A BILL TO BE ENTITLED
AN ACT TO PROVIDE ADDITIONAL SUPPORT FOR THE STATE’S SHELLFISH INDUSTRY BY REFORMING AND MODERNIZING THE STATUTES GOVERNING SHELLFISH AND AQUACULTURE BOTTOMLAND LEASING AND BY APPROPRIATING FUNDS TO STUDY THE IMPACT OF OYSTER RESTORATION ON NUTRIENT REDUCTION LEVELS.

The General Assembly of North Carolina enacts:

PART I. SHELLFISH AQUACULTURE REFORMS

SHELLFISH BOTTOM LEASING AMENDMENTS

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


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

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

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

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

(4) Cultivation of shellfish in the leased area will not unreasonably conflict with the riparian rights of adjacent property owners.

(4a) The leased area must be located a minimum of 100 feet from the shoreline of any private property. The 100-foot minimum shall not apply when (i) the
adjacent private property is owned by the lease applicant or (ii) the owner of
the private property have provided consent in the form of a written and
notarized statement.
(5) The area leased must not include an area designated for inclusion in the
Department's Shellfish Management Program.
(6) The area leased must not include an area which the State Health Director has
recommended be closed to shellfish harvest by reason of pollution, waters that
have been classified as prohibited, restricted, or conditionally approved closed
with respect to shellfish harvesting at the time of filing of the lease application.
(7) The area leased under a single lease shall not be less than one-half acre or
exceed 10 acres, except in areas designated by the Department as Shellfish
Aquaculture Enterprise Areas under subsection (s) of this section.

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

(1) With respect to coastal fishing waters located in and south of Core Sound, the
limit is 50 acres. For purposes of this subdivision, Core Sound shall have the
definition set forth in Section 1(b) of Chapter 44 of the 1993 Session Laws.
(2) With respect to other coastal fishing waters, the limit is 300 acres.

For purposes of this subsection, the number of acres of leases held by a person includes acres
held by a corporation in which the person holds an interest. The Marine Fisheries Commission
may adopt rules to require the submission of information necessary to ensure compliance with
this subsection.

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

(1) Failure to pay the annual rent in advance.
(2) Failure to file information required by the Secretary upon annual remittance
of rental or filing false information on the form required to accompany the
annual remittance of rental.
(3) Failure by new owner to report a transfer of beneficial ownership of all or any
portion of or interest in the leasehold.

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(2) Failure to file information required by the Secretary upon annual remittance
of rental or filing false information on the form required to accompany the
annual remittance of rental.
(3) Failure by new owner to report a transfer of beneficial ownership of all or any
portion of or interest in the leasehold.
(4) Failure to mark the boundaries in the leasehold and to keep them marked as required in the rules of the Marine Fisheries Commission.

(5) Failure to utilize the leasehold on a continuing basis for the commercial production of shellfish.

(6) Transfer of all or part of the beneficial ownership of a leasehold to a nonresident.

(7) Substantial breach of compliance with the provisions of this Article or of rules of the Marine Fisheries Commission governing use of the leasehold.

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

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

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

SECTION 1.1.(c) This section becomes effective July 1, 2018.

ADMINISTRATIVE REMEDY FOR SHELLFISH BOTTOM LEASING APPEALS

SECTION 1.2.(a) G.S. 113-202(g) reads as rewritten:

"(g) After consideration of the public comment received and any additional investigations the Secretary orders to evaluate the comments, the Secretary shall notify the applicant in person or by certified or registered mail of the decision on the lease application. The Secretary shall also notify persons who submitted comments at the public hearing and requested notice of the lease decision. An applicant who is dissatisfied with the Secretary's decision or another person aggrieved by the decision may appeal the decision to the Shellfish Cultivation Lease Review Committee established under G.S. 143B-289.57(f). A party to an appeal to the Review Committee who is dissatisfied with the Review Committee's decision may commence a contested case by filing a petition under G.S. 150B-23 within 20 days after receiving notice of the Secretary's Committee's decision. In the event the Secretary's decision of the Secretary or the Review Committee is a modification to which the applicant agrees, the lease applicant must furnish an amended map or diagram before the lease can be issued by the Secretary."

SECTION 1.2.(b) G.S. 143B-289.57 is amended by adding a new subsection to read:

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

EXPAND SHELLFISH NURSERY AREAS AND UNDER DOCK OYSTER CULTURE SITING

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

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

..."

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

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

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

..."
forth in Section 2 of Chapter 876 of the 1967 Session Laws and Section 1(c) of S.L. 2003-64 shall not apply to Shellfish Aquaculture Enterprise Areas established under this subsection."

SECTION 1.4.(b) G.S. 113-201.1 is amended by adding a new subdivision to read:

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

PART II. REVISE OYSTER STUDIES REPORTING DATES

SECTION 2.1.(a) Section 14.11(f) of S.L. 2016-94 reads as rewritten:

"SECTION 14.11.(f) The University of North Carolina at Chapel Hill shall report the results of its study, including any recommendations and suggested legislation needed to implement the recommendations, to the Fiscal Research Division, the Environmental Review Commission, and the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources no later than December 31, 2018. December 31, 2018, which may be extended to June 30, 2019, by written notice to the Fiscal Research Division if the University determines additional time is needed to complete the study."
may be extended to June 30, 2019, by written notice to the Fiscal Research Division if the
Collaboratory and stakeholders determine that additional time is needed to complete the study.
This study, as it may be subsequently amended after submission, shall be included as an appendix
to the Shellfish Mariculture Plan required by subsection (b) of this section."

PART III. STUDIES

SECTION 3.1. There is appropriated from the General Fund to the University of
North Carolina at Chapel Hill the sum of one hundred thousand dollars ($100,000) in
nonrecurring funds for the 2018-2019 fiscal year for the University's North Carolina Policy
Collaboratory to study the impact of oyster restoration and shellfish mariculture on nitrogen and
phosphorus levels in the Pamlico Sound and whether the use of oyster restoration and shellfish
mariculture as mitigation or offsets for nutrient input to the Pamlico Sound from the Neuse and
Tar-Pamlico river basins could contribute to achievement of the policy and water quality goals
of the nutrient strategies for those basins. The Collaboratory's report shall be provided no later
than March 1, 2020, to the Joint Legislative Oversight Committee on Agriculture and Natural
and Economic Resources, the chairs of the House of Representatives Appropriations Committee
on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations
Committee on Agriculture, Natural, and Economic Resources, and the Fiscal Research Division.

SECTION 3.2. The Division of Marine Fisheries of the Department of
Environmental Quality shall review real estate owned by the State and allocated to the Division
in Carteret, Hyde, and Dare Counties that were acquired with funding from the Waterfront Access
and Marine Industry Fund and develop an inventory of sites suitable to be used for commercial
aquaculture, hatcheries, or other aquaculture support operations. The Division will also develop
(i) a plan to publicize the availability of the sites and (ii) a streamlined process for lease of the
sites to potential commercial aquaculture or aquaculture support ventures. The Division shall
report on its implementation of this section to the Joint Legislative Oversight Committee on
Agriculture and Natural and Economic Resources and the Fiscal Research Division no later than
February 1, 2019.

PART IV. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 4.1. If any section or provision of this act is declared unconstitutional or
invalid by the courts, it does not affect the validity of this act as a whole or any part other than
the part declared to be unconstitutional or invalid.

SECTION 4.2. Except as otherwise provided, this act is effective when it becomes
law.