

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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HOUSE BILL 1428*

Short Title: Est. Marine Fisheries Violation Points System.

(Public)

Sponsors: Representatives Wainwright; and Stiller.

Referred to: Environment and Natural Resources.

May 13, 2004

A BILL TO BE ENTITLED
AN ACT TO ESTABLISH A VIOLATIONS POINTS SYSTEM FOR THE
SUSPENSION, REVOCATION, AND REISSUANCE OF MARINE FISHING
LICENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-171 is repealed.

SECTION 2. Article 14A of Chapter 113 of the General Statutes is amended
by adding a new section to read:

**"§ 113-171.2. Violation points system for the suspension, revocation, and
reissuance of licenses.**

(a) Definitions. – As used in this section:

(1) "Commercial fishing license" means any license used to engage in a
commercial fishing operation. A fish dealer license issued under
G.S. 113-169.3 is not a commercial fishing license.

(2) "Conviction" means a plea of guilty or nolo contendere, any other
termination of a criminal prosecution unfavorable to the defendant
after jeopardy has attached, any substitute for criminal prosecution
whereby the defendant expressly or impliedly confesses the
defendant's guilt, procedures whereby bond forfeitures are accepted in
lieu of proceeding to trial, or cases indefinitely continued upon arrest
of judgment or prayer for judgment continued.

(3) "Fishery offense" means a criminal offense within the jurisdiction of
the Division under the provisions of this Subchapter or of rules of the
Commission adopted under the authority of this Subchapter.

(4) "License" means all licenses, assignments, endorsements, registrations,
and permits issued by the Division and the privilege to hold licenses,
assignments, endorsements, registrations, and permits issued by the
Division.

1 (5) "Licensee" means a person who holds a license issued under this
2 Article.

3 (6) "Recreational fishing license" means a RCGL.

4 (7) "Reliable notice" means information furnished to the Fisheries
5 Director in prosecution or other reports from inspectors.

6 (b) Duty to Revoke or Suspend Licenses. – Upon receipt of reliable notice that a
7 licensee has had imposed against the licensee a conviction of a fisheries offense, the
8 Fisheries Director shall suspend or revoke all licenses held by the licensee as provided
9 in this section.

10 (c) Notice of Convictions. – The Fisheries Director shall initiate an
11 administrative procedure designed to give the Fisheries Director reliable notice of all
12 convictions of fisheries offenses by licensees.

13 (d) Assessment and Recordation of Points. – The Fisheries Director shall
14 maintain a record of the convictions of fisheries offenses of each licensee. The Fisheries
15 Director shall assess to the record of each licensee, as of the date of the commission of
16 the fisheries offense, a number of points for each conviction as provided in the schedule
17 set out in subsection (f) of this section. The Fisheries Director shall assess points for any
18 conviction in which any of the following are the case:

19 (1) No notice of appeal has been given.

20 (2) The time for appeal has expired without an appeal having been
21 perfected.

22 (3) The conviction is sustained on appeal. Where there is a new trial,
23 finality of any subsequent conviction will be determined in the manner
24 set out above.

25 (e) Designation of Fisheries Offenses and Multiple Offenses. – The Fisheries
26 Director shall designate in the record whether a fisheries offense was related to
27 commercial fishing activity or recreational fishing activity. The Fisheries Director shall
28 designate in the record whether a fisheries offense was related to the harvest of fish or
29 the sale of fish. These designations are within the sole discretion of the Fisheries
30 Director. Where several convictions for fisheries offenses result from a single
31 transaction or occurrence, the licensee shall be assessed for one fisheries offense only
32 and if the fisheries offenses have different point values, the licensee shall be assessed
33 for the fisheries offense having the greater point value.

34 (f) Violation Points Schedule. – The Fisheries Director shall assess points for
35 convictions of fisheries offenses as follows:

36 (1) Felony 36 points.

37 (2) Class A1 misdemeanor 12 points.

38 (3) Class 1 misdemeanor 10 points.

39 (4) Class 2 misdemeanor 6 points.

40 (5) Class 3 misdemeanor 3 points.

41 (g) General Revocation and Suspension Schedule. – Except as provided in
42 subsections (h) and (i) of this section, the Fisheries Director shall suspend or revoke all
43 of the licenses held by a licensee as follows:

- 1 (1) The assessment of 18 to 25 points within a three-year period shall
2 result in a 30-day suspension.
- 3 (2) The assessment of 26 to 35 points within a three-year period shall
4 result in a six-month suspension.
- 5 (3) The assessment of 36 or more points within a three-year period shall
6 result in a minimum one-year revocation. Where 36 or more points
7 have been assessed within a three-year period, the Fisheries Director
8 may, in the Director's sole discretion, revoke all of the licenses of a
9 licensee for a specified period of time greater than one year or may
10 permanently revoke all of the licenses of a licensee.

11 (h) Limitation on Revocation and Suspension Based on Type of Fishery Offense.
12 – The Fisheries Director shall suspend or revoke a recreational fishing license based
13 only on points assessed for fisheries offenses related to recreational fishing activity. The
14 Fisheries Director shall suspend or revoke a commercial fishing license based only on
15 points assessed for fisheries offenses related to commercial fishing activity. The
16 Fisheries Director shall suspend or revoke a SCFL or RSCFL based only on points
17 assessed for fisheries offenses related to the harvest of fish. The Fisheries Director shall
18 suspend or revoke a fish dealer license based only on points assessed for fisheries
19 offenses related to the sale of fish, unless the holder of the fish dealer license was
20 clearly in collusion or in a conspiracy with fishermen to commit fisheries offenses
21 related to commercial fishing activity.

22 (i) Specific Revocation and Suspension Requirements Based on Type of Fishery
23 Offense. – Except where subsection (g) of this section would result in a longer
24 suspension or revocation and as provided in subsection (h) of this section, the Fisheries
25 Director shall suspend or revoke all of the licenses held by a licensee as follows:

- 26 (1) The Fisheries Director shall suspend for 30 days all of the licenses of a
27 licensee who has either of the following:
- 28 a. Second conviction of refusal to stop for an inspector.
29 b. Second conviction of refusal to obey or allow inspection by an
30 officer.
- 31 (2) The Fisheries Director shall suspend for six months all of the licenses
32 of a licensee who has any of the following:
- 33 a. Second conviction of taking fish or possession of commercial
34 quantities without holding the proper commercial licenses.
35 b. Second conviction of selling fish without the proper license.
36 c. Second conviction for abandoning gear.
37 d. First conviction of robbing, stealing, or willfully injuring gear.
- 38 (3) The Fisheries Director shall revoke for one year all of the licenses of a
39 licensee who has any of the following:
- 40 a. First conviction of assault upon a governmental official or law
41 enforcement officer as a result of the performance of duties
42 related to marine fisheries.
43 b. Second conviction of taking shellfish from a temporarily closed
44 polluted area.

- 1 c. Second conviction of using prohibited gear in a Primary
2 Nursery Area.
- 3 d. Second conviction of robbing, stealing, or willfully injuring
4 gear.
- 5 e. Third conviction for abandoning gear.
- 6 f. Three suspensions in one, three-year period.
- 7 g. Conviction of a criminal offense covered by subsection (a) of
8 this section during a period of suspension.
- 9 (4) The Fisheries Director shall revoke for two years all of the licenses of
10 a licensee who has any of the following:
- 11 a. Second conviction of assault upon a governmental official or
12 law enforcement officer as a result of the performance of duties
13 related to marine fisheries.
- 14 b. First conviction of taking shellfish from a permanently closed
15 area.
- 16 c. Third conviction of taking shellfish from a temporarily closed
17 polluted area.
- 18 d. Third conviction of selling fish without the proper license.
- 19 e. Fourth conviction of purchasing fish without a proper license
20 for the sale of those fish or purchasing fish from a seller who
21 does not possess a proper license for the sale of those fish.
- 22 f. Third conviction for using prohibited gear in a Primary Nursery
23 Area.
- 24 g. Third conviction of robbing, stealing, or willfully injuring gear.
- 25 h. Third conviction of refusal to obey or allow inspection by an
26 officer.
- 27 i. Third conviction of refusal to stop for an inspector.
- 28 j. Third conviction of taking fish or possession of commercial
29 quantities of fish without proper commercial licenses.
- 30 (5) The Fisheries Director shall permanently revoke all of the licenses of a
31 licensee who has any of the following:
- 32 a. Third conviction of assault upon a governmental official or law
33 enforcement officer as a result of the performance of duties
34 related to marine fisheries.
- 35 b. Second conviction of taking shellfish from a permanently
36 closed area.
- 37 c. Fourth conviction of taking shellfish from a temporarily closed
38 polluted area.
- 39 d. Fourth conviction of selling fish without the proper license.
- 40 e. Fifth conviction of purchasing fish without a proper license for
41 the sale of those fish or purchasing fish from a seller who does
42 not possess a proper license for the sale of those fish.
- 43 f. Fourth conviction of using prohibited gear in a Primary Nursery
44 Area.

- 1 g. Third conviction of robbing, stealing, or willfully injuring gear.
2 h. Fourth conviction of refusal to obey or allow inspection by an
3 officer.
4 i. Fourth conviction of refusal to stop for an inspector.
5 j. Fourth conviction for abandoning gear.
6 k. Fourth conviction of taking fish or possession of commercial
7 quantities without proper commercial licenses.

8 (j) Conviction During Revocation. – Conviction of a fishery offense during a
9 period of revocation shall extend the period of revocation by one year.

10 (k) Assignment and Transfer. – Except as provided by rules adopted by the
11 Commission pursuant to this subsection, any assignment or transfer made from the time
12 of the offense that triggered a suspension or revocation to the end of the period of
13 suspension or revocation is void. The Commission may adopt rules to allow the transfer
14 of a suspended or revoked pound net permit.

15 (l) Cancellation of Points. – Upon revocation of a license, the assessed points
16 that resulted in the revocation shall be cancelled and removed from the former licensee's
17 record. Upon suspension of a license, one-half of the assessed points that resulted in the
18 suspension, rounded down, shall be cancelled and removed from the former licensee's
19 record.

20 (m) Reissuance. – Where a commercial fishing license has been suspended or
21 revoked, the former licensee is not eligible to apply for the reissuance of the license or
22 to apply for the issuance of a different type of commercial fishing license during the
23 period of suspension or revocation. Where a recreational fishing license has been
24 suspended or revoked, the former licensee is not eligible to apply for the reissuance of
25 the license or to apply for the issuance of a different type of recreational fishing license
26 during the period of suspension or revocation. Where a license has been suspended, the
27 Fisheries Director shall return the license to the former licensee at the end of a period of
28 suspension. Where a commercial fishing license has been revoked for a specified period
29 of time, the former licensee is not eligible to apply for the reissuance of the license or to
30 apply for the issuance of a different type of commercial fishing license until six months
31 following the end of the period of revocation. Where a recreational fishing license has
32 been revoked for a specified period of time, the former licensee is not eligible to apply
33 for the reissuance of the license or to apply for the issuance of a different type of
34 recreational fishing license until six months following the end of the period of
35 revocation. Where a commercial fishing license has been permanently revoked, the
36 former licensee is not eligible to apply for the reissuance of the license or to apply for
37 the issuance of a different type of commercial fishing license until at least six years
38 following the end of the period of revocation. Where a recreational fishing license has
39 been permanently revoked, the former licensee is not eligible to apply for the reissuance
40 of the license or to apply for the issuance of a different type of recreational fishing
41 license until at least six years following the end of the period of revocation. Where a
42 license has been revoked, the former licensee shall satisfy the Fisheries Director that the
43 licensee will strive in the future to conduct the operations for which the license is sought
44 in accord with all applicable laws and the Fisheries Director, in the Director's sole

1 discretion, may issue one license sought but not another, as deemed necessary to
2 prevent the hazard of recurring violations of the law.

3 (n) Notice of Suspension or Revocation. – Upon a determination that suspension
4 or revocation is required by subsection (g) or (i) of this section, the Fisheries Director
5 shall promptly cause the licensee to be personally served with written notice of
6 suspension or revocation. Where the licensee is not an individual, the written notice
7 may be served upon any responsible individual affiliated with the corporation,
8 partnership, or association. The notice of suspension or revocation may be served by an
9 inspector or other agent of the Division, shall state the ground upon which it is based,
10 and take effect within 10 days of service, as specified in the notice. The agent of the
11 Fisheries Director making service shall collect all license certificates, license plates, and
12 other forms or records relating to the license as directed by the Fisheries Director. It is
13 unlawful for any licensee willfully to evade the personal service prescribed in this
14 subsection.

15 (o) Administrative Review for Suspension or Revocation. – A licensee served
16 with a notice of suspension or revocation may obtain an administrative review of the
17 suspension or revocation by filing a petition for a contested case under G.S. 150B-23
18 within 20 days after receiving the notice. The only issue in the hearing shall be whether
19 the licensee was convicted of the criminal offense on which the suspension or
20 revocation is based. A license remains suspended or revoked pending the final decision
21 by the Fisheries Director.

22 (p) Administrative Review for Reissuance. – If the Fisheries Director refuses to
23 reissue a license of or issue an additional license to an applicant whose license was
24 revoked, the applicant may contest the decision by filing a petition for a contested case
25 under G.S. 150B-23 within 20 days after the Fisheries Director makes the decision. The
26 Commission shall make the final agency decision in a contested case under this
27 subsection. An applicant whose license is denied under this subsection may not reapply
28 for the same license for at least six months.

29 (q) The Commission may adopt rules to provide for the disclosure of the identity
30 of any individual or individuals in responsible positions of control respecting operations
31 of any licensee that is not an individual. For the purposes of this section, individuals in
32 responsible positions of control are deemed to be individual licensees subject to the
33 suspension and revocation requirements of this section with regard to any applications
34 for license they may make either as individuals or as persons in responsible positions of
35 control in any corporation, partnership, or association. In the case of individual
36 licensees, the individual applying for a license or licensed under this Article shall be the
37 real party in interest."

38 **SECTION 3.** G.S. 113-277(a3) reads as rewritten:

39 "(a3) As used in this Article, the term "conviction" has the same meaning assigned
40 to it in ~~G.S. 113-171~~.G.S. 113-171.2."

41 **SECTION 4.** This act becomes effective December 1, 2004, and applies to
42 offenses committed on or after that date. Suspensions and revocations for offenses
43 committed before the effective date of this act are not abated or affected by this act, and

- 1 the statutes that would be applicable but for this act remain applicable to those
- 2 suspensions and revocations.