

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1133

Short Title: Amend Shellfish Statutes.

(Public)

Sponsors: Representative Preston.

Referred to: Environment and Natural Resources.

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES GOVERNING THE CULTIVATION OF SHELLFISH, TO ELIMINATE THE PERSONAL USE EXEMPTION FROM SHELLFISH LICENSE REQUIREMENTS, TO AUTHORIZE THE MARINE FISHERIES COMMISSION TO ADOPT TEMPORARY RULES RELATED TO THE CULTIVATION OF SHELLFISH, AND TO AUTHORIZE THE MARINE FISHERIES COMMISSION TO STUDY ISSUES RELATED TO THE CULTIVATION OF SHELLFISH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-201 reads as rewritten:

"§ 113-201. ~~Authority~~ Legislative findings and declaration of policy; authority of Marine Fisheries Commission.

(a) The General Assembly finds that shellfish cultivation provides increased seafood production and long-term economic and employment opportunities. The General Assembly also finds that shellfish cultivation provides increased ecological benefits to the estuarine environment by promoting natural water filtration and increased fishery habitats. The General Assembly declares that it is the policy of the State to encourage the development of private, commercial shellfish cultivation.

(b) The Marine Fisheries Commission is empowered to make rules and take all steps necessary to develop and improve the cultivation, harvesting, and marketing of shellfish in North Carolina both from public grounds and private beds.

(c) The Marine Fisheries Commission shall adopt rules to establish training requirements for persons applying for new shellfish cultivation leases. These training requirements shall be designed to encourage the productive use of shellfish cultivation leases. Training requirements established pursuant to this subsection shall not apply to an applicant who applies for a new shellfish cultivation lease if, at the time of the application, the applicant holds one or more shellfish cultivation leases and all of the leases meet the shellfish production requirements established by the Marine Fisheries Commission."

1 **SECTION 2.** G.S. 113-202(d) reads as rewritten:

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

7 (d1) The map or diagram must conform to standards prescribed by the Secretary
8 concerning accuracy of map or diagram and the amount of detail that must be shown. If
9 on the basis of the application information and map or diagram the Secretary deems that
10 granting the lease would benefit the shellfish culture of North Carolina, the Secretary, in
11 the case of initial lease applications, must order an investigation of the bottom proposed
12 to be leased. The investigation is to be made by the Secretary or his authorized agent to
13 determine whether the area proposed to be leased is consistent with the standards in
14 subsection (a) and any other applicable standards under this Article and the rules of the
15 Marine Fisheries Commission. In the event the Secretary finds the application
16 inconsistent with the applicable standards, the Secretary shall deny the application or
17 propose that a conditional lease be issued that is consistent with the applicable
18 standards. In the event the Secretary authorizes amendment of the application, the
19 applicant must furnish a new map or diagram meeting requisite standards showing the
20 area proposed to be leased under the amended application. At the time of making
21 application for an initial lease, the applicant must pay a filing fee of ~~one hundred dollars~~
22 ~~(\$100.00); two hundred dollars (\$200.00).~~"

23 **SECTION 3.** G.S. 113-202(j) reads as rewritten:

24 "(j) Initial leases begin upon the issuance of the lease by the Secretary and expire
25 at noon on the first day of ~~April~~ July following the ~~tenth~~ fifth anniversary of the
26 granting of the lease. Renewal leases are issued for a period of ~~40~~ five years effective
27 from the time of expiration of the previous lease. At the time of making application for
28 renewal of a lease, the applicant must pay a filing fee of ~~fifty dollars (\$50.00); one~~
29 hundred dollars (\$100.00). The rental for initial leases is one dollar (\$1.00) per acre for
30 all leases entered into before July 1, 1965, and for all other leases until noon on the first
31 day of ~~April~~ July following the first anniversary of the lease. Thereafter, for initial
32 leases entered into after July 1, 1965, and from the beginning for renewals of leases
33 entered into after said date, the rental is ~~five dollars (\$5.00); ten dollars (\$10.00)~~ per acre
34 per year. Rental must be paid annually in advance prior to the first day of April each
35 year. Upon initial granting of a lease, the pro rata amount for the portion of the year left
36 until the first day of ~~April~~ July must be paid in advance at the rate of one dollar (\$1.00)
37 per acre per year; then, on or before the first day of April next, the lessee must pay the
38 rental for the next full year."

39 **SECTION 4.** G.S. 113-202(l) reads as rewritten:

40 "(l) Upon receipt of notice by the Secretary of any of the following occurrences,
41 he must commence action to terminate the leasehold:

- 42 (1) Failure to pay the annual rent in advance.

- 1 (2) Failure to file information required by the Secretary upon annual
2 remittance of rental or filing false information on the form required to
3 accompany the annual remittance of rental.
- 4 (3) Failure by new owner to report a transfer of beneficial ownership of all
5 or any portion of or interest in the leasehold.
- 6 (4) Failure to mark the boundaries in the leasehold and to keep them
7 marked as required in the rules of the Marine Fisheries Commission.
- 8 (5) Failure to utilize the leasehold on a continuing basis for the
9 commercial production of shellfish.
- 10 (6) Transfer of all or part of the beneficial ownership of a leasehold to a
11 nonresident.
- 12 (7) Substantial breach of compliance with the provisions of this Article or
13 of rules of the Marine Fisheries Commission governing use of the
14 leasehold.
- 15 (8) Failure to comply with the training requirements established by the
16 Marine Fisheries Commission pursuant to G.S. 113-201(c).

17 (11) The Marine Fisheries Commission is authorized to make rules defining
18 commercial production of shellfish, based upon the productive potential of particular
19 areas climatic or biological conditions at particular areas or particular times, availability
20 of seed shellfish, availability for purchase by lessees of shells or other material to which
21 oyster spat may attach, and the like. Commercial production may be defined in terms of
22 planting effort made as well as in terms of quantities of shellfish harvested. Provided,
23 however, that if a lessee has made a diligent effort to effectively and efficiently manage
24 his lease according to accepted standards and practices in such management, and
25 because of reasons beyond his control, such as acts of God, such lessee has not and
26 cannot meet the requirements set out by the Marine Fisheries Commission under the
27 provisions of this paragraph of this subsection, his leasehold shall not be terminated
28 under subdivision (5) of ~~this subsection~~. subsection (1) of this section."

29 **SECTION 5.** G.S. 113-202.1(d) reads as rewritten:

30 "(d) Amendments of shellfish cultivation leases to authorize use of the water
31 column are issued for a period of five years or the remainder of the term of the lease,
32 whichever is shorter. The annual rental for ~~an initial~~ a new or renewal water column
33 amendment is one hundred dollars (\$100.00) ~~an acre for each of the first four years for~~
34 ~~which the amendment is issued and five hundred dollars (\$500.00) an acre for the fifth~~
35 ~~year for which the amendment is issued. The annual rental for a renewed water column~~
36 ~~amendment is five hundred dollars (\$500.00) an acre. If a year for which a water~~
37 ~~column amendment is issued is for less than a 12-month period, the rental for that year~~
38 shall be prorated based on the number of months remaining in the year. The annual
39 rental for an amendment is payable at the beginning of the year. The rental is in addition
40 to that required in G.S. 113-202."

41 **SECTION 6.** G.S. 113-169.2 reads as rewritten:

42 "**§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

43 (a) License or Endorsement Necessary to Take or Sell Shellfish. – It is unlawful
44 for an individual to take shellfish from the public or private grounds of the State by

1 ~~mechanical means or in quantities greater than the personal use limits set forth in~~
2 ~~subsection (i) of this section~~ by any means without holding either a shellfish license or a
3 shellfish endorsement of a SCFL. A North Carolina resident who seeks only to take and
4 sell shellfish shall be eligible to obtain a shellfish license without holding a SCFL. The
5 shellfish license authorizes the licensee to sell shellfish.

6 (b) Repealed by Session Laws 1998-225, s. 4.17.

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

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

17 (e) Repealed by Session Laws 1998-225, s. 4.17.

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

24 (g) Transfer Prohibited. – It is unlawful for an individual issued a shellfish
25 license to transfer or offer to transfer the license, either temporarily or permanently, to
26 another. It is unlawful for an individual to secure or attempt to secure a shellfish license
27 from a source not authorized by the Commission.

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

32 (i) ~~Taking Shellfish Without a License for Personal Use.—~~

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

35 a. ~~One bushel of oysters per day.~~

36 b. ~~One half bushel of scallops per day.~~

37 c. ~~One hundred clams per day.~~

38 d. ~~Ten conchs per day.~~

39 e. ~~One hundred mussels per day.~~

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

43 a. ~~Two bushels of oysters per day.~~

44 b. ~~One bushel of scallops per day.~~

- 1 e. ~~Two hundred clams per day.~~
2 d. ~~Twenty conchs per day.~~
3 e. ~~Two hundred mussels per day."~~

4 **SECTION 7.** G.S. 113-173(j) reads as rewritten:

5 "(j) Exemptions. –

- 6 (1) A person who is under 16 years of age may take fish for recreational
7 purposes by means of authorized commercial gear without holding a
8 RCGL if the person is accompanied by a parent, grandparent, or
9 guardian who holds a valid RCGL or if the person has in the person's
10 possession a valid RCGL issued to the person's parent, grandparent, or
11 guardian.
12 (2) A person may take crabs for recreational purposes by means of one or
13 more crab pots attached to the shore along privately owned land or to a
14 privately owned pier without holding a RCGL provided that the crab
15 pots are attached with the permission of the owner of the land or pier.
16 (3) A person who is on a vessel may take fish for recreational purposes by
17 means of authorized commercial gear without holding a RCGL if there
18 is another person on the vessel who holds a valid RCGL. This
19 exemption does not authorize the use of commercial gear in excess of
20 that authorized for use by the person who holds the valid RCGL or, if
21 more than one person on the vessel holds a RCGL, in excess of that
22 authorized for use by those persons.
23 (4) ~~A person using nonmechanical means may take shellfish for personal~~
24 ~~use within the limits specified in G.S. 113-169.2(i) without holding a~~
25 ~~RCGL.~~
26 (5) A person may take fish for recreational purposes by means of a gig
27 without holding a RCGL."

28 **SECTION 8.** The Marine Fisheries Commission may adopt temporary rules
29 related to the leasing of public bottoms for shellfish cultivation.

30 **SECTION 9.** The Marine Fisheries Commission may study whether and
31 how to establish a process by which shellfish cultivation leases that are terminated
32 pursuant to G.S. 113-202(l) may be leased to an applicant for a shellfish cultivation
33 lease without the leasehold reverting to public bottom. If the Commission conducts a
34 study pursuant to this section, it shall report its findings, recommendations, and
35 legislative proposals, if any, to the Joint Legislative Commission on Seafood and
36 Aquaculture no later than February 1, 2004.

37 **SECTION 10.** The Marine Fisheries Commission may study issues related
38 to the corporate ownership of shellfish cultivation leases. If the Commission conducts a
39 study pursuant to this section, it shall report its findings, recommendations, and
40 legislative proposals, if any, to the Joint Legislative Commission on Seafood and
41 Aquaculture no later than February 1, 2004.

42 **SECTION 11.** Sections 1, 4, 8, 9, 10, and 11 of this act are effective when
43 this act becomes law. Sections 2, 3, 5, 6, and 7 of this act become effective July 1,
44 2003.