

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 423
SENATE BILL 428

AN ACT TO AUTHORIZE THE ISSUANCE OF WATER COLUMN LEASES FOR
COMMERCIAL AQUACULTURE ACTIVITIES.

The General Assembly of North Carolina enacts:

Section 1. Article 16 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-202.1. Water column leases for aquaculture.

(a) To increase the productivity of leases for shellfish culture issued under G.S. 113-202, the Marine Fisheries Commission may amend shellfish cultivation leases to authorize use of the water column superjacent to the leased bottom under the terms of this section when it determines the public interest will benefit from amendment of the leases. Leases with water column amendments must produce shellfish in commercial quantities at four times the minimum production rate of leases issued under G.S. 113-202, or any higher quantity required by the Commission through duly adopted rules.

(b) Suitable areas for the authorization of water column use shall meet the following minimum standards:

- (1) Aquaculture use of the leased area must not significantly impair navigation;
- (2) The leased area must not be within a navigation channel marked or maintained by a state or federal agency;
- (3) The leased area must not be within an area traditionally used and available for fishing or hunting activities incompatible with the activities proposed by the leaseholder, such as trawling or seining;
- (4) Aquaculture use of the leased area must not significantly interfere with the exercise of riparian rights by adjacent property owners including access to navigation channels from piers or other means of access; and
- (5) Any additional standards, established by the Commission in duly adopted rules, to protect the public interest in coastal fishing waters.

(c) The Commission shall not amend shellfish cultivation leases to authorize use of the water column unless:

- (1) The leaseholder submits an application, accompanied by a nonrefundable application fee of one hundred dollars (\$100.00), which conforms to the standards for lease applications in G.S. 113A-202(d) and the duly adopted rules of the Commission;
- (2) The proposed amendment has been noticed consistent with G.S. 113-202(f);

- (3) Public hearings have been conducted consistent with G.S. 113-202(g);
- (4) The aspects of the proposals which require use and dedication of the water column have been documented and are recognized by the Commission as commercially feasible forms of aquaculture which will enhance shellfish production on the leased area;
- (5) It is not feasible to undertake the aquaculture activity outside of coastal fishing waters; and
- (6) The authorized water column use has the least disruptive effect on other public trust uses of the waters of any available technology to produce the shellfish identified in the proposal.

(d) Amendments of shellfish cultivation leases to authorize use of the water column are issued for a period of five years or the remainder of the term of the lease, whichever is shorter. The annual rental for water column amendments is five hundred dollars (\$500.00) per acre, prorated. The rental is in addition to that required in G.S. 113-202.

(e) Amendments of shellfish cultivation leases to authorize use of the water column are subject to termination in accordance with the procedures established in G.S. 113-202 for the termination of shellfish cultivation leases. Additionally, such amendments may be terminated for unauthorized or unlawful interference with the exercise of public trust rights by the leaseholder, agents and employees of the leaseholder.

(f) Amendments of shellfish cultivation leases to authorize use of the water column are not transferrable except when the Commission approves the transfer after public notice and hearing consistent with subsection (c) of this section.

(g) After public notice and hearing consistent with subsection (c) of this section, the Commission may renew an amendment, in whole or in part, when the leaseholder has produced commercial quantities of shellfish and has otherwise complied with the rules of the Commission. Renewals may be denied or reduced in scope when the public interest so requires. Appeal of renewal decisions shall be conducted in accordance with G.S. 113-202(p). Renewals are subject to the lease terms and rates established in subsection (d) of this section.

(h) The procedures and requirements of G.S. 113-202 shall apply to proposed amendments or amendments of shellfish cultivation leases considered under this section except more specific provisions of this section control conflicts between the two sections.

(i) To the extent required by demonstration or research aquaculture development projects, the Commission may amend existing leases and issue leases that authorize use of the bottom and the water column. Demonstration or research aquaculture development projects may be authorized for two years with no more than one renewal and when the project is proposed or formally sponsored by an educational institution which conducts research or demonstration of aquaculture. Production of shellfish with a sales value in excess of one thousand dollars (\$1,000) per acre per year shall constitute commercial production. Demonstration or research aquaculture development projects

shall be exempt for the rental rate in subsection (d) of this section unless commercial production occurs as a result of the project."

Sec. 2. G.S. 113-202(b) reads as rewritten:

"(b) The Marine Fisheries Commission may delete any part of an area proposed for lease or may condition a lease to protect the public interest with respect to the factors enumerated in subsection (a) of this section. The Marine Fisheries Commission may not grant a new lease in an area heavily used for recreational purposes. ~~To the extent required by demonstration or research aquaculture development projects, the Marine Fisheries Commission may amend existing leases and issue leases that authorize use of the bottom and the water column, notwithstanding the factors enumerated in subsection (a) of this section.~~"

Sec. 3. G.S. 113-206(a1) reads as rewritten:

"(a1) If a claim is based on an oyster or other shellfish grant or a perpetual franchise for shellfish cultivation, the Marine Fisheries Commission, upon the recommendation of the Secretary, may, to resolve the claim, grant a shellfish lease to the claimant for part or all of the area claimed. If a claim of exclusive shellfishing rights was registered based upon a conveyance by the Literary Fund, the North Carolina Literary Board or the State Board of Education, and the claimant shows that the area had been cultivated by the claimant or his predecessor in title for the seven-year period prior to registration of the claim, the Marine Fisheries Commission, upon recommendation of the Secretary, may, to resolve the claim, grant a shellfish lease to the claimant for all or part of the area claimed, not to exceed ten acres. A shellfish lease granted under this subsection is subject to the restrictions imposed on shellfish leases in G.S. 113-202, except the prohibition against leasing an area that contains a natural shellfish bed in G.S. 113-202(a)(2). This restriction is waived because, due to the cultivation efforts of the claimant, the area is likely to contain a natural shellfish bed."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of June, 1989.