

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1448*
Committee Substitute Favorable 7/29/98

Short Title: 1998 Marine Fisheries Amendments.

(Public)

Sponsors:

Referred to:

May 25, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE FISHERIES REFORM ACT OF 1997 AND RELATED
3 MARINE FISHERIES LAWS, AS RECOMMENDED BY THE JOINT
4 LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. MARINE FISHERIES COMMISSION**

8
9 Section 1.1. G.S. 113-128(5a) reads as rewritten:

10 "(5a) Marine Fisheries Commission. – The Marine Fisheries Commission
11 of the Department as established by ~~Part 5A~~ Part 5D of Article 7 of
12 Chapter 143B of the General Statutes."

13 Section 1.2. G.S. 120-123(53) reads as rewritten:

14 "(53) The North Carolina Marine Fisheries Commission as established by
15 ~~G.S. 143B-289.5~~ G.S. 143B-289.51."

16 Section 1.3. G.S. 143B-289.52(b)(3) reads as rewritten:

17 "(3) To govern all license requirements ~~and taxes~~ prescribed in Article 14 of
18 Chapter 113 of the General Statutes."

1 Section 1.4. G.S. 143B-289.52 is amended by adding a new subsection to
2 read:

3 "(d1) The Commission may regulate participation in a fishery that is subject to a
4 federal fishery management plan if that plan imposes a quota on the State for the harvest
5 or landing of fish in the fishery. If the Commission regulates participation in a fishery
6 under this subsection, the Division may issue a license to participate in the fishery to a
7 person who:

8 (1) Held a valid license issued by the Division to harvest, land, or sell fish
9 during at least two of the three license years immediately preceding the
10 date adopted by the Commission to determine participation in the
11 fishery and

12 (2) Participated in the fishery during at least two of those license years by
13 landing in the State at least the minimum number of pounds of fish
14 adopted by the Commission to determine participation in the fishery."

15 Section 1.5. G.S. 143B-289.52(e) reads as rewritten:

16 "(e) The Commission may adopt rules to implement or comply with a ~~fisheries~~-fishery
17 management plan adopted by the Atlantic States Marine Fisheries Commission or an
18 ~~interstate fisheries management council~~. adopted by the United States Secretary of
19 Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management
20 Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission may
21 adopt temporary rules under this subsection at any time within six months of the adoption
22 or amendment of a fisheries-fishery management plan ~~by the Atlantic States Marine Fisheries~~
23 ~~Council [Commission] or an interstate fisheries management council~~. or the notification of a
24 change in management measures needed to remain in compliance with a fishery
25 management plan."

26 Section 1.6. G.S. 143B-289.54(c) reads as rewritten:

27 "(c) Additional Considerations. – In making appointments to the Commission, the
28 Governor shall provide for appropriate representation of women and minorities on the
29 Commission. The Governor shall make appointments to the Commission consistent with
30 the restrictions of G.S. 113-200(g)."

31 Section 1.7. G.S. 143B-289.54(h) reads as rewritten:

32 "(h) Removal. – The Governor may remove, as provided in ~~G.S. 143-13~~, G.S. 143B-
33 13, any member of the Commission for misfeasance, malfeasance, or nonfeasance."
34

35 PART II. FISHERY MANAGEMENT PLANS

36
37 Section 2.1. G.S. 113-182.1 reads as rewritten:

38 "**§ 113-182.1. (Effective July 1, 1998) Fishery Management Plans.**

39 (a) The Department shall prepare proposed Fishery Management Plans for
40 adoption by the Marine Fisheries Commission for all commercially or recreationally
41 significant species or fisheries that comprise State marine or estuarine resources.
42 Proposed Fishery Management Plans shall be developed in accordance with the Priority

1 List, Schedule, and guidance criteria established by the Marine Fisheries Commission
2 under G.S. 143B-289.22.

3 (b) The goal of the plans shall be to ensure the long-term viability of the State's
4 commercially and recreationally significant species or fisheries. Each plan shall be
5 designed to reflect fishing practices so that one plan may apply to a specific fishery,
6 while other plans may be based on gear or geographic areas. Each plan shall:

7 (1) Contain necessary information pertaining to the fishery or fisheries,
8 including management goals and objectives, status of relevant fish
9 stocks, stock assessments for multiyear species, fishery habitat and
10 water quality considerations consistent with Coastal Habitat Protection
11 Plans adopted pursuant to G.S. 143B-279.8, social and economic impact
12 of the fishery to the State, and user conflicts.

13 (2) Recommend management actions pertaining to the fishery or fisheries.

14 (3) Include conservation and management measures that prevent
15 overfishing, while achieving, on a continuing basis, the optimal yield
16 from each fishery.

17 (c) To assist in the development of each Fishery Management Plan, the Chair of
18 the Marine Fisheries Commission shall appoint ~~an Advisory Council~~ a fishery
19 management plan advisory committee. ~~Each Advisory Council fishery management plan~~
20 advisory committee shall be composed of commercial fishermen, recreational fishermen,
21 and scientists, all with expertise in the fishery for which the Fishery Management Plan is
22 being developed.

23 (d) Each Fishery Management Plan shall be revised at least once every three years.
24 The Marine Fisheries Commission may revise the Priority List and guidance criteria
25 whenever it determines that a revision of the Priority List or guidance criteria will
26 facilitate or improve the development of Fishery Management Plans or is necessary to
27 restore, conserve, or protect the marine and estuarine resources of the State. The Marine
28 Fisheries Commission may not revise the Schedule for the development of a ~~Fisheries~~
29 Fishery Management Plan, once adopted, without the approval of the Secretary of
30 Environment and Natural Resources.

31 (e) The Secretary of Environment and Natural Resources shall monitor progress in
32 the development and adoption of Fishery Management Plans in relation to the Schedule
33 for development and adoption of the plans established by the Marine Fisheries
34 Commission. The Secretary of Environment and Natural Resources shall report to the
35 Joint Legislative Commission on Seafood and Aquaculture and the Environmental
36 Review Commission on progress in developing and implementing the Fishery
37 Management Plans on or before 1 September of each year. The Secretary of
38 Environment and Natural Resources shall report to the Joint Legislative Commission on
39 Seafood and Aquaculture and the Environmental Review Commission within 30 days of
40 the completion or substantial revision of each proposed Fishery Management Plan. The
41 Joint Legislative Commission on Seafood and Aquaculture and the Environmental
42 Review Commission shall concurrently review each proposed Fishery Management Plan
43 within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint

1 Legislative Commission on Seafood and Aquaculture and the Environmental Review
2 Commission may submit comments and recommendations on the proposed Plan to the
3 Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

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

6 (g) To achieve optimal yield under a Fishery Management Plan, the Marine
7 Fisheries Commission may include in the Plan a recommendation that the General
8 Assembly limit the number of fishermen authorized to participate in the fishery. The
9 Commission may recommend that the General Assembly limit participation in a fishery
10 only if the Commission determines that optimal yield cannot otherwise be achieved. In
11 determining whether to recommend that the General Assembly limit participation in a
12 fishery, the Commission shall consider all of the following factors:

13 (1) Current participation in and dependence on the fishery.

14 (2) Past fishing practices in the fishery.

15 (3) Economics of the fishery.

16 (4) Capability of fishing vessels used in the fishery to engage in other
17 fisheries.

18 (5) Cultural and social factors relevant to the fishery and any affected
19 fishing communities.

20 (6) Capacity of the fishery to support biological parameters.

21 (7) Equitable resolution of competing social and economic interests.

22 (8) Any other relevant considerations."

24 PART III. MARINE FISHERIES LAW ENFORCEMENT

25
26 Section 3.1. G.S. 113-136(b) reads as rewritten:

27 "(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of
28 the Department set out in this Subchapter, Part ~~5A-5D~~ of Article 7 of Chapter 143B of the
29 General Statutes, Article 5 of Chapter 76 of the General Statutes, and Article 2 of Chapter
30 77 of the General Statutes, and to all other matters within the jurisdiction of the
31 Department which it directs inspectors to enforce. In addition, inspectors have
32 jurisdiction over all offenses involving property of or leased to or managed by the
33 Department in connection with the conservation of marine and estuarine resources."

34 Section 3.2. G.S. 113-136(g) reads as rewritten:

35 "(g) Protectors may not temporarily stop or inspect vehicles proceeding along
36 primary highways of the State without clear evidence that someone within the vehicle is
37 or has recently been engaged in an activity regulated by the Wildlife Resources
38 Commission. Inspectors may temporarily stop vehicles, boats, airplanes, and other
39 conveyances upon reasonable grounds to believe that they are transporting ~~taxable~~
40 seafood products; they are authorized to inspect any seafood products being transported
41 to determine whether they were taken in accordance with law and to require exhibition of
42 any applicable license, ~~tax~~-receipts, permits, bills of lading, or other identification
43 required to accompany such seafood products."

1 Section 3.3. G.S. 113-184(a) reads as rewritten:

2 "(a) It is unlawful to carry aboard any vessel subject to licensing requirements
3 under ~~Article 14~~ Article 14A under way or at anchor in coastal fishing waters during the
4 regular closed oyster season any scoops, scrapes, dredges, or winders such as are usually
5 or can be used for taking oysters. Provided that when such vessels are engaged in
6 lawfully permitted oyster harvesting operations on any privately held shellfish bottom
7 lease under G.S. 113-202 or G.S. 113-205, the vessel shall be exempt from this
8 requirement."

9 Section 3.4. G.S. 113-185(a) reads as rewritten:

10 "(a) It is unlawful to fish in the ocean from vessels or with a net within 750 feet of
11 an ocean pier licensed in accordance with ~~G.S. 113-156.1~~ G.S. 113-169.4. The prohibition
12 shall be effective when:

13 (1) Buoys or beach markers, placed at the owner's expense in accordance
14 with the rules adopted by the Marine Fisheries Commission, indicate
15 clearly to fishermen in vessels and on the beach the requisite distance of
16 750 feet from the pier, and

17 (2) The public is allowed to fish from the pier for a reasonable fee.

18 The prohibition shall not apply to littoral proprietors whose property is within 750 feet of
19 a duly licensed ocean pier."

20 Section 3.5. G.S. 113-208(a) reads as rewritten:

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

26 (1) From within the confines of posted boundaries of the area as identified
27 by signs, whether the whole or any part of the area is posted, or

28 (2) When the area has been regularly posted and identified and the person
29 knew the area to be the subject of private shellfish rights.

30 A violation of this section shall constitute a ~~Class 2~~ Class A1 misdemeanor, which may
31 include a fine of not more than five thousand dollars (\$5,000). The written authorization
32 shall include the lease number or deed reference, name and address of authorized person,
33 date of issuance, and date of expiration, and it must be signed by the holder of the private
34 shellfish right. Identification signs shall include the lease number or deed reference and
35 the name of the holder."

36 Section 3.6. G.S. 113-221(e) reads as rewritten:

37 "(e) The Marine Fisheries Commission may delegate to the Fisheries Director the
38 authority to issue proclamations suspending or implementing, in whole or in part,
39 particular rules of the Commission which may be affected by variable conditions. Such
40 proclamations are to be issued by the Fisheries Director or by a person designated by the
41 Fisheries Director. All proclamations must state the hour and date upon which they
42 become effective and must be issued at least 48 hours in advance of the effective date and
43 time. In those situations in which the proclamation prohibits the taking of certain fisheries

1 resources for reasons of public health, the proclamation can be made effective
2 immediately upon issuance. Notwithstanding any other provisions of this subsection, a
3 proclamation can be issued at least 12 hours in advance of the effective date and time to
4 reopen the taking of certain fisheries resources closed for reason of public health through
5 a prior proclamation made effective immediately upon issuance. Persons violating any
6 proclamation which is made effective immediately shall not be charged with a criminal
7 offense during the time between the issuance and 48 hours after such issuance unless
8 such person had actual notice of the issuance of such proclamation. Fisheries resources
9 taken or possessed by any person in violation of any proclamation may be seized
10 regardless of whether such person had actual notice of the proclamation. A permanent file
11 of the text of all proclamations shall be maintained in the office of the Fisheries Director.
12 Certified copies of proclamations are entitled to judicial notice in any civil or criminal
13 proceeding.

14 The Fisheries Director must make every reasonable effort to give actual notice of the
15 terms of any proclamation to the persons who may be affected thereby. Reasonable effort
16 includes press releases to communications media, posting of notices at docks and other
17 places where persons affected may gather, personal communication by inspectors and
18 other agents of the Fisheries Director, and such other measures designed to reach the
19 persons who may be affected. ~~The Fisheries Director may determine, on a case-by-case basis~~
20 ~~and at the Fisheries Director's sole discretion, that a proclamation did not apply to an individual~~
21 ~~licensee when an act of God occurred that prevented the licensee from receiving notice of the~~
22 ~~proclamation.~~ It is a defense to an enforcement action for a violation of a proclamation
23 that a licensee was prevented from receiving notice of the proclamation due to a natural
24 disaster or other act of God occasioned exclusively by violence of nature without
25 interference of any human agency and that could not have been prevented or avoided by
26 the exercise of due care or foresight."

27 Section 3.7. G.S. 113-268 reads as rewritten:

28 "**§ 113-268. Robbing or injuring-Injuring, destroying, stealing, or stealing from nets,**
29 **seines, buoys, pots, etc.**

30 (a) It is unlawful for any person without the authority of the owner of the
31 equipment to take fish from nets, traps, pots, and other devices to catch fish which have
32 been lawfully placed in the open waters of the State.

33 (b) It is unlawful for any master or other person having the management or control
34 of a vessel in the navigable waters of the State to willfully, wantonly, and unnecessarily
35 do injury to any seine, net or pot which may lawfully be hauled, set, or fixed in such
36 waters for the purpose of taking fish except that a net set across a channel may be
37 temporarily moved to accommodate persons engaged in drift netting, provided that no
38 fish are removed and no damage is done to the net moved.

39 (c) It is unlawful for any person to willfully ~~destroy~~ steal, destroy, or injure any
40 buoys, markers, stakes, nets, pots, or other devices on property lawfully set out in the
41 open waters of the State in connection with any fishing or fishery.

1 (d) Violation of subsections (a), (b), or (c) is a ~~Class 2 misdemeanor for a first~~
2 ~~conviction, and a Class 1 misdemeanor for a second or subsequent conviction.~~ Class A1
3 misdemeanor.

4 (e) The Department may, either before or after the institution of any other action
5 or proceeding authorized by this section, institute a civil action for injunctive relief to
6 restrain a violation or threatened violation of subsections (a), (b), or (c) of this section
7 pursuant to G.S. 113-131. The action shall be brought in the superior court of the county
8 in which the violation or threatened violation is occurring or about to occur and shall be
9 in the name of the State upon the relation of the Secretary. The court, in issuing any final
10 order in any action brought pursuant to this subsection may, in its discretion, award costs
11 of litigation including reasonable attorney and expert-witness fees to any party."

12 Section 3.8. G.S. 113-277(a3) reads as rewritten:

13 "(a3) As used in this Article, the term 'conviction' has the same meaning assigned to
14 it in ~~G.S. 113-166(a).~~ G.S. 113-171."

15 16 **PART IV. FISHING LICENSES; TRANSITIONAL PROVISIONS**

17
18 Section 4.1. G.S. 75A-5(h) reads as rewritten:

19 "(h) Each certificate of number awarded pursuant to this Chapter must be renewed
20 on or before the first day of the month next succeeding that during which the same
21 expires; otherwise, such certificate shall lapse and be void until such time as it may
22 thereafter be renewed. Application for renewal shall be submitted on a form approved by
23 the Wildlife Resources Commission and shall be accompanied by a fee of eight dollars
24 (\$8.00) for a one-year period or by a fee of twenty dollars (\$20.00) for a three-year
25 period; provided, there shall be no fee required for renewal of certificates of number
26 which have been previously issued to commercial fishing ~~boats~~ vessels as defined in G.S.
27 75A-5.1, upon compliance with all of the requirements of that section."

28 Section 4.2. G.S. 75A-5.1 reads as rewritten:

29 **"§ 75A-5.1. Commercial fishing ~~boats~~; vessels; renewal of number.**

30 (a) The owner ~~or operator~~ of any commercial fishing ~~boat~~ which is currently licensed
31 ~~for the use of commercial fishing gear shall be entitled to renewal of vessel that is registered~~
32 ~~under the provisions of G.S. 113-152, G.S. 113-168.6 may renew~~ the certificate of number
33 ~~of such boat~~ the vessel when ~~such~~ the owner has complied with all of the conditions of this
34 section.

35 (b) ~~For the purpose of this section, commercial fishing boats are defined as vessels~~
36 ~~which are used primarily for commercial fishing operations, from which operations the~~
37 ~~owners and/or operators thereof derived more than one half of their gross incomes during~~
38 ~~the preceding calendar year.~~ As used in this section, 'commercial fishing vessel' is a
39 vessel used in a commercial fishing operation, as defined in G.S. 113-168.

40 (c) In order to be entitled to renewal of certificate of number under the provisions
41 of this section, the owner of the ~~boat~~ vessel shall submit, and the Wildlife Resources
42 Commission shall require:

1 (e) Application for Replacement Non-Vessel Endorsement to Sell. – A
2 replacement endorsement shall only be obtained from the Morehead City ~~offices~~ office of
3 the Division of Marine Fisheries. The Division shall not accept an application for a
4 replacement endorsement unless the Division determines that the applicant's current
5 license has not been suspended or revoked. A copy of an application duly filed with the
6 Division shall serve as the endorsement until the replacement license has been received."

7 Section 4.6. G.S. 113-154.1(h1) reads as rewritten:

8 "(h1) Transfer of Endorsement to Sell Fish on a Vessel ~~License; Limitation on Use of~~
9 ~~Endorsement to Sell Fish on a Vessel License by Other Persons License.~~ – A valid
10 endorsement to sell fish on a vessel license may be transferred with the vessel license
11 when the vessel license is transferred by the vessel licensee to (i) another vessel
12 purchased by the vessel licensee or (ii) a vessel that is purchased by another person who
13 is otherwise qualified to hold the vessel license and endorsement under this Article. Upon
14 application to the Morehead City office of the Division of Marine Fisheries by a vessel
15 licensee who is eligible to transfer an endorsement to sell fish on a vessel license under
16 this subsection, the Division shall transfer the endorsement to sell fish on the vessel
17 license. ~~It is unlawful to use an endorsement to sell fish on a vessel license issued to another~~
18 ~~person in the sale or attempted sale of fish or for the holder of an endorsement to sell fish on a~~
19 ~~vessel license to allow fish to be sold under the endorsement by any other person except that a~~
20 ~~person:~~

21 (1) ~~Under the age of 16 may sell fish under the endorsement to sell fish on a~~
22 ~~vessel license of a relative or guardian.~~

23 (2) ~~May sell fish that are taken in a fishing operation in which that person~~
24 ~~and the holder of the endorsement both participated."~~

25 Section 4.7. G.S. 113-154.1(i) is repealed.

26 Section 4.8. G.S. 113-156(i) is repealed.

27 Section 4.9. G.S. 113-168 reads as rewritten:

28 **"§ 113-168. Definitions.**

29 As used in this Article:

30 (1) 'Commercial fishing operation' means any activity preparatory to,
31 during, or subsequent to the taking of any fish, the taking of which is
32 subject to regulation by the Commission, either with the use of
33 commercial fishing equipment or gear, or by any means if the purpose
34 of the taking is to obtain fish for sale. ~~Commercial fishing operation~~
35 ~~includes taking people fishing for hire.~~ Commercial fishing operation does
36 not include (i) the taking of fish as part of a recreational fishing
37 tournament, unless commercial fishing equipment or gear is used or (ii)
38 the taking of fish under a RCGL.

39 (2) 'Commission' means the Marine Fisheries Commission.

40 (3) 'Division' means the Division of Marine Fisheries in the Department of
41 Environment and Natural Resources.

1 (3a) 'Immediate family' means the mother, father, brothers, sisters, spouse,
2 children, stepparents, stepbrothers, stepsisters, and stepchildren of a
3 person.

4 (4) 'License year' means the period beginning 1 July of a year and ending
5 on 30 June of the following year.

6 (5) 'North Carolina resident' means a person who is a resident within the
7 meaning of G.S. 113-130(4). ~~G.S. 113-130(4) and who filed a State~~
8 ~~income tax return as a resident of the State for the previous calendar or~~
9 ~~tax year.~~

10 (6) 'RCGL' means Recreational Commercial Gear License.

11 (7) 'RSCFL' means Retired Standard Commercial Fishing License.

12 (8) 'SCFL' means Standard Commercial Fishing License."

13 Section 4.10. G.S. 113-168.1 reads as rewritten:

14 "**§ 113-168.1. General provisions for ~~commercial~~ governing licenses and**
15 **endorsements.**

16 (a) Duration, Fees. – Except as provided in G.S. 113-173(f), All licenses and
17 endorsements issued under this Article expire on the last day of the license year. An
18 applicant for any license or endorsement shall pay the full annual ~~license~~-fee at the time
19 the applicant applies for the license or endorsement regardless of when application is
20 made.

21 (b) Licenses Required to Engage in Commercial Fishing. – It is unlawful for any
22 person to engage in a commercial fishing operation without ~~being licensed as holding a~~
23 license and any endorsements required by this Article. It is unlawful for anyone to
24 command a vessel engaged in a commercial fishing operation without complying with the
25 provisions of this Article and rules adopted by the Commission under this Article.

26 (c) ~~Licenses~~ Licenses, Assignments, and Endorsements Available for Inspection. –
27 It is unlawful for any person to engage in a commercial fishing operation in the State
28 without having ready at hand for inspection all valid ~~licenses~~-licenses, assignments, and
29 endorsements required under this Article. To comply with this subsection, a person must
30 have any required endorsements and either a currently valid (i) license issued in the
31 person's true name and bearing the person's current address or (ii) SCFL and an
32 assignment of a ~~the~~ SCFL authorized under this Article. ~~A licensee or assignee shall not~~ It
33 is unlawful for a person to refuse to exhibit ~~the licenses and endorsements~~ any license,
34 assignment, or endorsement required by this Article upon the request of an inspector or
35 ~~any~~ other law enforcement officer authorized to enforce federal or State laws, regulations,
36 or rules relating to marine fisheries.

37 (d) No Dual Residency. – It is unlawful for any person to hold any currently valid
38 license issued under this Article to the person as a North Carolina resident if that person
39 holds any currently valid commercial or recreational fishing license issued by another
40 state to the person as a resident of that state.

41 (e) License Format. – Licenses issued under this Article shall be issued in the
42 name of the applicant. Each license shall show the type of license and any endorsements;
43 the name, mailing address, physical or residence address, and date of birth of the

1 licensee; the date on which the license is issued; the date on which the license expires;
2 and any other information that the Commission or the Division determines to be
3 necessary to accomplish the purposes of this Subchapter.

4 (f) License Issuance and Renewal. – Except as provided in G.S. 113-173(d), the
5 Division shall issue licenses and endorsements under this Article to eligible applicants at
6 any office of the Division or by mail from the Morehead City office of the Division. A
7 license or endorsement may be renewed in person at any office of the Division or by mail
8 to the Morehead City office of the Division. Eligibility to renew an expired SCFL shall
9 end one year after the date of expiration of the SCFL.

10 (g) Limitations on Eligibility. – A person is not eligible to obtain or renew a
11 license or endorsement under this Article if, at the time the person applies for the license
12 or endorsement, any other license or endorsement issued to the person under this Article
13 is suspended or revoked. A person is not eligible to obtain a license or endorsement
14 under this Article if, within the three years prior to the date of application, the person has
15 been determined to be responsible for four or more violations of federal or state laws,
16 regulations, or rules governing the management of marine and estuarine resources. An
17 applicant shall certify that the applicant has not been determined to be responsible for
18 four or more violations of federal or state laws, regulations, or rules governing the
19 management of marine and estuarine resources during the previous three years.

20 (h) Replacement Licenses and Endorsements. – The Division shall issue a
21 replacement license, including any endorsements, to a licensee for a license that has been
22 lost, stolen, or destroyed and that has not been suspended or revoked. To obtain a
23 replacement license, a licensee shall pay a replacement fee of ten dollars (\$10.00). A
24 licensee may apply for a replacement license in person at any office of the Division or by
25 mail to the Morehead City office of the Division. A licensee may use a copy of the
26 application for a replacement license that has been filed with the Division as a temporary
27 license until the licensee receives the replacement license.

28 (i) Cancellation. – The Division may cancel a license or endorsement issued on
29 the basis of a license application that contains false information supplied by the applicant.
30 A cancelled license or endorsement is void from the date of issuance. A person in
31 possession of a cancelled license or endorsement shall surrender the cancelled license or
32 endorsement to the Division. It is unlawful to refuse to surrender a cancelled license or
33 endorsement upon demand of any authorized agent of the Division."

34 Section 4.11. G.S. 113-168.2 reads as rewritten:

35 **"§ 113-168.2. Standard Commercial Fishing License.**

36 (a) Requirement. –~~No person shall~~ Except as otherwise provided in this Article, it
37 is unlawful for any person to engage in a commercial fishing operation in the coastal
38 fishing waters without holding a Standard Commercial Fishing License-SCFL issued by the
39 Division. A person who works as a member of the crew of a vessel engaged in a
40 commercial fishing operation under the direction of a person who holds a valid SCFL or
41 RSCFL is not required to hold a SCFL or RSCFL-SCFL. A person who holds a SCFL is
42 not authorized to take shellfish unless the SCFL is endorsed as provided in G.S. 113-
43 168.5(d) or the person holds a shellfish license issued pursuant to G.S. 113-169.2.

1 (a1) Use of Vessels. – The holder of a SCFL is authorized to use only one vessel in
2 a commercial fishing operation at any given time. The Commission may adopt a rule to
3 exempt from this requirement a person in command of a vessel that is auxiliary to a
4 vessel engaged in a pound net operation, long-haul operation, beach seine operation, or
5 menhaden operation.

6 (b) ~~Purchase; Renewal.~~—A person may purchase a SCFL at any office of the
7 Division. The SCFL and endorsements may be renewed by mail by forwarding a
8 completed application, including applicable fees, to the Division's Morehead City office.
9 Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL or RSCFL
10 and any endorsements if the SCFL or RSCFL has not been suspended or revoked.

11 (c) ~~Replacement License.~~—A licensee may obtain a replacement license for a lost
12 or destroyed license, including all endorsements, upon receipt of a proper application in
13 the offices of the Division together with a ten-dollar (\$10.00) fee. The Division shall not
14 accept an application for a replacement license unless the Division determines that the
15 applicant's current license has not been suspended or revoked. A copy of an application
16 duly filed with the Division shall serve as the license until the replacement license has
17 been received. The Commission may provide by rule for the replacement of lost,
18 obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the
19 original license receipt or upon other evidence that the Commission deems sufficient.

20 (d) ~~Nonresident Certification Required.~~—Persons obtaining licenses who are not
21 North Carolina residents shall certify that their conviction record in their state of
22 residence is such that they would not be denied a license under the standards in G.S. 113-
23 171. When a license application is denied for violations of fisheries laws, whether the
24 violations occurred in North Carolina or another jurisdiction, the license fees shall not be
25 refunded and shall be applied to the costs of processing the application.

26 (e) ~~Fees.~~ – The annual SCFL fee for a North Carolina resident of this State shall be
27 two hundred dollars (\$200.00). The annual SCFL fee for a person who is not a resident
28 of North Carolina this State shall be eight hundred dollars (\$800.00) or the amount
29 charged to a North Carolina resident of this State in the nonresident's state, whichever is
30 less. In no event, however, may the fee be less than two hundred dollars (\$200.00). For
31 purposes of this subsection, a 'resident of this State' is a person who is a resident within
32 the meaning of:

33 (1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State
34 income tax return as a resident of North Carolina for the previous
35 calendar or tax year, or

36 (2) G.S. 113-130(4)e.

37 (f) ~~Assignment.~~ – The holder of a SCFL may assign the SCFL to any individual,
38 provided that a SCFL or RSCFL issued to the individual is not suspended or revoked. individual
39 who is eligible to hold a SCFL under this Article. If the SCFL is endorsed for one or more
40 vessels, each vessel endorsement may be assigned, independently of the SCFL, to another holder
41 of a SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a holder
42 or assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed.—The
43 assignment shall be in writing on a form provided by the Division and shall include the

1 name of the licensee, the license number, any endorsements, the assignee's ~~name and~~
2 name, mailing address, physical or residence address, and the duration of the assignment.
3 ~~A notarized copy of the assignment shall be filed with the Division. If a notarized copy of an~~
4 assignment is not filed with the Morehead City office of the Division within five days of
5 the date of the assignment, the assignment shall expire. The assignee shall carry the
6 assignment on the assignee's person and have the assignment available for inspection at all times
7 while using the vessel. It is unlawful for the assignee of a SCFL to assign the SCFL. The
8 assignment may be revoked by: (i) shall terminate:

- 9 (1) Upon written notification by the assignor to the assignee and the
10 Division that the assignment has been terminated; or (ii) a terminated.
11 (1a) Upon written notification by the estate of the assignor to the assignee
12 and the Division that the assignment has been terminated.
13 (2) ~~determination by the Division~~ If the Division determines that the assignee
14 is operating in violation of the terms and conditions applicable to the
15 assignment.
16 (3) If the assignee becomes ineligible to hold a license under this Article.
17 (4) Upon the death of the assignee.
18 (5) If the Division suspends or revokes the assigned SCFL.
19 (6) At the end of the license year.

20 (g) Transfer. – A SCFL may be transferred:

- 21 (1) ~~By the license holder to a member of the license holder's immediate~~
22 ~~family.~~
23 (2) ~~By the State to the estate of the license holder upon the death of the~~
24 ~~license holder.~~
25 (3) ~~By a surviving family member to whom a license was transferred~~
26 ~~pursuant to subdivision (2) of this subsection to a third party purchaser~~
27 ~~of the license holder's fishing vessel upon the death of the license~~
28 ~~holder.~~
29 (4) ~~By the license holder to a third party purchaser of the license holder's~~
30 ~~fishing vessel upon retirement of the license holder from commercial~~
31 ~~fishing.~~
32 (5) ~~Under any other circumstance authorized by rule of the Commission.~~
33 transferred only by the Division. A SCFL may be transferred pursuant to rules adopted
34 by the Commission or upon the request of:

- 35 (1) A licensee, from the licensee to a member of the licensee's immediate
36 family who is eligible to hold a SCFL under this Article.
37 (2) The administrator or executor of the estate of a deceased licensee, to the
38 administrator or executor of the estate if a surviving member of the
39 deceased licensee's immediate family is eligible to hold a SCFL under
40 this Article. The administrator or executor must request a transfer under
41 this subdivision within six months after the administrator or executor
42 qualifies under Chapter 28A of the General Statutes. An administrator

1 or executor who holds a SCFL under this subdivision may, for the
2 benefit of the estate of the deceased licensee:

3 a. Engage in a commercial fishing operation under the SCFL if the
4 administrator or executor is eligible to hold a SCFL under this
5 Article.

6 b. Assign the SCFL as provided in subsection (f) of this section.

7 c. Renew the SCFL as provided in G.S. 113-168.1.

8 (3) An administrator or executor to whom a SCFL was transferred pursuant
9 to subdivision (2) of this subsection, to a surviving member of the
10 deceased licensee's immediate family who is eligible to hold a SCFL
11 under this Article.

12 (4) The surviving member of the deceased licensee's immediate family to
13 whom a SCFL was transferred pursuant to subdivision (3) of this
14 subsection, to a third-party purchaser of the deceased licensee's fishing
15 vessel.

16 (5) A licensee who is retiring from commercial fishing, to a third-party
17 purchaser of the licensee's fishing vessel.

18 (h) Identification as Commercial Fisherman. – The receipt of a current and valid
19 ~~SCFL, RSCFL, SCFL~~ or shellfish license issued by the Division shall serve as proper
20 identification of the licensee as a commercial fisherman.

21 (i) Record-Keeping Requirements. – The fish dealer shall record each transaction
22 at the time and place of landing on a form provided by the Division. The transaction
23 form shall include the information on the ~~SCFL, RSCFL, SCFL~~ or shellfish license, the
24 quantity of the fish, the identity of the fish dealer, and other information as the Division
25 deems necessary to accomplish the purposes of this Subchapter. The person who records
26 the transaction shall provide a completed copy of the transaction form to the Division and
27 to the other party of the transaction. The Division's copy of each transaction form shall
28 be transmitted to the Division by the fish dealer on or before the tenth day of the month
29 following the transaction."

30 Section 4.12. G.S. 113-168.3 reads as rewritten:

31 "**§ 113-168.3. Retired Standard Commercial Fishing License.**

32 (a) SCFL Provisions Applicable. – Except as provided in this section, the
33 provisions set forth in ~~G.S. 113-168.2~~ this Article concerning the SCFL shall apply to the
34 RSCFL.

35 (b) Eligibility; Fees. – Any ~~person~~ individual who is 65 years of age or older and
36 who is ~~otherwise~~ eligible for a SCFL under G.S. 113-168.2 may ~~purchase a~~ apply for either
37 a SCFL or RSCFL. An applicant for a RSCFL shall provide proof of age ~~Proof of age~~
38 ~~shall be supplied~~ at the time the application is made. The annual fee for a RSCFL for a
39 ~~North Carolina~~ resident of this State shall be one hundred dollars (\$100.00). The annual
40 fee for a RSCFL for a person who is not a resident of ~~North Carolina~~ this State shall be
41 eight hundred dollars (\$800.00) or the amount charged to a ~~North Carolina~~ resident of this
42 State in the nonresident's state, whichever is less. In no event, however, shall the fee be

1 less than one hundred dollars (\$100.00). For purposes of this subsection, a 'resident of
2 this State' is a person who is a resident within the meaning of:

3 (1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State
4 income tax return as a resident of North Carolina for the previous
5 calendar or tax year, or

6 (2) G.S. 113-130(4)e.

7 (c) Transfer. – The holder of a RSCFL may transfer the RSCFL as provided in
8 ~~G.S. 113-168.2. G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-~~
9 ~~party purchaser of the RSCFL holder's fishing vessel.~~

10 (1) ~~If the third-party purchaser-transferee is less than 65 years of age, that~~
11 ~~purchaser-the transferee holds a SCFL. When the transferee renews the~~
12 ~~SCFL, the transferee shall pay the fee for the SCFL set forth out in G.S.~~
13 ~~113-168.2.~~

14 (2) If the transferee is 65 years of age or older, the transferee may elect to
15 hold either a SCFL or RSCFL. If the transferee elects to hold a SCFL,
16 the transferee shall pay the fee set out in G.S. 113-168.2. If the
17 transferee elects to hold a RSCFL, the transferee shall pay the fee set
18 out in this section.

19 (d) Assignment. – The RSCFL shall not be assignable."

20 Section 4.13. G.S. 113-168.4 reads as rewritten:

21 **"§ 113-168.4. ~~Regulations concerning the sale~~ Sale of fish.**

22 (a) Except as otherwise provided in this section, it is unlawful for any person who
23 takes or lands any species of fish under the authority of the Commission from coastal
24 fishing waters by any means whatever, including mariculture operations, to sell, offer for
25 sale, barter or exchange these fish for anything of value for merchandise these fish, without
26 ~~holding a current and valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a~~
27 ~~valid shellfish license issued under G.S. 113-169.2, without holding a license required to sell~~
28 ~~the type of fish being offered. It is unlawful for fish dealers to buy fish unless the seller~~
29 ~~presents a current and valid SCFL, RSCFL, or shellfish license at the time of the transaction.~~
30 ~~Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under~~
31 ~~G.S. 113-169.3.~~

32 (b) It is unlawful for any person licensed under this section to sell fish taken
33 outside the territorial waters of the State or to sell fish taken from coastal fishing waters
34 except to:

35 (1) Fish dealers licensed under G.S. 113-169.3; or

36 (2) The public, if the seller is also licensed as a fish dealer under G.S. 113-
37 169.3.

38 (c) A person who organizes a ~~nonprofit~~-recreational fishing tournament may sell
39 fish taken in connection with the tournament pursuant to a recreational fishing
40 tournament license to sell fish. A person who organizes a ~~nonprofit~~-recreational fishing
41 tournament may obtain a recreational fishing tournament license to sell fish upon
42 application to the Division and payment of a fee of one hundred dollars (\$100.00). It is
43 unlawful for any person licensed under this subsection to sell fish to any person other

1 than a fish dealer licensed under G.S. 113-169.3 unless the seller is also a licensed fish
2 dealer. A recreational fishing tournament is an organized fishing competition occurring
3 within a specified time period not to exceed one week and that is not a commercial
4 fishing operation. ~~Proceeds derived~~ Gross proceeds from the sale of fish may be used only
5 for ~~charitable purposes~~; charitable, religious, educational, civic, or conservation purposes
6 and shall not be used to pay tournament expenses."

7 Section 4.14. G.S. 113-168.5 reads as rewritten:

8 **"§ 113-168.5. License endorsements for Standard Commercial Fishing License and**
9 **Retired Standard Commercial Fishing License.**

10 (a) ~~A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a~~
11 ~~commercial fishing operation.~~

12 (b) ~~Vessel Endorsements.—~~

13 (1) ~~As used in this subsection, a North Carolina vessel is a vessel that has~~
14 ~~its primary situs in the State. A vessel has its primary situs in the State~~
15 ~~if:~~

16 a. ~~A certificate of number has been issued for the vessel under~~
17 ~~Article 1 of Chapter 75A of the General Statutes;~~

18 b. ~~A certificate of title has been issued for the vessel under Article 4~~
19 ~~of Chapter 75A of the General Statutes; or~~

20 e. ~~A certification of documentation has been issued for the vessel~~
21 ~~that lists a home port in the State under 42 U.S.C. § 12101, et~~
22 ~~seq., as amended.~~

23 (2) ~~It is unlawful to use a vessel in a commercial fishing operation in the~~
24 ~~coastal fishing waters of the State without a vessel endorsement of the~~
25 ~~license required under this Article for that commercial fishing operation.~~
26 ~~It is unlawful to use a North Carolina vessel to land or sell fish in the~~
27 ~~State that are taken during a commercial fishing operation outside the~~
28 ~~coastal fishing waters of the State without a vessel endorsement of the~~
29 ~~license required under this Article for that commercial fishing operation.~~
30 ~~No endorsement is required, however, for a vessel of any length that~~
31 ~~does not have a motor if the vessel is used only in connection with~~
32 ~~another vessel for which the required license has been properly~~
33 ~~endorsed.~~

34 (3) ~~The fee for a vessel endorsement shall be determined by the length of~~
35 ~~the vessel and shall be in addition to the fee for a SCFL, RSCFL, or~~
36 ~~shellfish license. The length of a vessel shall be determined by~~
37 ~~measuring the distance between the ends of the vessel along the deck~~
38 ~~and through the cabin, excluding the sheer. The fee for a vessel~~
39 ~~endorsement is:~~

40 a. ~~One dollar (\$1.00) per foot for a vessel not over 18 feet in length.~~

41 b. ~~One dollar and fifty cents (\$1.50) per foot for a vessel over 18~~
42 ~~feet but not over 38 feet in length.~~

1 e. ~~Three dollars (\$3.00) per foot for a vessel over 38 feet but not~~
2 ~~over 50 feet in length.~~

3 d. ~~Six dollars (\$6.00) per foot for a vessel over 50 feet in length.~~

4 (4) ~~A vessel endorsement may be assigned as provided in G.S. 113-~~
5 ~~168.2(f).~~

6 (5) ~~When the owner of a vessel for which a SCFL, RSCFL, or shellfish~~
7 ~~license has been endorsed transfers ownership of the vessel to a holder~~
8 ~~of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be~~
9 ~~transferred from the former owner's SCFL, RSCFL, or shellfish license~~
10 ~~to the new owner's SCFL, RSCFL, or shellfish license upon the request~~
11 ~~of the new owner. The new owner of the vessel shall notify the~~
12 ~~Division of the change in ownership and request that the vessel~~
13 ~~endorsement be transferred within 30 days of the date on which the~~
14 ~~transfer of ownership occurred. The notification of a change in the~~
15 ~~ownership of a vessel and request that the vessel endorsement be~~
16 ~~transferred shall be made on a form provided by the Division and shall~~
17 ~~be accompanied by satisfactory proof of the transfer of vessel~~
18 ~~ownership. Transfer of vessel ownership may be proven by a notarized~~
19 ~~copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a~~
20 ~~vessel documentation transfer.~~

21 (c) Menhaden Endorsements. – Except as provided in G.S. 113-169, it is
22 unlawful to use a vessel to take menhaden by purse seine in ~~the coastal fishing waters of~~
23 ~~the State, waters, to land menhaden taken by purse seine, in the State, or to sell menhaden~~
24 ~~from a vessel in the State taken by purse seine~~ without obtaining a menhaden endorsement
25 of a ~~SCFL or RSCFL.~~ SCFL. The fee for a menhaden endorsement shall be two dollars
26 (\$2.00) per ton, based on gross tonnage as determined by the custom house measurement
27 for the mother ship. The menhaden endorsement shall be required for the mother ship but
28 no separate endorsement shall be required for a purse boat carrying a purse seine. The
29 application for a menhaden endorsement must state the name of the person in command
30 of the vessel. Upon a change in command of a menhaden vessel, the owner must notify
31 the Division in writing within 30 days.

32 (d) Shellfish Endorsement for North Carolina Residents. – The Division shall issue
33 a shellfish endorsement of a ~~SCFL or RSCFL~~ to a North Carolina resident at no charge.
34 The holder of a SCFL with a shellfish endorsement is authorized to take and sell
35 shellfish."

36 Section 4.15. Article 14A of Chapter 113 of the General Statutes is amended
37 by adding a new section to read:

38 "**§ 113-168.6. Commercial fishing vessel registration.**

39 (a) As used in this subsection, a North Carolina vessel is a vessel that has its
40 primary situs in the State. A vessel has its primary situs in the State if:

41 (1) A certificate of number has been issued for the vessel under Article 1 of
42 Chapter 75A of the General Statutes;

1 (2) A certificate of title has been issued for the vessel under Article 4 of
2 Chapter 75A of the General Statutes; or

3 (3) A certification of documentation has been issued for the vessel that lists
4 a home port in the State under 46 U.S.C. § 12101, et seq., as amended.

5 (b) The owner of a vessel used in a commercial fishing operation in the coastal
6 fishing waters of the State or a North Carolina vessel used to land or sell fish in the State
7 shall register the vessel with the Division. It is unlawful to use a vessel that is not
8 registered with the Division in a commercial fishing operation in the coastal fishing
9 waters of the State. It is unlawful to use a North Carolina vessel that is not registered
10 with the Division to land or sell fish in the State. No registration is required for a vessel
11 of any length that does not have a motor if the vessel is used only in connection with
12 another vessel that is properly registered.

13 (c) The annual fee for a commercial fishing vessel registration shall be determined
14 by the length of the vessel and shall be in addition to the fee for other licenses issued
15 under this Article. The length of a vessel shall be determined by measuring the distance
16 between the ends of the vessel along the deck and through the cabin, excluding the sheer.
17 The annual fee for a commercial fishing vessel registration is:

18 (1) One dollar (\$1.00) per foot for a vessel not over 18 feet in length.

19 (2) One dollar and fifty cents (\$1.50) per foot for a vessel over 18 feet but
20 not over 38 feet in length.

21 (3) Three dollars (\$3.00) per foot for a vessel over 38 feet but not over 50
22 feet in length.

23 (4) Six dollars (\$6.00) per foot for a vessel over 50 feet in length.

24 (d) A vessel may be registered at any office of the Division. A commercial fishing
25 vessel registration expires on the last day of the license year.

26 (e) Within 30 days of the date on which the owner of a registered vessel transfers
27 ownership of the vessel, the new owner of the vessel shall notify the Division of the
28 change in ownership and request that the Division transfer the commercial fishing vessel
29 registration to the new owner. The notification of a change in the ownership of a vessel
30 and request that the commercial fishing vessel registration be transferred shall be
31 accompanied by proof of the transfer of the vessel."

32 Section 4.16. G.S. 113-169 reads as rewritten:

33 **"§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.**

34 A person who is not a ~~resident of North Carolina,~~ North Carolina resident, who is not
35 eligible for a SCFL under this Article, and who only seeks to engage in ~~menhaden fishing~~
36 a commercial fishing operation for the harvest and sale of menhaden is eligible to
37 ~~purchase~~ obtain a menhaden license for nonresidents. The fee for the menhaden license
38 for nonresidents shall be two dollars (\$2.00) per ton, gross tonnage, customhouse
39 measurements for the mother ship. The menhaden license for nonresidents shall be
40 required for the mother ship to take, land, or sell menhaden in North Carolina taken by
41 purse seine. No separate endorsement shall be required for a purse boat carrying a purse
42 seine. The application for a menhaden license for nonresidents must state the name of the
43 person in command of the vessel. Upon change in command of a menhaden vessel, the

1 owner must notify the Division within 30 days. A person who works as a member of the
2 crew of a vessel engaged in a commercial fishing operation for the harvest and sale of
3 menhaden under the direction of a person who holds a valid menhaden license for
4 nonresidents is not required to hold a menhaden license for nonresidents or a SCFL."

5 Section 4.17. G.S. 113-169.2 reads as rewritten:

6 **"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

7 (a) License or Endorsement Necessary to Take or Sell Shellfish. – It is unlawful
8 for an individual to take shellfish from the public or private grounds of the State by
9 mechanical means or ~~for commercial use in~~ quantities greater than the personal use limits
10 set forth in subsection (i) of this section by any means without holding either a shellfish
11 license or a shellfish endorsement of a ~~SCFL or RSCFL.~~ SCFL. A North Carolina resident
12 who seeks only to take and sell shellfish shall be eligible to ~~purchase~~ obtain a shellfish
13 license without holding a ~~SCFL or RSCFL.~~ SCFL. ~~The license includes the privilege~~ The
14 shellfish license authorizes the licensee to sell shellfish to a licensed fish dealer. ~~shellfish.~~

15 (b) ~~Purchase; Renewal.~~ – ~~A person may purchase a shellfish license at any office~~
16 ~~of the Division. The shellfish license and endorsements may be renewed by mail by~~
17 ~~forwarding a completed application, including applicable fees, to the Division's~~
18 ~~Morehead City Office. Any person who is issued a shellfish license is eligible to renew~~
19 ~~the shellfish license and any endorsements if the shellfish license has not been suspended~~
20 ~~or revoked.~~

21 (c) Fees. – Shellfish licenses shall be issued annually upon payment of a fee of
22 twenty-five dollars (\$25.00) upon proof that the license applicant is a ~~resident of North~~
23 Carolina. North Carolina resident.

24 (d) License Available for Inspection. – It is unlawful for any individual to take
25 shellfish ~~for commercial use in~~ quantities greater than the personal use limits set forth in
26 subsection (i) of this section from the public or private grounds of the State without
27 having ready at hand for inspection a current and valid shellfish license issued to the
28 licensee personally and bearing the licensee's correct name and address. It is unlawful for
29 any individual taking or possessing freshly taken shellfish to refuse to exhibit the
30 individual's license upon the request of an officer authorized to enforce the fishing laws.

31 (e) ~~Vessel Endorsement Required.~~ – ~~A license holder under this section shall be~~
32 ~~required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the~~
33 ~~take or sale of shellfish. A vessel endorsement of a shellfish license does not authorize~~
34 ~~the use of the vessel for any commercial fishing operation other than the taking or selling~~
35 ~~of shellfish.~~

36 (f) Name or Address Change. – In the event of a change in name or address or upon
37 receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a
38 replacement shellfish license bearing the correct name and address. Upon a showing by
39 the individual that the name or address change occurred within the past 30 days, the trial
40 court or prosecutor shall dismiss any charges brought pursuant to this subsection.

41 (g) Transfer Prohibited. – It is unlawful for an individual issued a shellfish license
42 to transfer or offer to transfer the license, either temporarily or permanently, to another.

1 It is unlawful for an individual to secure or attempt to secure a shellfish license from a
2 source not authorized by the Commission.

3 (h) Exemption. – Persons under 16 years of age are exempt from the license
4 requirements of this section if accompanied by a parent, grandparent, or guardian who is
5 in compliance with the requirements of this section or if in possession of a parent's,
6 grandparent's or guardian's shellfish license.

7 (i) Taking Shellfish Without a License for Personal Use. –

8 (1) A person may take shellfish for personal use without obtaining a license
9 under this section in quantities up to:

- 10 a. One bushel of oysters per day.
11 b. One-half bushel of scallops per day.
12 c. One hundred clams per day.
13 d. Ten conchs per day.
14 e. One hundred mussels per day.

15 (2) Two or more persons who are using a vessel to take shellfish may take
16 shellfish for personal use without obtaining a license under this section
17 in quantities up to:

- 18 a. Two bushels of oysters per day.
19 b. One bushel of scallops per day.
20 c. Two hundred clams per day.
21 d. Twenty conchs per day.
22 e. Two hundred mussels per day."

23 Section 4.18. G.S. 113-169.3 reads as rewritten:

24 "**§ 113-169.3. Licenses for fish dealers.**

25 (a) Eligibility. – A fish dealer license shall be issued to a North Carolina resident
26 upon receipt of a proper application ~~in the Morehead City Office~~ at any office of the
27 Division together with all license fees including the total number of dealer categories set
28 forth in this section. The license shall be issued in the name of the applicant and shall
29 include all dealer categories on the license.

30 (b) Application for License. – Applications shall not be accepted from persons
31 ineligible to hold a license issued by the Division, including any applicant whose license
32 is suspended or revoked on the date of the application. The applicant shall be provided
33 with a copy of the application marked received. The copy shall serve as the fish dealer's
34 license until the license issued by the Division is received, or the Division determines that
35 the applicant is ineligible to hold a license. Where an applicant does not have an
36 established location for transacting the fisheries business within the State, the license
37 application shall be denied unless the applicant satisfies the Secretary that his residence,
38 or some other office or address within the State, is a suitable substitute for an established
39 location and that records kept in connection with licensing, sale, and purchase
40 requirements will be available for inspection when necessary. Fish dealers' licenses are
41 issued on a fiscal year basis upon payment of a fee as set forth herein upon proof,
42 satisfactory to the Secretary, that the license applicant is a North Carolina resident.

1 (c) License Requirement. – Any person subject to the licensing requirements of
2 this section is a fish dealer. Any person subject to the licensing requirements of this
3 section shall obtain a separate license for each physical location conducting activities
4 required to be licensed under this section. Except as otherwise provided in this section, it
5 is unlawful for any person not licensed pursuant to this ~~article~~: Article:

6 (1) To buy fish for resale from any person involved in a commercial fishing
7 operation that takes any species of fish from coastal fishing waters. For
8 purposes of this subdivision, a retailer who purchases fish from a fish
9 dealer shall not be liable if the fish dealer has not complied with the
10 licensing requirements of this section;

11 (2) To sell fish to the public; or

12 (3) To sell to the public any species of fish under the authority of the
13 Commission taken from coastal fishing waters.

14 ~~Any person subject to the licensing requirements of this section is a fish dealer. Any~~
15 ~~person subject to the licensing requirements of this section shall obtain a separate license~~
16 ~~for each physical location conducting activities required to be licensed under this section.~~

17 (d) Exceptions to License Requirements. – The Commission may adopt rules to
18 implement this subsection including rules to clarify the status of the listed classes of
19 exempted persons, require submission of statistical data, and require that records be kept
20 in order to establish compliance with this section. Any person not licensed pursuant to
21 this section is exempt from the licensing requirements of this section if all fish handled
22 within any particular licensing category meet one or more of the following requirements:

23 (1) The fish are sold by persons whose dealings in fish are primarily
24 educational, scientific, or official, and who have been issued a permit by
25 the Division that authorizes the educational, scientific, or official agency
26 to sell fish taken or processed in connection with research or
27 demonstration projects;

28 (2) The fish are sold by individual employees of fish dealers when
29 transacting the business of their duly licensed employer;

30 (3) The fish are shipped to a person by a dealer from without the State;

31 (4) The fish are of a kind the sale of which is regulated exclusively by the
32 Wildlife Resources Commission; or

33 (5) The fish are purchased from a licensed dealer.

34 (e) Application Fee for New Fish Dealers. – An applicant for a new fish dealer
35 license shall pay a nonrefundable application fee of fifty dollars (\$50.00) in addition to
36 the license category fees set forth in this section.

37 (f) License Category Fees. – Every fish dealer subject to licensing requirements
38 shall secure an annual license at each established location for each of the following
39 activities transacted there, upon payment of the fee set out:

40 (1) Dealing in oysters: \$50.00;

41 (2) Dealing in scallops: \$50.00;

42 (3) Dealing in clams: \$50.00;

43 (4) Dealing in hard or soft crabs: \$50.00;

- 1 (5) Dealing in shrimp, including bait: \$50.00;
2 (6) Dealing in finfish, including bait: \$50.00;
3 (7) Operating menhaden or other fish-dehydrating or oil-extracting
4 processing plants: \$50.00; or
5 (8) Consolidated license (all categories): \$300.00.

6 Any person subject to fish dealer licensing requirements who deals in fish not included in
7 the above categories shall secure a finfish dealer license. The Commission may adopt
8 rules implementing and clarifying the dealer categories of this subsection. Bait
9 operations shall be licensed under either the finfish or shrimp dealer license categories.

10 (g) License Format. – The format of the license shall include the name of the
11 licensee, date of birth, name and physical address of each business location, expiration
12 date of the license, and any other information the Division deems necessary to
13 accomplish the purposes of this Subchapter.

14 ~~(h) Application for Replacement License. – A replacement license shall only be
15 obtained from an office of the Division. The Division shall not accept an application for a
16 replacement license unless the Division determines that the applicant's current license has
17 not been suspended or revoked. A copy of an application duly filed with the Division
18 shall serve as the license until the replacement license has been received.~~

19 (h1) Name or Address Change. – If the name or address of a licensee changes, the
20 licensee shall, within 30 days, apply for a replacement fish dealer license bearing the
21 correct name and address. If the licensee fails to comply with this requirement, the
22 license is revoked. A revocation under this subsection is not subject to G.S. 150B-3.

23 (i) Unlawful Purchase and Sale of Fish. – It is unlawful for a fish dealer to buy or
24 accept fish unless the unless, at the time of the transaction:

- 25 (1) The seller or donor possesses–presents a current and valid SCFL,
26 RSCFL, shellfish license, menhaden license for nonresidents, or a
27 special fisheries sale permit issued under G.S. 113-168.4(c), license to
28 sell the type of fish being offered;
29 (2) The seller or donor presents the commercial fishing vessel registration
30 of the vessel that was used to take the fish being offered; and the
31 (3) The dealer records the transaction consistent with the record-keeping
32 requirements of G.S. 113-168.2(i).

33 ~~It is unlawful for any person to purchase, possess, or sell fish taken from coastal fishing
34 waters in violation of this Subchapter or the rules adopted by the Commission
35 implementing this Subchapter.~~

36 (j) Transfer Prohibited. – Any fish dealer license issued under this section is
37 nontransferable. It is unlawful to use a fish dealer license issued to another person in the
38 sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for
39 the purpose of circumventing the requirements of this section."

40 Section 4.19. G.S. 113-170.1 reads as rewritten:

41 **"§ 113-170.1. Nonresidents reciprocal agreements.**

42 Persons who are not North Carolina residents are not ~~entitled~~ eligible to obtain
43 licenses under the provisions of this Article except as provided in this section. Residents

1 of jurisdictions that sell commercial fishing licenses to North Carolina residents are
2 ~~entitled to eligible to hold~~ North Carolina commercial fishing licenses under the
3 provisions of G.S. 113-168.2. Licenses may be restricted in terms of area, gear, and
4 fishery by the Commission so that the nonresidents are licensed to engage in North
5 Carolina fisheries on the same or similar terms that North Carolina residents can be
6 licensed to engage in the fisheries of other jurisdictions. The Secretary may enter into
7 reciprocal agreements with other jurisdictions as necessary to allow nonresidents to
8 obtain commercial fishing licenses in the State subject to the foregoing provisions."

9 Section 4.20. G.S. 113-173 reads as rewritten:

10 **"§ 113-173. Recreational Commercial Gear License.**

11 (a) License Required. – Except as provided in subsection (j) of this section, it is
12 unlawful for any person to take or attempt to take fish for recreational purposes by means
13 of commercial fishing equipment or gear in coastal fishing waters without holding a
14 RCGL. As used in this section, fish are taken for recreational purposes if the fish are not
15 taken for the purpose of sale. The RCGL entitles the licensee to use authorized
16 commercial gear to take fish for personal use subject to recreational ~~quotas or possession~~
17 limits. It is unlawful for any person licensed under this section or fishing under a RCGL
18 to possess fish in excess of recreational possession limits.

19 (b) Sale of Fish Prohibited. – It is unlawful for the holder of a RCGL or for a
20 person who is exempt under subsection (j) of this section to sell fish taken under the
21 RCGL or pursuant to the exemption.

22 (c) Authorized Commercial Gear. – The Commission shall adopt rules authorizing
23 the use of a limited amount of commercial fishing equipment or gear for recreational
24 fishing under a RCGL. The Commission may authorize the limited use of commercial
25 gear on a uniform basis in all coastal fishing waters or may vary the limited use of
26 commercial gear within specified areas of the coastal fishing waters. The Commission
27 shall periodically evaluate and revise the authorized use of commercial gear for
28 recreational fishing. Authorized commercial gear shall be identified by visible colored
29 tags or other means specified by the Commission in order to distinguish between
30 commercial gear used in a commercial operation and commercial gear used for
31 recreational purposes.

32 (d) Purchase; Renewal. – A RCGL may be purchased at designated offices of the
33 Division and from a license agent authorized under G.S. 113-172. A RCGL may be
34 renewed by mail.

35 (e) Replacement RCGL. – Upon receipt of a proper application and a two-dollar
36 (\$2.00) replacement fee, the Division may issue a duplicate RCGL to replace an
37 unexpired RCGL that has been lost or destroyed.

38 (f) Duration; Fees. – The RCGL shall be valid for a one-year period from the date
39 of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars
40 (\$35.00). The fee for a RCGL for an individual who is not a North Carolina resident shall
41 be two hundred fifty dollars (\$250.00).

42 (g) RCGL Available for Inspection. – It is unlawful for any person to engage in
43 recreational fishing by means of restricted commercial gear in the State without having

1 ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to
2 exhibit the RCGL upon the request of an inspector or any other law enforcement officer
3 authorized to enforce federal or State laws, regulations, or rules relating to marine
4 fisheries.

5 (h) Assignment and Transfer Prohibited. – A RCGL is not transferable. Except as
6 provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow, assign,
7 or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or
8 otherwise transfer a RCGL.

9 (i) Reporting Requirements. – The holder of a RCGL shall comply with the
10 biological data sampling and survey programs of the Commission and the Division.

11 (j) Exemptions. –

12 (1) A person who is under 16 years of age may take fish for recreational
13 purposes by means of authorized commercial gear without holding a
14 RCGL if the person is accompanied by a parent, grandparent, or
15 guardian who holds a valid RCGL or if the person has in the person's
16 possession a valid RCGL issued to the person's parent, grandparent, or
17 guardian.

18 (2) A person may take crabs for recreational purposes by means of one or
19 more crab pots attached to the shore along privately owned land or to a
20 privately owned pier without holding a RCGL provided that the crab
21 pots are attached with the permission of the owner of the land or pier.

22 (3) A person who is on a vessel may take fish for recreational purposes by
23 means of authorized commercial gear without holding a RCGL if there
24 is another person on the vessel who holds a valid RCGL. This
25 exemption does not authorize the use of commercial gear in excess of
26 that authorized for use by the person who holds the valid RCGL or, if
27 more than one person on the vessel holds a RCGL, in excess of that
28 authorized for use by those persons.

29 (4) A person using nonmechanical means may take shellfish for personal
30 use within the limits specified in G.S. 113-169.2(i) without holding a
31 RCGL."

32 Section 4.21. G.S. 113-183 reads as rewritten:

33 "**§ 113-183. Unlawful purchase, possession, transportation and sale of fish.**

34 (a) It is unlawful to possess, transport, offer to transport, sell, offer to sell, receive,
35 buy, or attempt to buy any fish regulated by the Department with knowledge or reason to
36 believe that such fish are illicit.

37 (b) Fish are illicit when taken, possessed, or dealt with unlawfully, or when there
38 has occurred at any time with respect to such fish a substantial failure of compliance with
39 the applicable provisions of this Subchapter or of rules made under the authority of this
40 Subchapter.

41 (c) It is unlawful for any person to purchase, possess, or sell fish taken from
42 coastal fishing waters in violation of this Subchapter or the rules adopted by the
43 Commission implementing this Subchapter."

1 Section 4.22. G.S. 113-223 reads as rewritten:

2 **"§ 113-223. Reciprocal agreements by Department generally.**

3 Subject to the specific provisions of ~~G.S. 113-153~~ G.S. 113-169.5 and ~~G.S. 113-161~~
4 G.S. 113-170.1 relating to reciprocal provisions as to landing and selling catch and as to
5 licenses, the Department is empowered to make reciprocal agreements with other
6 jurisdictions respecting any of the matters governed in this Subchapter. Pursuant to such
7 agreements the Department may modify provisions of this Subchapter in order to
8 effectuate the purposes of such agreements, in the overall best interests of the
9 conservation of marine and estuarine resources."

10 Section 4.23. Article 19A of Chapter 113 of the General Statutes reads as
11 rewritten:

12 **"ARTICLE 19A.**

13 **~~"SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL.~~ COUNCILS.**

14 **"§ 113-259. North Carolina members of the South Atlantic Fishery Management**
15 **Council.**

16 (a) In pursuance of Section 302 of the ~~Magnuson-Magnuson~~ -Stevens Fishery
17 Conservation and Management Act, 16 ~~United States Code~~ U.S.C. § 1801 ~~et seq., et seq.,~~
18 there shall be at least two members of the South Atlantic Fishery Management Council
19 from the State of North Carolina.

20 (b) The first Council member shall be the principal State official with marine
21 fishery management responsibility and expertise in the State, which official is the
22 Director of the Division of Marine Fisheries of the Department or his designee.

23 (c) Pursuant to the enabling legislation, other members from the State of North
24 Carolina are selected by the United States Secretary of Commerce from a list of qualified
25 individuals submitted by the Governor of the State. The list of nominees shall be
26 compiled by the Marine Fisheries Commission and must be comprised of individuals who
27 are knowledgeable and experienced with regard to the management, conservation, or
28 commercial or recreational harvest of the fishery resources in the Atlantic Ocean seaward
29 of the ~~States-states~~ of North Carolina, South Carolina, Georgia, and Florida. Prior to
30 submission of the list of nominees, the Governor may consult with the Commission
31 regarding additions to the list of nominees to be submitted. Should it be necessary for the
32 Governor to submit additional nominees, the list of nominees shall be compiled by the
33 Marine Fisheries Commission.

34 **"§ 113-260. North Carolina members of the Mid-Atlantic Fishery Management**
35 **Council.**

36 (a) In pursuance of Section 302 of the Magnuson-Stevens Fishery Conservation
37 and Management Act, 16 U.S.C. § 1801, et seq., there shall be at least two members of
38 the Mid-Atlantic Fishery Management Council from the State of North Carolina.

39 (b) The first Council member shall be the principal State official with marine
40 fishery management responsibility and expertise in the State, which official is the
41 Director of the Division of Marine Fisheries of the Department or his designee.

42 (c) Pursuant to the enabling legislation, other members from the State of North
43 Carolina are selected by the United States Secretary of Commerce from a list of qualified

1 individuals submitted by the Governor of the State. The list of nominees shall be
2 compiled by the Marine Fisheries Commission and must be comprised of individuals who
3 are knowledgeable and experienced with regard to the management, conservation, or
4 commercial or recreational harvest of the fishery resources in the Atlantic Ocean seaward
5 of the states of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and
6 North Carolina. Prior to submission of the list of nominees, the Governor may consult
7 with the Commission regarding additions to the list of nominees to be submitted. Should
8 it be necessary for the Governor to submit additional nominees, the list of nominees shall
9 be compiled by the Marine Fisheries Commission."

10 Section 4.24. Section 5.2 of S.L. 1997-400 reads as rewritten:

11 "Section 5.2. (a) Definitions; Citations. The definitions set out in G.S. 113-168 apply
12 to this section. A citation to a provision of the General Statutes in this section means that
13 provision of the General Statutes as enacted by this act.

14 (b) Transitional Provisions. In order to effect an orderly implementation of this
15 Part and the transition from the moratorium imposed by subsection (a) of Section 3 of
16 Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3
17 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of
18 Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of S.L. 1997-256;
19 Section 3 of S.L. 1997-347; and Section 6.1 of this act, to the licensing provision of
20 Article 14A of Chapter 113 of the General Statutes, the provisions of this section shall
21 apply to the issuance of licenses under Article 14A of Chapter 113 of the General
22 Statutes until all Fishery Management Plans have been adopted as required by G.S. 113-
23 182.1 and G.S. 143B-289.22.

24 (c) Temporary Cap. There is hereby imposed a temporary cap on the total number
25 of SCFLs that the Division may issue. The temporary cap equals the total number of
26 endorsements to sell fish that establish eligibility for a SCFL under subsection (g) of this
27 section plus 500 additional SCFLs, authorized by subsection (d) of this section.

28 (d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is
29 authorized to issue SCFLs as provided in subsection (g) of this section plus an additional
30 500 SCFLs using the procedure set out in subsection (h) of this section.

31 (e) Subsequent License Years. For license years beginning with the 2000-01
32 license year, the Commission is authorized to issue SCFLs from the pool of available
33 SCFLs as provided in subsection (f) of this section using the procedure set out in
34 subsection (h) of this section.

35 (f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of
36 available SCFLs in license years beginning with the 2000-01 license year is the
37 temporary cap less the number of SCFLs that ~~are renewed.~~ were issued during the
38 previous license year. The Commission may increase or decrease the number of SCFLs
39 that are issued from the pool of available SCFLs. The Commission may increase the
40 number of SCFLs that are issued from the pool of available SCFLs up to the temporary
41 cap. The Commission may decrease the number of SCFLs that are issued from the pool
42 of available SCFLs but may not refuse to renew a SCFL that is issued during the previous
43 license year and that has not been suspended or revoked. The Commission shall increase

1 or decrease the number of SCFLs that are issued to reflect its determination as to the
2 effort that the fishery can support, based on the best available scientific evidence.

3 (g) Eligibility for SCFL. Any person who holds a valid endorsement to sell fish of
4 a vessel license on ~~1 July 30 June~~ 1999 is eligible to receive a SCFL. Any person who
5 holds a valid nonvessel endorsement to sell fish, other than a nonvessel endorsement to
6 sell fish issued for an aquaculture operation or a fishing tournament, on 30 June 1999 is
7 eligible to receive a SCFL. The Division shall issue a SCFL to any person who is eligible
8 under this subsection upon receipt of an application and required fees. If the person held
9 more than one endorsement to sell fish, the person is eligible to receive a SCFL for each
10 endorsement to sell previously held. Eligibility to receive a SCFL under this subsection
11 shall expire ~~1 July 30 June~~ 2000.

12 (h) Procedure for Issuing Additional SCFLs. The Commission shall determine a
13 procedure for issuing the 500 additional SCFLs authorized by subsection (d) of this
14 section for the 1999-2000 license year and for issuing SCFLs from the pool of available
15 SCFLs authorized by subsection (e) of this section. The procedure shall set a date on
16 which the Division will begin receiving applications and a date on which the
17 determination by lot of which applicants will receive a SCFL will be made. The
18 Commission shall develop criteria ~~for~~ to be used by the SCFL Eligibility Board in
19 determining eligibility for a SCFL under this subsection. Criteria shall include the past
20 involvement of the applicant and the applicant's family in commercial fishing; the extent
21 to which the applicant has relied on commercial fishing for the applicant's livelihood; the
22 extent to which the applicant has complied with federal and State laws, regulations, and
23 rules relating to coastal fishing and protection of the environment; and any other factors
24 the Commission determines to be relevant. ~~The Division~~ SCFL Eligibility Board shall
25 review each application for a SCFL that ~~it~~ the Division receives during the application
26 period to determine whether the applicant is eligible for a SCFL under the eligibility
27 criteria established by the Commission. The Division shall issue SCFLs under this
28 subsection by lot. All applicants who are determined to be eligible shall have an equal
29 chance of being issued a SCFL.

30 (i) SCFL Eligibility Board. There is established a SCFL Eligibility Board. The
31 Board shall apply the eligibility criteria adopted by the Commission to determine whether
32 an applicant for a SCFL is eligible for a SCFL under subsection (h) of this section. The
33 Board shall consist of the Secretary of Environment and Natural Resources or the
34 Secretary's designee, the Fisheries Director or the Director's designee, and the Chair of
35 the Commission or the Chair's designee. The Secretary shall designate one member of
36 the Board to serve as Chair of the Board. The Commission shall adopt rules to govern
37 the operation of the Board. The Board is exempt from the provisions of Article 3 of
38 Chapter 150B of the General Statutes. Decisions of the Board shall be subject to judicial
39 review under the provisions of Article 4 of Chapter 150B of the General Statutes."

41 PART V. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

1 Section 5.1. Unless otherwise expressly provided, every agency to which this
2 act applies shall adopt rules to implement the provisions of this act only in accordance
3 with the provisions of Chapter 150B of the General Statutes. This act constitutes a recent
4 act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to
5 which this act applies that is authorized to adopt rules to implement the provisions of this
6 act may adopt temporary rules to implement the provisions of this act. This section shall
7 continue in effect until all rules necessary to implement the provisions of this act have
8 become effective as either temporary rules or permanent rules.

9 Section 5.2. The headings to the Parts of this act are a convenience to the
10 reader and are for reference only. The headings do not expand, limit, or define the text of
11 this act.

12 Section 5.3. If any section or provision of this act is declared unconstitutional
13 or invalid by the courts, the unconstitutional or invalid section or provision does not
14 affect the validity of this act as a whole or any part of this act other than the part declared
15 to be unconstitutional or invalid.

16 Section 5.4. Sections 1.3, 1.5, 2.1, 3.2, 3.6, 4.4, 4.5, 4.23, 5.1, 5.2, 5.3, and 5.4
17 of this act are effective when this act becomes law. Sections 3.5 and 3.7 of this act
18 become effective December 1, 1998, and apply to offenses committed on or after that
19 date. Sections 1.4, 3.3, 3.4, 3.8, 4.1, 4.2, 4.3, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16,
20 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, and 4.24 become effective July 1, 1999. Section 4.6 is
21 effective retroactively to August 14, 1997. Sections 1.1, 1.2, 1.6, 1.7, 3.1, 4.7, and 4.8
22 are effective retroactively to September 1, 1997. Section 4.15 expires September 1, 2003.