

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-400
HOUSE BILL 1097

AN ACT TO ENACT THE FISHERIES REFORM ACT OF 1997 TO PROTECT,
ENHANCE, AND BETTER MANAGE COASTAL FISHERIES IN NORTH
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; STUDIES

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 shall include an assessment of the capacity of the Division of Marine Fisheries to effectively implement the provisions of Part V of this act. The performance audit report shall be delivered to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 February 1998. The Joint Legislative Commission on Seafood and Aquaculture shall review the performance audit and make a specific recommendation to the 1998 Session of the 1997 General Assembly as to whether the provisions of Part V of this act should be implemented.

Section 1.3. The Joint Legislative Commission on Seafood and Aquaculture shall study issues relating to licensing coastal recreational fishing. The Joint Legislative Commission on Seafood and Aquaculture shall make specific findings as to whether a licensing system should be adopted for coastal recreational fishing and, if so, what that system should be and how it should be implemented. In conducting the study required by this section, the Joint Legislative Commission on Seafood and Aquaculture shall consider the findings and recommendations of the final report of the Fisheries Moratorium Steering Committee and the final report of the State Auditor on the performance audit of the Division of Marine Fisheries required by Section 1.2 of this act. The Joint Legislative Commission on Seafood and Aquaculture shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

Section 1.4. The Joint Legislative Commission on Seafood and Aquaculture shall study issues related to the establishment of a crew license for persons working aboard a vessel engaged in the taking of fish for sale. The Joint Legislative Commission on Seafood and Aquaculture shall make a specific determination as to whether a crew license should be established. The Joint Legislative Commission on Seafood and Aquaculture shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

Section 1.5. The Joint Legislative Commission on Seafood and Aquaculture shall study issues relating to the enhancement and management of shellfish resources and shall develop a set of comprehensive recommendations for the enhancement and management of the shellfish resources of the State. The Joint Legislative Commission on Seafood and Aquaculture shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

Section 1.6. The Joint Legislative Commission on Seafood and Aquaculture shall study issues relating to whether either a limited shellfish license or an exemption from shellfish license requirements should be established to allow students under the age of 18 to take and sell shellfish during the summer months. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations to the 1998 Regular Session of the 1997 General Assembly.

Section 1.7. The Joint Legislative Commission on Seafood and Aquaculture shall study the establishment of a comprehensive State program to acquire, preserve, and restore habitats critical to marine and estuarine fisheries. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations to the 1998 Regular Session of the 1997 General Assembly.

Section 1.8. The Joint Legislative Commission on Seafood and Aquaculture shall study procedures and rules used by the Appeals Panel established by subsection (d) of Section 3 of Chapter 576 of the 1993 Session Laws (1994 Regular Session), as amended by Section 1 of Chapter 770 of the 1993 Session Laws (1994 Regular Session) in the review of license applications. The Appeals Panel shall prepare and submit a detailed summary of its activities, including all decisions to issue or deny licenses, to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 December 1997. The Joint Legislative Commission on Seafood and Aquaculture shall report its

findings and recommendations to the 1998 Regular Session of the 1997 General Assembly.

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 within its jurisdiction, as described in G.S. 113-132.
- (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 knowledgeable in the protection, restoration, proper use, and management of marine and estuarine resources.
- (3) Implement management measures regarding ocean and marine fisheries in the Atlantic Ocean consistent with the authority conferred on the State by the United States.
- (4) Advise the State regarding ocean and marine fisheries within the jurisdiction of the Atlantic States Marine Fisheries Compact, the South Atlantic Fishery Management Council, the Mid-Atlantic Fishery Management Council, and other similar organizations established to manage or regulate fishing in the Atlantic Ocean.

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

(a) The Marine Fisheries Commission shall adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, including commercial and sports fisheries resources. The Marine Fisheries Commission shall have the power and duty:

- (1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:
 - a. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.
 - b. Seasons for taking fish.
 - c. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.
- (2) To provide fair regulation of commercial and recreational fishing groups in the interest of the public.
- (3) To adopt rules and take all steps necessary to develop and improve mariculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources in the State, involving the use of public grounds and private beds as provided in G.S. 113-201.
- (4) To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204.
- (5) In the interest of conservation of the marine and estuarine resources of the State, to institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of the State registered with the Department as provided in G.S. 113-206(d).
- (6) To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter as provided by G.S. 113-223.
- (7) To adopt relevant provisions of federal laws and regulations as State rules pursuant to G.S. 113-228.
- (8) To delegate to the Fisheries Director the authority by proclamation to suspend or implement, in whole or in part, a particular rule of the Commission that may be affected by variable conditions as provided in G.S. 113-221(e).
- (9) To comment on and otherwise participate in the determination of permit applications received by State agencies that may have an effect on the marine and estuarine resources of the State.
- (10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to establish a Priority List to determine the order in which Fishery Management Plans are developed, to establish a Schedule for the development and adoption of each Fishery Management Plan, and to

establish guidance criteria as to the contents of Fishery Management Plans.

- (11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.
- (12) Except as may otherwise be provided, to make the final agency decision in all contested cases involving matters within the jurisdiction of the Commission.

(b) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules:

- (1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.
- (2) To manage the disposition of confiscated property as set forth in G.S. 113-137.
- (3) To govern all license requirements and taxes prescribed in Article 14 of Chapter 113 of the General Statutes.
- (4) To regulate 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, as provided in G.S. 113-160.
- (5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. 113-164.
- (6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.
- (7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.
- (8) To govern the utilization of private fisheries, as provided in G.S. 113-205.
- (9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.
- (10) To regulate the location and utilization of artificial reefs in coastal waters.
- (11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.

(c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:

- (1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities.
- (2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to carry out its duties.

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

(e) The Commission may adopt rules to implement or comply with a fisheries management plan adopted by the Atlantic States Marine Fisheries Commission or an interstate fisheries management council. Notwithstanding G.S. 150B-21.1(a), the Commission may adopt temporary rules under this subsection at any time within six months of the adoption of a fisheries management plan by the Atlantic States Marine Fisheries Council or an interstate fisheries management council.

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

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

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

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

- (1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the Chair of the Commission.
- (2) Oral arguments by the parties may be allowed by the Chair of the Commission upon request of the parties.
- (3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, arising from the violation of a statute or rule enacted or adopted to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

- (1) The degree and extent of harm to the marine and estuarine resources within the jurisdiction of the Commission, as described in G.S. 113-132; to the public health; or to private property resulting from the violation.

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

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

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

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

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

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

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

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

- (1) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a

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

(b) Residential Qualifications. – For purposes of providing regional representation on the Commission, the following three coastal regions of the State are designated: (i) Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties, (ii) Central Coastal Region comprised

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

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

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

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

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

(g) Ethical Standards. –

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

(2) Voting/conflict of interest. – A member of the Commission shall not vote on any issue before the Commission that would have a 'significant and predictable effect' on the member's financial interest. For

purposes of this subdivision, 'significant and predictable effect' means there is or may be a close causal link between the decision of the Commission and an expected disproportionate financial benefit to the member that is shared only by a minority of persons within the same industry sector or gear group. A member of the Commission shall also abstain from voting on any petition submitted by an advocacy group of which the member is an officer or sits as a member of the advocacy group's board of directors. A member of the Commission shall not use the member's official position as a member of the Commission to secure any special privilege or exemption of substantial value for any person. No member of the Commission shall, by the member's conduct, create an appearance that any person could improperly influence the member in the performance of the member's official duties.

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

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

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

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

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

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

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

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

(b) The Chair shall guide and coordinate the activities of the Commission in fulfilling its duties as set out in this Article. The Chair shall report to and advise the Governor and the Secretary on the activities of the Commission, on marine and estuarine conservation matters, and on all marine fisheries matters.

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

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

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

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

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

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

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

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

- (1) The Finfish Committee, which shall consider matters concerning finfish.
- (2) The Crustacean Committee, which shall consider matters concerning shrimp and crabs.
- (3) The Shellfish Committee, which shall consider matters concerning oysters, clams, scallops, and other molluscan shellfish.
- (4) The Habitat and Water Quality Committee, which shall consider matters concerning habitat and water quality that may affect coastal fisheries resources.

(c) Each standing advisory committee shall be composed of commercial and recreational fishermen, scientists, and other persons who have expertise in the matters to be considered by the advisory committee to which they are appointed. In making appointments to advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented and shall consider for appointment persons who are recommended by groups representing

commercial fishing interests, recreational fishing interests, environmental protection and conservation interests, and other groups interested in coastal fisheries management.

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

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

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

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

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

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

- (1) The proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund.
- (2) Any other sources specified by law.

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

- (1) Any limitations or restrictions specified by the donors on the uses of the income derived from the gifts, grants, and voluntary contributions shall be respected but shall not be binding.
- (2) No expenditure or disbursement shall be made from the principal of the Marine Fisheries Endowment Fund except as otherwise provided by law.

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

(e) The Board of Trustees of the Marine Fisheries Endowment Fund may accumulate the investment income of the Fund until the income, in the sole judgment of the trustees, can provide a significant supplement to the budget for the conservation and management of marine and estuarine resources. After that time the trustees, in their sole discretion and authority, may direct expenditures from the income of the Fund for the purposes set out in subdivision (3) of subsection (d) above.

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

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

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

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

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

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

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

"§ 143B-289.31. Jurisdictional questions.

In the event of any question arising between the Wildlife Resources Commission and the Marine Fisheries Commission or between the Department of Environment, Health, and Natural Resources and the Marine Fisheries Commission as to any duty, responsibility, or authority imposed upon any of these bodies by law or with respect to conflict involving rules or administrative practices, the question or conflict shall be resolved by the Governor, whose decision shall be binding."

Section 2.2. G.S. 143B-289.22(b), as enacted by Section 2.1 of this act, reads as rewritten:

"(b) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules:

- (1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.
- (2) To manage the disposition of confiscated property as set forth in G.S. 113-137.
- (3) To govern all license requirements and taxes prescribed in Article 14 14A of Chapter 113 of the General Statutes.
- (4) To regulate 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 as provided in G.S. ~~113-160~~-113-170.
- (5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. ~~113-164~~-113-170.4.
- (6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.
- (7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.
- (8) To govern the utilization of private fisheries, as provided in G.S. 113-205.
- (9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.
- (10) To regulate the location and utilization of artificial reefs in coastal waters.
- (11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.

PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY MANAGEMENT PLANS

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

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

(a) The Department shall coordinate the preparation of draft Coastal Habitat Protection Plans for critical fisheries habitats. The goal of the Plans shall be the long-

term enhancement of coastal fisheries associated with each coastal habitat identified in subdivision (1) of this subsection. The Department shall use the staff of those divisions within the Department that have jurisdiction over marine fisheries, water quality, and coastal area management in the preparation of the Coastal Habitat Protection Plans and shall request assistance from other federal and State agencies as necessary. The plans shall:

- (1) Describe and classify biological systems in the habitats, including wetlands, fish spawning grounds, estuarine or aquatic endangered or threatened species, primary or secondary nursery areas, shellfish beds, submerged aquatic vegetation (SAV) beds, and habitats in outstanding resource waters.
- (2) Evaluate the function, value to coastal fisheries, status, and trends of the habitats.
- (3) Identify existing and potential threats to the habitats and the impact on coastal fishing.
- (4) Recommend actions to protect and restore the habitats.

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

(c) In carrying out their powers and duties, the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall ensure, to the maximum extent practicable, that their actions are consistent with the Coastal Habitat Protection Plans as adopted by the three commissions. The obligation to act in a manner consistent with a Coastal Habitat Protection Plan is prospective only and does not oblige any commission to modify any rule adopted, permit decision made, or other action taken prior to the adoption or revision of the Coastal Habitat Protection Plan by the three commissions. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall adopt rules to implement Coastal Habitat Protection Plans in accordance with Chapter 150B of the General Statutes.

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

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

(f) The Secretary of Environment, Health, and Natural Resources shall report to the Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture within 30 days of the completion or substantial revision of each draft Coastal Habitat Protection Plan. The Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture shall concurrently review each draft Coastal Habitat Protection Plan within 30 days of the date the draft Plan is submitted by the Secretary. The Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture may submit comments and recommendations on the draft Plan to the Secretary within 30 days of the date the draft Plan is submitted by the Secretary."

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

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

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

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

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

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

"§ 113-182.1. Fishery Management Plans.

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

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

- (1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.
- (2) Recommend management actions pertaining to the fishery or fisheries.
- (3) Include conservation and management measures that prevent overfishing, while achieving, on a continuing basis, the optimal yield from each fishery.

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

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

(e) The Secretary of Environment, Health, and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environment, Health, and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year. The Secretary of Environment, Health, and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission shall concurrently review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

(f) The Marine Fisheries Commission shall adopt rules to implement Fishery Management Plans in accordance with Chapter 150B of the General Statutes."

Section 3.5. G.S. 113-129 is amended by adding two new subdivisions to read:

"(12a) Optimal yield. – The amount of fish that:

- a. Will provide the greatest overall benefit to the State, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;
- b. Is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and
- c. In the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in the fishery.

(12b) Overfishing or overfished. – A rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis."

PART IV. MARINE FISHERIES LAW ENFORCEMENT

Section 4.1. G.S. 113-187 reads as rewritten:

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

(a) Any person who participates in a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in an operation in connection with which any vessel is used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 4~~Class A1 misdemeanor.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 4~~Class A1 misdemeanor.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in charge of any vessel used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 4~~Class A1 misdemeanor.

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

- (1) Taking or attempting to take, possess, sell, or offer for sale any oysters, mussels, or clams taken from areas closed by statute, rule, or proclamation because of suspected pollution.
- (2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl net, in areas not opened to shrimping, pulled by a vessel not showing lights required by G.S. 75A-6 after sunset and before sunrise.
- (3) Using a trawl net in any coastal fishing waters closed by proclamation or rule to trawl nets.

- (4) Violating the provisions of a special permit or gear license issued by the Department.
- (5) Using or attempting to use any trawl net, long haul seine, swipe net, mechanical methods for oyster or clam harvest or dredge in designated primary nursery areas."

Section 4.2. Article 15 of Chapter 113 of the General Statutes is amended by adding a new section to read:

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

(a) Any person who sells fish in violation of G.S. 113-154.1 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(b) Any person who purchases fish in violation of G.S. 113-156 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(c) A civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the Secretary against any person who sells fish in violation of G.S. 113-154.1 or purchases fish in violation of G.S. 113-156.

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

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

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

(g) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (e) of this section, or requests remission of the assessment in whole or in part as provided in subsection (f) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any

county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

Section 4.3. G.S. 113-221(e) reads as rewritten:

"(e) The Marine Fisheries Commission may delegate to the Fisheries Director the authority to issue proclamations suspending or implementing, in whole or in part, particular rules of the Commission which may be affected by variable conditions. Such proclamations are to be issued by the Fisheries Director or by a person designated by the Fisheries Director. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of the effective date and time. In those situations in which the proclamation prohibits the taking of certain fisheries resources for reasons of public health, the proclamation can be made effective immediately upon issuance. Notwithstanding any other provisions of this subsection, a proclamation can be issued at least 12 hours in advance of the effective date and time to reopen the taking of certain fisheries resources closed for reason of public health through a prior proclamation made effective immediately upon issuance. Persons violating any proclamation which is made effective immediately shall not be charged with a criminal offense during the time between the issuance and 48 hours after such issuance unless such person had actual notice of the issuance of such proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether such person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

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

Section 4.4. The Marine Fisheries Commission shall develop a Violation Points System applicable to the fishing licenses of all persons who violate marine fisheries statutes or rules. In developing this system, the Marine Fisheries Commission shall consider the recommendations made in the Final Report of the Moratorium Steering Committee and the suspension, revocation, and reissuance procedures under G.S. 113-166. The Marine Fisheries Commission shall also develop an implementation schedule for the Violation Points System. The Marine Fisheries Commission shall report to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 July 1999, on the development of the Violation Points System and the implementation schedule.

Section 4.5. G.S. 113-190, as enacted by Section 4.2 of this act, reads as rewritten:

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

(a) Any person who sells fish in violation of G.S. ~~113-154.1~~113-168.4 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(b) Any person who purchases fish in violation of G.S. ~~113-156~~113-169.3 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(c) A civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the Secretary against any person who sells fish in violation of G.S. ~~113-154.1~~113-168.4 or purchases fish in violation of G.S. ~~113-156~~113-169.3.

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

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

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

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

PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS

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

"ARTICLE 14A.

"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 being licensed 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 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 commercial or recreational fishing license issued by another state to the person as a resident of that state.

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

"§ 113-168.2. Standard Commercial Fishing License.

(a) Requirement. – No person shall engage in a commercial fishing operation in the coastal fishing waters without holding a Standard Commercial Fishing License issued by the Division. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation under the direction of a person who holds a valid SCFL or RSCFL is not required to hold a SCFL or RSCFL.

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

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

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

(e) Fees. – The annual SCFL fee for a North Carolina resident shall be two hundred dollars (\$200.00). The annual SCFL fee for a person who is not a resident of North Carolina shall be eight hundred dollars (\$800.00) or the amount charged to a North Carolina resident in the nonresident's state, whichever is less. In no event, however, may the fee be less than two hundred dollars (\$200.00).

(f) Assignment. – The holder of a SCFL may assign the SCFL to any individual, provided that a SCFL or RSCFL issued to the individual is not suspended or revoked. If the SCFL is endorsed for one or more vessels, each vessel endorsement may be

assigned, independently of the SCFL, to another holder of a SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a holder or assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed. The assignment shall be in writing on a form provided by the Division and shall include the name of the licensee, the license number, any endorsements, the assignee's name and mailing address, and the duration of the assignment. A notarized copy of the assignment shall be filed with the Division. The assignee shall carry the assignment on the assignee's person and have the assignment available for inspection at all times while using the vessel. The assignment may be revoked by: (i) written notification by the assignor that the assignment has been terminated; or (ii) a determination by the Division that the assignee is operating in violation of the terms and conditions applicable to the assignment.

(g) Transfer. – A SCFL may be transferred:

- (1) By the license holder to a member of the license holder's immediate family.
- (2) By the State to the estate of the license holder upon the death of the license holder.
- (3) By a surviving family member to whom a license was transferred pursuant to subdivision (2) of this subsection to a third-party purchaser of the license holder's fishing vessel upon the death of the license holder.
- (4) By the license holder to a third-party purchaser of the license holder's fishing vessel upon retirement of the license holder from commercial fishing.
- (5) Under any other circumstance authorized by rule of the Commission.

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

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

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

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

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

a RSCFL for a person who is not a resident of North Carolina shall be eight hundred dollars (\$800.00) or the amount charged to a North Carolina resident in the nonresident's state, whichever is less. In no event, however, shall the fee be less than one hundred dollars (\$100.00).

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

(d) Assignment. – 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 holding 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 or RSCFL may be endorsed to authorize the use of a vessel in a commercial fishing operation.

(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 has its primary situs in the State if:
 - a. A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;

- b. A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or
 - c. A certification of documentation has been issued for the vessel that lists a home port in the State under 42 U.S.C. § 12101, et seq., as amended.
- (2) It is unlawful to use a vessel in a commercial fishing operation in the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. It is unlawful to use a North Carolina vessel to land or sell fish in the State that are taken during a commercial fishing operation outside the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. No endorsement is required, however, for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel for which the required license has been properly endorsed.
- (3) The fee for a vessel endorsement shall be determined by the length of the vessel and shall be in addition to the fee for a SCFL, RSCFL, or shellfish license. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The fee for a vessel endorsement is:
- a. One dollar (\$1.00) per foot for a vessel not over 18 feet in length.
 - b. One dollar and fifty cents (\$1.50) per foot for a vessel over 18 feet but not over 38 feet in length.
 - c. Three dollars (\$3.00) per foot for a vessel over 38 feet but not over 50 feet in length.
 - d. Six dollars (\$6.00) per foot for a vessel over 50 feet in length.
- (4) A vessel endorsement may be assigned as provided in G.S. 113-168.2(f).
- (5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish license has been endorsed transfers ownership of the vessel to a holder of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be transferred from the former owner's SCFL, RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or shellfish license upon the request of the new owner. The new owner of the vessel shall notify the Division of the change in ownership and request that the vessel endorsement be transferred within 30 days of the date on which the transfer of ownership occurred. The notification of a change in the ownership of a vessel and request that the vessel endorsement be transferred shall be made on a form provided by the Division and shall be accompanied by satisfactory proof of the transfer of vessel ownership. Transfer of vessel ownership may be proven by a

notarized copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a vessel documentation transfer.

(c) Menhaden Endorsements. – Except as provided in G.S. 113-169, it is unlawful to use a vessel to take menhaden by purse seine in the coastal fishing waters of the State, to land menhaden in the State, or to sell menhaden from a vessel in the State without obtaining a menhaden endorsement of a SCFL or RSCFL. The fee for a menhaden endorsement shall be two dollars (\$2.00) per ton, based on gross tonnage as determined by the custom house measurement for the mother ship. The menhaden endorsement shall be required for the mother ship but no separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden endorsement must state the name of the person in command of the vessel. Upon a change in command of a menhaden vessel, the owner must notify the Division in writing within 30 days.

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

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

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

"§ 113-169.1. Permits for gear, equipment, and other specialized activities authorized.

The Commission may adopt rules to establish permits for gear, equipment, and specialized activities, including commercial fishing operations that do not involve the use of a vessel and transplanting oysters or clams. The Commission shall establish a fee for each permit in an amount that compensates the Division for the actual administrative costs associated with the permit but that does not exceed fifty dollars (\$50.00) per permit.

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

(a) License or Endorsement Necessary to Take or Sell Shellfish. – It is unlawful for an individual to take shellfish from the public grounds of the State by mechanical means or for commercial use by any means without holding either a shellfish license or a shellfish endorsement of a SCFL or RSCFL. A North Carolina resident who seeks only to take and sell shellfish shall be eligible to purchase a shellfish license without holding a SCFL or RSCFL. The license includes the privilege to sell shellfish to a licensed fish dealer.

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

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

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

(e) Vessel Endorsement Required. – A license holder under this section shall be required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the take or sale of shellfish. A vessel endorsement of a shellfish license does not authorize the use of the vessel for any commercial fishing operation other than the taking or selling of shellfish.

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

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

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

(i) Taking Shellfish Without a License for Personal Use. –

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

- a. One bushel of oysters per day.
- b. One-half bushel of scallops per day.
- c. One hundred clams per day.

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

- a. Two bushels of oysters per day.

- b. One bushel of scallops per day.
- c. Two hundred clams per day.

"§ 113-169.3. Licenses for fish dealers.

(a) Eligibility. – A fish dealer license shall be issued to a North Carolina resident upon receipt of a proper application in the Morehead City Office of the Division together with all license fees including the total number of dealer categories set forth in this section. The license shall be issued in the name of the applicant and shall include all dealer categories on the license.

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

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

- (1) To buy fish for resale from any person involved in a commercial fishing operation that takes any species of fish from coastal fishing waters. For purposes of this subdivision, a retailer who purchases fish from a fish dealer shall not be liable if the fish dealer has not complied with the licensing requirements of this section;
- (2) To sell fish to the public; or
- (3) To sell to the public any species of fish under the authority of the Commission taken from coastal fishing waters.

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

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

- (1) The fish are sold by persons whose dealings in fish are primarily educational, scientific, or official, and who have been issued a permit by the Division that authorizes the educational, scientific, or official agency to sell fish taken or processed in connection with research or demonstration projects;
- (2) The fish are sold by individual employees of fish dealers when transacting the business of their duly licensed employer;
- (3) The fish are shipped to a person by a dealer from without the State;
- (4) The fish are of a kind the sale of which is regulated exclusively by the Wildlife Resources Commission; or
- (5) The fish are purchased from a licensed dealer.

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

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

- (1) Dealing in oysters: \$50.00;
- (2) Dealing in scallops: \$50.00;
- (3) Dealing in clams: \$50.00;
- (4) Dealing in hard or soft crabs: \$50.00;
- (5) Dealing in shrimp, including bait: \$50.00;
- (6) Dealing in finfish, including bait: \$50.00;
- (7) Operating menhaden or other fish-dehydrating or oil-extracting processing plants: \$50.00; or
- (8) Consolidated license (all categories): \$300.00.

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

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

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

(i) Purchase and Sale of Fish. – It is unlawful for a fish dealer to buy fish unless the seller possesses a current and valid SCFL, RSCFL, shellfish license, menhaden license for nonresidents, or a special fisheries sale permit issued under G.S. 113-168.4(c), and the dealer records the transaction consistent with the record-keeping

requirements of G.S. 113-168.2(i). It is unlawful for any person to purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter.

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

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

(a) The owner or operator 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 waterline. 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 not having its primary situs in North Carolina 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 terms that North Carolina residents can be licensed to engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions as necessary to allow nonresidents to obtain commercial fishing licenses in the State subject to the foregoing provisions.

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

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

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

"§ 113-170.3. Record-keeping requirements.

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

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

(c) The following records collected and compiled by the Department shall not be considered public records within the meaning of Chapter 132 of the General Statutes, but shall be confidential and shall be used only for the equitable and efficient administration and enforcement of this Article or for determining conservation policy, and shall not be disclosed except when required by the order of a court of competent jurisdiction: all records, accounts, and reports that licensees are required by the Commission to make, keep, and exhibit pursuant to the provisions of this section, and all records, accounts, and memoranda compiled by the Department from records,

accounts, and reports of licensees and from investigations and inspections, containing data and information concerning the business and operations of licensees reflecting their assets, liabilities, inventories, revenues, and profits; the number, capacity, capability, and type of fishing vessels owned and operated; the type and quantity of fishing gear used; the catch of fish or other seafood by species in numbers, size, weight, quality, and value; the areas in which fishing was engaged in; the location of catch; the time of fishing, number of hauls, and the disposition of the fish and other seafood. The Department may compile statistical information in any aggregate or summary form that does not directly or indirectly disclose the identity of any licensee who is a source of the information, and any compilation of statistical information by the Department shall be a public record open to inspection and examination by any person, and may be disseminated to the public by the Department.

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

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

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

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

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

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

- (1) No notice of appeal has been given;
- (2) The time for appeal has expired without an appeal having been perfected; or

(3) The conviction is sustained on appeal. Where there is a new trial, finality of any subsequent conviction will be determined in the manner set out above.

(b) The Secretary must initiate an administrative procedure designed to give the Secretary systematic notice of all convictions of criminal offenses by licensees covered by subsection (a) of this section above and keep a file of all convictions reported. Upon receipt of notice of conviction, the Secretary must determine whether it is a first, a second, a third, or a fourth or subsequent conviction of some offense covered by subsection (a). In the case of second convictions, the Secretary must suspend all licenses issued to the licensee for a period of 10 days. In the case of third convictions, the Secretary must suspend all licenses issued to the licensee for a period of 30 days. In the case of fourth or subsequent convictions, the Secretary must revoke all licenses issued to the licensee. Where several convictions result from a single transaction or occurrence, they are to be treated as a single conviction so far as suspension or revocation of the licenses of any licensee is concerned. Anyone convicted of taking or of knowingly possessing, transporting, buying, selling, or offering to buy or sell oysters or clams from areas closed because of suspected pollution will be deemed by the Secretary to have been convicted of two separate offenses on different occasions for license suspension or revocation purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 113-172. License agents.

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

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

"§ 113-173. Recreational Commercial Gear License.

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

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

(c) Authorized Commercial Gear. – The Commission shall adopt rules authorizing the use of a limited amount of commercial fishing equipment or gear for recreational fishing under a RCGL. The Commission may authorize the limited use of commercial gear on a uniform basis in all coastal fishing waters or may vary the limited use of commercial gear within specified areas of the coastal fishing waters. The Commission shall periodically evaluate and revise the authorized use of commercial gear for recreational fishing. Authorized commercial gear shall be identified by visible colored tags or other means specified by the Commission in order to distinguish between commercial gear used in a commercial operation and commercial gear used for recreational purposes.

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

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

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

(g) RCGL Available for Inspection. – It is unlawful for any person to engage in recreational fishing by means of restricted commercial gear in the State without having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to exhibit the RCGL 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.

(h) Assignment and Transfer Prohibited. – A RCGL is not transferable. Except as provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

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

(j) Exemptions. –

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

(2) A person may take crabs for recreational purposes by means of one or more crab pots attached to the shore along privately owned land or to a

privately owned pier without holding a RCGL provided that the crab pots are attached with the permission of the owner of the land or pier.

- (3) A person who is on a vessel may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if there is another person on the vessel who holds a valid RCGL. This exemption does not authorize the use of commercial gear in excess of that authorized for use by the person who holds the valid RCGL or, if more than one person on the vessel holds a RCGL, in excess of that authorized for use by those persons."

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

(b) Transitional Provisions. In order to effect an orderly implementation of this Part and the transition from the moratorium imposed by subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of S.L. 1997-256; Section 3 of S.L. 1997-347; and Section 6.1 of this act, to the licensing provision of Article 14A of Chapter 113 of the General Statutes, the provisions of this section shall apply to the issuance of licenses under Article 14A of Chapter 113 of the General Statutes until all Fishery Management Plans have been adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

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

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

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

(f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of available SCFLs in license years beginning with the 2000-01 license year is the temporary cap less the number of SCFLs that are renewed. The Commission may increase or decrease the number of SCFLs that are issued from the pool of available SCFLs. The Commission may increase the number of SCFLs that are issued from the pool of available SCFLs up to the temporary cap. The Commission may decrease the number of SCFLs that are issued from the pool of available SCFLs but may not refuse to renew a SCFL that is issued during the previous license year and that has not been suspended or revoked. The Commission shall increase or decrease the number of

SCFLs that are issued to reflect its determination as to the effort that the fishery can support, based on the best available scientific evidence.

(g) Eligibility for SCFL. Any person who holds a valid endorsement to sell fish of a vessel license on 1 July 1999 is eligible to receive a SCFL. The Division shall issue a SCFL to any person who is eligible under this subsection upon receipt of an application and required fees. If the person held more than one endorsement to sell fish, the person is eligible to receive a SCFL for each endorsement to sell previously held. Eligibility to receive a SCFL under this subsection shall expire 1 July 2000.

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

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

Section 5.4. Article 14 of Chapter 113 of the General Statutes is repealed.

Section 5.5. The Marine Fisheries Commission shall adopt a Fishery Management Plan for the blue crab fishery in accordance with G.S. 143B-289.22, as enacted by Section 2.1 of this act, and G.S. 113-182.1, as enacted by Section 3.4 of this act, no later than 1 January 1999.

Section 5.6. The Revisor of Statutes shall set out Section 5.2 of this act as a note to G.S. 113-168.2, as enacted by Section 5.1 of this act.

Section 5.7. G.S. 113-203(a)(2) reads as rewritten:

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

Section 5.8. G.S. 113-154.1 reads as rewritten:

"§ 113-154.1. Endorsement to sell fish.

(a) Requirements. – 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 Marine Fisheries Commission from coastal fishing waters by any means whatever, including

aquaculture operations, to sell, offer for sale, barter or exchange for merchandise such fish, without having first procured a current and valid endorsement to sell fish. It is unlawful for fish dealers to buy fish unless the seller presents a current and valid vessel license with an endorsement to sell, or a separate endorsement to sell if no vessel is involved, at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-156.

(b) Fees. – The annual fee for an endorsement to sell fish on a vessel license for a resident of this State is set forth in G.S. 113-152(h). The annual fee for an endorsement to sell fish when no vessel is involved for a resident of this State is fifteen dollars (\$15.00) and for a nonresident of this State is one hundred dollars (\$100.00) or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater. The license shall be valid for the period July 1 through June 30 of a given year.

(c) Non-Vessel Endorsement Format. – The format of an endorsement when the applicant is not seeking a vessel license shall include the name of the applicant, date of birth, expiration date of the endorsement, and any other information the Division deems necessary to accomplish the purposes of this Subchapter. The endorsement shall be issued on a card made of hard plastic or metal capable of being used to make imprints of the sale or transaction. An applicant who is applying for an endorsement on a vessel license shall comply with G.S. 113-152.

(d) Application for Non-Vessel Endorsement. – An application for issuance or renewal of an endorsement to sell shall be filed with the Morehead City offices of the Division of Marine Fisheries or license agents authorized to sell licenses under this Article. An application shall be accompanied by the fee established in subsection (b) of this section. Applications shall not be accepted from persons ineligible to hold a license issued by the Marine Fisheries Commission, including any applicant whose endorsement is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the endorsement to sell, until the endorsement issued by the Division is received or the Division determines that the applicant is ineligible to hold an endorsement. In addition to the information required in subsection (c) of this section, the applicant shall disclose on the application a valid address, and such other information as the Division may require.

(e) Application for Replacement Non-Vessel Endorsement to Sell. – A replacement endorsement shall only be obtained from the Morehead City offices of the Division of Marine Fisheries. The Division shall not accept an application for a replacement endorsement unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the endorsement until the replacement license has been received.

(f) Sale of Fish. – It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of North Carolina or to sell fish taken from coastal fishing waters except to:

- (1) Fish dealers licensed under G.S. 113-156; or
- (2) The public, if the seller is also licensed as a fish dealer under G.S. 113-156.

(g) Recordkeeping Requirements. – The fish dealer shall record each transaction on a form provided by the Department. The transaction form shall include the information on the endorsement to sell of the seller, the quantity of the fish, the identity of the fish dealer, and such other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Department, and to the other party of the transaction. The Department copy of each transaction from the preceding month shall be transmitted to the Department by the fish dealer on or before the tenth day of the following month.

(h) Non-Vessel Endorsement to Sell Nontransferable. —~~An~~A non-vessel endorsement to sell fish issued under this section is nontransferable. It is unlawful to use ~~an~~a non-vessel endorsement to sell issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a license to sell with the following two exceptions: (i) an individual under the age of 16 may sell fish under the license of a relative or guardian; or (ii) a license may be transferred within a single fishing operation if the person to whom it is transferred is a U.S. citizen. It is unlawful for a licensee to lend or transfer a license to sell for the purpose of circumventing the requirements of this section.

(h1) Transfer of Endorsement to Sell Fish on a Vessel License; Limitation on Use of Endorsement to Sell Fish on a Vessel License by Other Persons. – A valid endorsement to sell fish on a vessel license may be transferred with the vessel license when the vessel license is transferred by the vessel licensee to (i) another vessel purchased by the vessel licensee or (ii) a vessel that is purchased by another person who is otherwise qualified to hold the vessel license and endorsement under this Article. Upon application to the Morehead City office of the Division of Marine Fisheries by a vessel licensee who is eligible to transfer an endorsement to sell fish on a vessel license under this subsection, the Division shall transfer the endorsement to sell fish on the vessel license. It is unlawful to use an endorsement to sell fish on a vessel license issued to another person in the sale or attempted sale of fish or for the holder of an endorsement to sell fish on a vessel license to allow fish to be sold under the endorsement by any other person except that a person:

- (1) Under the age of 16 may sell fish under the endorsement to sell fish on a vessel license of a relative or guardian.
- (2) May sell fish that are taken in a fishing operation in which that person and the holder of the endorsement both participated.

(i) **(See note)** Penalties. – Any person who violates any provision of this section or any rule by the Marine Fisheries Commission to implement this section is guilty of a misdemeanor.

- (1) A violation of subsections (a), (f), or (h) or a rule of the Marine Fisheries Commission implementing any of those subsections is punishable as follows:
 - a. For a first conviction or a subsequent conviction not described in subdivision (1)b. or c., a violation is a Class 3 misdemeanor. A fine shall be imposed of not less than fifty dollars (\$50.00) or

double the value of the fish which are the subject of the transaction, whichever is greater, not to exceed two hundred fifty dollars (\$250.00).

b. For a second conviction within three years, a violation is a Class 2 misdemeanor. A fine shall be imposed of not less than two hundred fifty dollars (\$250.00) or double the value of the fish which are the subject of the transaction, whichever is greater, not to exceed five hundred dollars (\$500.00).

c. For a third or subsequent conviction within three years, a violation is a Class 2 misdemeanor. A fine shall be imposed of not less than five hundred dollars (\$500.00) or double the value of the fish which are the subject of the transaction, whichever is greater.

(2) A violation of any other provision of this section other than subsections (a), (f), or (h), or of any rule of the Marine Fisheries Commission other than a rule implementing subsections (a), (f), or (h) of this section, is punishable under G.S. 113-135(a).

(j) Use of Fees. – Fees paid under G.S. 113-152(h) or G.S. 113-154.1 for an endorsement to sell fish shall be applied to the cost of a fisheries data information system that compiles fisheries data obtained from the endorsement program established by G.S. 113-152 and this section or to marine fisheries programs or research projects that enhance knowledge and use of marine and estuarine resources."

PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 6.1. Subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of S.L. 1997-256; and Section 3 of S.L. 1997-347, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning 1 July 1, 1994, 1994 and ending August 15, 1997-1 July 1999 under the following statutes:

- (1) G.S. 113-152. ~~Vessel licenses.~~ Consolidated license for vessels, equipment, and operations; fees.
- (2) G.S. 113-153.1. ~~Crab license.~~ License.
- (3) G.S. 113-154. ~~Shellfish license.~~ license.
- (4) G.S. 113-154.1. ~~Nonvessel endorsements to sell fish.~~ Endorsement to sell fish."

Section 6.2. The moratorium imposed by subdivision (4) of subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of

S.L. 1997-256; Section 3 of S.L. 1997-347; and Section 6.1 of this act on nonvessel endorsements to sell fish applies also to endorsements to sell fish on vessel licenses.

Section 6.3. (a) Part 5A of Article 7 of Chapter 143B of the General Statutes is repealed, except that G.S. 143B-289.19, as amended by Section 2 of S.L. 1997-286, is not repealed but is recodified as G.S. 143B-289.40 within Part 5C of Article 7 of Chapter 143B of the General Statutes.

(b) Part 5B of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-289.20 through G.S. 143B-289.23), as amended by Sections 3, 4, and 5 of S.L. 1997-286, is recodified as Part 5C of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-289.41 through G.S. 143B-289.44). Part 5C of Article 7 of Chapter 143B of the General Statutes shall be captioned "Division of North Carolina Aquariums."

(c) G.S. 143B-289.41(a)(1b)g., as recodified by subsection (b) of this section, reads as rewritten:

"g. Create local advisory committees in accordance with the provisions of ~~G.S. 143B-289.22.~~ 143B-289.43."

(d) G.S. 143B-289.43, as recodified by subsection (b) of this section and as amended, prior to being recodified, by Section 4 of S.L. 1997-286, reads as rewritten: "**§ 143B-289.43. Local advisory committees; duties; membership.**

Local advisory committees created pursuant to ~~G.S. 143B-289.20(a)(1b)~~ 143B-289.41(a)(1b) shall assist each North Carolina Aquarium in its efforts to establish projects and programs and to assure adequate citizen-consumer input into those efforts. Members of these committees shall be appointed by the Secretary of Environment, Health, and Natural Resources for three-year terms from nominations made by the Director of the Office of Marine Affairs. Each committee shall select one of its members to serve as chairperson. Members of the committees shall serve without compensation for services or expenses."

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

Section 6.5. In order to establish a schedule of staggered terms of three years for the Marine Fisheries Commission, the terms of members of the Commission initially filling positions established by subdivisions (1), (2), and (3) of subsection (a) of G.S.

143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 2001; the terms of members of the Commission initially filling positions established by subdivisions (4), (5), and (6) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 2000; the terms of members of the Commission initially filling positions established by subdivisions (7), (8), and (9) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 1999.

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

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

- (1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Department; and
- (2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties.
- (3) The possession, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all fish taken in the Atlantic Ocean out to a distance of 200 miles from the State's mean low watermark, consistent with the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq., as amended. ~~when the harvest or landing of the fish is controlled by a quota imposed on the State by a federal fisheries management plan."~~

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

Section 6.8. The Revisor of Statutes shall set out Section 6.4 of this act as a note to G.S. 143B-289.21, as enacted by Section 2.1 of this act.

Section 6.9. All of the Coastal Habitat Protection Plans required by G.S. 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than 1 July 2003. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall make the first report on progress in developing and implementing Coastal Habitat Protection Plans, as required by G.S. 143B-279.8(e), as enacted by Section 3.1 of this act, on or before 1 September 1999. The Secretary of Environment, Health, and Natural Resources shall make the first report on progress in developing and implementing Fishery Management Plans, as required by G.S. 113-182.1(f), as enacted by Section 3.4 of this act, on or before 1 September 1999.

Section 6.10. Unless otherwise expressly provided, every agency to which this act applies shall adopt rules to implement the provisions of this act only in

accordance with the provisions of Chapter 150B of the General Statutes. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. The Marine Fisheries Commission is authorized to adopt rules, including temporary rules, to implement the provisions of Section 5.1 of this act. These implementing rules may be made effective no earlier than 1 April 1999. Beginning 1 April 1999, the Division of Marine Fisheries may prepare forms and sell licenses based on these implementing rules so as to effect an orderly implementation of Part V of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules.

Section 6.11. The Cochairs of the Joint Legislative Commission on Seafood and Aquaculture shall appoint an Advisory Committee to the Commission. The Advisory Committee shall be composed of persons who represent the broad range of interests involved in marine fisheries issues as determined by the Cochairs. The Cochairs of the Joint Legislative Commission on Seafood and Aquaculture shall designate a member or members of the Commission to serve as Chair or Cochairs of the Advisory Committee. The Advisory Committee shall meet as determined by the Cochairs of the Commission and, under the direction of the Cochairs of the Commission, shall assist the Commission in the development of recommendations on issues related to marine fisheries, including the issues to be studied by the Commission pursuant to Part I of this act.

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

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

Section 6.14. Section 3 of Chapter 547 of the 1995 Session Laws, Regular Session 1996, as amended by subsection (b) of Section 1 of Chapter 633 of the 1995 Session Laws, Regular Session 1996, and Section 27.33 of Chapter 18 of the 1996 Session Laws, Second Extra Session, Section 12 of S.L. 1997-256, and Section 8 of S.L. 1997-347, reads as rewritten:

"Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation leases shall be imposed in the remaining area of Core Sound not described in Section 1 of this act. During the moratorium, a comprehensive study of the shellfish lease program shall be conducted. The moratorium established under this section covers that part of Core Sound bounded by a line beginning at a point on Cedar Island at 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N - 76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N - 76°31'12"W, thence following the shoreline in a northerly direction to the point of

beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the Rumley Bay ditch shall be considered shoreline. The moratorium shall expire ~~August 15, 1997.~~ 1 July 1998."

Section 6.15. Sections 1.1, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 5.5, 5.6, 5.8, 6.2, 6.7, 6.10, 6.11, 6.12, 6.13, and 6.15 of this act are effective when this act becomes law. Sections 2.1, 4.4, 5.3, 6.3, 6.4, 6.5, 6.6, and 6.8 of this act become effective 1 September 1997. Sections 4.1, 4.2, and 4.3 of this act become effective 1 September 1997 and apply to violations and offenses on or after 1 September 1997. Section 1.2 of this act is effective retroactively as of 1 March 1997. Sections 6.1 and 6.14 of this act become effective 15 August 1997. Sections 3.1, 3.2, 3.3, 3.4, 3.5, and 6.9 of this act become effective 1 July 1998. Sections 2.2, 5.1, 5.2, 5.4, and 5.7 of this act become effective 1 July 1999. Section 4.5 of this act becomes effective 1 July 1999 and applies to violations and offenses on or after 1 July 1999. Sections 5.1 and 5.2 of this act expire 1 September 2003.

In the General Assembly read three times and ratified this the 14th day of August, 1997.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 2:35 p.m. this 14th day of August, 1997