

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 106\*

Short Title: Implement Shellfish FMP Recommendations. (Public)

Sponsors: Representatives Wainwright; Harrison, Hill, Justice, Lucas, Pierce, and Stiller.

Referred to: Marine Resources and Aquaculture, if favorable, Judiciary III, if favorable,  
Finance.

February 11, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE OYSTER AND HARD  
3 CLAM FISHERY MANAGEMENT PLAN, AS RECOMMENDED BY THE JOINT  
4 LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Subsection (b) of G.S. 113-168.4 reads as rewritten:

7 "~~(b) It is unlawful for any person licensed under this Article to sell fish taken outside the~~  
8 ~~territorial waters of the State or to sell fish taken from coastal fishing waters except to:~~

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

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

12 (b) Except as otherwise provided in this section, it is unlawful for any person licensed  
13 under this Article to sell fish taken outside the territorial waters of the State or to sell fish taken  
14 from coastal fishing waters. A person licensed under this Article may sell fish taken outside the  
15 territorial waters of the State or sell fish taken from coastal fishing waters under any of the  
16 following circumstances:

17 (1) The sale is to a fish dealer licensed under G.S. 113-169.3.

18 (2) The sale is to the public and the seller is a licensed fish dealer under  
19 G.S. 113-169.3.

20 (3) The sale of oysters or clams from a hatchery or aquaculture operation to the  
21 holder of an Aquaculture Operation Permit, an Under Dock Culture Permit,  
22 or a shellfish cultivation lease for further grow out."

23 **SECTION 2.** G.S. 113-169.2 reads as rewritten:

24 "§ 113-169.2. **Shellfish license for North Carolina residents without a SCFL.**

25 (a) License or Endorsement Necessary to Take or Sell Shellfish. – It is unlawful for an  
26 individual to take shellfish from the public or private grounds of the State by mechanical means  
27 or ~~in quantities greater than the personal use limits set forth in subsection (i) of this section~~  
28 as part of a commercial fishing operation by any means without holding either a shellfish license  
29 or a shellfish endorsement of a SCFL. A North Carolina resident who seeks only to take and  
30 sell shellfish shall be eligible to obtain a shellfish license without holding a SCFL. The shellfish  
31 license authorizes the licensee to sell shellfish.

32 (b) Repealed by Session Laws 1998-225, s. 4.17, effective July 1, 1999.

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

35 (d) License Available for Inspection. – It is unlawful for any individual to take shellfish  
36 ~~in quantities greater than the personal use limits set forth in subsection (i) of this section~~ as part



1 of a commercial fishing operation from the public or private grounds of the State without  
2 having ready at hand for inspection a current and valid shellfish license issued to the licensee  
3 personally and bearing the licensee's correct name and address. It is unlawful for any individual  
4 taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the  
5 request of an officer authorized to enforce the fishing laws.

6 (e) Repealed by Session Laws 1998-225, s. 4.17, effective July 1, 1999.

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

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

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

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

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

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

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

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

26 d. ~~Ten conchs per day.~~

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

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

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

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

33 c. ~~Two hundred clams per day.~~

34 d. ~~Twenty conchs per day.~~

35 e. ~~Two hundred mussels per day."~~

36 **SECTION 3.** G.S. 113-201 reads as rewritten:

37 **"§ 113-201. Legislative findings and declaration of policy; authority of Marine Fisheries**  
38 **Commission.**

39 (a) The General Assembly finds that shellfish cultivation provides increased seafood  
40 production and long-term economic and employment opportunities. The General Assembly  
41 also finds that shellfish cultivation provides increased ecological benefits to the estuarine  
42 environment by promoting natural water filtration and increased fishery habitats. The General  
43 Assembly declares that it is the policy of the State to encourage the development of private,  
44 commercial shellfish cultivation in ways that are compatible with other public uses of marine  
45 and estuarine resources such as navigation, fishing, and recreation.

46 (b) The Marine Fisheries Commission is empowered to make rules and take all steps  
47 necessary to develop and improve the cultivation, harvesting, and marketing of shellfish in  
48 North Carolina both from public grounds and private beds. In order to assure the public that  
49 some waters will remain open and free from shellfish cultivation activities, the Marine  
50 Fisheries Commission may limit the number of acres in any area that may be granted as  
51 shellfish cultivation leases.

1 (c) The Marine Fisheries Commission shall adopt rules to establish training  
2 requirements for persons applying for new shellfish cultivation ~~leases~~ ~~leases~~ and for persons  
3 acquiring shellfish cultivation leases by lawful transfer. These training requirements shall be  
4 designed to encourage the productive use of shellfish cultivation leases. Training requirements  
5 established pursuant to this subsection shall not apply ~~to~~ ~~and~~ either:

6 (1) An applicant who applies for a new shellfish cultivation lease if, at the time  
7 of the application, the applicant holds one or more shellfish cultivation  
8 leases and all of the leases meet the shellfish production requirements  
9 established by the Marine Fisheries Commission.

10 (2) A person who receives a shellfish cultivation lease by lawful transfer if, at  
11 the time of the transfer, the person holds one or more shellfish cultivation  
12 leases and all of the leases meet the shellfish production requirements  
13 established by the Marine Fisheries Commission."

14 **SECTION 4.** Subsection (c) of G.S. 113-202 reads as rewritten:

15 "(c) No person, including a corporate entity, or single family unit may acquire and hold  
16 by lease, lease renewal, or purchase more than 50 acres of public bottoms under shellfish  
17 cultivation leases. For purposes of this subsection, the number of acres of leases held by a  
18 person includes acres held by a corporation in which the person holds an interest. The Marine  
19 Fisheries Commission may adopt rules to require the submission of information necessary to  
20 ensure compliance with this subsection."

21 **SECTION 5.** Subsection (j) of G.S. 113-202 reads as rewritten:

22 "(j) Initial leases begin upon the issuance of the lease by the Secretary and expire at  
23 noon on the first day of July following the ~~tenth~~ fifth anniversary of the granting of the lease.  
24 Renewal leases are issued for a period of ~~10~~ five years from the time of expiration of the  
25 previous lease. At the time of making application for renewal of a lease, the applicant must pay  
26 a filing fee of one hundred dollars (\$100.00). The rental for initial leases is one dollar (\$1.00)  
27 per acre for all leases entered into before July 1, 1965, and for all other leases until noon on the  
28 first day of July following the first anniversary of the lease. Thereafter, for initial leases entered  
29 into after July 1, 1965, and from the beginning for renewals of leases entered into after that  
30 date, the rental is ten dollars (\$10.00) per acre per year. Rental must be paid annually in  
31 advance prior to the first day of April each year. Upon initial granting of a lease, the pro rata  
32 amount for the portion of the year left until the first day of July must be paid in advance at the  
33 rate of one dollar (\$1.00) per acre per year; then, on or before the first day of April next, the  
34 lessee must pay the rental for the next full year."

35 **SECTION 6.** G.S. 113-203 reads as rewritten:

36 **"§ 113-203. Transplanting of oysters and clams.**

37 (a) It is unlawful to transplant oysters taken from public grounds to private beds except:

- 38 (1) When lawfully taken during open season and transported directly to a private  
39 bed in accordance with rules of the Marine Fisheries Commission;  
40 (2) When the transplanting is done by a dealer in accordance with the provisions  
41 of G.S. 113-169.1(2) and implementing rules; or  
42 (3) When the transplanting is done in accordance with the provisions of this  
43 section and implementing rules.

44 (a1) It is lawful to transplant seed clams less than 12 millimeters in their largest  
45 dimension and seed oysters less than 25 millimeters in their largest dimension and when the  
46 seed clams and seed oysters originate from an aquaculture operation permitted by the Secretary.

47 (b) It is lawful to transplant to private beds oysters or clams taken from polluted waters  
48 with a permit from the Secretary setting out the waters from which the oysters or clams may be  
49 taken, the quantities which may be taken, the times during which the taking is permissible, and  
50 other reasonable restrictions imposed by the Secretary to aid him in his duty of regulating such

1 transplanting operations. Any transplanting operation which does not substantially comply with  
2 the restrictions of the permit issued is unlawful.

3 ~~(c) It is lawful to transplant to private beds oysters taken from public beds managed by~~  
4 ~~the State for the production of seed oysters in accordance with the implementing rules of the~~  
5 ~~Marine Fisheries Commission. Persons taking such seed oysters may, in the discretion of the~~  
6 ~~Marine Fisheries Commission, be required to pay to the Department for oysters taken an~~  
7 ~~amount to reimburse the Department in full or in part for the costs of seed oyster management~~  
8 ~~operations.~~

9 (d) It is lawful to transplant to private beds in North Carolina oysters taken from natural  
10 or managed public beds designated by the Marine Fisheries Commission as ~~natural~~-seed oyster  
11 management areas. ~~Such areas shall be designated as natural seed oyster areas in the following~~  
12 ~~manner:~~

13 (1) ~~A petition shall be filed with the Secretary by the board of county~~  
14 ~~commissioners of the county in which such area is located requesting the~~  
15 ~~designation of and describing the area proposed as a natural seed oyster area.~~  
16 ~~Upon the receipt of the petition, the Secretary shall, within six weeks of the~~  
17 ~~receipt by him of such petition, cause an investigation of the area proposed~~  
18 ~~to be designated as a natural seed oyster area. Such investigation shall be~~  
19 ~~made by qualified biologists of the Department. The Secretary shall then~~  
20 ~~make a recommendation to the Marine Fisheries Commission as to whether~~  
21 ~~the area described in the petition should be designated as a natural seed~~  
22 ~~oyster area and such area shall be so designated by the Marine Fisheries~~  
23 ~~Commission only after the Secretary so recommends as being in the best~~  
24 ~~interests of the State.~~

25 (2) The Secretary shall issue permits to all qualified individuals who are  
26 residents of North Carolina without regard to county of residence to  
27 transplant seed oysters from said designated ~~natural~~-seed oyster management  
28 areas, setting out the quantity which may be taken, the times which the  
29 taking is permissible and other reasonable restrictions imposed to aid ~~him~~  
30 the Secretary in ~~his~~ the Secretary's duty of regulating such transplanting  
31 operations. Persons taking such seed oysters may, in the discretion of the  
32 Marine Fisheries Commission, be required to pay to the Department for  
33 oysters taken an amount to reimburse the Department in full or in part for the  
34 costs of seed oyster management operations. Any transplanting operation  
35 which does not substantially comply with the restrictions of the permit  
36 issued is unlawful.

37 (e) The Marine Fisheries Commission may implement the provisions of this section by  
38 rules governing sale, possession, transportation, storage, handling, planting, and harvesting of  
39 oysters and clams and setting out any system of marking oysters and clams or of permits or  
40 receipts relating to them generally, from both public and private beds, as necessary to regulate  
41 the lawful transplanting of seed oysters and oysters or clams taken from or placed on public or  
42 private beds."

43 **SECTION 7.** G.S. 113-207 reads as rewritten:

44 **"§ 113-207. Taking shellfish from certain areas forbidden; penalty.**

45 (a) ~~To the extent that funds are available, the Department shall post oyster rocks or~~  
46 ~~appropriate landing sites to forbid the taking of clams upon such rocks by use of rakes or tongs~~  
47 ~~or any other device which will disturb or damage the oysters thereon. As used in this section,~~  
48 ~~"oyster rocks" mean those rocks in the coastal fishing waters upon which oysters grow.~~

49 (b) ~~It is unlawful for any person to take clams on oyster rocks posted by the Department~~  
50 ~~by use of rakes, tongs, or any other device which will disturb or damage the oysters growing~~  
51 ~~thereon. This section will not apply to the taking of clams by signing.~~

- 1       (c)     It is unlawful for any person to take shellfish within 150 feet of any part of a  
2 publically owned pier beneath which the Division of Marine Fisheries has deposited clutch  
3 material.  
4       (d)     A person who violates this section is guilty of a Class 3 misdemeanor."  
5       **SECTION 8.** This act is effective when it becomes law.