land or sell licensing procedure in order to devise an efficient and convenient procedure for licensing out-of-state vessels to only land, or after landing to permit sale of cargo.

(b) The fee for a land or sell license for a vessel not having its primary situs in North Carolina is two hundred dollars (\$200.00), or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater. Persons aboard vessels having a primary situs in a jurisdiction that would allow North Carolina vessels without restriction to land or sell their catch, taken outside the jurisdiction, may land or sell their catch in the State without complying with this section if the persons are in possession of a valid license from their state of residence.

"§ 113-170. Exportation and importation of fish and equipment.

The Commission may adopt rules governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State. These rules may regulate, license, prohibit, or restrict importation into the State and exportation from the State of any and all species of fish that are native to coastal fishing waters or may thrive if introduced into these waters.

"§ 113-170.1. Nonresidents reciprocal agreements.

Persons who are not North Carolina residents are not entitled to obtain licenses under the provisions of this Article except as provided in this section. Residents of jurisdictions that sell commercial fishing licenses to North Carolina residents are entitled to North Carolina commercial fishing licenses under the provisions of G.S. 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the Commission so that the nonresidents are licensed to engage in North Carolina fisheries on the same or similar

1 terms that North Carolina residents can be licensed to engage in the fisheries of other
2 jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions
3 as necessary to allow nonresidents to obtain commercial fishing licenses in the State
4 subject to the foregoing provisions.

5 **"§ 113-170.2. Fraud or deception as to licenses, permits, or records.**

6 (a) It is unlawful for any person to give any false information or willfully to omit
7 giving required information to the Division or any license agent when the information is
8 material to the securing of any license or permit under this Article. It is unlawful to
9 falsify, fraudulently alter, or counterfeit any license, permit, identification, or record to
10 which this Article applies or otherwise practice any fraud or deception designed to evade
11 the provisions of this Article or reasonable administrative directives made under the
12 authority of this Article.

13 (b) A violation of this section is punishable by a fine of not less than one hundred
14 dollars (\$100.00) nor more than five hundred dollars (\$500.00).

15 **"§ 113-170.3. Record-keeping requirements.**

16 (a) The Commission may require all licensees under this Article to keep and to
17 exhibit upon the request of an authorized agent of the Department records and accounts
18 as may be necessary to the equitable and efficient administration and enforcement of this
19 Article. In addition, licensees may be required to keep additional information of a
20 statistical nature or relating to location of catch as may be needed to determine
21 conservation policy. Records and accounts required to be kept must be preserved for
22 inspection for not less than three years.

23 (b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse
24 to keep records and accounts as may be reasonably required. The Department may
25 distribute forms to licensees to aid in securing compliance with its requirements, or it
26 may inform licensees of requirements in other effective ways such as distributing
27 memoranda and sending agents of the Department to consult with licensees who have
28 been remiss. Detailed forms or descriptions of records, accounts, collection and
29 inspection procedures, and the like that reasonably implement the objectives of this
30 Article need not be embodied in rules of the Commission in order to be validly required.

31 (c) The following records collected and compiled by the Department shall not be
32 considered public records within the meaning of Chapter 132 of the General Statutes, but
33 shall be confidential and shall be used only for the equitable and efficient administration
34 and enforcement of this Article or for determining conservation policy, and shall not be
35 disclosed except when required by the order of a court of competent jurisdiction: all
36 records, accounts, and reports that licensees are required by the Commission to make,
37 keep, and exhibit pursuant to the provisions of this section, and all records, accounts, and
38 memoranda compiled by the Department from records, accounts, and reports of licensees
39 and from investigations and inspections, containing data and information concerning the
40 business and operations of licensees reflecting their assets, liabilities, inventories,
41 revenues, and profits; the number, capacity, capability, and type of fishing vessels owned
42 and operated; the type and quantity of fishing gear used; the catch of fish or other seafood
43 by species in numbers, size, weight, quality, and value; the areas in which fishing was

1 engaged in; the location of catch; the time of fishing, number of hauls, and the disposition
2 of the fish and other seafood. The Department may compile statistical information in any
3 aggregate or summary form that does not directly or indirectly disclose the identity of any
4 licensee who is a source of the information, and any compilation of statistical information
5 by the Department shall be a public record open to inspection and examination by any
6 person, and may be disseminated to the public by the Department.

7 **§ 113-170.4. Rules as to possession, transportation, and disposition of fisheries**
8 **resources.**

9 The Commission may adopt rules governing possession, transportation, and
10 disposition of fisheries resources by all persons, including those not subject to fish dealer
11 licensing requirements, in order that inspectors may adequately distinguish regulated
12 coastal fisheries resources from those not so regulated and enforce the provisions of this
13 Article equitably and efficiently. These rules may include requirements as to giving
14 notice, filing declarations, securing permits, marking packages, and the like.

15 **§ 113-170.5. Violations with respect to coastal fisheries resources.**

16 It is unlawful to take, possess, transport, process, sell, buy, or in any way deal in
17 coastal fisheries resources without conforming with the provisions of this Article or of
18 rules adopted under the authority of this Article.

19 **§ 113-171. Suspension, revocation, and reissuance of licenses.**

20 (a) Upon receipt of reliable notice that a person licensed under this Article has had
21 imposed against the person a conviction of a criminal offense within the jurisdiction of
22 the Department under the provisions of this Subchapter or of rules of the Commission
23 adopted under the authority of this Subchapter, the Secretary must suspend or revoke all
24 licenses held by the person in accordance with the terms of this section. Reliable notice
25 includes information furnished the Secretary in prosecution or other reports from
26 inspectors. As used in this section, a conviction includes a plea of guilty or nolo
27 contendere, any other termination of a criminal prosecution unfavorably to the defendant
28 after jeopardy has attached, or any substitute for criminal prosecution whereby the
29 defendant expressly or impliedly confesses the defendant's guilt. In particular, procedures
30 whereby bond forfeitures are accepted in lieu of proceeding to trial and cases indefinitely
31 continued upon arrest of judgment or prayer for judgment continued are deemed
32 convictions. The Secretary may act to suspend or revoke licenses upon the basis of any
33 conviction in which:

- 34 (1) No notice of appeal has been given;
35 (2) The time for appeal has expired without an appeal having been
36 perfected; or
37 (3) The conviction is sustained on appeal. Where there is a new trial,
38 finality of any subsequent conviction will be determined in the manner
39 set out above.

40 (b) The Secretary must initiate an administrative procedure designed to give the
41 Secretary systematic notice of all convictions of criminal offenses by licensees covered
42 by subsection (a) of this section above and keep a file of all convictions reported. Upon
43 receipt of notice of conviction, the Secretary must determine whether it is a first, a

1 second, a third, or a fourth or subsequent conviction of some offense covered by
2 subsection (a). In the case of second convictions, the Secretary must suspend all licenses
3 issued to the licensee for a period of 10 days. In the case of third convictions, the
4 Secretary must suspend all licenses issued to the licensee for a period of 30 days. In the
5 case of fourth or subsequent convictions, the Secretary must revoke all licenses issued to
6 the licensee. Where several convictions result from a single transaction or occurrence,
7 they are to be treated as a single conviction so far as suspension or revocation of the
8 licenses of any licensee is concerned. Anyone convicted of taking or of knowingly
9 possessing, transporting, buying, selling, or offering to buy or sell oysters or clams from
10 areas closed because of suspected pollution will be deemed by the Secretary to have been
11 convicted of two separate offenses on different occasions for license suspension or
12 revocation purposes.

13 (c) Where a license has been suspended or revoked, the former licensee is not
14 eligible to apply for reissuance of license or for any additional license authorized in this
15 Article during the suspension or revocation period. Licenses must be returned to the
16 licensee by the Secretary or the Secretary's agents at the end of a period of suspension.
17 Where there has been a revocation, application for reissuance of license or for an
18 additional license may not be made until six months following the date of revocation. In
19 such case of revocation, the eligible former licensee must satisfy the Secretary that the
20 licensee will strive in the future to conduct the operations for which the license is sought
21 in accord with all applicable laws and rules. Upon the application of an eligible former
22 licensee after revocation, the Secretary, in the Secretary's discretion, may issue one
23 license sought but not another, as deemed necessary to prevent the hazard of recurring
24 violations of the law.

25 (d) Upon receiving reliable information of a licensee's conviction of a second or
26 subsequent criminal offense covered by subsection (a) of this section, the Secretary shall
27 promptly cause the licensee to be personally served with written notice of suspension or
28 revocation, as the case may be. The written notice may be served upon any responsible
29 individual affiliated with the corporation, partnership, or association where the licensee is
30 not an individual. The notice of suspension or revocation may be served by an inspector
31 or other agent of the Department, must state the ground upon which it is based, and takes
32 effect immediately upon personal service. The agent of the Secretary making service
33 shall then or subsequently, as may be feasible under the circumstances, collect all license
34 certificates and plates and other forms or records relating to the license as directed by the
35 Secretary. It is unlawful for any licensee willfully to evade the personal service
36 prescribed in this subsection.

37 (e) A licensee served with a notice of suspension or revocation may obtain an
38 administrative review of the suspension or revocation by filing a petition for a contested
39 case under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the
40 hearing shall be whether the licensee was convicted of a criminal offense for which a
41 license must be suspended or revoked. A license remains suspended or revoked pending
42 the final decision by the Secretary.

1 (f) If the Secretary refuses to reissue the license of or issue an additional license to
2 an applicant whose license was revoked, the applicant may contest the decision by filing
3 a petition for a contested case under G.S. 150B-23 within 20 days after the Secretary
4 makes the decision. The Commission shall make the final agency decision in a contested
5 case under this subsection. An applicant whose license is denied under this subsection
6 may not reapply for the same license for at least six months.

7 (g) The Commission may adopt rules to provide for the disclosure of the identity
8 of any individual or individuals in responsible positions of control respecting operations
9 of any licensee that is not an individual. For the purposes of this section, individuals in
10 responsible positions of control are deemed to be individual licensees and subject to
11 suspension and revocation requirements in regard to any applications for license they
12 may make – either as individuals or as persons in responsible positions of control in any
13 corporation, partnership, or association. In the case of individual licensees, the individual
14 applying for a license or licensed under this Article must be the real party in interest.

15 (h) In determining whether a conviction is a second or subsequent offense under
16 the provisions of this section, the Secretary may not consider convictions for:

- 17 (1) Offenses that occurred three years prior to the effective date of this
18 Article; or
19 (2) Offenses that occurred more than three years prior to the time of the
20 latest offense the conviction for which is in issue as a subsequent
21 conviction.

22 **"§ 113-171.1. Use of spotter planes in commercial fishing operations regulated.**

23 (a) Spotter Plane Defined. – A 'spotter plane' is an aircraft used for aerial
24 identification of the location of fish in coastal fishing waters so that a vessel may be
25 directed to the fish.

26 (b) License. – Before an aircraft is used as a spotter plane in a commercial fishing
27 operation, the owner or operator of the aircraft must obtain a license for the aircraft from
28 the Division. The fee for a license for a spotter plane is one hundred dollars (\$100.00).
29 An applicant for a license for a spotter plane shall include in the application the identity,
30 either by boat or by company, of the specific commercial fishing operations in which the
31 spotter plane will be used during the license year. If, during the course of the license
32 year, the aircraft is used as a spotter plane in a commercial fishing operation that is not
33 identified in the original license application, the owner or operator of the aircraft shall
34 amend the license application to add the identity of the additional commercial fishing
35 operation.

36 (c) Unlawful Activity. – It shall be unlawful to:

- 37 (1) Use a spotter plane directed at food fish, except in connection with a
38 purse seine operation authorized by a rule of the Commission.
39 (2) Use or permit the use of an unlicensed spotter plane or a licensed spotter
40 plane whose license application does not identify the specific
41 commercial fishing operation involved.
42 (3) Participate knowingly in a commercial fishing operation that uses an
43 unlicensed spotter plane or a licensed spotter plane whose license

1 application does not identify the specific commercial fishing operation
2 involved.

3 (d) Violation a Misdemeanor. – A violation of subsection (c) of this section is a
4 Class 1 misdemeanor.

5 **"§ 113-172. License agents.**

6 (a) The Secretary shall designate license agents for the Department. At least one
7 license agent shall be designated for each county that contains or borders on coastal
8 fishing waters. The Secretary may designate additional license agents in any county if
9 the Secretary determines that additional agents are needed to provide efficient service to
10 the public. The Division and license agents designated by the Secretary under this
11 section shall issue licenses authorized under this Article in accordance with this Article
12 and the rules of the Commission. The Secretary shall require license agents to enter into
13 a contract that provides for their duties and compensation, post a bond, and submit to
14 reasonable inspections and audits. If a license agent violates any provision of this
15 Article, the rules of the Commission, or the terms of the contract, the Secretary may
16 initiate proceedings for the forfeiture of the license agent's bond and may summarily
17 suspend, revoke, or refuse to renew a designation as a license agent and may impound or
18 require the return of all licenses, moneys, record books, reports, license forms and other
19 documents, ledgers, and materials pertinent or apparently pertinent to the license agency.
20 The Secretary shall report evidence or misuse of State property, including license fees, by
21 a license agent to the State Bureau of Investigation as provided by G.S. 114-15.1.

22 (b) License agents shall be compensated by adding a surcharge of one dollar
23 (\$1.00) to each license sold and retaining the surcharge. If more than one license is listed
24 on a consolidated license form, the license agent shall be compensated as if a single
25 license were sold. It is unlawful for a license agent to add more than the surcharge
26 authorized by this section to the fee for each license sold.

27 **"§ 113-173. Recreational Commercial Gear License.**

28 (a) License Required. – Except as provided in subsection (j) of this section, it is
29 unlawful for any person to take or attempt to take fish for recreational purposes by means
30 of commercial fishing equipment or gear in coastal fishing waters without holding a
31 RCGL. As used in this section, fish are taken for recreational purposes if the fish are not
32 taken for the purpose of sale. The RCGL entitles the licensee to use authorized
33 commercial gear to take fish for personal use subject to recreational quotas or limits.

34 (b) Sale of Fish Prohibited. – It is unlawful for the holder of a RCGL or for a
35 person who is exempt under subsection (k) of this section to sell fish taken under the
36 RCGL or pursuant to the exemption.

37 (c) Authorized Commercial Gear. – The Commission shall adopt rules authorizing
38 the use of a limited amount of commercial fishing equipment or gear for recreational
39 fishing under a RCGL. The Commission may authorize the limited use of commercial
40 gear on a uniform basis in all coastal fishing waters or may vary the limited use of
41 commercial gear within specified areas of the coastal fishing waters. The Commission
42 shall periodically evaluate and revise the authorized use of commercial gear for
43 recreational fishing. Authorized commercial gear shall be identified by visible colored

1 tags or other means specified by the Commission in order to distinguish between
2 commercial gear used in a commercial operation and commercial gear used for
3 recreational purposes.

4 (d) Purchase; Renewal. – A RCGL may be purchased at designated offices of the
5 Division and from a license agent authorized under G.S. 113-172. A RCGL may be
6 renewed by mail.

7 (e) Replacement RCGL. – Upon receipt of a proper application and a two-dollar
8 (\$2.00) replacement fee, the Division may issue a duplicate RCGL to replace an
9 unexpired RCGL that has been lost or destroyed.

10 (f) Duration; Fees. – The RCGL shall be valid for a one-year period from the date
11 of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars
12 (\$35.00). The fee for a RCGL for an individual who is not a North Carolina resident
13 shall be two hundred fifty dollars (\$250.00).

14 (g) RCGL Available for Inspection. – It is unlawful for any person to engage in
15 recreational fishing by means of restricted commercial gear in the State without having
16 ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to
17 exhibit the RCGL upon the request of an inspector or any other law enforcement officer
18 authorized to enforce federal or State laws, regulations, or rules relating to marine
19 fisheries.

20 (h) Assignment and Transfer Prohibited. – A RCGL is not transferable. Except as
21 provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow, assign,
22 or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or
23 otherwise transfer a RCGL.

24 (i) Reporting Requirements. – The holder of a RCGL shall comply with the
25 biological data sampling and survey programs of the Commission and the Division.

26 (j) Exemptions. –

27 (1) A person who is under 16 years of age may take fish for recreational
28 purposes by means of authorized commercial gear without holding a
29 RCGL if the person is accompanied by a parent, grandparent, or
30 guardian who holds a valid RCGL or if the person has in the person's
31 possession a valid RCGL issued to the person's parent, grandparent, or
32 guardian.

33 (2) A person may take crabs for recreational purposes by means of one or
34 more crab pots attached to the shore along privately owned land or to a
35 privately owned pier without holding a RCGL provided that the crab
36 pots are attached with the permission of the owner of the land or pier.

37 (3) A person who is on a vessel may take fish for recreational purposes by
38 means of authorized commercial gear without holding a RCGL if there
39 is another person on the vessel who holds a valid RCGL. This
40 exemption does not authorize the use of commercial gear in excess of
41 that authorized for use by the person who holds the valid RCGL or, if
42 more than one person on the vessel holds a RCGL, in excess of that
43 authorized for use by those persons."

1 Section 5.2. (a) Definitions; Citations. The definitions set out in G.S. 113-168 apply
2 to this section. A citation to a provision of the General Statutes in this section means that
3 provision of the General Statutes as enacted by this act.

4 (b) Transitional Provisions. In order to effect an orderly implementation of this
5 Part and the transition from the moratorium imposed by subsection (a) of Section 3 of
6 Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3
7 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of
8 Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of S.L. 1997-256;
9 Section 3 of S.L. 1997-347; and Section 6.1 of this act, to the licensing provision of
10 Article 14A of Chapter 113 of the General Statutes, the provisions of this section shall
11 apply to the issuance of licenses under Article 14A of Chapter 113 of the General
12 Statutes until all Fishery Management Plans have been adopted as required by G.S. 113-
13 182.1 and G.S. 143B-289.22.

14 (c) Temporary Cap. There is hereby imposed a temporary cap on the total number
15 of SCFLs that the Division may issue. The temporary cap equals the total number of
16 endorsements to sell fish that establish eligibility for a SCFL under subsection (g) of this
17 section plus 500 additional SCFLs, authorized by subsection (d) of this section.

18 (d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is
19 authorized to issue SCFLs as provided in subsection (g) of this section plus an additional
20 500 SCFLs using the procedure set out in subsection (h) of this section.

21 (e) Subsequent License Years. For license years beginning with the 2000-01
22 license year, the Commission is authorized to issue SCFLs from the pool of available
23 SCFLs as provided in subsection (f) of this section using the procedure set out in
24 subsection (h) of this section.

25 (f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of
26 available SCFLs in license years beginning with the 2000-01 license year is the
27 temporary cap less the number of SCFLs that are renewed. The Commission may
28 increase or decrease the number of SCFLs that are issued from the pool of available
29 SCFLs. The Commission may increase the number of SCFLs that are issued from the
30 pool of available SCFLs up to the temporary cap. The Commission may decrease the
31 number of SCFLs that are issued from the pool of available SCFLs but may not refuse to
32 renew a SCFL that is issued during the previous license year and that has not been
33 suspended or revoked. The Commission shall increase or decrease the number of SCFLs
34 that are issued to reflect its determination as to the effort that the fishery can support,
35 based on the best available scientific evidence.

36 (g) Eligibility for SCFL. Any person who holds a valid endorsement to sell
37 fish of a vessel license on 1 July 1999 is eligible to receive a SCFL. The Division shall
38 issue a SCFL to any person who is eligible under this subsection upon receipt of an
39 application and required fees. If the person held more than one endorsement to sell fish,
40 the person is eligible to receive a SCFL for each endorsement to sell previously held.
41 Eligibility to receive a SCFL under this subsection shall expire 1 July 2000.

42 (h) Procedure for Issuing Additional SCFLs. The Commission shall determine
43 a procedure for issuing the 500 additional SCFLs authorized by subsection (d) of this

1 section for the 1999-2000 license year and for issuing SCFLs from the pool of available
2 SCFLs authorized by subsection (e) of this section. The procedure shall set a date on
3 which the Division will begin receiving applications and a date on which the
4 determination by lot of which applicants will receive a SCFL will be made. The
5 Commission shall develop criteria for determining eligibility for a SCFL under this
6 subsection. Criteria shall include the past involvement of the applicant and the
7 applicant's family in commercial fishing; the extent to which the applicant has relied on
8 commercial fishing for the applicant's livelihood; the extent to which the applicant has
9 complied with federal and State laws, regulations, and rules relating to coastal fishing and
10 protection of the environment; and any other factors the Commission determines to be
11 relevant. The Division shall review each application for a SCFL that it receives during
12 the application period to determine whether the applicant is eligible under the eligibility
13 criteria established by the Commission. The Division shall issue SCFLs under this
14 subsection by lot. All applicants who are determined to be eligible shall have an equal
15 chance of being issued a SCFL.

16 Section 5.3. The Marine Fisheries Commission shall adopt rules authorizing
17 the use of a limited amount commercial gear for recreational fishing under a Recreational
18 Commercial Gear License, as required by G.S. 113-173, as enacted by Section 5.1 of this
19 act, on or before 1 July 1999.

20 Section 5.4. Article 14 of Chapter 113 of the General Statutes is repealed.

21 Section 5.5. The Marine Fisheries Commission shall adopt a Fishery
22 Management Plan for the blue crab fishery in accordance with G.S. 143B-289.22, as
23 enacted by Section 2.1 of this act, and G.S. 113-182.1, as enacted by Section 3.4 of this
24 act, no later than 1 January 1999.

25 Section 5.6. The Revisor of Statutes shall set out Section 5.2 of this act as a
26 note to G.S. 113-168.2, as enacted by Section 5.1 of this act.

27 Section 5.7. G.S. 113-203(a)(2) reads as rewritten:

28 "(2) When the transplanting is done by a dealer in accordance with the
29 provisions of G.S. ~~113-158~~ 113-169.1(2) and implementing rules; or".

30 Section 5.8. G.S. 113-154.1 reads as rewritten:

31 **"§ 113-154.1. Endorsement to sell fish.**

32 (a) Requirements. – Except as otherwise provided in this section, it is unlawful for
33 any person who takes or lands any species of fish under the authority of the Marine
34 Fisheries Commission from coastal fishing waters by any means whatever, including
35 aquaculture operations, to sell, offer for sale, barter or exchange for merchandise such
36 fish, without having first procured a current and valid endorsement to sell fish. It is
37 unlawful for fish dealers to buy fish unless the seller presents a current and valid vessel
38 license with an endorsement to sell, or a separate endorsement to sell if no vessel is
39 involved, at the time of the transaction. Any subsequent sale of fish shall be subject to the
40 licensing requirements of fish dealers under G.S. 113-156.

41 (b) Fees. – The annual fee for an endorsement to sell fish on a vessel license for a
42 resident of this State is set forth in G.S. 113-152(h). The annual fee for an endorsement to
43 sell fish when no vessel is involved for a resident of this State is fifteen dollars (\$15.00)

1 and for a nonresident of this State is one hundred dollars (\$100.00) or an amount equal to
2 the nonresident fee charged by the nonresident's state, whichever is greater. The license
3 shall be valid for the period July 1 through June 30 of a given year.

4 (c) Non-Vessel Endorsement Format. – The format of an endorsement when the
5 applicant is not seeking a vessel license shall include the name of the applicant, date of
6 birth, expiration date of the endorsement, and any other information the Division deems
7 necessary to accomplish the purposes of this Subchapter. The endorsement shall be
8 issued on a card made of hard plastic or metal capable of being used to make imprints of
9 the sale or transaction. An applicant who is applying for an endorsement on a vessel
10 license shall comply with G.S. 113-152.

11 (d) Application for Non-Vessel Endorsement. – An application for issuance or
12 renewal of an endorsement to sell shall be filed with the Morehead City offices of the
13 Division of Marine Fisheries or license agents authorized to sell licenses under this
14 Article. An application shall be accompanied by the fee established in subsection (b) of
15 this section. Applications shall not be accepted from persons ineligible to hold a license
16 issued by the Marine Fisheries Commission, including any applicant whose endorsement
17 is suspended or revoked on the date of the application. The applicant shall be provided
18 with a copy of the application marked received. The copy shall serve as the endorsement
19 to sell, until the endorsement issued by the Division is received or the Division
20 determines that the applicant is ineligible to hold an endorsement. In addition to the
21 information required in subsection (c) of this section, the applicant shall disclose on the
22 application a valid address, and such other information as the Division may require.

23 (e) Application for Replacement Non-Vessel Endorsement to Sell. – A
24 replacement endorsement shall only be obtained from the Morehead City offices of the
25 Division of Marine Fisheries. The Division shall not accept an application for a
26 replacement endorsement unless the Division determines that the applicant's current
27 license has not been suspended or revoked. A copy of an application duly filed with the
28 Division shall serve as the endorsement until the replacement license has been received.

29 (f) Sale of Fish. – It is unlawful for any person licensed under this section to sell
30 fish taken outside the territorial waters of North Carolina or to sell fish taken from coastal
31 fishing waters except to:

32 (1) Fish dealers licensed under G.S. 113-156; or

33 (2) The public, if the seller is also licensed as a fish dealer under G.S. 113-
34 156.

35 (g) Recordkeeping Requirements. – The fish dealer shall record each transaction
36 on a form provided by the Department. The transaction form shall include the
37 information on the endorsement to sell of the seller, the quantity of the fish, the identity
38 of the fish dealer, and such other information as the Division deems necessary to
39 accomplish the purposes of this Subchapter. The person who records the transaction shall
40 provide a completed copy of the transaction form to the Department, and to the other
41 party of the transaction. The Department copy of each transaction from the preceding
42 month shall be transmitted to the Department by the fish dealer on or before the tenth day
43 of the following month.

1 (h) Non-Vessel Endorsement to Sell Nontransferable. —~~An~~A non-vessel
2 endorsement to sell fish issued under this section is nontransferable. It is unlawful to use
3 ~~an a non-vessel~~ endorsement to sell issued to another person in the sale or attempted sale
4 of fish or for a licensee to lend or transfer a license to sell with the following two
5 exceptions: (i) an individual under the age of 16 may sell fish under the license of a
6 relative or guardian; or (ii) a license may be transferred within a single fishing operation
7 if the person to whom it is transferred is a U.S. citizen. It is unlawful for a licensee to
8 lend or transfer a license to sell for the purpose of circumventing the requirements of this
9 section.

10 (h1) Transfer of Endorsement to Sell Fish on a Vessel License; Limitation on Use
11 of Endorsement to Sell Fish on a Vessel License by Other Persons. – A valid
12 endorsement to sell fish on a vessel license may be transferred with the vessel license
13 when the vessel license is transferred by the vessel licensee to (i) another vessel
14 purchased by the vessel licensee or (ii) a vessel that is purchased by another person who
15 is otherwise qualified to hold the vessel license and endorsement under this Article.
16 Upon application to the Morehead City office of the Division of Marine Fisheries by a
17 vessel licensee who is eligible to transfer an endorsement to sell fish on a vessel license
18 under this subsection, the Division shall transfer the endorsement to sell fish on the vessel
19 license. It is unlawful to use an endorsement to sell fish on a vessel license issued to
20 another person in the sale or attempted sale of fish or for the holder of an endorsement to
21 sell fish on a vessel license to allow fish to be sold under the endorsement by any other
22 person except that a person:

23 (1) Under the age of 16 may sell fish under the endorsement to sell fish on a
24 vessel license of a relative or guardian.

25 (2) May sell fish that are taken in a fishing operation in which that person
26 and the holder of the endorsement both participated.

27 (i) **(See note)** Penalties. – Any person who violates any provision of this section
28 or any rule by the Marine Fisheries Commission to implement this section is guilty of a
29 misdemeanor.

30 (1) A violation of subsections (a), (f), or (h) or a rule of the Marine
31 Fisheries Commission implementing any of those subsections is
32 punishable as follows:

33 a. For a first conviction or a subsequent conviction not described in
34 subdivision (1)b. or c., a violation is a Class 3 misdemeanor. A
35 fine shall be imposed of not less than fifty dollars (\$50.00) or
36 double the value of the fish which are the subject of the
37 transaction, whichever is greater, not to exceed two hundred fifty
38 dollars (\$250.00).

39 b. For a second conviction within three years, a violation is a Class
40 2 misdemeanor. A fine shall be imposed of not less than two
41 hundred fifty dollars (\$250.00) or double the value of the fish
42 which are the subject of the transaction, whichever is greater, not
43 to exceed five hundred dollars (\$500.00).

1 c. For a third or subsequent conviction within three years, a
2 violation is a Class 2 misdemeanor. A fine shall be imposed of
3 not less than five hundred dollars (\$500.00) or double the value
4 of the fish which are the subject of the transaction, whichever is
5 greater.

6 (2) A violation of any other provision of this section other than subsections
7 (a), (f), or (h), or of any rule of the Marine Fisheries Commission other
8 than a rule implementing subsections (a), (f), or (h) of this section, is
9 punishable under G.S. 113-135(a).

10 (j) Use of Fees. – Fees paid under G.S. 113-152(h) or G.S. 113-154.1 for an
11 endorsement to sell fish shall be applied to the cost of a fisheries data information system
12 that compiles fisheries data obtained from the endorsement program established by G.S.
13 113-152 and this section or to marine fisheries programs or research projects that enhance
14 knowledge and use of marine and estuarine resources."

15
16 **PART VI. MORATORIUM EXTENSION; MISCELLANEOUS**
17 **PROVISIONS; EFFECTIVE DATES**
18

19 Section 6.1. Subsection (a) of Section 3 of Chapter 576 of the 1993 Session
20 Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993
21 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the
22 1995 Session Laws; Section 7 of S.L. 1997-256; and Section 3 of S.L. 1997-347, reads as
23 rewritten:

24 "(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the
25 Department shall not issue any new licenses for a period beginning 1 July 1, 1994, 1994
26 and ending August 15, 1997-1 July 1999 under the following statutes:

- 27 (1) G.S. 113-152. ~~Vessel licenses.~~ Consolidated license for vessels,
28 equipment, and operations; fees.
29 (2) G.S. 113-153.1. ~~Crab license.~~ License.
30 (3) G.S. 113-154. ~~Shellfish license.~~ license.
31 (4) G.S. 113-154.1. ~~Nonvessel endorsements to sell fish.~~ Endorsement to
32 sell fish."

33 Section 6.2. The moratorium imposed by subdivision (4) of subsection (a) of
34 Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended
35 by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection
36 (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of S.L. 1997-256;
37 Section 3 of S.L. 1997-347; and Section 6.1 of this act on nonvessel endorsements to sell
38 fish applies also to endorsements to sell fish on vessel licenses.

39 Section 6.3. (a) Part 5A of Article 7 of Chapter 143B of the General Statutes is
40 repealed, except that G.S. 143B-289.19, as amended by Section 2 of S.L. 1997-286, is not
41 repealed but is recodified as G.S. 143B-289.40 within Part 5C of Article 7 of Chapter
42 143B of the General Statutes.

1 (b) Part 5B of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-
2 289.20 through G.S. 143B-289.23), as amended by Sections 3, 4, and 5 of S.L. 1997-286,
3 is recodified as Part 5C of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-
4 289.41 through G.S. 143B-289.44). Part 5C of Article 7 of Chapter 143B of the General
5 Statutes shall be captioned "Division of North Carolina Aquariums."

6 (c) G.S. 143B-289.41(a)(1b)g., as recodified by subsection (b) of this section,
7 reads as rewritten:

8 "g. Create local advisory committees in accordance with the
9 provisions of G.S. ~~143B-289.22-143B-289.43.~~"

10 (d) G.S. 143B-289.43, as recodified by subsection (b) of this section and as
11 amended, prior to being recodified, by Section 4 of S.L. 1997-286, reads as rewritten:

12 **"§ 143B-289.43. Local advisory committees; duties; membership.**

13 Local advisory committees created pursuant to G.S. ~~143B-289.20(a)(1b)-143B-~~
14 ~~289.41(a)(1b)~~ shall assist each North Carolina Aquarium in its efforts to establish
15 projects and programs and to assure adequate citizen-consumer input into those efforts.
16 Members of these committees shall be appointed by the Secretary of Environment,
17 Health, and Natural Resources for three-year terms from nominations made by the
18 Director of the Office of Marine Affairs. Each committee shall select one of its members
19 to serve as chairperson. Members of the committees shall serve without compensation
20 for services or expenses."

21 Section 6.4. The records, personnel, property, unexpended balances of
22 appropriations, allocations, and other funds, including the functions of budgeting and
23 purchasing, heretofore vested in the Marine Fisheries Commission created under Part 5A
24 of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of this act,
25 are transferred to the Marine Fisheries Commission created under Part 5B of Article 7 of
26 Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act. All rules,
27 decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries
28 Commission created under Part 5 of Article 7 of Chapter 143B of the General Statutes,
29 repealed by Section 1 of Chapter 641 of the 1987 Session Laws, and all rules, decisions,
30 and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission
31 created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by
32 Section 6.3 of this act, that have not been heretofore repealed or rescinded shall continue
33 in effect until repealed or rescinded by the Marine Fisheries Commission created under
34 Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of
35 this act.

36 Section 6.5. In order to establish a schedule of staggered terms of three years
37 for the Marine Fisheries Commission, the terms of members of the Commission initially
38 filling positions established by subdivisions (1), (2), and (3) of subsection (a) of G.S.
39 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is
40 appointed and duly qualified and shall expire on 30 June 2001; the terms of members of
41 the Commission initially filling positions established by subdivisions (4), (5), and (6) of
42 subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on
43 the date the member is appointed and duly qualified and shall expire on 30 June 2000; the

1 terms of members of the Commission initially filling positions established by
2 subdivisions (7), (8), and (9) of subsection (a) of G.S. 143B-289.24, as enacted by
3 Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified
4 and shall expire on 30 June 1999.

5 Section 6.6. G.S. 113-182(b) reads as rewritten:

6 "(b) The Marine Fisheries Commission is authorized to authorize, regulate,
7 prohibit, prescribe, or restrict and the Department is authorized to license:

- 8 (1) The opening and closing of coastal fishing waters, except as to inland
9 game fish, whether entirely or only as to the taking of particular classes
10 of fish, use of particular equipment, or as to other activities within the
11 jurisdiction of the Department; and
12 (2) The possession, cultivation, transportation, importation, exportation,
13 sale, purchase, acquisition, and disposition of all marine and estuarine
14 resources and all related equipment, implements, vessels, and
15 conveyances as necessary to implement the work of the Department in
16 carrying out its duties.
17 (3) The possession, transportation, importation, exportation, sale, purchase,
18 acquisition, and disposition of all fish taken in the Atlantic Ocean out to
19 a distance of 200 miles from the State's mean low watermark, consistent
20 with the Magnuson Fishery Conservation and Management Act, 16
21 U.S.C. § 1801, et seq., as amended. ~~when the harvest or landing of the~~
22 ~~fish is controlled by a quota imposed on the State by a federal fisheries~~
23 ~~management plan.~~"

24 Section 6.7. G.S. 113-190, as enacted by Section 2 of Chapter 633 of the 1995
25 Session Laws (1996 Regular Session), is recodified as G.S. 113-200.

26 Section 6.8. The Revisor of Statutes shall set out Section 6.4 of this act as a
27 note to G.S. 143B-289.21, as enacted by Section 2.1 of this act.

28 Section 6.9. All of the Coastal Habitat Protection Plans required by G.S.
29 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than 1 July
30 2003. The Coastal Resources Commission, the Environmental Management
31 Commission, and the Marine Fisheries Commission shall make the first report on
32 progress in developing and implementing Coastal Habitat Protection Plans, as required by
33 G.S. 143B-279.8(e), as enacted by Section 3.1 of this act, on or before 1 September 1999.
34 The Secretary of Environment, Health, and Natural Resources shall make the first report
35 on progress in developing and implementing Fishery Management Plans, as required by
36 G.S. 113-182.1(f), as enacted by Section 3.4 of this act, on or before 1 September 1999.

37 Section 6.10. Unless otherwise expressly provided, every agency to which this
38 act applies shall adopt rules to implement the provisions of this act only in accordance
39 with the provisions of Chapter 150B of the General Statutes. This act constitutes a recent
40 act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to
41 which this act applies that is authorized to adopt rules to implement the provisions of this
42 act may adopt temporary rules to implement the provisions of this act. The Marine
43 Fisheries Commission is authorized to adopt rules, including temporary rules, to

1 implement the provisions of Section 5.1 of this act. These implementing rules may be
2 made effective no earlier than 1 April 1999. Beginning 1 April 1999, the Division of
3 Marine Fisheries may prepare forms and sell licenses based on these implementing rules
4 so as to effect an orderly implementation of Part V of this act. This section shall continue
5 in effect until all rules necessary to implement the provisions of this act have become
6 effective as either temporary rules or permanent rules.

7 Section 6.11. The Cochairs of the Joint Legislative Commission on Seafood
8 and Aquaculture shall appoint an Advisory Committee to the Commission. The Advisory
9 Committee shall be composed of persons who represent the broad range of interests
10 involved in marine fisheries issues as determined by the Cochairs. The Cochairs of the
11 Joint Legislative Commission on Seafood and Aquaculture shall designate a member or
12 members of the Commission to serve as Chair or Cochairs of the Advisory Committee.
13 The Advisory Committee shall meet as determined by the Cochairs of the Commission
14 and, under the direction of the Cohairs of the Commission, shall assist the Commission in
15 the development of recommendations on issues related to marine fisheries, including the
16 issues to be studied by the Commission pursuant to Part I of this act.

17 Section 6.12. The headings to the Parts of this act are a convenience to the
18 reader and are for reference only. The headings do not expand, limit, or define the text of
19 this act.

20 Section 6.13. If any section or provision of this act is declared unconstitutional
21 or invalid by the courts, the unconstitutional or invalid section or provision does not
22 affect the validity of this act as a whole or any part of this act other than the part declared
23 to be unconstitutional or invalid.

24 Section 6.14. Section 3 of Chapter 547 of the 1995 Session Laws, Regular
25 Session 1996, as amended by subsection (b) of Section 1 of Chapter 633 of the 1995
26 Session Laws, Regular Session 1996, and Section 27.33 of Chapter 18 of the 1996
27 Session Laws, Second Extra Session, Section 12 of S.L. 1997-256, and Section 8 of S.L.
28 1997-347, reads as rewritten:

29 "Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation
30 leases shall be imposed in the remaining area of Core Sound not described in Section 1 of
31 this act. During the moratorium, a comprehensive study of the shellfish lease program
32 shall be conducted. The moratorium established under this section covers that part of
33 Core Sound bounded by a line beginning at a point on Cedar Island at 35°00'39"N -
34 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N - 76°12'42"W,
35 thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at 34°43'30"N -
36 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at 34°37'24"N -
37 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N - 76°31'12"W,
38 thence following the shoreline in a northerly direction to the point of beginning except
39 that the highway bridges at Salters Creek, Thorofare Bay, and the Rumley Bay ditch shall
40 be considered shoreline. The moratorium shall expire ~~August 15, 1997.~~ 1 July 1998."

41 Section 6.15. Sections 1.1, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 5.5, 5.6, 5.8, 6.2, 6.7,
42 6.10, 6.11, 6.12, 6.13, and 6.15 of this act are effective when this act becomes law.
43 Sections 2.1, 4.4, 5.3, 6.3, 6.4, 6.5, 6.6, and 6.8 of this act become effective 1 September

1 1997. Sections 4.1, 4.2, and 4.3 of this act become effective 1 September 1997 and apply
2 to violations and offenses on or after 1 September 1997. Section 1.2 of this act is
3 effective retroactively as of 1 March 1997. Sections 6.1 and 6.14 of this act become
4 effective 15 August 1997. Sections 3.1, 3.2, 3.3, 3.4, 3.5, and 6.9 of this act become
5 effective 1 July 1998. Sections 2.2, 5.1, 5.2, 5.4, and 5.7 of this act become effective 1
6 July 1999. Section 4.5 of this act becomes effective 1 July 1999 and applies to violations
7 and offenses on or after 1 July 1999. Sections 5.1 and 5.2 of this act expire 1 September
8 2003.