

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 302
Committee Substitute Favorable 4/21/15

Short Title: Strengthen Oyster Industry.

(Public)

Sponsors:

Referred to:

March 19, 2015

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A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN AND PROTECT THE OYSTER INDUSTRY IN NORTH CAROLINA AND TO AMEND THE SEDIMENTATION POLLUTION CONTROL ACT TO EXEMPT ACTIVITIES TO RESTORE THE WETLANDS FUNCTION OF PRIOR CONVERTED CROPLAND.

The General Assembly of North Carolina enacts:

STUDY SHELLFISH AQUACULTURE

SECTION 1. The Division of Marine Fisheries of the Department of Environment and Natural Resources shall study North Carolina's shellfish lease and franchise program, including (i) the regulatory, statutory, and other obstacles faced by the private shellfish aquaculture industry in establishing or expanding shellfish cultivation operations; (ii) a summary of shellfish leasing and franchising programs in other states and a comparison of the private shellfish aquaculture industry in North Carolina compared to other states; (iii) the economic and logistical feasibility for public-private partnerships to engage in State-based production of viable oyster seed through the creation of one or more production hatcheries in North Carolina; and (iv) recommendations for best practices to achieve greater opportunities for North Carolina's shellfish aquaculture industry and greater program efficiencies and outcomes, including the development of a 10-year plan for the encouragement and enhancement of shellfish aquaculture. The Division shall report its findings and recommendations, along with an update on the implementation of Section 3 of this act, no later than April 1, 2016, to the Chairs of the Environmental Review Commission, the Chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the Chairs of the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division.

CIVIL PENALTY AUTHORITY FOR CERTAIN SHELLFISH OFFENSES

SECTION 2. Article 16 of the General Statutes is amended by adding a new section to read:

"§ 113-211. Civil penalties.

(a) A civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the Secretary against any person who does any of the following:

- (1) Takes or attempts to take shellfish in violation of G.S. 113-208 or who takes, destroys, or damages equipment or structures used for the cultivation of shellfish pursuant to and within the confines of a lease or franchise granted under the provisions of this Article.



1 (2) Takes or attempts to take shellfish in violation of G.S. 113-209 from areas
2 closed to harvest by statute, rule, or proclamation.

3 (3) Takes or attempts to take shellfish from an area designated as an oyster
4 sanctuary by the Division of Marine Resources of the Department.

5 (b) In determining the amount of the penalty, the Secretary shall consider the factors set
6 out in G.S. 143B-289.53(b), as well as the level of damage to the natural resources of the State,
7 and, in the case of penalties levied under subdivision (a)(1) of this section, the amount and
8 severity of physical and economic damage to the shellfish aquaculture operations of the holder
9 of the lease or franchise. The procedures set out in G.S. 143B-289.53 shall apply to civil
10 penalty assessments that are presented to the Commission for final agency decision.

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

15 (d) Requests for remission of civil penalties shall be filed with the Secretary. Remission
16 requests shall not be considered unless filed within 30 days of receipt of the notice of
17 assessment. Remission requests must be accompanied by a waiver of the right to a contested
18 case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on
19 which the assessment was based. Consistent with the limitations in G.S. 143B-289.53(c),
20 remission requests may be resolved by the Secretary and the violator. If the Secretary and the
21 violator are unable to resolve the request, the Secretary shall deliver remission requests and the
22 Secretary's recommended action to the Committee on Civil Penalty Remissions of the Marine
23 Fisheries Commission appointed pursuant to G.S. 143B-289.53(c).

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

35
36 **AMEND SENATOR JEAN PRESTON MARINE SHELLFISH SANCTUARY**
37 **LEGISLATION**

38 **SECTION 3.** Section 44 of S.L. 2014-120 reads as rewritten:

39 **"SENATOR JEAN PRESTON MARINE ~~SHELLFISH~~ OYSTER SANCTUARY**
40 **PROGRAM**

41 **"SECTION 44.(a)** ~~It is the intent of the General Assembly to establish a marine shellfish~~
42 ~~sanctuary in the Pamlico Sound to be named in honor of former Senator Jean Preston, to be~~
43 ~~called the "Senator Jean Preston Marine Shellfish Sanctuary."to enhance shellfish habitat~~
44 ~~within the Albemarle and Pamlico Sounds and their tributaries to benefit fisheries, water~~
45 ~~quality, and the economy. This will be achieved through the establishment of a network of~~
46 ~~oyster sanctuaries, harvestable enhancement sites, and coordinated support for the development~~
47 ~~of shellfish aquaculture. The network of oyster sanctuaries is to be named in honor of~~
48 ~~Senator Jean Preston and will be called the "Senator Jean Preston Oyster Sanctuary~~
49 ~~Network."~~

50 **"SECTION 44.(b)** ~~The Division of Marine Fisheries of the Department of Environment~~
51 ~~and Natural Resources shall designate an area of appropriate acreage within the Pamlico Sound~~

1 as a recommendation to the Environmental Review Commission for establishment of the
2 "~~Senator Jean Preston Marine Shellfish Sanctuary~~" and create a plan for managing the
3 sanctuary that includes develop a plan to construct and manage additional oyster habitat. The
4 new sanctuaries, along with selected existing oyster sanctuaries, will be included in the Senator
5 Jean Preston Oyster Sanctuary Network. The plan will include the following components:

- 6 (1) Location and delineation of the sanctuary.—oyster sanctuaries. — The plan
7 should include a location~~locations~~ for the sanctuary~~sanctuary network~~
8 components that minimizes minimize the impact on commercial trawling. ~~In~~
9 addition, the sanctuary should be gridded into areas leased to private parties
10 for restoration and harvest and areas operated and maintained by the State
11 for restoration that are not open for harvest. The leased and unleased areas
12 should be arranged in a pattern where leased squares are surrounded on four
13 sides by unleased squares.The location of sanctuaries shall take into account
14 connectivity to existing oyster sanctuaries and proposed oyster enhancement
15 sites. New oyster sanctuaries shall be designed to provide hook-and-line
16 fishing while allowing the development of complex fish habitat and
17 brood-stock oysters that will enhance recruitment in the surrounding reefs.
18 The plan should outline a 10-year development project to accomplish the
19 expansion.
- 20 (2) Administration.— The plan should include the prices to be charged for the
21 leased portions of the sanctuary, including an administration fee to be
22 retained by the Division to support the leasing and monitoring program. The
23 plan shall also provide that the balance of lease payments collected by the
24 Division be transferred to the General Fund with a recommendation that
25 some or all of the proceeds be used for the support of the State's special
26 education programs in memory of Senator Jean Preston.
- 27 (3) Enhancement of oyster habitat restoration. — The General Assembly finds
28 that the lack of a reliable State-based supply of oyster seed and inadequate
29 funding for cultch planting are limitations to the expansion of oyster
30 harvesting and the restoration of wild oyster habitat in North Carolina.
31 Therefore, the plan should include the following:
- 32 a. Provisions and recommendations to facilitate the availability of
33 oyster seed produced in North Carolina for wild oyster habitat
34 restoration projects as well as oyster aquaculture and to reduce
35 potential negative impacts from importation of non-native oyster
36 seed.
- 37 b. Plans, where feasible, for public-private partnerships for State-based
38 production of viable oyster seed through the creation of one or more
39 production hatcheries and recommendations for increased support of
40 the existing research hatchery at UNC-Wilmington.
- 41 c. Plans and cost estimates for an expansion of cultch planting in
42 suitable areas of the State's coastal waters in order to expand areas
43 suitable for development of wild oyster habitat.
- 44 (4) Economic relief. — The plan should consider a waiver of application fees and
45 yearly rental fees for new shellfish leases for an established period of time to
46 further promote and support shellfish aquaculture in North Carolina. The
47 new leasing fee waiver program should include measures to discourage
48 speculation and target persons with a genuine interest in starting a shellfish
49 aquaculture business, such as a requirement that the lease be nontransferable
50 for a five-year period.

- 1 (5) Outreach. – The plan should include outreach and education that promotes,
2 whenever possible, public-private partnerships utilizing the Sea Grant
3 College Program, local colleges, and other nongovernmental organizations
4 to (i) encourage shellfish aquaculture and provide technical assistance to
5 broaden cost-effective technologies available to leaseholders; (ii) encourage
6 best management practices to leaseholders; and (iii) inform fishermen and
7 the public on the benefits provided by the Senator Jean Preston Oyster
8 Sanctuary Network.
- 9 (6) Monitoring. – The plan should include a monitoring plan designed to (i)
10 determine the success of oyster reef construction and (ii) evaluate the cost
11 benefit of the oyster sanctuary network and harvestable enhancement sites.
- 12 ~~(3)~~(7) Funding. – The plan should include a request for appropriations sufficient to
13 ~~provide funds for the construction of appropriate bottom habitat and shellfish~~
14 ~~seeding and for Division staff necessary to conduct oyster restoration and~~
15 ~~monitoring activities. The plan should provide that, whenever possible,~~
16 ~~construction and shellfish seeding be carried out by contract with private~~
17 ~~entities for Division staff to expand oyster restoration and monitoring~~
18 ~~activities for 10 years. The plan should provide that, whenever possible,~~
19 ~~public-private partnerships are employed to meet the construction, seeding,~~
20 ~~and outreach requirements of the plan.~~
- 21 (4) ~~Commercial fisherman relief.~~ – To promote the diversification of
22 ~~commercial fishing opportunities, the plan should include a program to~~
23 ~~award free or discounted leases under this section to commercial fishermen~~
24 ~~who (i) have held one or more commercial fishing licenses continually for a~~
25 ~~period of 10 or more years and (ii) receive at least fifty percent (50%) of~~
26 ~~their income from commercial fishing with those licenses.~~
- 27 ~~(5)~~(8) Recommendations. – The plan ~~should~~ shall include recommendations for
28 statutory or regulatory changes needed to expedite the expansion of shellfish
29 restoration and harvesting in order to improve water quality, restore
30 ecological habitats, provide enhanced recreational and commercial fishing
31 opportunities, and expand the coastal economy.

32 ~~"SECTION 44.(e) No later than December 1, 2014, and quarterly thereafter until~~
33 ~~submission of a final plan to the Environmental Review Commission, the Department of~~
34 ~~Environment and Natural Resources shall report to the Environmental Review Commission~~
35 ~~regarding its implementation of this section and its recommended plan."~~

37 **CORE SOUND SHELLFISH LEASING**

38 **SECTION 4.** The Division of Marine Fisheries of the Department of Environment
39 and Natural Resources shall, in consultation with representatives of the commercial fishing
40 industry, representatives of the shellfish aquaculture industry, and relevant federal agencies,
41 create a proposal to open certain areas of Core Sound to shellfish cultivation leasing. The
42 Division will report regarding the plan no later than May 1, 2016, to the Joint Legislative
43 Commission on Governmental Operations.

45 **RESTORE JOINT LEGISLATIVE OVERSIGHT COMMISSION ON SEAFOOD AND** 46 **AQUACULTURE**

47 **SECTION 5.1.** Subdivisions 1.2(a)(5) and 1.2(b)(3) and Sections 2.26 through
48 2.29 of S.L. 2011-291 are repealed, and Article 12F of Chapter 120 of the General Statutes, as
49 it existed prior to its repeal by S.L. 2011-291, is reenacted.

50 **SECTION 5.2.** G.S. 120-76(15) is repealed.

1 **SECTION 5.3.** G.S. 120-70.62, as reenacted by Section 5.1 of this act, reads as
2 rewritten:

3 **"§ 120-70.62. Powers and duties.**

4 The Commission shall have the following powers and duties:

- 5 (1) To monitor and study the current seafood industry in North Carolina
6 including studies of the feasibility of increasing the State's production,
7 processing, and marketing of ~~seafood;~~seafood.
- 8 (2) To study the potential for increasing the role of aquaculture in all regions of
9 the ~~State;~~State.
- 10 (3) To evaluate the feasibility of creating a central permitting office for fishing
11 and aquaculture ~~matters;~~matters.
- 12 (4) To evaluate actions of the Division of Marine Fisheries of the Department of
13 Environment and Natural Resources, the Wildlife Resources ~~Commission of~~
14 ~~the Department of Environment and Natural Resources~~Commission, and of
15 any other board, commission, department, or agency of the State or local
16 government as such actions relate to the seafood and aquaculture
17 ~~industries;~~industries.
- 18 (5) ~~To make recommendations regarding regulatory matters relating to the~~
19 ~~seafood and aquaculture industries including, but not limited to:~~
20 a. ~~Increasing the State's representation and decision making ability by~~
21 ~~dividing the State between the Atlantic and South Atlantic regions of~~
22 ~~the National Division of Marine Fisheries; and~~
23 b. ~~Evaluating the necessity to substantially increase~~To evaluate the
24 adequacy of penalties for trespass and theft of shellfish and other
25 aquaculture ~~products;~~products.
- 26 (6) To review and evaluate changes in federal law and regulations, relevant
27 court decisions, and changes in technology affecting the seafood and
28 aquaculture ~~industries;~~industries.
- 29 (7) To review existing and proposed State law and rules affecting the seafood
30 and aquaculture industries and to determine whether any modification of law
31 or rules is in the public ~~interest;~~interest.
- 32 (8) To make reports and recommendations, including draft legislation, to the
33 General Assembly from time to time as to any matter relating to the powers
34 and duties set out in this ~~section;~~and section.
- 35 (9) To undertake such additional studies as it deems appropriate or as may from
36 time to time be requested by the President of the Senate, the President Pro
37 Tempore of the Senate, the Speaker of the House of Representatives, either
38 house of the General Assembly, the Legislative Research Commission, or
39 the Joint Legislative Commission on Governmental Operations, and to make
40 such reports and recommendations to the General Assembly regarding such
41 studies as it deems appropriate."
42

43 **AMEND THE SEDIMENTATION POLLUTION CONTROL ACT TO EXEMPT**
44 **ACTIVITIES TO RESTORE THE WETLANDS FUNCTION OF PRIOR CONVERTED**
45 **CROPLAND**

46 **SECTION 6.** G.S. 113A-52.01 is amended by adding a new subdivision to read:

47 **"§ 113A-52.01. Applicability of this Article.**

48 This Article shall not apply to the following land-disturbing activities:

- 49 (1) Activities, including the breeding and grazing of livestock, undertaken on
50 agricultural land for the production of plants and animals useful to man,
51 including, but not limited to:

- 1 a. Forages and sod crops, grains and feed crops, tobacco, cotton, and
2 peanuts.
- 3 b. Dairy animals and dairy products.
- 4 c. Poultry and poultry products.
- 5 d. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies,
6 mules, and goats.
- 7 e. Bees and apiary products.
- 8 f. Fur producing animals.
- 9 (2) Activities undertaken on forestland for the production and harvesting of
10 timber and timber products and conducted in accordance with best
11 management practices set out in Forest Practice Guidelines Related to Water
12 Quality, as adopted by the Department.
- 13 (3) Activities for which a permit is required under the Mining Act of 1971,
14 Article 7 of Chapter 74 of the General Statutes.
- 15 (4) For the duration of an emergency, activities essential to protect human life,
16 including activities specified in an executive order issued under
17 G.S. 166A-19.30(a)(5).
- 18 (5) Activities undertaken pursuant to Natural Resources Conservation Service
19 standards to restore the wetlands functions of converted wetlands as defined
20 in 7 Code of Federal Regulations § 12.2 (January 1, 2014 Edition)."
21

EFFECTIVE DATE

22 **SECTION 7.** This act is effective when it becomes law.
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