

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

3

HOUSE BILL 1427*
Committee Substitute Favorable 6/29/04
Third Edition Engrossed 7/1/04

Short Title: Rec. Shellfish License/Amend Shellfish Laws.

(Public)

Sponsors:

Referred to:

May 13, 2004

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A RECREATIONAL SHELLFISH LICENSE, TO AMEND
THE STATUTES GOVERNING THE CULTIVATION OF SHELLFISH, AND TO
AUTHORIZE THE MARINE FISHERIES COMMISSION TO STUDY ISSUES
RELATED TO THE CULTIVATION OF SHELLFISH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-168 is amended by adding a new subdivision to read:

"(7a) 'RSL' means Recreational Shellfish License."

SECTION 2. G.S. 113-168.1(a) reads as rewritten:

"(a) Duration, Fees. – Except as provided in ~~G.S. 113-173(f)~~, G.S. 113-173(f) and G.S. 113-174(e), all licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license or endorsement shall pay the full annual fee at the time the applicant applies for the license or endorsement regardless of when application is made."

SECTION 3. G.S. 113-168.1(f) reads as rewritten:

"(f) License Issuance and Renewal. – Except as provided in ~~G.S. 113-173(d)~~, G.S. 113-173(d) and G.S. 113-174(c), the Division shall issue licenses and endorsements under this Article to eligible applicants at any office of the Division or by mail from the Morehead City office of the Division. A license or endorsement may be renewed in person at any office of the Division or by mail to the Morehead City office of the Division. Eligibility to renew an expired SCFL shall end one year after the date of expiration of the SCFL."

SECTION 4. G.S. 113-169.2 reads as rewritten:

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

(a) ~~License or Endorsement Necessary to Take or Sell Shellfish. — Requirement.~~
— It is unlawful for an individual to take shellfish from the public or private grounds of the State ~~by mechanical means or in quantities greater than the personal use limits set forth in subsection (i) of this section by any means~~ as part of a commercial fishing

1 operation without holding either a shellfish license or a shellfish endorsement of a
2 SCFL. A North Carolina resident who seeks only to take and sell shellfish shall be
3 eligible to obtain a shellfish license without holding a SCFL. The shellfish license
4 authorizes the licensee to sell shellfish.

5 (b) Repealed by Session Laws 1998-225, s. 4.17.

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

9 ~~(d) License Available for Inspection. — It is unlawful for any individual to take~~
10 ~~shellfish in quantities greater than the personal use limits set forth in subsection (i) of~~
11 ~~this section from the public or private grounds of the State without having ready at hand~~
12 ~~for inspection a current and valid shellfish license issued to the licensee personally and~~
13 ~~bearing the licensee's correct name and address. It is unlawful for any individual taking~~
14 ~~or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the~~
15 ~~request of an officer authorized to enforce the fishing laws.~~

16 (e) Repealed by Session Laws 1998-225, s. 4.17.

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

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

27 (h) Exemption. – Persons under 16 years of age are exempt from the license
28 requirements of this section if accompanied by a parent, grandparent, or guardian who is
29 in compliance with the requirements of this section or if in possession of a parent's,
30 ~~grandparent's~~ grandparent's, or guardian's shellfish license or a parent's, ~~grandparent's~~,
31 or guardian's shellfish endorsement of a SCFL.

32 (i) ~~Taking Shellfish Without a License for Personal Use. —~~

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

35 a. ~~One bushel of oysters per day.~~

36 b. ~~One half bushel of scallops per day.~~

37 c. ~~One hundred clams per day.~~

38 d. ~~Ten conchs per day.~~

39 e. ~~One hundred mussels per day.~~

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

43 a. ~~Two bushels of oysters per day.~~

44 b. ~~One bushel of scallops per day.~~

- 1 e. ~~Two hundred clams per day.~~
2 d. ~~Twenty conchs per day.~~
3 e. ~~Two hundred mussels per day."~~

4 **SECTION 5.** G.S. 113-173(j)(4) is repealed.

5 **SECTION 6.** Article 14A of Chapter 113 of the General Statutes is amended
6 by adding a new section to read:

7 "**§ 113-174. Recreational Shellfish License.**

8 (a) License Required. – Except as provided in subsection (i) of this section, it is
9 unlawful for any person to take or attempt to take shellfish for personal use in coastal
10 fishing waters without holding a RSL. As used in this section, shellfish are taken for
11 personal use if the shellfish are not taken for the purpose of sale. The RSL entitles the
12 licensee to take shellfish for personal use subject to the following possession limits:

13 (1) A person holding a RSL may take shellfish for personal use in
14 quantities up to:

- 15 a. One bushel of oysters per day.
16 b. One-half bushel of scallops per day.
17 c. One hundred clams per day.
18 d. Ten conchs per day.
19 e. One hundred mussels per day.

20 (2) Two or more persons, one of whom holds a RSL, who are using a
21 vessel to take shellfish for personal use may take shellfish for personal
22 use in quantities up to:

- 23 a. Two bushels of oysters per day.
24 b. One bushel of scallops per day.
25 c. Two hundred clams per day.
26 d. Twenty conchs per day.
27 e. Two hundred mussels per day.

28 (b) Sale of Fish Prohibited. – It is unlawful for the holder of a RSL or for a
29 person who is exempt under subsection (i) of this section to sell fish taken under the
30 RSL or pursuant to the exemption.

31 (c) Purchase; Renewal. – A RSL may be purchased at designated offices of the
32 Division and from a license agent authorized under G.S. 113-172. A RSL may be
33 renewed by mail.

34 (d) Replacement RSL. – The provisions of G.S. 113-168.1(h) apply to this
35 section.

36 (e) Duration; Fees. – The RSL shall be valid from the date of purchase until July
37 1, 2008. The fee for a RSL shall be ten dollars (\$10.00).

38 (f) RSL Available for Inspection. – It is unlawful for any person to take or
39 attempt to take shellfish for personal use in coastal fishing waters without having ready
40 at hand for inspection a valid RSL. A holder of a RSL shall not refuse to exhibit the
41 RSL upon the request of an inspector or any other law enforcement officer authorized to
42 enforce federal or State laws, regulations, or rules relating to marine fisheries.

43 (g) Assignment and Transfer Prohibited. – A RSL is not transferable. Except as
44 provided in subsection (i) of this section, it is unlawful to buy, sell, lend, borrow, assign,

1 or otherwise transfer a RSL, or to attempt to buy, sell, lend, borrow, assign, or otherwise
2 transfer a RSL.

3 (h) Reporting Requirements. – The holder of a RSL shall comply with the
4 biological data sampling and survey programs of the Commission and the Division.

5 (i) Exemption. – A person who is under 16 years of age may take shellfish for
6 personal use in coastal fishing waters without holding a RSL if the person is
7 accompanied by a parent, grandparent, or guardian who holds a valid RSL or if the
8 person has in the person's possession a valid RSL issued to the person's parent,
9 grandparent, or guardian."

10 **SECTION 7.** G.S. 113-201 reads as rewritten:

11 "**§ 113-201. Authority—Legislative findings and declaration of policy; authority of**
12 **Marine Fisheries Commission.**

13 (a) The General Assembly finds that shellfish cultivation provides increased
14 seafood production and long-term economic and employment opportunities. The
15 General Assembly also finds that shellfish cultivation provides increased ecological
16 benefits to the estuarine environment by promoting natural water filtration and
17 increased fishery habitats. The General Assembly declares that it is the policy of the
18 State to encourage the development of private, commercial shellfish cultivation in ways
19 that are compatible with other public uses of marine and estuarine resources such as
20 navigation, fishing, and recreation.

21 (b) The Marine Fisheries Commission is empowered to make rules and take all
22 steps necessary to develop and improve the cultivation, harvesting, and marketing of
23 shellfish in North Carolina both from public grounds and private beds.

24 (c) The Marine Fisheries Commission shall adopt rules to establish training
25 requirements for persons applying for new shellfish cultivation leases. These training
26 requirements shall be designed to encourage the productive use of shellfish cultivation
27 leases. Training requirements established pursuant to this subsection shall not apply to
28 an applicant who applies for a new shellfish cultivation lease if, at the time of the
29 application, the applicant holds one or more shellfish cultivation leases and all of the
30 leases meet the shellfish production requirements established by the Marine Fisheries
31 Commission."

32 **SECTION 8.** G.S. 113-202(d) reads as rewritten:

33 "(d) Any person desiring to apply for a lease must make written application to the
34 Secretary on forms prepared by the Department containing such information as deemed
35 necessary to determine the desirability of granting or not granting the lease requested.
36 Except in the case of renewal leases, the application must be accompanied by a map or
37 diagram made at the expense of the applicant, showing the area proposed to be leased.

38 (d1) The map or diagram must conform to standards prescribed by the Secretary
39 concerning accuracy of map or diagram and the amount of detail that must be shown. If
40 on the basis of the application information and map or diagram the Secretary deems that
41 granting the lease would benefit the shellfish culture of North Carolina, the Secretary, in
42 the case of initial lease applications, must order an investigation of the bottom proposed
43 to be leased. The investigation is to be made by the Secretary or his authorized agent to
44 determine whether the area proposed to be leased is consistent with the standards in

1 subsection (a) of this section and any other applicable standards under this Article and
2 the rules of the Marine Fisheries Commission. In the event the Secretary finds the
3 application inconsistent with the applicable standards, the Secretary shall deny the
4 application or propose that a conditional lease be issued that is consistent with the
5 applicable standards. In the event the Secretary authorizes amendment of the
6 application, the applicant must furnish a new map or diagram meeting requisite
7 standards showing the area proposed to be leased under the amended application. At the
8 time of making application for an initial lease, the applicant must pay a filing fee of ~~one~~
9 ~~hundred dollars (\$100.00)~~ two hundred dollars (\$200.00)."

10 **SECTION 9.** G.S. 113-202(j) reads as rewritten:

11 "(j) Initial leases begin upon the issuance of the lease by the Secretary and expire
12 at noon on the first day of ~~April~~ July following the ~~tenth~~ fifth anniversary of the
13 granting of the lease. Renewal leases are issued for a period of ~~10~~ five years ~~effective~~
14 from the time of expiration of the previous lease. At the time of making application for
15 renewal of a lease, the applicant must pay a filing fee of ~~fifty dollars (\$50.00)~~ one
16 hundred dollars (\$100.00). The rental for initial leases is one dollar (\$1.00) per acre for
17 all leases entered into before July 1, 1965, and for all other leases until noon on the first
18 day of ~~April~~ July following the first anniversary of the lease. Thereafter, for initial
19 leases entered into after July 1, 1965, and from the beginning for renewals of leases
20 entered into after ~~said~~ that date, the rental is ~~five dollars (\$5.00)~~ ten dollars (\$10.00) per
21 acre per year. Rental must be paid annually in advance prior to the first day of April
22 each year. Upon initial granting of a lease, the pro rata amount for the portion of the
23 year left until the first day of ~~April~~ July must be paid in advance at the rate of one dollar
24 (\$1.00) per acre per year; then, on or before the first day of April next, the lessee must
25 pay the rental for the next full year."

26 **SECTION 10.** G.S. 113-202(l) reads as rewritten:

27 "(l) Upon receipt of notice by the Secretary of any of the following occurrences,
28 he must commence action to terminate the leasehold:

- 29 (1) Failure to pay the annual rent in advance.
- 30 (2) Failure to file information required by the Secretary upon annual
31 remittance of rental or filing false information on the form required to
32 accompany the annual remittance of rental.
- 33 (3) Failure by new owner to report a transfer of beneficial ownership of all
34 or any portion of or interest in the leasehold.
- 35 (4) Failure to mark the boundaries in the leasehold and to keep them
36 marked as required in the rules of the Marine Fisheries Commission.
- 37 (5) Failure to utilize the leasehold on a continuing basis for the
38 commercial production of shellfish.
- 39 (6) Transfer of all or part of the beneficial ownership of a leasehold to a
40 nonresident.
- 41 (7) Substantial breach of compliance with the provisions of this Article or
42 of rules of the Marine Fisheries Commission governing use of the
43 leasehold.

1 (8) Failure to comply with the training requirements established by the
2 Marine Fisheries Commission pursuant to G.S. 113-201(c).

3 (11) The Marine Fisheries Commission is authorized to make rules defining
4 commercial production of shellfish, based upon the productive potential of particular
5 areas climatic or biological conditions at particular areas or particular times, availability
6 of seed shellfish, availability for purchase by lessees of shells or other material to which
7 oyster spat may attach, and the like. Commercial production may be defined in terms of
8 planting effort made as well as in terms of quantities of shellfish harvested. Provided,
9 however, that if a lessee has made a diligent effort to effectively and efficiently manage
10 his lease according to accepted standards and practices in such management, and
11 because of reasons beyond his control, such as acts of God, such lessee has not and
12 cannot meet the requirements set out by the Marine Fisheries Commission under the
13 provisions ~~of this paragraph~~ of this subsection, his leasehold shall not be terminated
14 under subdivision (5) of ~~this subsection~~ subsection (l) of this section."

15 **SECTION 11.** G.S. 113-202.1(d) reads as rewritten:

16 "(d) Amendments of shellfish cultivation leases to authorize use of the water
17 column are issued for a period of five years or the remainder of the term of the lease,
18 whichever is shorter. The annual rental for ~~an initial~~ a new or renewal water column
19 amendment is one hundred dollars (\$100.00) ~~an acre for each of the first four years for~~
20 ~~which the amendment is issued and five hundred dollars (\$500.00) an acre for the fifth~~
21 ~~year for which the amendment is issued. The annual rental for a renewed water column~~
22 ~~amendment is five hundred dollars (\$500.00) an acre. If a year for which a water~~
23 ~~column amendment is issued is~~ for less than a 12-month period, the rental ~~for that year~~
24 shall be prorated based on the number of months remaining in the year. The annual
25 rental for an amendment is payable at the beginning of the year. The rental is in addition
26 to that required in G.S. 113-202."

27 **SECTION 12.** The Marine Fisheries Commission may study whether and
28 how to establish a process by which shellfish cultivation leases that are terminated
29 pursuant to G.S. 113-202(l) may be leased to an applicant for a shellfish cultivation
30 lease without the leasehold reverting to public bottom. If the Commission conducts a
31 study pursuant to this section, it shall report its findings, recommendations, and
32 legislative proposals, if any, to the Joint Legislative Commission on Seafood and
33 Aquaculture no later than December 1, 2004.

34 **SECTION 13.** The Marine Fisheries Commission may study issues related
35 to the corporate ownership of shellfish cultivation leases. If the Commission conducts a
36 study pursuant to this section, it shall report its findings, recommendations, and
37 legislative proposals, if any, to the Joint Legislative Commission on Seafood and
38 Aquaculture no later than December 1, 2004.

39 **SECTION 14.** Sections 7, 10, 12, 13, and 14 of this act are effective when
40 this act becomes law. Sections 8, 9, and 11 of this act become effective July 1, 2005.
41 Sections 1 through 6 of this act become effective July 1, 2005, and expire July 1, 2008.