

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1097  
Committee Substitute Favorable 4/23/97  
Committee Substitute #2 Favorable 5/15/97  
Committee Substitute #3 Favorable 5/28/97

Short Title: Fisheries Reform Act-2.

(Public)

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Sponsors:

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Referred to:

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April 21, 1997

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

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

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

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

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

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

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

The General Assembly of North Carolina enacts:

## PART I. SHORT TITLE; PERFORMANCE AUDIT

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

Section 1.2. The State Auditor shall conduct a performance audit, including a detailed operational review, of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources. The performance audit report shall be delivered to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 February 1998.

## PART II. MARINE FISHERIES COMMISSION

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

### **"PART 5B. MARINE FISHERIES COMMISSION.**

#### **"§ 143B-289.20. Definitions.**

(a) As used in this Part:

(1) 'Commission' means the Marine Fisheries Commission.

(2) 'Department' means the Department of Environment, Health, and Natural Resources.

(3) 'Fisheries Director' means the Director of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources.

(4) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

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

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

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

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

(1) Manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources of the State.

(2) Implement the laws relating to coastal fisheries, coastal fishing, shellfish, crustaceans, and other marine and estuarine resources enacted by the General Assembly by the adoption of rules and policies, to provide a sound, constructive, comprehensive, continuing, and economical coastal fisheries program directed by citizens who are

1 knowledgeable in the protection, restoration, proper use, and  
2 management of marine and estuarine resources.

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

8 **"§ 143B-289.22. Marine Fisheries Commission – powers and duties.**

9 (a) The Marine Fisheries Commission shall adopt rules to be followed in the  
10 management, protection, preservation, and enhancement of the marine and estuarine  
11 resources of the State including commercial and sports fisheries resources. The Marine  
12 Fisheries Commission shall have the power and duty:

- 13 (1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms  
14 of marine and estuarine resources in coastal fishing waters with respect  
15 to:  
16 a. Time, place, character, or dimensions of any methods or  
17 equipment that may be employed in taking fish.  
18 b. Seasons for taking fish.  
19 c. Size limits on and maximum quantities of fish that may be taken,  
20 possessed, bailed to another, transported, bought, sold, or given  
21 away.
- 22 (2) To provide fair regulation of commercial and recreational fishing groups  
23 in the interest of the public.
- 24 (3) To adopt rules and take all steps necessary to develop and improve  
25 mariculture, including the cultivation, harvesting, and marketing of  
26 shellfish and other marine resources in the State, involving the use of  
27 public grounds and private beds as provided in G.S. 113-201.
- 28 (4) To close areas of public bottoms under coastal fishing waters for such  
29 time as may be necessary in any program of propagation of shellfish as  
30 provided in G.S. 113-204.
- 31 (5) In the interest of conservation of the marine and estuarine resources of  
32 the State, to institute an action in the superior court to contest the claim  
33 of title or claimed right of fishery in any navigable waters of the State  
34 registered with the Department as provided in G.S. 113-206(d).
- 35 (6) To make reciprocal agreements with other jurisdictions respecting any  
36 of the matters governed in this Subchapter as provided by G.S. 113-223.
- 37 (7) To adopt relevant provisions of federal laws and regulations as State  
38 rules pursuant to G.S. 113-228.
- 39 (8) To delegate to the Fisheries Director the authority by proclamation to  
40 suspend or implement, in whole or in part, a particular rule of the  
41 Commission that may be affected by variable conditions as provided in  
42 G.S. 113-221(e).

- 1           (9)    To comment on and otherwise participate in the determination of permit  
2           applications received by State agencies that may have an effect on the  
3           marine and estuarine resources of the State.
- 4           (10)   To adopt Fishery Management Plans as provided in G.S. 113-182.1, to  
5           establish a Priority List to determine the order in which Fishery  
6           Management Plans are developed, to establish a Schedule for the  
7           development and adoption of each Fishery Management Plan, and to  
8           establish guidance criteria as to the contents of Fishery Management  
9           Plans.
- 10          (11)   To approve Coastal Habitat Protection Plans as provided in G.S. 143B-  
11          279.8.
- 12          (12)   To hear appeals by persons denied a fishing license, permit, or lease  
13          under this Chapter.
- 14          (b)    The Marine Fisheries Commission shall have the power and duty to establish  
15          standards and adopt rules:
- 16               (1)    To implement the provisions of Subchapter IV of Chapter 113 as  
17               provided in G.S. 113-134.
- 18               (2)    To manage the disposition of confiscated property as set forth in G.S.  
19               113-137.
- 20               (3)    To govern all license requirements and taxes prescribed in Article 14A  
21               of Chapter 113 of the General Statutes.
- 22               (4)    To regulate the importation and exportation of fish, and equipment that  
23               may be used in taking or processing fish, as necessary to enhance the  
24               conservation of marine and estuarine resources of the State as provided  
25               in G.S. 113-170.
- 26               (5)    To regulate the possession, transportation, and disposition of seafood, as  
27               provided in G.S. 113-170.4.
- 28               (6)    To regulate the disposition of the young of edible fish, as provided by  
29               G.S. 113-185.
- 30               (7)    To manage the leasing of public grounds for mariculture, including  
31               oysters and clam production, as provided in G.S. 113-202.
- 32               (8)    To govern the utilization of private fisheries, as provided in G.S. 113-  
33               205.
- 34               (9)    To impose further restrictions upon the throwing of fish offal in any  
35               coastal fishing waters, as provided in G.S. 113-265.
- 36               (10)   To regulate the location and utilization of artificial reefs in coastal  
37               waters.
- 38               (11)   To regulate the placement of nets and other sports or commercial fishing  
39               apparatus in coastal fishing waters with regard to navigational or  
40               recreational safety as well as from a conservation standpoint.
- 41          (c)    The Commission is authorized to authorize, license, prohibit, prescribe, or  
42          restrict:

1           (1)    The opening and closing of coastal fishing waters, except as to inland  
2                   game fish, whether entirely or only as to the taking of particular classes  
3                   of fish, use of particular equipment, or as to other activities.

4           (2)    The possession, cultivation, transportation, importation, exportation,  
5                   sale, purchase, acquisition, and disposition of all marine and estuarine  
6                   resources and all related equipment, implements, vessels, and  
7                   conveyances as necessary to carry out its duties.

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

12          (e)    The Commission shall adopt rules as provided in this Chapter. All rules  
13                  adopted by the Commission shall be enforced by the Department of Environment, Health,  
14                  and Natural Resources.

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

18          **"§ 143B-289.23. Marine Fisheries Commission – quasi-judicial powers; procedures.**

19          (a)    With respect to those matters within its jurisdiction, the Marine Fisheries  
20                  Commission shall exercise quasi-judicial powers in accordance with the provisions of  
21                  Chapter 150B of the General Statutes. This section and any rules adopted by the Marine  
22                  Fisheries Commission shall govern the following proceedings:

23               (1)    Exceptions to recommended decisions in contested cases shall be filed  
24                   with the Secretary within 30 days of the receipt by the Secretary of the  
25                   official record from the Office of Administrative Hearings, unless  
26                   additional time is allowed by the Chair of the Commission.

27               (2)    Oral arguments by the parties may be allowed by the Chair of the  
28                   Commission upon request of the parties.

29               (3)    Deliberations of the Commission shall be conducted in its public  
30                   meeting unless the Commission determines that consultation with its  
31                   counsel should be held in a closed session pursuant to G.S. 143-318.11.

32          (b)    The final agency decision in contested cases that arise from civil penalty  
33                  assessments shall be made by the Commission. In the evaluation of each violation, the  
34                  Commission shall recognize that harm to the marine and estuarine resources of the State  
35                  arising from the violation of a statute or rule enacted or adopted to protect those resources  
36                  may be immediately observed through damaged resources or may be incremental or  
37                  cumulative with no damage that can be immediately observed or documented. Penalties  
38                  up to the maximum authorized may be based on any one or combination of the following  
39                  factors:

40               (1)    The degree and extent of harm to the marine and estuarine resources of  
41                   the State, to the public health, or to private property resulting from the  
42                   violation.

43               (2)    The frequency and gravity of the violation.

- 1           (3)    The cost of rectifying the damage.
- 2           (4)    Whether the violation was committed willfully or intentionally.
- 3           (5)    The prior record of the violator in complying or failing to comply with  
4           programs over which the Marine Fisheries Commission has regulatory  
5           authority.
- 6           (6)    The cost to the State of the enforcement procedures.

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

- 13           (1)    Whether one or more of the civil penalty assessment factors in  
14           subsection (b) of this section were wrongly applied to the detriment of  
15           the petitioner.
- 16           (2)    Whether the violator promptly abated continuing environmental damage  
17           resulting from the violation.
- 18           (3)    Whether the violation was inadvertent.
- 19           (4)    Whether the violator had been assessed civil penalties for any previous  
20           violations.
- 21           (5)    Whether payment of the civil penalty will prevent payment for the  
22           remaining necessary remedial actions.

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

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

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

34 **"§ 143B-289.24. Marine Fisheries Commission – members; appointment; term;**  
35 **oath; ethical standards; removal; compensation; staff.**

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

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

- 1           (2) One person actively engaged in, or recently retired from, commercial  
2 fishing as demonstrated by currently or recently deriving at least fifty  
3 percent (50%) of earned income from taking and selling fishery  
4 resources in coastal fishing waters of the State. The spouse of a  
5 commercial fisherman who meets the criteria of this subdivision may be  
6 appointed under this subdivision.
- 7           (3) One person actively connected with, and experienced as, a licensed fish  
8 dealer or in seafood processing or distribution as demonstrated by  
9 deriving at least fifty percent (50%) of earned annual income from  
10 activities involving the buying, selling, processing, or distribution of  
11 seafood landed in this State. The spouse of a person qualified under this  
12 subdivision may be appointed provided that the spouse is actively  
13 involved in the qualifying business.
- 14           (4) One person actively engaged in recreational sports fishing in coastal  
15 waters in this State. An appointee under this subdivision may not derive  
16 more than ten percent (10%) of earned annual income from sports  
17 fishing activities.
- 18           (5) One person actively engaged in recreational sports fishing in coastal  
19 waters in this State. An appointee under this subdivision may not derive  
20 more than ten percent (10%) of earned annual income from sports  
21 fishing activities.
- 22           (6) One person actively engaged in the sports fishing industry as  
23 demonstrated by deriving at least fifty percent (50%) of earned annual  
24 income from selling goods or services in this State. The spouse of a  
25 person qualified under this subdivision may be appointed provided that  
26 the spouse is actively involved in the qualifying business.
- 27           (7) One person having general knowledge of and experience related to  
28 subjects and persons regulated by the Commission.
- 29           (8) One person having general knowledge of and experience related to  
30 subjects and persons regulated by the Commission.
- 31           (9) One person who is a fisheries scientist having special training and  
32 expertise in marine and estuarine fisheries biology, ecology, population  
33 dynamics, water quality, habitat protection, or similar knowledge. A  
34 person appointed under this subdivision may not receive more than ten  
35 percent (10%) of earned annual income from either the commercial or  
36 sports fishing industries, including the processing and distribution of  
37 seafood.

38           (b) Residential Qualifications. – For purposes of providing regional representation  
39 on the Commission, the following three coastal regions of the State are designated: (i)  
40 Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates,  
41 Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and  
42 Washington Counties, (ii) Central Coastal Region comprised of Beaufort, Carteret,  
43 Craven, Hyde, Jones, and Pamlico Counties; and (iii) Southeast Coastal Region

1 comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender  
2 Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of subsection  
3 (a) of this section shall be residents of one of the coastal regions of the State. The  
4 membership of the Commission shall include at least one person who is a resident of each  
5 of the three coastal regions of the State.

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

9 (d) Terms. – The term of office of members of the Commission is three years. A  
10 member may be reappointed to any number of successive three-year terms. Upon the  
11 expiration of a three-year term, a member shall continue to serve until a successor is  
12 appointed and duly qualified as provided by G.S. 128-7. The term of members appointed  
13 under subdivisions (1), (2), and (3) of subsection (a) of this section shall expire on 30  
14 June of years evenly divisible by three. The term of members appointed under  
15 subdivisions (4), (5), and (6) of subsection (a) of this section shall expire on 30 June of  
16 years that precede by one year those years that are evenly divisible by three. The term of  
17 members appointed under subdivisions (7), (8), and (9) of subsection (a) of this section  
18 shall expire on 30 June of years that follow by one year those years that are evenly  
19 divisible by three.

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

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

24 (g) Ethical Standards. –

25 (1) Disclosure statements. – Any person under consideration for  
26 appointment to the Commission shall provide both a financial disclosure  
27 statement and a potential bias disclosure statement to the Governor. A  
28 financial disclosure statement shall include statements of the nominee's  
29 financial interests in and related to State fishery resources use, licenses  
30 issued by the Division of Marine Fisheries held by the nominee or any  
31 business in which the nominee has a financial interest, and uses made by  
32 the nominee or by any business in which the nominee has a financial  
33 interest of the regulated resources. A potential bias disclosure statement  
34 shall include a statement of the nominee's membership or other  
35 affiliation with, including offices held in societies, organizations, or  
36 advocacy groups pertaining to the management and use of the State's  
37 coastal fishery resources. Disclosure statements shall be treated as  
38 public records under Chapter 132 of the General Statutes and shall be  
39 updated on an annual basis.

40 (2) Voting/conflict of interest. – A member of the Commission shall not  
41 vote on any issue before the Commission that would have a 'significant  
42 and predictable effect' on the member's financial interest. For purposes  
43 of this subdivision, 'significant and predictable effect' means there is or



1           may be a close causal link between the decision of the Commission and  
2           an expected disproportionate financial benefit to the member that is  
3           shared only by a minority of persons within the same industry sector or  
4           gear group. A member of the Commission shall also abstain from  
5           voting on any petition submitted by an advocacy group of which the  
6           member is an officer or sits as a member of the advocacy group's board  
7           of directors. A member of the Commission shall not use the member's  
8           official position as a member of the Commission to secure any special  
9           privilege or exemption of substantial value for any person. No member  
10           of the Commission shall, by the member's conduct, create an appearance  
11           that any person could improperly influence the member in the  
12           performance of the member's official duties.

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

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

17           (i) Office May Be Held Concurrently With Others. – The office of member of the  
18           Marine Fisheries Commission may be held concurrently with any other elected or  
19           appointed office, as authorized by Article VI, Section 9, of the Constitution of North  
20           Carolina.

21           (j) Compensation. – Members of the Commission who are State officers or  
22           employees shall receive no per diem compensation for serving on the Commission, but  
23           shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the  
24           Commission who are full-time salaried public officers or employees other than State  
25           officers or employees shall receive no per diem compensation for serving on the  
26           Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in  
27           the same manner as State officers or employees. All other Commission members shall  
28           receive per diem compensation and reimbursement in accordance with the compensation  
29           rate established in G.S. 93B-5.

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

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

36           "**§ 143B-289.25. Marine Fisheries Commission – officers; organization; seal.**

37           (a) The Governor shall appoint a member of the Commission to serve as Chair.  
38           The Chair shall serve at the pleasure of the Governor. The Commission shall elect one of  
39           its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year term  
40           beginning 1 July and ending 30 June of the following year. The Vice-Chair may serve  
41           any number of consecutive terms.

42           (b) The Chair shall guide and coordinate the activities of the Commission in  
43           fulfilling its duties as set out in this Article. The Chair shall report to and advise the

1 Governor and the Secretary on the activities of the Commission, on marine and estuarine  
2 conservation matters, and on all marine fisheries matters.

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

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

8 **"§ 143B-289.26. Marine Fisheries Commission – meetings; quorum.**

9 (a) The Commission shall meet at least once each calendar quarter and may hold  
10 additional meetings at any time and place within the State at the call of the Chair or upon  
11 the written request of at least four members. At least three of the four quarterly meetings  
12 of the Commission shall be held in one of the coastal regions designated in G.S. 143B-  
13 289.24.

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

16 **"§ 143B-289.27. Marine Fisheries Commission Advisory Committees established;**  
17 **members; selection; duties.**

18 (a) The Commission shall be assisted in the performance of its duties by three  
19 standing advisory committees and four regional advisory committees. Each standing and  
20 regional advisory committee shall consist of no more than 11 members. The Chair of the  
21 Commission shall designate one member of each advisory committee to serve as Chair of  
22 the committee. Members shall serve staggered three-year terms as determined by the  
23 Commission. The Commission shall establish other policies and procedures for standing  
24 and regional advisory committees that are consistent with those governing the  
25 Commission as set out in this Part.

26 (b) The Chair of the Commission shall appoint the following standing advisory  
27 committees:

28 (1) The Habitat/Water Quality Committee, which shall be a technical  
29 committee comprised of scientists or other experts in fisheries biology,  
30 ecology, water quality, sociology, and economics.

31 (2) The Fisheries Assessment Committee, which shall be a technical  
32 committee comprised of scientists or other experts in fisheries biology,  
33 ecology, water quality, sociology, and economics.

34 (3) The Fisheries Resources/Users Committee, which shall be comprised of  
35 members of the fishing public, including the chairs of four regional  
36 committees.

37 (c) Each standing advisory committee shall review all matters referred to the  
38 committee by the Commission and shall make findings and recommendations on these  
39 matters. A standing advisory committee may, on its own motion, make findings and  
40 recommendations as to any matter related to its subject area. The Commission, in the  
41 performance of its duties, shall consider all findings and recommendations submitted by  
42 standing advisory committees.

1       (d) The Chair of the Commission shall appoint a regional advisory committee for  
2 each of the three coastal regions designated in G.S. 143B-289.24(b) and shall appoint a  
3 regional advisory committee for that part of the State that is not included in the three  
4 coastal regions. In making appointments to regional advisory committees, the Chair of  
5 the Commission shall ensure that both commercial and recreational fishing interests are  
6 fairly represented.

7 **"§ 143B-289.28. Marine Fisheries Endowment Fund.**

8       (a) Recognizing the inestimable importance to the State and its people of  
9 conserving the marine and estuarine resources of the State, and for the purpose of  
10 providing the opportunity for citizens and residents of the State to invest in the future of  
11 its marine and estuarine resources, there is created the North Carolina Marine Fisheries  
12 Endowment Fund, the income and principal of which shall be used only for the purpose  
13 of supporting marine and estuarine resource conservation programs of the State in  
14 accordance with this section.

15       (b) There is created the Board of Trustees of the Marine Fisheries Endowment  
16 Fund of the Marine Fisheries Commission, with full authority over the administration of  
17 the Marine Fisheries Endowment Fund, whose ex officio Chair, Vice-Chair, and  
18 members shall be the Chair, Vice-Chair, and members of the Marine Fisheries  
19 Commission. The State Treasurer shall be the custodian of the Marine Fisheries  
20 Endowment Fund and shall invest its assets in accordance with the provisions of G.S.  
21 147-69.2 and G.S. 147-69.3.

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

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

26           (2) Any other sources specified by law.

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

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

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

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

40       (e) The Board of Trustees of the Marine Fisheries Endowment Fund may  
41 accumulate the investment income of the Fund until the income, in the sole judgment of  
42 the trustees, can provide a significant supplement to the budget for the conservation and  
43 management of marine and estuarine resources. After that time the trustees, in their sole

1 discretion and authority, may direct expenditures from the income of the Fund for the  
2 purposes set out in subdivision (3) of subsection (d) above.

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

8 (g) The Marine Fisheries Endowment Fund and the income therefrom shall not  
9 take the place of State appropriations, but any portion of the income of the Marine  
10 Fisheries Endowment Fund available for the purpose set out in subdivision (3) of  
11 subsection (d) above shall be used to supplement other income of and appropriations for  
12 the conservation and management of marine and estuarine resources to the end that the  
13 Commission may improve and increase its services and become more useful to a greater  
14 number of people.

15 **"§ 143B-289.29. Conservation Fund; Commission may accept gifts.**

16 (a) The Marine Fisheries Commission may accept gifts, donations, or  
17 contributions from any sources. These funds shall be held in a separate account and used  
18 solely for the purposes of marine and estuarine conservation and management. These  
19 funds shall be administered by the Marine Fisheries Commission and shall be used for  
20 marine and estuarine resources management, including education about the importance of  
21 conservation, in a manner consistent with marine and estuarine conservation management  
22 principles.

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

33 **"§ 143B-289.30. Article subject to Chapter 113.**

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

38 **"§ 143B-289.31. Jurisdictional questions.**

39 In the event of any question arising between the Wildlife Resources Commission and  
40 the Marine Fisheries Commission or between the Department of Environment, Health,  
41 and Natural Resources and the Marine Fisheries Commission as to any duty,  
42 responsibility, or authority imposed upon any of these bodies by law or with respect to

1 conflict involving rules or administrative practices, the question or conflict shall be  
2 resolved by the Governor, whose decision shall be binding."

3  
4 **PART III. COASTAL HABITAT PROTECTION PLANS;**  
5 **FISHERY MANAGEMENT PLANS**

6  
7 Section 3.1. Article 7 of Chapter 143B of the General Statutes is amended by  
8 adding a new section to read:

9 **"§ 143B-279.8. Coastal Habitat Protection Plans.**

10 (a) The Department shall coordinate the preparation of draft Coastal Habitat  
11 Protection Plans for critical fisheries habitats. The Department shall use the staff of those  
12 divisions within the Department that have jurisdiction over marine fisheries, water  
13 quality, and coastal area management in the preparation of the Coastal Habitat Protection  
14 Plans and shall request assistance from other federal and State agencies as necessary. The  
15 plans shall:

16 (1) Describe and classify biological systems in the habitats, including  
17 wetlands, fish spawning grounds, estuarine or aquatic endangered or  
18 threatened species, primary or secondary nursery areas, shellfish beds,  
19 submerged aquatic vegetation (SAV) beds, and habitats in outstanding  
20 resource waters.

21 (2) Evaluate the function, value to coastal fisheries, status, and trends of the  
22 habitats.

23 (3) Identify existing and potential threats to the habitats and the impact on  
24 coastal fishing.

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

26 (b) Once a draft Coastal Habitat Protection Plan has been prepared, the chairs of  
27 the Coastal Resources Commission, the Environmental Management Commission, and  
28 the Marine Fisheries Commission shall each appoint two members of the commission he  
29 or she chairs to a six-member review committee. The six-member review committee, in  
30 consultation with the Department, shall review the draft Plan and may revise the draft  
31 Plan on a consensus basis. The draft Plan, as revised by the six-member review  
32 committee, shall then be submitted to the Coastal Resources Commission, the  
33 Environmental Management Commission, and the Marine Fisheries Commission, each of  
34 which shall independently consider the Plan for adoption. If any of the three  
35 commissions is unable to agree to any aspect of a Plan, the chair of each commission  
36 shall refer that aspect of the Plan to a six-member conference committee to facilitate the  
37 resolution of any differences. The six-member conference committee shall be appointed  
38 in the same manner as a six-member review committee and may include members of the  
39 six-member review committee that reviewed the Plan. Each final Coastal Habitat  
40 Protection Plan shall consist of those provisions adopted by all three commissions. The  
41 three commissions shall review and revise each Coastal Habitat Protection Plan at least  
42 once every five years.

1 (c) In carrying out their powers and duties, the Coastal Resources Commission,  
2 the Environmental Management Commission, and the Marine Fisheries Commission  
3 shall ensure, to the maximum extent practicable, that their actions are consistent with the  
4 Coastal Habitat Protection Plans as adopted by the three commissions. The obligation to  
5 act in a manner consistent with a Coastal Habitat Protection Plan is prospective only and  
6 does not oblige any commission to modify any rule adopted, permit decision made, or  
7 other action taken prior to the adoption or revision of the Coastal Habitat Protection Plan  
8 by the three commissions.

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

15 (e) The Coastal Resources Commission, the Environmental Management  
16 Commission, and the Marine Fisheries Commission shall report to the Joint Legislative  
17 Commission on Seafood and Aquaculture on progress in developing and implementing  
18 the Coastal Habitat Protection Plans, including the extent to which the actions of the three  
19 commissions are consistent with the Plans, on or before 1 September of each year."

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

22 "v. To approve Coastal Habitat Protection Plans as provided in G.S.  
23 143B-279.8."

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

26 "**§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.**

27 The Commission shall approve Coastal Habitat Protection Plans as provided in G.S.  
28 143B-279.8."

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

31 "**§ 113-182.1. Fishery Management Plans.**

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

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

42 (1) Contain necessary information pertaining to the fishery or fisheries,  
43 including management goals and objectives, status of relevant fish

1 stocks, stock assessments for multiyear species, fishery habitat and  
2 water quality considerations consistent with Coastal Habitat Protection  
3 Plans adopted pursuant to G.S. 143B-279.8, social and economic impact  
4 of the fishery to the State, and user conflicts.

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

6 (c) To assist in the development of each Fishery Management Plan, the Chair of  
7 the Marine Fisheries Commission shall appoint an Advisory Council. Each Advisory  
8 Council shall be composed of commercial fishermen, recreational fishermen, and  
9 scientists, all with expertise in the fishery for which the Fishery Management Plan is  
10 being developed.

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

19 (e) The Secretary of Environment, Health, and Natural Resources shall monitor  
20 progress in the development and adoption of Fishery Management Plans in relation to the  
21 Schedule for development and adoption of the plans established by the Marine Fisheries  
22 Commission. The Secretary of Environment, Health, and Natural Resources shall report  
23 to the Joint Legislative Commission on Seafood and Aquaculture on progress in  
24 developing and implementing the Fishery Management Plans on or before 1 September  
25 of each year."

#### 27 **PART IV. MARINE FISHERIES LAW ENFORCEMENT**

28  
29 Section 4.1. G.S. 113-136(d1) reads as rewritten:

30 "(d1) In addition to law enforcement authority granted elsewhere, ~~a protector~~ has  
31 inspectors and protectors have the authority to enforce criminal laws under the following  
32 circumstances:

33 (1) When the inspector or protector has probable cause to believe that a  
34 person committed a criminal offense in his presence and at the time of  
35 the violation the inspector or protector is engaged in the enforcement of  
36 laws otherwise within his ~~jurisdiction; or jurisdiction.~~

37 (2) When the inspector or protector is asked to provide temporary  
38 assistance by the head of a State or local law enforcement agency or his  
39 designee and the request is within the scope of the agency's subject  
40 matter jurisdiction.

41 While acting pursuant to this subsection, an inspector or a protector shall have the  
42 same powers invested in law enforcement officers by statute or common law. When  
43 acting pursuant to (2) of this subsection an inspector or a protector shall not be

1 considered an officer, employee, or agent for the state or local law enforcement agency or  
2 designee asking for temporary assistance. Nothing in this subsection shall be construed  
3 to expand the authority of inspectors or protectors to initiate or conduct an independent  
4 investigation into violations of criminal laws outside the scope of their subject matter or  
5 territorial jurisdiction."

6 Section 4.2. G.S. 113-187 reads as rewritten:

7 **"§ 113-187. Penalties for violations of Subchapter and rules.**

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

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

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

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

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

39 Section 4.3. Article 15 of Chapter 113 of the General Statutes is amended by  
40 adding a new section to read:

41 **"§ 113-190. Unlawful sale or purchase of fish; criminal and civil penalties.**



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

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

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

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

14       (e) The Secretary shall notify any person assessed a civil penalty of the assessment  
15 and the specific reasons therefor by registered or certified mail or by any means  
16 authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S.  
17 150B-23 within 30 days of receipt of the notice of assessment.

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

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

40               Section 4.4. G.S. 113-221(e) reads as rewritten:

41       "(e) The Marine Fisheries Commission may delegate to the Fisheries Director the  
42 authority to issue proclamations suspending or implementing, in whole or in part,  
43 particular rules of the Commission which may be affected by variable conditions. Such

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

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

27 Section 4.5. The Marine Fisheries Commission shall develop a Violation  
28 Points System applicable to the fishing licenses of all persons who violate marine  
29 fisheries statutes or rules. In developing this system, the Marine Fisheries Commission  
30 shall consider the recommendations made in the Final Report of the Moratorium Steering  
31 Committee and the suspension, revocation, and reissuance procedures under G.S. 113-  
32 166. The Marine Fisheries Commission shall also develop an implementation schedule  
33 for the Violation Points System. The Marine Fisheries Commission shall report to the  
34 Joint Legislative Commission on Seafood and Aquaculture no later than 1 July 1999, on  
35 the development of the Violation Points System and the implementation schedule.

36  
37 **PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL**  
38 **PROVISIONS**  
39

40 Section 5.1. Chapter 113 of the General Statutes is amended by adding a new  
41 Article to read:

42 **"ARTICLE 14A.**  
43 **"COASTAL AND ESTUARINE COMMERCIAL FISHING LICENSES.**

**"§ 113-168. Definitions.**

As used in this Article:

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

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

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

(b) Licenses Required to Engage in Commercial Fishing. – It is unlawful for any person to engage in a commercial fishing operation without having first obtained a license as required by this Article. It is unlawful for anyone to command a vessel engaged in a commercial fishing operation without complying with the provisions of this Article and rules adopted by the Commission under this Article.

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

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

1 (e) License Format. – Licenses issued under this Article shall be issued in the  
2 name of the applicant. Each license shall show the type of license and any endorsements;  
3 the name, address, and date of birth of the licensee; the date on which the license is  
4 issued; the date on which the license expires; and any other information that the  
5 Commission or the Division determines to be necessary to accomplish the purposes of  
6 this Subchapter.

7 **"§ 113-168.2. Standard Commercial Fishing License.**

8 (a) Requirement. – No person shall harvest, land, and sell fish from the coastal  
9 fishing waters of this State without having first obtained a Standard Commercial Fishing  
10 License issued by the Division.

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

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

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

31 (e) Fees. – The annual SCFL fee for a North Carolina resident shall be two  
32 hundred dollars (\$200.00). The annual SCFL fee for a person who is not a resident of  
33 North Carolina shall be two thousand dollars (\$2,000) or the amount charged to a North  
34 Carolina resident in the nonresident's state, whichever is lesser.

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

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

7 (g) Transferability. – A SCFL may be transferred:

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

10 (2) By the State to a surviving family member of the license holder upon  
11 the death of the license holder.

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

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

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

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

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

32 **"§ 113-168.3. Retired Standard Commercial Fishing License.**

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

35 (b) Eligibility; Fee. – Any person who is 65 years of age or older and who is  
36 otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL for an  
37 annual fee of one hundred dollars (\$100.00). Proof of age shall be supplied at the time  
38 the application is made.

39 (c) Transferability. – The holder of a RSCFL may transfer the RSCFL as provided  
40 in G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party purchaser  
41 of the RSCFL holder's fishing vessel. If the third-party purchaser is less than 65 years of  
42 age, that purchaser shall pay the fee for the SCFL set forth in G.S. 113-168.2.

43 (d) Assignability. – The RSCFL shall not be assignable.

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

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

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

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

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

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

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

(a) A SCFL, RSCFL, or shellfish license may be endorsed to authorize:

(1) The use of a vessel in a commercial fishing operation.

(2) Taking and selling menhaden.

(3) Taking and selling shellfish by a North Carolina resident.

(b) Vessel Endorsements. –

(1) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel that is titled under Article 4 of Chapter 75A of the General Statutes has its primary situs in the State.

(2) It is unlawful to use a vessel in a commercial fishing operation in the coastal fishing waters of the State without obtaining a vessel endorsement of a SCFL, RSCFL, or shellfish license. It is unlawful for a North Carolina vessel to land fish in the State that are taken during a commercial fishing operation outside the coastal fishing waters of the State without obtaining a vessel endorsement of a SCFL, RSCFL, or shellfish license. No endorsement is required, however, for a vessel of any length that does not have a motor if the vessel is used only in

- 1                    connection with another vessel for which a SCFL, RSCFL, or shellfish  
2                    license has been properly endorsed.
- 3            (3)        The fee for a vessel endorsement shall be determined by the length of  
4                    the vessel and shall be in addition to the fee for a SCFL, RSCFL, or  
5                    shellfish license. The length of a vessel shall be determined by  
6                    measuring the distance between the ends of the vessel along the deck  
7                    and through the cabin, excluding the sheer. The fee for a vessel  
8                    endorsement is:
- 9                    a.        One dollar (\$1.00) per foot for a vessel not over 18 feet in length.  
10                    b.        One dollar and fifty cents (\$1.50) per foot for a vessel over 18  
11                    feet but not over 38 feet in length.  
12                    c.        Three dollars (\$3.00) per foot for a vessel over 38 feet but not  
13                    over 50 feet in length.  
14                    d.        Six dollars (\$6.00) per foot for a vessel over 50 feet in length.
- 15            (4)        A vessel endorsement may be assigned as provided in G.S. 113-  
16                    168.2(f).
- 17            (5)        When the owner of a vessel for which a SCFL, RSCFL, or shellfish  
18                    license has been endorsed transfers ownership of the vessel to a holder  
19                    of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be  
20                    transferred from the former owner's SCFL, RSCFL, or shellfish license  
21                    to the new owner's SCFL, RSCFL, or shellfish license upon the request  
22                    of the new owner. The new owner of the vessel shall notify the  
23                    Division of the change in ownership and request that the vessel  
24                    endorsement be transferred within 30 days of the date on which the  
25                    transfer of ownership occurred. The notification of a change in the  
26                    ownership of a vessel and request that the vessel endorsement be  
27                    transferred shall be made on a form provided by the Division and shall  
28                    be accompanied by satisfactory proof of the transfer of vessel  
29                    ownership. Transfer of vessel ownership may be proven by a notarized  
30                    copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a  
31                    vessel documentation transfer.
- 32            (c)        Menhaden Endorsements. – Except as provided in G.S. 113-169, it is unlawful  
33                    to use a vessel to take menhaden by purse seine in the coastal fishing waters of the State,  
34                    to land menhaden in the State, or to sell menhaden from a vessel in the State without  
35                    obtaining a menhaden endorsement of a SCFL or RSCFL. The fee for a menhaden  
36                    endorsement shall be two dollars (\$2.00) per ton, based on gross tonnage as determined  
37                    by the custom house measurement for the mother ship. The menhaden endorsement shall  
38                    be required for the mother ship but no separate endorsement shall be required for a purse  
39                    boat carrying a purse seine. The application for a menhaden endorsement must state the  
40                    name of the person in command of the vessel. Upon a change in command of a  
41                    menhaden vessel, the owner must notify the Division in writing within 30 days.

1 (d) Shellfish Endorsement for North Carolina Residents. – The Commission shall  
2 issue a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at no  
3 charge.

4 **"§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.**

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

15 **"§ 113-169.1. Other commercial licenses and permits authorized by the**  
16 **Commission.**

17 The Commission may adopt rules to establish licenses or permits as set forth in this  
18 section. Licenses or permits shall be issued upon the payment of fees as prescribed by  
19 the Commission in its duly adopted rules at a rate to be established by the Commission.  
20 The fee rate for licenses or permits authorized under this section shall, at a minimum, be  
21 adequate to compensate the Division for the actual and administrative cost associated  
22 with the conservation and management of the fishery.

23 (1) Crew licenses. – The Commission may adopt rules to establish an  
24 individual crew license for persons working on commercial vessels at a  
25 rate not to exceed one hundred dollars (\$100.00) per license.

26 (2) Permits. – The Commission may adopt rules to establish permits for  
27 gear, equipment, and specialized activities at a rate not to exceed fifty  
28 dollars (\$50.00) per permit. The Commission may require permits for  
29 commercial fishing operations that do not involve the use of a vessel.  
30 The Commission may require that a person obtain a special permit prior  
31 to transplanting oysters or clams.

32 **"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

33 (a) License or Endorsement Necessary to Harvest or Sell Shellfish. – It is  
34 unlawful for an individual to take shellfish from the public grounds of the State by  
35 mechanical means or for commercial use by any means without having first procured  
36 either a SCFL with a shellfish endorsement or an individual shellfish license. A North  
37 Carolina resident who seeks only to harvest and sell shellfish shall be eligible to purchase  
38 a shellfish license without having first obtained a SCFL. The license includes the  
39 privilege to sell shellfish to a licensed fish dealer.

40 (b) Purchase; Renewal. – A person may purchase a shellfish license at any office  
41 of the Division. The shellfish license and endorsements may be renewed by mail by  
42 forwarding a completed application, including applicable fees, to the Division's  
43 Morehead City Office. Any person who is issued a shellfish license is eligible to renew



1 the shellfish license and any endorsements if the shellfish license has not been suspended  
2 or revoked.

3 (c) Fees. – Shellfish licenses shall be issued annually upon payment of a fee of  
4 twenty-five dollars (\$25.00) upon proof that the license applicant is a North Carolina  
5 resident: Provided, that persons under 16 years of age are exempt from the license  
6 requirements of this section if accompanied by a parent, grandparent, or guardian who is  
7 in compliance with the requirements of this section or if in possession of a parent's,  
8 grandparent's, or guardian's shellfish license.

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

15 (e) Vessel Endorsement Required. – A license holder under this section shall be  
16 required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the  
17 harvest or sale of shellfish.

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

23 (g) Transferability Not Allowed. – It is unlawful for an individual issued a  
24 shellfish license to transfer or offer to transfer the license, either temporarily or  
25 permanently, to another. It is unlawful for an individual to secure or attempt to secure a  
26 shellfish license from a source not authorized by the Commission.

27 (h) Limitation on Taking Shellfish Without a License. –

28 (1) A person who is not required to obtain a shellfish license under  
29 subsection (a) of this section shall not take more than:

30 a. One bushel of oysters per day.

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

32 c. One hundred clams per day.

33 (2) Two or more persons who are not required to obtain a shellfish license  
34 under subsection (a) of this section and who are using a vessel to take  
35 shellfish shall not take more than:

36 a. Two bushels of oysters per day.

37 b. One bushel of scallops per day.

38 c. Two hundred clams per day.

39 **"§ 113-169.3. Licenses for fish dealers.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"§ 113-170.1. Nonresidents reciprocal agreements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

5           "§ 113-172. License agents.

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

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

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

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

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

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

1 recreational fishing. Authorized commercial gear shall be identified by visible colored  
2 tags or other means specified by the Commission in order to distinguish between  
3 commercial gear used in a commercial operation and commercial gear used for  
4 recreational purposes.

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

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

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

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

21 (h) Assignability and Transferability Prohibited. – A RCGL is not transferable. It  
22 is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt  
23 to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

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

26 (j) Exemptions. –

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

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

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

1 more than one person on the vessel holds a RCGL, in excess of that  
2 authorized for use by those persons."

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

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

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

19 (d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is  
20 authorized to issue SCFLs as provided in subsection (g) of this section plus an additional  
21 500 SCFLs using the procedure set out in subsection (h) of this section.

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

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

37 (g) Eligibility for SCFL. Any person who held a valid endorsement to sell fish  
38 prior to 1 July 1999 is eligible to receive a SCFL. Any person who filed a petition with  
39 the Appeals Panel under 15A NCAC 30.0303 for an endorsement to sell fish and whose  
40 petition was denied by the Appeals Panel prior to 1 May 1997 is eligible to receive a  
41 SCFL. The Division shall issue a SCFL to any person who is eligible under this  
42 subsection upon receipt of an application and required fees. If the person held more than  
43 one endorsement to sell fish, the person is eligible to receive a SCFL for each

1 endorsement to sell previously held. Eligibility to receive a SCFL under this subsection  
2 shall expire 1 July 2000.

3 (h) Procedure for Issuing Additional SCFLs. The Commission shall determine  
4 a procedure for issuing the 500 additional SCFLs authorized by subsection (d) of this  
5 section for the 1999-2000 license year and for issuing SCFLs from the pool of available  
6 SCFLs authorized by subsection (e) of this section. The procedure shall set a date on  
7 which the Division will begin receiving applications and a date on which the  
8 determination by lot of which applicants will receive a SCFL will be made. The  
9 Commission shall develop criteria for determining eligibility for a SCFL under this  
10 subsection. Criteria shall include the past involvement of the applicant and the  
11 applicant's family in commercial fishing; the extent to which the applicant has relied on  
12 commercial fishing for the applicant's livelihood; the extent to which the applicant has  
13 complied with federal and State laws, regulations, and rules relating to coastal fishing and  
14 protection of the environment; and any other factors the Commission determines to be  
15 relevant. The Division shall review each application for a SCFL that it receives during  
16 the application period to determine whether the applicant is eligible under the eligibility  
17 criteria established by the Commission. The Division shall issue SCFLs under this  
18 subsection by lot. All applicants who are determined to be eligible shall have an equal  
19 chance of being issued a SCFL.

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

24 Section 5.4. (a) G.S. 113-153.1 is recodified as G.S. 113-168.9 in Article 14A  
25 of Chapter 113 of the General Statutes, as enacted by Section 5.1 of this act.

26 (b) G.S. 113-168.9(e), as recodified by subsection (a) of this section, reads as  
27 rewritten:

28 "(e) The owner of a vessel ~~licensed under G.S. 113-152~~ shall be eligible to purchase a  
29 vessel crab license for crabs as an alternative to the purchase of individual licenses under  
30 this section. A vessel crab license authorizes the owner of the vessel and up to two  
31 unlicensed persons serving as crew to fish for crabs from that vessel. It is unlawful for  
32 the owner of a vessel to take crabs from the coastal fishing waters of North Carolina for  
33 commercial use by any means, when unlicensed persons not authorized by the vessel crab  
34 license are on the vessel. The Secretary shall revoke a vessel crab license issued under  
35 this subsection shall be revoked when if the owner of the vessel or any other person using  
36 the owner's vessel is convicted of a violation under this section, except for subsection (b)-  
37 section, other than conviction for a violation under subsection (b) of this section."

38 (c) All sections of Article 14 of Chapter 113 of the General Statutes other than  
39 G.S. 113-153.1 are repealed.

40 Section 5.5. The Marine Fisheries Commission shall adopt a Fishery  
41 Management Plan for the blue crab fishery in accordance with G.S. 143B-289.22, as  
42 enacted by Section 2.1 of this act, and G.S. 113-182.1, as enacted by Section 3.4 of this  
43 act, no later than 1 January 2000.

1           Section 5.6. Notwithstanding the provisions of G.S. 113-168.2 and G.S. 113-  
2 168.3, as enacted by Section 5.1 of this act, it is unlawful for any person to take crabs  
3 from the coastal fishing waters of the State for commercial use without having first  
4 obtained an individual crab license under G.S. 113-168.9.

5           Section 5.7. G.S. 113-168.9, as recodified from G.S. 113-153.1 by Section 5.4  
6 of this act, is repealed.

7           Section 5.8. The Revisor of Statutes shall set out Section 5.2 of this act as a  
8 note to G.S. 113-168.2, as enacted by Section 5.1 of this act.

9           Section 5.9. G.S. 113-203(a)(2) reads as rewritten:

10          "(2) When the transplanting is done by a dealer in accordance with the  
11 provisions of G.S. ~~113-158~~113-169.1(2) and implementing rules; or".  
12

### 13           **PART VI. MORATORIUM EXTENSION; MISCELLANEOUS** 14           **PROVISIONS; EFFECTIVE DATES**

15  
16           Section 6.1. Subsection (a) of Section 3 of Chapter 675 of the 1993 Session  
17 Laws, Regular Session 1994, as amended by subsection (a) of Section 26.5 of Chapter  
18 507 of the 1995 Session Laws, reads as rewritten:

19          "(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the  
20 Department shall not issue any new licenses for a period beginning 1 July 1994, 1994  
21 and ending ~~June 30, 1997~~, 1 July 1999 under the following statutes:

22          (1) G.S. 113-152. ~~Vessel licenses.~~ Consolidated license for vessels,  
23 equipment, and operations; fees.

24          (2) G.S. 113-153.1. ~~Crab license.~~ License.

25          (3) G.S. 113-154. ~~Shellfish license.~~ license.

26          (4) G.S. 113-154.1. ~~Nonvessel endorsements to sell fish.~~ Endorsement to sell  
27 fish, with respect to nonvessel endorsements only."

28           Section 6.2. Subsection (a) of Section 3 of Chapter 675 of the 1993 Session  
29 Laws, Regular Session 1994, as amended by subsection (a) of Section 26.5 of Chapter  
30 507 of the 1995 Session Laws and Section 6.1 of this act, reads as rewritten:

31          "(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the  
32 Department shall not issue any new licenses for a period beginning 1 July 1994 and  
33 ending 1 July 1999-2000 under the following statutes:

34          (1) G.S. ~~113-152. Consolidated license for vessels, equipment, and~~  
35 ~~operations; fees.~~

36          (2) G.S. ~~113-153.1.~~ 113-168.9, Crab license.

37          (3) G.S. ~~113-154. Shellfish license.~~

38          (4) G.S. ~~113-154.1. Endorsement to sell fish, with respect to nonvessel~~  
39 ~~endorsements only."~~

40           Section 6.3. (a) Part 5A of Article 7 of Chapter 143B of the General Statutes is  
41 repealed, except that G.S. 143B-289.19 is not repealed but is recodified as G.S. 143B-  
42 289.40 within Part 5C of Article 7 of Chapter 143B of the General Statutes and reads as  
43 rewritten:

1 **"§ 143B-creation.**

2 ~~There~~ The Office of Marine Affairs is created in the Department of Administration the  
3 ~~Office of Marine Affairs.~~ Environment, Health, and Natural Resources."

4 (b) Part 5B of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-  
5 289.20 through G.S. 143B-289.22) is recodified as Part 5C of Article 7 of Chapter 143B  
6 of the General Statutes (G.S. 143B-289.41 through G.S. 143B-289.43).

7 (c) G.S. 143B-289.40(a)(1b)g., as recodified by subsection (a) of this section,  
8 reads as rewritten:

9 "g. Create local advisory committees in accordance with the  
10 provisions of G.S. ~~143B-289.22.~~ 143B-289.42."

11 Section 6.4. The records, personnel, property, unexpended balances of  
12 appropriations, allocations, and other funds, including the functions of budgeting and  
13 purchasing, heretofore vested in the Marine Fisheries Commission created under Part 5A  
14 of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of this act,  
15 are transferred to the Marine Fisheries Commission created under Part 5B of Article 7 of  
16 Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act. All rules,  
17 decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries  
18 Commission created under Part 5 of Article 7 of Chapter 143B of the General Statutes,  
19 repealed by Section 1 of Chapter 641 of the 1987 Session Laws, and all rules, decisions,  
20 and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission  
21 created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by  
22 Section 6.2 of this act, that have not been heretofore repealed or rescinded shall continue  
23 in effect until repealed or rescinded by the Marine Fisheries Commission created under  
24 Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of  
25 this act.

26 Section 6.5. In order to establish a schedule of staggered terms of three years  
27 for the Marine Fisheries Commission, the terms of members of the Commission initially  
28 filling positions established by subdivisions (1), (2), and (3) of subsection (a) of G.S.  
29 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is  
30 appointed and duly qualified and shall expire on 30 June 2001; the terms of members of  
31 the Commission initially filling positions established by subdivisions (4), (5), and (6) of  
32 subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on  
33 the date the member is appointed and duly qualified and shall expire on 30 June 2000; the  
34 terms of members of the Commission initially filling positions established by  
35 subdivisions (7), (8), and (9) of subsection (a) of G.S. 143B-289.24, as enacted by  
36 Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified  
37 and shall expire on 30 June 1999.

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

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

41 (1) The opening and closing of coastal fishing waters, except as to inland  
42 game fish, whether entirely or only as to the taking of particular classes

1 of fish, use of particular equipment, or as to other activities within the  
2 jurisdiction of the Department; and

3 (2) The possession, cultivation, transportation, importation, exportation,  
4 sale, purchase, acquisition, and disposition of all marine and estuarine  
5 resources and all related equipment, implements, vessels, and  
6 conveyances as necessary to implement the work of the Department in  
7 carrying out its duties.

8 (3) The possession, transportation, importation, exportation, sale, purchase,  
9 acquisition, and disposition of all fish taken in the Atlantic Ocean out to  
10 a distance of 200 miles from the State's mean low watermark, consistent  
11 with the Magnuson Fishery Conservation and Management Act, 16  
12 U.S.C. § 1801, et seq., as amended. ~~when the harvest or landing of the fish~~  
13 ~~is controlled by a quota imposed on the State by a federal fisheries~~  
14 ~~management plan."~~

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

17 Section 6.8. All of the Coastal Habitat Protection Plans required by G.S.  
18 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than 1 July  
19 2003. The Coastal Resources Commission, the Environmental Management  
20 Commission, and the Marine Fisheries Commission shall make the first report on  
21 progress in developing and implementing Coastal Habitat Protection Plans, as required by  
22 G.S. 143B-279.8(d), as enacted by Section 3.1 of this act, on or before 1 September 1999.  
23 The Secretary of Environment, Health, and Natural Resources shall make the first report  
24 on progress in developing and implementing Fishery Management Plans, as required by  
25 G.S. 113-182.1(f), as enacted by Section 3.4 of this act, on or before 1 September 1999.

26 Section 6.9. The Joint Legislative Commission on Seafood and Aquaculture  
27 shall study the establishment of a comprehensive State program to acquire, preserve, and  
28 restore habitats critical to marine and estuarine fisheries. The Joint Legislative  
29 Commission on Seafood and Aquaculture shall report its findings and recommendations,  
30 if any, to the 1998 Regular Session of the 1997 General Assembly.

31 Section 6.10. This act constitutes a recent act of the General Assembly within  
32 the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized  
33 to adopt rules to implement the provisions of this act may adopt temporary rules to  
34 implement the provisions of this act. This section shall continue in effect until all rules  
35 necessary to implement the provisions of this act have become effective as either  
36 temporary rules or permanent rules.

37 Section 6.11. The Marine Fisheries Commission may adopt temporary rules to  
38 implement or comply with a fisheries management plan adopted by the Atlantic States  
39 Marine Fisheries Commission or an interstate fisheries management council of which the  
40 State is a member.

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

1           Section 6.13. If any section or provision of this act is declared unconstitutional  
2 or invalid by the courts, the unconstitutional or invalid section or provision does not  
3 affect the validity of this act as a whole or any part of this act other than the part declared  
4 to be unconstitutional or invalid.

5           Section 6.14. Sections 1.1, 5.8, 6.7, 6.9, 6.10, 6.12, 6.13, and 6.14 of this act  
6 are effective when this act becomes law. Sections 2.1, 4.5, 5.3, 6.3, 6.4, 6.5, 6.6, and  
7 6.11 of this act become effective 1 September 1997. Sections 4.1 through 4.4 of this act  
8 become effective 1 September 1997 and apply to violations and offenses on or after 1  
9 September 1997. Section 1.2 of this act is effective retroactively as of 1 March 1997.  
10 Section 6.1 of this act becomes effective 30 June 1997. Sections 3.1, 3.2, 3.3, 3.4, 5.5,  
11 and 6.8 of this act become effective 1 July 1998. Sections 5.1, 5.2, 5.4, 5.6, 5.9, and 6.2  
12 of this act become effective 1 July 1999. Section 5.6 of this act expires 1 July 2000.  
13 Section 5.7 of this act becomes effective 1 July 2000. Sections 5.1 and 5.2 of this act  
14 expire 1 September 2003.