

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 428

Short Title: Water Column Leases for Aquaculture.

(Public)

Sponsors: Senators Basnight; and Barker.

Referred to: Marine Resources and Wildlife.

March 15, 1989

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF WATER COLUMN LEASES FOR
COMMERCIAL AQUACULTURE ACTIVITIES.

The General Assembly of North Carolina enacts:

Section 1. Article 16 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-202.1. Water Column Leases for Aquaculture.

(a) To increase the productivity of leases for shellfish culture issued under G.S. 113-202, the Marine Fisheries Commission may amend shellfish cultivation leases to authorize use of the water column superjacent to the leased bottom under the terms of this section when it determines the public interest will benefit from amendment of the leases. Leases with water column amendments must produce shellfish in commercial quantities at four times the minimum production rate of leases issued under G.S. 113-202, or any higher quantity required by the Commission through duly adopted rules.

(b) Suitable areas for the authorization of water column use shall meet the following minimum standards:

(1) Aquaculture use of the leased area must not significantly impair navigation;

(2) The leased area must not be within a navigation channel marked or maintained by a state or federal agency;

(3) The leased area must not be within an area traditionally used and available for fishing activities incompatible with the activities proposed by the leaseholder, such as trawling or seining;

- 1 (4) Aquaculture use of the leased area must not significantly interfere with
2 the exercise of riparian rights by adjacent property owners including
3 access to navigation channels from piers or other means of access; and
- 4 (5) Any additional standards, established by the Commission in duly
5 adopted rules, to protect the public interest in coastal fishing waters.
- 6 (c) The Commission shall not amend shellfish cultivation leases to authorize use
7 of the water column unless:
- 8 (1) The leaseholder submits an application, accompanied by a
9 nonrefundable application fee of one hundred dollars (\$100.00), which
10 conforms to the standards for lease applications in G.S. 113A-202(d)
11 and the duly adopted rules of the Commission;
- 12 (2) The proposed amendment has been noticed consistent with G.S. 113-
13 202(f);
- 14 (3) Public hearings have been conducted consistent with G.S. 113-202(g);
- 15 (4) The aspects of the proposals which require use and dedication of the
16 water column have been documented and are recognized by the
17 Commission as commercially feasible forms of aquaculture which will
18 enhance shellfish production on the leased area;
- 19 (5) It is not feasible to undertake the aquaculture activity outside of coastal
20 fishing waters; and
- 21 (6) The authorized water column use has the least disruptive effect on
22 other public trust uses of the waters of any available technology to
23 produce the shellfish identified in the proposal.
- 24 (d) Amendments of shellfish cultivation leases to authorize use of the water
25 column are issued for a period of five years or the remainder of the term of the lease,
26 whichever is shorter. The annual rental for water column amendments is five hundred
27 dollars (\$500.00) per acre or ten percent (10%) of the gross revenues generated from the
28 leased bottoms, whichever is greater. The rental is in addition to that required in G.S.
29 113-202.
- 30 (e) Amendments of shellfish cultivation leases to authorize use of the water
31 column are subject to termination in accordance with the procedures established in G.S.
32 113-202 for the termination of shellfish cultivation leases. Additionally, such
33 amendments may be terminated for unauthorized or unlawful interference with the
34 exercise of public trust rights by the leaseholder, agents and employees of the
35 leaseholder.
- 36 (f) Amendments of shellfish cultivation leases to authorize use of the water
37 column are not transferrable except when the Commission approves the transfer after
38 public notice and hearing consistent with subsection (c) of this section.
- 39 (g) After public notice and hearing consistent with subsection (c) of this section,
40 the Commission may renew an amendment, in whole or in part, when the leaseholder
41 has produced commercial quantities of shellfish and has otherwise complied with the
42 rules of the Commission. Renewals may be denied or reduced in scope when the public
43 interest so requires. Appeal of renewal decisions shall be conducted in accordance with

1 G.S. 113-202(p). Renewals are subject to the lease terms and rates established in
2 subsection (d) of this section.

3 (h) The procedures and requirements of G.S. 113-202 shall apply to proposed
4 amendments or amendments of shellfish cultivation leases considered under this section
5 except more specific provisions of this section control conflicts between the two
6 sections.

7 (i) To the extent required by demonstration or research aquaculture development
8 projects, the Commission may amend existing leases and issue leases that authorize use
9 of the bottom and the water column. Demonstration or research aquaculture
10 development projects may be authorized for two years with no more than one renewal
11 and when the project is proposed or formally sponsored by an educational institution
12 which conducts research or demonstration of aquaculture. Production of shellfish with
13 a sales value in excess of one thousand dollars (\$1,000) per acre per year shall constitute
14 commercial production. Demonstration or research aquaculture development projects
15 shall be exempt for the rental rate in subsection (d) of this section unless commercial
16 production occurs as a result of the project."

17 Sec. 2. G.S. 113-202(b) reads as rewritten:

18 "(b) The Marine Fisheries Commission may delete any part of an area proposed
19 for lease or may condition a lease to protect the public interest with respect to the
20 factors enumerated in subsection (a) of this section. The Marine Fisheries Commission
21 may not grant a new lease in an area heavily used for recreational purposes. ~~To the extent~~
22 ~~required by demonstration or research aquaculture development projects, the Marine Fisheries~~
23 ~~Commission may amend existing leases and issue leases that authorize use of the bottom and~~
24 ~~the water column, notwithstanding the factors enumerated in subsection (a) of this section."~~

25 Sec. 3. This act is effective upon ratification. ♦