

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 545
SENATE BILL 809

AN ACT TO PROVIDE THAT FISHERIES LICENSES BE ISSUED ON A FISCAL YEAR BASIS, INCREASE THE FEE FOR A LICENSE, AND PROVIDE THAT LICENSE AGENTS BE BONDED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-152 reads as rewritten:

"§ 113-152. Licensing of vessels, equipment and operations; fees.

(a) The following vessels are subject to the licensing requirements of this section:

- (1) All vessels engaged in commercial fishing operations in coastal fishing waters;
- (2) All North Carolina vessels engaged in commercial fishing operations without the State which result in landing and selling fish in North Carolina. North Carolina vessels are those which have their primary situs in North Carolina. Motorboats with North Carolina numbers under the provisions of Chapter 75A of the General Statutes are deemed to have their primary situs in North Carolina: documented vessels which list a North Carolina port as home port are deemed to have their primary situs in North Carolina; and
- (3) All nonresident vessels engaged in commercial fishing operations within the State or engaged in commercial fishing operations without the State that result in landing and selling fish in North Carolina.

'Commercial fishing operations' are all operations preparatory to, during, and subsequent to the taking of fish:

- (1) With the use of commercial fishing equipment; or
- (2) By any means, if a primary purpose of the taking is to sell the fish.

Commercial fishing operations also includes taking people fishing for hire.

It is unlawful for the owner of a vessel subject to licensing requirements to permit it to engage in commercial fishing operations without having first procured the appropriate licenses including vessel, gear, or other license required by the Commission. It is unlawful for anyone to command such a vessel engaged in commercial fishing operations without complying with the provisions of this section and of rules made under the authority of this Article. It is unlawful for anyone to command such a vessel engaged in commercial fishing operations that does not meet the license requirements of this Article or of rules made under the authority of the Article, or without making reasonably certain that all persons on board are in compliance with the provisions of this

Article and rules made under the authority of this Article. It is unlawful to participate in any commercial fishing operation in connection with which there is a vessel subject to licensing requirements not meeting the licensing requirements under the provisions of this Article or of rules made under the authority of this Article.

Nothing in this section shall require the licensing of any vessel used solely for oystering, scalloping, or clamming by a person not required to have an oyster, scallop, and clam license under the provisions of G.S. 113-154. Spears or gigs shall not be deemed commercial fishing equipment unless used in an operation the purpose of which is the taking of fish for commercial purposes.

(b) Any license that may be required by this section is to be issued in the name of the owner of the vessel. It is unlawful for the individual or corporate owner of a licensed vessel or any persons with the authority to authorize the use of a licensed vessel to permit any individual who is not eligible to have the license issued to him in his own right to command such licensed vessel for the purpose of engaging in commercial fishing operations. It is unlawful for such an ineligible person to command a licensed vessel for such purposes. The license application for a menhaden vessel must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Secretary within 30 days. Upon change in ownership of any licensed vessel, the new owner must notify the Secretary within 30 days. The Marine Fisheries Commission may provide by rule for the replacement of lost, obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the original license receipt or upon other evidence that the Marine Fisheries Commission deems sufficient. The Department may charge a fee of fifty cents (50¢) for replacement of a plate or decal.

(c) Licenses are issued ~~annually~~ upon a ~~calendar-year~~ fiscal year basis for vessels of various lengths (length measured straight through the cabin and along the deck, from end to end, excluding the sheer) and types as follows for the fees indicated:

- (1) Vessels, without motors, regardless of length when used in connection with other licensed vessels, no license required.
- (2) Vessels with or without motors not over 18 feet in length, one dollar (\$1.00) per foot.
- (3) Vessels with or without motors over 18 feet but not over 38 feet in length, one dollar and fifty cents (\$1.50) per foot.
- (4) Vessels with or without motors over 38 feet in length, three dollars (\$3.00) per foot.
- (4a) Vessels owned by persons who are not residents of North Carolina, two hundred dollars (\$200.00) or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater, in addition to the fee requirement otherwise applicable under this subsection or subsection (d).
- (5) Vessels engaged in menhaden fishing shall be taxed, based on tonnage, as prescribed in subsection (d).

- (6) Vessels engaged in commercial fishing operations for which the Commission requires a gear or equipment license shall be subject to fees as prescribed in subsection (g).

~~Length is measured from end to end over the deck excluding sheer.~~

(d) Vessels engaging in menhaden fishing are subject to the following license and fee requirements:

- (1) For the mother ship, two dollars (\$2.00) per ton, gross tonnage, customhouse measurements.
- (2) For each purse boat carrying a purse seine used in connection with a licensed mother ship, no license required.
- (3) Repealed by Session Laws 1983, c. 570, s. 6, effective January 1, 1984.

(e) All licenses in this Article issued during the period January 1, 1992, through June 30, 1992, are subject to fifty percent (50%) of the full license fee regardless of when issued and expire on June 30, 1992. Unless otherwise indicated, Beginning July 1, 1992, all licenses in this Article expire on December 31-June 30 of each year and are subject to the full license fee regardless of when issued. issued unless otherwise indicated. Unless a nonresident vessel is eligible for a land and sell license pursuant to G.S. 113-153, nonresident licenses may not be obtained from license agents and shall be obtained from the Morehead City offices of Marine Fisheries. Applications, including license fees, must be submitted by nonresidents and received by the Division at least 45 days prior to issuance of a license during which period it shall be ascertained whether the applicant would be denied a license under the standards in G.S. 113-166.

Nonresidents obtaining licenses must certify that their conviction record in their state of residence is such that they would not be denied a license under the standards in G.S. 113-166. When a license application is denied for violations of fisheries laws, whether the violations occurred in North Carolina or another jurisdiction, the license fees shall not be refunded and shall be applied to the costs of processing the application.

(f) No person exempt from the oyster, scallop, and clam license under the provisions of this Article may take more than:

- (1) One bushel of oysters per person per day, not to exceed two bushels per vessel per day;
- (2) One-half bushel of scallops per person per day, not to exceed one bushel per vessel; and
- (3) One hundred clams per person per day, not to exceed two hundred per vessel per day.

(g) Gear or equipment licenses shall be issued upon the payment of fees as prescribed by the Commission in its duly adopted rules at a rate to be established by the Commission between twenty-five dollars (\$25.00) and five hundred dollars (\$500.00) per license. The fee rate for gear or equipment licenses, at a minimum, shall be adequate to compensate the Department for the actual and administrative cost associated with the conservation and management of the fishery. Gear or equipment licenses may be required for commercial fishing operations that do not involve the use of a vessel."

Sec. 2. G.S. 113-154(c) reads as rewritten:

"(c) Oyster, scallop, and clam licenses are issued ~~annually on a calendar year~~ on a fiscal year basis upon payment of a fee of four dollars (\$4.00) upon proof that the license applicant is a resident of North Carolina: Provided, that persons under 16 years of age are exempt from the license requirements of this section if they are accompanied by their parent or guardian who is in compliance with the requirements of this section or if they have in their possession their parent's or guardian's oyster, scallop, and clam license."

Sec. 3. G.S. 113-156(d) reads as rewritten:

"(d) Every fish dealer subject to the licensing provisions of this section must secure a separate license or set of licenses for each established location. Where a dealer does not have an established location for transacting the fisheries business within the State, the license application must 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 tax requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a ~~calendar year~~ fiscal year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Secretary, that the license applicant is a resident of North Carolina."

Sec. 4. G.S. 113-167(a) reads as rewritten:

"(a) License. – Before an aircraft is used as a spotter plane in a commercial fishing operation, the owner of the aircraft must obtain a license for the aircraft from the Marine Fisheries Commission. A 'spotter plane' is an aircraft used for aerial identification of the location of fish in coastal waters so that a vessel may be directed to the fish. A license for a spotter plane to be used in a commercial fishing operation ~~must be renewed annually on or before January 1 of each year~~ is issued on a fiscal year basis upon payment of a fee of one hundred dollars (\$100.00). ~~The fee for an initial license for a spotter plane or the renewal of a license is one hundred dollars (\$100.00).~~

In an application for a license for a spotter plane, the applicant must identify, either by boat or by company, the specific commercial fishing operations in which the spotter plane will be used during the license year. A license application may be amended during a license year to add a commercial fishing operation not identified in the license application."

Sec. 5. G.S. 113-151.1 reads as rewritten:

"§ 113-151.1. License agents.

(a) The Secretary shall commission such persons as in his discretion he deems necessary to be license agents for the Department; provided, that at least one such license agent shall be appointed in each county which contains or borders on coastal fishing waters. Such agents together with the Department shall have the authority and duty to sell all licenses provided for by this Article. The Secretary may require license agents to post bonds and enter into contracts for keeping records, making reports concerning licenses and receipts, and be subject to necessary audits and inspections. Upon any violation by a license agent of the requirements of this section or any contract entered into under the terms of this section, the Secretary may initiate proceedings for the forfeiture of the license agent's bond and may summarily suspend, revoke, or refuse

to renew a person's commission as a license agent pursuant to G.S. 150B-3, and impound or require the return of all licenses, moneys, record books, reports, license forms and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency. The Secretary shall report evidence or misuse of State property, including license fees, by a license agent to the State Bureau of Investigation as provided by G.S. 114-15.1.

(b) License agents shall be compensated by ~~retaining fifty cents (50¢) from adding a surcharge of one dollar (\$1.00) to each license sold.~~ retaining the one dollar (\$1.00) surcharge. If more than one license is listed on a consolidated license form, the license agent shall be compensated as if a single license were sold. sold and he shall retain fifty cents (50¢).—It is unlawful for a license agent to add more than the surcharge authorized by this section to the fee for each license sold."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives