

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 281
SENATE BILL 797

AN ACT TO FORBID DAMAGE TO AQUACULTURE OPERATIONS AND TO SHELLFISH BEDS.

The General Assembly of North Carolina enacts:

Section 1. Article 20 of Chapter 113 is amended by adding a new section to read:

"§ 113-269. Robbing or injuring hatcheries and other aquaculture operations.

(a) The definitions established in G.S. 106-758 are incorporated by reference into this section. For the purposes of this section, a shellfish lease issued pursuant to G.S. 113-202 is defined as an aquaculture facility only when it has been amended pursuant to G.S. 113-202.1 to authorize use of the water column and when it is or has been regularly posted and identified in accordance with the rules of the Marine Fisheries Commission.

(b) It is unlawful for any person without the authority of the owner of an aquaculture facility to take fish or aquatic species being cultivated or reared by the owner from an aquaculture facility.

(c) It is unlawful for any person to receive or possess fish or aquatic species stolen from an aquaculture facility while knowing or having reasonable grounds to believe that the fish or aquatic species are stolen.

(d) It is unlawful for any person to willfully destroy or injure an aquaculture facility or aquatic species being reared in an aquaculture facility.

(e) Violation of subsections (b) or (c) for fish or aquatic species valued at more than four hundred dollars (\$400.00) is punishable under G.S. 14-72. Violation of subsections (b) or (c) for fish or aquatic species valued at four hundred dollars (\$400.00) or less is a misdemeanor punishable by a fine not less than five hundred dollars (\$500.00), by imprisonment not to exceed one year, or both.

(f) Violation of subsection (d) is a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000), by imprisonment for not less than one year, or both.

(g) In deciding to impose any sentence other than an active prison sentence, the sentencing judge shall consider and may require, in accordance with G.S. 15A-1343, restitution to the victim for the amount of damage to the aquaculture facility or aquatic species or for the value of the stolen fish or aquatic species.

(h) The district attorney shall dismiss any case brought pursuant to subsections (b) and (c) if defendant produces a notarized written authorization for taking fish or aquatic species from the aquaculture facility or if the fish or aquatic species taken from

a shellfish lease aquaculture facility was not a shellfish authorized for cultivation on the lease."

Sec. 2. G.S. 113-208(a) reads as rewritten:

"(a) It is unlawful for any person, other than the holder of private shellfish rights, to take or attempt to take shellfish from any privately leased, franchised, or deeded shellfish bottom area without written authorization of the holder and with actual knowledge it is a private shellfish bottom area. Actual knowledge will be presumed when the shellfish are taken or attempted to be taken:

- (1) From within the confines of posted boundaries of the area as identified by signs, whether the whole or any part of the area is posted, or
- (2) When the area has been regularly posted and identified and the person knew the area to be the subject of private shellfish rights.

A violation of this section shall constitute a misdemeanor, punishable by imprisonment not to exceed six months, 30 days,—or by a fine of not less than twenty five dollars (\$25.00) nor more than five thousand dollars (\$5,000), two hundred fifty dollars (\$250.00),—or both such fine and imprisonment. The written authorization shall include the lease number or deed reference, name and address of authorized person, date of issuance, and date of expiration, and it must be signed by the holder of the private shellfish right. Identification signs shall include the lease number or deed reference and the name of the holder."

Sec. 3. G.S. 113-132(a) reads as rewritten:

"(a) The Marine Fisheries Commission has jurisdiction over the conservation of marine and estuarine resources. Except as may be otherwise provided by law, it has jurisdiction over all activities connected with the conservation and regulation of marine and estuarine ~~resources.~~ resources, including the regulation of aquaculture facilities as defined in G.S. 106-758 which cultivate or rear marine and estuarine resources."

Sec. 4. This act shall become effective October 1, 1989, and shall apply to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 12th day of June, 1989.