

## Article 15.

### Regulation of Coastal Fisheries.

#### **§ 113-181. Duties and powers of Department.**

(a) It is the duty of the Department to administer and enforce the provisions of this Subchapter pertaining to the conservation of marine and estuarine resources. In execution of this duty, the Department may collect such statistics, market information, and research data as is necessary or useful to the promotion of sports and commercial fisheries in North Carolina and the conservation of marine and estuarine resources generally; conduct or contract for research programs or research and development programs applicable to resources generally and to methods of cultivating, harvesting, marketing, or processing fish as may be beneficial in achieving the objectives of this Subchapter; enter into reciprocal agreements with other jurisdictions with regard to the conservation of marine and estuarine resources; and regulate placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational and recreational safety as well as from a conservation standpoint.

(b) The Department is directed to make every reasonable effort to carry out the duties imposed in this Subchapter. (1915, c. 84, s. 5; 1917, c. 290, s. 10; C.S., s. 1883; 1953, c. 1086; 1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1987, c. 827, s. 101.)

#### **§ 113-182. Regulation of fishing and fisheries.**

(a) The Marine Fisheries Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:

- (1) Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish;
- (2) Seasons for taking fish;
- (3) Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

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

- (1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Department; and
- (2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties.
- (3) The possession, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all fish taken in the Atlantic Ocean out to a distance of 200 miles from the State's mean low watermark, consistent with the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq., as amended. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C.S., s. 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1251; 1961, c. 1189, s. 1; 1963, c. 1097, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1995, c. 507, s. 26.5(c); 1997-400, s. 6.6.)

### **§ 113-182.1. Fishery Management Plans.**

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.52.

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

- (1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.
- (2) Recommend management actions pertaining to the fishery or fisheries.
- (3) Include conservation and management measures that will provide the greatest overall benefit to the State, particularly with respect to food production, recreational opportunities, and the protection of marine ecosystems, and that will produce a sustainable harvest.
- (4) Repealed by Session Laws 2010-13, s. 1, effective June 23, 2010.
- (5) Specify a time period, not to exceed two years from the date of the adoption of the plan, to end overfishing. This subdivision shall not apply if the Fisheries Director determines that the biology of the fish, environmental conditions, or lack of sufficient data make implementing the requirements of this subdivision incompatible with professional standards for fisheries management.
- (6) Specify a time period, not to exceed 10 years from the date of the adoption of the plan, for achieving a sustainable harvest. This subdivision shall not apply if the Fisheries Director determines that the biology of the fish, environmental conditions, or lack of sufficient data make implementing the requirements of this subdivision incompatible with professional standards for fisheries management.
- (7) Include a standard of at least fifty percent (50%) probability of achieving sustainable harvest for the fishery or fisheries. This subdivision shall not apply if the Fisheries Director determines that the biology of the fish, environmental conditions, or lack of sufficient data make implementing the requirements of this subdivision incompatible with professional standards for fisheries management.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint a fishery management plan advisory committee. Each fishery management plan advisory committee shall be composed of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the Fishery Management Plan is being developed.

(c1) The Department shall consult with the regional advisory committees established pursuant to G.S. 143B-289.57(e) regarding the preparation of each Fishery Management Plan. Before submission of a plan for review by the Joint Legislative Commission on Governmental Operations, the Department shall review any comment or recommendation regarding the plan that a regional advisory committee submits to the Department within the time limits established in the Schedule for the development and adoption of Fishery Management Plans established by G.S. 143B-289.52. Before the Commission adopts a management measure to implement a plan, the Commission shall review any comment or recommendation regarding the management measure that a regional advisory committee submits to the Commission.

(d) Each Fishery Management Plan shall be reviewed at least once every five years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a Fishery Management Plan, once adopted, without the approval of the Secretary of Environmental Quality.

(e) The Secretary of Environmental Quality shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environmental Quality shall report to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources shall review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

(e1) If the Secretary determines that it is in the interest of the long-term viability of a fishery, the Secretary may authorize the Commission to develop temporary management measures to supplement an existing Fishery Management Plan pursuant to this subsection. Development of temporary management measures pursuant to this subsection is exempt from subsections (c), (c1), and (e) of this section and the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.52. During the next review period for a Fishery Management Plan supplemented pursuant to this subsection, the Commission shall either incorporate the temporary management measures into the revised Fishery Management Plan or the

temporary management measures shall expire on the date the revised Fishery Management Plan is adopted.

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

(g) To achieve sustainable harvest under a Fishery Management Plan, the Marine Fisheries Commission may include in the Plan a recommendation that the General Assembly limit the number of fishermen authorized to participate in the fishery. The Commission may recommend that the General Assembly limit participation in a fishery only if the Commission determines that sustainable harvest cannot otherwise be achieved. In determining whether to recommend that the General Assembly limit participation in a fishery, the Commission shall consider all of the following factors:

- (1) Current participation in and dependence on the fishery.
- (2) Past fishing practices in the fishery.
- (3) Economics of the fishery.
- (4) Capability of fishing vessels used in the fishery to engage in other fisheries.
- (5) Cultural and social factors relevant to the fishery and any affected fishing communities.
- (6) Capacity of the fishery to support biological parameters.
- (7) Equitable resolution of competing social and economic interests.
- (8) Any other relevant considerations. (1997-400, s. 3.4; 1997-443, s. 11A.119(b); 1998-212, s. 14.3; 1998-225, s. 2.1; 2001-213, s. 1; 2001-452, s. 2.1; 2004-160, ss. 3, 4; 2007-495, ss. 6, 7; 2010-13, s. 1; 2010-15, s. 1; 2011-291, ss. 2.27, 2.28; 2012-201, s. 1; 2013-360, s. 14.8(r); 2015-241, s. 14.30(v); 2015-286, s. 4.12(b); 2017-57, s. 14.1(d).)

**§ 113-183. Unlawful possession, transportation and sale of fish.**

(a) It is unlawful to possess, transport, offer to transport, sell, offer to sell, receive, buy, or attempt to buy any fish regulated by the Department with knowledge or reason to believe that such fish are illicit.

(b) Fish are illicit when taken, possessed, or dealt with unlawfully, or when there has occurred at any time with respect to such fish a substantial failure of compliance with the applicable provisions of this Subchapter or of rules made under the authority of this Subchapter. (1961, c. 1189, s. 2; 1965, c. 957, s. 2; 1987, c. 827, s. 98.)

**§ 113-184. Possession and transportation of prohibited oyster equipment.**

(a) It is unlawful to carry aboard any vessel subject to licensing requirements under Article 14A under way or at anchor in coastal fishing waters during the regular closed oyster season any scoops, scrapes, dredges, or winders such as are usually or can be used for taking oysters. Provided that when such vessels are engaged in lawfully permitted oyster harvesting operations on any privately held shellfish bottom lease under G.S. 113-202 or G.S. 113-205, the vessel shall be exempt from this requirement.

(b) If any vessel has recently been under way or at anchor in coastal fishing waters engaged in activity similar in manner to that in which oysters are taken with scoops, scrapes, or dredges

and at a time or place in which the taking of oysters is prohibited, the presence on board of the vessel of wet oysters or scoops, scrapes, dredges, lines, or deck wet, indicating the taking of oysters, constitutes prima facie evidence that the vessel was engaged in taking oysters unlawfully with scoops, scrapes, or dredges at the time or place prohibited.

(c) Repealed by Session Laws 1991, c. 86, s. 1. (1903, c. 516, ss. 13-15, 28; Rev., ss. 2385, 2397; C.S., s. 1926; 1963, c. 452; 1965, c. 957, s. 2; 1991, c. 86, s. 1; 1991 (Reg. Sess., 1992), c. 788, s. 1; 1998-225, s. 3.3.)

### **§ 113-185. Fishing near ocean piers; trash or scrap fishing.**

(a) It is unlawful to fish in the ocean from vessels or with a net within 750 feet of an ocean pier licensed in accordance with G.S. 113-169.4. The prohibition shall be effective when:

(1) Buoys or beach markers, placed at the owner's expense in accordance with the rules adopted by the Marine Fisheries Commission, indicate clearly to fishermen in vessels and on the beach the requisite distance of 750 feet from the pier, and

(2) The public is allowed to fish from the pier for a reasonable fee.

The prohibition shall not apply to littoral proprietors whose property is within 750 feet of a duly licensed ocean pier.

(b) It is unlawful to engage in any fishing operations known as trash fishing or scrap fishing. "Trash fishing" or "scrap fishing" consists of taking the young of edible fish before they are of sufficient size to be of value as individual food fish:

(1) For commercial disposition as bait; or

(2) For sale to any dehydrating or nonfood processing plant; or

(3) For sale or commercial disposition in any manner.

The Marine Fisheries Commission may by rule authorize the disposition of the young of edible fish taken in connection with the legitimate commercial fishing operations, provided that the quantity of such fish that may be disposed of is sufficiently limited, or the taking and disposition is otherwise so regulated, as to discourage any practice of trash or scrap fishing for its own sake. (1965, c. 957, s. 2; 1973, c. 1262, ss. 28, 86; 1985, c. 452, ss. 1-4; 1987, c. 641, s. 5; c. 827, s. 98; 1991, c. 86, s. 2; 1998-225, s. 3.4.)

### **§ 113-186. Measures for fish scrap and oil.**

All persons buying or selling menhaden for the purpose of manufacturing fish scrap and oil within the State must buy or sell according to the measure prescribed in this section: 22,000 cubic inches for every 1,000 fish. Each day of failure to use the prescribed measure constitutes a separate offense. (1911, c. 101; C.S., s. 1963; 1965, c. 957, s. 2.)

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

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

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

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

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

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

(e) Any person who takes menhaden or Atlantic thread herring by the use of a purse seine net deployed by a mother ship and one or more runner boats in coastal fishing waters is guilty of a Class A1 misdemeanor. (1965, c. 957, s. 2; 1973, c. 1102; c. 1262, ss. 28, 86; 1977, c. 771, s. 4; 1979, c. 388, s. 5; 1987, c. 641, s. 6; c. 827, s. 98; 1989, c. 275, s. 2; 1993, c. 539, s. 839; 1994, Ex. Sess., c. 24, s. 14(c); 1997-400, s. 4.1; 2012-190, s. 3(a).)

#### **§ 113-188. Additional restrictions authorized.**

The setting out of particular offenses or requirements with regard to specific species of fish or with regard to certain types of equipment does not affect the authority of the Marine Fisheries Commission to make similar additional restrictions not in conflict with the provisions of this Article under authority granted in this Chapter. (1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1987, c. 827, s. 102.)

#### **§ 113-189. Protection of sea turtles, marine mammals, migratory birds, and finfish.**

(a) It is unlawful to willfully take, harm, disturb or destroy any sea turtles protected under the federal Endangered Species Act of 1973 (Public Law 93-205), as it may be subsequently amended, including green, hawksbill, loggerhead, Kemp's ridley, and leatherback turtles, or their nests or eggs.

(b) It shall be unlawful willfully to take, harm, disturb, or destroy marine mammals protected under the federal Marine Mammal Protection Act of 1972 (Public Law 92-522), as it may be subsequently amended.

(c) It shall be unlawful willfully to take, harm, disturb, or destroy migratory birds protected under the federal Migratory Bird Treaty Act of 1918 (16 U.S.C. §§ 703 through 712), as it may be subsequently amended, unless such action is permitted by regulations.

(d) It shall be unlawful willfully to take, harm, disturb, or destroy finfish protected under the federal Endangered Species Act of 1973 (Public Law 93-205), as it may be subsequently amended. (1967, cc. 198, 1225; 1981, c. 873; 1991, c. 86, s. 3; 2013-413, s. 37(b).)

**§ 113-190: Recodified as § 113-200 by Session Laws 1997-400, s. 6.7.**

**§ 113-191. Unlawful sale or purchase of fish; criminal and civil penalties.**

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

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

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

(d) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-289.53(b). The procedures set out in G.S. 143B-289.53 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

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

(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless filed within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-289.53(c), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to G.S. 143B-289.53(c).

(g) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (e) of this section, or requests remission of the assessment in whole or in part as provided in subsection (f) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in

which the violator resides or has his or its principal place of business to recover the amount of the assessment. Civil actions must be filed within three years of the date the final agency decision or court order was served on the violator. (1997-400, ss. 4.2, 4.5; 1998-225, ss. 3.5, 3.6.)

**§§ 113-192 through 113-199. Reserved for future codification purposes.**

**§ 113-200:** Repealed by Session Laws 2013-360, s. 14.7(a), effective July 1, 2013.