

NORTH CAROLINA GENERAL ASSEMBLY
1965 SESSION

CHAPTER 957
HOUSE BILL 560

1 AN ACT TO REWRITE THE LAWS RELATING TO THE CONSERVATION OF MARINE
2 AND ESTUARINE AND WILDLIFE RESOURCES.

3
4 The General Assembly of North Carolina do enact:

5
6 **Section 1.** Statement of Purpose. To clarify the conservation laws of the State and
7 the authority and jurisdiction of the Department of Conservation and Development and the
8 North Carolina Wildlife Resources Commission: the Commissioner of Commercial Fisheries
9 and the Division of Commercial Fisheries of the Department of Conservation and Development
10 are renamed the Commissioner of Commercial and Sports Fisheries and the Division of
11 Commercial and Sports Fisheries; the Commercial Fisheries Committee of the Department of
12 Conservation and Development is renamed the Commercial and Sports Fisheries Committee;
13 the Commercial Fisheries Advisory Board is abolished and in its stead is created the
14 Commercial and Sports Fisheries Advisory Board; commercial fishing waters are renamed
15 coastal fishing waters and the Division of Commercial and Sports Fisheries is given jurisdiction
16 over and responsibility for the marine and estuarine resources in coastal fishing waters; the
17 laws pertaining to commercial fishing operations regulated by the Department of Conservation
18 and Development are consolidated and revised generally and broadened to reflect the
19 jurisdictional change respecting coastal fisheries; and the connected and related laws pertaining
20 to fisheries resources administered by the North Carolina Wildlife Resources Commission are
21 recodified to harmonize in such revision and consolidation.

22 **Sec. 2.** Subchapter IV of Chapter 113 of the General Statutes of North Carolina is
23 repealed and in its stead is substituted a revised Subchapter IV:

24 **SUBCHAPTER IV.**
25 **CONSERVATION OF FISHERIES RESOURCES.**

26 Article 12.

27 General Definitions.

28 **§ 113-127. Application of Article.** Unless the context clearly requires otherwise, the
29 definitions in this Article apply throughout this subchapter.

30 **§ 113-128. Definitions Relating to Agencies and Their Powers.** The following definitions
31 apply to powers and administration of agencies charged with the conservation of marine and
32 estuarine and wildlife resources.

33 Advisory Board: Commercial and Sports Fisheries Advisory Board.

34 Board: Board of Conservation and Development.

35 Commercial and Sports Fisheries Advisory Board: the Board described in Article 18 of this
36 subchapter. Except as the Advisory Board may be constituted differently from the former
37 Commercial Fisheries Advisory Board so as to make the reference inapplicable, all references
38 in statutes, regulations, contracts, and other legal or official documents to the Commercial
39 Fisheries Advisory Board apply to the Commercial and Sports Fisheries Advisory Board.

40 Commercial and Sports Fisheries Committee: Commercial and Sports Fisheries Committee,
41 Board of Conservation and Development. All references in statutes, regulations, contracts, and
42 other legal or official documents to the Commercial Fisheries Committee of the Board of
43 Conservation and Development apply to the Commercial and Sports Fisheries Committee.

1 Commercial and Sports Fisheries Inspector: the Commissioner and every other employee of
2 the Division of Commercial and Sports Fisheries sworn in as an officer and assigned to duties
3 which include exercise of law enforcement powers. All references in statutes, regulations,
4 contracts, and other legal or official documents to commercial fisheries inspectors apply to
5 Commercial and Sports Fisheries Inspectors.

6 Commission: North Carolina Wildlife Resources Commission.

7 Commissioner: Commissioner of Commercial and Sports Fisheries, Department of
8 Conservation and Development. All references in statutes, regulations, contracts, and other
9 legal or official documents to the Commissioner of Commercial Fisheries apply to the
10 Commissioner of Commercial and Sports Fisheries.

11 Department: Department of Conservation and Development. Unless the context otherwise
12 indicates, general references to the Department include the Board as well as the Department.

13 Director: Director, Department of Conservation and Development.

14 Division of Commercial and Sports Fisheries: Division of Commercial and Sports
15 Fisheries, Department of Conservation and Development. All references in statutes,
16 regulations, contracts, and other legal or official documents to the Division of Commercial
17 Fisheries of the Department of Conservation and Development apply to the Division of
18 Commercial and Sports Fisheries.

19 Executive Director: Executive Director, North Carolina Wildlife Resources Commission.

20 Inspector: Commercial and Sports Fisheries Inspector.

21 Notice; Notify: where it is required that notice be given an agency of a situation within a
22 given number of days, this places the burden on the person giving notice to make sure that the
23 information is received in writing by a responsible member of the agency within the time limit.

24 Protector: Wildlife Protector.

25 Wildlife Protector: every employee of the Commission sworn in as an officer and assigned
26 to duties which include exercise of law enforcement powers.

27 **§ 113-129. Definitions Relating to Resources.** The following definitions apply in the
28 description of the various marine and estuarine and wildlife resources:

29 Bushel: a dry measure containing 2,150.42 cubic inches.

30 Coastal Fisheries: any and every aspect of cultivating, taking, possessing, transporting,
31 processing, selling, utilizing, and disposing of fish taken in coastal fishing waters, whatever the
32 manner or purpose of taking, except for the regulation of inland game fish in coastal fishing
33 waters which is vested in the Commission; and all such dealings with fish, wherever taken or
34 found, by a person primarily concerned with fish taken in coastal fishing waters so as to be
35 placed under the administrative supervision of the Department. Provided, that the Department
36 is given no authority over the taking of fish in inland fishing waters. Except as provisions in
37 this subchapter or in regulations of the Board authorized under this subchapter may make such
38 reference inapplicable, all references in statutes, regulations, contracts, and other legal or
39 official documents to commercial fisheries apply to coastal fisheries.

40 Coastal Fishing: all fishing in coastal fishing waters. Except as provisions in this subchapter
41 or in regulations of the Board authorized under this subchapter may make such references
42 inapplicable, all references in statutes, regulations, contracts, and other legal or official
43 documents to commercial fishing apply to coastal fishing.

44 Coastal Fishing Waters: the Atlantic Ocean; the various coastal sounds; and estuarine
45 waters up to the dividing line between coastal fishing waters and inland fishing waters agreed
46 upon by the Department of the Commission. Except as provisions in this subchapter or changes
47 in the agreement between the Department and the Commission may make such reference
48 inapplicable, all references in statutes, regulations, contracts, and other legal or official
49 documents to commercial fishing waters apply to coastal fishing waters.

50 Crustaceans: Crustacea, specifically including shrimp and hard and soft-shelled crabs.

1 Fisheries Resources: marine and estuarine resources and such wildlife resources as relate to
2 fish.

3 Fish; Fishes: all marine mammals; all shellfish; all crustaceans; and all other fishes.

4 Game Fish: inland game fish and such other game fish in coastal fishing waters as may be
5 regulated by the Department.

6 Inland Fishing Waters: all inland waters except private ponds; and all waters connecting
7 with or tributary to coastal sounds or the ocean extending inland from the dividing line between
8 coastal fishing waters and inland fishing waters agreed upon by the Department and the
9 Commission.

10 Inland Game Fish: those species of fresh-water fish, wherever found, and migratory salt-
11 water fish, when found in inland fishing waters, as to which there is an important element of
12 sport in taking and which are denominated as game fish in the regulations of the Commission.
13 No species of fish of commercial importance not classified as a game fish in commercial
14 fishing waters as of January 1, 1965, may be classified as an inland game fish in coastal fishing
15 waters without the concurrence of the Department.

16 Marine and Estuarine Resources: all fish, except inland game fish, found in the Atlantic
17 Ocean and in coastal fishing waters; all fisheries based upon such fish; all uncultivated or
18 undomesticated plant and animal life, other than wildlife resources, inhabiting or dependent
19 upon coastal fishing waters; and the entire ecology supporting such fish, fisheries, and plant
20 and animal life.

21 Non-game Fish: all fish found in inland fishing waters other than inland game fish.

22 Private Pond: a body of water arising within and lying wholly upon the lands of a single
23 owner or a single group of joint owners or tenants in common, and from which fish cannot
24 escape, and into which fish of legal size cannot enter from public waters at any time.

25 Shellfish: mollusca, specifically including oysters, clams, mussels, and scallops.

26 Wild Animals: game animals; fur-bearing animals; and such other wild mobile creatures
27 included in the definition of wildlife resources which in the discretion of the Commission need
28 protection or regulation in the interests of conservation of wildlife resources.

29 Wildlife: wild animals; wild birds; all fish found in inland fishing waters; and inland game
30 fish. Unless the context clearly requires otherwise, the definitions of wildlife, wildlife
31 resources, wild animals, wild birds, fish, and the like are deemed to include species normally
32 wild, or indistinguishable from wild species, which are raised or kept in captivity.

33 Wildlife Resources: all wild birds; all wild mammals other than marine mammals found in
34 coastal fishing waters; all fish found in inland fishing waters, including migratory salt-water
35 fish; all inland game fish; all uncultivated or undomesticated plant and animal life inhabiting or
36 dependent upon inland fishing waters; waterfowl food plants wherever found, except that to the
37 extent such plants in coastal fishing waters affect the conservation of marine and estuarine
38 resources the Department is given concurrent jurisdiction as to such plants; all undomesticated
39 terrestrial creatures; and the entire ecology supporting such birds, mammals, fish, plant and
40 animal life, and creatures.

41 **§ 113-130. Definitions Relating to Activities of the Public.** The following definitions apply
42 to activities of the public in regard to marine and estuarine and wildlife resources:

43 To Fish: to take fish.

44 Individual: a human being.

45 Owner; Ownership: as for personal property refers to persons having beneficial ownership
46 and not to those holding legal title for security; as for real property, refers to persons having the
47 present right of control, possession, and enjoyment, whether as life tenant, fee holder,
48 beneficiary of a trust, or otherwise. Provided, that this definition does not include lessees of
49 property except where the lease arrangement is a security device to facilitate what is in
50 substance a sale of the property to the lessee.

1 Person: any individual; or any partnership, firm, association, corporation, or other group of
2 individuals capable of suing or being sued as an entity.

3 Resident: in the case of individuals, one who is domiciled in North Carolina, except those
4 domiciled for less than six months; or an individual who at the time in question is living and
5 has for the previous six months been living in North Carolina, without regard to his actual
6 domicile; in the case of corporations, a corporation which is chartered under the laws of North
7 Carolina and has its principal office within the State.

8 To Sell; Sale: includes a sale or exchange of property, or an offer or attempt to sell or
9 exchange — for money or any other valuable consideration.

10 To Take: all operations during, preparatory, and subsequent to an attempt — whether
11 successful or not — to capture, kill, pursue, or otherwise harm or reduce to possession any
12 fisheries resources.

13 Vessel: every description of watercraft, other than a seaplane on the water, used or capable
14 of being used as a means of transportation on water.

15 Article 13.

16 Jurisdiction of Fisheries Agencies.

17 **§ 113-131. Stewardship of Conservation Agencies.** The marine and estuarine and wildlife
18 resources of the State belong to the people of the State as a whole. The Department and the
19 Commission are charged with stewardship of these resources.

20 **§ 113-132. Jurisdiction of Fisheries Agencies.** (a) The Department has jurisdiction over the
21 conservation of marine and estuarine resources. Except as may be otherwise provided by law, it
22 has jurisdiction over all activities connected with the conservation and regulation of marine
23 and estuarine resources.

24 (b) The Commission has jurisdiction over the conservation of wildlife resources. Except
25 as may be otherwise provided by law, it has jurisdiction over all activities connected with the
26 conservation and regulation of wildlife resources.

27 (c) Notwithstanding the provisions of this Article, the Department and the Commission
28 do not have jurisdiction over matters with respect to which jurisdiction may now or hereafter be
29 vested in the Board and Department of Water Resources, the State Stream Sanitation
30 Committee, or the State Board of Health.

31 (d) To the extent that the grant of jurisdiction to the Department and the Commission
32 may overlap, the Department and the Commission are granted concurrent jurisdiction. In cases
33 of conflict between actions taken or regulations promulgated by either agency, as respects the
34 activities of the other, pursuant to the dominant purpose of such jurisdiction, the Department
35 and the Commission are empowered to make agreements concerning the harmonious settlement
36 of such conflict in the best interests of the conservation of the marine and estuarine and wildlife
37 resources of the State. In the event the Department and the Commission cannot agree, the
38 Governor is empowered to resolve the differences.

39 (e) Those coastal fishing waters in which are found a significant number of fresh-water
40 fish, as agreed upon by the Department and the Commission, may be denominated joint fishing
41 waters. Such waters are deemed coastal fishing waters from the standpoint of laws and
42 regulations administered by the Department and are deemed inland fishing waters from the
43 standpoint of laws and regulations administered by the Commission. The Board and the
44 Commission may make joint regulations governing the responsibilities of each agency and
45 modifying the applicability of licensing and other regulatory provisions as may be necessary
46 for rational and compatible management of the marine and estuarine and wildlife resources in
47 such joint fishing waters.

48 (f) The granting of jurisdiction in this Section pertains to the power of agencies to enact
49 regulations and ordinances. Nothing in this Section or in § 113-138 is designed to prohibit law
50 enforcement officers who would otherwise have jurisdiction from making arrests or in any
51 manner enforcing the provisions of this subchapter.

1 **§ 113-133. Abolition of Local Coastal Fishing Laws.** The enjoyment of the marine and
2 estuarine resources of the State belongs to the people of the State as a whole and is not properly
3 the subject of local regulation. As the Department is charged with administering the governing
4 statutes and promulgating regulations in a manner to reconcile as equitably as may be the
5 various competing interests of the people as regards these resources, considering the interests of
6 those whose livelihood depends upon full and wise use of renewable and nonrenewable
7 resources and also the interests of the many whose approach is recreational, all special, local,
8 and private acts and ordinances regulating the conservation of marine and estuarine resources
9 are repealed. Nothing in this Section is intended to invalidate local legislation or local
10 ordinances which exercise valid powers over subjects other than the conservation of marine and
11 estuarine resources, even though an incidental effect may consist of an overlapping or conflict
12 of jurisdiction as to some particular provision not essential to the conservation objectives set
13 out in this subchapter.

14 **§ 113-134. Regulations.** The Department and the Commission are empowered to promulgate
15 regulations implementing the provisions of this Chapter, within the limits of the jurisdiction
16 granted in this Article.

17 **§ 113-135. Punishment.** Any person who violates any provision of this subchapter or any
18 regulation adopted by the Department or the Commission pursuant to the authority of this
19 subchapter is guilty of a misdemeanor. Unless a different level of punishment is elsewhere set
20 out, anyone convicted of such a misdemeanor may be fined not exceeding fifty dollars
21 (\$50.00). Noncriminal sanctions, such as license revocation or suspension, and exercise of
22 powers auxiliary to criminal prosecution, such as seizure of property involved in the
23 commission of an offense, do not constitute alternative levels of punishment so as to oust
24 criminal liability.

25 **§ 113-136. Enforcement Authority.** (a) Inspectors and protectors are granted the powers of
26 peace officers anywhere in this State in enforcing all matters within their respective subject-
27 matter jurisdiction as set out in this Section.

28 (b) The jurisdiction of inspectors extends to all matters within the jurisdiction of the
29 Department as set out in this subchapter and to all other matters within the jurisdiction of the
30 Division of Commercial and Sports Fisheries.

31 (c) The jurisdiction of protectors extends to all matters within the jurisdiction of the
32 Commission, whether set out in this Chapter, Chapter 75A, Chapter 143, or elsewhere.

33 (d) Inspectors and protectors are additionally authorized to arrest without warrant under
34 the terms of § 15-41 for felonies, for breaches of the peace, for assaults upon them or in their
35 presence, and for other offenses evincing a flouting of their authority as enforcement officers or
36 constituting a threat to public peace and order which would tend to subvert the authority of the
37 State if ignored. In particular, they are authorized, subject to the direction of their
38 administrative superiors, to arrest for violations of §§ 14-223, 14-224, 14-225, 14-269, and 14-
39 277.

40 (e) Inspectors and protectors may serve warrants, subpoenas, and other process
41 connected with any cases within their subject-matter jurisdiction.

42 In the exercise of their law enforcement powers, inspectors and protectors are subject to
43 provisions relating to police officers in general set out in Chapter 15 and elsewhere.

44 (f) Inspectors and protectors are authorized to stop temporarily any persons they
45 reasonably believe to be engaging in activity regulated by their respective agencies to
46 determine whether such activity is being conducted within the requirements of the law,
47 including license requirements. If the person stopped is in a motor vehicle being driven at the
48 time and the inspector or protector in question is also in a motor vehicle, the inspector or
49 protector is required to sound a siren or activate a special light, bell, horn, or exhaust whistle
50 approved for law enforcement vehicles under the provisions of § 20-125 (b) or 20-125 (c).

1 (g) Protectors may not temporarily stop or inspect vehicles proceeding along primary
2 highways of the State without clear evidence that someone within the vehicle is or has recently
3 been engaged in an activity regulated by the Commission. Inspectors may temporarily stop
4 vehicles, boats, airplanes, and other conveyances upon reasonable grounds to believe that they
5 are transporting taxable seafood products; they are authorized to inspect any seafood products
6 being transported to determine whether they were taken in accordance with law and to require
7 exhibition of any applicable licenses, tax receipts, permits, bills of lading, or other
8 identification required to accompany such seafood products.

9 (h) The refusal of any person to stop in obedience to the implicit or explicit directions
10 of an inspector or protector acting under the authority of this Section is unlawful. It is unlawful
11 to refuse to exhibit upon request any license, permit, tax receipt, certificate, or identification
12 required to be carried by any law or regulation as to which inspectors and protectors have
13 enforcement jurisdiction. It is unlawful to refuse to allow inspectors and protectors to inspect
14 weapons, equipment, fish, or wildlife regulated by any law or regulation as to which inspectors
15 and protectors have enforcement jurisdiction.

16 (i) Nothing in this Section authorizes searches within the curtilage of a dwelling or of
17 the living quarters of a vessel in contravention of constitutional prohibitions against
18 unreasonable searches and seizures.

19 **§ 113-137. Seizure and Confiscation of Property.** (a) Every inspector or protector who
20 arrests a person for an offense as to which he has enforcement jurisdiction is authorized to
21 search the person arrested and the surrounding area for weapons and for fruits,
22 instrumentalities, and evidence of any crime for which the person arrested is or might have
23 been arrested.

24 (b) Every inspector or protector who issues a citation instead of arresting a person, in
25 cases in which the inspector or protector is authorized to arrest, may seize all lawfully
26 discovered evidence, fruits, and instrumentalities of any crime as to which he has arrest
27 jurisdiction and probable cause.

28 (c) Every inspector or protector who in the lawful pursuit of his duties has probable
29 cause for believing he has discovered a violation of the law over which he has jurisdiction may
30 seize in connection therewith any fish, wildlife, weapons, equipment, vessels, or other
31 evidence, fruits, or instrumentalities of the crime, notwithstanding the absence of any person in
32 the immediate area subject to arrest or the failure or inability of the inspector or protector to
33 capture or otherwise take custody of the person guilty of the violation in question. Where the
34 owner of such property satisfies the Commissioner or the Executive Director, as the case may
35 be, of his ownership and that he had no knowledge or culpability in regard to the offense
36 involving the use of his property, such property must be returned to the owner. If after due
37 diligence on the part of employees of the Department or the Commission, as the case may be,
38 the identity or whereabouts of the violator or of the owner of the property seized cannot be
39 determined, such property may be sold by the Department or the Commission in accordance
40 with the provisions of this Section.

41 (d) The Board and the Commission may provide by regulation for summary disposition
42 of live or perishable fish seized by an inspector or protector pursuant to subsection (b) or (c) or
43 pursuant to a search authorized under subsection (a). If the property seized consists of live fish
44 which may again be placed to the benefit of the public on public grounds or in public waters,
45 the inspector or protector may require the person in possession of the seized live property to
46 transport it such distance as may be necessary to effect placement on appropriate grounds or
47 waters. In the event of refusal by the person in question to transport the property, the inspector
48 or protector must take appropriate steps to effect such transportation. The steps may include
49 seizure of any conveyance or vessel of the person refusing to transport the property. Where a
50 conveyance or vessel is seized, it is to be safeguarded by the inspector or protector seizing it
51 pending trial and it becomes subject to the orders of the court. Such transportation costs as may

1 be borne by the Department or by the Commission, as the case may be, may be collected by the
2 agency from the proceeds of the sale of any other property of the defendant seized and sold in
3 accordance with the provisions of this Section.

4 Except as provided in subsection (g), where the seizure consists of edible fish which is not
5 alive, may not live, or may not otherwise benefit conservation objectives if again placed on
6 public grounds or in public waters, the inspector or protector must dispose of the property by
7 turning it over to one or more appropriate public or charitable or nonprofit agencies or
8 institutions, in accordance with the directions of his administrative superiors.

9 (e) Except as otherwise specifically provided in this Section, all property seized must
10 be safeguarded pending trial by the inspector or protector initiating the prosecution. Upon a
11 conviction the property seized in connection with the offense in question is subject to the
12 disposition ordered by the court. Upon an acquittal, property seized must be returned to the
13 defendant or established owner, except:

- 14 (1) where the property was summarily disposed of in accordance with
15 subsection (d);
- 16 (2) where possession of the property by the person to whom it otherwise would
17 be returned would constitute a crime; and
- 18 (3) where the property seized has been sold in accordance with subsection (g).
19 In this event the net proceeds of the sale must be returned to the defendant or
20 established owner, as the case may be. Where property seized summarily
21 under subsection (d) is not available for return, an acquitted defendant or
22 established owner is entitled to no compensation where there was probable
23 cause for the action taken.

24 In safeguarding property seized pending trial, an inspector or protector is authorized in his
25 discretion, subject to orders of his administrative superiors, to make his own provisions for
26 storage or safekeeping or to deposit the property with the sheriff of the county in which the trial
27 is to be held for custody pending trial. In the event the mode of safekeeping reasonably selected
28 by the inspector or protector entails a storage or handling charge, such charge is to be paid as
29 follows:

- 30 (4) by the defendant if he is convicted but the court nevertheless orders the
31 return of the property to the defendant;
- 32 (5) from the proceeds of the sale of the property if the property is sold under
33 court order or in accordance with the provisions of this Section; or
- 34 (6) by the Department or by the Commission, as the case may be, if no other
35 provision for payment exists.

36 (f) Subject to orders of his administrative superiors, an inspector or protector in his
37 discretion may leave property which he is authorized to seize in the possession of the defendant
38 with the understanding that such property will be subject to the orders of the court upon
39 disposition of the case. Willful failure or inexcusable neglect of the defendant to keep such
40 property subject to the orders of the court is a misdemeanor punishable in the discretion of the
41 court. In exercising his discretion, the inspector or protector should not permit property to be
42 retained by the defendant if there is any substantial risk of its being used by the defendant in
43 further unlawful activity.

44 (g) Where a prosecution involving seized saleable fish is pending and such fish are
45 perishable or seasonal, the inspector or protector may apply to the court in which the trial is
46 pending for an order permitting sale prior to trial. As used in this subsection, seasonal fish are
47 those which command a higher price at one season than at another so that economic loss may
48 occur if there is a delay in the time of sale. When ordered by the court, such sale prior to trial
49 must be conducted in accordance with the order of the court or in accordance with the
50 provisions of this Section. The net proceeds of such sale are to be deposited with the court and
51 are subject to the same disposition as would have been applicable to other types of property

1 seized. Where sale is not lawful or otherwise not practicable or where prosecution is not
2 pending, disposal of the fish is in accordance with subsection (d).

3 (h) Pending trial, the defendant or the established owner of any nonperishable and
4 nonconsumable property seized may apply to the court designated to try the offense for return
5 of the property. The property must be returned pending trial if:

6 (1) the court is satisfied that return of the property will not facilitate further
7 violations of the law; and

8 (2) the claimant posts a bond for return of the property at trial in an amount
9 double the value of the property as assessed by the court.

10 (i) Upon conviction of any defendant for a violation of the laws or regulations
11 administered by the Department or the Commission under the authority of this subchapter, the
12 court in its discretion may order seizure and sale of all weapons, equipment, vessels,
13 conveyances, fish, and other evidence, fruits, and instrumentalities of the offense in question—
14 whether or not seized or made subject to the orders of the court pending trial. The defendant
15 may appeal the reasonableness of any order of seizure and sale. Unless otherwise specified in
16 the order of the court, such sales are to be held by the Department or by the Commission, as the
17 case may be.

18 The Board and the Commission may by regulation provide for an orderly public sale
19 procedure of property which it may sell under the provisions of this Section. Such procedure
20 may include turning the property to be sold over to some other agency for sale, provided that
21 the provisions of subsection (j) are complied with and there is proper accounting for the net
22 proceeds of the sale. In the case of property unlikely to sell for a sufficient amount to offset the
23 costs of sale, the Board and Commission may provide for destruction of the property.

24 (j) Except as provided in subsection (d), in the case of property seized under the
25 provisions of subsection (c) or in any case where it appears that a person not a defendant has an
26 interest in any property to be sold, destroyed, or otherwise disposed of, the Board and the
27 Commission must provide for public notice of the description of the property and the
28 circumstances of its seizure for a sufficient period prior to the time set for sale or other
29 disposition to allow innocent owners or lienholders to assert their claims. The validity of such
30 claims are to be determined by the trial court in the event there is or has been a prosecution in
31 connection with the seizure of the property. Where there has been no prosecution, the validity
32 of such claims must be determined by the Commissioner or by the Executive Director, as the
33 case may be. Where there has been a sale under subsection(g), the provisions of this subsection
34 apply to the net proceeds of the sale.

35 (k) Except as provided in subdivision (e)(3) and subsection (j), the net proceeds of all
36 sales made pursuant to this Section must be deposited in the school fund of the county in which
37 the property was seized.

38 **§ 113-138. Enforcement Jurisdiction of Special Officers.** The Board and the Commission by
39 regulation may confer law enforcement powers over matters within their jurisdiction upon the
40 employees of any local, State, or Federal public agency who possess special law enforcement
41 jurisdiction that would not otherwise extend to the subject matter of this subchapter. The Board
42 and Commission may confer such powers or not to any particular officers of class or officers as
43 may be convenient or desirable in the interests of conservation of marine and estuarine and
44 wildlife resources. Such conferring of powers does not constitute the appointment of any such
45 special enforcement officer to an additional office and no oath need be taken.

46 **§§ 113-139 to 113-150. Reserved for future codification purposes.**

47 Article 14.

48 Commercial and Sports Fisheries Licenses and Taxes.

49 **§ 113-151. Regulations of the Board.** The Board is authorized to make reasonable rules and
50 regulations governing the administration and enforcement of all license requirements and taxes
51 prescribed in this Article. In the event license agents are utilized for the issuance of any license,

1 such agents may be compensated not in excess of five per cent (5%) of the license fees
2 collected.

3 **§ 113-152. Licensing of Vessels.** (a) The following vessels are subject to the licensing
4 requirements of this Section:

- 5 (1) all vessels engaged in commercial fishing operations in coastal fishing
6 waters and
- 7 (2) all North Carolina vessels engaged in commercial fishing operations without
8 the State which result in landing and selling fish in North Carolina. North
9 Carolina vessels are those which have their primary situs in North Carolina.
10 Motorboats with North Carolina numbers under the provisions of Chapter
11 75A of the General Statutes are deemed to have their primary situs in North
12 Carolina; documented vessels which list a North Carolina port as home port
13 are deemed to have their primary situs in North Carolina. "Commercial
14 fishing operations" are all operations preparatory to, during, and subsequent
15 to the taking of fish:
- 16 (3) with the use of commercial fishing equipment or
- 17 (4) by any means, if a primary purpose of the taking is to sell the fish.

18 It is unlawful for the owner of a vessel subject to licensing requirements to permit it to
19 engage in commercial fishing operations without having first procured the appropriate license.
20 It is unlawful for anyone to command such a vessel engaged in commercial fishing operations
21 without complying with the provisions of this Section and of regulations made under the
22 authority of this Article. It is unlawful for anyone to command such a vessel engaged in
23 commercial fishing operations that does not meet the license requirements of this Article or of
24 regulations made under the authority of the Article, or without making reasonably certain that
25 all persons on board are in compliance with the provisions of this Article and regulations made
26 under the authority of this Article. It is unlawful to participate in any commercial fishing
27 operation in connection with which there is a vessel subject to licensing requirements not
28 meeting the licensing requirements under the provisions of this Article or of regulations made
29 under the authority of this Article.

30 (b) Any license that may be required by this Section is to be issued in the name of the
31 owner of the vessel. It is unlawful for the owner to permit anyone who is not eligible to have
32 the license issued to him in his own right to command such licensed vessel for the purpose of
33 engaging in commercial fishing operations. It is unlawful for such an ineligible person to
34 command a licensed vessel for such purposes. The license application for a menhaden vessel
35 must state the name of the person in command of the vessel. Upon change in command of a
36 menhaden vessel, the owner must notify the Commissioner within fifteen days. Upon change in
37 ownership of any licensed vessel, the new owner must notify the Commissioner within fifteen
38 days. The Board may provide by regulation for replacement of lost license plates upon tender
39 of the original license receipt or upon such other evidence as the Board may deem sufficient. A
40 fee not to exceed fifty cents (50¢) may be charged for replacement of a plate.

41 (c) Licenses are issued annually upon a calendar year basis for vessels of various
42 lengths and types as follows for the fees indicated:

- 43 (1) vessels without motors, one dollar (\$1.00).
- 44 (2) vessels with motors not over eighteen feet in length, three dollars (\$3.00).
- 45 (3) vessels with motors over eighteen feet but not over twenty-six feet in length,
46 fifty cents (50¢) per foot.
- 47 (4) vessels with motors over twenty-six feet in length, seventy-five cents (75¢)
48 per foot.
- 49 (5) vessels engaged in menhaden fishing, as prescribed in subsection (d).

50 Length is measured from end to end over the deck excluding sheer.

1 (d) Vessels engaging in menhaden fishing are subject to the following license and fee
2 requirements:

3 (1) for the mother ship, one dollar and sixty cents (\$1.60) per ton, gross tonnage,
4 customhouse measurements.

5 (2) for each purse boat carrying a purse seine used in connection with a licensed
6 mother ship, no license required.

7 (e) Unless otherwise indicated, all licenses in this Article expire on December 31 of
8 each year and are subject to the full license fee regardless of when issued.

9 **§ 113-153. Vessels Fishing Beyond Territorial Waters.** Persons aboard vessels not having
10 their primary situs in North Carolina which are carrying a cargo of fish taken outside the waters
11 of North Carolina may land and sell their catch in North Carolina either by complying with the
12 licensing provisions of § 113-152 with respect to the vessel in question or by complying, if
13 eligible, with the provisions of § 113-155. The Board may by regulation modify the licensing
14 procedure set out in § 113-152 in order to devise an efficient and convenient procedure for
15 licensing out-of-state vessels after landing in order to permit sale of cargo. Provided, that
16 persons aboard vessels having a primary situs in a jurisdiction that would allow North Carolina
17 vessels without restriction to land and sell their catch, taken outside such jurisdiction, may land
18 and sell their catch in North Carolina without complying with this Section.

19 **§ 113-154. Oyster and Clam License.** (a) In addition to all other license requirements, every
20 individual engaged in taking oysters or clams from the public or private grounds of North
21 Carolina for commercial use by any means whatever must have first procured an individual
22 oyster and clam license.

23 (b) It is unlawful for any individual to take oysters or clams from the public or private
24 grounds of North Carolina without having ready at hand for inspection a current and valid
25 oyster and clam license issued to him personally and bearing his correct name and address. It is
26 unlawful for any such individual taking or possessing freshly-taken oysters or clams to refuse
27 to exhibit his license upon the request of an officer authorized to enforce the fishing laws.

28 (c) Oyster and clam licenses are issued annually on a calendar year basis upon payment
29 of a fee of one dollar (\$1.00) upon proof that the license applicant is a resident of North
30 Carolina.

31 (d) In the event an individual possessing an oyster and clam license changes his name
32 or address or receives one erroneous in this respect, he must within fifteen days surrender the
33 license for one bearing the correct name and address. An individual prosecuted for failure to
34 possess a valid license is exonerated if he can show that the invalidity consisted solely of an
35 incorrect name or address appearing in a license to which he was lawfully entitled and that the
36 erroneous condition had not existed for longer than fifteen days.

37 (e) It is unlawful for an individual issued an oyster and clam license to transfer or offer
38 to transfer his license, either temporarily or permanently, to another. It is unlawful for an
39 individual to secure or attempt to secure an oyster or clam license from a source not authorized
40 by the Department.

41 **§ 113-155. License to Land and Sell.** (a) Except as otherwise provided in this Article, it is
42 unlawful for any person to sell fish, no matter where or how taken, to a fish dealer required to
43 be licensed under this Article unless the fish were taken lawfully and unless:

44 (1) he has a current and valid license to land and sell fish issued to him
45 personally and has received less than two hundred dollars (\$200.00) on
46 account of the sale of fish within the last twelve months; or

47 (2) the fish were taken in a commercial fishing operation meeting all licensing
48 requirements, and he was a party to the operation; or

49 (3) the fish were taken by him, whether by sport or commercial methods,
50 through the use of a vessel currently and validly licensed under § 113-152;
51 or

- 1 (4) the fish were taken by him in inland fishing waters in conformity with laws
2 and regulations administered by the Commission and are of a type permitted
3 to be sold by the Commission; or
4 (5) he is a licensed fish dealer.

5 (b) In the case of oysters or clams a license to land and sell is not required, but the
6 person selling must satisfy the dealer that he took them or participated in the taking, that he
7 then had a current and valid oyster and clam license issued to him personally, and that the
8 oysters or clams were taken lawfully. In the event the person selling is a dealer, he must satisfy
9 the purchasing dealer that the oysters or clams were acquired in conformity with law.

10 (c) Dealers purchasing fish must record such information relating to purchases as
11 required by the Board to implement the provisions of this Section.

12 (d) Annual licenses to land and sell are issued on a calendar year basis to individual
13 residents and nonresidents upon payment of a fee of two dollars (\$2.00).

14 (e) Any individual who receives in excess of two hundred dollars(\$200.00) in cash or
15 equivalent value within any twelve-month period on account of the sale of fish is not entitled to
16 a license to land and sell. If not covered by any exemption from license requirements, he must
17 comply with licensing provisions applicable to vessels (or secure compliance by the owner of
18 any vessel that may be involved) or comply with licensing provisions applicable to dealers, as
19 may be appropriate. The Board may implement this subsection by regulations clarifying which
20 license is required in particular situations. In the event the taking of fish is done without the use
21 of a vessel but the vessel license rather than the dealer license is the appropriate one, the Board
22 may by regulation determine which vessel license may be applicable on the basis of amount or
23 value of fish taken and the average size of vessels ordinarily used to take such quantity or value
24 of fish.

25 (f) It is unlawful for an individual issued a license to land and sell to transfer or offer to
26 transfer his license, either temporarily or permanently, to another. It is unlawful for an
27 individual to secure or attempt to secure an oyster and clam license from a source not
28 authorized by the Department.

29 **§ 113-156. Licenses for Fish Dealers.** (a) Except as otherwise provided in this Article, every
30 person who sells fish or has any connection whatever with fish that results in his enrichment is
31 a fish dealer, provided that individual employees of fish dealers are not fish dealers merely by
32 virtue of transacting the business of their employers.

33 (b) The Board may make reasonable regulations to implement this Section by clarifying
34 the status of particular classes of persons as regards fish dealerships. Persons all of whose
35 dealings with a category of fish fall under one or more of the following headings are not fish
36 dealers as respects that category:

- 37 (1) persons whose dealings in fish are primarily educational, scientific, or
38 official. Scientific, educational, or official agencies may sell fish harvested
39 or processed in connection with research or demonstration projects without
40 being deemed dealers, but such sales are subject to such reasonable
41 regulations as the Board may make governing such sales.
42 (2) individuals selling legally acquired fish other than oysters and clams to
43 individuals other than dealers on a casual, noncommercial basis, provided
44 that such sales do not net in excess of five hundred dollars (\$500.00) in cash
45 or equivalent value in any twelve-month period. Any public offer to sell, or
46 peddling of fish, is deemed commercial.
47 (3) fishermen who sell their catch exclusively to licensed dealers in accordance
48 with § 113-155.

49 (c) Every fish dealer is subject to the licensing requirements of this Section unless all
50 fish handled within any particular licensing category meet one or more of the following
51 requirements:

- 1 (1) the fish are shipped to him by a dealer from without the State.
- 2 (2) the fish are non-game fish taken in inland fishing waters.
- 3 (3) the fish are of a kind the sale of which is regulated exclusively by the
- 4 Commission.
- 5 (4) the fish are purchased from a licensed dealer.

6 In the event the seller is a licensed fish dealer, he must satisfy any purchasing fish dealer,
7 whether licensed or unlicensed, that the fish were acquired in conformity with law. It is
8 unlawful for a fish dealer to purchase or sell or in any manner deal in fish except in conformity
9 with the provisions of this Section.

10 (d) Every fish dealer subject to the licensing provisions of this Section must secure a
11 separate license or set of licenses for each established location. Where a dealer does not have an
12 established location for transacting the fisheries business within the State, the license
13 application must be denied unless the applicant satisfies the Commissioner that his residence,
14 or some other office or address, within the State, is a suitable substitute for an established
15 location and that records kept in connection with licensing, sale, and tax requirements will be
16 available for inspection when necessary.

17 (e) Every fish dealer subject to licensing requirements must secure an annual license at
18 each established location for each of the following activities transacted there, upon payment of
19 the fee set out:

20 (1) Dealing in shellfish:

- 21 a. shucker-packer (including sale of shell stock), twenty-five dollars
- 22 (\$25.00).
- 23 b. shell stock shipper, ten dollars (\$10.00).

24 (2) Dealing in hard and soft crabs:

- 25 a. crab processor (including dealing in unprocessed crabs), ten dollars
- 26 (\$10.00).
- 27 b. unprocessed crab dealer, five dollars (\$5.00).

28 (3) Dealing in shrimp, ten dollars (\$10.00).

29 (4) Dealing in finfish, ten dollars (\$10.00).

30 (5) Operating menhaden processing plant, one hundred dollars (\$100.00).

31 (6) Operating any other fish dehydrating or oil extracting plant, fifty dollars

32 (\$50.00).

33 Any person subject to fish-dealer licensing requirements who deals in fish not included in the
34 above categories must secure a finfish dealer license. The Board may make reasonable
35 regulations implementing and clarifying the dealer categories of this subsection.

36 **§ 113-157. Taxes on Seafood.** (a) Taxes are due and payable to the Department from fish
37 dealers required to be licensed upon delivery to them of any seafood listed in this Section taken
38 within the State, whether from public or private grounds, unless accompanied by evidence that
39 the tax levied by this Section has already been assessed. The Board may make reasonable
40 regulations governing the administration, assessment, and collection of the seafood tax.

41 (b) In the event the fish dealer required to be licensed is also the fisherman taking the
42 taxable seafood, the Board may make reasonable regulations fixing the point at which the
43 seafood tax becomes due and payable.

44 (c) In the event that the Board authorizes a self -assessment method of collecting all or
45 any part of the seafood tax, upon forms furnished to dealers by the Department, all taxes
46 assessed are payable at all times on demand of any inspector or other authorized agent of the
47 Department. If the Commissioner becomes satisfied that any dealer granted the privilege of
48 self-assessment has substantially obstructed the efficient and equitable administration of the
49 provisions of this Article, either willfully or through inexcusable neglect, the Commissioner
50 may order the dealer's self-assessment privilege terminated. Termination may not exceed ten
51 days upon the first occasion. Upon the second occasion, the period of termination may not

1 exceed thirty days. Upon the third or any subsequent occasion, the Commissioner may
2 terminate the self-assessment privilege indefinitely subject to reinstatement in his discretion. If
3 the Commissioner determines that termination of the privilege is likely to aggravate rather than
4 reduce obstruction, he should employ other methods designed to secure compliance with laws,
5 regulations, and reasonable requests of agents of the Department designed to produce equitable
6 and efficient administration and enforcement of the provisions of this Article.

7 (d) The following taxes are applicable to the seafood named below:

8 (1) Oysters, eight cents (8¢) per bushel.

9 (2) Clams, six cents (6¢) per bushel.

10 (3) Scallops, five cents (5¢) per gallon.

11 (4) Soft crabs, two cents (2¢) per dozen.

12 (5) Hard crabs, ten cents (10¢) per one hundred pounds.

13 (6) Shrimp, green, heads off, fifteen cents (15¢) per one hundred pounds.

14 An additional tax of fifty cents (50¢) per bushel is levied upon all oysters taken in North
15 Carolina which are shipped in the shell to any place outside the State.

16 (e) In the event the Board authorizes a self -assessment method of collecting all or any
17 part of the seafood tax, all records and accounts required to be kept by the Department must be
18 kept in a safe place and reasonable efforts must be made to preserve them from loss or
19 destruction. If it becomes impossible to determine the amount of tax assessed for any period
20 owing to loss or destruction of records or accounts, failure to make proper entries, or other fault
21 of the dealer, an agent of the Department must reconstruct the approximate tax payable based
22 upon previous sales in similar periods, the general condition of the market for the time in
23 question, and other relevant information. The tax to be assessed for such period includes a one
24 hundred per cent (100%) penalty and is double the reconstructed figure. It is unlawful for any
25 fish dealer to fail to remit upon demand of an authorized agent of the Department all taxes and
26 penalties due. If any dispute arises as to the accuracy of the reconstructed figure, the dealer
27 must bear the burden of showing it to be inaccurate. The dealer may appeal the reconstructed
28 amount to the Commissioner and, if dissatisfied, to the Board. The decision of the Board is
29 final. In the event of appeal, the dealer must pay the reconstructed tax plus penalty under
30 protest.

31 **§ 113-158. Transplanting or Holding Seafood.** (a) Where a fish dealer acquires taxable live
32 seafood and transfers it to private beds, holding ponds, fish boxes or traps, or otherwise in the
33 waters of this State with the purpose of harvesting the seafood at a subsequent time, the tax
34 becomes due and payable at the time of harvest. The Board may regulate such operations and
35 require that such notices be given inspectors and that such records be kept as will minimize the
36 risk of illicit traffic in taxable seafood under the cover of these operations. If as to any
37 particular type of operation, regulation and inspection is made more efficient and equitable
38 through the assessment of the tax at an earlier stage than that prescribed above, the Board may
39 by regulation declare the tax due and payable at the earlier stage.

40 (b) The Board may require that special permits be secured in advance by all persons,
41 whether dealers or otherwise, prior to transplanting oysters or clams.

42 **§ 113-159. Contribution of Oyster Shells.** All persons required to secure shellfish dealers'
43 licenses must set aside and accumulate for the Department fifty per cent (50%) of the oyster
44 shells which come into their possession, or a lesser fractional amount of the total as set by the
45 Board. Such fractional amount must not be more than half of the shells acquired within any
46 calendar year, without regard to whether the oysters were taken from public or private beds or
47 within the State or without. The Commissioner should collect the shells accumulated at least
48 annually and in his discretion may do so more frequently, but he may decline to accept the
49 contribution of shells from any dealer in the event he finds collections to be uneconomical or
50 unfeasible.

1 **§ 113-160. Exportation and Importation of Fish and Equipment.** The Board may make
2 reasonable regulations governing the importation and exportation of fish, and equipment that
3 may be used in taking or processing fish, as necessary to enhance the conservation of marine
4 and estuarine resources of North Carolina. Such regulations may regulate, license, prohibit, or
5 restrict importation into the State and exportation from the State of any and all species of fish
6 which are native to coastal fishing waters or which may thrive if introduced into such waters.

7 **§ 113-161. Reciprocal Agreements.** Upon recommendation of the Commissioner, the
8 Director may make reciprocal agreements with other jurisdictions to authorize persons licensed
9 in such other jurisdictions to exercise licensed privileges within this State upon such terms and
10 conditions that may be agreed on as mutually beneficial, provided that such jurisdictions accord
11 privileges of similar nature or value to holders of North Carolina licenses.

12 **§ 113-162. Fraud or Deception.** It is unlawful to falsify, or to practice any fraud or deception
13 designed to evade the provisions of this Article or of regulations made under the authority of
14 this Article in connection with:

- 15 (1) any licenses authorized in this Article;
- 16 (2) any tax receipts or other evidence that the tax has been assessed on seafood
17 or that the seafood is not subject to tax; or
- 18 (3) any records required to be kept under the provisions of this Article or of
19 regulations made under the authority of this Article.

20 **§ 113-163. Record-keeping Requirements.** (a) The Department may require all licensees
21 under this Article to keep and to exhibit upon the request of an authorized agent of the
22 Department such records and accounts as may be necessary to the equitable and efficient
23 administration and enforcement of this Article. In addition, licensees may be required to keep
24 additional information of a statistical nature or relating to location of catch as may be needed to
25 determine conservation policy. Records and accounts required to be kept must be preserved for
26 inspection for not less than three years.

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

35 **§ 113-164. Regulations as to Seafood.** The Board may make reasonable regulations
36 governing possession, transportation, and disposition of the seafood listed in § 113-157 (d) by
37 all persons, including those not subject to fish dealer licensing and tax requirements, in order
38 that inspectors may adequately distinguish the taxable seafood from that not subject to tax and
39 equitably and efficiently enforce the provisions of this Article. Such regulations may include
40 requirements as to giving notice, filing declarations, securing permits, marking packages, and
41 the like.

42 **§ 113-165. Violations With Respect to Seafood and Coastal Fisheries Products.** It is
43 unlawful to take, possess, transport, process, sell, buy, offer or attempt to buy, or in any way
44 deal in either seafood made taxable in this Article or coastal fisheries products without
45 conforming with the provisions of this Article or of regulations made under the authority of this
46 Article.

47 **§ 113-166. Revocation and Suspension of Licenses.** (a) Upon receipt of reliable notice that a
48 person licensed under this Article has had imposed against him a conviction of a criminal
49 offense within the jurisdiction of the Department under the provisions of this subchapter or of
50 regulations of the Board adopted under the authority of this subchapter, the Commissioner must
51 suspend or revoke all licenses held by such person in accordance with the terms of this Section.

1 Reliable notice includes information furnished the Commissioner in prosecution or other
2 reports from inspectors. As used in this Section, a conviction includes a plea of guilty or nolo
3 contendere, any other termination of a criminal prosecution unfavorably to the defendant after
4 jeopardy has attached, or any substitute for criminal prosecution whereby the defendant
5 expressly or impliedly confesses his guilt. In particular, procedures whereby bond forfeitures
6 are accepted in lieu of proceeding to trial and cases indefinitely continued upon arrest of
7 judgment or prayer for judgment continued are deemed convictions. The Commissioner may
8 act to suspend or revoke licenses upon the basis of any conviction in which:

- 9 (1) no notice of appeal has been given; or
- 10 (2) the time for appeal has expired without an appeal having been perfected; or
- 11 (3) the conviction is sustained on appeal. Where there is a new trial, finality of
12 any subsequent conviction will be determined in the manner set out above.

13 (b) The Commissioner must initiate an administrative procedure designed to give him
14 systematic notice of all convictions of criminal offenses by licensees covered by subsection (a)
15 above and keep a file of all such convictions reported to him. Upon receipt of notice of such
16 conviction, the Commissioner must determine whether it is a first, a second, a third, or a fourth
17 or subsequent conviction of some offense covered by subsection (a). In the case of second
18 convictions, the Commissioner must suspend all licenses issued to the licensee for a period of
19 ten days. In the case of third convictions, the Commissioner must suspend all licenses issued to
20 the licensee for a period of thirty days. In the case of fourth or subsequent convictions, the
21 Commissioner must revoke all licenses issued to the licensee. Where several convictions result
22 from a single transaction or occurrence, they are to be treated as a single conviction so far as
23 suspension or revocation of the licenses of any licensee is concerned. Anyone convicted of
24 taking or of knowingly possessing, transporting, buying, selling, or offering to buy or sell
25 oysters or clams from areas closed because of suspected pollution will be deemed by the
26 Commissioner to have been convicted of two separate offenses on different occasions for
27 license suspension or revocation purposes.

28 (c) Where a license has been suspended or revoked, the former licensee is not eligible
29 to apply for reissuance of license or for any additional license authorized in this Article during
30 the suspension or revocation period. Licenses must be returned to the licensee by the
31 Commissioner or his agents at the end of a period of suspension. Where there has been a
32 revocation, application for reissuance of license or for an additional license may not be made
33 until six months following the date of revocation. In such case of revocation, the eligible
34 former licensee must satisfy the Commissioner that he will strive in the future to conduct the
35 operations for which the license is sought in accord with all applicable laws and regulations.
36 Upon the application of an eligible former licensee after revocation, the Commissioner in his
37 discretion may issue one license sought but not another, as he deems it necessary to prevent the
38 hazard of recurring violations of the law.

39 (d) Upon receiving reliable information of a licensee's conviction of a second or
40 subsequent criminal offense covered by subsection (a), the Commissioner must promptly cause
41 the licensee to be personally served with written notice of suspension or revocation, as the case
42 may be. The written notice may be served upon any responsible individual affiliated with the
43 corporation, partnership, or association where the licensee is not an individual. The notice of
44 suspension or revocation may be served by an inspector or other agent of the Department, must
45 state the ground upon which it is based, and takes effect immediately upon personal service.
46 The agent of the Commissioner making such service must then or subsequently, as may be
47 feasible under the circumstances, collect all license certificates and plates and other forms or
48 records relating to the license as directed by the Commissioner. It is unlawful for any licensee
49 willfully to evade the personal service prescribed in this subsection.

50 (e) Licensees served with notices of suspension or revocation may appeal in writing to
51 the Commissioner on the question of whether or not they were in fact subjected to final

1 convictions in the proceedings forming a basis for their license suspension or revocation. The
2 license remains revoked or suspended, after personal service, pending appeal to the
3 Commissioner. The Commissioner must hear the evidence of the licensee as promptly as may
4 be feasible and either cancel or continue in effect the suspension or revocation order. The
5 decision of the Commissioner as to imposition of suspension or revocation is the final
6 administrative determination.

7 (f) In the event the Commissioner refuses to reissue the license of or issue an additional
8 license to an eligible former licensee after revocation, the former licensee may appeal the
9 decision of the Commissioner to the Director and, if dissatisfied, to the Board. In the event the
10 decision not to issue the license is upheld, the former licensee must wait an additional six
11 months before again applying to the Commissioner for issuance or reissuance of any license.

12 (g) The Board may by regulation provide for disclosure of the identity of any individual
13 or individuals in responsible positions of control respecting operations of any licensee that is
14 not an individual. For the purposes of this Section, individuals in such responsible positions of
15 control are deemed to be individual licensees and subject to suspension and revocation
16 requirements in regard to any applications for license they may make — either as individuals or
17 as persons in responsible positions of control in any corporation, partnership, or association. In
18 the case of individual licensees, the individual applying for a license or licensed under this
19 Article must be the real party in interest.

20 (h) In determining whether a conviction is a second or subsequent offense under the
21 provisions of this Section, the Commissioner may not consider convictions for:

- 22 (1) offenses which occurred prior to the effective date of this Article; or
- 23 (2) offenses which occurred more than three years prior to the time of the latest
24 offense the conviction for which is in issue as a subsequent conviction.

25 **§§ 113-167 to 113-180. Reserved for future codification purposes.**

26 Article 15.

27 Regulation of Coastal Fisheries.

28 **§ 113-181. Duties of Department.** (a) It is the duty of the Department to administer and
29 enforce the provisions of this subchapter pertaining to the conservation of marine and estuarine
30 resources. In execution of this duty, the Department may collect such statistics, market
31 information, and research data as is necessary or useful to the promotion of sports and
32 commercial fisheries in North Carolina and the conservation of marine and estuarine resources
33 generally; conduct or contract for research programs or research and development programs
34 applicable to resources generally and to methods of cultivating, harvesting, marketing, or
35 processing fish as may be beneficial in achieving the objectives of this subchapter; enter into
36 reciprocal agreements with other jurisdictions with regard to the conservation of marine and
37 estuarine resources; and regulate placement of nets and other sports or commercial fishing
38 apparatus in coastal fishing waters with regard to navigational and recreational safety as well as
39 from a conservation standpoint.

40 (b) The Department is directed to make every reasonable effort to carry out the duties
41 imposed in this subchapter. The Board may make regulations as necessary to implement the
42 work of the Department in carrying out such duties.

43 **§ 113-182. Regulation of Fishing and Fisheries.** (a) The Board is authorized to authorize,
44 license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in
45 coastal fishing waters with respect to:

- 46 (1) time, place, character, or dimensions of any methods or equipment that may
47 be employed in taking fish;
- 48 (2) seasons for taking fish;
- 49 (3) size limits on and maximum quantities of fish that may be taken, possessed,
50 bailed to another, transported, bought, sold, or given away.

1 (b) The Board is authorized to authorize, license, regulate, prohibit, prescribe, or
2 restrict:

- 3 (1) the opening and closing of coastal fishing waters, except as to inland game
4 fish, whether entirely or only as to the taking of particular classes of fish, use
5 of particular equipment, or as to other activities within the jurisdiction of the
6 Department; and
7 (2) the possession, cultivation, transportation, importation, exportation, sale,
8 purchase, acquisition, and disposition of all marine and estuarine resources
9 and all related equipment, implements, vessels, and conveyances as
10 necessary to implement the work of the Department in carrying out its
11 duties.

12 **§ 113-183. Unlawful Possession, Transportation, and Sale of Fish.** (a) it is unlawful to
13 possess, transport, offer to transport, sell, offer to sell, receive, buy, or attempt to buy any fish
14 regulated by the Department with knowledge or reason to believe that such fish are illicit.

15 (b) Fish are illicit when taken, possessed, or dealt with unlawfully, or when there has
16 occurred at any time with respect to such fish a substantial failure of compliance with the
17 applicable provisions of this subchapter or of regulations made under the authority of this
18 subchapter.

19 **§ 113-184. Possession and Transportation of Prohibited Oyster Equipment.** (a) It is
20 unlawful to carry aboard any vessel subject to licensing requirements under Article 14 under
21 way or at anchor in coastal fishing waters during the regular closed oyster season any scoops,
22 scrapes, dredges, or winders such as are usually or can be used for taking oysters.

23 (b) If any vessel has recently been under way or at anchor in coastal fishing waters
24 engaged in activity similar in manner to that in which oysters are taken with scoops, scrapes, or
25 dredges and at a time or place in which the taking of oysters is prohibited, the presence on
26 board the vessel of wet oysters or scoops, scrapes, dredges, lines, or deck wet, indicating the
27 taking of oysters, constitutes prima facie evidence that the vessel was engaged in taking oysters
28 unlawfully with scoops, scrapes, or dredges at the time or place prohibited.

29 (c) It is unlawful to carry aboard any vessel subject to licensing requirements under
30 Article 14 under way or at anchor in coastal fishing waters any dredge weighing more than one
31 hundred pounds.

32 **§ 113-185. Miscellaneous Fishing Prohibitions.** (a) It is unlawful to fish in the ocean within
33 750 feet of an ocean pier except:

- 34 (1) from the pier or
35 (2) by means of surf casting.

36 This prohibition shall be effective whether or not the pier owner places in the area of his pier
37 and at his own expense buoys located in accordance with directives of the Commissioner to
38 indicate clearly to fishermen in vessels and on the beach the requisite distance of 750 feet from
39 the pier.

40 (b) It is unlawful to engage in any fishing operations known as trash fishing or scrap
41 fishing. "Trash fishing" or "scrap fishing" consists of intentionally taking the young of edible
42 fish before they are of sufficient size to be of value as individual food fish:

- 43 (1) for commercial disposition as bait; or
44 (2) for sale to any dehydrating or nonfood processing plant; or
45 (3) for sale or commercial disposition in any manner other than for human
46 consumption. The Board may by regulation authorize the disposition of the
47 young of edible fish taken incidentally and unavoidably in connection with
48 legitimate commercial fishing operations, provided that the quantity of such
49 fish that may be disposed of is sufficiently limited, or the taking and
50 disposition is otherwise so regulated, as to discourage any practice of trash
51 or scrap fishing for its own sake.

1 **§ 113-186. Measures for Fish Scrap and Oil.** All persons buying or selling menhaden for the
2 purpose of manufacturing fish scrap and oil within the State must buy or sell according to the
3 measure prescribed in this Section: twenty-two thousand cubic inches for every one thousand
4 fish. Each day of failure to use the prescribed measure constitutes a separate offense.

5 **§ 113-187. Penalties.** (a) It is unlawful for any person to participate in any commercial fishing
6 operation conducted in violation of any provision of this Article and its implementing
7 regulations or in any operation in connection with which any vessel is used in violation of any
8 provision of this Article and its implementing regulations.

9 (b) Any owner of a vessel who knowingly permits it to be used in violation of any
10 provision of this Article and its implementing regulations is guilty of a misdemeanor
11 punishable in the discretion of the court.

12 (c) Any person in charge of a commercial fishing operation conducted in violation of
13 any provision of this Article and its implementing regulations or in charge of any vessel used in
14 violation of any provision of this Article and its implementing regulations is guilty of a
15 misdemeanor punishable in the discretion of the court.

16 **§ 113-188. Construction of Article.** The setting out of particular offenses or requirements
17 with regard to specific species of fish or with regard to certain types of equipment does not
18 affect the authority of the Board to make similar additional regulations not in conflict with the
19 provisions of this Article under authority granted in this Chapter.

20 **§§ 113-189 to 113-200. Reserved for Future Codification Purposes.**

21 Article 16.

22 Cultivation of Oysters and Clams.

23 **§ 113-201. Authority of Board.** The Board is empowered to make regulations and take all
24 steps necessary to develop and improve the cultivation, harvesting, and marketing of oysters
25 and clams in North Carolina both from public grounds and private beds.

26 **§ 113-202. Oyster and Clam Leases.** (a) Except as indicated below, all oyster and clam leases
27 heretofore granted are subject to the provisions of this Article. All oyster and clam leases
28 renewed under the provisions of the former law are terminated upon the first day of April next
29 following the effective date of this Article, subject to the right to renewal of lease in conformity
30 with the provisions of this Article, upon the application of the lessee. All initial oyster and clam
31 leases under the provisions of the former law more than fifteen years old but not more than
32 twenty years old are terminated on the first of April one year next following the effective date
33 of this Article, subject to the right to renewal of lease in conformity with the provisions of this
34 Article, upon the application of the lessee. All initial oyster and clam leases under the
35 provisions of the former law more than ten years old but not more than fifteen years old are
36 terminated on the first day of April two years next following the effective date of this Article,
37 subject to the right to renewal of lease in conformity with the provisions of this Article, upon
38 the application of the lessee. All initial oyster and clam leases under the provisions of the
39 former law not more than ten years old upon the effective date of this Article are terminated at
40 noon on the first day of April following the tenth anniversary of the granting of the lease and
41 are subject to renewal in accordance with the provisions of this Article. Except as otherwise
42 provided in this Article or in regulations of the Board implementing the orderly transition from
43 the provisions of the former law to that in this Article, the provisions of this Article and its
44 implementing regulations apply to all oyster and clam leases within the State. Rental amounts
45 prescribed in this Article apply to all leases granted under the provisions of previous
46 legislation, effective the first day of April next following the effective date of this Article.

47 (b) In order to encourage oyster and clam culture in North Carolina, the Board, upon the
48 recommendation of the Commissioner, may lease to residents any of the public bottoms
49 underlying coastal fishing waters which do not contain a natural oyster or clam bed, in
50 accordance with the provisions of this Article. A natural oyster or clam bed is an area of public

1 bottom where oysters or clams are to be found growing in sufficient quantities to be valuable to
2 the public.

3 (c) The area leased may not be less than one acre nor more than fifty acres, except that
4 in the open waters of Pamlico Sound leases may not be less than five acres nor more than two
5 hundred acres. For the purposes of this Section, the open waters of Pamlico Sound are those
6 waters more than two miles from the shore line.

7 (d) No person may lease more than a total of fifty acres of public bottom outside the
8 open waters of Pamlico Sound. In no event may any person lease more than a total of two
9 hundred acres within the State.

10 (e) Any person desiring to apply for a lease or renewal of a lease must make written
11 application to the Commissioner on forms prepared by him containing such information as
12 deemed necessary to determine the desirability of granting or not granting the lease requested.
13 The application must be accompanied by a survey, made at the expense of the applicant,
14 showing the area proposed to be leased.

15 The survey must conform to standards prescribed by the Commissioner concerning
16 accuracy of survey and the amount of detail that must be shown. If on the basis of the
17 application information and survey the Commissioner deems that granting the lease would
18 benefit the oyster and clam culture of North Carolina, the Commissioner, in the case of initial
19 lease applications, must order an investigation of the bottom proposed to be leased. The
20 investigation is to be made by the Commissioner or his authorized agent and by a qualified
21 assistant appointed by the board of county commissioners of the county in which the bottom, or
22 the greater portion of the bottom, is located to determine whether there is a natural oyster or
23 clam bed within the bounds of the proposed lease. In the event a natural oyster or clam bed is
24 encountered, the Commissioner in his discretion may either recommend that the lease be denied
25 or that it be amended so as to exclude such bed. In the event the Commissioner authorizes
26 amendment of the application, the applicant must furnish a new survey meeting requisite
27 standards showing the area proposed to be leased under the amended application. At the time of
28 making application for an initial lease, the applicant must pay a filing fee of twenty-five dollars
29 (\$25.00). At the time of making application for a renewal lease, the applicant must pay a filing
30 fee of ten dollars (\$10.00).

31 (f) The area of bottom applied for in the case of an initial lease or amended initial lease
32 must be as compact as possible, taking into consideration the shape of the body of water, the
33 consistency of the bottom, and the desirability of separating the boundaries of a leasehold by a
34 sufficient distance from any known natural oyster or clam bed to prevent the likelihood of
35 disputes arising between the leaseholder and members of the public taking oysters or clams
36 from the natural bed.

37 (g) Upon determination by the Commissioner that the results of the investigation, if
38 required, are satisfactory and that the application for lease or renewal of lease and the
39 accompanying survey are in order, and that the proper filing fee has been tendered, the
40 Commissioner must within a reasonable time notify the applicant whether he recommends
41 approval, disapproval, or modification of the lease application. In the event the Commissioner
42 recommends approval or a modification to which the applicant agrees, the Commissioner must
43 publish at least two notices of intention to lease in a newspaper of general circulation in the
44 county or counties in which the proposed leasehold lies. The first publication must precede by
45 more than thirty days the meeting of the Board at which the granting of the lease or renewal of
46 lease is to be made; the second publication must follow the first by seven to eleven days. The
47 notice of intention to lease must contain a sufficient description of the area of the proposed
48 leasehold that its boundaries may be established with reasonable ease and certainty and must
49 also contain the date of the meeting at which the Board is slated to act upon the application for
50 lease or renewal of lease.

1 (h) Protests to the granting of the proposed lease or renewal of lease may be filed with
2 the Commissioner in writing under oath prior to the granting of the lease by the Board. Protests
3 cannot be considered unless accompanied by a filing fee of twenty-five dollars (\$25.00). The
4 Commissioner must evaluate the sufficiency of the grounds stated in the protest and make such
5 investigation as he deems necessary. In the interest of making a just evaluation, he may
6 recommend that the Board postpone consideration of the lease to a subsequent meeting. The
7 Commissioner as a result of his evaluation may recommend denial or amendment of the lease
8 or the granting of it in its original form, in the best interests of the oyster and clam culture of
9 North Carolina, except that no lease may be granted which embraces a known or suspected
10 natural oyster or clam bed. The lease applicant must furnish any additional or amended survey
11 required in the event the protest results in a modification of the lease. In the event the protest
12 does not prevail and the lease is granted in its original form, the twenty-five dollars (\$25.00)
13 deposited with the protest must be forfeited to the use of the Department. In the event the
14 protest is successful in causing a denial or modification of the lease, the twenty-five
15 dollar(\$25.00) deposit must be returned to the person protesting.

16 (i) The Board in its discretion may lease or decline to lease public bottoms for oyster or
17 clam culture in accordance with its duty to conserve the marine and estaurine resources of the
18 State. The Commissioner must present all lease applications to the Board as to which he has
19 published a notice of intention to lease more than thirty days prior to the meeting of the Board.
20 In the event there was a protest that did not prevail before the Commissioner as to any lease
21 recommended by him, the Commissioner must notify the Board of such protest. Persons whose
22 lease applications are not recommended or are recommended in amended form by the
23 Commissioner may appeal to the Board. In the event the Board sustains the appeal in whole or
24 in part, it may order the Commissioner to take the steps necessary to comply with its decisions
25 and effect a reprocessing of the lease application prior to the next Board meeting or such other
26 time as it may direct.

27 (j) In the event of procedural delay upon an application for renewal of lease, the
28 leaseholder having made timely application may continue in possession of the leasehold until a
29 final decision is made by the Board either to grant, deny, or modify the renewal lease for which
30 he applied. Renewal applications are timely if received by the Commissioner after January 1
31 and on or before April 1 in the year in which the lease is subject to renewal.

32 (k) After a lease is granted by the Board and the Director is satisfied that the survey
33 submitted meets the Commissioner's criteria and that the filing fee and rent due in advance has
34 been paid, the Director must execute the lease on forms approved by the Attorney General. The
35 leaseholder must erect markers complying with regulations of the Board in order to define the
36 bounds of the leased area.

37 (l) Initial leases begin upon the issuance of the lease by the Director and expire at noon
38 on the first day of April following the tenth anniversary of the granting of the lease. Renewal
39 leases are issued for a period of ten years effective from the time of expiration of the previous
40 lease. The rental for initial leases is one dollar (\$1.00) per acre until noon on the first day of
41 April following the first anniversary of the lease. Thereafter, for initial leases, and from the
42 beginning for renewal leases, the rental is five dollars (\$5.00) per acre per year. Rental must be
43 paid annually in advance prior to the first day of April each year. Upon initial granting of a
44 lease, the pro rata amount for the portion of the year left until the first day of April must be paid
45 in advance at the rate of one dollar (\$1.00) per acre per year; then, on or before the first day of
46 April next, the lessee must pay the rental for the next full year.

47 (m) Except as restricted by this subchapter, leaseholds granted under this Section are to
48 be treated as if they were real property and are subject to all laws relating to taxation, sale,
49 devise, inheritance, gift, seizure and sale under execution or other legal process, and the like.
50 Leases properly acknowledged and probated are eligible for recordation in the same manner as
51 instruments conveying an estate in real property. Within fifteen days after transfer of beneficial

1 ownership of all or any portion of or interest in a leasehold to another, the new owner must
2 notify the Commissioner of such fact. Such transfer is not valid until notice is furnished the
3 Commissioner. In the event such transferee is a nonresident, the Commissioner must initiate
4 proceedings to terminate the lease.

5 (n) Upon receipt of notice by the Commissioner of any of the following occurrences, he
6 must commence action to terminate the leasehold:

- 7 (1) Failure to pay the annual rent in advance.
- 8 (2) Failure to file information required by the Commissioner upon annual
9 remittance of rental.
- 10 (3) Failure by new owner to report a transfer of beneficial ownership of all or
11 any portion of or interest in the leasehold.
- 12 (4) Failure to mark the boundaries in the leasehold and to keep them marked as
13 required in the regulations of the Board.
- 14 (5) Failure to utilize the leasehold on a continuing basis for the commercial
15 production of oysters or clams.
- 16 (6) Transfer of all or part of the beneficial ownership of a leasehold to a
17 nonresident.
- 18 (7) Substantial breach of compliance with the provisions of this Article or of
19 regulations of the Board governing use of the leasehold. The Board is
20 authorized to make regulations defining commercial production of oysters
21 and clams, based upon the productive potential of particular areas, climatic
22 or biological conditions at particular areas or particular times, availability of
23 seed oysters and clams, availability for purchase by lessees of shells or other
24 material to which oyster spat may attach, and the like. Commercial
25 production may be defined in terms of planting effort made as well as in
26 terms of quantities of oysters and clams harvested.

27 (o) After receipt of notice of any occurrence listed in subsection (n), the Commissioner
28 must mail the leaseholder a letter by registered or certified mail, return receipt requested,
29 informing him of his intention to terminate and of the reason for the action. In the event the
30 leaseholder takes steps within thirty days to remedy the situation upon which the notice of
31 intention to terminate was based and the Commissioner is satisfied that continuation of the
32 lease is in the best interests of the oyster and clam culture of the State, the Commissioner may
33 discontinue termination procedures. Where there is no discontinuance of termination
34 procedures, the leaseholder may appeal to the Director, and, if dissatisfied, to the Board. Where
35 there is no appeal, or where an appeal does not prevail, the Director must send a final letter of
36 termination to the leaseholder by registered or certified mail, return receipt requested. The final
37 letter of termination may not be mailed sooner than thirty days after receipt by the leaseholder
38 of the Commissioner's notice of intention to terminate, as evidenced by the return receipt. The
39 lease is terminated effective at midnight on the day the final notice of termination is received
40 by the leaseholder, as evidenced by the return receipt. The final notice of termination may not
41 be issued pending hearing of any appeal by the Director or by the Board.

42 (p) Upon final termination of any leasehold, the bottom in question is thrown open to
43 the public for use in accordance with laws and regulations governing use of public grounds
44 generally. Agents of the Commissioner are required as soon as possible after termination of
45 lease to remove all markers denominating the area of the leasehold as a private bottom.

46 (q) Every year between January 1 and February 15 the Commissioner must mail to all
47 leaseholders a notice of the annual rental due and include forms designed by him for
48 determining the amount of shellfish or shells planted on the leasehold during the preceding
49 calendar year, the amount of harvest gathered, and the names and addresses of those to whom
50 the harvest was sold or delivered. Such forms may contain other pertinent questions relating to
51 the utilization of the leasehold in the best interests of the oyster and clam culture of the State,

1 and must be executed and returned by the leaseholder with the payment of his rental. Any
2 leaseholder or his agent executing such forms for him who knowingly makes a false statement
3 on such forms is guilty of a misdemeanor punishable in the discretion of the court.

4 (r) All leases and renewal leases granted before or after the effective date of this Article
5 are granted or made subject to reasonable amendment of governing statutes, regulations of the
6 Board, and requirements imposed by the Commissioner or his agents in regulating the use of
7 the leasehold or in processing applications or rentals. This includes such statutory increase in
8 rentals as may be necessitated by changing conditions and refusal to renew lease after
9 expiration, in the discretion of the Board. No increase in rentals, however, may be given
10 retroactive effect. Any holder of any lease in effect upon the effective date of this Article who
11 deems himself damaged as to any vested property rights by the adoption of provisions of this
12 Article more restrictive than those in the law formerly governing his leasehold may apply to the
13 Industrial Commission for the award of such damages as he may prove. The procedure
14 governing such application shall follow as closely as feasible that set out in Article 3 of Chapter
15 143 of the General Statutes of North Carolina pertaining to tort claims against State
16 departments and agencies, except that the limitation period upon any claims under this Section
17 is three rather than two years and the measure of damages is for any condemnation of leasehold
18 effected by this Section rather than for any tort. It is hereby directed that the amounts necessary
19 to cover awards made by the Industrial Commission under the authority of this subsection be
20 paid from funds available to the Department.

21 **§ 113-203. Transplanting of Oysters and Clams.** (a) It is unlawful to transplant oysters taken
22 from public grounds to private beds except:

- 23 (1) when lawfully taken during open season and transported directly to a private
24 bed in accordance with regulations of the Board;
- 25 (2) when the transplanting is done by a dealer in accordance with the provisions
26 of § 113-158 and implementing regulations; or
- 27 (3) when the transplanting is done in accordance with the provisions of this
28 Section and implementing regulations.

29 (b) It is lawful to transplant to private beds oysters or clams taken from polluted waters
30 with a permit from the Commissioner setting out the waters from which the oysters or clams
31 may be taken, the quantities which may be taken, the times during which the taking is
32 permissible, and other reasonable restrictions imposed by the Commissioner to aid him in his
33 duty of regulating such transplanting operations. Any transplanting operation which does not
34 substantially comply with the restrictions of the permit issued is unlawful.

35 (c) It is lawful to transplant to private beds oysters taken from public beds managed by
36 the State for the production of seed oysters in accordance with the implementing regulations of
37 the Board. Persons taking such seed oysters may, in the discretion of the Board, be required to
38 pay to the Department for oysters taken an amount to reimburse the Department in full or in
39 part for the costs of seed-oyster management operations.

40 (d) The Board may implement the provisions of this Section by regulations governing
41 sale, possession, transportation, storage, handling, planting, and harvesting of oysters and clams
42 and setting out any system of marking oysters and clams or of permits or receipts relating to
43 them generally, from both public and private beds, as necessary to regulate the lawful
44 transplanting of seed oysters and oysters or clams taken from or placed on public or private
45 beds.

46 **§ 113-204. Propagation of Shellfish.** The Board is authorized to close areas of public bottoms
47 under coastal fishing waters for such time as may be necessary in any program of propagation
48 of shellfish. The Board is authorized to expend State funds planting such areas and to manage
49 them in ways beneficial to the overall productivity of the shellfish industry in North Carolina.
50 The Board in its discretion in accordance with desirable conservation objectives may make
51 shellfish produced by it available to commercial fishermen generally, to those in possession of

1 private shellfish beds, or to selected individuals cooperating with the Board in demonstration
2 projects concerned with the cultivation, harvesting, or processing of shellfish.

3 **§ 113-205. Grants in Navigable Waters; Fishery Rights.** (a) Every person claiming title to
4 any part of the bed lying under navigable waters of North Carolina or any right of fishery in
5 navigable waters superior to that of the general public must register the grant, charter, or other
6 authorization under which he claims with the Commissioner. Such registration must be
7 accompanied by a survey of the claimed area, meeting criteria established by the Commissioner
8 for surveys of oyster and clam leases. All rights and titles not registered in accordance with this
9 Section on or before January 1, 1970, are hereby declared null and void. The Commissioner
10 must give notice of this Section at least once each calendar year for three years by publication
11 in a newspaper or newspapers of general circulation throughout all coastal counties of the State.

12 (b) The Board may make reasonable regulations governing utilization of private
13 fisheries and may require grantees or others with private rights to mark their fishery areas or
14 private beds in navigable waters as a precondition to the right of excluding the public from
15 exercising the private rights claimed to be secured to them. Nothing in this Section is to be
16 deemed to confer upon any grantee or other person with private rights the power to impede
17 navigation upon or hinder any other appropriate use of the surface of navigable waters of North
18 Carolina.

19 **§ 113-206. Chart of Grants, Leases, and Fishery Rights; Condemnation.** (a) The
20 Commissioner must commence to prepare as expeditiously as possible charts of the waters of
21 North Carolina containing the locations of all oyster and clam leaseholds made by the
22 Department under the provisions of this Article and of all existing leaseholds as they are
23 renewed under the provisions of this Article, the locations of all claims of grant of title to
24 portions of the bed under navigable waters registered with him, and the locations of all areas in
25 navigable waters to which a right of private fishery is claimed and registered with him.
26 Charting or registering any claim by the Commissioner in no way implies recognition by the
27 State of the validity of the claim.

28 (b) In the event of any overlapping of areas leased by the Department, the
29 Commissioner shall recommend modification of the areas leased as he deems equitable to all
30 parties. Appeal from the recommendation of the Commissioner lies for either party in the same
31 manner as for a lease applicant as to which there is a recommendation of denial or modification
32 of lease. If there is no appeal, or upon settlement of the issue upon appeal, the modified leases
33 must be approved by the Board and reissued by the Director in the same manner as initial or
34 renewal leases. Leaseholders must furnish the Commissioner surveys of the modified leasehold
35 areas, meeting the requisite criteria for surveys established by the Commissioner.

36 (c) In the event of any overlapping of areas leased by the Department and of areas in
37 which title or conflicting private right of fishery is claimed and registered under the provisions
38 of this Article, the Commissioner must give preference to the leaseholder engaged in the
39 production of oysters or clams in commercial quantities who received the lease with no notice
40 of the existence of any claimed grant or right of fishery. To this end, the Commissioner shall
41 cause a modification of the claim registered with him and its accompanying survey to exclude
42 the leasehold area. Such modification effected by the Commissioner has the effect of voiding
43 the grant of title or right of fishing to the extent indicated.

44 (d) In the interest of conservation of the marine and estuarine resources of North
45 Carolina, the Board may institute an action in the Superior Court to contest the claim of title or
46 claimed right of fishery in any navigable waters of North Carolina registered with the
47 Commissioner. In such proceeding, the burden of showing title or right of fishery, by the
48 preponderance of the evidence, shall be upon the claiming title or right holder. In the event the
49 claiming title or right holder prevails, the court shall fix the monetary worth of the claim. The
50 Board may elect to condemn the claim upon payment of the established owners or right holders
51 their pro rata shares of the amount so fixed. The Board may make such payments from such

1 funds as may be available to it. An appeal lies to the Supreme Court by either party both as to
2 the validity of the claim and as to the fairness of the amount fixed. The Board in such actions
3 may be represented by the Attorney General. In determining the availability of funds to the
4 Board to underwrite the costs of litigation or make condemnation payments, the use which the
5 Board proposes to make of the area in question may be considered; such payments are to be
6 deemed necessary expenses in the course of operations attending such use or of developing or
7 attempting to develop the area in the proposed manner.

8 (e) To the extent that any application of the provisions of § 113-205 and this Section is
9 deemed to constitute a taking of private property, any claimant may apply to the Industrial
10 Commission for the award of such damages as he may prove. The procedure governing such
11 application shall follow as closely as feasible that set out in Article 3 of Chapter 143 of the
12 General Statutes of North Carolina pertaining to tort claims against State departments and
13 agencies, except that the limitation period upon any claims brought under the authority of this
14 subsection is three rather than two years and the measure of damages is for any condemnation
15 effected rather than for any tort. Where the claiming party asserts damage from the voiding of a
16 grant or right under § 113-205 (a) and further asserts his minority or other disability subsequent
17 to January 1, 1970, the claimant is granted a period of three years after attaining majority or
18 after removal of the disability in which to prosecute the claim before the Industrial
19 Commission. No claims whatever may be entertained by the Industrial Commission, however,
20 after January 1, 1990. It is hereby directed that the amounts necessary to cover awards made by
21 the Industrial Commission under the authority of this subsection be paid from funds available
22 to the Department.

23 **§§ 113-207 to 113-220. Reserved for Future Codification Purposes.**

24 Article 17.

25 Administrative Provisions;

26 Regulatory Authority of Board and Department.

27 **§ 113-221. Publication of Regulations.** (a) All regulations of the Board promulgated under
28 the authority of this subchapter must be filed with the Secretary of State in accordance with §§
29 143-195 to 143-197. In addition, all such regulations of the Board the violation of which
30 constitutes a crime must be filed with the Clerk of Superior Court of each county containing
31 coastal fishing waters within its borders.

32 (b) The Commissioner must periodically codify the regulations of the Board
33 implementing this subchapter which are subject to annual or seasonal change; other regulations
34 or sets of regulations need be recodified only as supplies are exhausted or substantial changes
35 are made. The Commissioner must cause to be distributed to each licensee upon purchasing his
36 license each year the appropriate set or sets of such codified regulations, plus any supplement
37 needed to make them current, pertaining to the activities to be engaged in by the licensee.

38 (c) As soon as feasible after any meeting of the Board amending or adding regulations,
39 the Commissioner must cause to be issued to all licensees who may be affected a newsletter
40 containing the text of such amendments or added regulations. The newsletter need not be issued
41 if a codification containing the amended or added regulations is scheduled for distribution
42 within a reasonable period following the meeting of the Board.

43 (d) Unless an effective date is stated by the Board, its regulations take effect
44 immediately upon passage. Any regulation change resulting in further restrictions upon
45 licensees or the public, however, should in the ordinary case be given a future effective date
46 sufficiently advanced to allow for compliance with the publication procedures of this Section.
47 Where circumstances require that such restrictive regulation be put into effect immediately, the
48 Board should take steps to insure that actual public notice is given — in a fashion similar to
49 that set out in subsection (e). Unless there are overriding policy considerations involved, any
50 regulation of the Board which will in the judgment of the Board result in severe curtailment of
51 the usefulness or value of equipment in which fishermen have any substantial investment

1 should be given such a future effective date as to minimize undue potential economic loss to
2 fishermen. Whether or not any provision may cause potential economic loss and whether or not
3 a future effective date should be set is a matter within the complete discretion of the Board. The
4 Board need not set any future effective date more than two years in advance of the passage of
5 any regulation.

6 (e) The Board may delegate to the Director the authority by proclamation to suspend or
7 implement, in whole or in part, particular regulations of the Board which may be affected by
8 variable conditions. Such proclamations are to be issued by the Director upon the
9 recommendation of the Commissioner. All proclamations must state the hour and date upon
10 which they become effective and must be issued at least forty-eight hours in advance of the
11 effective date and time. The Director must keep a permanent file of the texts of proclamations
12 issued by him, and furnish upon request certified copies of any proclamation for use in
13 evidence in any civil or criminal proceeding in which the text of a proclamation may be in
14 issue. Proclamations need not be filed with the Secretary of State or with any clerk of court.

15 The Department must make every reasonable effort to give actual notice of the terms of any
16 proclamation to the persons who may be affected thereby. Such effort includes press releases to
17 communications media, posting of notices at docks and other places where persons affected
18 may gather, personal communication by inspectors and other agents of the Department, and
19 such other measures designed to reach the persons who may be affected.

20 (f) All persons who may be affected by them are under a duty to keep themselves
21 informed of current regulations of the Board and proclamations of the Director. It is no defense
22 in any criminal prosecution for the defendant to show that he in fact received no notice of a
23 particular regulation or proclamation. In any prosecution for violation of the provisions of any
24 regulation or proclamation, or in which proof of matter contained in a regulation or
25 proclamation is involved, the Department is deemed to have complied with publication
26 procedures and the burden is on the defendant to show by the greater weight of the evidence
27 substantial failure of compliance by the Department with the publication procedures of this
28 Section.

29 (g) Every court must take judicial notice of any codification of regulations issued by the
30 Commissioner within two years preceding the date of the offense charged or transaction in
31 issue. In the absence of any indication to the contrary, such codifications are to be deemed
32 accurate and current statements of the text of the regulations in question and it is incumbent
33 upon any person asserting that a relevant portion of the codified text is inaccurate, or has been
34 amended or deleted, to satisfy the court as to the text of the regulations which is in fact properly
35 applicable.

36 (h) Certificates of the Director as to the text of a regulation or proclamation or as to any
37 other official matter concerning the Department must be received in court as prima facie
38 evidence of the truth of the statement in the certificate. Certificates bearing the signature of the
39 Director upon paper containing the letterhead of the Department are, in the absence of evidence
40 to the contrary, to be accepted as genuine without any need for formal proof of the signature of
41 the Director.

42 **§ 113-222. Arrest and Witness Fees.** All arrest fees and other fees that may be charged in any
43 bill of costs for service of process by inspectors must be paid to the county in which the trial is
44 held. No witness fee may be taxed in any bill of costs by virtue of the appearance of an
45 inspector as a witness in a criminal case within his enforcement jurisdiction. Acceptance by any
46 inspector of any arrest fee, witness fee, or any other fee to which he is not entitled is a
47 misdemeanor punishable in the discretion of the court.

48 **§ 113-223. Reciprocal Agreements.** Subject to the specific provisions of §§ 113-153 and 113-
49 161 relating to reciprocal provisions as to landing and selling catch and as to licenses, the
50 Board is empowered to make reciprocal agreements with other jurisdictions respecting any of
51 the matters governed in this subchapter. Pursuant to such agreements the Board may modify

1 provisions of this subchapter in order to effectuate the purposes of such agreements, in the
2 overall best interests of the conservation of marine and estuarine resources.

3 **§ 113-224. Cooperative Agreements.** The Board is empowered to enter into cooperative
4 agreements with public and private agencies and individuals respecting the matters governed in
5 this subchapter. Pursuant to such agreements the Board may expend funds, assign employees to
6 additional duties within or without the State, assume additional responsibilities, and take other
7 actions that may be required by virtue of such agreements, in the overall best interests of the
8 conservation of marine and estuarine resources.

9 **§ 113-225. Financial Interest in Fisheries.** Except as provided in this subchapter respecting
10 operations of demonstration and research projects by employees of the Department as part of
11 their employment, no inspector may be financially interested in any fishing industry in the State
12 of North Carolina.

13 **§ 113-226. Administrative Authority.** (a) In the overall best interests of the conservation of
14 marine and estuarine resources, the Board may lease or purchase lands, equipment, and other
15 property; accept gifts and grants on behalf of the State; establish boating and fishing access
16 areas; establish fisheries, fishery processing or storage plants, planted seafood beds, fish farms,
17 and other enterprises related to the conservation of marine and estuarine resources as research
18 or demonstration projects either alone or in cooperation with some individual or agency; sell
19 the catch or processed fish or other marine and estuarine resources resulting from research
20 fishing operations or demonstration projects; provide matching funds for entering into projects
21 with some other governmental agency or with some scientific, educational, or charitable
22 foundation or institution; condemn lands in accordance with the provisions of Chapter 40 of the
23 General Statutes and other governing provisions of law; and sell, lease, or give away property
24 acquired by it. Provided, that any private person selected to receive gifts or benefits by the
25 Department be selected:

- 26 (1) with regard to the overall public interest that may result, and
27 (2) from a defined class upon such a rational basis open to all within the class as
28 to prevent constitutional infirmity with respect to requirements of equal
29 protection of the laws or prohibitions against granting exclusive privileges or
30 emoluments.

31 (b) All money credited to, held by, or to be received by the Department in respect of the
32 conservation of marine and estuarine resources must be deposited with the Department for the
33 use of the Division. In administering such funds and recommending expenditures, the
34 Department must give attention to the sources of the revenues received so as to encourage
35 disbursements to be made on an equitable basis; nevertheless, except as provided in this
36 Section, separate funds may not be established and particular projects and programs deemed to
37 be of sufficient importance in the conservation of marine and estuarine resources may receive
38 proportional shares of Division expenditures that are greater than the proportional shares of
39 license and other revenues produced by such projects or programs for the Department.

40 (c) If as a precondition of receiving funds under any cooperative program there must be
41 a separation of license revenues received from certain classes of licensees and utilization of
42 such revenues for limited purposes, the Department is directed to make such arrangements for
43 separate accounting or for separate funding as may be necessary to insure the use of the
44 revenues for the required purposes and eligibility for the cooperative funds. In such instance, if
45 required, such revenues may be retained by the Department until expended upon the limited
46 purposes in question. This subsection applies whether the cooperative program is with a public
47 or private agency and whether the Department acts alone on behalf of the State or in
48 conjunction with the Commission or some other State agency.

49 (d) The Board may, within the terms of policies set by regulation and applicable statutes
50 in this subchapter, delegate to the Director or the Commissioner, in its discretion, all
51 administrative powers granted to it.

1 § 113-227. **Appointment of Commissioner.** The Commissioner is to be appointed by the
2 Director in accordance with § 113-112.

3 § 113-228. **Adoption of Federal Regulations.** To the extent that the Department is granted
4 authority in this subchapter over subject matter as to which there is concurrent Federal
5 jurisdiction, the Board in its discretion may by reference in its regulations adopt relevant
6 provisions of Federal laws and regulations as State regulations. To prevent confusion or
7 conflict of jurisdiction in enforcement, the Board may provide for automatic incorporation by
8 reference into its regulations of future changes within any particular set of Federal laws or
9 regulations relating to some subject clearly within the jurisdiction of the Department.

10 §§ 113-229 to 113-240. **Reserved for Future Codification Purposes.**

11 Article 18.

12 Commercial and Sports Fisheries Advisory Board.

13 § 113-241. **Creation; Function; Purpose and Duty.** There is hereby created the Commercial
14 and Sports Fisheries Advisory Board. The function, purpose, and duty of the Advisory Board is
15 to study all matters and activities in connection with the conservation of marine and estuarine
16 resources and make recommendations to the Commissioner respecting ways to improve the
17 conservation of such resources.

18 The Advisory Board has the duty of acting as a liaison group between sports and
19 commercial fishermen, and others interested in the beneficial utilization of the marine and
20 estuarine resources, and the Commissioner. The Advisory Board is to consider all matters
21 which may be referred to it for study by the Board, the Commercial and Sports Fisheries
22 Committee, the Commissioner, or the General Assembly and it must render a report in writing
23 giving conclusions on each matter so referred. It may originate its own studies on various
24 matters within the scope of its interests and report on such matters to the public or to the agency
25 or official appropriately concerned. The Advisory Board, through its chairman and other
26 members, should keep in close communication with the Commissioner and with members of
27 the Commercial and Sports Fisheries Committee and bring to their attention all such matters as
28 may be brought to the attention of the Advisory Board which do not require specific study but
29 which may require decisions by them and by the Board. Aside from making recommendations
30 to the Commissioner and other officials and agencies as to matters referred to it, the Advisory
31 Board should make recommendations on all matters which are deemed relevant which may
32 come to the attention of the various members of the Advisory Board through their associations
33 with members of the public and various groups interested in the conservation of marine and
34 estuarine resources.

35 § 113-242. **Appointment of Members; Interests Represented.** The Governor is authorized to
36 appoint the Advisory Board to be composed of eleven members as follows:

- 37 (1) three sports fishermen;
- 38 (2) three commercial fishermen;
- 39 (3) two professional scientists with backgrounds relevant to the conservation of
40 marine and estuarine resources; and
- 41 (4) three persons who are, at the time of their appointments, members of the
42 General Assembly.

43 § 113-243. **Appointment of Chairman; Terms of Members.** The Governor must delegate
44 one of the members of the Advisory Board as chairman. The member so designated serves as
45 chairman at the pleasure of the Governor. Members of the Advisory Board serve at the pleasure
46 of the Governor.

47 § 113-244. **Organization and Meetings.** At its first meeting after the appointment of a new
48 chairman, or after the appointment of more than three new members since the last
49 organizational election, the Advisory Board must organize and elect a vice chairman and a
50 secretary. In any event an organizational election must be held once every four years. A

1 quorum for such organizational election meetings consists of seven members; the quorum for
2 other meetings consists of six members.

3 Regular meetings of the Advisory Board may be held upon such a schedule as the Advisory
4 Board may adopt. It may meet with the Commercial and Sports Fisheries Committee at the
5 regular quarterly meetings of the Board, provided that the Advisory Board must hold at least
6 one regular meeting per year prior to the meeting of the Board at some coastal area of the State
7 as provided in § 113-6. Either the chairman of the Advisory Board or the Commissioner, in his
8 discretion after consultation with interested persons, may call special meetings of the Advisory
9 Board.

10 The Commissioner and the chairman of the Commercial and Sports Fisheries Committee
11 must be notified of and are entitled to attend all regular and special meetings of the Advisory
12 Board.

13 **§ 113-245. Compensation and Expenses.** The members of the Advisory Board are to be
14 compensated while in attendance of meetings or engaged in the business of the Advisory Board
15 by payment of per diem, subsistence, and travel allowances fixed for members of State boards,
16 commissions, and committees in §§ 138-5 and 138-7.

17 **§§ 113-246 to 113-250. Reserved for Future Codification Purposes.**

18 Article 19.

19 Marine Fisheries Compact and Commission.

20 **§ 113-251. Definition of Terms.** (a) As used in this Article, the word "Commission" refers to
21 the Atlantic States Marine Fisheries Commission and the word "Commissioner" refers to a
22 member of that Commission.

23 (b) The reference in Article III of the compact set out in § 113-252 to the chairman of
24 the Committee on Commercial Fisheries shall be deemed to refer to the chairman of the
25 successor Commercial and Sports Fisheries Committee.

26 (c) The reference in Article III of the compact set out in § 113-252 to the Commissioner
27 of Commercial Fisheries shall be deemed to refer to the Commissioner of Commercial and
28 Sports Fisheries.

29 **§§ 113-252 to 113-258. Reserved for Insertion of Atlantic States Marine Fisheries
30 Compact and Administrative Provisions.**

31 **§§ 113-259 and 113-260. Reserved for Future Codification Purposes.**

32 Article 20.

33 Miscellaneous Regulatory Provisions

34 Applicable Both to Department and Commission.

35 **§ 113-261. Taking Fish for Scientific Purposes.** (a) The Department, the Commission, and
36 any agency of the United States with jurisdiction over fish is hereby granted the right to take
37 fish within the State, to conduct fish cultural operations and scientific investigations in the
38 several waters of North Carolina, and to erect fish hatcheries and fish propagating plants
39 without regard to any licensing or permit requirements in this subchapter.

40 (b) The Department with respect to fish in coastal fishing waters and the Commission
41 with respect to fish in inland fishing waters may provide for the issuance of permits, on such
42 terms as they deem just and in the best interests of conservation, authorizing persons to take
43 such fish through the use of drugs, poisons, explosives, electricity, or any other normally
44 prohibited manner. Such permits need not be restricted solely to victims of depredations or to
45 scientific or educational institutions, but should be issued only for good causes.

46 **§ 113-262. Prohibited Takings.** (a) Except as otherwise provided in this Article, or in
47 regulations permitting use of electricity to take certain fish, it is a misdemeanor punishable in
48 the discretion of the court to take any fish through the use of poisons, drugs, explosives, or
49 electricity.

1 (b) The possession of any fish which bears evidence of having been killed in violation
2 of this Section constitutes prima facie evidence that the person in possession intentionally took
3 such fish.

4 **§ 113-263. Inspecting Plans and Specifications of Dams.** The Department and the
5 Commission, in addition to other agencies primarily responsible, may inspect the plans and
6 specifications of all dams proposed to be built, in North Carolina or elsewhere within the
7 United States, the design or proposed mode of construction of which may have an adverse
8 effect upon fish within the State. The Department or the Commission, as the case may be, may
9 be heard before the appropriate agency charged with approving said plans and specifications,
10 and due consideration shall be given to said Department or Commission in the approval or
11 disapproval of the plans and specifications of proposed dams by the agencies so charged with
12 said duty.

13 **§ 113-264. Regulatory Power Over Property of Agency.** The Board and the Commission are
14 granted the power by regulation to license, regulate, prohibit, or restrict the public as to use and
15 enjoyment of, or harm to, any property of the Department and the Commission, and may charge
16 the public reasonable fees for access to or use of such property. "Property" as the word is used
17 in this Section is intended to be broadly interpreted and includes lands, buildings, vessels,
18 vehicles, equipment, markers, stakes, buoys, posted signs and other notices, trees and shrubs
19 and artificial constructions in boating and fishing access areas, and all other property owned,
20 leased, or managed by either the Department or the Commission. Wilful destruction of any
21 property of the Department or the Commission is a misdemeanor punishable in the discretion of
22 the court.

23 **§ 113-265. Miscellaneous Fish Provisions.** (a) The Board and the Commission may by
24 regulation prohibit or restrict fishing from any bridge so constructed that persons fishing on the
25 bridge are endangered by passing vehicular or rail traffic. The jurisdiction of the Board extends
26 to bridges over coastal fishing waters; the jurisdiction of the Commission extends to bridges
27 over inland fishing waters. In any event, no one may fish from the draw span of any bridge.

28 (b) No person may obstruct, pollute, or diminish the natural flow of water into or
29 through any fish hatchery in violation of the requirements of the Department of Water
30 Resources and the State Stream Sanitation Committee.

31 (c) It is unlawful for any person to throw or cause to be thrown into the channel of any
32 navigable waters fish offal in any quantity likely to hinder or prevent the passage of fish along
33 such channel. The Board and the Commission may by regulation impose further restrictions
34 upon the throwing of fish offal in any coastal fishing waters or inland fishing waters
35 respectively.

36 (d) It is unlawful for any person without the authority of the owner of the equipment to
37 take any fish from nets, traps, and other devices to catch fish which have been placed in the
38 open waters of the State. Violation of this subsection is a misdemeanor punishable in the
39 discretion of the court.

40 (e) Any master or other person having the management or control of a vessel in the
41 navigable waters of the State who wilfully, wantonly, and unnecessarily does injury to any
42 seine or net which may lawfully be hauled, set, or fixed in such waters for the purpose of taking
43 fish is guilty of a misdemeanor punishable in the discretion of the court.

44 (f) Any person who wilfully destroys or injures any buoys, markers, stakes, nets, or
45 other devices or property lawfully set out in the open waters of the State in connection with any
46 fishing or fishery is guilty of a misdemeanor punishable in the discretion of the court.

47 **§§ 113-266 to 113-270. Reserved for Future Codification Purposes.**

48 Article 21.

49 Inland Fishing Licenses.

1 **§ 113-271. Hook-and-Line Licenses in Inland Fishing Waters.** (a) Except as otherwise
2 provided in this Article, no one may fish by means of hook and line in inland fishing waters
3 without having first procured a current and valid hook-and-line fishing license.

4 (b) Except where indicated otherwise, all hook-and-line fishing licenses are annual
5 licenses. Annual fishing licenses, except for the combination hunting-fishing license, are issued
6 beginning January 1 each year and run until the following December 31.

7 (c) The hook-and-line fishing licenses are granted upon such terms and for such prices
8 as set out below. The amount stated in parentheses following the price of a license indicates the
9 fee to be kept by a license agent when selling such license, out of the amount collected.

10 (1) Resident State license, \$4.25 (\$0.25). This license is valid only for use by an
11 individual resident of the State.

12 (2) Resident State combination hunting-fishing license, \$6.25 (\$0.25).

13 This license is valid only for use by an individual resident of the State. It is valid during the
14 period set for annual hunting licenses in § 113-95.

15 (3) Resident county license, \$1.65 (\$0.15). This license is valid only for use by
16 an individual resident of the State within the county in which he lives.

17 (4) Resident State daily license, \$0.85 (\$0.10). This license is valid only for use
18 on a single day by an individual resident of the State.

19 (5) Nonresident State license, \$8.25 (\$0.25). This license is valid for use by an
20 individual within the State.

21 (6) Nonresident State five-day license, \$3.75 (\$0.25). This license is valid only
22 for use on five consecutive days by an individual within the State.

23 (7) Nonresident State daily license, \$1.65 (\$0.15). This license is valid only for
24 use on a single day by an individual within the State.

25 **§ 113-272. Special Trout Licenses.** (a) In addition to such hook-and-line fishing license as
26 may be required in § 113-271, no one may fish in public mountain trout waters without having
27 first procured a current and valid special trout license.

28 (b) All special trout licenses are annual licenses beginning January 1 each year and
29 running until the following December 31.

30 (c) Public mountain trout waters are those waters designated by the Commission as
31 having been stocked with trout at public expense.

32 (d) The special trout licenses issued by the Commission are as follows:

33 (1) Resident special trout license, \$1.25 (\$0.25). This license is valid only for
34 use by an individual resident of the State in public mountain trout waters.

35 (2) Nonresident special trout license, \$3.25 (\$0.25). This license is valid for use
36 by an individual within the State in public mountain trout waters.

37 **§ 113-273. Licenses for the Propagation and Sale of Fish.** (a) All licenses under this Section
38 are annual licenses issued beginning January 1 each year and running until the following
39 December 31.

40 (b) Except as otherwise provided, no person may engage in any activity as to which a
41 license is required by this Section without having first procured a current and valid license for
42 such activity. In implementing the provisions of this Section, the Commission may by
43 regulation govern every aspect of the licensee's dealings in fish and require licensees to keep
44 records and statistics, be subject to inspection and audit, make periodic reports, post
45 performance bonds payable to the Commission conditioned upon faithful compliance with
46 provisions of law, and otherwise comply with reasonable regulations and administrative
47 requirements that may be imposed under the authority of this Section.

48 (c) Commercial trout pond license. As used in this subsection, a "commercial trout
49 pond" is an artificial impoundment of three acres or less lying on private land and not on a
50 natural stream, but which may be supplied through screened and regulated supply lines, which
51 pond must be stocked exclusively with hatchery-reared mountain trout obtained from such

1 hatcheries as may be approved by the Commission. The Commission may by regulation
2 prescribe qualifications of operators of commercial trout ponds, standards of operation, and the
3 conditions under which trout from such ponds may be taken, transported, possessed, bought,
4 and sold. Commercial trout pond licenses issued by the Commission are as follows:

5 (1) Commercial trout fishing pond license, \$25.00. Authorizes the responsible
6 licensed pond owner or operator to sell trout taken by fishermen from the
7 pond to such fishermen.

8 (2) Commercial trout holding pond license, \$25.00. Authorizes the responsible
9 licensed pond owner or operator to hold trout for such commercial purposes
10 other than angling as may be authorized in the implementing regulations of
11 the Commission.

12 (d) Game fish sale license. The Commission may by regulation authorize and license
13 the sale of game fish other than trout taken from private ponds for propagation purposes and for
14 such other purposes as the Commission may specify, in the overall interests of the conservation
15 of wildlife resources. The Commission may prescribe standards of operation and the conditions
16 under which such fish may be taken, transported, possessed, bought, and sold. Game fish sale
17 licenses are issued by the Commission for a fee of one dollar (\$1.00).

18 (e) Fish propagation license. The Commission may by regulation authorize and license
19 the operation of fish hatcheries for species of fish which may be found in inland fishing waters.
20 The Commission may prescribe standards of operation, qualifications of operators, and the
21 conditions under which such fish may be taken, transported, possessed, bought, and sold. Fish
22 propagation licenses issued by the Commission are as follows:

23 (1) Trout and bass propagation license, \$5.00. Authorizes artificial propagation
24 and sale of all species of fish permitted under the regulations of the
25 Commission.

26 (2) Restricted propagation license, \$0.50. Authorizes artificial propagation and
27 sale of such species of fish, other than trout and bass, as may be designated
28 in the license, in accordance with governing regulations of the Commission.

29 **§ 113-274. Permits.** (a) As used in this Article, the word "permit" refers to a written
30 authorization issued without charge by an employee or agent of the Commission to an
31 individual or a person to conduct some activity over which the Commission has jurisdiction.
32 Such permit may serve in lieu of any license which may otherwise be required or it may be
33 necessary that the permit be secured in addition to adherence to regular license requirements, as
34 the Commission may direct, in accordance with the provisions of this subchapter.

35 (b) Except as otherwise specifically provided by law, no one may engage in any activity
36 as to which a permit is required without having first procured a current and valid permit.

37 (c) Under such circumstances and upon such terms and conditions as it may prescribe
38 by regulation, the Commission may issue the following permits:

39 (1) Possession permit. Authorizes the possession of fresh-water fish lawfully
40 acquired. The Commission may by regulation implement the issuance and
41 supervision of this permit, in accordance with governing laws and
42 regulations respecting the possession of fish.

43 (2) Transportation permit. The Commission may require the use of
44 transportation permits by persons required to be licensed under this Article,
45 or by persons and individuals exempt from license requirements, while
46 transporting within the State the fish described in subdivision (1) above, as
47 necessary to discourage unlawful taking or dealing in such fish and to
48 control and promote the orderly and systematic transportation of fish within,
49 into, through, and out of the State. Transportation permits may be issued for
50 such fish transported either dead or alive, in accordance with such
51 restrictions as may reasonably be imposed. Where convenient, the

1 Commission may require the retention and use of the license or permit
2 authorizing the taking or acquisition of the fish as a transportation permit.
3 Where circumstances warrant, however, the Commission may require a
4 separate additional transportation permit. Any substantial deviation from
5 reasonable requirements imposed by regulation or administratively under the
6 authority of this Section renders the transportation of the fish unlawful.

7 (3) Exportation or importation permit. Authorizes the exportation or importation
8 of the fish described in subdivision (1) above from or into the State. The
9 Commission may by regulation implement the issuance and supervision of
10 this permit, in accordance with governing laws and regulations respecting
11 the exportation and importation of such fish.

12 (4) Other permits. In implementing the provisions of this subchapter, the
13 Commission may require the use of such additional permits as may be
14 necessary or desirable in carrying out the duties of the Commission.

15 **§ 113-275. General Provisions Respecting Licenses.** (a) The Commission is authorized to
16 make agreements with other jurisdictions as to reciprocal honoring of licenses in the best
17 interests of the conservation of inland fishing resources.

18 (b) Every license issued under the provisions of this Article is effective beginning upon
19 its date of issuance unless the license expressly provides to the contrary, in accordance with
20 regulations of the Commission and such administrative authority to set future effective dates in
21 particular types of cases as may be delegated by the Commission to responsible employees or
22 agents.

23 (c) Every license issued under the provisions of this Article must be sold for the full
24 prescribed amount notwithstanding that a portion of the prescribed license period may have
25 elapsed prior to the license application.

26 (d) In implementing the sale and distribution of licenses issued under this Article, the
27 Commission may require license applicants to disclose such information as necessary for
28 determining the applicant's eligibility for a particular license. Such information as deemed
29 desirable to assist in enforcement of license requirements may be required to be recorded on the
30 face of any license. Fixing the form of the license may be by reasonable administrative
31 directive, and requirements as to such form need not be embodied in regulations of the
32 Commission in order to be validly required.

33 (e) Where employees of the Commission sell licenses of a type also sold through
34 license agents, such employees must sell the licenses for the full amount and remit such full
35 amount to the Commission without any deduction of the stipulated license agent's fee.

36 (f) Except as exemptions or exceptions may be provided in § 113-276:

37 (1) all licenses and permits under this Article must be kept ready at hand by or
38 about the person of individual licensees and permittees while engaged in the
39 regulated operations;

40 (2) all licenses and permits under this Article are nontransferrable; and

41 (3) all individuals engaged in operations subject to license or permit
42 requirements must have an individual license or permit — except where
43 such individuals are in the employ of and under the supervision of someone
44 who has the license or permit or acceptable evidence of the same at hand and
45 the activity is one for which a person not an individual may acquire a
46 license.

47 (g) It is unlawful to buy, sell, lend, borrow, or in any other way transfer or receive or
48 attempt to do any such things with respect to any nontransferrable license or permit for the
49 purpose of circumventing the requirements of this Article.

50 (h) It is unlawful for any person engaged in regulated operations under this Article to
51 refuse to exhibit or display any required license, permit, or identification upon the request of

1 any employee or agent of the Commission or of any officer authorized to enforce the provisions
2 of this Article.

3 (i) It is unlawful to refuse to comply with any provisions of this Article or of
4 regulations and administrative requirements reasonably promulgated under the authority of this
5 Article.

6 (j) It is a misdemeanor punishable in the discretion of the court for any person:

7 (1) knowingly to engage in any activity regulated under this Article with an
8 improper, false, or altered license or permit;

9 (2) knowingly to make any application for a license or permit to which he is not
10 entitled;

11 (3) knowingly to make any false, fraudulent, or misleading statement in
12 applying for a license or permit under this Article; or

13 (4) to counterfeit, alter, or falsify any application, license, or permit under this
14 Article.

15 **§ 113-276. Exemptions and Exceptions.** (a) Members of the Armed Forces of the United
16 States stationed at a military facility in North Carolina are deemed residents of the State for the
17 purpose of purchasing a resident State hook-and-line fishing license.

18 (b) A person holding a license under § 113-273 may take the fish regulated in
19 connection with his license without any additional license under such restrictions, including
20 permit requirements, as the Commission may by regulation impose. Provided, that such a
21 licensee may not take fish from public fishing waters for use in any licensed operation.

22 (c) Every landowner, his spouse, and dependent members of his family under twenty-
23 one years of age residing with him may fish upon the land of such landowner without being
24 subject to the hook-and-line fishing license requirements of § 113-271.

25 (d) An individual under sixteen years of age is exempt from the hook-and-line fishing
26 license requirements of § 113-271 anywhere within the State if:

27 (1) he is accompanied by a responsible adult who is in compliance with any
28 applicable license requirements; or

29 (2) he is carrying a current and valid license which has been issued to one of his
30 parents or to his guardian.

31 (e) A resident individual fishing with hook and line in the county of his residence using
32 natural bait is exempt from the hook-and-line fishing license requirements of § 113-271.
33 "Natural bait" is bait which may be beneficially digested by fish.

34 (f) Special device licenses issued by the Commission under its authority to regulate the
35 taking of non-game fish are not required in the following instances:

36 (1) When a landing net meeting the requirements set out below is used to take
37 non-game fish in inland fishing waters.

38 (2) When a landing net is used to assist in taking fish in inland fishing waters
39 when the initial and primary method of taking is by the use of hook and line.
40 Provided, that such license requirements as may be applicable to the fishing
41 with hook and line are met. The landing net authorized for use under
42 subdivision (1) above must have a handle not exceeding eight feet in length
43 and a hoop or frame to which the net is attached not exceeding sixty inches
44 along its outer perimeter. The license exemption as to the use of landing nets
45 may not be construed to apply to other special fishing devices the use of
46 which is regulated by the Commission.

47 (g) Bow nets which have been properly licensed by the Commission may be used in
48 inland fishing waters designated for and used by persons other than the licensee with the
49 permission of the licensee.

50 (h) The Commission may by regulation require persons subject to license requirements
51 and persons exempt from license requirements to carry or produce such identification as may

1 be necessary to substantiate the person's entitlement to a particular license or to a particular
2 exemption from license requirements.

3 **§ 113-277. Suspension and Revocation of Licenses.** (a) Upon conviction of any licensee or
4 permittee under this Article of a violation of any law or regulation administered by the
5 Commission under the authority of this subchapter, the court in its discretion may order
6 surrender of that license or permit plus any other license or permit issued by the Commission.
7 The court may order suspension of any license or permit for some stipulated period or may
8 order revocation of any license or permit for the remainder of the period for which it is valid. A
9 period of suspension may extend past the expiration date of a license or permit, but no period of
10 suspension longer than two years may be imposed. During any period of suspension or
11 revocation, the licensee or permittee is not entitled to purchase or apply for any replacement,
12 renewal, or additional license or permit regulating the same activity covered by the suspended
13 or revoked license or permit. The Commission may by administrative action and by regulation
14 devise procedures designed to implement license or permit suspensions and revocations that
15 may be ordered by the courts.

16 (b) It is a misdemeanor punishable in the discretion of the court for any person during a
17 period of suspension or revocation under the terms of this Article:

- 18 (1) to engage in any activity licensed in this Article without the appropriate
19 license or permit;
- 20 (2) knowingly to make any application for a license or permit to which he is not
21 entitled;
- 22 (3) knowingly to make any false, fraudulent, or misleading statement in
23 applying for a license or permit under this Article;
- 24 (4) to counterfeit, alter, or falsify any application, license, or permit under this
25 Article;
- 26 (5) knowingly to retain and use any license or permit which has been ordered
27 revoked or suspended under the terms of this Article; or
- 28 (6) wilfully to circumvent the terms of suspension or revocation in any manner
29 whatsoever.

30 **§§ 113-278 to 113-290. Reserved for future codification purposes.**

31 Article 22.

32 Regulation of Inland Fisheries.

33 **§ 113-291. General Restrictions.** Except as specifically permitted in this subchapter or in
34 regulations made under the authority of this subchapter, no person may take, possess, buy, sell,
35 or transport:

- 36 (1) any fish taken from or found in inland fishing waters; or
- 37 (2) any inland game fish.

38 **§ 113-292. Regulation of Fish.** (a) The Commission is authorized to authorize, license,
39 regulate, prohibit, prescribe, or restrict all fishing in inland fishing waters, and the taking of
40 inland game fish in coastal fishing waters, with respect to:

- 41 (1) time, place, character, or dimensions of any methods or equipment that may
42 be employed in taking fish;
- 43 (2) seasons for taking fish;
- 44 (3) size limits on and maximum quantities of fish that may be taken, possessed,
45 bailed to another, transported, bought, sold, or given away.

46 (b) The Commission is authorized to authorize, license, regulate, prohibit, prescribe, or
47 restrict:

- 48 (1) the opening and closing of inland fishing waters, whether entirely or only as
49 to the taking of particular classes of fish, use of particular equipment, or as
50 to other activities within the jurisdiction of the Commission; and

1 (2) the possession, cultivation, transportation, importation, exportation, sale,
2 purchase, acquisition, and disposition of all inland fisheries resources and all
3 related equipment, implements, vessels, and conveyances as necessary to
4 implement the work of the Commission in carrying out its duties.

5 To the extent not in conflict with provisions enforced by the Department, the
6 Commission may exercise the powers conferred in this subsection in coastal
7 fishing waters pursuant to its regulation of inland game fish in such waters.

8 (c) The Commission is authorized to make such regulations pertaining to the
9 acquisition, disposition, transportation, and possession of fish in connection with private ponds
10 as may be necessary in carrying out the provisions of this subchapter and the overall objectives
11 of the conservation of wildlife resources.

12 **§ 113-293. Miscellaneous Inland Fishing Provisions.** (a) The Commission may not adopt
13 any regulation to require the exclusive use of a float made of plastic or any other substance in
14 connection with hook-and-line fishing in inland fishing waters. In regulating the technique
15 known as "jug fishing," however, the Commission may restrict or prohibit the use of floats
16 made of glass.

17 (b) The Commission may not adopt any regulation limiting the number of lines to be
18 used by any fishermen fishing by hook and line in inland fishing waters. The Commission,
19 however, may regulate the number of such lines used in designated public mountain trout
20 waters.

21 (c) It is unlawful for any person in inland fishing waters:

- 22 (1) to set a net of any description across the main channel of any river or creek;
23 (2) to erect so as to extend more than three-fourths of the distance across any
24 river or creek any stand, dam, weir, hedge, or other obstruction to the
25 passage of fish;
26 (3) to erect any stand, dam, weir, or hedge in any part of a river or creek
27 required to be left open for the passage of fish; or,
28 (4) having erected any dam where the same was allowed, to fail to make and
29 keep open such slope or fishway as may be required by law to be kept open
30 for the free passage of fish. The provisions of this Section may not be
31 construed to conflict in any way with the laws and regulations of any other
32 agency with jurisdiction over the activity or subject matter in question.

33 **§ 113-294. Penalties.** Any person who unlawfully sells, possesses for sale, buys, or offers or
34 attempts to buy any game fish is guilty of a misdemeanor punishable by a fine of not less than
35 fifty dollars (\$50.00) in addition to such other punishment as the court may impose in its
36 discretion.

37 **§§ 113-295 to 113-300. Reserved for future codification purposes.**

38 Article 23.

39 Administrative Provisions; Regulatory Authority of Commission.

40 § 113-301. Publication of Regulations. (a) All regulations of the Commission promulgated
41 under the authority of this Chapter or any other statutes, including provisions in Chapters 75A
42 and 143 of the General Statutes of North Carolina, must be filed with the Secretary of State in
43 accordance with §§ 143-195 to 143-197. In addition, all such regulations of the Commission
44 the violation of which constitutes a crime must be filed with the Clerk of the Superior Court:

- 45 (1) of every county in the State, in the case of regulations of general application;
46 and
47 (2) of the county or counties affected, in the case of special or local regulations
48 affecting only a particular area.

49 (b) Regulations promulgated by the Commission under the authority of this subchapter
50 must be published at least once in some newspaper published in and having general circulation
51 throughout the State.

1 § 113-302. **Prima-Facie Evidence.** The prima-facie evidence provisions of § 113-103
2 respecting game apply equally to the possession of game fish in such establishments.

3 § 113-303. **Arrest and Witness Fees.** All arrest fees and other fees that may be charged in any
4 bill of costs for service of process by protectors must be paid to the county in which the trial is
5 held. No witness fee may be taxed in any bill of costs by virtue of the appearance of a protector
6 as a witness in a criminal case within his enforcement jurisdiction. Acceptance by any protector
7 of any arrest fee, witness fee, or any other fee to which he is not entitled is a misdemeanor
8 punishable in the discretion of the court.

9 § 113-304. **Reciprocal Agreements.** The Commission is empowered to make reciprocal
10 agreements with other jurisdictions respecting the matters governed in this subchapter. Pursuant
11 to such agreements the Commission may by regulation modify provisions of this subchapter in
12 order to effectuate the purposes of such agreements, in the overall best interests of the
13 conservation of wildlife resources.

14 § 113-305. **Cooperative Agreements.** The Commission is empowered to enter into
15 cooperative agreements with public and private agencies and individuals respecting the matters
16 governed in this subchapter. Pursuant to such agreements the Commission may expend funds,
17 assign employees to additional duties within or without the State, assume additional
18 responsibilities, and take other actions that may be required by virtue of such agreements, in the
19 overall best interests of the conservation of wildlife resources.

20 § 113-306. **Administrative Authority.** (a) In the overall best interests of the conservation of
21 wildlife resources, the Commission may lease or purchase lands, equipment, and other
22 property; accept gifts and grants on behalf of the State; establish wildlife refuges, management
23 areas, and boating and fishing access areas, either alone or in cooperation with others; provide
24 matching funds for entering into projects with some other governmental agency or with some
25 scientific, educational, or charitable foundation or institution; condemn lands in accordance
26 with the provisions of Chapter 40 of the General Statutes and other governing provisions of
27 law; and sell, lease, or give away property acquired by it. Provided, that any private person
28 selected to receive gifts or benefits by the Commission be selected:

- 29 (1) with regard to the overall public interest that may result; and
- 30 (2) from a defined class upon such a rational basis open to all within the class as
31 to prevent constitutional infirmity with respect to requirements of equal
32 protection of the laws or prohibitions against granting exclusive privileges or
33 emoluments.

34 (b) All money credited to, held by, or to be received by the Commission from the sale
35 of licenses authorized by this subchapter must be consolidated and placed in the Wildlife
36 Resources Fund.

37 (c) The Commission may, within the terms of policies set by regulation, delegate to the
38 Executive Director all administrative powers granted to it.

39 § 113-307. **Adoption of Federal Regulations.** To the extent that the Commission is granted
40 authority under this Chapter or under any other provision of law, including Chapter 75A of the
41 General Statutes, over subject matter as to which there is concurrent Federal jurisdiction, the
42 Commission in its discretion may by reference in its regulations adopt relevant provisions of
43 Federal law and regulations as State regulations. To prevent confusion or conflict of
44 jurisdiction in enforcement, the Commission may provide for an automatic incorporation by
45 reference into its regulations of future changes within any particular set of Federal laws or
46 regulations relating to some subject clearly within the jurisdiction of the Commission.

47 **Sec. 3.** The intention of this Act is to continue and broaden the powers and
48 authority of the Department of Conservation and Development and the North Carolina Wildlife
49 Resources Commission with respect to all matters pertaining to the conservation of fisheries
50 resources, except as specific modifications, qualifications, and restrictions may appear in this
51 Act. The failure to carry forward any specific administrative or regulatory power contained in

1 the former statutes in Chapter 113 of the General Statutes is not to be deemed to deprive the
2 Department or the Commission of the authority in question. The failure to carry forward any
3 specific prohibitions contained in the former statutes in Chapter 113 of the General Statutes or
4 of local laws repealed by this Act does not indicate an intention to make lawful the activity
5 formerly prohibited; in the absence of provisions in this Act respecting such activity, the
6 Department and the Commission in their discretion may continue, modify, or abolish the
7 previous prohibition through the passage of regulations. In numerous instances particular
8 provisions contained in the former law are omitted from this codification in order to leave the
9 matter within the discretionary power of the Board and the Commission.

10 **Sec. 4.** Upon the effective date of this Act the Commissioner of Commercial
11 Fisheries and the Division of Commercial Fisheries of the Department of Conservation and
12 Development are renamed the Commissioner of Commercial and Sports Fisheries and the
13 Division of Commercial and Sports Fisheries of such Department respectively. The change of
14 name is not intended to disrupt continuance of employment, tenure, seniority, or any other rule,
15 regulation, provision of law, custom, or administrative practice presently applicable to the
16 Commissioner and the Division of Commercial Fisheries and employees of the Division —
17 except as changes are made necessary by provisions within this Act. In addition, all contracts
18 and all other legal or official documents and provisions applicable to the Commissioner and the
19 Division of Commercial Fisheries and employees of that Division are made continuingly
20 applicable to the Commissioner and the Division of Commercial and Sports Fisheries and
21 employees of the Division. In particular, subject to the provisions of this Act, all
22 appropriations, credits, revenues, funds, moneys, obligations, equipment, vehicles, vessels,
23 offices, and other property, privileges, rights, and duties pertaining to the Commissioner and
24 the Division of Commercial Fisheries and employees of that Division are made fully applicable
25 to the Commissioner and the Division of Commercial and Sports Fisheries and employees of
26 the Division.

27 Upon the effective date of this Act all money and credit from any fund, including the
28 Commercial Fisheries Fund, the Commercial Fisheries Experimental and Oyster Demonstration
29 Fund, the fund provided for in former Sections 113-216.3 and 113-216.4 of the General
30 Statutes, and the Special Commercial Fisheries Equipment Fund, are transferred to the general
31 account of the Department of Conservation and Development for the use of the Division of
32 Commercial and Sports Fisheries. Except as otherwise provided in this Act, all appropriations
33 and receipts of the Department of Conservation and Development for the conservation of
34 marine and estuarine resources must be paid into such general account for the use of the
35 Division. Notwithstanding the provisions of this Section, the Department must provide for
36 separate accounting or funding for any receipts of the Division which are required by law to be
37 restricted as to their purpose of expenditure.

38 **Sec. 5.** Upon the effective date of this Act, the Commercial Fisheries Committee of
39 the Board of Conservation and Development is renamed the Commercial and Sports Fisheries
40 Committee of such Board. The change of name is not intended to change the composition of
41 the Committee or its status and all statutes, rules, regulations, bylaws, contracts, and other legal
42 and official documents or provisions applicable to the Commercial Fisheries Committee are,
43 unless contrary to the purposes of this Act, made continuingly applicable to the Commercial
44 and Sports Fisheries Committee.

45 **Sec. 6.** Upon the effective date of this Act, the Commercial Fisheries Advisory
46 Board is dissolved. Upon the appointment of the Commercial and Sports Fisheries Advisory
47 Board, the Advisory Board will become entitled to all appropriations, property, and privileges
48 enjoyed by the Commercial Fisheries Advisory Board. To the extent appropriate to the
49 purposes of this Act, all provisions in statutes, regulations, bylaws, contracts, and other legal or
50 official documents or provisions applicable to the Commercial Fisheries Advisory Board are
51 made applicable to the Commercial and Sports Fisheries Advisory Board.

1 **Sec. 7.** Subject to the power of future modification by the Board and Commission
2 as provided in this Act, the existing boundary line between inland fishing waters and
3 commercial fishing waters is retained as the boundary line between inland fishing waters and
4 coastal fishing waters. Except as this Act provides otherwise, all statutes, regulations, bylaws,
5 contracts, and other legal or official documents or provisions applicable to commercial fishing
6 waters are made applicable to coastal fishing waters. Those areas of commercial fishing waters
7 to which hook-and-line fishing license requirements of the North Carolina Wildlife Resources
8 Commission applied on January 1, 1965, are to be deemed joint fishing waters, subject to
9 modification by agreement between the Department of Conservation and Development and the
10 Commission. Until such agreement provides otherwise, the Commission may continue to
11 enforce license requirements and applicable inland fishing laws and regulations in such waters.

12 **Sec. 8.** G.S. 75A-5.1 is amended to delete the references to "G.S. 113-174.7" in
13 subsections (a) and (c) (3) and to substitute references to "§ 113-152" in lieu thereof.

14 **Sec. 9.** G.S. 75A-17(b) is amended by substituting the words "Commercial and
15 Sports Fisheries Division" for "Commercial Fisheries Division" in such subsection.

16 **Sec. 10.** G.S. 113-6 is rewritten to read as follows:

17 **§ 113-6. Meetings of the Board and Commercial and Sports Fisheries Committee.** The
18 said Board shall meet at least four times each year; one meeting to be held at some coastal area
19 in the State, and the other three meetings to be held at a date and place to be fixed by the Board,
20 and it may hold such other meetings as may be deemed necessary by the Board for the proper
21 conduct of the business of the Department. The Commercial and Sports Fisheries Committee of
22 the Board of Conservation and Development shall meet once each year prior to the meeting
23 held in the coastal area. It will at that time hear recommendations of persons interested in the
24 conservation of marine and estuarine resources.

25 **Sec. 11.** The fifth paragraph of G.S. 113-8 is rewritten to read as follows:

26 It shall have the duty of enforcing all laws relating to the conservation of marine and
27 estuarine resources.

28 **Sec. 12.** G.S. 143-238(3) is amended to read as follows:

29 The terms "wildlife resources" and "wildlife" shall be defined in accordance with the
30 definitions in § 113-129.

31 **Sec. 13.** G.S. 143-239 as it appears in 1964 Replacement Volume 3C of the General
32 Statutes is amended in line six of said Section to delete the phrase and comma "and other
33 wildlife exclusive of commercial fisheries," and to insert "and other wildlife resources" in lieu
34 thereof.

35 **Sec. 14.** The phrase "exclusive of commercial fish and fisheries" appearing in lines
36 seven and eight of G.S. 143-247 as codified in 1964 Replacement Volume 3C of the General
37 Statutes is deleted and "subject to the provisions of Subchapter IV of Chapter 113 of the
38 General Statutes" is substituted in lieu thereof.

39 **Sec. 15.** The phrase and commas ", exclusive of commercial fish or fisheries,"
40 appearing in lines eleven and twelve of G.S. 143-248 as codified in 1964 Replacement Volume
41 3C of the General Statutes is deleted.

42 **Sec. 16.** The phrase and commas ", exclusive of commercial fish and fisheries,"
43 appearing in line nine of G.S. 143-250 as codified in 1964 Replacement Volume 3C of the
44 General Statutes is deleted.

45 **Sec. 17.** G.S. 143-252 is rewritten to read as follows:

46 **§ 143-252. Article Subject to Chapter 113.** Nothing in this Article shall be construed to
47 affect the jurisdictional division between the North Carolina Wildlife Resources Commission
48 and the Department of Conservation and Development contained in Subchapter IV of Chapter
49 113 of the General Statutes, or in any way to alter or abridge the powers and duties of the two
50 agencies conferred in that subchapter.

1 **Sec. 18.** Notwithstanding the repeal of Subchapter IV of Chapter 113 of the General
2 Statutes effected in Section 2 of this Act, the provisions of §§ 113-377.1 to 113-377.7
3 pertaining to the Atlantic States Marine Fisheries Compact and implementing administrative
4 provisions are retained and recodified in the revision of Subchapter IV as §§ 113-252 to 113-
5 258. The cross reference in line 3 of § 113-377.2 to "§ 113-377.1" is corrected to read "§ 113-
6 252" in order to harmonize with the new codification. The references in § 113-377.3 to the
7 "committee on commercial fisheries" and the "Commissioner of Commercial Fisheries" are
8 corrected to read "Commercial and Sports Fisheries Committee" and "Commissioner of
9 Commercial and Sports Fisheries" in order to harmonize with the new codification.

10 **Sec. 19.** In the process of repealing the existing Subchapter IV of the General
11 Statutes and all special, local, and private acts and ordinances regulating the conservation of
12 marine and estuarine resources, the repeal of acts which themselves repeal former acts is not
13 intended to revive the former acts.

14 **Sec. 20.** In addition to the repeals specifically provided for in this Act, all laws and
15 clauses of laws in conflict with this Act are hereby repealed.

16 **Sec. 21.** The provisions of this Act become fully effective on January 1, 1966. Prior
17 to this date, however, the Department of Conservation and Development and the North
18 Carolina Wildlife Resources Commission are authorized by both regulation and administrative
19 action to take all such steps as may be necessary to implement the orderly transition from the
20 provisions of the former law to the provisions contained in this Act. Budgetary and accounting
21 changes required by this Act may be placed into effect as of July 1, 1965, in the discretion of
22 the Department or the Commission, except that no increased tax or license fee authorized in
23 this Act may be charged for any tax assessed or any license in effect prior to January 1, 1966.

24 In the General Assembly read three times and ratified, this the 11th day of June,
25 1965.