

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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1

HOUSE BILL 375

Short Title: Fisheries Reform Act.

(Public)

Sponsors: Representatives Redwine, Reynolds (Cosponsors); Sutton and Hackney.

Referred to: Environment, if favorable, Finance.

March 3, 1997

A BILL TO BE ENTITLED

1
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 some of the most diverse fisheries in the United States; and

5 Whereas, the General Assembly recognizes the importance of the traditional
6 full-time and part-time commercial fishermen, both from a perspective of protecting a
7 strong heritage, as well as the importance of the commercial fishing industry to the State's
8 economy; and

9 Whereas, the General Assembly recognizes the importance of providing
10 plentiful fishery resources to continue the State's strong attraction for tourism and for the
11 recreational fishing community; and

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

15 The General Assembly of North Carolina enacts:

16 Section 1. This act shall be referred to as the "Fisheries Reform Act of 1997".
17

18 **PART I. COASTAL FISHING LICENSES; FUND**

1
2 Section 2. Article 14 of Chapter 113 of the General Statutes is repealed.

3 Section 3. Chapter 113 of the General Statutes is amended by adding a new
4 Article to read:

5 "ARTICLE 14A.

6 "Commercial and Recreational Fishing Licenses.

7
8 "Part 1. Commercial Fishing Licenses.

9 **"§ 113-168. Definitions. – The following definitions shall apply to this Article.**

10 (1) 'Commercial fishing operations' means all operations preparatory to,
11 during, and subsequent to the taking of fish under the authority of the
12 Marine Fisheries Commission: (i) with the use of commercial fishing
13 equipment; or (ii) by any means, if a primary purpose of the taking is to
14 sell fish.

15 (2) 'North Carolina resident' means a person who, upon application for a
16 resident license under this Article, presents a statement from the North
17 Carolina Department of Revenue indicating that the applicant filed a
18 North Carolina income tax form as a resident for the previous calendar
19 year. It is unlawful to possess a currently valid North Carolina resident
20 license authorized under this Article and a currently valid resident
21 fishing license of another state.

22 **"§ 113-168.1. General provisions for commercial licenses.**

23 (a) Duration. – All licenses in this Part expire on June 30 of each year and are
24 subject to the full license fee regardless of when issued unless otherwise indicated. All
25 license and endorsement fees are due upon receipt of the application.

26 (b) Licenses Required to Engage in Commercial Fishing. – It is unlawful for the
27 licensee under this Part to engage in commercial fishing operations without having first
28 procured the appropriate licenses and endorsements required by the Commission. It is
29 unlawful for anyone to command such a vessel engaged in commercial fishing operations
30 without complying with the provisions of this section and of rules made under the
31 authority of this Article.

32 (c) Licenses and Endorsements Available for Inspection. – It is unlawful for any
33 person to engage in a commercial fishing operation in North Carolina without having
34 ready at hand for inspection all current and valid licenses and endorsements required
35 under this Part issued to the licensee personally and bearing the licensee's correct name
36 and address or a current and valid assignment of the Standard Commercial Fishing
37 License authorized under this Part. A licensee or assignee shall not refuse to exhibit the
38 licenses and endorsements upon the request of an officer authorized to enforce the fishing
39 laws.

40 **"§ 113-168.2. Standard Commercial Fishing License.**

41 (a) Eligibility; Establishment of Temporary Cap. – The Standard Commercial
42 Fishing License (SCFL) shall be issued in the name of the individual and shall be
43 required for any person who harvests, lands, or sells fish from the coastal fishing waters

1 of North Carolina. Any person who previously held one or more endorsements to sell
2 under G.S. 113-154.1 shall be eligible to purchase and renew the same number of SCFL's
3 equal to the number of endorsements to sell held by the individual. The Commission
4 shall establish an initial temporary cap equal to the total number of eligible licensees until
5 all fishery management plans have been completed pursuant to G.S. 113-189.

6 (b) Establishment of Pool of Licenses. – The Commission shall make available a
7 number of licenses for those individuals who desire a SCFL, but who are not eligible to
8 purchase a SCFL under subsection (a) of this section. The licenses shall be distributed by
9 a lottery on an annual basis. The initial pool shall equal 500 licenses. The Commission
10 shall adjust the number of available licenses in subsequent years based on the total
11 number of SCFL's and the temporary cap.

12 (c) Purchase; Renewal. – An individual may purchase a SCFL at any of the offices
13 of the Division of Marine Fisheries. The SCFL and endorsements may be renewed by
14 mail by forwarding a completed application, including applicable fees to the Division of
15 Marine Fisheries, Morehead City office. Any person who purchased a SCFL or a Retired
16 CFL under subsection (a) or (b) of this section, or any person for whom an appeal on the
17 SCFL or Retired CFL was granted, shall be eligible to renew the license and
18 endorsements.

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

29 (e) Nonresident Certification Required. – Nonresidents obtaining licenses shall
30 certify that their conviction record in their state of residence is such that they would not
31 be denied a license under the standards in G.S. 113-170.6. When a license application is
32 denied for violations of fisheries laws, whether the violations occurred in North Carolina
33 or another jurisdiction, the license fees shall not be refunded and shall be applied to the
34 costs of processing the application.

35 (f) Fees. – The annual SCFL fee for a North Carolina resident shall be two
36 hundred fifty dollars (\$250.00). The annual SCFL fee for a nonresident shall be two
37 thousand five hundred dollars (\$2,500) or the amount charged to a North Carolina
38 resident in the nonresident's state, whichever is lesser.

39 (g) Assignment. – The holder of a SCFL may assign the SCFL to any individual,
40 provided that the individual does not have a suspended or revoked SCFL. The
41 assignment shall be in writing in a form designed by the Division and shall include the
42 name of the licensee, the license number, any endorsements, the assignee's name and
43 mailing address, and the duration of the assignment. The assignment shall only be valid

1 while the assignee uses the vessel for which an endorsement is noted on the license and
2 shall be kept physically on the assignee and available for inspection at all times while
3 using the vessel. If a SCFL holder has more than one vessel endorsement on the SCFL,
4 only one vessel may be used at a time by either the licensee or the assignee. The
5 assignment may be revoked by: (i) written notification by the assignor that the
6 assignment has been terminated; or (ii) a determination by the Division that the assignee
7 is operating beyond the terms and conditions applicable to any assignment.

8 (h) Transferability. – The holder of a SCFL may transfer the SCFL under the
9 following circumstances:

- 10 (1) From the license holder to a member of the immediate family;
- 11 (2) Upon the death of the license holder, by the State to a surviving family
12 member;
- 13 (3) Upon the death of the license holder, by a surviving family member to a
14 third-party purchaser of the decedent's fishing vessel;
- 15 (4) Upon retirement from commercial fishing, from the license holder to a
16 third-party purchaser of the licensee's fishing vessel, provided that the
17 purchaser would be limited to the same or similar amount of gear as the
18 license holder; or
- 19 (5) Any other circumstance authorized by rule of the Commission.

20 (i) Identification as Commercial Fisherman. – The receipt of a current and valid
21 SCFL issued pursuant to G.S. 113-168.2 by the Department shall serve as proper
22 identification of the licensee as a commercial fisherman.

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

32 (k) Permanent Appeals Panel Established. – There is established a permanent
33 three-member Appeals Panel comprised of the Director of the Division or designee, the
34 Chair of the Marine Fisheries Commission or designee, and a commercial fisherman
35 selected jointly by the Director and the Chair. The Appeals Panel shall review appeals for
36 individuals for whom the SCFL or the Retired CFL was denied. Appeals of licenses that
37 have been denied shall be granted or denied based on criteria adopted by the
38 Commission.

39 **"§ 113-168.3. Retired Standard Commercial Fishing License.**

40 (a) SCFL Provisions Applicable. – Except as provided below, the provisions set
41 forth in G.S. 113-168.2 concerning the SCFL shall apply to the Retired SCFL.

42 (b) Eligibility; Fee. – Any person who is 65 years of age or older and who is
43 otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a Retired SCFL for an

1 annual fee of one hundred dollars (\$100.00). Proof of age shall be supplied at the time
2 the application is made.

3 (c) Transferability. – The holder of a SCFL may transfer the SCFL as provided in
4 G.S. 113-168.2. If the third party purchaser is less than 65 years of age, that purchaser
5 shall pay the fee for the SCFL set forth in G.S. 113-168.2.

6 (d) Assignability. – The Retired SCFL shall not be assignable.

7 **"§ 113-168.4. Regulations concerning the sale of fish.**

8 (a) Except as otherwise provided in this section, it is unlawful for any person who
9 takes or lands any species of fish under the authority of the Marine Fisheries Commission
10 from coastal fishing waters by any means whatever, including mariculture operations, to
11 sell, offer for sale, barter or exchange for merchandise such fish, without having first
12 procured a current and valid SCFL or Retired SCFL issued under G.S. 113-168.2 or G.S.
13 113-168.3, a valid Shellfish License issued under G.S. 113-169.2, or a valid Mariculture
14 License issued under G.S. 113-210. It is unlawful for fish dealers to buy fish unless the
15 seller presents a current and valid SCFL or Retired SCFL, Shellfish License, or
16 Mariculture License at the time of the transaction. Any subsequent sale of fish shall be
17 subject to the licensing requirements of fish dealers under G.S. 113-169.3.

18 (b) It is unlawful for any person licensed under this section to sell fish taken
19 outside the territorial waters of North Carolina or to sell fish taken from coastal fishing
20 waters except to:

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

22 (2) The public, if the seller is also licensed as a fish dealer under G.S. 113-
23 169.3.

24 (c) Any person who held an endorsement to sell under G.S. 113-154.1, and who
25 was authorized to sell fish taken in a recreational fishing tournament, may obtain a
26 Special Fisheries Sale Permit for a fee of one hundred dollars (\$100.00) upon application
27 to the Division of Marine Fisheries. After January 1, 2001, it shall be unlawful to sell
28 fish taken in a recreational fishing tournament.

29 **"§ 113-168.5. License endorsements for Standard Commercial Fishing License;**
30 **Retired Standard Commercial Fishing License.**

31 The following endorsements may be purchased in addition to the SCFL or Retired
32 SCFL issued under this Article.

33 (a) Vessel Endorsements. – It is unlawful to participate in any commercial fishing
34 operation in connection with which there is a vessel subject to licensing requirements not
35 meeting the licensing requirements under the provisions of this Article or of rules made
36 under the authority of this Article.

37 (1) The following vessels shall be subject to the vessel endorsement
38 requirements of this section:

39 a. All vessels engaged in commercial fishing operations in coastal
40 fishing waters;

41 b. All North Carolina vessels engaged in commercial fishing
42 operations without the State which result in landing fish in North
43 Carolina. North Carolina vessels are those which have their

1 primary situs in North Carolina. Motorboats with North Carolina
2 numbers under the provisions of Chapter 75A of the General
3 Statutes are deemed to have their primary situs in North
4 Carolina: documented vessels which list a North Carolina
5 address on the U.S. Coast Guard documentation and list a North
6 Carolina port as home port are deemed to have their primary situs
7 in North Carolina; and

8 c. All nonresident vessels engaged in commercial fishing operations
9 within the State.

10 (2) Vessel endorsement fees shall be in addition to the SCFL or Retired
11 CFL established under this Article. Vessel endorsements shall be issued
12 upon a fiscal year basis for vessels of various lengths (length measured
13 straight through the cabin and along the deck, from end to end,
14 excluding the sheer) and types as follows:

15 a. Vessels, without motors, regardless of length when used in
16 connection with other licensed vessels, no license required.

17 b. Vessels with or without motors not over 18 feet in length, one
18 dollar (\$1.00) per foot.

19 c. Vessels with or without motors over 18 feet but not over 38 feet
20 in length, one dollar and fifty cents (\$1.50) per foot.

21 d. Vessels with or without motors over 38 feet in length, three
22 dollars (\$3.00) per foot.

23 e. Vessels engaged in menhaden fishing, two dollars (\$2.00) per
24 ton, gross tonnage, custom house measurements for the mother
25 ship. The menhaden endorsement shall be required for the
26 mother ship to harvest, land, or sell menhaden in North Carolina
27 taken by purse seine. No separate endorsement shall be required
28 for a purse boat carrying a purse seine. The application for a
29 menhaden endorsement must state the name of the person in
30 command of the vessel. Upon change in command of a
31 menhaden vessel, the owner must notify the Division in writing
32 within 30 days.

33 (3) Upon transfer of ownership of a vessel bearing a vessel endorsement, a
34 vessel endorsement may be transferred from the previous owner to the
35 new owner within 30 days if the new owner is the holder of a SCFL or a
36 Retired CFL under this Part. The transfer shall be documented on a
37 form provided by the Morehead City Office of the Division of Marine
38 Fisheries and shall include proof that the vessel ownership has been
39 transferred to the new owner. Proof may include a notarized bill of sale
40 or a temporary vessel registration or documentation transfer.

41 (b) Shellfish Endorsement for Residents. – A resident shall obtain a shellfish
42 endorsement on the SCFL at no additional charge to harvest and sell shellfish in North
43 Carolina.

1 **"§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.**

2 A nonresident who is not eligible for a SCFL under this Article, and who only seeks
3 to engage in menhaden fishing shall be eligible to purchase a menhaden license for
4 nonresidents. The fee for vessels engaged in menhaden fishing shall be two dollars
5 (\$2.00) per ton, gross tonnage, customhouse measurements for the mother ship. The
6 menhaden license shall be required for the mother ship to harvest, land, or sell menhaden
7 in North Carolina taken by purse seine. No separate endorsement shall be required for a
8 purse boat carrying a purse seine. The application for a menhaden license must state the
9 name of the person in command of the vessel. Upon change in command of a menhaden
10 vessel, the owner must notify the Division within 30 days.

11 **§ 113-169.1. Other commercial licenses and permits authorized by the Commission.**

12 (a) The Commission may adopt rules to establish licenses or permits as set forth in
13 this section. Licenses or permits shall be issued upon the payment of fees as prescribed
14 by the Commission in its duly adopted rules at a rate to be established by the
15 Commission. The fee rate for licenses or permits authorized under this section shall, at a
16 minimum, be adequate to compensate the Division for the actual and administrative cost
17 associated with the conservation and management of the fishery.

18 (1) Crew Licenses. – The Commission may adopt rules to establish an
19 individual crew license for persons working on commercial vessels at a
20 rate not to exceed one hundred dollars (\$100.00) per license.

21 (2) Permits. – The Commission may adopt rules to establish permits for
22 specialized activities at a rate not to exceed fifty dollars (\$50.00) per
23 permit.

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

25 (a) License or Endorsement Necessary to Harvest or Sell Shellfish. – It is
26 unlawful for an individual to take shellfish from the public grounds of North Carolina by
27 mechanical means or for commercial use by any means without having first procured
28 either a SCFL with a shellfish endorsement or an individual shellfish license. An
29 individual who takes shellfish from private grounds shall purchase a coastal mariculture
30 license under G.S. 113-210. A North Carolina resident who seeks only to harvest and sell
31 shellfish shall be eligible to purchase a shellfish license without having first obtained a
32 SCFL. The license includes the privilege to sell shellfish to a licensed fish dealer.

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

39 (c) License Available for Inspection. – It is unlawful for any individual to take
40 shellfish for commercial use from the public grounds of North Carolina without having
41 ready at hand for inspection a current and valid shellfish license issued to the licensee
42 personally and bearing the licensee's correct name and address. It is unlawful for any

1 such individual taking or possessing freshly taken shellfish to refuse to exhibit the
2 individual's license upon the request of an officer authorized to enforce the fishing laws.

3 (d) Vessel Endorsement Required. – A license holder under this section shall be
4 required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the
5 harvest or sale of shellfish.

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

11 (f) Transferability Not Allowed. – It is unlawful for an individual issued a
12 shellfish license to transfer or offer to transfer the license, either temporarily or
13 permanently, to another. It is unlawful for an individual to secure or attempt to secure a
14 shellfish license from a source not authorized by the Marine Fisheries Commission.

15 **§ 113-169.3. Licenses for fish dealers.**

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

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

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

36 (1) To buy fish for resale from any person involved in a commercial fishing
37 operation that takes any species of fish from coastal fishing waters. For
38 purposes of this subdivision, a retailer who purchases fish from a fish
39 dealer shall not be liable if the fish dealer has not complied with the
40 licensing requirements of this section;

41 (2) To sell fish to the public; or

42 (3) To sell to the public any species of fish under the authority of the
43 Commission taken from coastal fishing waters.

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

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

10 (1) The fish are sold by persons whose dealings in fish are primarily
11 educational, scientific, or official, and who have been issued a permit by
12 the Division that authorizes the educational, scientific, or official agency
13 to sell fish harvested or processed in connection with research or
14 demonstration projects;

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

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

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

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

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

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

27 (1) Dealing in oysters: \$100.00;

28 (2) Dealing in scallops: \$100.00;

29 (3) Dealing in clams: \$100.00;

30 (4) Dealing in hard or soft crabs: \$100.00;

31 (5) Dealing in shrimp, including bait: \$100.00;

32 (6) Dealing in finfish, including bait: \$100.00; or

33 (7) Consolidated license (all categories): \$600.00.

34 Any person subject to fish dealer licensing requirements who deals in fish not
35 included in the above categories shall secure a finfish dealer license. The Marine
36 Fisheries Commission may make reasonable rules implementing and clarifying the dealer
37 categories of this subsection. Bait operations shall be licensed under either the finfish or
38 shrimp dealer license categories.

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

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

6 (i) Purchase and Sale of Fish. – It is unlawful for a fish dealer to buy fish unless
7 the seller possesses a current and valid SCFL or Retired CFL and the dealer records the
8 transaction consistent with the recording requirements of G.S. 113-168.2(j). It is
9 unlawful for a fish dealer to possess or sell fish taken from coastal fishing waters in
10 violation of this Subchapter or the rules adopted by the Commission implementing this
11 Subchapter.

12 (j) License Nontransferable. – Any fish dealer license issued under this section is
13 nontransferable. It is unlawful to use a fish dealer license issued to another person in the
14 sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for
15 the purpose of circumventing the requirements of this section.

16 **"§ 113-169.4. Licensing of ocean fishing piers; fees.**

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

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

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

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

31 **"§ 113-169.5. Land or sell license; vessels fishing beyond territorial waters.**

32 (a) Persons aboard vessels not having their primary situs in North Carolina which
33 are carrying a cargo of fish taken outside the waters of North Carolina may land or sell
34 their catch in North Carolina by purchasing a land or sell license as set forth in this
35 section with respect to the vessel in question. The Commission may by rule modify the
36 land or sell licensing procedure in order to devise an efficient and convenient procedure
37 for licensing out-of-state vessels to only land, or after landing to permit sale of cargo.

38 (b) The fee for a land or sell license for a vessel owned by a person who is not a
39 resident of North Carolina is two hundred dollars (\$200.00), or an amount equal to the
40 nonresident fee charged by the nonresident's state, whichever is greater. Persons aboard
41 vessels having a primary situs in a jurisdiction that would allow North Carolina vessels
42 without restriction to land or sell their catch, taken outside such jurisdiction, may land or

1 sell their catch in North Carolina without complying with this section if such persons are
2 in possession of a valid license from their state of residence.

3 **"§ 113-170. Exportation and importation of fish and equipment.**

4 The Commission may make reasonable rules governing the importation and
5 exportation of fish, and equipment that may be used in taking or processing fish, as
6 necessary to enhance the conservation of marine and estuarine resources of North
7 Carolina. Such rules may regulate, license, prohibit, or restrict importation into the State
8 and exportation from the State of any and all species of fish which are native to coastal
9 fishing waters or which may thrive if introduced into such waters.

10 **"§ 113-170.1. Nonresidents reciprocal agreements.**

11 Persons who are not residents of North Carolina are not entitled to obtain licenses
12 under the provisions of this Part except as hereinafter provided. Residents of jurisdictions
13 which sell commercial fishing licenses to North Carolina residents are entitled to North
14 Carolina commercial fishing licenses under the provisions of G.S. 113-168.2. Licenses
15 may be restricted in terms of area, gear, and fishery by the Commission so that the
16 nonresidents are licensed to engage in North Carolina fisheries on the same or similar
17 terms that North Carolina residents can be licensed to engage in the fisheries of other
18 jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions
19 as necessary to allow nonresidents to obtain commercial fishing licenses in North
20 Carolina subject to the foregoing provisions.

21 **"§ 113-170.2. Fraud or deception as to licenses, permits, or records.**

22 (a) It is unlawful for any person to give any false information or willfully to omit
23 giving required information to the Division or any license agent when the information is
24 material to the securing of any license or permit under this Article. It is unlawful to
25 falsify, fraudulently alter, or counterfeit any license, permit, identification, or record to
26 which this Article applies or otherwise practice any fraud or deception designed to evade
27 the provisions of this Article or reasonable administrative directives made under the
28 authority of this Article.

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

31 **"§ 113-170.3. Record-keeping requirements.**

32 (a) The Commission may require all licensees under this Article to keep and to
33 exhibit upon the request of an authorized agent of the Department such records and
34 accounts as may be necessary to the equitable and efficient administration and
35 enforcement of this Article. In addition, licensees may be required to keep additional
36 information of a statistical nature or relating to location of catch as may be needed to
37 determine conservation policy. Records and accounts required to be kept must be
38 preserved for inspection in accordance with the Department's record retention schedule.

39 (b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse
40 to keep such records and accounts as may be reasonably required. The Department may
41 distribute forms to licensees to aid in securing compliance with its requirements, or it
42 may inform licensees of requirements in other effective ways such as distributing
43 memoranda and sending agents of the Department to consult with licensees who have

1 been remiss. Detailed forms or descriptions of records, accounts, collection and
2 inspection procedures, and the like which reasonably implement the objectives of this
3 Article need not be embodied in rules of the Commission in order to be validly required.

4 (c) The following records collected and compiled by the Department shall not be
5 considered public records within the meaning of Chapter 132 of the General Statutes, but
6 shall be confidential and shall be used only for the equitable and efficient administration
7 and enforcement of this Article or for determining conservation policy, and shall not be
8 disclosed except when required by the order of a court of competent jurisdiction: all
9 records, accounts, and memoranda compiled by the Department containing data and
10 information concerning the business and operations of licensees reflecting their assets,
11 liabilities, inventories, revenues and profits and other proprietary information. The
12 Department may compile statistical information in any aggregate or summary form which
13 does not directly or indirectly disclose the identity of any licensee-source of the
14 information, and any compilation of such statistical information by the Department shall
15 be a public record open to inspection and examination by any person, and may be
16 disseminated to the public by the Department.

17 **§ 113-170.4. Rules as to possession, transportation, and disposition of fisheries**
18 **resources.**

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

25 **§ 113-170.5. Violations with respect to coastal fisheries resources.**

26 It is unlawful to take, possess, transport, process, sell, buy, or in any way deal in
27 coastal fisheries resources without conforming with the provisions of this Article or of
28 rules made under the authority of this Article.

29 **§ 113-170.6. Suspension, revocation, and reissuance of licenses.**

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

- 1 (1) No notice of appeal has been given;
2 (2) The time for appeal has expired without an appeal having been
3 perfected; or
4 (3) The conviction is sustained on appeal. Where there is a new trial,
5 finality of any subsequent conviction will be determined in the manner
6 set out above.

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

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

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

1 Secretary. It is unlawful for any licensee willfully to evade the personal service
2 prescribed in this subsection.

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

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

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

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

25 (1) Offenses which occurred prior to the effective date of this Article; or

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

29 **"§ 113-170.7. Use of spotter planes in commercial fishing operations regulated.**

30 (a) License. – Before an aircraft is used as a spotter plane in a commercial fishing
31 operation, the owner of the aircraft must obtain a license for the aircraft from the Marine
32 Fisheries Commission. A 'spotter plane' is an aircraft used for aerial identification of the
33 location of fish in coastal waters so that a vessel may be directed to the fish. A license
34 for a spotter plane to be used in a commercial fishing operation is issued on a fiscal year
35 basis upon payment of a fee of one hundred dollars (\$100.00).

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

41 (b) Unlawful Activity. – The following activities involving the use of a spotter
42 plane in a commercial fishing operation are unlawful:

- 1 (1) To use a spotter plane directed at food fish, except in connection with a
2 purse seine operation authorized by a rule of the Marine Fisheries
3 Commission;
4 (2) To use or permit the use of an unlicensed spotter plane or a licensed
5 spotter plane whose license application does not identify the specific
6 commercial fishing operation involved;
7 (3) To participate knowingly in a commercial fishing operation that uses an
8 unlicensed spotter plane or a licensed spotter plane whose license
9 application does not identify the specific commercial fishing operation
10 involved.

11 Violation of this subsection is a Class 1 misdemeanor.

12 "Part 2. Coastal Recreational Licenses.

13 **"§ 113-171. General provisions for coastal recreational licenses.**

14 (a) Purchase; Renewal. – Coastal recreational licenses may be purchased at offices
15 of the Division, by an '800' telephone number, through a license agent authorized under
16 G.S. 113-174, or in convenience stores and other locations where fish and tackle supplies
17 are sold. Upon receipt of a proper application, licenses may be renewed by mail.

18 (b) Replacement License. – The Division may issue a new license under this Part
19 to replace one that has been lost or destroyed before its expiration upon receipt of a
20 proper application and a two dollar (\$2.00) replacement fee. The application shall be on
21 a form of the Division setting forth information in sufficient detail to allow ready
22 identification of the lost or destroyed license and ascertainment of the applicant's
23 continued entitlement to it.

24 (c) Disclosure of Information. – In implementing the sale and distribution of or
25 use of licenses issued under this Part, the Secretary may require license applicants and
26 licensees to disclose such information as necessary for determining eligibility for a
27 particular license. Such information as deemed desirable to assist in enforcement of
28 license requirements may be required to be recorded on the face of any license. Fixing
29 the form of the license may be by reasonable administrative directive, and requirements
30 as to such form need not be embodied in rules of the Commission in order to be validly
31 required.

32 (d) Proof of License; Inspection. – Licenses under this Part shall be kept ready at
33 hand by or about the person of individual licensees while engaged in the regulated
34 operations. It is unlawful for any individual subject to the fishing license requirements
35 under this Part to take, attempt to take, any fish or possess any fish freshly taken from
36 coastal fishing waters, without having ready at hand for inspection, a current and valid
37 Coastal Recreational Fishing License issued to the individual personally and bearing the
38 individual's correct name and address. It is unlawful for any individual taking,
39 attempting to take, any fish or possessing any fish freshly taken from coastal fishing
40 waters to refuse to exhibit the license upon the request of an officer authorized to enforce
41 the fishing laws.

42 (e) Transferability and Assignability Prohibited. – All licenses issued under this
43 Part are nontransferable. It is unlawful to buy, sell, lend, borrow, or in any other way

1 transfer or receive or attempt any such activities with respect to any nontransferable
2 license for the purpose of circumventing the requirements of this Part.

3 (f) Sale of Fish Prohibited. – A license holder under this Part shall be prohibited
4 from selling fish taken under either a coastal Recreational Commercial Gear License or a
5 Coastal Recreational Fishing License.

6 (g) Reporting Requirements. – A license holder under this Part shall comply with
7 the Division and the Commission's biological data sampling and survey programs and
8 efforts.

9 **"§ 113-172. Recreational Commercial Gear License.**

10 (a) Eligibility. – Except as otherwise provided in this Article, it is unlawful for any
11 person to take or attempt to take fish for recreational purposes by means of restricted
12 commercial gear as set forth in this section in the coastal fishing waters of North Carolina
13 without having first procured a current and valid Recreational Commercial Gear License.
14 The Recreational Commercial Gear License entitles the licensee to use a limited amount
15 of commercial gear to harvest fish for personal use subject to recreational quotas or
16 limits. Every individual engaged in activity under this section shall purchase an
17 individual license issued to the licensee personally bearing the licensee's correct name
18 and address.

19 (b) Restricted Commercial Gear. – The Commission shall establish specific gear
20 limits for recreational fishing and may include differences in restrictions based on coastal
21 geographic regions. The Commission shall reevaluate and revise the restrictions
22 periodically. Until such time as the Commission adopts rules to establish gear limitations
23 for recreational fishing, but in any event no later than August 1, 1999, the holder of a
24 Recreational Commercial Gear License may use only the following specific types and
25 amounts of commercial gear:

26 (1) One hundred yards of gill net;

27 (2) Five crab or fish pots; and

28 (3) A single trawl employing a headrope not to exceed 25 feet in length.

29 Restricted commercial gear shall be identified by visible colored tags, or by similar
30 means as specified by the Commission to distinguish between commercial gear used in a
31 commercial operation versus commercial gear used for recreational purposes under this
32 section.

33 (c) Duration; Fees. – The Recreational Commercial Gear License shall be valid for
34 a one-year period from the date of purchase. The annual fee for a Recreational
35 Commercial Gear License for residents shall be twenty-five dollars (\$25.00) and two
36 hundred fifty dollars (\$250.00) for nonresidents.

37 (d) Vessel Endorsement Required. – Any holder of a Recreational Commercial
38 Gear License who uses a vessel to harvest fish shall be required to purchase a vessel
39 endorsement under G.S. 113-168.5 in addition to the Recreational Commercial Gear
40 License.

41 **"§ 113-173. Coastal Recreational Fishing License.**

42 (a) Eligibility. – Except as otherwise provided in this Article, it is unlawful for any
43 person to take or attempt to take fish by means of traditional recreational gear as defined

1 by the Commission in the coastal fishing waters of North Carolina without having first
2 procured a current and valid Coastal Recreational Fishing License. The Coastal
3 Recreational Fishing License entitles the licensee to fish in coastal waters of the State,
4 but not in freshwater, unless the licensee holds a lifetime license under G.S. 113-27(d) or
5 G.S. 113-270.1D(b). Except for persons under the age of 16 and accompanied by a duly
6 licensed parent or guardian, every individual engaged in activity subject to Coastal
7 Recreational Fishing Licenses must have an individual license issued to the licensee
8 personally bearing the correct name and address.

9 (b) Types of Licenses; Fees. – The Coastal Recreational Fishing Licenses issued
10 by the Division shall be as follows:

11 (1) Standard Coastal Recreational Fishing License. – \$15.00. This license
12 shall be available to residents and nonresidents and shall be valid for
13 one year from the date of purchase.

14 (2) One Week Coastal Recreational Fishing License. – \$5.00. This license
15 shall be available to residents and nonresidents and shall be valid for a
16 period of seven days.

17 (3) Coastal Recreational Endorsement for Standard Commercial Fishing
18 License. – No charge. Any person who holds a Standard Commercial
19 Fishing License under G.S. 113-168.2 or G.S. 113-168.3 , may receive
20 a coastal recreational endorsement on their license to take fish by means
21 of traditional recreational gear.

22 (4) Special User Lifetime Coastal Recreational Fishing License. –
23 Applicants for a license under this subsection shall provide
24 documentation to the Division demonstrating that the applicant is a
25 member of the particular license class. These licenses shall be valid for
26 the lifetime of the licensee and shall be available as follows:

27 a. Persons over 65 years of age \$10.00

28 b. Handicapped or disabled persons \$10.00

29 c. Disabled American veterans \$10.00

30 d. Legally blind persons No charge

31 e. Subsistence fishers No charge.

32 (5) Wildlife Resources and Marine Fisheries Lifetime Coastal Recreational
33 Fishing License. – No charge. This license shall be valid for the
34 lifetime of the licensee and shall be available to any person holding
35 either a Lifetime Resident Comprehensive Fishing License or a Lifetime
36 Sportsman Combination License issued by the North Carolina Wildlife
37 Resources Commission pursuant to G.S. 113-271(d) and G.S. 113-
38 270.1D(b) respectively.

39 (6) Lifetime Adult Coastal Recreational Fishing License. – \$250.00. This
40 license shall be available to persons 17 years of age or older and shall be
41 valid for the lifetime of the licensee.

- 1 (7) Personalized Lifetime Adult Coastal Recreational Fishing License. –
2 \$255.00. This license shall be available to persons 17 years of age or
3 older and shall be valid for the lifetime of the licensee.
- 4 (8) Lifetime Infant Coastal Recreational Fishing License. – \$100.00. This
5 license shall be available to persons of less than one year of age and
6 shall be valid for the lifetime of the licensee.
- 7 (9) Personalized Lifetime Infant Coastal Recreational Fishing License. –
8 \$105.00. This license shall be available to persons of less than one year
9 of age, and shall be valid for the lifetime of the licensee.
- 10 (10) Lifetime Youth Coastal Recreational Fishing License. – This license
11 shall be available to persons of ages one to 16 who apply for this license
12 during the six-month period following the requirement of a Coastal
13 Recreational Fishing License and shall be valid for the lifetime of the
14 licensee. This license is available to the following age groups for the
15 following fees.
- 16 a. 1-5 years \$100.00
- 17 b. 6-10 years \$150.00
- 18 c. 11-16 years \$200.00.
- 19 (11) Charter Boat Blanket License. – Any owner of a charter boat, head boat,
20 or dive boat shall purchase a blanket charter/head/dive boat Coastal
21 Recreational Fishing License that will entitle all paying customers on
22 board to take fish by means of traditional recreational gear without
23 obtaining an individual recreational license. The cost of the license
24 varies with the length of the vessel as follows:
- 25 a. Vessel of 0-18 feet in length \$1.50 per foot
- 26 b. Vessel of greater than 18 feet in length
27 but less than 38 feet in length \$2.25 per foot
- 28 c. Vessel of greater than 38 feet in length \$4.50 per foot.
- 29 (12) Commercial Pier Blanket License. – Any owners of a commercial pier
30 shall purchase a blanket commercial pier Coastal Recreational Fishing
31 License that will entitle all paying individuals on the pier to take fish by
32 means of traditional recreational gear. The cost of the license varies
33 with the length of the pier based on \$4.50 per foot. This license shall be
34 in addition to the pier license required under G.S. 113-169.4.

35 **"§ 113-174. License agents for Coastal Recreational Fishing License.**

- 36 (a) The Secretary may designate license agents for the Department; provided, that
37 at least one license agent shall be appointed in each county that contains or borders on
38 coastal fishing waters. The Secretary may require license agents to post bonds and enter
39 into contracts for keeping records, making reports concerning licenses and receipts, and
40 be subject to necessary audits and inspections. Upon any violation by a license agent of
41 the requirements of this section or any contract entered into under the terms of this
42 section, the Secretary may initiate proceedings for the forfeiture of the license agent's
43 bond and may summarily suspend, revoke, or refuse to renew a person's commission as a

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

6 (b) License agents shall remit the entire license fee paid on a weekly basis to the
7 Department. The Department shall reimburse license agents six percent (6%) for each
8 license sold per individual.

9 (c) The Secretary of the Department may authorize license agents to sell both
10 recreational licenses and wildlife licenses under this Subchapter.”

11 Section 3.1. of Chapter 113 is amended by adding a new section to read:

12 "**§ 113-175. Marine and Estuarine Resources Fund.**

13 (a) Definitions. – The following definitions apply in this section:

14 (1) Fund. – The Marine and Estuarine Resources Fund.

15 (2) License Revenues. – The term includes the proceeds from the sale of
16 licenses and endorsements issued under Article 14A, interest earnings
17 derived from the investment of license proceeds, funds realized from the
18 sale, lease, rental, or other granting of rights to real or personal property
19 acquired or produced with license revenues, and from federal aid project
20 reimbursements to the extent that license revenues originally funded the
21 project for which the reimbursement is being made.

22 (3) Trustees. – The Board of Trustees of the Marine and Estuarine
23 Resources Fund.

24 (b) Marine and Estuarine Resources Fund Established. – There is established a
25 special fund within the Department of Environment, Health, and Natural Resources
26 known as the Marine and Estuarine Resources Fund. The Secretary shall administer the
27 Fund with the advice and consent of the Board of Trustees of the Marine and Estuarine
28 Resources Fund. The State Treasurer shall invest the assets of the Fund in accordance
29 with the provisions of G.S. 147-69.2 and G.S. 147-69.3.

30 The Fund is subject to the provisions of the Executive Budget Act, Article 1 of
31 Chapter 143 of the General Statutes and the provisions of the Personnel Act, Article 2 of
32 Chapter 143 of the General Statutes.

33 (c) Fund Revenue Sources, Availability, and Purpose. – All license revenues shall
34 be deposited to the credit of the Fund. All moneys credited to the Fund shall be made
35 available to carry out the intent and purposes of this section in accordance with plans
36 approved by the Trustees and the Secretary. In the event any uncertainty arises with
37 regard to the funds to be turned over to the Fund for distribution by the Secretary, the
38 Governor has full power and authority to determine the matter and the Governor's
39 recommendation is final and binding on all parties concerned.

40 The moneys in the Fund are appropriated, reserved, set aside, and made available until
41 expended, for the enforcement and administration of this Article and Chapter 113,
42 Subchapter IV of the General Statutes.

1 The Secretary shall report to the Joint Legislative Commission on Governmental
2 Operations within 30 days of expending funds from the Fund.

3 (d) Recreational License Resources Account and Commercial License Resources
4 Account Established. – Within the Fund there is established two special accounts: the
5 Recreational License Resources Account and the Commercial License Resources
6 Account. Allocations between the two special accounts from the Fund are as follows.
7 License revenues from the licenses issued under Part 1 of Article 14 of Chapter 113 of
8 the General Statutes is allocated to the Commercial License Resources Account. License
9 revenues from the licenses issued under Part 2 of Article 14 of Chapter 113 of the
10 General Statutes is allocated to the Recreational License Resources Account.

11 Funds in the two accounts may be invested in the same manner as permitted for
12 investments of funds belonging to the State or held in the State Treasury. Interest
13 earnings derived from the investments shall be credited to the respective accounts from
14 which funds were used to make the investments.

15 (e) Recreational License Resource Account. – The sums allocated in subsection
16 (d) of this section and accruing to this account in each fiscal year shall be allocated and
17 used as provided below. The Secretary shall disburse no funds from the Recreational
18 License Resource Account except upon receipt of written approval of the disbursement
19 from the Trustees.

20 (1) Resources and Habitat Enhancement. – Not less than twenty-five
21 percent (25%) of the funds in the Recreational License Resource
22 Account shall be used for resource and habitat enhancement.

23 (2) Law Enforcement. – Not less than twenty percent (20%), but not more
24 than twenty-five percent (25%) of the funds in the Recreational License
25 Resource Account shall be used for law enforcement.

26 (3) Marine Fisheries Research. – Not less than twenty-five percent (25%) of
27 the funds in the Recreational License Resource Account shall be used
28 for marine fisheries research.

29 (4) Grants. – Not more than ten percent (10%) of the funds in the
30 Recreational License Resource Account shall be distributed to fund
31 coastal fishing programs, projects and scholarships for students.

32 (5) Administration. – Not more than ten percent (10%) of the funds,
33 exclusive of the license agent fees, in the Recreational License Resource
34 Account shall be used for administrative costs.

35 (6) Public Education and Information. – Not less than five percent (5%), but
36 no more than ten percent (10%) of the funds in the Recreational License
37 Resource Account shall be used for public education and information.

38 (f) Commercial License Resource Account. – The sums allocated in subsection (d)
39 of this section and accruing to this account in each fiscal year shall be allocated and used
40 as provided below. The Secretary shall disburse no funds from the Commercial License
41 Resource Account except upon receipt of written approval of the disbursement from the
42 Trustees.

- 1 (1) Resources and Habitat Enhancement. – Not less than twenty-five
2 percent (25%) of the funds in the Commercial License Resource
3 Account shall be used for resource and habitat enhancement.
- 4 (2) Law Enforcement. – Not less than twenty percent (20%), but not more
5 than twenty-five percent (25%) of the funds in the Commercial License
6 Resource Account shall be used for law enforcement.
- 7 (3) Marine Fisheries Research. – Not less than twenty-five percent (25%) of
8 the funds in the Commercial License Resource Account shall be used
9 for marine fisheries research.
- 10 (4) Grants. – Not more than ten percent (10%) of the funds in the
11 Commercial License Resource Account shall be distributed to fund
12 coastal fishing programs, projects, and scholarships for students.
- 13 (5) Administration. – Not more than ten percent (10%) of the funds,
14 exclusive of the license agent fees, in the Commercial License Resource
15 Account shall be used for administrative costs.
- 16 (6) Public Education and Information. – Not less than five percent (5%), but
17 no more than ten percent (10%) of the funds in the Commercial License
18 Resource Account shall be used for public education and information.
- 19 (g) Board of Trustees Established. – There is created the Board of Trustees of the
20 Marine and Estuarine Resources Fund. The Board shall be composed of nine members.
21 Of the nine members the Secretary of the Department of Environment, Health, and
22 Natural Resources and the Chair of the Marine Fisheries Commission shall serve as ex
23 officio members. The remaining seven members shall be appointed by the Governor. In
24 making appointments to and filling vacancies upon the Board of Trustees of the Marine
25 and Estuarine Resources Fund, the Governor shall give due consideration to
26 recommendations of the Marine Fisheries Commission and to securing appropriate
27 representation of women and minorities. Appointments to the Trustees shall be as
28 follows:
- 29 (1) Two of the members shall have interest and expertise in commercial use
30 of marine and estuarine resources.
- 31 (2) Two of the members shall have interest in recreational use of marine
32 and estuarine resources.
- 33 (3) Two of the members shall be from the general public.
- 34 (4) One member from the Marine Fisheries Commission who is not Chair
35 of the Commission.
- 36 (h) Membership Terms and Vacancies. – Except for initial members, the term for
37 each person appointed to the Board of Trustees of the Marine and Estuarine Resources
38 Fund shall be for four years. The term for initial members shall be as provided in
39 subsection (i) of this section. Vacancies occurring on the Board of Trustees of the
40 Marine and Estuarine Resources Fund for any reason shall be filled in the same manner
41 as the original appointment. Any appointment to fill a vacancy on the Board of Trustees
42 of the Marine and Estuarine Resources Fund created by resignation, dismissal, death or

1 disability of a member shall be for the balance of the unexpired term. Members of the
2 Board of Trustees may continue to serve until their successors have been appointed.

3 (i) Initial Members. – Of the Board of Trustees members appointed by the
4 Governor, three shall each serve an initial term of two years beginning September 1,
5 1997; two shall each serve an initial term of three years beginning September 1, 1997;
6 and three shall each serve an initial term of four years beginning September 1, 1997.

7 (j) Removal. – Members of the Board of Trustees may be removed by the
8 Governor for misconduct, incompetence, or neglect of duty. Regular attendance at
9 Trustee meetings is a duty of each member. The Board of Trustees shall develop
10 procedures for declaring any seat on the Board of Trustees to be vacant upon failure by a
11 member to perform his or her duty.

12 (k) Office May Be Held Concurrently With Others. – Membership on the Board of
13 Trustees is declared to be an office that may be held concurrently with other elective or
14 appointive offices permitted to be held by one person under G.S. 128-1.1.

15 (l) Compensation. – Members of the Board of Trustees who are State officers or
16 employees shall receive no per diem compensation for serving on the Board of Trustees,
17 but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of
18 the Board of Trustees who are full-time salaried public officers or employees other than
19 State officers or employees shall receive no per diem compensation for serving on the
20 Board of Trustees, but shall be reimbursed for their expenses in accordance with G.S.
21 138-6 in the same manner as State officers or employees. All other members of the
22 Board of Trustees shall receive per diem compensation and reimbursement in accordance
23 with the compensation rate established in G.S. 93B-5.

24 (m) Quorum. – A majority of the members of the Board of Trustees shall constitute
25 a quorum for the transaction of business. No vacancy in the membership of the Board of
26 Trustees shall impair the rights of a quorum to exercise all the rights and to perform all
27 the duties of the Board of Trustees.

28 (n) Staff. – All clerical and other services required by the Board of Trustees shall
29 be supplied by the Department of Environment, Health, and Natural Resources. The
30 Department of Environment, Health, and Natural Resources shall also provide office and
31 meeting space for the Board of Trustees."

32 Section 4. Article 16 of Chapter 113 of the General Statutes is amended by
33 adding the following sections to read:

34 **"§ 113-210. Coastal Mariculture License.**

35 (a) License Requirement to Conduct a Mariculture Operation. – It is unlawful for
36 an individual holding a shellfish lease under G.S. 113-202, a water column lease under
37 G.S. 113-202.1 or G.S. 113-202.2, or a shellfish franchise under G.S. 113-206 to conduct
38 a mariculture operation in North Carolina coastal waters without having first procured a
39 Coastal Mariculture License. The Coastal Mariculture License entitles the licensee to
40 plant, relay, culture, harvest, sell to a licensed fish dealer, and lawfully participate in all
41 other mariculture operation activities. A coastal mariculture licensee is not required to
42 purchase either a standard commercial fishing license or a shellfish license for those
43 activities conducted on or directly related to the mariculture operation.

1 (b) Eligibility. – The Coastal Mariculture License shall be issued in the name of
2 the individual principally in charge of the mariculture operation.

3 (c) Fees. – The Coastal Mariculture License shall cost two hundred fifty dollars
4 (\$250.00) annually and shall be in addition to the annual cost of maintaining the shellfish
5 lease or franchise.

6 (d) Application. – The license applicant shall provide a complete description of the
7 mariculture operation being licensed, including location, size, species cultivated, and
8 other information determined by the Division to be relevant. The application shall be
9 made on forms provided by the Division.

10 (e) Employees on Shellfish Leases. – A shellfish leaseholder under G.S. 113-202,
11 or a water column leaseholder under G.S. 113-202.1 or G.S. 113-202.2, or a franchise
12 holder under G.S. 113-206 who purchases a Coastal Mariculture License under this
13 section, may employ persons who do not possess Coastal Mariculture Licenses or a
14 Standard Commercial Fishing License, provided that the employees have written proof of
15 employment on hand, if requested for inspection by a Marine Fisheries officer to verify
16 lawful activities on the lease. The written proof of employment shall include: (i) the
17 name and address of the leaseholder or franchise holder; (ii) the lease or franchise
18 number; (iii) the date of issuance and expiration of the lease or franchise; and (iv) the
19 employee's name and address. The proof of employment shall be signed and dated by the
20 leaseholder or franchise holder.

21 (f) Operation Conditions. – A coastal mariculture licensee shall, as a condition of
22 being licensed, abide by reasonable conditions placed upon the mariculture operation by
23 the Commission.

24 (g) Vessel Endorsement. – A Coastal Mariculture License holder shall be required
25 to obtain a vessel endorsement, for the same fee charged a Standard Commercial Fishing
26 License or Commercial Gear Recreational License holder, for any vessel used as part of
27 the mariculture operation.

28 (h) Coastal Mariculture License Equivalent to SCFL. – In the case of a person
29 using a vessel under this license, the Coastal Mariculture License shall serve as the
30 equivalent of the Standard Commercial Fishing License for purposes of the requirement
31 that in order for any vessel to lawfully participate in the commercial harvest of coastal
32 fishery resources, a Standard Commercial Fishing License holder must be aboard the
33 vessel.

34 **"§ 113-211. Mariculture training.**

35 (a) The Marine Fisheries Commission shall enact mariculture training
36 requirements for participants in the State mariculture industry. Persons who apply for a
37 new public bottom mariculture lease, whose shellfish franchise is recognized after the
38 effective date of this license requirement, who apply for an amendment to their public
39 bottom mariculture lease or shellfish franchise, or who obtain a mariculture lease or
40 franchise from another individual after the effective date of this license requirement shall,
41 prior to receiving management plan approval by the Division, satisfactorily complete the
42 mariculture training curriculum created pursuant to this section."
43

PART II. MARINE FISHERIES COMMISSION

Section 5. Article 7 of Chapter 143B is amended by adding a new Part to read:

"Part 5AA. Marine Fisheries Commission.

"§ 143B-289.1A. Definitions.

(a) As used in this Part:

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

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

(3) 'Fisheries Director' means the Director of the North Carolina 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 terms used in this Part shall have the same meaning as terms defined in G.S. 113-129.

"§ 143B-289.2A. Marine Fisheries Commission – creation; purpose and transfer of function.

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

(b) The function, purpose, and duty of the Marine Fisheries Commission shall be:

(1) To manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources of the State of North Carolina;

(2) To implement the laws relating to coastal fisheries, coastal fishing, shellfish, and crustaceans, and other marine and estuarine resources enacted by the General Assembly, through the promulgation of rules and policies, to the end that there may be provided a sound, constructive, comprehensive, continuing, and economical coastal fisheries program directed by citizens, who shall have knowledge of or training in the protection, restoration, proper use and management of marine and estuarine resources; and

(3) To advise the State regarding ocean and marine fisheries within the jurisdiction of the Atlantic States Marine Fisheries Compact, the South Atlantic Fishery Management Council, the Mid-Atlantic Fishery Management Council, and other similar organizations established to manage or regulate fishing in the Atlantic Ocean.

The powers and duties of the Marine Fisheries Commission established under G.S. 143B-289.4 are transferred to the Marine Fisheries Commission created by this Part.

(c) All decisions heretofore made by the Marine Fisheries Commission, appointed pursuant to G.S. 143B-289.5, shall remain in full force and effect unless repealed or suspended by action of the Marine Fisheries Commission established in the North Carolina Marine Fisheries Act of 1987. All rules heretofore adopted pursuant to the provisions of the Administrative Procedure Act of the General Statutes by the Marine

1 Fisheries Commission, appointed pursuant to G.S. 143B-287, shall remain in full force
2 and effect until repealed or amended by action of the Marine Fisheries Commission
3 established herein.

4 **"§ 143B-289.3A. Marine Fisheries Commission – powers and duties.**

5 (a) The Marine Fisheries Commission shall have the power and duty to adopt rules
6 to be followed in the management, protection, preservation, and enhancement of the
7 marine and estuarine resources of the State including commercial and sports fisheries
8 resources. The Marine Fisheries Commission shall have the following powers and
9 duties:

- 10 (1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms
11 of marine and estuarine resources in coastal fishing waters with respect
12 to:
13 a. Time, place, character, or dimensions of any methods or
14 equipment that may be employed in taking fish;
15 b. Seasons for taking fish;
16 c. Size limits on and maximum quantities of fish that may be taken,
17 possessed, bailed to another, transported, bought, sold, or given
18 away.
- 19 (2) To provide fair regulation of commercial and recreational fishing groups
20 in the interest of the public;
- 21 (3) To adopt rules and take all steps necessary to develop and improve
22 mariculture, including the cultivation, harvesting, and marketing of
23 shellfish and other marine resources, in North Carolina involving the
24 use of public grounds and private beds as provided in G.S. 113-201;
- 25 (4) To close areas of public bottoms under coastal fishing waters for such
26 time as may be necessary in any program of propagation of shellfish as
27 provided in G.S. 113-204;
- 28 (5) In the interest of conservation of the marine and estuarine resources of
29 North Carolina, to institute an action in the superior court to contest the
30 claim of title or claimed right of fishery in any navigable waters of
31 North Carolina registered with the Department as provided in G.S. 113-
32 206(d);
- 33 (6) To make reciprocal agreements with other jurisdictions respecting any
34 of the matters governed in this Subchapter as provided by G.S. 113-223;
- 35 (7) To adopt relevant provisions of federal laws and regulations as State
36 rules pursuant to G.S. 113-228;
- 37 (8) To delegate to the Fisheries Director the authority by proclamation to
38 suspend or implement, in whole or in part, particular rules of the
39 Commission which may be affected by variable conditions as provided
40 in G.S. 113-221(e);
- 41 (9) To comment on and otherwise participate in the determination of permit
42 applications received by State agencies which may have an effect on the
43 marine and estuarine resources of the State;

- 1 (10) To adopt Fishery Management Plans in accordance with a priority
2 listing adopted by the Commission for all commercially or
3 recreationally significant species or fishery subject to specified criteria.
4 Each Plan shall be developed with the assistance of Advisory Councils
5 appointed by the Commission and composed of commercial and
6 recreational fishermen, as well as scientists with expertise in the fishery
7 for which the Plan is being prepared;
- 8 (11) To jointly approve Coastal Habitat Protection Plans with the Coastal
9 Resources Commission and the Environmental Management
10 Commission pursuant to G.S. 143B-278.8; and
- 11 (12) To hear appeals by persons denied a fishing license, permit, or lease
12 under this Chapter.
- 13 (b) The Marine Fisheries Commission shall have the power and duty to establish
14 standards and adopt rules:
- 15 (1) To implement the provisions of Subchapter IV of Chapter 113 as
16 provided in G.S. 113-134;
- 17 (2) To manage the disposition of confiscated property as set forth in G.S.
18 113-137;
- 19 (3) To govern all license requirements and taxes prescribed in Article 14A
20 of Chapter 113 of the General Statutes;
- 21 (4) To regulate the importation and exportation of fish, and equipment that
22 may be used in taking or processing fish, as necessary to enhance the
23 conservation of marine and estuarine resources of North Carolina as
24 provided in G.S. 113-160;
- 25 (5) To regulate the possession, transportation, and disposition of seafood, as
26 provided in G.S. 113-164;
- 27 (6) To regulate the disposition of the young of edible fish, as provided by
28 G.S. 113-185;
- 29 (7) To manage the leasing of public grounds for mariculture, including
30 oysters and clam production, as provided in G.S. 113-202;
- 31 (8) To govern the utilization of private fisheries, as provided in G.S. 113-
32 205;
- 33 (9) To impose further restrictions upon the throwing of fish offal in any
34 coastal fishing waters, as provided in G.S. 113-265;
- 35 (10) To regulate the location and utilization of artificial reefs in coastal
36 waters; and
- 37 (11) To regulate the placement of nets and other sports or commercial fishing
38 apparatus in coastal fishing waters with regard to navigational or
39 recreational safety as well as from a conservation standpoint.
- 40 (c) The Commission is authorized to authorize, license, prohibit, prescribe, or
41 restrict:

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

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

8 (d) The Commission is authorized and empowered to make such rules, not
9 inconsistent with the laws of this State, as may be required by the federal government for
10 grants-in-aid for coastal resource purposes which may be made available to the State by
11 the federal government. This section is to be liberally construed in order that the State
12 and its citizens may benefit from such grants-in-aid.

13 (e) The Commission shall make rules consistent with the provisions of this
14 Chapter. All rules adopted by the Commission shall be enforced by the Department of
15 Environment, Health, and Natural Resources.

16 (f) As a quasi-judicial agency, the Commission, in accordance with Article IV,
17 Section 3 of the Constitution, has such judicial powers as may be reasonably necessary as
18 an incident to the accomplishment of the purposes for which it was created.

19 **"§ 143B-289.4A. Marine Fisheries Commission – members; selection; removal;**
20 **compensation; quorum; services.**

21 (a) Members, Selection. – The Marine Fisheries Commission shall consist of nine
22 members appointed by the President Pro Tempore of the Senate, the Speaker of the
23 House of Representatives, and the Governor. Appointees shall be selected to represent
24 the following interests:

25 (1) Two persons actively engaged in, or recently retired from, commercial
26 fishing as demonstrated by deriving at least fifty percent (50%) of
27 earned income from taking and selling fishery resources in coastal
28 fishing waters of the State of North Carolina. The spouse of a
29 commercial fisherman may be appointed under this subdivision
30 provided that either spouse meets the criteria set forth herein. The
31 President Pro Tempore of the Senate and the Speaker of the House of
32 Representatives shall each appoint one member under this subdivision.

33 (2) One person, appointed by the Governor, who shall be actively
34 connected and experienced as a licensed fish dealer, or in seafood
35 processing or distribution, as demonstrated by deriving at least fifty
36 percent (50%) of earned income from activities involving the buying,
37 selling, processing, or distribution of seafood landed in North Carolina.
38 The spouse of a person qualified under this subdivision may be
39 appointed provided that the spouse is actively involved in the business.

40 (3) Two persons who are actively engaged in recreational sports fishing in
41 coastal waters in the State of North Carolina. Neither of the two
42 appointees under this subdivision may derive more than ten percent
43 (10%) of earned annual income from sports fishing activities. The

1 President Pro Tempore of the Senate and the Speaker of the House of
2 Representatives shall each appoint one member under this subdivision.

3 (4) One person, appointed by the Governor, who shall be actively engaged
4 in the sports fishing industry as demonstrated by selling goods or
5 services that generate at least fifty percent (50%) of earned income. The
6 spouse of a person qualified under this subdivision may be appointed
7 provided that the spouse is actively involved in the business.

8 (5) Two persons 'at large' who have knowledge of and experience related to
9 subjects and persons regulated by the Commission. The President Pro
10 Tempore of the Senate and the Speaker of the House of Representatives
11 shall each appoint one member under this subdivision.

12 (6) One fisheries scientist, appointed by the Governor, who shall have
13 special training and expertise in marine and estuarine fisheries biology,
14 ecology, population dynamics, water quality, habitat protection, or
15 similar knowledge. A person appointed under this subdivision may not
16 receive more than ten percent (10%) of earned annual income from
17 either the commercial or sports fishing industries, including the
18 processing and distribution of seafood.

19 In making appointments to and filling vacancies upon the Commission, due
20 consideration shall be given to securing appropriate representation of women and
21 minorities.

22 (b) Residential Qualifications. – For purposes of providing regional representation
23 on the Commission, the following three coastal regions are designated: (i) Northeast
24 Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax,
25 Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington
26 Counties, (ii) Central Coastal Region comprised of Beaufort, Carteret, Craven, Hyde,
27 Jones, and Pamlico Counties; and (iii) Southeast Coastal Region comprised of Bladen,
28 Brunswick, Columbus, New Hanover, Onslow, and Pender Counties. In appointing the
29 members to the Commission representing recreational fishing interests under G.S. 143B-
30 285.5A(a)(3) and (4), the Governor shall appoint one of the three members from one of
31 the coastal regions. In appointing the remaining three members under G.S. 143B-
32 289.5(a)(5) through (6), the Governor shall appoint one member from one of the coastal
33 regions.

34 (c) Terms. – Members shall serve staggered terms of office of three years and may
35 be reappointed to subsequent consecutive terms. Initial appointments shall be made as
36 follows: (i) one commercial fisherman, one recreational fisherman, and the at-large
37 members shall serve a three-year term; (ii) one fish dealer or seafood processor; one
38 person engaged in the sports fishing industry, and one scientist shall serve an initial term
39 of two years; and (iii) one commercial fisherman, one recreational fisherman, and one at-
40 large member shall serve an initial term of one year. Commission members may continue
41 to serve until their successors have been appointed.

42 (d) Ethical Standards. –

1 (1) Disclosure Statement. – Any person under consideration for
2 appointment to the Commission shall provide both a financial disclosure
3 statement and a potential bias disclosure statement to the Governor.
4 Disclosure statements shall include statements of the nominee's
5 financial interests in and related to State fishery resources use, licenses
6 issued by the Division of Marine Fisheries held by the nominee or any
7 business in which the nominee has a financial interest, uses made by the
8 nominee or by any business in which the nominee has a financial
9 interest of the regulated resources, and the nominee's membership or
10 other affiliation with, including offices held in, societies, organizations
11 or advocacy groups pertaining to the management and use of North
12 Carolina coastal fishery resources. Disclosure statements shall be
13 treated as public records under Chapter 132 of the General Statutes and
14 shall be updated on an annual basis.

15 (2) Oath of Office. – Each member of the Commission, before assuming the
16 duties of office, shall take an oath for the faithful performance of the
17 member's duties.

18 (3) Voting/Conflict of Interest. – Commission members shall recuse
19 themselves from voting on Commission decisions that would have a
20 'significant and predictable effect' on the member's financial interests.
21 For purposes of this subdivision, 'significant and predictable effect'
22 means there is or may be a close casual link between the Commission
23 decision and an expected disproportionate benefit shared only by a
24 minority of persons within the same industry sector or gear group to the
25 financial interest of the Commission member. Commission members
26 shall also abstain from voting on petitions submitted by advocacy
27 groups of which they are officers or sit as members of the advocacy
28 group's board of directors, and shall not use their official positions as
29 Commissioners to secure unwarranted privileges or exemptions of
30 substantial value for any person or to create the appearance that any
31 person could improperly influence them in the performance of official
32 duties.

33 (4) Failure to Comply with Ethical Standards. – The Governor shall cause
34 the State to investigate any report of a Commission member who refuses
35 to abide by a Commission vote and, if the allegations prove true, may
36 dismiss the noncomplying Commissioner under subsection (f) of this
37 section.

38 (e) Vacancies. – Vacancies on the Commission occurring for any reason shall be
39 filled by the appointing officer. Any appointment to fill a vacancy on the Commission
40 created by the resignation, dismissal, death or disability of a member shall be for the
41 balance of the unexpired term.

42 (f) Removal. – Commission members may be removed by their respective
43 appointing officers for misconduct, incompetence, or neglect of duty. Regular attendance

1 at Commission meetings is a duty of each member. The Commission shall develop
2 procedures for declaring any seat on the Commission to be vacant upon failure by a
3 member to perform his duty.

4 (g) Office may be held concurrently with others.

5 (h) Compensation. – Members of the Commission who are State officers or
6 employees shall receive no per diem compensation for serving on the Commission, but
7 shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the
8 Commission who are full-time salaried public officers or employees other than State
9 officers or employees shall receive no per diem compensation for serving on the
10 Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in
11 the same manner as State officers or employees. All other Commission members shall
12 receive per diem compensation and reimbursement in accordance with the compensation
13 rate established in G.S. 93B-5.

14 (i) Quorum. – A majority of the Commission of the duly appointed members shall
15 constitute a quorum for the transaction of business. No vacancy in the membership of the
16 Commission shall impair the rights of a quorum to exercise all the rights and to perform
17 all the duties of the Commission.

18 (j) Staff. – All clerical and other services required by the Commission shall be
19 supplied by the Fisheries Director and the Department of Environment, Health, and
20 Natural Resources.

21 (k) Legal Services. – The Attorney General shall: (i) act as attorney for the
22 Commission; (ii) initiate actions in the name of, and at the request of, the Commission;
23 and (iii) represent the Commission in the hearing of any appeal from, or other review of,
24 any order of the Commission.

25 **"§ 143B-289.5A. Marine Fisheries Commission – organization; selection of officers;**

26 **Robert's Rules of Order.**

27 (a) The Chair shall be selected by the Governor from among membership. The
28 Vice-chair of the Commission shall be selected by the commissioners on an annual basis.

29 (b) The Chair shall guide and coordinate the official actions and official activities
30 of the Commission in fulfilling its program responsibility for setting the statewide policy
31 of the Commission. The Chair shall report to and advise the Governor and the Secretary
32 on the official actions and work of the Commission and on all marine and estuarine
33 conservation and ocean fishery matters that affect the interest of the people of the State.

34 (c) The Commission shall determine its own organization and methods of
35 procedure in accordance with the provisions of this Article and shall have an official seal,
36 which shall be judicially noticed.

37 (d) Meetings of the Commission shall be conducted pursuant to the bylaws of the
38 Commission or Robert's Rules of Order when the bylaws do not provide necessary
39 procedures.

40 **"§ 143B-289.6A. Marine Fisheries Commission – meetings.**

41 The Marine Fisheries Commission shall meet at least once in each quarter and may
42 hold special meetings at any time and place within the State at the call of the Chair or
43 upon the written request of at least five members. At least three of the four quarterly

1 meetings of the Marine Fisheries Commission shall be held in the coastal area as that area
2 is defined in G.S. 113A-103.

3 **"§ 143B-289.7A. Marine Fisheries Commission Advisory Committees established;**
4 **members; selection; duties.**

5 (a) There is created an advisory committee system consisting of the following
6 committees:

7 (1) The Habitat/Water Quality Committee shall be a technical committee
8 comprised of scientists or other experts in fisheries biology, ecology,
9 water quality, sociology, and economics;

10 (2) The Fisheries Assessment Committee shall be a technical committee
11 comprised of scientists or other experts in fisheries biology, ecology,
12 water quality, sociology, and economics; and

13 (3) The Fisheries Resources/Users Committee shall be comprised of
14 members of the fishing public, including the chairs of five ad hoc
15 regional committees.

16 (b) Advisory committee members shall be selected by the Marine Fisheries
17 Commission and shall include nominees from commercial and recreational fishing
18 groups.

19 (c) Advisory committee members shall serve staggered terms of three years.

20 **"§ 143B-289.8A. Marine Fisheries Endowment Fund.**

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

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

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

36 (1) The proceeds of any gifts, grants, and contributions to the State which
37 are specifically designated for inclusion in the fund; and

38 (2) Such other sources as may be specified by law.

39 (d) The Marine Fisheries Endowment Fund is declared to constitute a special trust
40 derived from a contractual relationship between the State and the members of the public
41 whose investments contribute to the fund. In recognition of such special trust, the
42 following limitations and restrictions are placed on expenditures from the fund:

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

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

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

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

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

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

28 (h) In the event of a future dissolution of the Marine Fisheries Commission, such
29 State agency as shall succeed to its budgetary authority shall, ex officio, assume the
30 trusteeship of the Marine Fisheries Endowment Fund and shall be bound by all the
31 limitations and restrictions placed by this section on expenditures from the fund.

32 **"§ 143B-289.9A. Conservation Fund; Commission may accept gifts.**

33 (a) The Marine Fisheries Commission is hereby authorized and empowered to
34 accept gifts, donations, or contributions from any sources, which funds shall be held in a
35 separate account and used solely for the purposes of marine and estuarine conservation
36 and management. Such funds shall be administered by the Marine Fisheries Commission
37 and shall be used for marine and estuarine resources management, including education
38 about the importance of conservation, in a manner consistent with marine and estuarine
39 conservation management principles.

40 (b) The Marine Fisheries Commission is hereby authorized to issue and sell
41 appropriate emblems by which to identify recipients thereof as contributors to a special
42 marine and estuarine resources Conservation Fund which shall be made available to the
43 Marine Fisheries Commission for conservation, protection, enhancement, preservation,

1 and perpetuation of marine and estuarine species which may be endangered or threatened
2 with extinction and for education about these issues. The special Conservation Fund is
3 subject to oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the
4 General Statutes. Emblems of different size, shape, type, or design may be used to
5 recognize contributions in different amounts, but no such emblem shall be issued for a
6 contribution amounting in value to less than five dollars (\$5.00).

7 **"§ 143B-289.10A. Article subject to Chapter 113.**

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

13 **"§ 143B-289.11A. Jurisdictional questions.**

14 In the event of any questions arising between the North Carolina Wildlife Resources
15 Commission and the North Carolina Marine Fisheries Commission or between the
16 Department of Environment, Health, and Natural Resources and the North Carolina
17 Marine Fisheries Commission as to any duty or responsibility or authority imposed upon
18 either of said bodies by law, or in case of any conflicting rules or administrative practices
19 adopted by said bodies, such questions or matters shall be determined by the Governor of
20 the State and his determination shall be binding on each of said bodies.

21 **"§ 143B-289.12A. Rules of Department continued.**

22 All rules now in force with respect to marine and estuarine resources as herein
23 defined, promulgated by the Department of Environment, Health, and Natural Resources
24 under Chapter 113 of the General Statutes of North Carolina, shall continue in full force
25 and effect until altered, modified, amended, or rescinded by the Commission created
26 under this Part, or repealed or modified by law."

27
28 **PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY**
29 **MANAGEMENT PLANS**

30
31 Section 6. Article 7 of Chapter 143B of the General Statutes is amended by
32 adding a new section to read:

33 **"§ 143B-279.8. Coastal Habitat Protection Plans.**

34 (a) The Department shall coordinate an interdepartmental effort to prepare Coastal
35 Habitat Protection Plans for critical fisheries habitats utilizing staff from the Division of
36 Coastal Management, the Division of Marine Fisheries, the Division of Water Quality,
37 and other agencies as necessary. The plans shall include, but not be limited to:

- 38 (1) A description and classification of the biological systems in the habitats,
39 including, wetlands, fish spawning grounds, estuarine or aquatic
40 endangered or threatened species, primary or secondary nursery areas,
41 shellfish beds, submerged aquatic vegetation (SAV) beds, and habitats
42 in outstanding resource waters;

1 (2) An evaluation of the function, value to coastal fisheries, status, and
2 trends of the habitats;

3 (3) An identification of existing and potential threats to the habitats and the
4 impact on coastal fishing; and

5 (4) Recommendations to protect and restore critical fisheries habitats.

6 (b) Following the development of the Coastal Habitat Protection Plans, but in any
7 event no later than July 1, 2002, the plans shall be considered and adopted by the Coastal
8 Resources Commission, the Environmental Management Commission, and the Marine
9 Fisheries Commission in one or more joint meetings. The plans shall be reviewed and
10 revised by the commissions in a joint meeting at least every five years.

11 (c) In adopting rules and in establishing policies, the Coastal Resources
12 Commission, the Environmental Management Commission, and the Marine Fisheries
13 Commission shall consider the findings and recommendations of the Coastal Habitat
14 Protection Plans."

15 Section 7. G.S. 143B-282(a)(1) is amended by adding a new sub-subdivision
16 to read:

17 "v. To jointly approve Coastal Habitat Protection Plans with the
18 Coastal Resources Commission and the Marine Fisheries
19 Commission pursuant to G.S. 143B-279.8."

20 Section 8. G.S. 113A-107 is amended by adding a new subsection to read:

21 "(g) The Commission shall jointly approve Coastal Habitat Protection Plans with
22 the Environmental Management Commission and the Marine Fisheries Commission
23 pursuant to G.S. 143B-279.8."

24 Section 9. G.S. 113-181 is amended by adding a new subsection to read:

25 "(c) The Department shall prepare Fishery Management Plans for all commercially
26 or recreationally significant species or fisheries that comprise State marine or estuarine
27 resources. The plans shall be developed in accordance with a fishery priority list adopted
28 by the Marine Fisheries Commission under G.S. 143B-289.4A. The goal of the plans
29 shall be to ensure the long-term viability of the State's commercially and recreationally
30 significant species of fisheries. Each plan shall be designed to reflect fishing practices so
31 that one plan may apply to a specific fishery, while other plans may be based on gear or
32 geographic areas. The plans shall:

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

39 (2) Recommend management actions pertaining to the fishery or fisheries.
40 The Department shall update the plans every three years, and the Commission shall adopt
41 any modifications to the plans."

42 Section 10. The Joint Legislative Commission on Seafood and Aquaculture
43 shall study the establishment of a comprehensive State program to acquire, preserve, and

1 restore habitats critical to marine and estuarine fisheries. The Joint Legislative
2 Commission on Seafood and Aquaculture shall report its findings and recommendations,
3 if any, to the 1998 Regular Session of the 1997 General Assembly.
4

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

6

7 Section 11. G.S. 113-221(b) reads as rewritten:

8 "(b) Upon ~~purchase~~initial purchase of a license, each licensee shall be given a
9 copy of the rules concerning the activities authorized by the ~~license~~license purchased. A
10 licensee may request a copy of the complete set of rules established by the Marine
11 Fisheries Commission."

12 Section 12. G.S. 113-136(d1) reads as rewritten:

13 "(d1) In addition to law enforcement authority granted elsewhere, ~~a protector~~has
14 inspectors and protectors have the authority to enforce criminal laws under the following
15 circumstances:

- 16 (1) When the inspector or protector has probable cause to believe that a
17 person committed a criminal offense in his presence and at the time of
18 the violation the inspector or protector is engaged in the enforcement of
19 laws otherwise within his jurisdiction; or
20 (2) When the inspector or protector is asked to provide temporary
21 assistance by the head of a State or local law enforcement agency or his
22 designee and the request is within the scope of the agency's subject
23 matter jurisdiction.

24 While acting pursuant to this subsection, an inspector or a protector shall have the
25 same powers invested in law enforcement officers by statute or common law. When
26 acting pursuant to (2) of this subsection an inspector or a protector shall not be
27 considered an officer, employee, or agent for the state or local law enforcement agency or
28 designee asking for temporary assistance. Nothing in this subsection shall be construed
29 to expand the authority of inspectors or protectors to initiate or conduct an independent
30 investigation into violations of criminal laws outside the scope of their subject matter or
31 territorial jurisdiction."

32 Section 13. G.S. 113-187 reads as rewritten:

33 **"§ 113-187. Penalties for violations of Subchapter and rules.**

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

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

41 (c) Any person in charge of a commercial fishing operation conducted in violation
42 of any provision of this Subchapter and its implementing rules or in charge of any vessel

1 used in violation of any provision of this Subchapter and its implementing rules is guilty
2 of a ~~Class 1~~ Class A1 misdemeanor.

3 (d) Any person in charge of a commercial fishing operation conducted in violation
4 of the following provisions of this Subchapter or the following rules of the Marine
5 Fisheries Commission; and any person in charge of any vessel used in violation of the
6 following provisions of the Subchapter or the following rules, shall be guilty of a ~~Class 2~~
7 Class 1 misdemeanor. The violations of the statute or the rules for which the penalty is
8 mandatory are:

- 9 (1) Taking or attempting to take, possess, sell, or offer for sale any oysters,
10 mussels, or clams taken from areas closed by statute, rule, or
11 proclamation because of suspected pollution.
- 12 (2) Taking or attempting to take or have in possession aboard a vessel,
13 shrimp taken by the use of a trawl net, in areas not opened to shrimping,
14 pulled by a vessel not showing lights required by G.S. 75A-6 after
15 sunset and before sunrise.
- 16 (3) Using a trawl net in any coastal fishing waters closed by proclamation
17 or rule to trawl nets.
- 18 (4) Violating the provisions of a special permit or gear license issued by the
19 Department.
- 20 (5) Using or attempting to use any trawl net, long haul seine, swipe net,
21 mechanical methods for oyster or clam harvest or dredge in designated
22 primary nursery areas."

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

25 **"§ 113-175. Unlawful sale or purchase of fish; criminal and civil penalties.**

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

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

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

35 (d) In determining the amount of the penalty, the Secretary shall consider the
36 factors set out in G.S. 143B-289.13(b). The procedures set out in G.S. 143B-289.13 shall
37 apply to civil penalty assessments that are presented to the Commission for final agency
38 decision.

39 (e) The Secretary shall notify any person assessed a civil penalty of the assessment
40 and the specific reasons therefor by registered or certified mail, or by any means
41 authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S.
42 150B-23 within 30 days of receipt of the notice of assessment. The Secretary shall make
43 the final decision regarding assessment of a civil penalty under this section.

1 (f) Requests for remission of civil penalties shall be filed with the Secretary.
2 Remission requests shall not be considered unless made within 30 days of receipt of the
3 notice of assessment. Remission requests must be accompanied by a waiver of the right
4 to a contested case hearing pursuant to Chapter 150B of the General Statutes and a
5 stipulation of the facts on which the assessment was based. Consistent with the
6 limitations in G.S. 143B-289.13(c), remission requests may be resolved by the Secretary
7 and the violator. If the Secretary and the violator are unable to resolve the request, the
8 Secretary shall deliver remission requests and his recommended action to the Committee
9 on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to
10 G.S. 143B-289.13(c).

11 (g) If any civil penalty has not been paid within 30 days after notice of assessment
12 has been served on the violator, the Secretary shall request the Attorney General to
13 institute a civil action in the superior court of any county in which the violator resides or
14 has his or its principal place of business to recover the amount of the assessment, unless
15 the violator contests the assessment as provided in subsection (e) of this section, or
16 requests remission of the assessment in whole or in part as provided in subsection (f) of
17 this section. If any civil penalty has not been paid within 30 days after the final agency
18 decision or court order has been served on the violator, the Secretary shall request the
19 Attorney General to institute a civil action in the superior court of any county in which
20 the violator resides or has his or its principal place of business to recover the amount of
21 the assessment. Such civil actions must be filed within three years of the date the final
22 agency decision or court order was served on the violator."

23 Section 15. Article 7 of Chapter 143B of the General Statutes is amended by
24 adding a new section to read:

25 **"§ 143B-289.13. 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 such 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 natural resources of the State arising from
42 the violation of standards or limitations established to protect those resources may be
43 immediately observed through damaged resources or may be incremental or cumulative

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

3 (1) The degree and extent of harm to the natural resources of the State, to
4 the public health, or to private property resulting from the violation;

5 (2) The duration and gravity of the violation;

6 (3) The effect on ground or surface water quantity;

7 (4) The cost of rectifying the damage;

8 (5) Whether the violation was committed willfully or intentionally;

9 (6) The prior record of the violator in complying or failing to comply with
10 programs over which the Marine Fisheries Commission has regulatory
11 authority; and

12 (7) The cost to the State of the enforcement procedures.

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

19 (1) Whether one or more of the civil penalty assessment factors in
20 subsection (b) of this section were wrongly applied to the detriment of
21 the petitioner;

22 (2) Whether the violator promptly abated continuing environmental damage
23 resulting from the violation;

24 (3) Whether the violation was inadvertent or a result of an accident;

25 (4) Whether the violator had been assessed civil penalties for any previous
26 violations;

27 (5) Whether payment of the civil penalty will prevent payment for the
28 remaining necessary remedial actions.

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

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

38 (f) As used in this section, 'Secretary' means the Secretary of Environment,
39 Health, and Natural Resources. The Secretary may delegate his powers and duties under
40 this section to the Director of the Division of Marine Fisheries of the Department of
41 Environment, Health, and Natural Resources."

42 Section 16. The Marine Fisheries Commission shall develop a Violation
43 Points System applicable to the fishing licenses of all persons who violate marine

1 fisheries statutes or rules. In developing this system, the Marine Fisheries Commission
2 shall consider the recommendations made in the Final Report of the Moratorium Steering
3 Committee and the suspension, revocation, and reissuance procedures under G.S. 113-
4 166. The Marine Fisheries Commission shall also develop an implementation schedule
5 for the Violation Points System. The Marine Fisheries Commission shall report to the
6 Joint Legislative Commission on Seafood and Aquaculture no later than July 1, 1999, on
7 the development of the Violation Points System and the implementation schedule.

8 Section 17. The Division of Marine Fisheries shall prepare a Conservation
9 Volunteers Pilot Program to be approved by the Marine Fisheries Commission prior to
10 implementation. The Conservation Volunteers Pilot Program shall be limited to a
11 maximum of 10 citizen volunteers. The conservation volunteers shall be carefully
12 selected and trained and shall seek to improve the effectiveness of Marine Patrol field
13 activities by performing educational and administrative duties only. No later than
14 December 1, 1998, the Division of Marine Fisheries shall report to the Marine Fisheries
15 Commission and the Joint Legislative Commission on Seafood and Aquaculture on the
16 activities of the conservation volunteers.

17 18 **PART V. MISCELLANEOUS PROVISIONS; APPROPRIATIONS; EFFECTIVE** 19 **DATES**

20
21 Section 18. Subsection (a) of Section 3 of Chapter 675 of the 1993 Session
22 Laws, Regular Session 1994, as amended by subsection (a) of Section 26.5 of Chapter
23 507 of the 1995 Session Laws reads as rewritten:

24 "(a) Except as provided in subsections (b), (c), (c1), or (c2), the Department shall
25 not issue any new licenses for a period beginning July 1, 1994, and ending June 30, ~~1997,~~
26 1998, under the following statutes:

- 27 (1) G.S. 113-152. Vessel licenses.
- 28 (2) G.S. 113-153.1. Crab License.
- 29 (3) G.S. 113-154. Shellfish license
- 30 (4) G.S. 113-154.1. Nonvessel endorsements to sell fish."

31 Section 19. (a) The Office of the State Auditor shall conduct a performance
32 audit of the Division of Marine Fisheries of the Department of Environment, Health, and
33 Natural Resources. The scope of the audit shall include, but not be limited to:

- 34 (1) Performing an operation review of the Division;
- 35 (2) Assessing progress made by the Division in implementing the
36 recommendations made by the Moratorium Steering Committee;
- 37 (3) Reviewing the progress made on the timetable created by the Division
38 and the Marine Fisheries Commission in order to implement legislative
39 recommendations; and
- 40 (4) Reviewing any other issues which the Office of the State Auditor deems
41 it necessary or desirable to review.

42 The performance audit report shall be delivered to the Joint Legislative Committee on
43 Seafood and Aquaculture no later than January 1, 1998.

1 (b) Notwithstanding any other provision of law to the contrary, including
2 G.S. 143-64.20 through G.S. 143-64.24, the Office of the State Auditor may hire
3 consultants to assist in conducting the work required by this section.

4 (c) There is appropriated from the General Fund to the Office of the State
5 Auditor the sum of twenty-five thousand dollars (\$25,000) to be used for travel,
6 consultant, and other expenses that may be incurred in connection with this audit.

7 Section 20. There is appropriated from the General Fund to the Department of
8 Environment, Health, and Natural Resources the sum of seven hundred twelve thousand
9 eight hundred fifty-seven dollars (\$712,857) for the 1997-98 fiscal year for start-up
10 funding to administer the commercial license program.

11 Section 21. There is appropriated from the General Fund to the Department of
12 Environment, Health, and Natural Resources the sum of three hundred seventy-nine
13 thousand three hundred ninety-four dollars (\$379,394) for the 1997-98 fiscal year for
14 start-up funding to administer the recreational license program.

15 Section 22. There is appropriated from the General Fund to the Department of
16 Environment, Health, and Natural Resources the sum of sixty-three thousand four
17 hundred eight dollars (\$63,408) for the 1997-98 fiscal year for one position to support the
18 Appeals Panel.

19 Section 23. There is appropriated to the Department of Environment, Health,
20 and Natural Resources the sum of two hundred ninety-four thousand eight hundred forty-
21 six dollars (\$294,846) for the 1997-98 fiscal year and the sum of two hundred seventy-
22 seven thousand three hundred forty-six dollars (\$277,346) for the 1998-99 fiscal year for
23 five positions and to be used for administrative and other costs relating to the Coastal
24 Habitat Protection Plans.

25 Section 24. There is appropriated to the Department of Environment, Health,
26 and Natural Resources the sum of one million two hundred fifteen thousand four hundred
27 sixty-seven dollars (\$1,215,467) for the 1997-98 fiscal year and the sum of one million
28 twenty-five thousand ninety-nine dollars (\$1,025,099) for the 1998-99 fiscal year for 16
29 positions and to be used for administrative and other costs relating to the development of
30 fishery management plans.

31 Section 25. There is appropriated to the Department of Environment, Health,
32 and Natural Resources the sum of two hundred sixty-four thousand five hundred sixty-
33 three dollars (\$264,563) for the 1997-98 fiscal year and the sum of two hundred forty-
34 seven thousand five hundred sixty-three dollars (\$247,563) for the 1998-99 fiscal year for
35 administrative and operating expenses of the Marine Fisheries Commission and its
36 Advisory Committees and to establish two support positions.

37 Section 26. There is appropriated from the General Fund to the Department of
38 Environment, Health, and Natural Resources the sum of forty-six thousand eighty dollars
39 (\$46,080) for each year of the 1997-99 biennium to support the activities of the Fishery
40 Management Plan Advisory Councils.

41 Section 27. There is appropriated from the General Fund to the Department of
42 Environment, Health, and Natural Resources the sum of sixty-seven thousand dollars
43 (\$67,000) for the 1997-98 fiscal year and the sum of sixty-seven thousand dollars

1 (\$67,000) for the 1998-99 fiscal year to contract with the Department of Justice for an
2 attorney assigned to the Department of Environment, Health, and Natural Resources.
3 The attorney's duties shall include advising departmental law enforcement personnel on
4 matters related to the enforcement and administration of criminal laws; assisting in the
5 training of departmental law enforcement officers; acting as a liaison between
6 departmental law enforcement officers and the State judicial system; and assisting in the
7 prosecution of environmental, criminal enforcement cases when requested to do so by the
8 district attorney of a local judicial district.

9 Section 28. There is appropriated from the General Fund to the Department of
10 Environment, Health, and Natural Resources the sum of one hundred sixteen thousand
11 five hundred twenty dollars (\$116,520) for the 1997-98 fiscal year and the sum of sixteen
12 thousand five hundred twenty dollars (\$16,520) for the 1998-99 fiscal year for the
13 construction, equipping, and maintenance of an oceangoing patrol vessel within the
14 Division of Marine Fisheries in the Department of Environment, Health, and Natural
15 Resources.

16 Section 29. There is appropriated from the General Fund to the Department of
17 Environment, Health, and Natural Resources the sum of one hundred twenty-five
18 thousand dollars (\$125,000) for the 1997-98 fiscal year and the sum of two hundred
19 twenty thousand dollars (\$220,000) for the 1998-99 fiscal year for the publication and
20 distribution of rules and rule summaries pursuant to G.S. 113-221(b).

21 Section 30. Sections 2, 3, and 4 of this act become effective July 1, 1998.
22 Sections 3A, 5, 15, 16, and 17 of this act become effective September 1, 1997. Sections
23 13 and 14 of this act become effective September 1, 1997, and apply only to violations
24 occurring on or after the effective date of these provisions. Section 18 of this act
25 becomes effective June 30, 1997. Section 19 of this act is effective when the act becomes
26 law provided that subsection (c) of Section 19 becomes effective July 1, 1997. Sections
27 20 through 29 become effective July 1, 1997. All remaining sections of this act are
28 effective when this act becomes law. Notwithstanding any other provisions, the Marine
29 Fisheries Commission may adopt rules to implement this act when the act becomes law.