

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

4

SENATE BILL 428  
Second Edition Engrossed 3/30/89  
House Committee Substitute Favorable 6/6/89  
Fourth Edition Engrossed 6/13/89

Short Title: Water Column Leases for Aquaculture.

(Public)

---

Sponsors:

---

Referred to:

---

March 15, 1989

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF WATER COLUMN LEASES FOR  
COMMERCIAL AQUACULTURE ACTIVITIES.

The General Assembly of North Carolina enacts:

Section 1. Article 16 of Chapter 113 of the General Statutes is amended by  
adding a new section to read:

**"§ 113-202.1. Water column leases for aquaculture.**

(a) To increase the productivity of leases for shellfish culture issued under G.S. 113-202, the Marine Fisheries Commission may amend shellfish cultivation leases to authorize use of the water column superjacent to the leased bottom under the terms of this section when it determines the public interest will benefit from amendment of the leases. Leases with water column amendments must produce shellfish in commercial quantities at four times the minimum production rate of leases issued under G.S. 113-202, or any higher quantity required by the Commission through duly adopted rules.

(b) Suitable areas for the authorization of water column use shall meet the following minimum standards:

(1) Aquaculture use of the leased area must not significantly impair navigation;

(2) The leased area must not be within a navigation channel marked or maintained by a state or federal agency;

- 1           (3) The leased area must not be within an area traditionally used and  
2 available for fishing or hunting activities incompatible with the  
3 activities proposed by the leaseholder, such as trawling or seining;
- 4           (4) Aquaculture use of the leased area must not significantly interfere with  
5 the exercise of riparian rights by adjacent property owners including  
6 access to navigation channels from piers or other means of access; and
- 7           (5) Any additional standards, established by the Commission in duly  
8 adopted rules, to protect the public interest in coastal fishing waters.
- 9       (c) The Commission shall not amend shellfish cultivation leases to authorize use  
10 of the water column unless:
- 11           (1) The leaseholder submits an application, accompanied by a  
12 nonrefundable application fee of one hundred dollars (\$100.00), which  
13 conforms to the standards for lease applications in G.S. 113A-202(d)  
14 and the duly adopted rules of the Commission;
- 15           (2) The proposed amendment has been noticed consistent with G.S. 113-  
16 202(f);
- 17           (3) Public hearings have been conducted consistent with G.S. 113-202(g);
- 18           (4) The aspects of the proposals which require use and dedication of the  
19 water column have been documented and are recognized by the  
20 Commission as commercially feasible forms of aquaculture which will  
21 enhance shellfish production on the leased area;
- 22           (5) It is not feasible to undertake the aquaculture activity outside of coastal  
23 fishing waters; and
- 24           (6) The authorized water column use has the least disruptive effect on  
25 other public trust uses of the waters of any available technology to  
26 produce the shellfish identified in the proposal.
- 27       (d) Amendments of shellfish cultivation leases to authorize use of the water  
28 column are issued for a period of five years or the remainder of the term of the lease,  
29 whichever is shorter. The annual rental for water column amendments is five hundred  
30 dollars (\$500.00) per acre, prorated. The rental is in addition to that required in G.S.  
31 113-202.
- 32       (e) Amendments of shellfish cultivation leases to authorize use of the water  
33 column are subject to termination in accordance with the procedures established in G.S.  
34 113-202 for the termination of shellfish cultivation leases. Additionally, such  
35 amendments may be terminated for unauthorized or unlawful interference with the  
36 exercise of public trust rights by the leaseholder, agents and employees of the  
37 leaseholder.
- 38       (f) Amendments of shellfish cultivation leases to authorize use of the water  
39 column are not transferrable except when the Commission approves the transfer after  
40 public notice and hearing consistent with subsection (c) of this section.
- 41       (g) After public notice and hearing consistent with subsection (c) of this section,  
42 the Commission may renew an amendment, in whole or in part, when the leaseholder  
43 has produced commercial quantities of shellfish and has otherwise complied with the  
44 rules of the Commission. Renewals may be denied or reduced in scope when the public

1 interest so requires. Appeal of renewal decisions shall be conducted in accordance with  
2 G.S. 113-202(p). Renewals are subject to the lease terms and rates established in  
3 subsection (d) of this section.

4 (h) The procedures and requirements of G.S. 113-202 shall apply to proposed  
5 amendments or amendments of shellfish cultivation leases considered under this section  
6 except more specific provisions of this section control conflicts between the two  
7 sections.

8 (i) To the extent required by demonstration or research aquaculture development  
9 projects, the Commission may amend existing leases and issue leases that authorize use  
10 of the bottom and the water column. Demonstration or research aquaculture  
11 development projects may be authorized for two years with no more than one renewal  
12 and when the project is proposed or formally sponsored by an educational institution  
13 which conducts research or demonstration of aquaculture. Production of shellfish with  
14 a sales value in excess of one thousand dollars (\$1,000) per acre per year shall constitute  
15 commercial production. Demonstration or research aquaculture development projects  
16 shall be exempt for the rental rate in subsection (d) of this section unless commercial  
17 production occurs as a result of the project."

18 Sec. 2. G.S. 113-202(b) reads as rewritten:

19 "(b) The Marine Fisheries Commission may delete any part of an area proposed  
20 for lease or may condition a lease to protect the public interest with respect to the  
21 factors enumerated in subsection (a) of this section. The Marine Fisheries Commission  
22 may not grant a new lease in an area heavily used for recreational purposes. ~~To the extent~~  
23 ~~required by demonstration or research aquaculture development projects, the Marine Fisheries~~  
24 ~~Commission may amend existing leases and issue leases that authorize use of the bottom and~~  
25 ~~the water column, notwithstanding the factors enumerated in subsection (a) of this section."~~

26 Sec. 3. G.S. 113-206(a1) reads as rewritten:

27 "(a1) If a claim is based on an oyster or other shellfish grant or a perpetual  
28 franchise for shellfish cultivation, the Marine Fisheries Commission, upon the  
29 recommendation of the Secretary, may, to resolve the claim, grant a shellfish lease to  
30 the claimant for part or all of the area claimed. If a claim of exclusive shellfishing  
31 rights was registered based upon a conveyance by the Literary Fund, the North Carolina  
32 Literary Board or the State Board of Education, and the claimant shows that the area  
33 had been cultivated by the claimant or his predecessor in title for the seven-year period  
34 prior to registration of the claim, the Marine Fisheries Commission, upon  
35 recommendation of the Secretary, may, to resolve the claim, grant a shellfish lease to  
36 the claimant for all or part of the area claimed, not to exceed ten acres. A shellfish lease  
37 granted under this subsection is subject to the restrictions imposed on shellfish leases in  
38 G.S. 113-202, except the prohibition against leasing an area that contains a natural  
39 shellfish bed in G.S. 113-202(a)(2). This restriction is waived because, due to the  
40 cultivation efforts of the claimant, the area is likely to contain a natural shellfish bed."

41 Sec. 4. This act is effective upon ratification.