

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 797

Short Title: Damage to Aquaculture Forbidden.

(Public)

Sponsors: Senators Basnight and Barker.

Referred to: Marine Resources.

April 5, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO FORBID DAMAGE TO AQUACULTURE OPERATIONS AND TO
3 SHELLFISH BEDS.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 20 of Chapter 113 is amended by adding a new section to
6 read:

7 "**§ 113-269. Robbing or injuring hatcheries and other aquaculture operations.**

8 (a) The definitions established in G.S. 106-758 are incorporated by reference into
9 this section. For the purposes of this section, a shellfish lease issued pursuant to G.S.
10 113-202 is defined as an aquaculture facility only when it has been amended pursuant to
11 G.S. 113-202.1 to authorize use of the water column and when it is or has been
12 regularly posted and identified in accordance with the rules of the Marine Fisheries
13 Commission.

14 (b) It is unlawful for any person without the authority of the owner of an
15 aquaculture facility to take fish or aquatic species being cultivated or reared by the
16 owner from an aquaculture facility.

17 (c) It is unlawful for any person to receive or possess fish or aquatic species
18 stolen from an aquaculture facility while knowing or having reasonable grounds to
19 believe that the fish or aquatic species are stolen.

20 (d) It is unlawful for any person to willfully destroy or injure an aquaculture
21 facility or aquatic species being reared in an aquaculture facility.

22 (e) Violation of subsections (b) or (c) for fish or aquatic species valued at more
23 than four hundred dollars (\$400.00) is punishable under G.S. 14-72. Violation of
24 subsections (b) or (c) for fish or aquatic species valued at four hundred dollars

1 (\$400.00) or less is a misdemeanor punishable by a fine not less than five hundred
2 dollars (\$500.00), by imprisonment not to exceed one year, or both.

3 (f) Violation of subsection (d) is a misdemeanor punishable by a fine of not less
4 than one thousand dollars (\$1,000), by imprisonment for not less than one year, or both.

5 (g) In deciding to impose any sentence other than an active prison sentence, the
6 sentencing judge shall consider and may require, in accordance with G.S. 15A-1343,
7 restitution to the victim for the amount of damage to the aquaculture facility or aquatic
8 species or for the value of the stolen fish or aquatic species.

9 (h) The district attorney shall dismiss any case brought pursuant to subsections
10 (b) and (c) if defendant produces a notarized written authorization for taking fish or
11 aquatic species from the aquaculture facility or if the fish or aquatic species taken from
12 a shellfish lease aquaculture facility was not a shellfish authorized for cultivation on the
13 lease."

14 Sec. 2. G.S. 113-208(a) reads as rewritten:

15 "(a) It is unlawful for any person, other than the holder of private
16 shellfish rights, to take or attempt to take shellfish from any privately leased, franchised,
17 or deeded shellfish bottom area without written authorization of the holder and with
18 actual knowledge it is a private shellfish bottom area. Actual knowledge will be
19 presumed when the shellfish are taken or attempted to be taken:

- 20 (1) From within the confines of posted boundaries of the area as identified
21 by signs, whether the whole or any part of the area is posted, or
22 (2) When the area has been regularly posted and identified and the person
23 knew the area to be the subject of private shellfish rights.

24 A violation of this section shall constitute a misdemeanor, punishable by imprisonment
25 not to exceed six months, 30 days,—or by a fine of not less than one thousand dollars
26 (\$1,000) ~~twenty-five dollars (\$25.00)~~—nor more than five thousand dollars (\$5,000), two
27 hundred fifty dollars (\$250.00),—or both such fine and imprisonment. The written
28 authorization shall include the lease number or deed reference, name and address of
29 authorized person, date of issuance, and date of expiration, and it must be signed by the
30 holder of the private shellfish right. Identification signs shall include the lease number
31 or deed reference and the name of the holder."

32 Sec. 3. G.S. 113-132(a) reads as rewritten:

33 "(a) The Marine Fisheries Commission has jurisdiction over the conservation of
34 marine and estuarine resources. Except as may be otherwise provided by law, it has
35 jurisdiction over all activities connected with the conservation and regulation of marine
36 and estuarine ~~resources—resources,~~ including the regulation of aquaculture facilities as
37 defined in G.S. 106-758 which cultivate or rear marine and estuarine resources."

38 Sec. 4. This act shall become effective October 1, 1989, and shall apply to
39 offenses occurring on or after that date.