

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 361  
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted  
6/6/18

Short Title: Support Shellfish Industry.

(Public)

Sponsors:

Referred to:

March 16, 2017

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE ADDITIONAL SUPPORT FOR THE STATE'S SHELLFISH  
3 INDUSTRY BY REFORMING AND MODERNIZING THE STATUTES GOVERNING  
4 SHELLFISH AND AQUACULTURE BOTTOMLAND LEASING.

5 The General Assembly of North Carolina enacts:

6  
7 **PART I. SHELLFISH AQUACULTURE REFORMS**

8  
9 **SHELLFISH BOTTOM LEASING AMENDMENTS**

10 **SECTION 1.1.(a)** G.S. 113-202 reads as rewritten:

11 **"§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued**  
12 **prior to January 1, 1966.**

13 (a) To increase the use of suitable areas underlying coastal fishing waters for the  
14 production of shellfish, the Secretary may grant shellfish cultivation leases to persons who reside  
15 in North Carolina under the terms of this section when the Secretary determines, in accordance  
16 with his duty to conserve the marine and estuarine resources of the State, that the public interest  
17 will benefit from issuance of the lease. Suitable areas for the production of shellfish shall meet  
18 the following minimum standards:

19 (1) The area leased must be suitable for the cultivation and harvesting of shellfish  
20 in commercial quantities.

21 (2) The area leased must not contain a natural shellfish bed. For purposes of this  
22 subdivision, a "natural shellfish bed" is an area containing at least 10 bushels  
23 of shellfish per acre that does not include a previously leased area terminated  
24 by the Secretary for failure to meet the requirements of this section within the  
25 12 months directly preceding the date of the lease application.

26 (3) Cultivation of shellfish in the leased area will be compatible with lawful  
27 utilization by the public of other marine and estuarine ~~resources~~ resources near  
28 the leased area. Other public uses which may be considered include, but are  
29 not limited to, navigation, fishing and recreation.

30 (4) Cultivation of shellfish in the leased area will not ~~impinge upon the rights of~~  
31 ~~riparian owners~~ unreasonably conflict with the riparian rights of adjacent  
32 property owners.

33 (4a) The leased area must be located a minimum of 100 feet from the shoreline of  
34 any private property. The 100-foot minimum shall not apply when (i) the  
35 adjacent private property is owned by the lease applicant or (ii) the owner of



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1 the private property has provided consent in the form of a written and  
2 notarized statement.

3 (5) The area leased must not include an area designated for inclusion in the  
4 Department's Shellfish Management Program.

5 (6) ~~The area leased must not include an area which the State Health Director has~~  
6 ~~recommended be closed to shellfish harvest by reason of pollution waters that~~  
7 ~~have been classified as prohibited, restricted, or conditionally approved closed~~  
8 ~~with respect to shellfish harvesting at the time of filing of the lease application.~~

9 (7) The area leased under a single lease shall be as follows:

10 a. For coastal fishing waters located in and south of Core Sound, the area  
11 leased under a single lease shall not be less than one-half acre or  
12 exceed 10 acres, except in areas designated by the Department as  
13 Shellfish Aquaculture Enterprise Areas under subsection (s) of this  
14 section. For purposes of this subdivision, Core Sound shall have the  
15 definition set forth in Section 1(b) of Chapter 44 of the 1993 Session  
16 Laws.

17 b. For other coastal fishing waters, the area leased under a single lease  
18 shall not be less than one-half acre or exceed 50 acres, except in areas  
19 designated by the Department as Shellfish Aquaculture Enterprise  
20 Areas under subsection (s) of this section.

21 (b) The Secretary may delete any part of an area proposed for lease or may condition a  
22 lease to protect the public interest with respect to the factors enumerated in subsection (a) of this  
23 section. The Secretary may not grant a new lease in an area heavily used for recreational  
24 purposes. Except as prohibited by federal law, the Secretary shall not exclude any area from  
25 leasing solely on the basis that the area contains submerged aquatic vegetation and shall make  
26 specific findings based on the standards set forth in subsection (a) of this section prior to reaching  
27 a decision not to grant or renew a lease for shellfish cultivation for any area containing submerged  
28 aquatic vegetation.

29 (c) No person, including a corporate entity, or single family unit may acquire and hold  
30 by lease, lease renewal, or purchase ~~shellfish cultivation leases covering more than 50 acres of~~  
31 ~~public bottoms under shellfish cultivation leases.~~ the acreage of public bottoms set forth in this  
32 subsection. For purposes of this subsection, the number of acres of leases held by a person  
33 includes acres held by a corporation in which the person holds an interest. The Marine Fisheries  
34 Commission may adopt rules to require the submission of information necessary to ensure  
35 compliance with this subsection.

36 (1) With respect to coastal fishing waters located in and south of Core Sound, the  
37 limit is 50 acres. For purposes of this subdivision, Core Sound shall have the  
38 definition set forth in Section 1(b) of Chapter 44 of the 1993 Session Laws.

39 (2) With respect to other coastal fishing waters, the limit is 300 acres.

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

45 (d1) The map or diagram must conform to standards prescribed by the Secretary  
46 concerning accuracy of map or diagram and the amount of detail that must be shown. If on the  
47 basis of the application information and map or diagram the Secretary deems that granting the  
48 lease would benefit the shellfish culture of North Carolina, the Secretary, in the case of initial  
49 lease applications, must order an investigation of the bottom proposed to be leased. The  
50 investigation is to be made by the Secretary or his authorized agent to determine whether the area  
51 proposed to be leased is consistent with the standards in subsection (a) of this section and any

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

8 (e) The area of bottom applied for in the case of an initial lease or amended initial lease  
9 must be as compact as possible, taking into consideration the shape of the body of water, the  
10 consistency of the bottom, and the desirability of separating the boundaries of a leasehold by a  
11 sufficient distance from any known natural shellfish bed to prevent the likelihood of disputes  
12 arising between the leaseholder and members of the public taking shellfish from the natural bed.

13 (f) Within a reasonable time after receipt of an application that complies with subsection  
14 (d), the Secretary shall notify the applicant of the intended action on the lease application. If the  
15 intended action is approval of the application as submitted or approval with a modification to  
16 which the applicant agrees, the Secretary shall conduct a public hearing in the county where the  
17 proposed leasehold lies. The Secretary must publish at least two notices of the intention to lease  
18 in a newspaper of general circulation in the county in which the proposed leasehold lies. The first  
19 publication must precede the public hearing by more than 20 days; the second publication must  
20 follow the first by seven to 11 days. The notice of intention to lease must contain a sufficient  
21 description of the area of the proposed leasehold that its boundaries may be established with  
22 reasonable ease and certainty and must also contain the date, hour and place of the hearing.

23 (g) After consideration of the public comment received and any additional investigations  
24 the Secretary orders to evaluate the comments, the Secretary shall notify the applicant in person  
25 or by certified or registered mail of the decision on the lease application. The Secretary shall also  
26 notify persons who submitted comments at the public hearing and requested notice of the lease  
27 decision. An applicant who is dissatisfied with the Secretary's decision ~~or another person~~  
28 ~~aggrieved by the decision~~ may commence a contested case by filing a petition under  
29 G.S. 150B-23 within ~~20-30~~ days after receiving notice of the Secretary's decision. In the event  
30 the Secretary's decision is a modification to which the applicant agrees, the lease applicant must  
31 furnish an amended map or diagram before the lease can be issued by the Secretary. A person  
32 other than the applicant who is aggrieved by the Secretary's decision may file a petition for a  
33 contested case hearing only if the Shellfish Cultivation Lease Review Committee established  
34 pursuant to G.S. 143B-289.57(f) determines that a hearing is appropriate. A request for a  
35 determination of the appropriateness of a contested case hearing shall be made in writing and  
36 received by the Review Committee within 30 days after the disputed decision is made. A  
37 determination of the appropriateness of a contested case shall be made within 30 days after a  
38 request for a determination is received and shall be based on whether the person seeking to  
39 commence a contested case:

40 (1) Has alleged that the decision is contrary to a statute or rule;

41 (2) Is directly affected by the decision; and

42 (3) Has alleged facts or made legal arguments that demonstrate that the request  
43 for the hearing is not frivolous.

44 If the Review Committee determines that a contested case is appropriate, the petition for a  
45 contested case shall be filed within 30 days after the Review Committee makes its determination.  
46 A determination that a person may not commence a contested case is a final agency decision and  
47 is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on  
48 judicial review, the court determines that the Review Committee erred in determining that a  
49 contested case would not be appropriate, the court shall remand the matter for a contested case  
50 hearing under G.S. 150B-23 and final decision on the permit pursuant to G.S. 113A-122.

1 Decisions in such cases shall be rendered pursuant to those rules, regulations, and other  
2 applicable laws in effect at the time of the commencement of the contested case.

3 The applicant or another person aggrieved by a final decision under this section may appeal  
4 the decision to the superior court of the county where the proposed lease or any part thereof is  
5 located, pursuant to the provisions of Chapter 150B of the General Statutes.

6 (h) Repealed by Session Laws 1993, c. 466, s. 1.

7 (i) After a lease application is approved by the Secretary, the applicant shall submit to  
8 the Secretary information sufficient to define the bounds of the area approved for leasing with  
9 markers in accordance with the rules of the Commission. The information shall conform to  
10 standards prescribed by the Secretary concerning accuracy and the amount of detail to be shown.  
11 When information is submitted, the boundaries are marked and all fees and rents due in advance  
12 are paid, the Secretary shall execute the lease on forms approved by the Attorney General. The  
13 Secretary is authorized, with the approval of the lessee, to amend an existing lease by reducing  
14 the area under lease or by combining contiguous leases without increasing the total area leased.  
15 The information required by this subsection may be based on coordinate information produced  
16 using a device equipped to receive global positioning system data.

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

29 (k) Except as restricted by this Subchapter, leaseholds granted under this section are to  
30 be treated as if they were real property and are subject to all laws relating to taxation, sale, devise,  
31 inheritance, gift, seizure and sale under execution or other legal process, and the like. Leases  
32 properly acknowledged and probated are eligible for recordation in the same manner as  
33 instruments conveying an estate in real property. Within 30 days after transfer of beneficial  
34 ownership of all or any portion of or interest in a leasehold to another, the new owner must notify  
35 the Secretary of such fact. Such transfer is not valid until notice is furnished the Secretary. In the  
36 event such transferee is a nonresident, the Secretary must initiate proceedings to terminate the  
37 lease.

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

- 40 (1) Failure to pay the annual rent in advance.
- 41 (2) Failure to file information required by the Secretary upon annual remittance  
42 of rental or filing false information on the form required to accompany the  
43 annual remittance of rental.
- 44 (3) Failure by new owner to report a transfer of beneficial ownership of all or any  
45 portion of or interest in the leasehold.
- 46 (4) Failure to mark the boundaries in the leasehold and to keep them marked as  
47 required in the rules of the Marine Fisheries Commission.
- 48 (5) Failure to utilize the leasehold on a continuing basis for the commercial  
49 production of shellfish.
- 50 (6) Transfer of all or part of the beneficial ownership of a leasehold to a  
51 nonresident.

- 1 (7) Substantial breach of compliance with the provisions of this Article or of rules  
2 of the Marine Fisheries Commission governing use of the leasehold.
- 3 (8) Failure to comply with the training requirements established by the Marine  
4 Fisheries Commission pursuant to G.S. 113-201(c).

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

16 (m) In the event the leaseholder takes steps within 30 days to remedy the situation upon  
17 which the notice of intention to terminate was based and the Secretary is satisfied that  
18 continuation of the lease is in the best interests of the shellfish culture of the State, the Secretary  
19 may discontinue termination procedures. Where there is no discontinuance of termination  
20 procedures, the leaseholder may initiate a contested case by filing a petition under G.S. 150B-23  
21 within 30 days of receipt of notice of intention to terminate. Where the leaseholder does not  
22 initiate a contested case, or the final decision upholds termination, the Secretary must send a final  
23 letter of termination to the leaseholder. The final letter of termination may not be mailed sooner  
24 than 30 days after receipt by the leaseholder of the Secretary's notice of intention to terminate, or  
25 of the final agency decision, as appropriate. The lease is terminated effective at midnight on the  
26 day the final notice of termination is served on the leaseholder. The final notice of termination  
27 may not be issued pending hearing of a contested case initiated by the leaseholder.

28 Service of any notice required in this subsection may be accomplished by certified mail,  
29 return receipt requested; personal service by any law-enforcement officer; or upon the failure of  
30 these two methods, publication. Service by publication shall be accomplished by publishing such  
31 notices in a newspaper of general circulation within the county where the lease is located for at  
32 least once a week for three successive weeks. The format for notice by publication shall be  
33 approved by the Attorney General.

34 (n) Upon final termination of any leasehold, ~~the bottom in question is thrown open to the~~  
35 ~~public for use in accordance with laws and rules governing use of public grounds generally. the~~  
36 Secretary may either (i) re-lease the area to the first qualified applicant to file an application  
37 following the procedures set forth in this Article for renewal of a lease or (ii) designate the area  
38 as a Shellfish Aquaculture Enterprise Area under subsection (s) of this section. Within 30 days  
39 of final termination of the leasehold, the former leaseholder shall remove all abandoned markers  
40 and gear denominating the area of the leasehold as a private bottom. The State may, after 10 days'  
41 notice to the owner of the abandoned ~~markers thereof, remove the abandoned structure and~~  
42 markers and gear, have the area cleaned up. The cost of such removal and cleanup shall be  
43 payable by the owner of the abandoned markers and gear and the State may bring suit to recover  
44 ~~the costs thereof.~~ costs, including legal fees.

45 (o) Every year between January 1 and February 15 the Secretary must mail to all  
46 leaseholders a notice of the annual rental due and include forms designed by him for determining  
47 the amount of shellfish or shells planted on the leasehold during the preceding calendar year, and  
48 the amount of harvest gathered. Such forms may contain other pertinent questions relating to the  
49 utilization of the leasehold in the best interests of the shellfish culture of the State, and must be  
50 executed and returned by the leaseholder with the payment of his rental. Any leaseholder or his

1 agent executing such forms for him who knowingly makes a false statement on such forms is  
2 guilty of a Class 1 misdemeanor.

3 (p) All leases and renewal leases granted after the effective date of this Article are made  
4 subject to this Article and to reasonable amendment of governing statutes, rules of the Marine  
5 Fisheries Commission, and requirements imposed by the Secretary or his agents in regulating the  
6 use of the leasehold or in processing applications of rentals. This includes such statutory increase  
7 in rentals as may be necessitated by changing conditions and refusal to renew lease after  
8 expiration, in the discretion of the Secretary. No increase in rentals, however, may be given  
9 retroactive effect.

10 The General Assembly declares it to be contrary to public policy to the oyster and clam  
11 bottoms which were leased prior to January 1, 1966, and which are not being used to produce  
12 oysters and clams in commercial quantities to continue to be held by private individuals, thus  
13 depriving the public of a resource which belongs to all the people of the State. Therefore, when  
14 the Secretary determines, after due notice to the lessee, and after opportunity for the lessee to be  
15 heard, that oysters or clams are not being produced in commercial quantities, due to the lessee's  
16 failure to make diligent effort to produce oysters and clams in commercial quantities, the  
17 Secretary may decline to renew, at the end of the current term, any oyster or clam bottom lease  
18 which was executed prior to January 1, 1966. The lessee may appeal the denial of the Secretary  
19 to renew the lease by initiating a contested case pursuant to G.S. 150B-23. In such contested  
20 cases, the burden of proof, by the greater weight of the evidence, shall be on the lessee.

21 (q) Repealed by Session Laws 1983, c. 621, s. 16.

22 (r) A lease under this section shall include the right to place devices or equipment related  
23 to the cultivation or harvesting of marine resources on or within 18 inches of the leased bottom.  
24 Devices or equipment not resting on the bottom or extending more than 18 inches above the  
25 bottom will require a water column lease under G.S. 113-202.1.

26 (s) To facilitate shellfish aquaculture opportunities through advanced siting and  
27 preapprovals from relevant federal and State agencies, the Secretary may establish Shellfish  
28 Aquaculture Enterprise Areas. The Secretary shall only issue nontransferrable leases to residents  
29 of North Carolina within designated Shellfish Aquaculture Enterprise Areas. Any leased parcel  
30 within a Shellfish Aquaculture Enterprise Area that is relinquished or terminated shall revert to  
31 the State and be made available to other applicants.

32 (t) For purposes of this section, a "resident" is any of the following:

- 33 (1) Individuals. – One who at the time in question has resided in North Carolina  
34 for the preceding six months or has been domiciled in North Carolina for the  
35 preceding 60 days. When domicile in the State for a period of 60 days up to  
36 six months is the basis for establishing residence, the individual must sign a  
37 certificate on a form supplied by the Department or the Wildlife Resources  
38 Commission, as the case may be, stating the necessary facts and the intent to  
39 establish domicile here.
- 40 (2) Corporations. – A corporation which is chartered under the laws of North  
41 Carolina.
- 42 (3) Partnerships. – A partnership in which all partners are residents of North  
43 Carolina.
- 44 (4) Other Associations and Groups Fitting the Definition of Person. – An  
45 association or group principally composed of individual residents of North  
46 Carolina and organized for a purpose that contemplates more involvement or  
47 contact with this State than any other state.
- 48 (5) Military personnel and their dependents. – A member of the Armed Forces of  
49 the United States stationed at a military facility in North Carolina, the  
50 member's spouse, and any dependent under 18 years of age residing with the

1 member are deemed residents of the State, of the county in which they live,  
2 and also, if different, of any county in which the military facility is located.

3 (6) Students. – Nonresident students attending a university, college, or  
4 community college in the State."

5 **SECTION 1.1.(b)** As part of the Shellfish Mariculture Plan required by Section  
6 13.13 of S.L. 2017-57, the North Carolina Policy Collaboratory and the Division of Marine  
7 Fisheries shall study and recommend whether the establishment of a Shellfish Mariculture  
8 Commission to oversee shellfish bottom leasing and other aspects of shellfish aquaculture would  
9 substantially advance and promote the State's shellfish aquaculture industry. The  
10 recommendation shall include proposals for additional or reallocated funding as well as proposed  
11 legislation necessary to implement the recommendation.

12 **SECTION 1.1.(c)** As part of the Shellfish Mariculture Plan required by Section  
13 13.13 of S.L. 2017-57, the North Carolina Policy Collaboratory shall establish a stakeholder  
14 process to study and recommend whether the shellfish leasing moratoria established by Section  
15 2 of Chapter 876 of the 1967 Session Laws and Section 1(c) of S.L. 2003-64 should apply to  
16 Shellfish Aquaculture Enterprise Areas.

## 17 **ADMINISTRATIVE REMEDY FOR SHELLFISH BOTTOM LEASING APPEALS**

18 **SECTION 1.2.** G.S. 143B-289.57 is amended by adding a new subsection to read:

19 "(f) The Chair of the Commission shall appoint a three-member Shellfish Cultivation  
20 Lease Review Committee to hear appeals of decisions of the Secretary regarding shellfish  
21 cultivation leases issued under G.S. 113-202. The Committee shall include one Commission  
22 member, who shall serve as the hearing officer, and two public members. One public member  
23 shall have expertise or other relevant experience in shellfish aquaculture, and the other public  
24 member shall have expertise or other relevant experience with respect to coastal property or  
25 property assessment. The Commission shall adopt rules to establish procedures for the appeals  
26 and may adopt temporary rules."

## 27 **EXPAND SHELLFISH NURSERY AREAS AND UNDER DOCK OYSTER CULTURE** 28 **SITING**

29 **SECTION 1.3.(a)** G.S. 113-203 reads as rewritten:

30 **"§ 113-203. Transplanting of oysters and clams.**

31 ...

32 (a2) It is unlawful to do any of the following:

- 33
- 34 (1) Transplant oysters or clams taken from public grounds to private beds except  
35 when lawfully taken during open season and transported directly to a private  
36 bed in accordance with rules of the Marine Fisheries Commission.
  - 37 (2) Transplant oysters or clams taken from permitted aquaculture operations to  
38 private beds except from waters in the approved classification.
  - 39 (3) Transplant oysters or clams from public grounds or permitted aquaculture  
40 operations utilizing waters in the prohibited, restricted or conditionally  
41 approved classification to private beds except when the transplanting is done  
42 in accordance with the provisions of this section and implementing rules.

43

44 (a3) ~~It~~ Unless the Secretary determines that the nursery of shellfish in an area will present  
45 a risk to public health, it is lawful to transplant seed oysters or seed clams taken from permitted  
46 aquaculture operations that use waters in the prohibited, restricted or conditionally approved  
47 classification to private beds pursuant to an Aquaculture Seed Transplant Permit issued by the  
48 Secretary that sets times during which transplant is permissible and other reasonable restrictions  
49 imposed by the Secretary under either of the following circumstances:

- 50 (1) When transplanting seed clams less than 12 millimeters in their largest  
51 dimension.

- 1 (2) When transplanting seed oysters less than 25 millimeters in their largest  
2 dimension.

3 ...."

4 **SECTION 1.3.(b)** G.S. 113-210(c) reads as rewritten:

5 "(c) Issuance. – The Director of the Division of Marine Fisheries shall issue an Under  
6 Dock Oyster Culture Permit only if the Director determines all of the following:

- 7 (1) ~~That if~~ the dock or pier is ~~not~~ located in an area that the State Health Director  
8 has recommended be closed to shellfish harvest due to pollution or that has  
9 been closed to harvest by statute, rule, or proclamation due to suspected  
10 ~~pollution~~. pollution, the owner of the dock or pier has signed a written  
11 acknowledgement that oysters produced under the permit are intended for  
12 restoration purposes and not for consumption.

13 ...."

## 14 SHELLFISH AQUACULTURE ENTERPRISE AREAS

15 **SECTION 1.4.** G.S. 113-201.1 is amended by adding a new subdivision to read:

- 16 "(3a) "Shellfish Aquaculture Enterprise Area" means an area designated and  
17 permitted by the Department that is subdivided into parcels and made  
18 available for shellfish aquaculture leasing."

## 19 MORATORIUM ON SHELLFISH LEASING IN THE NEW HANOVER COUNTY 20 AREA

21 **SECTION 1.5.** Notwithstanding G.S. 113-202 and G.S. 113-202.1, a moratorium on  
22 new shellfish cultivation leases and new water column leases for aquaculture shall be imposed  
23 for all those waters bordered in the north by a line beginning at a point 34° 13.10221' N – 77°  
24 48.79544' W on the mainland near the Wrightsville Beach Bridge; running southeasterly to a  
25 point 34° 12.51584' N – 77° 47.81847' W on Wrightsville Beach; and bordered in the south by a  
26 line beginning at a point 34° 07.77029' N – 77° 52.08320' W on the mainland near Peden Point;  
27 running easterly near IWW Marker #141 to a point 34° 07.60069' N – 77° 51.03281' on  
28 Masonboro Island, to include the waters of Masonboro Sound and Greenville Sound. The  
29 moratorium shall expire July 1, 2020.

## 30 MORATORIUM ON SHELLFISH LEASING IN BOGUE SOUND

31 **SECTION 1.6.(a)** Notwithstanding G.S. 113-202 and G.S. 113-202.1, a moratorium  
32 on new shellfish cultivation leases and new water column leases for aquaculture shall be imposed  
33 for all those waters bordered in the west by a line beginning at a point 34° 40.77658' N – 77°  
34 04.02674' W on the mainland near the Emerald Isle High Rise Bridge; running southeasterly  
35 following the bridge to a point 34° 40.05410' N – 77° 03.80531' W on Emerald Isle; bordered in  
36 the north by a line beginning at a point 34° 43.24641' N – 76° 41.68436' W; running easterly  
37 following the Highway 70 High Rise Bridge to a point 34° 43.27819' N – 76° 41.22259' W; and  
38 bordered in the east by a line beginning at a point 34° 42.37275' N – 76° 40.80078' W on the  
39 southern tip of Radio Island; running southerly to a point 34° 41.98273' N – 76° 40.81929' on  
40 Bogue Banks near the U.S. Coast Guard Station. The moratorium shall expire July 1, 2020.

41 **SECTION 1.6.(b)** During the process for establishing Shellfish Aquaculture  
42 Enterprise Areas, the Division of Marine Fisheries of the Department of Environmental Quality  
43 shall identify areas in Bogue Sound where there are fewer anticipated user conflicts with shellfish  
44 leases. The Division shall report its findings to the General Assembly no later than July 1, 2019.

## 45 PART II. REVISE OYSTER STUDIES REPORTING DATES

46 **SECTION 2.1.(a)** Section 14.11(f) of S.L. 2016-94 reads as rewritten:  
47  
48  
49  
50

1 "SECTION 14.11.(f) The University of North Carolina at Chapel Hill shall report the results  
2 of its study, including any recommendations and suggested legislation needed to implement the  
3 recommendations, to the Fiscal Research Division, the Environmental Review Commission, and  
4 the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources  
5 no later than ~~December 31, 2018.~~December 31, 2018, which may be extended to June 30, 2019,  
6 by written notice to the Fiscal Research Division if the University determines additional time is  
7 needed to complete the study."

8 SECTION 2.1.(b) Section 13.13(b) of S.L. 2017-57 reads as rewritten:

9 "SECTION 13.13.(b) In addition to the study required by Section 14.11(d) of S.L. 2016-94,  
10 as amended by subsection (a) of this section, the North Carolina Policy Collaboratory shall also  
11 prepare and deliver a Shellfish Mariculture Plan by ~~December 31, 2018.~~December 31, 2018,  
12 which may be extended to June 30, 2019, by written notice to the Fiscal Research Division if the  
13 Collaboratory determines additional time is needed to complete the study. Except as otherwise  
14 prohibited by State or federal law, all State entities shall provide all information, resources, and  
15 support deemed relevant by the Collaboratory for the creation of the Shellfish Mariculture Plan.  
16 The plan shall be submitted to the Joint Legislative Oversight Committee on Agriculture and  
17 Natural and Economic Resources, the chairs of the House of Representatives Appropriations  
18 Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate  
19 Appropriations Committee on Agriculture, Natural, and Economic Resources, and the Fiscal  
20 Research Division and shall consider the following:

21 ...."

22 SECTION 2.1.(c) Section 13.13(d) of S.L. 2017-57, as amended by Section 4.1 of  
23 S.L. 2017-197, reads as rewritten:

24 "SECTION 13.13.(d) The North Carolina Policy Collaboratory, in consultation with the  
25 Economic Development Partnership of North Carolina, the Department of Commerce, and the  
26 Department of Natural and Cultural Resources, and any other stakeholders the Partnership deems  
27 relevant, including the North Carolina Tourism Advisory Board, the North Carolina Restaurant  
28 and Lodging Association, the North Carolina Shellfish Growers Association, North Carolina Sea  
29 Grant, and the North Carolina Fisheries Association, shall develop conceptual plans and  
30 recommendations for economic development related to promotion of the State's shellfish  
31 harvesting heritage. The plans and recommendations shall include the creation of a North  
32 Carolina Oyster Trail and a ~~North Carolina Oyster Festival~~other public engagement events. Plan  
33 development shall be congruent with the ongoing work of the North Carolina Policy  
34 Collaboratory and its stakeholder group as described in this section and shall include  
35 recommendations of locations, oversight, governmental support, cost, and timing of when such  
36 initiatives should be launched in the future, including, but not limited to, achieving production  
37 and acreage benchmarks, in addition to any other information deemed relevant for inclusion. The  
38 Collaboratory's recommendations shall be provided no later than December 31, 2018, to the Joint  
39 Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the  
40 chairs of the House of Representatives Appropriations Committee on Agriculture and Natural  
41 and Economic Resources, the chairs of the Senate Appropriations Committee on Agriculture,  
42 Natural, and Economic Resources, and the Fiscal Research Division. The due date for the report  
43 may be extended to June 30, 2019, by written notice to the Fiscal Research Division if the  
44 Collaboratory and stakeholders determine that additional time is needed to complete the study.  
45 This study, as it may be subsequently amended after submission, shall be included as an appendix  
46 to the Shellfish Mariculture Plan required by subsection (b) of this section."

### 47 PART III. SEVERABILITY CLAUSE AND EFFECTIVE DATE

48 SECTION 3.1. If any section or provision of this act is declared unconstitutional or  
49 invalid by the courts, it does not affect the validity of this act as a whole or any part other than  
50 the part declared to be unconstitutional or invalid.  
51

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**SECTION 3.2.** This act becomes effective July 1, 2018.