A BILL TO BE ENTITLED
AN ACT TO ENSURE THE ECONOMIC DEVELOPMENT OF COASTAL NORTH CAROLINA THROUGH THE RESTORATION AND LONG-TERM CONSERVATION OF NORTH CAROLINA'S PUBLIC, COASTAL FISHERIES RESOURCES.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as the "Coastal Fisheries Conservation and Economic Development Act of 2017."

CONSERVATION POLICY

SECTION 2.1. G.S. 143B-279.2 reads as rewritten:

"§ 143B-279.2. Department of Environmental Quality – duties.

(1) To provide for the protection of the environment;
(1a) To administer the State Outer Continental Shelf (OCS) Task Force and coordinate State participation activities in the federal outer continental shelf resource recovery programs as provided under the OCS Lands Act Amendments of 1978 (43 USC §§ 1801 et seq.) and the OCS Lands Act Amendments of 1986 (43 USC §§ 1331 et seq.);
(1b) To provide for the protection of the environment and public health through the regulation of solid waste and hazardous waste management and the administration of environmental health programs.
(2) Repealed by Session Laws 1997-443, s. 11A.5, effective August 28, 1997.
(2a) Repealed by Session Laws 2015-241, s. 14.30(kkk), effective July 1, 2015.
(3) To provide for the conservation and management of the State's natural resources.
(4) Repealed by Session Laws 2011-145, s. 13.11, effective July 1, 2011."

SECTION 2.2. G.S. 113-181(a) is recodified as G.S. 113-181(a1).

SECTION 2.3. G.S. 113-181, as amended by Section 2.2 of this act, reads as rewritten:

"§ 113-181. Duties. Declaration of policy; duties and powers of Department.
(a) North Carolina's marine and estuarine resources are a public trust resource belonging to all citizens of the State. It is declared to be in the interest of the public welfare of North Carolina that these resources be managed to ensure their long-term conservation. Coastal fisheries resources shall be conserved, protected, and enhanced for the benefit, use, and enjoyment of all current and future citizens and visitors to the State.
(a) It is the duty of the Department to administer and enforce the provisions of this Subchapter pertaining to the conservation of marine and estuarine resources. In execution of this duty, the Department shall fully implement the policy set out in subsection (a) of this section and may collect such statistics, market information, and research data as is necessary or useful to the promotion of sports and commercial fisheries in North Carolina and the conservation of marine and estuarine resources generally; conduct or contract for research programs or research and development programs applicable to resources generally and to methods of cultivating, harvesting, marketing, or processing fish as may be beneficial in achieving the objectives of this Subchapter; enter into reciprocal agreements with other jurisdictions with regard to the conservation of marine and estuarine resources; and regulate placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational and recreational safety as well as from a conservation standpoint.

(b) The Department is directed to make every reasonable effort to carry out the duties imposed in this Subchapter.

SECTION 2.4. G.S. 143B-289.51 reads as rewritten:

§ 143B-289.51. Marine Fisheries Commission – creation; purposes.

(a) There is hereby created the Marine Fisheries Commission in the Department of Environmental Quality.

(a1) The legislative policy for the Department set out in G.S. 113-181(a) shall apply to the Marine Fisheries Commission in carrying out the functions, purposes, and duties set forth in subsection (b) of this section and in exercising the powers and duties set forth in G.S. 143B-289.52.

(a2) In exercising each of its various powers and duties, the Marine Fisheries Commission shall apply the following coastal fisheries policies and standards to its actions:

(1) The paramount concern of conservation and management measures shall be the continuing health and abundance of the marine and estuarine resources of North Carolina.

(2) Conservation and management measures shall be based upon the best available biological information; allocation decisions shall be based upon the best available sociological, economic, and other information deemed relevant by the Commission.

(3) Conservation and management measures shall permit reasonable means and quantities of annual harvest, consistent with maintaining a viable residual stock biomass to ensure stock replenishment on a continuing basis.

(4) When possible and practicable, stocks of fish shall be managed as a biological unit.

(5) State coastal fishery management plans shall be developed as set out in G.S. 113-182.1 to implement conservation and management measures for all marine fishery resources of commercial, recreational, or ecological importance.

(6) Conservation and management decisions shall be fair and equitable to all the people of the State and carried out in such a manner that no individual, corporation, or entity acquires an excessive share of any privileges extended by the State regarding the use of marine and estuarine resources.

(7) Federal fishery management plans and fishery management plans of other states or interstate commissions shall be considered when developing State coastal fishery management plans. Inconsistencies should be avoided unless the Commission determines that the conflicting plan is not in the best interest of North Carolina fisheries.

(b) The functions, purposes, and duties of the Marine Fisheries Commission are to:
(1) Manage, restore, regulate, develop, and cultivate, conserve, protect, and cultivate the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, in a manner intended to conserve, protect, restore, and enhance those resources for the benefit of current and future generations of State citizens.

SECTION 2.5. G.S. 143B-289.52(a) is recodified as G.S. 143B-289.52(a1).

SECTION 2.6. G.S. 143B-289.52, as amended by section 2.5 of this act, reads as rewritten:

"§ 143B-289.52. Marine Fisheries Commission – powers and duties.

(a) In adopting rules and exercising its other powers and duties under subsections (a1) through (i) of this section, the Commission shall implement the legislative policies set out in subsections (a1) and (a2) of G.S. 143B-289.51.

(a1) 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).

(5a) In the interest of conservation of the marine and estuarine resources of the State and in keeping with the public trust resource conservation policies set out in subsections (a1) and (a2) of G.S. 143B-289.51, to enact rules applicable to each State commercial or recreational fishery that eliminate bycatch mortality of nontargeted species. Where bycatch mortality cannot be eliminated entirely from a fishery, the Commission shall enact rules that minimize bycatch mortality of nontargeted species to the maximum practicable extent.

SECTION 2.7. G.S. 113-129(1f) is recodified as G.S. 113-129(1g).

SECTION 2.8. G.S. 113-129, as amended by Section 2.7 of this act, reads as rewritten:

"§ 113-129. Definitions relating to resources.
The following definitions and their cognates apply in the description of the various marine and estuarine and wildlife resources:

(1) Repealed by Session Laws 1979, c. 830, s. 1.

(1a) Animals. – Wild animals, except when the context clearly indicates a contrary interpretation.

(1b) Big Game. – Bear, wild turkey, and white-tailed deer.

(1c) Birds. – Wild birds, except when the context clearly indicates a contrary interpretation.

(1d) Boating and Fishing Access Area. – An area of land providing access to public waters and which is owned, leased, controlled, or managed by the Wildlife Resources Commission.

(1e) Bushel. – A dry measure containing 2,150.42 cubic inches.

(1f) Bycatch. – Marine and estuarine resources which are harvested in a fishery but which are not sold or kept for personal use or may not legally be sold or kept for personal use. The term includes economic discards, regulatory discards, and retained fish harvested incidental to a targeted species.

(1g) Cervid or Cervidae. – All animals in the Family Cervidae (elk and deer).

(2) Coastal Fisheries. – Any and every aspect of cultivating, taking, possessing, transporting, processing, selling, utilizing, and disposing of fish taken in coastal fishing waters, whatever the manner or purpose of taking, except for the regulation of inland game fish in coastal fishing waters which is vested in the Wildlife Resources Commission; and all such dealings with fish, wherever taken or found, by a person primarily concerned with fish taken in coastal fishing waters so as to be placed under the administrative supervision of the Department. Provided, that the Department is given no authority over the taking of fish in inland fishing waters. Except as provisions in this Subchapter or in regulations of the Marine Fisheries Commission authorized under this Subchapter may make such reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fisheries apply to coastal fisheries.

(3) Coastal Fishing. – All fishing in coastal fishing waters. Except as provisions in this Subchapter or in regulations of the Marine Fisheries Commission authorized under this Subchapter may make such references inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fishing apply to coastal fishing.

(4) Coastal Fishing Waters. – The Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. Except as provisions in this Subchapter or changes in the agreement between the Marine Fisheries Commission and the Wildlife Resources Commission may make such reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fishing waters apply to coastal fishing waters.

(4a) Conservation. – The protection, preservation, restoration, and rational use of natural resources in a manner that promotes continuing and long-term quantity, quality, and ecosystem function of those resources, thereby protecting the resource’s capacity for self-renewal as well as ensuring resource availability for use by future generations.

...
(12c) **Overfished.** – The condition of a fishery that occurs when the spawning stock biomass of the fishery is below the level that is adequate for the recruitment class of a fishery to replace the spawning class of the fishery.

(12d) **Overfishing.** – Fishing that causes a level of mortality that prevents a fishery from producing a sustainable harvest may prevent conservation of a fishery or fish stock by reducing the spawning stock biomass of the fishery to a level that causes the fishery to be overfished.

(13) **Private Pond.** – A body of water arising within and lying wholly upon a single tract of privately owned land, from which fish cannot escape and into which fish cannot enter from public fishing waters at any time, except that all publicly owned ponds and lakes are classified as public fishing waters. In addition, the private owners of abutting tracts of land on which a pond not exceeding 10 acres is or has been established may by written agreement cooperate to maintain that pond as a private pond if it otherwise meets the requirements of this definition. If a copy of the agreement has been filed with the Wildlife Resources Commission and the pond in fact meets the requirements of this definition, it attains the status of private pond either 60 days after the agreement has been filed or upon the Commission’s approving it as private, whichever occurs first.

(13a) **Public Fishing Waters; Public Waters.** – Coastal fishing waters, inland fishing waters, or both.

(13b) **Public Hunting Grounds.** – Privately owned lands open to the public for hunting under the terms of a cooperative agreement between the owner and the Wildlife Resources Commission.

(13c) **Raptor.** – A migratory bird of prey authorized under federal law and regulations for the taking of quarry by falconry.

(14) **Shellfish.** – Mollusca, specifically including oysters, clams, mussels, and scallops.

(14a) **Sustainable harvest.** – The amount of fish that can be taken from a fishery on a continuing basis without reducing the stock biomass of the fishery or causing the fishery to become overfished.

SECTION 2.9. G.S. 113-224(b) reads as rewritten:

"(b) The Fisheries Director or a designee of the Fisheries Director may enter into an agreement with the National Marine Fisheries Service of the United States Department of Commerce allowing Division of Marine Fisheries inspectors to accept delegation of law enforcement powers over matters within the jurisdiction of the National Marine Fisheries Service."

FISHERY MANAGEMENT PLANS

SECTION 3. G.S. 113-182.1 reads as rewritten:


(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-289.52.

(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. Nevertheless, in accordance with the policy standards set
out in G.S. 143B-289.51(a2), stocks of fish, when possible and practicable, shall be managed as a biological unit. Each plan shall:

(1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, all biological and ecological data necessary for the conservation of the fishery, 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 those management actions pertaining to the fishery or fisheries.

(3) Include conservation and management measures that will provide the greatest overall benefit to the State, particularly with respect to food production, recreational opportunities, and the protection of marine ecosystems, and that will produce a sustainable harvest ensuring the conservation of marine and estuarine resources and ecosystems and protecting those resources from overexploitation. In order to achieve coastal fisheries conservation and restoration, plan management measures shall include all of the following:

a. Biological benchmarks for a species based on precautionary principles of fisheries management, in order to measure progress in conservation of the fishery.

b. Threshold biomass levels consistent with conservation of a proportion of the unfished adult stock biomass sufficient to prevent overfishing.

c. Target biomass levels that exceed the threshold biomass level sufficiently to provide a conservation buffer between the threshold and target biomass levels.

d. An ecosystem buffer, set as a percentage of the stock biomass based on the species life, history, characteristics, and contribution to ecosystem stability that is added to the target biomass level to ensure stock conservation by accounting for forage species, species diversity, and other critical ecosystem functions.

e. Minimum size limits that would allow at least seventy-five percent (75%) of juvenile fishes to survive harvest mortality and reach spawning age.

f. An assessment of stock status and target biomass levels, as it relates to overfishing, and management measures to end overfishing and restore stock conservation within two years from plan adoption.

g. Allowable catch limits for commercial and recreational fisheries with accountability measures in the event catch limits are exceeded.

h. Management measures to minimize bycatch mortality of nontargeted species in the fishery under consideration.

i. Management measures related to the annual collection and analysis of stock size and age structure data as a measure of stock health and conservation status.

(4) Repealed by Session Laws 2010-13, s. 1, effective June 23, 2010.

(5) Specify a time period, not to exceed two years from the date of the adoption of the plan, to end overfishing. This subdivision shall not apply if the Fisheries Director determines that the biology of the fish, environmental conditions, or lack of sufficient data make implementing the requirements of
(a) At the Commission's first regular meeting following the end of the two-year period, the Division shall report to the Commission whether overfishing has ended under plan management rules. Where the Commission determines that management measures under a plan have been insufficient to end overfishing within two years, the Commission shall utilize its supplemental authority under subdivision (e1) of this section to implement those measures necessary to end overfishing immediately. The Commission shall concurrently begin the process of adopting those permanent rules necessary to end overfishing. While the Commission is developing and implementing supplemental rules, the Fisheries Director shall exercise the Director's delegated proclamation authority under G.S. 143B-289.52(a)(8) to close the fishery to further harvest until the supplemental rules are in effect.

(b) Where the Commission determines that overfishing is occurring in a fishery at any time following the initial two-year overfishing assessment period under a plan, the management requirements for an overfished stock under sub-subdivision a. of this subdivision shall apply.

(6) Specify a time period, not to exceed 10 years from the date of the adoption of the plan, for achieving a sustainable harvest, conservation in a fishery. This subdivision shall not apply if the Fisheries Director determines that the biology of the fish, environmental conditions, or lack of sufficient data make implementing the requirements of this subdivision incompatible with professional standards for fisheries management. In the event that the Commission is unable to achieve conservation in a fishery within 10 years despite closing the fishery to further harvest, the Commission shall recommend to the Joint Legislative Commission on Governmental Operations those actions of other state agencies or proposed legislation the Commission finds necessary to restore the fishery.

(7) Include a standard of at least fifty percent (50%) probability of achieving sustainable harvest for the fishery or fisheries. This subdivision shall not apply if the Fisheries Director determines that the biology of the fish, environmental conditions, or lack of sufficient data make implementing the requirements of this subdivision incompatible with professional standards for fisheries management.

(8) Recommend appropriate management actions pertaining to the fishery or fisheries as directed in this subsection. In doing so, the plan shall contain scientific data or other objective information that reasonably demonstrates that the time periods and standards specified in subdivisions (5) and (6) of this subsection will be achieved by the actions recommended in the plan. If such data are not available, then the plan shall recommend those management measures most likely to conserve and protect the fishery resource under consideration, thereby ensuring that the stock remains biologically viable.

(c) To assist the Commission in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint a fishery management plan advisory committee. Each fishery management plan advisory committee 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, there is hereby established a
council to be known as the Marine Fisheries Resources Advisory Council.

(1) Membership and terms. – The Marine Fisheries Resources Advisory Council
shall consist of not more than 20 members appointed by the Marine Fisheries
Commission. The Council shall be composed of persons with appropriate
expertise in coastal fishery resources. Counties and cities in the coastal area
may nominate candidates for consideration by the Commission. The terms of
all Council members serving on the Council on January 1, 2018, shall expire
on July 31, 2018. A new Council shall be appointed in the manner provided
by this subsection with terms beginning on August 1, 2018, and expiring on
June 30, 2020. Thereafter, members shall be appointed to two-year terms
beginning on July 1 of even-numbered years and expiring on June 30 of the
next even-numbered year. Members may be reappointed at the discretion of
the Commission, provided that one-half of the membership at the beginning
of any two-year term is a resident of counties in the coastal area.

(2) Functions and duties. – The Advisory Council shall assist the Division and
Commission in an advisory capacity in Fishery Management Plan
development regarding all of the following:

a. On matters which may be submitted to it by either of them, including
technical questions relating to the development of rules.

b. On such other matters pertaining to Plan development as the Council
considers appropriate.

c1) The Department shall consult with the regional advisory committees established
pursuant to G.S. 143B-289.57(e) regarding the preparation of each Fishery Management Plan.
Before submission of a plan for review by the Joint Legislative Commission on Governmental
Operations, the Department shall review any comment or recommendation regarding the plan
that a regional advisory committee submits to the Department within the time limits established
in the Schedule for the development and adoption of Fishery Management Plans established by
G.S. 143B-289.52. Before the Commission adopts a management measure to implement a plan,
the Commission shall review any comment or recommendation regarding the management
measure that a regional advisory committee submits to the Commission Plan and shall inform
the Commission of any comment or recommendation regarding plan management measures
submitted to it by a regional advisory committee.

d) Each Fishery Management Plan shall be reviewed at least once every five 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 Fishery Management Plan, once adopted, without the
approval of the Secretary of Environmental Quality.

e) The Secretary of Environmental Quality 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
Environmental Quality shall report to the Joint Legislative Commission on Governmental
Operations within 30 days of the completion or substantial revision of each proposed Fishery
Management Plan. The Joint Legislative Commission on Governmental Operations shall
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 Governmental Operations
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.
(e1) If the Secretary determines that it is in the interest of the long-term viability of a fishery, the Secretary may authorize the Commission to—The Commission may develop temporary management measures to supplement an existing Fishery Management Plan pursuant to this subsection if it determines that it is necessary to the long-term viability of a species or fishery; alternatively, if the Secretary makes a similar determination and requests action by the Commission, the Commission shall develop temporary management measures to supplement an existing Fishery Management Plan pursuant to this subsection. Development of temporary management measures pursuant to this subsection is exempt from subsections (c), (c1), and (e) of this section and the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.52. However, the Commission shall consult with the regional advisory committees regarding the development of any temporary management measures and review any comment or recommendation regarding the management measure that a regional advisory committee submits to the Commission. During the next review period for a Fishery Management Plan supplemented pursuant to this subsection, the Commission shall either incorporate the temporary management measures into the revised Fishery Management Plan or the temporary management measures shall expire on the date the revised Fishery Management Plan is adopted.

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

(g) To achieve sustainable harvest and conservation of a fishery or fish stock under a Fishery Management Plan, the Marine Fisheries Commission may include in the Plan a recommendation that the General Assembly (i) limit the number of fishermen authorized to participate in the fishery, fishery and (ii) appropriate program funding to reduce economic burdens to commercial license holders due to changes in fishery participation prohibitions. The Commission may recommend that the General Assembly limit participation in a fishery only if the Commission determines that sustainable harvest and fishery conservation cannot otherwise be achieved. In determining whether to recommend that the General Assembly limit participation in a fishery, the Commission shall consider all of the following factors:

1. Current participation in and dependence on the fishery.
2. Past fishing practices in the fishery.
3. Economics of the fishery.
4. Capability of fishing vessels used in the fishery to engage in other fisheries.
5. Cultural and social factors relevant to the fishery and any affected fishing communities.
6. Capacity of the fishery to support biological parameters.
7. Equitable resolution of competing social and economic interests.
8. Any other relevant considerations.”

TEMPORARY RULES

SECTION 4. G.S. 150B-21.1(a) is amended by adding a new subdivision to read:

“(7a) The need for the Marine Fisheries Commission to establish any of the following in order to comply with subdivisions (5) and (6) of G.S. 113-182.1(b) or G.S. 113-182.1(e1):

a. Fishing seasons, including provisions for manner of take or any other conditions required for the implementation of such seasons.

b. Fishing size and harvest limits.”

JOBS AND INVESTMENTS TO SUPPORT COMMERCIAL FISHERIES

SECTION 5. There is appropriated from the General Fund to the Division of Marine Fisheries of the Department of Environmental Quality the sum of seven hundred fifty thousand dollars ($750,000) in recurring funds for the following purposes:
(1) A study by the Division of the impact to holders of commercial fishing licenses due to changes to rules and Fisheries Management Plans resulting from this act.

(2) The design and implementation of a fisheries license buyback program for impacted commercial license holders.

(3) The extension and expansion of programs to remove crab pots and other derelict fishing gear from northeastern, eastern, and southeastern North Carolina waters, with preference for program participants granted to transitioning commercial license holders.

(4) The expansion of aquaculture and shellfish leasing programs, including training and start-up funding for new participants in those programs, with preference given to transitioning commercial license holders.

SECTION 6. This act is effective when it becomes law.