

GENERAL ASSEMBLY OF NORTH CAROLINA

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Short Title: Fisheries Reform Act-2.

(Public)

Sponsors:

Referred to: Finance.

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE FISHERIES REFORM ACT OF 1997 TO PROTECT,
3 ENHANCE, AND BETTER MANAGE COASTAL FISHERIES IN NORTH
4 CAROLINA.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE; PERFORMANCE AUDIT

Section 1.1. This act shall be known as the "Fisheries Reform Act of 1997".

Section 1.2. The State Auditor shall conduct a performance audit, including a detailed operational review, of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources. The performance audit shall include an assessment of the capacity of the Division of Marine Fisheries to effectively implement the provisions of Part V of this act. The performance audit report shall be delivered to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 February 1998. The Joint Legislative Commission on Seafood and Aquaculture shall review the performance audit and make a specific recommendation to the 1998 Session of the 1997 General Assembly as to whether the provisions of Part V of this act should be implemented.

PART II. MARINE FISHERIES COMMISSION

◆ Section 2.1. Article 7 of Chapter 143B is amended by adding a new Part to read:

"PART 5B. MARINE FISHERIES COMMISSION.

"§ 143B-289.20. Definitions.

(a) As used in this Part:

(1) 'Commission' means the Marine Fisheries Commission.

(2) 'Department' means the Department of Environment, Health, and Natural Resources.

(3) 'Fisheries Director' means the Director of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources.

(4) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

(b) The definitions set out in G.S. 113-129 and G.S. 113-130 shall apply throughout this Part.

"§ 143B-289.21. Marine Fisheries Commission – creation; purposes.

(a) There is hereby created the Marine Fisheries Commission in the Department of Environment, Health, and Natural Resources.

(b) The functions, purposes, and duties of the Marine Fisheries Commission are to:

- 1 (1) Manage, restore, develop, cultivate, conserve, protect, and regulate the
2 marine and estuarine resources of the State.
- 3 (2) Implement the laws relating to coastal fisheries, coastal fishing,
4 shellfish, crustaceans, and other marine and estuarine resources enacted
5 by the General Assembly by the adoption of rules and policies, to
6 provide a sound, constructive, comprehensive, continuing, and
7 economical coastal fisheries program directed by citizens who are
8 knowledgeable in the protection, restoration, proper use, and
9 management of marine and estuarine resources.
- 10 (3) Advise the State regarding ocean and marine fisheries within the
11 jurisdiction of the Atlantic States Marine Fisheries Compact, the South
12 Atlantic Fishery Management Council, the Mid-Atlantic Fishery
13 Management Council, and other similar organizations established to
14 manage or regulate fishing in the Atlantic Ocean.

15 **"§ 143B-289.22. Marine Fisheries Commission – powers and duties.**

- 16 (a) The Marine Fisheries Commission shall adopt rules to be followed in the
17 management, protection, preservation, and enhancement of the marine and estuarine
18 resources of the State including commercial and sports fisheries resources. The Marine
19 Fisheries Commission shall have the power and duty:
- 20 (1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms
21 of marine and estuarine resources in coastal fishing waters with respect
22 to:
- 23 a. Time, place, character, or dimensions of any methods or
24 equipment that may be employed in taking fish.
- 25 b. Seasons for taking fish.
- 26 c. Size limits on and maximum quantities of fish that may be taken,
27 possessed, bailed to another, transported, bought, sold, or given
28 away.
- 29 (2) To provide fair regulation of commercial and recreational fishing groups
30 in the interest of the public.
- 31 (3) To adopt rules and take all steps necessary to develop and improve
32 mariculture, including the cultivation, harvesting, and marketing of
33 shellfish and other marine resources in the State, involving the use of
34 public grounds and private beds as provided in G.S. 113-201.
- 35 (4) To close areas of public bottoms under coastal fishing waters for such
36 time as may be necessary in any program of propagation of shellfish as
37 provided in G.S. 113-204.
- 38 (5) In the interest of conservation of the marine and estuarine resources of
39 the State, to institute an action in the superior court to contest the claim
40 of title or claimed right of fishery in any navigable waters of the State
41 registered with the Department as provided in G.S. 113-206(d).
- 42 (6) To make reciprocal agreements with other jurisdictions respecting any
43 of the matters governed in this Subchapter as provided by G.S. 113-223.

- 1 (7) To adopt relevant provisions of federal laws and regulations as State
2 rules pursuant to G.S. 113-228.
- 3 (8) To delegate to the Fisheries Director the authority by proclamation to
4 suspend or implement, in whole or in part, a particular rule of the
5 Commission that may be affected by variable conditions as provided in
6 G.S. 113-221(e).
- 7 (9) To comment on and otherwise participate in the determination of permit
8 applications received by State agencies that may have an effect on the
9 marine and estuarine resources of the State.
- 10 (10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to
11 establish a Priority List to determine the order in which Fishery
12 Management Plans are developed, to establish a Schedule for the
13 development and adoption of each Fishery Management Plan, and to
14 establish guidance criteria as to the contents of Fishery Management
15 Plans.
- 16 (11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-
17 279.8.
- 18 (12) Except as may otherwise be provided, to make the final agency decision
19 in all contested cases involving matters within the jurisdiction of the
20 Commission.
- 21 (b) The Marine Fisheries Commission shall have the power and duty to establish
22 standards and adopt rules:
- 23 (1) To implement the provisions of Subchapter IV of Chapter 113 as
24 provided in G.S. 113-134.
- 25 (2) To manage the disposition of confiscated property as set forth in G.S.
26 113-137.
- 27 (3) To govern all license requirements and taxes prescribed in Article 14A
28 of Chapter 113 of the General Statutes.
- 29 (4) To regulate the importation and exportation of fish, and equipment that
30 may be used in taking or processing fish, as necessary to enhance the
31 conservation of marine and estuarine resources of the State as provided
32 in G.S. 113-170.
- 33 (5) To regulate the possession, transportation, and disposition of seafood, as
34 provided in G.S. 113-170.4.
- 35 (6) To regulate the disposition of the young of edible fish, as provided by
36 G.S. 113-185.
- 37 (7) To manage the leasing of public grounds for mariculture, including
38 oysters and clam production, as provided in G.S. 113-202.
- 39 (8) To govern the utilization of private fisheries, as provided in G.S. 113-
40 205.
- 41 (9) To impose further restrictions upon the throwing of fish offal in any
42 coastal fishing waters, as provided in G.S. 113-265.

1 (10) To regulate the location and utilization of artificial reefs in coastal
2 waters.

3 (11) To regulate the placement of nets and other sports or commercial fishing
4 apparatus in coastal fishing waters with regard to navigational or
5 recreational safety as well as from a conservation standpoint.

6 (c) The Commission is authorized to authorize, license, prohibit, prescribe, or
7 restrict:

8 (1) The opening and closing of coastal fishing waters, except as to inland
9 game fish, whether entirely or only as to the taking of particular classes
10 of fish, use of particular equipment, or as to other activities.

11 (2) The possession, cultivation, transportation, importation, exportation,
12 sale, purchase, acquisition, and disposition of all marine and estuarine
13 resources and all related equipment, implements, vessels, and
14 conveyances as necessary to carry out its duties.

15 (d) The Commission may adopt rules required by the federal government for
16 grants-in-aid for coastal resource purposes that may be made available to the State by the
17 federal government. This section is to be liberally construed in order that the State and
18 its citizens may benefit from federal grants-in-aid.

19 (e) The Commission shall adopt rules as provided in this Chapter. All rules
20 adopted by the Commission shall be enforced by the Department of Environment, Health,
21 and Natural Resources.

22 (f) As a quasi-judicial agency, the Commission, in accordance with Article IV,
23 Section 3 of the Constitution of North Carolina, has those judicial powers reasonably
24 necessary to accomplish the purposes for which it was created.

25 **§ 143B-289.23. Marine Fisheries Commission – quasi-judicial powers; procedures.**

26 (a) With respect to those matters within its jurisdiction, the Marine Fisheries
27 Commission shall exercise quasi-judicial powers in accordance with the provisions of
28 Chapter 150B of the General Statutes. This section and any rules adopted by the Marine
29 Fisheries Commission shall govern the following proceedings:

30 (1) Exceptions to recommended decisions in contested cases shall be filed
31 with the Secretary within 30 days of the receipt by the Secretary of the
32 official record from the Office of Administrative Hearings, unless
33 additional time is allowed by the Chair of the Commission.

34 (2) Oral arguments by the parties may be allowed by the Chair of the
35 Commission upon request of the parties.

36 (3) Deliberations of the Commission shall be conducted in its public
37 meeting unless the Commission determines that consultation with its
38 counsel should be held in a closed session pursuant to G.S. 143-318.11.

39 (b) The final agency decision in contested cases that arise from civil penalty
40 assessments shall be made by the Commission. In the evaluation of each violation, the
41 Commission shall recognize that harm to the marine and estuarine resources of the State
42 arising from the violation of a statute or rule enacted or adopted to protect those resources
43 may be immediately observed through damaged resources or may be incremental or

1 cumulative with no damage that can be immediately observed or documented. Penalties
2 up to the maximum authorized may be based on any one or combination of the following
3 factors:

- 4 (1) The degree and extent of harm to the marine and estuarine resources of
5 the State, to the public health, or to private property resulting from the
6 violation.
- 7 (2) The frequency and gravity of the violation.
- 8 (3) The cost of rectifying the damage.
- 9 (4) Whether the violation was committed willfully or intentionally.
- 10 (5) The prior record of the violator in complying or failing to comply with
11 programs over which the Marine Fisheries Commission has regulatory
12 authority.
- 13 (6) The cost to the State of the enforcement procedures.

14 (c) The Chair shall appoint a Committee on Civil Penalty Remissions from the
15 members of the Commission. No member of the Committee on Civil Penalty Remissions
16 may hear or vote on any matter in which the member has an economic interest. The
17 Committee on Civil Penalty Remissions shall make the final agency decision on
18 remission requests. In determining whether a remission request will be approved, the
19 Committee shall consider the recommendation of the Secretary and the following factors:

- 20 (1) Whether one or more of the civil penalty assessment factors in
21 subsection (b) of this section were wrongly applied to the detriment of
22 the petitioner.
- 23 (2) Whether the violator promptly abated continuing environmental damage
24 resulting from the violation.
- 25 (3) Whether the violation was inadvertent.
- 26 (4) Whether the violator had been assessed civil penalties for any previous
27 violations.
- 28 (5) Whether payment of the civil penalty will prevent payment for the
29 remaining necessary remedial actions.

30 (d) The Committee on Civil Penalty Remissions may remit the entire amount of
31 the penalty only when the violator has not been assessed civil penalties for previous
32 violations and when payment of the civil penalty will prevent payment for the remaining
33 necessary remedial actions.

34 (e) If any civil penalty has not been paid within 30 days after the final agency
35 decision or court order has been served on the violator, the Secretary of Environment,
36 Health, and Natural Resources shall request the Attorney General to institute a civil
37 action in the superior court of any county in which the violator resides or has his or its
38 principal place of business to recover the amount of the assessment.

39 (f) The Secretary may delegate his powers and duties under this section to the
40 Fisheries Director.

41 **"§ 143B-289.24. Marine Fisheries Commission – members; appointment; term;**
42 **oath; ethical standards; removal; compensation; staff.**

1 (a) Members, Selection. – The Marine Fisheries Commission shall consist of nine
2 members appointed by the Governor as follows:

3 (1) One person actively engaged in, or recently retired from, commercial
4 fishing as demonstrated by currently or recently deriving at least fifty
5 percent (50%) of annual earned income from taking and selling fishery
6 resources in coastal fishing waters of the State. The spouse of a
7 commercial fisherman who meets the criteria of this subdivision may be
8 appointed under this subdivision.

9 (2) One person actively engaged in, or recently retired from, commercial
10 fishing as demonstrated by currently or recently deriving at least fifty
11 percent (50%) of annual earned income from taking and selling fishery
12 resources in coastal fishing waters of the State. The spouse of a
13 commercial fisherman who meets the criteria of this subdivision may be
14 appointed under this subdivision.

15 (3) One person actively connected with, and experienced as, a licensed fish
16 dealer or in seafood processing or distribution as demonstrated by
17 deriving at least fifty percent (50%) of annual earned income from
18 activities involving the buying, selling, processing, or distribution of
19 seafood landed in this State. The spouse of a person qualified under this
20 subdivision may be appointed provided that the spouse is actively
21 involved in the qualifying business.

22 (4) One person actively engaged in recreational sports fishing in coastal
23 waters in this State. An appointee under this subdivision may not derive
24 more than ten percent (10%) of annual earned income from sports
25 fishing activities.

26 (5) One person actively engaged in recreational sports fishing in coastal
27 waters in this State. An appointee under this subdivision may not derive
28 more than ten percent (10%) of annual earned income from sports
29 fishing activities.

30 (6) One person actively engaged in the sports fishing industry as
31 demonstrated by deriving at least fifty percent (50%) of annual earned
32 income from selling goods or services in this State. The spouse of a
33 person qualified under this subdivision may be appointed provided that
34 the spouse is actively involved in the qualifying business.

35 (7) One person having general knowledge of and experience related to
36 subjects and persons regulated by the Commission.

37 (8) One person having general knowledge of and experience related to
38 subjects and persons regulated by the Commission.

39 (9) One person who is a fisheries scientist having special training and
40 expertise in marine and estuarine fisheries biology, ecology, population
41 dynamics, water quality, habitat protection, or similar knowledge. A
42 person appointed under this subdivision may not receive more than ten
43 percent (10%) of annual earned income from either the commercial or

1 sports fishing industries, including the processing and distribution of
2 seafood.

3 (b) Residential Qualifications. – For purposes of providing regional representation
4 on the Commission, the following three coastal regions of the State are designated: (i)
5 Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates,
6 Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and
7 Washington Counties, (ii) Central Coastal Region comprised of Beaufort, Carteret,
8 Craven, Hyde, Jones, and Pamlico Counties; and (iii) Southeast Coastal Region
9 comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender
10 Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of subsection
11 (a) of this section shall be residents of one of the coastal regions of the State. The
12 membership of the Commission shall include at least one person who is a resident of each
13 of the three coastal regions of the State.

14 (c) Additional Considerations. – In making appointments to the Commission, the
15 Governor shall provide for appropriate representation of women and minorities on the
16 Commission.

17 (d) Terms. – The term of office of members of the Commission is three years. A
18 member may be reappointed to any number of successive three-year terms. Upon the
19 expiration of a three-year term, a member shall continue to serve until a successor is
20 appointed and duly qualified as provided by G.S. 128-7. The term of members appointed
21 under subdivisions (1), (2), and (3) of subsection (a) of this section shall expire on 30
22 June of years evenly divisible by three. The term of members appointed under
23 subdivisions (4), (5), and (6) of subsection (a) of this section shall expire on 30 June of
24 years that precede by one year those years that are evenly divisible by three. The term of
25 members appointed under subdivisions (7), (8), and (9) of subsection (a) of this section
26 shall expire on 30 June of years that follow by one year those years that are evenly
27 divisible by three.

28 (e) Vacancies. – An appointment to fill a vacancy shall be for the unexpired
29 balance of the term.

30 (f) Oath of Office. – Each member of the Commission, before assuming the duties
31 of office, shall take an oath of office as provided in Chapter 11 of the General Statutes.

32 (g) Ethical Standards. –

33 (1) Disclosure statements. – Any person under consideration for
34 appointment to the Commission shall provide both a financial disclosure
35 statement and a potential bias disclosure statement to the Governor. A
36 financial disclosure statement shall include statements of the nominee's
37 financial interests in and related to State fishery resources use, licenses
38 issued by the Division of Marine Fisheries held by the nominee or any
39 business in which the nominee has a financial interest, and uses made by
40 the nominee or by any business in which the nominee has a financial
41 interest of the regulated resources. A potential bias disclosure statement
42 shall include a statement of the nominee's membership or other
43 affiliation with, including offices held, in societies, organizations, or

1 advocacy groups pertaining to the management and use of the State's
2 coastal fishery resources. Disclosure statements shall be treated as
3 public records under Chapter 132 of the General Statutes and shall be
4 updated on an annual basis.

5 (2) Voting/conflict of interest. – A member of the Commission shall not
6 vote on any issue before the Commission that would have a 'significant
7 and predictable effect' on the member's financial interest. For purposes
8 of this subdivision, 'significant and predictable effect' means there is or
9 may be a close causal link between the decision of the Commission and
10 an expected disproportionate financial benefit to the member that is
11 shared only by a minority of persons within the same industry sector or
12 gear group. A member of the Commission shall also abstain from
13 voting on any petition submitted by an advocacy group of which the
14 member is an officer or sits as a member of the advocacy group's board
15 of directors. A member of the Commission shall not use the member's
16 official position as a member of the Commission to secure any special
17 privilege or exemption of substantial value for any person. No member
18 of the Commission shall, by the member's conduct, create an appearance
19 that any person could improperly influence the member in the
20 performance of the member's official duties.

21 (3) Regular attendance. – It shall be the duty of each member of the
22 Commission to regularly attend meetings of the Commission.

23 (h) Removal. – The Governor may remove, as provided in G.S. 143-13, any
24 member of the Commission for misfeasance, malfeasance, or nonfeasance.

25 (i) Office May Be Held Concurrently With Others. – The office of member of the
26 Marine Fisheries Commission may be held concurrently with any other elected or
27 appointed office, as authorized by Article VI, Section 9, of the Constitution of North
28 Carolina.

29 (j) Compensation. – Members of the Commission who are State officers or
30 employees shall receive no per diem compensation for serving on the Commission, but
31 shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the
32 Commission who are full-time salaried public officers or employees other than State
33 officers or employees shall receive no per diem compensation for serving on the
34 Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in
35 the same manner as State officers or employees. All other Commission members shall
36 receive per diem compensation and reimbursement in accordance with the compensation
37 rate established in G.S. 93B-5.

38 (k) Staff. – All clerical and other services required by the Commission shall be
39 supplied by the Fisheries Director and the Department.

40 (l) Legal Services. – The Attorney General shall: (i) act as attorney for the
41 Commission; (ii) at the request of the Commission, initiate actions in the name of the
42 Commission; and (iii) represent the Commission in any appeal or other review of any
43 order of the Commission.

1 **"§ 143B-289.25. Marine Fisheries Commission – officers; organization; seal.**

2 (a) The Governor shall appoint a member of the Commission to serve as Chair.
3 The Chair shall serve at the pleasure of the Governor. The Commission shall elect one of
4 its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year term
5 beginning 1 July and ending 30 June of the following year. The Vice-Chair may serve
6 any number of consecutive terms.

7 (b) The Chair shall guide and coordinate the activities of the Commission in
8 fulfilling its duties as set out in this Article. The Chair shall report to and advise the
9 Governor and the Secretary on the activities of the Commission, on marine and estuarine
10 conservation matters, and on all marine fisheries matters.

11 (c) The Commission shall determine its organization and procedure in accordance
12 with the provisions of this Article. The provisions of the most recent edition of Robert's
13 Rules of Order shall govern any procedural matter for which no other provision has been
14 made.

15 (d) The Commission may adopt a common seal and may alter it as necessary.

16 **"§ 143B-289.26. Marine Fisheries Commission – meetings; quorum.**

17 (a) The Commission shall meet at least once each calendar quarter and may hold
18 additional meetings at any time and place within the State at the call of the Chair or upon
19 the written request of at least four members. At least three of the four quarterly meetings
20 of the Commission shall be held in one of the coastal regions designated in G.S. 143B-
21 289.24.

22 (b) Five members of the Commission shall constitute a quorum for the transaction
23 of business.

24 **"§ 143B-289.27. Marine Fisheries Commission Advisory Committees established;**
25 **members; selection; duties.**

26 (a) The Commission shall be assisted in the performance of its duties by four
27 standing advisory committees and four regional advisory committees. Each standing and
28 regional advisory committee shall consist of no more than 11 members. The Chair of the
29 Commission shall designate one member of each advisory committee to serve as Chair of
30 the committee. Members shall serve staggered three-year terms as determined by the
31 Commission. The Commission shall establish other policies and procedures for standing
32 and regional advisory committees that are consistent with those governing the
33 Commission as set out in this Part.

34 (b) The Chair of the Commission shall appoint the following standing advisory
35 committees:

36 (1) The Finfish Committee, which shall consider matters concerning finfish.

37 (2) The Crustacean Committee, which shall consider matters concerning
38 shrimp and crabs.

39 (3) The Shellfish Committee, which shall consider matters concerning
40 oysters, clams, scallops, and other molluscan shellfish.

41 (4) The Habitat and Water Quality Committee, which shall consider matters
42 concerning habitat and water quality that may affect coastal fisheries
43 resources.

1 (c) Each standing advisory committee shall be composed of commercial and
2 recreational fishermen, scientists, and other persons who have expertise in the matters to
3 be considered by the advisory committee to which they are appointed. In making
4 appointments to advisory committees, the Chair of the Commission shall ensure that both
5 commercial and recreational fishing interests are fairly represented and shall consider for
6 appointment persons who are recommended by groups representing commercial fishing
7 interests, recreational fishing interests, environmental protection and conservation
8 interests, and other groups interested in coastal fisheries management.

9 (d) Each standing advisory committee shall review all matters referred to the
10 committee by the Commission and shall make findings and recommendations on these
11 matters. A standing advisory committee may, on its own motion, make findings and
12 recommendations as to any matter related to its subject area. The Commission, in the
13 performance of its duties, shall consider all findings and recommendations submitted by
14 standing advisory committees.

15 (e) The Chair of the Commission shall appoint a regional advisory committee for
16 each of the three coastal regions designated in G.S. 143B-289.24(b) and shall appoint a
17 regional advisory committee for that part of the State that is not included in the three
18 coastal regions. In making appointments to regional advisory committees, the Chair of
19 the Commission shall ensure that both commercial and recreational fishing interests are
20 fairly represented.

21 **"§ 143B-289.28. Marine Fisheries Endowment Fund.**

22 (a) Recognizing the inestimable importance to the State and its people of
23 conserving the marine and estuarine resources of the State, and for the purpose of
24 providing the opportunity for citizens and residents of the State to invest in the future of
25 its marine and estuarine resources, there is created the North Carolina Marine Fisheries
26 Endowment Fund, the income and principal of which shall be used only for the purpose
27 of supporting marine and estuarine resource conservation programs of the State in
28 accordance with this section.

29 (b) There is created the Board of Trustees of the Marine Fisheries Endowment
30 Fund of the Marine Fisheries Commission, with full authority over the administration of
31 the Marine Fisheries Endowment Fund, whose ex officio Chair, Vice-Chair, and
32 members shall be the Chair, Vice-Chair, and members of the Marine Fisheries
33 Commission. The State Treasurer shall be the custodian of the Marine Fisheries
34 Endowment Fund and shall invest its assets in accordance with the provisions of G.S.
35 147-69.2 and G.S. 147-69.3.

36 (c) The assets of the Marine Fisheries Endowment Fund shall be derived from the
37 following:

38 (1) The proceeds of any gifts, grants, and contributions to the State that are
39 specifically designated for inclusion in the Fund.

40 (2) Any other sources specified by law.

41 (d) The Marine Fisheries Endowment Fund is declared to constitute a special trust
42 derived from a contractual relationship between the State and the members of the public

1 whose investments contribute to the Fund. In recognition of this special trust, the
2 following limitations and restrictions are placed on expenditures from the Fund:

3 (1) Any limitations or restrictions specified by the donors on the uses of the
4 income derived from the gifts, grants, and voluntary contributions shall
5 be respected but shall not be binding.

6 (2) No expenditure or disbursement shall be made from the principal of the
7 Marine Fisheries Endowment Fund except as otherwise provided by
8 law.

9 (3) The income received and accruing from the investments of the Marine
10 Fisheries Endowment Fund must be spent only to further the
11 conservation of marine and estuarine resources.

12 (e) The Board of Trustees of the Marine Fisheries Endowment Fund may
13 accumulate the investment income of the Fund until the income, in the sole judgment of
14 the trustees, can provide a significant supplement to the budget for the conservation and
15 management of marine and estuarine resources. After that time the trustees, in their sole
16 discretion and authority, may direct expenditures from the income of the Fund for the
17 purposes set out in subdivision (3) of subsection (d) above.

18 (f) Expenditure of the income derived from the Marine Fisheries Endowment
19 Fund shall be made through the State budget accounts of the Marine Fisheries
20 Commission in accordance with the provisions of the Executive Budget Act. The Marine
21 Fisheries Endowment Fund is subject to the oversight of the State Auditor pursuant to
22 Article 5A of Chapter 147 of the General Statutes.

23 (g) The Marine Fisheries Endowment Fund and the income therefrom shall not
24 take the place of State appropriations, but any portion of the income of the Marine
25 Fisheries Endowment Fund available for the purpose set out in subdivision (3) of
26 subsection (d) above shall be used to supplement other income of and appropriations for
27 the conservation and management of marine and estuarine resources to the end that the
28 Commission may improve and increase its services and become more useful to a greater
29 number of people.

30 **"§ 143B-289.29. Conservation Fund; Commission may accept gifts.**

31 (a) The Marine Fisheries Commission may accept gifts, donations, or
32 contributions from any sources. These funds shall be held in a separate account and used
33 solely for the purposes of marine and estuarine conservation and management. These
34 funds shall be administered by the Marine Fisheries Commission and shall be used for
35 marine and estuarine resources management, including education about the importance of
36 conservation, in a manner consistent with marine and estuarine conservation management
37 principles.

38 (b) The Marine Fisheries Commission is hereby authorized to issue and sell
39 appropriate emblems by which to identify recipients thereof as contributors to a special
40 marine and estuarine resources Conservation Fund that shall be made available to the
41 Marine Fisheries Commission for conservation, protection, enhancement, preservation,
42 and perpetuation of marine and estuarine species that may be endangered or threatened
43 with extinction and for education about these issues. The special Conservation Fund is

1 subject to oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the
2 General Statutes. Emblems of different sizes, shapes, types, or designs may be used to
3 recognize contributions in different amounts, but no emblem shall be issued for a
4 contribution amounting in value to less than five dollars (\$5.00).

5 **"§ 143B-289.30. Article subject to Chapter 113.**

6 Nothing in this Article shall be construed to affect the jurisdictional division between
7 the Marine Fisheries Commission and the Wildlife Resources Commission contained in
8 Subchapter IV of Chapter 113 of the General Statutes or in any way to alter or abridge
9 the powers and duties of the two agencies conferred in that Subchapter.

10 **"§ 143B-289.31. Jurisdictional questions.**

11 In the event of any question arising between the Wildlife Resources Commission and
12 the Marine Fisheries Commission or between the Department of Environment, Health,
13 and Natural Resources and the Marine Fisheries Commission as to any duty,
14 responsibility, or authority imposed upon any of these bodies by law or with respect to
15 conflict involving rules or administrative practices, the question or conflict shall be
16 resolved by the Governor, whose decision shall be binding."

17
18 **PART III. COASTAL HABITAT PROTECTION PLANS;**
19 **FISHERY MANAGEMENT PLANS**
20

21 Section 3.1. Article 7 of Chapter 143B of the General Statutes is amended by
22 adding a new section to read:

23 **"§ 143B-279.8. Coastal Habitat Protection Plans.**

24 (a) The Department shall coordinate the preparation of draft Coastal Habitat
25 Protection Plans for critical fisheries habitats. The Department shall use the staff of those
26 divisions within the Department that have jurisdiction over marine fisheries, water
27 quality, and coastal area management in the preparation of the Coastal Habitat Protection
28 Plans and shall request assistance from other federal and State agencies as necessary. The
29 plans shall:

- 30 (1) Describe and classify biological systems in the habitats, including
31 wetlands, fish spawning grounds, estuarine or aquatic endangered or
32 threatened species, primary or secondary nursery areas, shellfish beds,
33 submerged aquatic vegetation (SAV) beds, and habitats in outstanding
34 resource waters.
- 35 (2) Evaluate the function, value to coastal fisheries, status, and trends of the
36 habitats.
- 37 (3) Identify existing and potential threats to the habitats and the impact on
38 coastal fishing.
- 39 (4) Recommend actions to protect and restore the habitats.

40 (b) Once a draft Coastal Habitat Protection Plan has been prepared, the chairs of
41 the Coastal Resources Commission, the Environmental Management Commission, and
42 the Marine Fisheries Commission shall each appoint two members of the commission he
43 or she chairs to a six-member review committee. The six-member review committee, in

1 consultation with the Department, shall review the draft Plan and may revise the draft
2 Plan on a consensus basis. The draft Plan, as revised by the six-member review
3 committee, shall then be submitted to the Coastal Resources Commission, the
4 Environmental Management Commission, and the Marine Fisheries Commission, each of
5 which shall independently consider the Plan for adoption. If any of the three
6 commissions is unable to agree to any aspect of a Plan, the chair of each commission
7 shall refer that aspect of the Plan to a six-member conference committee to facilitate the
8 resolution of any differences. The six-member conference committee shall be appointed
9 in the same manner as a six-member review committee and may include members of the
10 six-member review committee that reviewed the Plan. Each final Coastal Habitat
11 Protection Plan shall consist of those provisions adopted by all three commissions. The
12 three commissions shall review and revise each Coastal Habitat Protection Plan at least
13 once every five years.

14 (c) In carrying out their powers and duties, the Coastal Resources Commission,
15 the Environmental Management Commission, and the Marine Fisheries Commission
16 shall ensure, to the maximum extent practicable, that their actions are consistent with the
17 Coastal Habitat Protection Plans as adopted by the three commissions. The obligation to
18 act in a manner consistent with a Coastal Habitat Protection Plan is prospective only and
19 does not oblige any commission to modify any rule adopted, permit decision made, or
20 other action taken prior to the adoption or revision of the Coastal Habitat Protection Plan
21 by the three commissions. The Coastal Resources Commission, the Environmental
22 Management Commission, and the Marine Fisheries Commission shall adopt rules to
23 implement Coastal Habitat Protection Plans in accordance with Chapter 150B of the
24 General Statutes.

25 (d) If any of the three commissions concludes that another commission has taken
26 an action that is inconsistent with a Coastal Habitat Protection Plan, that commission may
27 request a written explanation of the action from the other commission. A commission
28 shall provide a written explanation: (i) upon the written request of one of the other two
29 commissions, or (ii) upon its own motion if the commission determines that it must take
30 an action that is inconsistent with a Coastal Habitat Protection Plan.

31 (e) The Coastal Resources Commission, the Environmental Management
32 Commission, and the Marine Fisheries Commission shall report to the Joint Legislative
33 Commission on Seafood and Aquaculture and the Environmental Review Commission on
34 progress in developing and implementing the Coastal Habitat Protection Plans, including
35 the extent to which the actions of the three commissions are consistent with the Plans, on
36 or before 1 September of each year."

37 (f) The Secretary of Environment, Health, and Natural Resources shall report to
38 the Environmental Review Commission within 30 days of the completion or substantial
39 revision of each draft Coastal Habitat Protection Plan. The Environmental Review
40 Commission shall review each draft Coastal Habitat Protection Plan within 30 days of the
41 date the draft Plan is submitted to the Environmental Review Commission. The
42 Environmental Review Commission may submit comments and recommendations on the

1 draft Plan to the Secretary within 30 days of the date the draft Plan is submitted by the
2 Secretary."

3 Section 3.2. G.S. 143B-282(a)(1) is amended by adding a new sub-subdivision
4 to read:

5 "v. To approve Coastal Habitat Protection Plans as provided in G.S.
6 143B-279.8."

7 Section 3.3. Part 1 of Article 7 of Chapter 113A of the General Statutes is
8 amended by adding a new section to read:

9 "**§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.**

10 The Commission shall approve Coastal Habitat Protection Plans as provided in G.S.
11 143B-279.8."

12 Section 3.4. Article 15 of Chapter 113 of the General Statutes is amended by
13 adding a new section to read:

14 "**§ 113-182.1. Fishery Management Plans.**

15 (a) The Department shall prepare proposed Fishery Management Plans for
16 adoption by the Marine Fisheries Commission for all commercially or recreationally
17 significant species or fisheries that comprise State marine or estuarine resources.
18 Proposed Fishery Management Plans shall be developed in accordance with the Priority
19 List, Schedule, and guidance criteria established by the Marine Fisheries Commission
20 under G.S. 143B-289.22.

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

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

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

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

35 (c) To assist in the development of each Fishery Management Plan, the Chair of
36 the Marine Fisheries Commission shall appoint an Advisory Council. Each Advisory
37 Council shall be composed of commercial fishermen, recreational fishermen, and
38 scientists, all with expertise in the fishery for which the Fishery Management Plan is
39 being developed.

40 (d) Each Fishery Management Plan shall be revised at least once every three years.
41 The Marine Fisheries Commission may revise the Priority List and guidance criteria
42 whenever it determines that a revision of the Priority List or guidance criteria will
43 facilitate or improve the development of Fishery Management Plans or is necessary to

1 restore, conserve, or protect the marine and estuarine resources of the State. The Marine
2 Fisheries Commission may not revise the Schedule for the development of a Fisheries
3 Management Plan, once adopted, without the approval of the Secretary of Environment,
4 Health, and Natural Resources.

5 (e) The Secretary of Environment, Health, and Natural Resources shall monitor
6 progress in the development and adoption of Fishery Management Plans in relation to the
7 Schedule for development and adoption of the plans established by the Marine Fisheries
8 Commission. If the Secretary determines that the Division of Marine Fisheries has failed
9 to develop or the Marine Fisheries Commission has failed to adopt a Fishery
10 Management Plan in compliance with the Schedule, the Secretary may issue a
11 proclamation prohibiting the taking of species to which the Plan would apply. The
12 completion of any act within 30 days of the time specified by the Schedule constitutes
13 compliance with the Schedule. A proclamation issued pursuant to this subsection is not
14 subject to Article 2A of Chapter 150B of the General Statutes.

15 (f) The Secretary of Environment, Health, and Natural Resources shall report to
16 the Joint Legislative Commission on Seafood and Aquaculture and the Environmental
17 Review Commission on progress in developing and implementing the Fishery
18 Management Plans on or before 1 September of each year. The Secretary of
19 Environment, Health, and Natural Resources shall report to the Joint Legislative
20 Commission on Seafood and Aquaculture and the Environmental Review Commission
21 within 30 days of the completion or substantial revision of each proposed Fishery
22 Management Plan. The Joint Legislative Commission on Seafood and Aquaculture and
23 the Environmental Review Commission shall review each proposed Fishery Management
24 Plan within 30 days of the date the proposed Plan is submitted to the commission. The
25 Joint Legislative Commission on Seafood and Aquaculture and the Environmental
26 Review Commission may submit comments and recommendations on the proposed Plan
27 to the Secretary within 30 days of the date the proposed Plan is submitted by the
28 Secretary.

29 (g) The Marine Fisheries Commission shall adopt rules to implement Fishery
30 Management Plans in accordance with Chapter 150B of the General Statutes."

31 Section 3.5. G.S. 113-129 is amended by adding two new subdivisions to read:

32 "(12a) Optimal yield. – The amount of fish that:

- 33 a. Will provide the greatest overall benefit to the State, particularly
34 with respect to food production and recreational opportunities,
35 and taking into account the protection of marine ecosystems;
36 b. Is prescribed on the basis of the maximum sustainable yield from
37 the fishery, as reduced by any relevant economic, social, or
38 ecological factor; and
39 c. In the case of an overfished fishery, provides for rebuilding to a
40 level consistent with producing the maximum sustainable yield in
41 the fishery.

1 (12b) Overfishing or overfished. – A rate or level of fishing mortality that
2 jeopardizes the capacity of a fishery to produce the maximum
3 sustainable yield on a continuing basis."
4

5 **PART IV. MARINE FISHERIES LAW ENFORCEMENT**

6
7 Section 4.1. G.S. 113-187 reads as rewritten:

8 **"§ 113-187. Penalties for violations of Subchapter and rules.**

9 (a) Any person who participates in a commercial fishing operation conducted
10 in violation of any provision of this Subchapter and its implementing rules or in an
11 operation in connection with which any vessel is used in violation of any provision of this
12 Subchapter and its implementing rules is guilty of a ~~Class 1~~Class A1 misdemeanor.

13 (b) Any owner of a vessel who knowingly permits it to be used in violation of any
14 provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~Class A1
15 misdemeanor.

16 (c) Any person in charge of a commercial fishing operation conducted in violation
17 of any provision of this Subchapter and its implementing rules or in charge of any vessel
18 used in violation of any provision of this Subchapter and its implementing rules is guilty
19 of a ~~Class 1~~Class A1 misdemeanor.

20 (d) Any person in charge of a commercial fishing operation conducted in violation
21 of the following provisions of this Subchapter or the following rules of the Marine
22 Fisheries Commission; and any person in charge of any vessel used in violation of the
23 following provisions of the Subchapter or the following rules, shall be guilty of a ~~Class 2~~
24 Class A1 misdemeanor. The violations of the statute or the rules for which the penalty is
25 mandatory are:

- 26 (1) Taking or attempting to take, possess, sell, or offer for sale any oysters,
27 mussels, or clams taken from areas closed by statute, rule, or
28 proclamation because of suspected pollution.
29 (2) Taking or attempting to take or have in possession aboard a vessel,
30 shrimp taken by the use of a trawl net, in areas not opened to shrimping,
31 pulled by a vessel not showing lights required by G.S. 75A-6 after
32 sunset and before sunrise.
33 (3) Using a trawl net in any coastal fishing waters closed by proclamation
34 or rule to trawl nets.
35 (4) Violating the provisions of a special permit or gear license issued by the
36 Department.
37 (5) Using or attempting to use any trawl net, long haul seine, swipe net,
38 mechanical methods for oyster or clam harvest or dredge in designated
39 primary nursery areas."

40 Section 4.2. Article 15 of Chapter 113 of the General Statutes is amended by
41 adding a new section to read:

42 **"§ 113-190. Unlawful sale or purchase of fish; criminal and civil penalties.**

1 (a) Any person who sells fish in violation of G.S. 113-168.4 or a rule of the
2 Marine Fisheries Commission to implement that section is guilty of a Class A1
3 misdemeanor.

4 (b) Any person who purchases fish in violation of G.S. 113-169.3 or a rule of the
5 Marine Fisheries Commission to implement that section is guilty of a Class A1
6 misdemeanor.

7 (c) A civil penalty of not more than ten thousand dollars (\$10,000) may be
8 assessed by the Secretary against any person who sells fish in violation of G.S. 113-168.4
9 or purchases fish in violation of G.S. 113-169.3.

10 (d) In determining the amount of the penalty, the Secretary shall consider the
11 factors set out in G.S. 143B-289.23(b). The procedures set out in G.S. 143B-289.23 shall
12 apply to civil penalty assessments that are presented to the Commission for final agency
13 decision.

14 (e) The Secretary shall notify any person assessed a civil penalty of the assessment
15 and the specific reasons therefor by registered or certified mail or by any means
16 authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S.
17 150B-23 within 30 days of receipt of the notice of assessment.

18 (f) Requests for remission of civil penalties shall be filed with the Secretary.
19 Remission requests shall not be considered unless filed within 30 days of receipt of the
20 notice of assessment. Remission requests must be accompanied by a waiver of the right
21 to a contested case hearing pursuant to Chapter 150B of the General Statutes and a
22 stipulation of the facts on which the assessment was based. Consistent with the
23 limitations in G.S. 143B-289.23(c), remission requests may be resolved by the Secretary
24 and the violator. If the Secretary and the violator are unable to resolve the request, the
25 Secretary shall deliver remission requests and his recommended action to the Committee
26 on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to
27 G.S. 143B-289.23(c).

28 (g) If any civil penalty has not been paid within 30 days after notice of assessment
29 has been served on the violator, the Secretary shall request the Attorney General to
30 institute a civil action in the superior court of any county in which the violator resides or
31 has his or its principal place of business to recover the amount of the assessment, unless
32 the violator contests the assessment as provided in subsection (e) of this section, or
33 requests remission of the assessment in whole or in part as provided in subsection (f) of
34 this section. If any civil penalty has not been paid within 30 days after the final agency
35 decision or court order has been served on the violator, the Secretary shall request the
36 Attorney General to institute a civil action in the superior court of any county in which
37 the violator resides or has his or its principal place of business to recover the amount of
38 the assessment. Civil actions must be filed within three years of the date the final agency
39 decision or court order was served on the violator."

40 Section 4.3. G.S. 113-221(e) reads as rewritten:

41 "(e) The Marine Fisheries Commission may delegate to the Fisheries Director the
42 authority to issue proclamations suspending or implementing, in whole or in part,
43 particular rules of the Commission which may be affected by variable conditions. Such

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

18 The Fisheries Director must make every reasonable effort to give actual notice of the
19 terms of any proclamation to the persons who may be affected thereby. ~~Such~~ Reasonable
20 effort includes press releases to communications media, posting of notices at docks and
21 other places where persons affected may gather, personal communication by inspectors
22 and other agents of the Fisheries Director, and such other measures designed to reach the
23 persons who may be affected. The Fisheries Director may determine, on a case-by-case
24 basis and at the Fisheries Director's sole discretion, that a proclamation did not apply to
25 an individual licensee when an act of God occurred that prevented the licensee from
26 receiving notice of the proclamation."

27 Section 4.4. The Marine Fisheries Commission shall develop a Violation
28 Points System applicable to the fishing licenses of all persons who violate marine
29 fisheries statutes or rules. In developing this system, the Marine Fisheries Commission
30 shall consider the recommendations made in the Final Report of the Moratorium Steering
31 Committee and the suspension, revocation, and reissuance procedures under G.S. 113-
32 166. The Marine Fisheries Commission shall also develop an implementation schedule
33 for the Violation Points System. The Marine Fisheries Commission shall report to the
34 Joint Legislative Commission on Seafood and Aquaculture no later than 1 July 1999, on
35 the development of the Violation Points System and the implementation schedule.

36
37 **PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL**
38 **PROVISIONS**
39

40 Section 5.1. Chapter 113 of the General Statutes is amended by adding a new
41 Article to read:

42 **"ARTICLE 14A.**
43 **"COASTAL AND ESTUARINE COMMERCIAL FISHING LICENSES.**

"§ 113-168. Definitions.

As used in this Article:

- (1) 'Commercial fishing operation' means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. Commercial fishing operation includes taking people fishing for hire.
- (2) 'Commission' means the Marine Fisheries Commission.
- (3) 'Division' means the Division of Marine Fisheries in the Department of Environment, Health, and Natural Resources.
- (4) 'License year' means the period beginning 1 July of a year and ending on 30 June of the following year.
- (5) 'North Carolina resident' means a person is a resident within the meaning of G.S. 113-130(4) and who filed a State income tax return as a resident of the State for the previous calendar or tax year.
- (6) 'RCGL' means Recreational Commercial Gear License.
- (7) 'RSCFL' means Retired Standard Commercial Fishing License.
- (8) 'SCFL' means Standard Commercial Fishing License.

"§ 113-168.1. General provisions for commercial licenses and endorsements.

(a) Duration, Fees. – All licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license shall pay the full annual license fee at the time the applicant applies for the license regardless of when application is made.

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

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

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

1 (e) License Format. – Licenses issued under this Article shall be issued in the
2 name of the applicant. Each license shall show the type of license and any endorsements;
3 the name, address, and date of birth of the licensee; the date on which the license is
4 issued; the date on which the license expires; and any other information that the
5 Commission or the Division determines to be necessary to accomplish the purposes of
6 this Subchapter.

7 **"§ 113-168.2. Standard Commercial Fishing License.**

8 (a) Requirement. – No person shall engage in a commercial fishing operation in
9 the coastal fishing waters without holding a Standard Commercial Fishing License issued
10 by the Division. A person who works as a member of the crew of a vessel engaged in a
11 commercial fishing operation under the direction of a person who holds a valid SCFL or
12 RSCFL is not required to hold a SCFL or RSCFL.

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

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

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

33 (e) Fees. – The annual SCFL fee for a North Carolina resident shall be two
34 hundred dollars (\$200.00). The annual SCFL fee for a person who is not a resident of
35 North Carolina shall be two thousand dollars (\$2,000) or the amount charged to a North
36 Carolina resident in the nonresident's state, whichever is lesser.

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. If
39 the SCFL is endorsed for one or more vessels, each vessel endorsement may be assigned,
40 independently of the SCFL, to another holder of a SCFL. An assignment of a SCFL
41 vessel endorsement shall be valid only for use by a holder or assignee of a SCFL in the
42 operation of the vessel for which the SCFL is endorsed. The assignment shall be in
43 writing on a form provided by the Division and shall include the name of the licensee, the

1 license number, any endorsements, the assignee's name and mailing address, and the
2 duration of the assignment. A notarized copy of the assignment shall be filed with the
3 Division. The assignee shall carry the assignment on the assignee's person and have the
4 assignment available for inspection at all times while using the vessel. The assignment
5 may be revoked by: (i) written notification by the assignor that the assignment has been
6 terminated; or (ii) a determination by the Division that the assignee is operating in
7 violation of the terms and conditions applicable to the assignment.

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

9 (1) By the license holder to a member of the license holder's immediate
10 family.

11 (2) By the State to the estate of the license holder upon the death of the
12 license holder.

13 (3) By a surviving family member to whom a license was transferred
14 pursuant to subdivision (2) of this subsection to a third-party purchaser
15 of the license holder's fishing vessel upon the death of the license
16 holder.

17 (4) By the license holder to a third-party purchaser of the license holder's
18 fishing vessel upon retirement of the license holder from commercial
19 fishing.

20 (5) Under any other circumstance authorized by rule of the Commission.

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

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

33 **"§ 113-168.3. Retired Standard Commercial Fishing License.**

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

36 (b) Eligibility; Fee. – Any person who is 65 years of age or older and who is
37 otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL for an
38 annual fee of one hundred dollars (\$100.00). Proof of age shall be supplied at the time
39 the application is made.

40 (c) Transfer. – The holder of a RSCFL may transfer the RSCFL as provided in
41 G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party purchaser of
42 the RSCFL holder's fishing vessel. If the third-party purchaser is less than 65 years of
43 age, that purchaser shall pay the fee for the SCFL set forth in G.S. 113-168.2.

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

2 **"§ 113-168.4. Regulations concerning the sale of fish.**

3 (a) Except as otherwise provided in this section, it is unlawful for any person who
4 takes or lands any species of fish under the authority of the Commission from coastal
5 fishing waters by any means whatever, including mariculture operations, to sell, offer for
6 sale, barter or exchange for merchandise these fish, without holding a current and valid
7 SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid shellfish
8 license issued under G.S. 113-169.2. It is unlawful for fish dealers to buy fish unless the
9 seller presents a current and valid SCFL, RSCFL, or shellfish license at the time of the
10 transaction. Any subsequent sale of fish shall be subject to the licensing requirements of
11 fish dealers under G.S. 113-169.3.

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

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

16 (2) The public, if the seller is also licensed as a fish dealer under G.S. 113-
17 169.3.

18 (c) A person who organizes a nonprofit recreational fishing tournament may sell
19 fish taken in connection with the tournament pursuant to a recreational fishing
20 tournament license to sell fish. A person who organizes a nonprofit recreational fishing
21 tournament may obtain a recreational fishing tournament license to sell fish upon
22 application to the Division and payment of a fee of one hundred dollars (\$100.00). A
23 recreational fishing tournament is an organized fishing competition occurring within a
24 specified time period not to exceed one week and that is not a commercial fishing
25 operation. Proceeds derived from the sale of fish may be used only for charitable
26 purposes.

27 **"§ 113-168.5. License endorsements for Standard Commercial Fishing License and**
28 **Retired Standard Commercial Fishing License.**

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

31 (b) Vessel Endorsements. –

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

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

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

39 c. A certification of documentation has been issued for the vessel
40 that lists a home port in the State under 42 U.S.C. § 12101, et
41 seq., as amended.

42 (2) It is unlawful to use a vessel in a commercial fishing operation in the
43 coastal fishing waters of the State without a vessel endorsement of the

1 license required under this Article for that commercial fishing operation.
2 It is unlawful to use a North Carolina vessel to land or sell fish in the
3 State that are taken during a commercial fishing operation outside the
4 coastal fishing waters of the State without a vessel endorsement of the
5 license required under this Article for that commercial fishing operation.
6 No endorsement is required, however, for a vessel of any length that
7 does not have a motor if the vessel is used only in connection with
8 another vessel for which the required license has been properly
9 endorsed.

10 (3) The fee for a vessel endorsement shall be determined by the length of
11 the vessel and shall be in addition to the fee for a SCFL, RSCFL, or
12 shellfish license. The length of a vessel shall be determined by
13 measuring the distance between the ends of the vessel along the deck
14 and through the cabin, excluding the sheer. The fee for a vessel
15 endorsement is:

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

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

19 c. Three dollars (\$3.00) per foot for a vessel over 38 feet but not
20 over 50 feet in length.

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

22 (4) A vessel endorsement may be assigned as provided in G.S. 113-
23 168.2(f).

24 (5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish
25 license has been endorsed transfers ownership of the vessel to a holder
26 of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be
27 transferred from the former owner's SCFL, RSCFL, or shellfish license
28 to the new owner's SCFL, RSCFL, or shellfish license upon the request
29 of the new owner. The new owner of the vessel shall notify the
30 Division of the change in ownership and request that the vessel
31 endorsement be transferred within 30 days of the date on which the
32 transfer of ownership occurred. The notification of a change in the
33 ownership of a vessel and request that the vessel endorsement be
34 transferred shall be made on a form provided by the Division and shall
35 be accompanied by satisfactory proof of the transfer of vessel
36 ownership. Transfer of vessel ownership may be proven by a notarized
37 copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a
38 vessel documentation transfer.

39 (c) Menhaden Endorsements. – Except as provided in G.S. 113-169, it is unlawful
40 to use a vessel to take menhaden by purse seine in the coastal fishing waters of the State,
41 to land menhaden in the State, or to sell menhaden from a vessel in the State without
42 obtaining a menhaden endorsement of a SCFL or RSCFL. The fee for a menhaden
43 endorsement shall be two dollars (\$2.00) per ton, based on gross tonnage as determined

1 by the custom house measurement for the mother ship. The menhaden endorsement shall
2 be required for the mother ship but no separate endorsement shall be required for a purse
3 boat carrying a purse seine. The application for a menhaden endorsement must state the
4 name of the person in command of the vessel. Upon a change in command of a
5 menhaden vessel, the owner must notify the Division in writing within 30 days.

6 (d) Shellfish Endorsement for North Carolina Residents. – The Division shall issue
7 a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at no charge.

8 **"§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.**

9 A person who is not a resident of North Carolina, who is not eligible for a SCFL
10 under this Article, and who only seeks to engage in menhaden fishing is eligible to
11 purchase a menhaden license for nonresidents. The fee for the menhaden license for
12 nonresidents shall be two dollars (\$2.00) per ton, gross tonnage, customhouse
13 measurements for the mother ship. The menhaden license for nonresidents shall be
14 required for the mother ship to take, land, or sell menhaden in North Carolina taken by
15 purse seine. No separate endorsement shall be required for a purse boat carrying a purse
16 seine. The application for a menhaden license for nonresidents must state the name of the
17 person in command of the vessel. Upon change in command of a menhaden vessel, the
18 owner must notify the Division within 30 days.

19 **"§ 113-169.1. Other commercial licenses and permits authorized by the**
20 **Commission.**

21 The Commission may adopt rules to establish licenses or permits as set forth in this
22 section. Licenses or permits shall be issued upon the payment of fees as prescribed by
23 the Commission in its duly adopted rules at a rate to be established by the Commission.
24 The fee rate for licenses or permits authorized under this section shall, at a minimum, be
25 adequate to compensate the Division for the actual and administrative cost associated
26 with the conservation and management of the fishery.

27 (1) Crew licenses. – The Commission may adopt rules to establish an
28 individual crew license for persons working aboard a vessel engaged in
29 a commercial fishing operation at a rate not to exceed one hundred
30 dollars (\$100.00) per license.

31 (2) Permits. – The Commission may adopt rules to establish permits for
32 gear, equipment, and specialized activities at a rate not to exceed fifty
33 dollars (\$50.00) per permit. The Commission may require permits for
34 commercial fishing operations that do not involve the use of a vessel.
35 The Commission may require that a person obtain a special permit prior
36 to transplanting oysters or clams.

37 **"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

38 (a) License or Endorsement Necessary to Take or Sell Shellfish. – It is unlawful
39 for an individual to take shellfish from the public grounds of the State by mechanical
40 means or for commercial use by any means without holding either a shellfish license or a
41 shellfish endorsement of a SCFL or RSCFL. A North Carolina resident who seeks only
42 to take and sell shellfish shall be eligible to purchase a shellfish license without holding a

1 SCFL or RSCFL. The license includes the privilege to sell shellfish to a licensed fish
2 dealer.

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

9 (c) Fees. – Shellfish licenses shall be issued annually upon payment of a fee of
10 twenty-five dollars (\$25.00) upon proof that the license applicant is a North Carolina
11 resident: Provided, that persons under 16 years of age are exempt from the license
12 requirements of this section if accompanied by a parent, grandparent, or guardian who is
13 in compliance with the requirements of this section or if in possession of a parent's,
14 grandparent's, or guardian's shellfish license.

15 (d) License Available for Inspection. – It is unlawful for any individual to take
16 shellfish for commercial use from the public grounds of the State without having ready at
17 hand for inspection a current and valid shellfish license issued to the licensee personally
18 and bearing the licensee's correct name and address. It is unlawful for any individual
19 taking or possessing freshly taken shellfish to refuse to exhibit the individual's license
20 upon the request of an officer authorized to enforce the fishing laws.

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

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

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

35 (h) Limitation on Taking Shellfish Without a License. –

36 (1) A person who is not required to obtain a shellfish license under
37 subsection (a) of this section shall not take more than:

38 a. One bushel of oysters per day.

39 b. One-half bushel of scallops per day.

40 c. One hundred clams per day.

41 (2) Two or more persons who are not required to obtain a shellfish license
42 under subsection (a) of this section and who are using a vessel to take
43 shellfish shall not take more than:

- a. Two bushels of oysters per day.
- b. One bushel of scallops per day.
- c. Two hundred clams per day.

"§ 113-169.3. Licenses for fish dealers.

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

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

(c) License Requirement. – Except as otherwise provided in this section, it is unlawful for any person not licensed pursuant to this article:

- (1) To buy fish for resale from any person involved in a commercial fishing operation that takes any species of fish from coastal fishing waters. For purposes of this subdivision, a retailer who purchases fish from a fish dealer shall not be liable if the fish dealer has not complied with the licensing requirements of this section;
- (2) To sell fish to the public; or
- (3) To sell to the public any species of fish under the authority of the Commission taken from coastal fishing waters.

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

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

- (1) The fish are sold by persons whose dealings in fish are primarily educational, scientific, or official, and who have been issued a permit by

1 the Division that authorizes the educational, scientific, or official agency
2 to sell fish taken or processed in connection with research or
3 demonstration projects;

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

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

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

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

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

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

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

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

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

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

20 (5) Dealing in shrimp, including bait: \$50.00;

21 (6) Dealing in finfish, including bait: \$50.00;

22 (7) Operating menhaden or other fish-dehydrating or oil-extracting
23 processing plants: \$50.00; or

24 (8) Consolidated license (all categories): \$300.00.

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

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

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

39 (i) Purchase and Sale of Fish. – It is unlawful for a fish dealer to buy fish unless
40 the seller possesses a current and valid SCFL, RSCFL, shellfish license, menhaden
41 license for nonresidents, or a special fisheries sale permit issued under G.S. 113-168.4(c),
42 and the dealer records the transaction consistent with the record-keeping requirements of
43 G.S. 113-168.2(i). It is unlawful for any person to purchase, possess, or sell fish taken

1 from coastal fishing waters in violation of this Subchapter or the rules adopted by the
2 Commission implementing this Subchapter.

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

7 **"§ 113-169.4. Licensing of ocean fishing piers; fees.**

8 (a) Every manager of an ocean fishing pier within the coastal fishing waters who
9 charges the public a fee to fish in any manner from the pier shall secure a current and
10 valid pier license from the Division. An application for a pier license shall disclose the
11 names of all parties involved in the pier operations, including the owner of the property,
12 owner of the pier if different, and all leasehold or other corporate arrangements, and all
13 persons with a substantial financial interest in the pier.

14 (b) Within 30 days following a change of ownership of a pier, or a change as to the
15 manager, the manager or new manager shall secure a replacement pier license from the
16 Division. The replacement license is issued without charge.

17 (c) Pier licenses are issued upon payment of fifty cents (50¢) per linear foot, to the
18 nearest foot, that the pier extends into coastal fishing waters beyond the mean high
19 waterline. The length of the pier shall be measured to include all extensions of the pier.

20 (d) The manager who secures the pier license shall be the individual with the duty
21 of executive-level supervision of pier operations.

22 **"§ 113-169.5. Land or sell license; vessels fishing beyond territorial waters.**

23 (a) Persons aboard vessels not having their primary situs in the State that are
24 carrying a cargo of fish taken outside the waters of the State may land or sell their catch
25 in the State by purchasing a land or sell license as set forth in this section with respect to
26 the vessel in question. The Commission may by rule modify the land or sell licensing
27 procedure in order to devise an efficient and convenient procedure for licensing out-of-
28 state vessels to only land, or after landing to permit sale of cargo.

29 (b) The fee for a land or sell license for a vessel not having its primary situs in
30 North Carolina is two hundred dollars (\$200.00), or an amount equal to the nonresident
31 fee charged by the nonresident's state, whichever is greater. Persons aboard vessels
32 having a primary situs in a jurisdiction that would allow North Carolina vessels without
33 restriction to land or sell their catch, taken outside the jurisdiction, may land or sell their
34 catch in the State without complying with this section if the persons are in possession of a
35 valid license from their state of residence.

36 **"§ 113-170. Exportation and importation of fish and equipment.**

37 The Commission may adopt rules governing the importation and exportation of fish,
38 and equipment that may be used in taking or processing fish, as necessary to enhance the
39 conservation of marine and estuarine resources of the State. These rules may regulate,
40 license, prohibit, or restrict importation into the State and exportation from the State of
41 any and all species of fish that are native to coastal fishing waters or may thrive if
42 introduced into these waters.

43 **"§ 113-170.1. Nonresidents reciprocal agreements.**

1 Persons who are not North Carolina residents are not entitled to obtain licenses under
2 the provisions of this Article except as provided in this section. Residents of jurisdictions
3 that sell commercial fishing licenses to North Carolina residents are entitled to North
4 Carolina commercial fishing licenses under the provisions of G.S. 113-168.2. Licenses
5 may be restricted in terms of area, gear, and fishery by the Commission so that the
6 nonresidents are licensed to engage in North Carolina fisheries on the same or similar
7 terms that North Carolina residents can be licensed to engage in the fisheries of other
8 jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions
9 as necessary to allow nonresidents to obtain commercial fishing licenses in the State
10 subject to the foregoing provisions.

11 **"§ 113-170.2. Fraud or deception as to licenses, permits, or records.**

12 (a) It is unlawful for any person to give any false information or willfully to omit
13 giving required information to the Division or any license agent when the information is
14 material to the securing of any license or permit under this Article. It is unlawful to
15 falsify, fraudulently alter, or counterfeit any license, permit, identification, or record to
16 which this Article applies or otherwise practice any fraud or deception designed to evade
17 the provisions of this Article or reasonable administrative directives made under the
18 authority of this Article.

19 (b) A violation of this section is punishable by a fine of not less than one hundred
20 dollars (\$100.00) nor more than five hundred dollars (\$500.00).

21 **"§ 113-170.3. Record-keeping requirements.**

22 (a) The Commission may require all licensees under this Article to keep and to
23 exhibit upon the request of an authorized agent of the Department records and accounts
24 as may be necessary to the equitable and efficient administration and enforcement of this
25 Article. In addition, licensees may be required to keep additional information of a
26 statistical nature or relating to location of catch as may be needed to determine
27 conservation policy. Records and accounts required to be kept must be preserved for
28 inspection for not less than three years.

29 (b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse
30 to keep records and accounts as may be reasonably required. The Department may
31 distribute forms to licensees to aid in securing compliance with its requirements, or it
32 may inform licensees of requirements in other effective ways such as distributing
33 memoranda and sending agents of the Department to consult with licensees who have
34 been remiss. Detailed forms or descriptions of records, accounts, collection and
35 inspection procedures, and the like that reasonably implement the objectives of this
36 Article need not be embodied in rules of the Commission in order to be validly required.

37 (c) The following records collected and compiled by the Department shall not be
38 considered public records within the meaning of Chapter 132 of the General Statutes, but
39 shall be confidential and shall be used only for the equitable and efficient administration
40 and enforcement of this Article or for determining conservation policy, and shall not be
41 disclosed except when required by the order of a court of competent jurisdiction: all
42 records, accounts, and reports that licensees are required by the Commission to make,
43 keep, and exhibit pursuant to the provisions of this section, and all records, accounts, and

1 memoranda compiled by the Department from records, accounts, and reports of licensees
2 and from investigations and inspections, containing data and information concerning the
3 business and operations of licensees reflecting their assets, liabilities, inventories,
4 revenues, and profits; the number, capacity, capability, and type of fishing vessels owned
5 and operated; the type and quantity of fishing gear used; the catch of fish or other seafood
6 by species in numbers, size, weight, quality, and value; the areas in which fishing was
7 engaged in; the location of catch; the time of fishing, number of hauls, and the disposition
8 of the fish and other seafood. The Department may compile statistical information in any
9 aggregate or summary form that does not directly or indirectly disclose the identity of any
10 licensee who is a source of the information, and any compilation of statistical information
11 by the Department shall be a public record open to inspection and examination by any
12 person, and may be disseminated to the public by the Department.

13 **§ 113-170.4. Rules as to possession, transportation, and disposition of fisheries**
14 **resources.**

15 The Commission may adopt rules governing possession, transportation, and
16 disposition of fisheries resources by all persons, including those not subject to fish dealer
17 licensing requirements, in order that inspectors may adequately distinguish regulated
18 coastal fisheries resources from those not so regulated and enforce the provisions of this
19 Article equitably and efficiently. These rules may include requirements as to giving
20 notice, filing declarations, securing permits, marking packages, and the like.

21 **§ 113-170.5. Violations with respect to coastal fisheries resources.**

22 It is unlawful to take, possess, transport, process, sell, buy, or in any way deal in
23 coastal fisheries resources without conforming with the provisions of this Article or of
24 rules adopted under the authority of this Article.

25 **§ 113-171. Suspension, revocation, and reissuance of licenses.**

26 (a) Upon receipt of reliable notice that a person licensed under this Article has had
27 imposed against the person a conviction of a criminal offense within the jurisdiction of
28 the Department under the provisions of this Subchapter or of rules of the Commission
29 adopted under the authority of this Subchapter, the Secretary must suspend or revoke all
30 licenses held by the person in accordance with the terms of this section. Reliable notice
31 includes information furnished the Secretary in prosecution or other reports from
32 inspectors. As used in this section, a conviction includes a plea of guilty or nolo
33 contendere, any other termination of a criminal prosecution unfavorably to the defendant
34 after jeopardy has attached, or any substitute for criminal prosecution whereby the
35 defendant expressly or impliedly confesses the defendant's guilt. In particular, procedures
36 whereby bond forfeitures are accepted in lieu of proceeding to trial and cases indefinitely
37 continued upon arrest or judgment or prayer for judgment continued are deemed
38 convictions. The Secretary may act to suspend or revoke licenses upon the basis of any
39 conviction in which:

40 (1) No notice of appeal has been given;

41 (2) The time for appeal has expired without an appeal having been
42 perfected; or

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

4 (b) The Secretary must initiate an administrative procedure designed to give the
5 Secretary systematic notice of all convictions of criminal offenses by licensees covered
6 by subsection (a) of this section above and keep a file of all convictions reported. Upon
7 receipt of notice of conviction, the Secretary must determine whether it is a first, a
8 second, a third, or a fourth or subsequent conviction of some offense covered by
9 subsection (a). In the case of second convictions, the Secretary must suspend all licenses
10 issued to the licensee for a period of 10 days. In the case of third convictions, the
11 Secretary must suspend all licenses issued to the licensee for a period of 30 days. In the
12 case of fourth or subsequent convictions, the Secretary must revoke all licenses issued to
13 the licensee. Where several convictions result from a single transaction or occurrence,
14 they are to be treated as a single conviction so far as suspension or revocation of the
15 licenses of any licensee is concerned. Anyone convicted of taking or of knowingly
16 possessing, transporting, buying, selling, or offering to buy or sell oysters or clams from
17 areas closed because of suspected pollution will be deemed by the Secretary to have been
18 convicted of two separate offenses on different occasions for license suspension or
19 revocation purposes.

20 (c) Where a license has been suspended or revoked, the former licensee is not
21 eligible to apply for reissuance of license or for any additional license authorized in this
22 Article during the suspension or revocation period. Licenses must be returned to the
23 licensee by the Secretary or the Secretary's agents at the end of a period of suspension.
24 Where there has been a revocation, application for reissuance of license or for an
25 additional license may not be made until six months following the date of revocation. In
26 such case of revocation, the eligible former licensee must satisfy the Secretary that the
27 licensee will strive in the future to conduct the operations for which the license is sought
28 in accord with all applicable laws and rules. Upon the application of an eligible former
29 licensee after revocation, the Secretary, in the Secretary's discretion, may issue one
30 license sought but not another, as deemed necessary to prevent the hazard of recurring
31 violations of the law.

32 (d) Upon receiving reliable information of a licensee's conviction of a second or
33 subsequent criminal offense covered by subsection (a) of this section, the Secretary shall
34 promptly cause the licensee to be personally served with written notice of suspension or
35 revocation, as the case may be. The written notice may be served upon any responsible
36 individual affiliated with the corporation, partnership, or association where the licensee is
37 not an individual. The notice of suspension or revocation may be served by an inspector
38 or other agent of the Department, must state the ground upon which it is based, and takes
39 effect immediately upon personal service. The agent of the Secretary making service
40 shall then or subsequently, as may be feasible under the circumstances, collect all license
41 certificates and plates and other forms or records relating to the license as directed by the
42 Secretary. It is unlawful for any licensee willfully to evade the personal service
43 prescribed in this subsection.

1 (e) A licensee served with a notice of suspension or revocation may obtain an
2 administrative review of the suspension or revocation by filing a petition for a contested
3 case under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the
4 hearing shall be whether the licensee was convicted of a criminal offense for which a
5 license must be suspended or revoked. A license remains suspended or revoked pending
6 the final decision by the Secretary.

7 (f) If the Secretary refuses to reissue the license of or issue an additional license to
8 an applicant whose license was revoked, the applicant may contest the decision by filing
9 a petition for a contested case under G.S. 150B-23 within 20 days after the Secretary
10 makes the decision. The Commission shall make the final agency decision in a contested
11 case under this subsection. An applicant whose license is denied under this subsection
12 may not reapply for the same license for at least six months.

13 (g) The Commission may adopt rules to provide for the disclosure of the identity
14 of any individual or individuals in responsible positions of control respecting operations
15 of any licensee that is not an individual. For the purposes of this section, individuals in
16 responsible positions of control are deemed to be individual licensees and subject to
17 suspension and revocation requirements in regard to any applications for license they
18 may make – either as individuals or as persons in responsible positions of control in any
19 corporation, partnership, or association. In the case of individual licensees, the individual
20 applying for a license or licensed under this Article must be the real party in interest.

21 (h) In determining whether a conviction is a second or subsequent offense under
22 the provisions of this section, the Secretary may not consider convictions for:

23 (1) Offenses that occurred three years prior to the effective date of this
24 Article; or

25 (2) Offenses that occurred more than three years prior to the time of the
26 latest offense the conviction for which is in issue as a subsequent
27 conviction.

28 **"§ 113-171.1. Use of spotter planes in commercial fishing operations regulated.**

29 (a) Spotter Plane Defined. – A 'spotter plane' is an aircraft used for aerial
30 identification of the location of fish in coastal fishing waters so that a vessel may be
31 directed to the fish.

32 (b) License. – Before an aircraft is used as a spotter plane in a commercial fishing
33 operation, the owner or operator of the aircraft must obtain a license for the aircraft from
34 the Division. The fee for a license for a spotter plane is one hundred dollars (\$100.00).
35 An applicant for a license for a spotter plane shall include in the application the identity,
36 either by boat or by company, of the specific commercial fishing operations in which the
37 spotter plane will be used during the license year. If, during the course of the license
38 year, the aircraft is used as a spotter plane in a commercial fishing operation that is not
39 identified in the original license application, the owner or operator of the aircraft shall
40 amend the license application to add the identity of the additional commercial fishing
41 operation.

42 (c) Unlawful Activity. – It shall be unlawful to:

1 (1) Use a spotter plane directed at food fish, except in connection with a
2 purse seine operation authorized by a rule of the Commission.

3 (2) Use or permit the use of an unlicensed spotter plane or a licensed spotter
4 plane whose license application does not identify the specific
5 commercial fishing operation involved.

6 (3) Participate knowingly in a commercial fishing operation that uses an
7 unlicensed spotter plane or a licensed spotter plane whose license
8 application does not identify the specific commercial fishing operation
9 involved.

10 (d) Violation a Misdemeanor. – A violation of subsection (c) of this section is a
11 Class 1 misdemeanor.

12 **"§ 113-172. License agents.**

13 (a) The Secretary shall designate license agents for the Department. At least one
14 license agent shall be designated for each county that contains or borders on coastal
15 fishing waters. The Secretary may designate additional license agents in any county if
16 the Secretary determines that additional agents are needed to provide efficient service to
17 the public. The Division and license agents designated by the Secretary under this
18 section shall issue all licenses authorized under this Article in accordance with this
19 Article and the rules of the Commission. The Secretary shall require license agents to
20 enter into a contract that provides for their duties and compensation, post a bond, and
21 submit to reasonable inspections and audits. If a license agent violates any provision of
22 this Article, the rules of the Commission, or the terms of the contract, the Secretary may
23 initiate proceedings for the forfeiture of the license agent's bond and may summarily
24 suspend, revoke, or refuse to renew a designation as a license agent and may impound or
25 require the return of all licenses, moneys, record books, reports, license forms and other
26 documents, ledgers, and materials pertinent or apparently pertinent to the license agency.
27 The Secretary shall report evidence or misuse of State property, including license fees, by
28 a license agent to the State Bureau of Investigation as provided by G.S. 114-15.1.

29 (b) License agents shall be compensated by adding a surcharge of one dollar
30 (\$1.00) to each license sold and retaining the surcharge. If more than one license is listed
31 on a consolidated license form, the license agent shall be compensated as if a single
32 license were sold. It is unlawful for a license agent to add more than the surcharge
33 authorized by this section to the fee for each license sold.

34 **"§ 113-173. Recreational Commercial Gear License.**

35 (a) License Required. – Except as provided in subsection (j) of this section, it is
36 unlawful for any person to take or attempt to take fish for recreational purposes by means
37 of commercial fishing equipment or gear in coastal fishing waters without holding a
38 RCGL. As used in this section, fish are taken for recreational purposes if the fish are not
39 taken for the purpose of sale. The RCGL entitles the licensee to use authorized
40 commercial gear to take fish for personal use subject to recreational quotas or limits.

41 (b) Sale of Fish Prohibited. – It is unlawful for the holder of a RCGL or for a
42 person who is exempt under subsection (k) of this section to sell fish taken under the
43 RCGL or pursuant to the exemption.

1 (c) Authorized Commercial Gear. – The Commission shall adopt rules authorizing
2 the use of a limited amount of commercial fishing equipment or gear for recreational
3 fishing under a RCGL. The Commission may authorize the limited use of commercial
4 gear on a uniform basis in all coastal fishing waters or may vary the limited use of
5 commercial gear within specified areas of the coastal fishing waters. The Commission
6 shall periodically evaluate and revise the authorized use of commercial gear for
7 recreational fishing. Authorized commercial gear shall be identified by visible colored
8 tags or other means specified by the Commission in order to distinguish between
9 commercial gear used in a commercial operation and commercial gear used for
10 recreational purposes.

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

14 (e) Replacement RCGL. – Upon receipt of a proper application and a two-dollar
15 (\$2.00) replacement fee, the Division may issue a duplicate RCGL to replace an
16 unexpired RCGL that has been lost or destroyed.

17 (f) Duration; Fees. – The RCGL shall be valid for a one-year period from the date
18 of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars
19 (\$35.00). The fee for a RCGL for an individual who is not a North Carolina resident
20 shall be two hundred fifty dollars (\$250.00).

21 (g) RCGL Available for Inspection. – It is unlawful for any person to engage in
22 recreational fishing by means of restricted commercial gear in the State without having
23 ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to
24 exhibit the RCGL upon the request of an inspector or any other law enforcement officer
25 authorized to enforce federal or State laws, regulations, or rules relating to marine
26 fisheries.

27 (h) Assignment and Transfer Prohibited. – A RCGL is not transferable. It is
28 unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt to
29 buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

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

32 (j) Exemptions. –

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

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

1 (3) A person who is on a vessel may take fish for recreational purposes by
2 means of authorized commercial gear without holding a RCGL if there
3 is another person on the vessel who holds a valid RCGL. This
4 exemption does not authorize the use of commercial gear in excess of
5 that authorized for use by the person who holds the valid RCGL or, if
6 more than one person on the vessel holds a RCGL, in excess of that
7 authorized for use by those persons."

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

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

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

25 (d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is
26 authorized to issue SCFLs as provided in subsection (g) of this section plus an additional
27 500 SCFLs using the procedure set out in subsection (h) of this section.

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

32 (f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of
33 available SCFLs in license years beginning with the 2000-01 license year is the
34 temporary cap less the number of SCFLs that are renewed. The Commission may
35 increase or decrease the number of SCFLs that are issued from the pool of available
36 SCFLs. The Commission may increase the number of SCFLs that are issued from the
37 pool of available SCFLs up to the temporary cap. The Commission may decrease the
38 number of SCFLs that are issued from the pool of available SCFLs but may not refuse to
39 renew a SCFL that is issued during the previous license year and that has not been
40 suspended or revoked. The Commission shall increase or decrease the number of SCFLs
41 that are issued to reflect its determination as to the effort that the fishery can support,
42 based on the best available scientific evidence.

1 (g) Eligibility for SCFL. Any person who holds a valid endorsement to sell
2 fish of a vessel license on 1 July 1999 is eligible to receive a SCFL. The Division shall
3 issue a SCFL to any person who is eligible under this subsection upon receipt of an
4 application and required fees. If the person held more than one endorsement to sell fish,
5 the person is eligible to receive a SCFL for each endorsement to sell previously held.
6 Eligibility to receive a SCFL under this subsection shall expire 1 July 2000.

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

24 Section 5.3. The Marine Fisheries Commission shall adopt rules authorizing
25 the use of a limited amount commercial gear for recreational fishing under a Recreational
26 Commercial Gear License, as required by G.S. 113-173, as enacted by Section 5.1 of this
27 act, on or before 1 July 1999.

28 Section 5.4. (a) G.S. 113-153.1 is recodified as G.S. 113-168.9 in Article 14A
29 of Chapter 113 of the General Statutes, as enacted by Section 5.1 of this act.

30 (b) G.S. 113-168.9(e), as recodified by subsection (a) of this section, reads as
31 rewritten:

32 "(e) The owner of a vessel licensed under ~~G.S. 113-152~~ shall be eligible to purchase a
33 vessel crab license for crabs as an alternative to the purchase of individual licenses under
34 this section. A vessel crab license authorizes the owner of the vessel and up to two
35 unlicensed persons serving as crew to fish for crabs from that vessel. It is unlawful for
36 the owner of a vessel to take crabs from the coastal fishing waters of North Carolina for
37 commercial use by any means, when unlicensed persons not authorized by the vessel crab
38 license are on the vessel. The Secretary shall revoke a vessel crab license issued under
39 this subsection shall be revoked when if the owner of the vessel or any other person using
40 the owner's vessel is convicted of a violation under this section, except for subsection (b)-
41 section, other than conviction for a violation under subsection (b) of this section."

42 (c) All sections of Article 14 of Chapter 113 of the General Statutes other than
43 G.S. 113-153.1 are repealed.

1 Section 5.5. The Marine Fisheries Commission shall adopt a Fishery
2 Management Plan for the blue crab fishery in accordance with G.S. 143B-289.22, as
3 enacted by Section 2.1 of this act, and G.S. 113-182.1, as enacted by Section 3.4 of this
4 act, no later than 1 January 2000.

5 Section 5.6. Notwithstanding the provisions of G.S. 113-168.2 and G.S. 113-
6 168.3, as enacted by Section 5.1 of this act, it is unlawful for any person to take crabs
7 from the coastal fishing waters of the State for commercial use without being licensed
8 under G.S. 113-168.9.

9 Section 5.7. G.S. 113-168.9, as recodified from G.S. 113-153.1 by Section 5.4
10 of this act, is repealed.

11 Section 5.8. The Revisor of Statutes shall set out Section 5.2 of this act as a
12 note to G.S. 113-168.2, as enacted by Section 5.1 of this act.

13 Section 5.9. G.S. 113-203(a)(2) reads as rewritten:

14 "(2) When the transplanting is done by a dealer in accordance with the
15 provisions of G.S. ~~113-158~~113-169.1(2) and implementing rules; or".

16 Section 5.10. G.S. 113-154.1 reads as rewritten:

17 "**§ 113-154.1. Endorsement to sell fish.**

18 (a) Requirements. – Except as otherwise provided in this section, it is unlawful for
19 any person who takes or lands any species of fish under the authority of the Marine
20 Fisheries Commission from coastal fishing waters by any means whatever, including
21 aquaculture operations, to sell, offer for sale, barter or exchange for merchandise such
22 fish, without having first procured a current and valid endorsement to sell fish. It is
23 unlawful for fish dealers to buy fish unless the seller presents a current and valid vessel
24 license with an endorsement to sell, or a separate endorsement to sell if no vessel is
25 involved, at the time of the transaction. Any subsequent sale of fish shall be subject to the
26 licensing requirements of fish dealers under G.S. 113-156.

27 (b) Fees. – The annual fee for an endorsement to sell fish on a vessel license for a
28 resident of this State is set forth in G.S. 113-152(h). The annual fee for an endorsement to
29 sell fish when no vessel is involved for a resident of this State is fifteen dollars (\$15.00)
30 and for a nonresident of this State is one hundred dollars (\$100.00) or an amount equal to
31 the nonresident fee charged by the nonresident's state, whichever is greater. The license
32 shall be valid for the period July 1 through June 30 of a given year.

33 (c) Non-Vessel Endorsement Format. – The format of an endorsement when the
34 applicant is not seeking a vessel license shall include the name of the applicant, date of
35 birth, expiration date of the endorsement, and any other information the Division deems
36 necessary to accomplish the purposes of this Subchapter. The endorsement shall be
37 issued on a card made of hard plastic or metal capable of being used to make imprints of
38 the sale or transaction. An applicant who is applying for an endorsement on a vessel
39 license shall comply with G.S. 113-152.

40 (d) Application for Non-Vessel Endorsement. – An application for issuance or
41 renewal of an endorsement to sell shall be filed with the Morehead City offices of the
42 Division of Marine Fisheries or license agents authorized to sell licenses under this
43 Article. An application shall be accompanied by the fee established in subsection (b) of

1 this section. Applications shall not be accepted from persons ineligible to hold a license
2 issued by the Marine Fisheries Commission, including any applicant whose endorsement
3 is suspended or revoked on the date of the application. The applicant shall be provided
4 with a copy of the application marked received. The copy shall serve as the endorsement
5 to sell, until the endorsement issued by the Division is received or the Division
6 determines that the applicant is ineligible to hold an endorsement. In addition to the
7 information required in subsection (c) of this section, the applicant shall disclose on the
8 application a valid address, and such other information as the Division may require.

9 (e) Application for Replacement Non-Vessel Endorsement to Sell. – A
10 replacement endorsement shall only be obtained from the Morehead City offices of the
11 Division of Marine Fisheries. The Division shall not accept an application for a
12 replacement endorsement unless the Division determines that the applicant's current
13 license has not been suspended or revoked. A copy of an application duly filed with the
14 Division shall serve as the endorsement until the replacement license has been received.

15 (f) Sale of Fish. – It is unlawful for any person licensed under this section to sell
16 fish taken outside the territorial waters of North Carolina or to sell fish taken from coastal
17 fishing waters except to:

18 (1) Fish dealers licensed under G.S. 113-156; or

19 (2) The public, if the seller is also licensed as a fish dealer under G.S. 113-
20 156.

21 (g) Recordkeeping Requirements. – The fish dealer shall record each transaction
22 on a form provided by the Department. The transaction form shall include the
23 information on the endorsement to sell of the seller, the quantity of the fish, the identity
24 of the fish dealer, and such other information as the Division deems necessary to
25 accomplish the purposes of this Subchapter. The person who records the transaction shall
26 provide a completed copy of the transaction form to the Department, and to the other
27 party of the transaction. The Department copy of each transaction from the preceding
28 month shall be transmitted to the Department by the fish dealer on or before the tenth day
29 of the following month.

30 (h) Non-Vessel Endorsement to Sell Nontransferable. —~~An~~A non-vessel
31 endorsement to sell fish issued under this section is nontransferable. It is unlawful to use
32 ~~an a non-vessel~~ endorsement to sell issued to another person in the sale or attempted sale
33 of fish or for a licensee to lend or transfer a license to sell with the following two
34 exceptions: (i) an individual under the age of 16 may sell fish under the license of a
35 relative or guardian; or (ii) a license may be transferred within a single fishing operation
36 if the person to whom it is transferred is a U.S. citizen. It is unlawful for a licensee to
37 lend or transfer a license to sell for the purpose of circumventing the requirements of this
38 section.

39 (h1) Endorsement to Sell Fish of a Vessel License Transferable. – An endorsement
40 to sell fish of a vessel license may be transferred to the purchaser of the vessel upon
41 application to the Division of Marine Fisheries at the Morehead City office of the
42 Division if the purchaser of the vessel is otherwise qualified to hold an endorsement to
43 sell fish of a vessel license.

1 (i) (See note) Penalties. – Any person who violates any provision of this section
2 or any rule by the Marine Fisheries Commission to implement this section is guilty of a
3 misdemeanor.

4 (1) A violation of subsections (a), (f), or (h) or a rule of the Marine
5 Fisheries Commission implementing any of those subsections is
6 punishable as follows:

7 a. For a first conviction or a subsequent conviction not described in
8 subdivision (1)b. or c., a violation is a Class 3 misdemeanor. A
9 fine shall be imposed of not less than fifty dollars (\$50.00) or
10 double the value of the fish which are the subject of the
11 transaction, whichever is greater, not to exceed two hundred fifty
12 dollars (\$250.00).

13 b. For a second conviction within three years, a violation is a Class
14 2 misdemeanor. A fine shall be imposed of not less than two
15 hundred fifty dollars (\$250.00) or double the value of the fish
16 which are the subject of the transaction, whichever is greater, not
17 to exceed five hundred dollars (\$500.00).

18 c. For a third or subsequent conviction within three years, a
19 violation is a Class 2 misdemeanor. A fine shall be imposed of
20 not less than five hundred dollars (\$500.00) or double the value
21 of the fish which are the subject of the transaction, whichever is
22 greater.

23 (2) A violation of any other provision of this section other than subsections
24 (a), (f), or (h), or of any rule of the Marine Fisheries Commission other
25 than a rule implementing subsections (a), (f), or (h) of this section, is
26 punishable under G.S. 113-135(a).

27 (j) Use of Fees. – Fees paid under G.S. 113-152(h) or G.S. 113-154.1 for an
28 endorsement to sell fish shall be applied to the cost of a fisheries data information system
29 that compiles fisheries data obtained from the endorsement program established by G.S.
30 113-152 and this section or to marine fisheries programs or research projects that enhance
31 knowledge and use of marine and estuarine resources."

32 33 **PART VI. MORATORIUM EXTENSION; MISCELLANEOUS** 34 **PROVISIONS; EFFECTIVE DATES** 35

36 Section 6.1. (a) Subsection (a) of Section 3 of Chapter 576 of the 1993 Session
37 Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993
38 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the
39 1995 Session Laws; and Section 7 of Chapter 256 of the 1997 Session Laws, reads as
40 rewritten:

41 "(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the
42 Department shall not issue any new licenses for a period beginning 1 July 1, 1994, 1994
43 and ending June 30, 1997, 1 July 1999 under the following statutes:

- 1 (1) G.S. 113-152. ~~Vessel licenses.~~ Consolidated license for vessels,
2 equipment, and operations; fees.
3 (2) G.S. 113-153.1. ~~Crab license.~~ License.
4 (3) G.S. 113-154. ~~Shellfish license.~~ license.
5 (4) G.S. 113-154.1. ~~Nonvessel endorsements to sell fish.~~ Endorsement to sell
6 fish."

7 (b) It is the intent of the General Assembly that the moratorium imposed by the
8 amendment made by subsection (a) of this section to subdivision (4) of subsection (a) of
9 Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended
10 by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection
11 (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; and Section 7 of Chapter
12 256 of the 1997 Session Laws shall apply to both non-vessel endorsements to sell fish
13 and endorsements to sell fish of vessel licenses.

14 Section 6.2. Subsection (a) of Section 3 of Chapter 576 of the 1993 Session
15 Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993
16 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the
17 1995 Session Laws; Section 7 of Chapter 256 of the 1997 Session Laws; and subsection
18 (a) of Section 6.1 of this act, reads as rewritten:

19 "(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the
20 Department shall not issue any new licenses for a period beginning 1 July 1994 and
21 ending 1 July ~~1999-2000~~ under the following statutes:

- 22 (1) ~~G.S. 113-152. Consolidated license for vessels, equipment, and~~
23 ~~operations; fees.~~
24 (2) ~~G.S. 113-153.1.~~ 113-168.9, Crab license.
25 (3) ~~G.S. 113-154. Shellfish license.~~
26 (4) ~~G.S. 113-154.1. Endorsement to sell fish."~~

27 Section 6.3. (a) Part 5A of Article 7 of Chapter 143B of the General Statutes is
28 repealed, except that G.S. 143B-289.19 is not repealed but is recodified as G.S. 143B-
29 289.40 within Part 5C of Article 7 of Chapter 143B of the General Statutes and reads as
30 rewritten:

31 "**§ 143B-creation.**

32 ~~There~~ The Office of Marine Affairs is created in the Department of ~~Administration~~ the
33 ~~Office of Marine Affairs.~~ Environment, Health, and Natural Resources."

34 (b) Part 5B of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-
35 289.20 through G.S. 143B-289.22) is recodified as Part 5C of Article 7 of Chapter 143B
36 of the General Statutes (G.S. 143B-289.41 through G.S. 143B-289.43).

37 (c) G.S. 143B-289.40(a)(1b)g., as recodified by subsection (a) of this section,
38 reads as rewritten:

- 39 "g. Create local advisory committees in accordance with the
40 provisions of G.S. ~~143B-289.22.~~ 143B-289.42."

41 Section 6.4. The records, personnel, property, unexpended balances of
42 appropriations, allocations, and other funds, including the functions of budgeting and
43 purchasing, heretofore vested in the Marine Fisheries Commission created under Part 5A

1 of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of this act,
2 are transferred to the Marine Fisheries Commission created under Part 5B of Article 7 of
3 Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act. All rules,
4 decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries
5 Commission created under Part 5 of Article 7 of Chapter 143B of the General Statutes,
6 repealed by Section 1 of Chapter 641 of the 1987 Session Laws, and all rules, decisions,
7 and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission
8 created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by
9 Section 6.2 of this act, that have not been heretofore repealed or rescinded shall continue
10 in effect until repealed or rescinded by the Marine Fisheries Commission created under
11 Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of
12 this act.

13 Section 6.5. In order to establish a schedule of staggered terms of three years
14 for the Marine Fisheries Commission, the terms of members of the Commission initially
15 filling positions established by subdivisions (1), (2), and (3) of subsection (a) of G.S.
16 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is
17 appointed and duly qualified and shall expire on 30 June 2001; the terms of members of
18 the Commission initially filling positions established by subdivisions (4), (5), and (6) of
19 subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on
20 the date the member is appointed and duly qualified and shall expire on 30 June 2000; the
21 terms of members of the Commission initially filling positions established by
22 subdivisions (7), (8), and (9) of subsection (a) of G.S. 143B-289.24, as enacted by
23 Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified
24 and shall expire on 30 June 1999.

25 Section 6.6. G.S. 113-182(b) reads as rewritten:

26 "(b) The Marine Fisheries Commission is authorized to authorize, regulate,
27 prohibit, prescribe, or restrict and the Department is authorized to license:

- 28 (1) The opening and closing of coastal fishing waters, except as to inland
29 game fish, whether entirely or only as to the taking of particular classes
30 of fish, use of particular equipment, or as to other activities within the
31 jurisdiction of the Department; and
- 32 (2) The possession, cultivation, transportation, importation, exportation,
33 sale, purchase, acquisition, and disposition of all marine and estuarine
34 resources and all related equipment, implements, vessels, and
35 conveyances as necessary to implement the work of the Department in
36 carrying out its duties.
- 37 (3) The possession, transportation, importation, exportation, sale, purchase,
38 acquisition, and disposition of all fish taken in the Atlantic Ocean out to
39 a distance of 200 miles from the State's mean low watermark, consistent
40 with the Magnuson Fishery Conservation and Management Act, 16
41 U.S.C. § 1801, et seq., as amended. ~~when the harvest or landing of the fish~~
42 ~~is controlled by a quota imposed on the State by a federal fisheries~~
43 ~~management plan."~~

1 Section 6.7. G.S. 113-190, as enacted by Section 2 of Chapter 633 of the 1995
2 Session Laws (1996 Regular Session), is recodified as G.S. 113-200.

3 Section 6.8. All of the Coastal Habitat Protection Plans required by G.S.
4 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than 1 July
5 2003. The Coastal Resources Commission, the Environmental Management
6 Commission, and the Marine Fisheries Commission shall make the first report on
7 progress in developing and implementing Coastal Habitat Protection Plans, as required by
8 G.S. 143B-279.8(d), as enacted by Section 3.1 of this act, on or before 1 September 1999.
9 The Secretary of Environment, Health, and Natural Resources shall make the first report
10 on progress in developing and implementing Fishery Management Plans, as required by
11 G.S. 113-182.1(f), as enacted by Section 3.4 of this act, on or before 1 September 1999.

12 Section 6.9. The Joint Legislative Commission on Seafood and Aquaculture
13 shall study the establishment of a comprehensive State program to acquire, preserve, and
14 restore habitats critical to marine and estuarine fisheries. The Joint Legislative
15 Commission on Seafood and Aquaculture shall report its findings and recommendations,
16 if any, to the 1998 Regular Session of the 1997 General Assembly.

17 Section 6.10. This act constitutes a recent act of the General Assembly within
18 the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized
19 to adopt rules to implement the provisions of this act may adopt temporary rules to
20 implement the provisions of this act. This section shall continue in effect until all rules
21 necessary to implement the provisions of this act have become effective as either
22 temporary rules or permanent rules.

23 Section 6.11. The Marine Fisheries Commission may adopt temporary rules to
24 implement or comply with a fisheries management plan adopted by the Atlantic States
25 Marine Fisheries Commission or an interstate fisheries management council.

26 Section 6.12. The headings to the Parts of this act are a convenience to the
27 reader and are for reference only. The headings do not expand, limit, or define the text of
28 this act.

29 Section 6.13. If any section or provision of this act is declared unconstitutional
30 or invalid by the courts, the unconstitutional or invalid section or provision does not
31 affect the validity of this act as a whole or any part of this act other than the part declared
32 to be unconstitutional or invalid.

33 Section 6.14. Section 3 of Chapter 547 of the 1995 Session Laws, Regular
34 Session 1996, as amended by subsection (b) of Section 1 of Chapter 633 of the 1995
35 Session Laws, Regular Session 1996, and Section 27.33 of Chapter 18 of the 1996
36 Session Laws, Second Extra Session, and Section 12 of Chapter 256 of the 1997 Session
37 Laws, reads as rewritten:

38 "Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation
39 leases shall be imposed in the remaining area of Core Sound not described in Section 1 of
40 this act. During the moratorium, a comprehensive study of the shellfish lease program
41 shall be conducted. The moratorium established under this section covers that part of
42 Core Sound bounded by a line beginning at a point on Cedar Island at 35°00'39"N -
43 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N - 76°12'42"W,

1 thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at 34°43'30"N -
2 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at 34°37'24"N -
3 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N - 76°31'12"W,
4 thence following the shoreline in a northerly direction to the point of beginning except
5 that the highway bridges at Salters Creek, Thorofare Bay, and the Rumley Bay ditch shall
6 be considered shoreline. The moratorium shall expire ~~August 1, 1997~~ 1 July 1998."

7 Section 6.15. Sections 1.1, 5.8, 6.7, 6.9, 6.10, 6.12, 6.13, and 6.15 of this act
8 are effective when this act becomes law. Sections 2.1, 4.4, 5.3, 6.3, 6.4, 6.5, 6.6, and
9 6.11 of this act become effective 1 September 1997. Sections 4.1 through 4.3 of this act
10 become effective 1 September 1997 and apply to violations and offenses on or after 1
11 September 1997. Section 1.2 of this act is effective retroactively as of 1 March 1997.
12 Sections 6.1 and 6.10 of this act become effective 31 July 1997. Section 6.14 of this act
13 becomes effective 1 August 1997. Sections 3.1, 3.2, 3.3, 3.4, 3.5, 5.5, and 6.8 of this act
14 become effective 1 July 1998. Sections 5.1, 5.2, 5.4, 5.6, 5.9, and 6.2 of this act become
15 effective 1 July 1999. Section 5.6 of this act expires 1 July 2000. Section 5.7 of this act
16 becomes effective 1 July 2000. Sections 5.1 and 5.2 of this act expire 1 September 2003.