

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2003**

**SESSION LAW 2004-150**  
**HOUSE BILL 1427**

AN ACT 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. 113-201 reads as rewritten:

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

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

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

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

**SECTION 2.** G.S. 113-202(d) reads as rewritten:

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

(d1) The map or diagram must conform to standards prescribed by the Secretary concerning accuracy of map or diagram and the amount of detail that must be shown. If on the basis of the application information and map or diagram the Secretary deems that granting the lease would benefit the shellfish culture of North Carolina, the Secretary, in the case of initial lease applications, must order an investigation of the bottom proposed to be leased. The investigation is to be made by the Secretary or his authorized agent to determine whether the area proposed to be leased is consistent with the standards in subsection (a) of this section and any other applicable standards under this Article and the rules of the Marine Fisheries Commission. In the event the Secretary finds the application inconsistent with the applicable standards, the Secretary shall deny the application or propose that a conditional lease be issued that is consistent with the applicable standards. In the event the Secretary authorizes amendment of the

application, the applicant must furnish a new map or diagram meeting requisite standards showing the area proposed to be leased under the amended application. At the time of making application for an initial lease, the applicant must pay a filing fee of ~~one hundred dollars (\$100.00)~~, two hundred dollars (\$200.00)."

**SECTION 3.** G.S. 113-202(j) reads as rewritten:

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

**SECTION 4.** G.S. 113-202(l) reads as rewritten:

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

- (1) Failure to pay the annual rent in advance.
- (2) Failure to file information required by the Secretary upon annual remittance of rental or filing false information on the form required to accompany the annual remittance of rental.
- (3) Failure by new owner to report a transfer of beneficial ownership of all or any portion of or interest in the leasehold.
- (4) Failure to mark the boundaries in the leasehold and to keep them marked as required in the rules of the Marine Fisheries Commission.
- (5) Failure to utilize the leasehold on a continuing basis for the commercial production of shellfish.
- (6) Transfer of all or part of the beneficial ownership of a leasehold to a nonresident.
- (7) Substantial breach of compliance with the provisions of this Article or of rules of the Marine Fisheries Commission governing use of the leasehold.
- (8) Failure to comply with the training requirements established by the Marine Fisheries Commission pursuant to G.S. 113-201(c).

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

**SECTION 5.** G.S. 113-202.1(d) reads as rewritten:

"(d) Amendments of shellfish cultivation leases to authorize use of the water column are issued for a period of five years or the remainder of the term of the lease,

whichever is shorter. The annual rental for ~~an initial~~ a new or renewal water column amendment is one hundred dollars (\$100.00) ~~an acre for each of the first four years for which the amendment is issued and five hundred dollars (\$500.00) an acre for the fifth year for which the amendment is issued.~~ The annual rental for a renewed water column amendment is five hundred dollars (\$500.00) an acre. If a year for which a water column amendment is issued ~~is for~~ is for less than a 12-month period, the rental ~~for that year~~ shall be prorated based on the number of months remaining in the year. The annual rental for an amendment is payable at the beginning of the year. The rental is in addition to that required in G.S. 113-202."

**SECTION 6.** The Marine Fisheries Commission may study whether and how to establish a process by which shellfish cultivation leases that are terminated pursuant to G.S. 113-202(1) may be leased to an applicant for a shellfish cultivation lease without the leasehold reverting to public bottom. If the Commission conducts a study pursuant to this section, it shall report its findings, recommendations, and legislative proposals, if any, to the Joint Legislative Commission on Seafood and Aquaculture no later than December 1, 2004.

**SECTION 7.** The Marine Fisheries Commission may study issues related to the corporate ownership of shellfish cultivation leases. If the Commission conducts a study pursuant to this section, it shall report its findings, recommendations, and legislative proposals, if any, to the Joint Legislative Commission on Seafood and Aquaculture no later than December 1, 2004.

**SECTION 8.** Sections 1, 4, 6, 7, and 8 of this act are effective when this act becomes law. Sections 2, 3, and 5 of this act become effective July 1, 2005.

In the General Assembly read three times and ratified this the 17<sup>th</sup> day of July, 2004.

s/ Beverly E. Perdue  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 4:30 p.m. this 2<sup>nd</sup> day of August, 2004