

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 100*

Agriculture, Marine Resources, and Wildlife Committee Substitute Adopted 2/24/93

Short Title: Shellfish Lease Authority.

(Public)

Sponsors:

Referred to: Agriculture, Marine Resources, and Wildlife.

February 9, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO VEST AUTHORITY IN THE SECRETARY OF ENVIRONMENT,
3 HEALTH, AND NATURAL RESOURCES TO GRANT SHELLFISH
4 CULTIVATION LEASES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 113-202 reads as rewritten:

7 "**§ 113-202. New and renewal leases for shellfish cultivation; termination of leases**
8 **issued prior to January 1, 1966.**

9 (a) To increase the use of suitable areas underlying coastal fishing waters for the
10 production of shellfish, the ~~Marine Fisheries Commission Secretary~~ may grant shellfish
11 cultivation leases to persons who reside in North Carolina under the terms of this
12 section when ~~it determines the Secretary determines, in accordance with his duty to~~
13 conserve the marine and estuarine resources of the State, that the public interest will
14 benefit from issuance of the lease. Suitable areas for the production of shellfish shall
15 meet the following minimum standards:

- 16 (1) The area leased must be suitable for the cultivation and harvesting of
17 shellfish in commercial quantities.
18 (2) The area leased must not contain a natural shellfish bed.
19 (3) Cultivation of shellfish in the leased area will be compatible with
20 lawful utilization by the public of other marine and estuarine
21 resources. Other public uses which may be considered include, but are
22 not limited to, navigation, fishing and recreation.

- 1 (4) Cultivation of shellfish in the leased area will not impinge upon the
2 rights of riparian owners.
- 3 (5) The area leased must not include an area designated for inclusion in
4 the Department's Shellfish Management Program.
- 5 (6) The area leased must not include an area which the State Health
6 Director has recommended be closed to shellfish harvest by reason of
7 pollution.
- 8 (b) ~~The Marine Fisheries Commission~~ Secretary may delete any part of an area
9 proposed for lease or may condition a lease to protect the public interest with respect to
10 the factors enumerated in subsection (a) of this section. ~~The Marine Fisheries Commission~~
11 Secretary may not grant a new lease in an area heavily used for recreational purposes.
- 12 (c) No person, including a corporate entity, or single family unit may acquire and
13 hold by lease, lease renewal, or purchase more than 50 acres of public bottoms under
14 shellfish cultivation leases.
- 15 (d) Any person desiring to apply for a lease must make written application to the
16 Secretary on forms prepared by the Department containing such information as deemed
17 necessary to determine the desirability of granting or not granting the lease requested.
18 Except in the case of renewal leases, the application must be accompanied by a map or
19 diagram made at the expense of the applicant, showing the area proposed to be leased.
- 20 The map or diagram must conform to standards prescribed by the Secretary
21 concerning accuracy of map or diagram and the amount of detail that must be shown. If
22 on the basis of the application information and map or diagram the Secretary deems that
23 granting the lease would benefit the shellfish culture of North Carolina, the Secretary, in
24 the case of initial lease applications, must order an investigation of the bottom proposed
25 to be leased. The investigation is to be made by the Secretary or his authorized agent to
26 determine whether the area proposed to be leased is consistent with the standards in
27 subsection (a) and any other applicable standards under this Article and the rules
28 of the Marine Fisheries Commission. In the event the Secretary finds the application
29 inconsistent with the applicable standards, the Secretary shall recommend that the
30 application be denied or that a conditional lease be issued which is consistent with the
31 applicable standards. In the event the Secretary authorizes amendment of the
32 application, the applicant must furnish a new map or diagram meeting requisite
33 standards showing the area proposed to be leased under the amended application. At the
34 time of making application for an initial lease, the applicant must pay a filing fee of one
35 hundred dollars (\$100.00).
- 36 (e) The area of bottom applied for in the case of an initial lease or amended
37 initial lease must be as compact as possible, taking into consideration the shape of the
38 body of water, the consistency of the bottom, and the desirability of separating the
39 boundaries of a leasehold by a sufficient distance from any known natural shellfish bed
40 to prevent the likelihood of disputes arising between the leaseholder and members of the
41 public taking shellfish from the natural bed.
- 42 (f) Within a reasonable time after receipt of an application that complies with
43 subsection (d), the Secretary shall notify the applicant whether he recommends
44 approval, disapproval, or modification of the lease application. In the event the

1 Secretary recommends approval or a modification to which the applicant agrees, the
2 Secretary shall conduct a public hearing in the county where the proposed leasehold
3 lies. The Secretary must publish at least two notices of the intention to lease in a
4 newspaper of general circulation in the county in which the proposed leasehold lies. The
5 first publication must precede the public hearing by more than 20 days; the second
6 publication must follow the first by seven to 11 days. The notice of intention to lease
7 must contain a sufficient description of the area of the proposed leasehold that its
8 boundaries may be established with reasonable ease and certainty and must also contain
9 the date, hour and place of the hearing. The Secretary's recommendation of disapproval
10 shall become the final agency decision ~~of on~~ the application unless the applicant requests
11 ~~in writing~~ initiates a contested case by filing a petition under G.S. 150B-23 within 20
12 days of notice of such action ~~an administrative hearing before the Marine Fisheries~~
13 ~~Commission.~~ action.

14 (g) ~~Protests to the granting of a proposed lease shall be made either in writing~~
15 ~~under oath prior to the public hearing held by the Secretary or by testimony under oath~~
16 ~~during the public hearing.~~ After consideration of the protests public comment received
17 and any additional investigations he orders to evaluate the protests, comments, the
18 Secretary shall send to notify the applicant and protesting parties in person or by
19 certified or registered mail of his final recommendation decision on the lease
20 application. The Secretary shall also notify persons who submitted comments at the
21 public hearing and requested notice of the lease decision. An applicant who is
22 dissatisfied with the Secretary's decision may commence a contested case by filing a
23 petition under G.S. 150B-23 within 20 days after receiving the Secretary's notice of his
24 decision, as may other persons meeting the requirements of G.S. 150B-23. In the event
25 the Secretary's final recommendation decision is a modification to which the applicant
26 agrees, the lease applicant must furnish an amended map or diagram before the
27 Secretary's final recommendation can be presented to the Marine Fisheries Commission.
28 lease can be issued by the Secretary. In the event the Secretary's final recommendation
29 is inconsistent with a protest, the person filing the protest may request in writing within
30 20 days of notice of such action an administrative hearing before the Marine Fisheries
31 Commission. ~~The Secretary's final recommendation of disapproval decision~~
32 disapproving an application shall become the final agency decision of on the application
33 unless the applicant ~~requests in writing~~ initiates a contested case by filing a petition
34 under G.S. 150B-23 within 20 days of notice of such action ~~an administrative hearing~~
35 ~~before the Marine Fisheries Commission.~~ action.

36 (h) ~~The Secretary shall present all lease applications recommended for approval~~
37 ~~to the Marine Fisheries Commission for final determination. In addition to his final~~
38 ~~recommendation, the Secretary shall present the official record of the application as~~
39 ~~developed pursuant to the requirements of this action. The applicants and persons who~~
40 ~~protested the application shall be given an opportunity to present oral and written~~
41 ~~arguments based on the official record. Unless the Marine Fisheries Commission, in its~~
42 ~~discretion, refers the matter for an administrative hearing, the Marine Fisheries~~
43 ~~Commission shall determine all lease applications presented by the Secretary during the~~
44 ~~public meetings when the matter is presented. The Marine Fisheries Commission,~~

1 Secretary, in its his discretion, may lease or decline to lease public bottoms in
2 accordance with its his duty to conserve the marine and estuarine resources of the State.

3 ~~More than 20 days prior to an administrative hearing conducted pursuant to this~~
4 ~~section, the Secretary must publish notice of the hearing in a newspaper of general~~
5 ~~circulation in the county where the proposed leasehold lies. The hearing shall be~~
6 ~~conducted in the county where the proposed leasehold lies. Protests to the granting of~~
7 ~~the proposed lease may be made during the administrative hearing by parties to the~~
8 ~~hearing, intervening parties, and witnesses for parties. When administrative hearings~~
9 ~~have been conducted pursuant to this section, the Marine Fisheries Commission shall~~
10 ~~determine the lease applications during the public meeting when the proposal for~~
11 ~~decision is presented by the hearing officer(s).~~

12 (i) After a lease application is approved by the ~~Marine Fisheries Commission,~~
13 Secretary, the applicant shall submit to the Secretary a survey of the area approved for
14 leasing and define the bounds of the area approved for leasing with markers in
15 accordance with the rules of the Commission. The survey shall conform to standards
16 prescribed by the Secretary concerning accuracy of survey and the amount of detail to
17 be shown. When an acceptable survey is submitted, the boundaries are marked and all
18 fees and rents due in advance are paid, the Secretary shall execute the lease on forms
19 approved by the Attorney General. ~~If the applicant and the Secretary are unable to agree that~~
20 ~~the area approved for lease is that shown in the survey, the Secretary shall report the matter~~
21 ~~with reasonable dispatch to the Marine Fisheries Commission for resolution.~~ The Secretary is
22 authorized, with the approval of the lessee, to amend an existing lease by reducing the
23 area under lease or by combining contiguous leases without increasing the total area
24 leased.

25 (j) Initial leases begin upon the issuance of the lease by the Secretary and expire
26 at noon on the first day of April following the tenth anniversary of the granting of the
27 lease. Renewal leases are issued for a period of 10 years effective from the time of
28 expiration of the previous lease. At the time of making application for renewal of a
29 lease, the applicant must pay a filing fee of fifty dollars (\$50.00). The rental for initial
30 leases is one dollar (\$1.00) per acre for all leases entered into before July 1, 1965, and
31 for all other leases until noon on the first day of April following the first anniversary of
32 the lease. Thereafter, for initial leases entered into after July 1, 1965, and from the
33 beginning for renewals of leases entered into after said date, the rental is five dollars
34 (\$5.00) per acre per year. Rental must be paid annually in advance prior to the first day
35 of April each year. Upon initial granting of a lease, the pro rata amount for the portion
36 of the year left until the first day of April must be paid in advance at the rate of one
37 dollar (\$1.00) per acre per year; then, on or before the first day of April next, the lessee
38 must pay the rental for the next full year.

39 (k) Except as restricted by this Subchapter, leaseholds granted under this section
40 are to be treated as if they were real property and are subject to all laws relating to
41 taxation, sale, devise, inheritance, gift, seizure and sale under execution or other legal
42 process, and the like. Leases properly acknowledged and probated are eligible for
43 recordation in the same manner as instruments conveying an estate in real property.
44 Within 30 days after transfer of beneficial ownership of all or any portion of or interest

1 in a leasehold to another, the new owner must notify the Secretary of such fact. Such
2 transfer is not valid until notice is furnished the Secretary. In the event such transferee is
3 a nonresident, the Secretary must initiate proceedings to terminate the lease.

4 (l) Upon receipt of notice by the Secretary of any of the following occurrences,
5 he must commence action to terminate the leasehold:

6 (1) Failure to pay the annual rent in advance.

7 (2) Failure to file information required by the Secretary upon annual
8 remittance of rental or filing false information on the form required to
9 accompany the annual remittance of rental.

10 (3) Failure by new owner to report a transfer of beneficial ownership of all
11 or any portion of or interest in the leasehold.

12 (4) Failure to mark the boundaries in the leasehold and to keep them
13 marked as required in the rules of the Marine Fisheries Commission.

14 (5) Failure to utilize the leasehold on a continuing basis for the
15 commercial production of shellfish.

16 (6) Transfer of all or part of the beneficial ownership of a leasehold to a
17 nonresident.

18 (7) Substantial breach of compliance with the provisions of this Article or
19 of rules of the Marine Fisheries Commission governing use of the
20 leasehold.

21 The Marine Fisheries Commission is authorized to make rules defining commercial
22 production of shellfish, based upon the productive potential of particular areas climatic
23 or biological conditions at particular areas or particular times, availability of seed
24 shellfish, availability for purchase by lessees of shells or other material to which oyster
25 spat may attach, and the like. Commercial production may be defined in terms of
26 planting effort made as well as in terms of quantities of shellfish harvested. Provided,
27 however, that if a lessee has made a diligent effort to effectively and efficiently manage
28 his lease according to accepted standards and practices in such management, and
29 because of reasons beyond his control, such as acts of God, such lessee has not and
30 cannot meet the requirements set out by the Marine Fisheries Commission under the
31 provisions of this paragraph of this subsection, his leasehold shall not be terminated
32 under subdivision (5) of this subsection.

33 (m) In the event the leaseholder takes steps within 30 days to remedy the situation
34 upon which the notice of intention to terminate was based and the Secretary is satisfied
35 that continuation of the lease is in the best interests of the shellfish culture of the State,
36 the Secretary may discontinue termination procedures. Where there is no discontinuance
37 of termination procedures, the leaseholder may ~~appeal to the Marine Fisheries Commission.~~
38 initiate a contested case by filing a petition under G.S. 150B-23 within 30 days of
39 receipt of notice of intention to terminate. The Secretary shall make the final agency
40 decision of all lease terminations. ~~Where there is no appeal, or where an appeal does not~~
41 ~~prevail, the leaseholder does not initiate a contested case, or the Secretary's final~~
42 decision upholds termination, the Secretary must send a final letter of termination to the
43 leaseholder. The final letter of termination may not be mailed sooner than 30 days after
44 receipt by the leaseholder of the Secretary's notice of intention to ~~terminate.~~ terminate, or

1 of the Secretary's final agency decision, as appropriate. The lease is terminated effective
2 at midnight on the day the final notice of termination is served on the leaseholder. The
3 final notice of termination may not be issued pending hearing of any appeal by the Marine
4 Fisheries Commission, a contested case initiated by the leaseholder.

5 Service of any notice required in this subsection may be accomplished by certified
6 mail, return receipt requested; personal service by any law-enforcement officer; or upon
7 the failure of these two methods, publication. Service by publication shall be
8 accomplished by publishing such notices in a newspaper of general circulation within
9 the county where the lease is located for at least once a week for three successive
10 weeks. The format for notice by publication shall be approved by the Attorney General.

11 (n) Upon final termination of any leasehold, the bottom in question is thrown
12 open to the public for use in accordance with laws and rules governing use of public
13 grounds generally. Within 30 days of final termination of the leasehold, the former
14 leaseholder shall remove all abandoned markers denominating the area of the leasehold
15 as a private bottom. The State may, after 10 days' notice to the owner of the abandoned
16 markers thereof, remove the abandoned structure and have the area cleaned up. The
17 cost of such removal and cleanup shall be payable by the owner of the abandoned
18 markers and the State may bring suit to recover the costs thereof.

19 (o) Every year between January 1 and February 15 the Secretary must mail to all
20 leaseholders a notice of the annual rental due and include forms designed by him for
21 determining the amount of shellfish or shells planted on the leasehold during the
22 preceding calendar year, and the amount of harvest gathered. Such forms may contain
23 other pertinent questions relating to the utilization of the leasehold in the best interests
24 of the shellfish culture of the State, and must be executed and returned by the
25 leaseholder with the payment of his rental. Any leaseholder or his agent executing such
26 forms for him who knowingly makes a false statement on such forms is guilty of a
27 misdemeanor punishable in the discretion of the court.

28 (p) All leases and renewal leases granted after the effective date of this Article
29 are made subject to this Article and to reasonable amendment of governing statutes,
30 rules of the Marine Fisheries Commission, and requirements imposed by the Secretary
31 or his agents in regulating the use of the leasehold or in processing applications of
32 rentals. This includes such statutory increase in rentals as may be necessitated by
33 changing conditions and refusal to renew lease after expiration, in the discretion of the
34 ~~Marine Fisheries Commission.~~ Secretary. No increase in rentals, however, may be given
35 retroactive effect.

36 The General Assembly declares it to be contrary to public policy to the oyster and
37 clam bottoms which were leased prior to January 1, 1966, and which are not being used
38 to produce oysters and clams in commercial quantities to continue to be held by private
39 individuals, thus depriving the public of a resource which belongs to all the people of
40 the State. Therefore, when the Secretary determines, after due notice to the lessee, and
41 after opportunity for the lessee to be heard, that oysters or clams are not being produced
42 in commercial quantities, due to the lessee's failure to make diligent effort to produce
43 oysters and clams in commercial quantities, the Secretary may decline to renew, at the
44 end of the current term, any oyster or clam bottom lease which was executed prior to

1 January 1, 1966. The lessee may appeal the denial of the Secretary to renew the lease to
2 the ~~Marine Fisheries Commission~~ in which event the lessee shall be granted an opportunity to
3 be heard, ~~de novo~~, by the ~~Marine Fisheries Commission~~ and by initiating a contested case
4 pursuant to G.S. 150B-23. In such contested cases, the burden of proof, by the greater
5 weight of the evidence, shall be on the lessee. ~~The Marine Fisheries Commission, by~~
6 ~~majority vote, may affirm or reverse the action of the Secretary. No appeal shall be allowed~~
7 ~~from the action of the Marine Fisheries Commission.~~

8 (q) Repealed by Session Laws 1983, c. 621, s. 16, effective July 1, 1983."

9 Sec. 2. G.S. 113-202.1 reads as rewritten:

10 "**§ 113-202.1. Water column leases for aquaculture.**

11 (a) To increase the productivity of leases for shellfish culture issued under G.S.
12 113-202, the ~~Marine Fisheries Commission~~ Secretary may amend shellfish cultivation
13 leases to authorize use of the water column superjacent to the leased bottom under the
14 terms of this section when ~~it~~ he determines the public interest will benefit from
15 amendment of the leases. Leases with water column amendments must produce
16 shellfish in commercial quantities at four times the minimum production rate of leases
17 issued under G.S. 113-202, or any higher quantity required by the Marine Fisheries
18 Commission through duly adopted rules.

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

- 21 (1) Aquaculture use of the leased area must not significantly impair
22 navigation;
- 23 (2) The leased area must not be within a navigation channel marked or
24 maintained by a state or federal agency;
- 25 (3) The leased area must not be within an area traditionally used and
26 available for fishing or hunting activities incompatible with the
27 activities proposed by the leaseholder, such as trawling or seining;
- 28 (4) Aquaculture use of the leased area must not significantly interfere with
29 the exercise of riparian rights by adjacent property owners including
30 access to navigation channels from piers or other means of access; and
- 31 (5) Any additional standards, established by the Commission in duly
32 adopted rules, to protect the public interest in coastal fishing waters.

33 (c) The ~~Commission~~ Secretary shall not amend shellfish cultivation leases to
34 authorize use of the water column unless:

- 35 (1) The leaseholder submits an application, accompanied by a
36 nonrefundable application fee of one hundred dollars (\$100.00), which
37 conforms to the standards for lease applications in G.S. 113-202(d)
38 and the duly adopted rules of the Commission;
- 39 (2) The proposed amendment has been noticed consistent with G.S. 113-
40 202(f);
- 41 (3) Public hearings have been conducted consistent with G.S. 113-202(g);
- 42 (4) The aspects of the proposals which require use and dedication of the
43 water column have been documented and are recognized by the

1 ~~Commission~~Secretary as commercially feasible forms of aquaculture
2 which will enhance shellfish production on the leased area;

3 (5) It is not feasible to undertake the aquaculture activity outside of coastal
4 fishing waters; and

5 (6) The authorized water column use has the least disruptive effect on
6 other public trust uses of the waters of any available technology to
7 produce the shellfish identified in the proposal.

8 (d) Amendments of shellfish cultivation leases to authorize use of the water
9 column are issued for a period of five years or the remainder of the term of the lease,
10 whichever is shorter. The annual rental for water column amendments is five hundred
11 dollars (\$500.00) per acre, prorated. The rental is in addition to that required in G.S.
12 113-202.

13 (e) Amendments of shellfish cultivation leases to authorize use of the water
14 column are subject to termination in accordance with the procedures established in G.S.
15 113-202 for the termination of shellfish cultivation leases. Additionally, such
16 amendments may be terminated for unauthorized or unlawful interference with the
17 exercise of public trust rights by the leaseholder, agents and employees of the
18 leaseholder.

19 (f) Amendments of shellfish cultivation leases to authorize use of the water
20 column are not transferrable except when the ~~Commission~~Secretary approves the
21 transfer after public notice and hearing consistent with subsection (c) of this section.

22 (g) After public notice and hearing consistent with subsection (c) of this section,
23 the ~~Commission~~Secretary may renew an amendment, in whole or in part, when the
24 leaseholder has produced commercial quantities of shellfish and has otherwise complied
25 with the rules of the Commission. Renewals may be denied or reduced in scope when
26 the public interest so requires. Appeal of renewal decisions shall be conducted in
27 accordance with G.S. 113-202(p). Renewals are subject to the lease terms and rates
28 established in subsection (d) of this section.

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

33 (i) To the extent required by demonstration or research aquaculture development
34 projects, the ~~Commission~~Secretary may amend existing leases and issue leases that
35 authorize use of the bottom and the water column. Demonstration or research
36 aquaculture development projects may be authorized for two years with no more than
37 one renewal and when the project is proposed or formally sponsored by an educational
38 institution which conducts research or demonstration of aquaculture. Production of
39 shellfish with a sales value in excess of one thousand dollars (\$1,000) per acre per year
40 shall constitute commercial production. Demonstration or research aquaculture
41 development projects shall be exempt for the rental rate in subsection (d) of this section
42 unless commercial production occurs as a result of the project."

43 Sec. 3. G.S. 113-202.2 reads as rewritten:

44 "**§ 113-202.2. Water column leases for aquaculture for perpetual franchises.**

1 (a) To increase the productivity of shellfish grants and perpetual franchises for
2 shellfish culture recognized under G.S. 113-206, the ~~Marine Fisheries Commission~~
3 Secretary may lease the water column superjacent to such grants or perpetual franchises
4 (hereinafter 'perpetual franchises') under the terms of this section when it determines the
5 public interest will benefit from the lease. Perpetual franchises with water column
6 leases must produce shellfish in commercial quantities at four times the minimum
7 production rate of leases issued under G.S. 113-202, or any higher quantity required by
8 the Marine Fisheries Commission by rule.

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

- 11 (1) Aquaculture use of the leased water column area must not significantly
12 impair navigation;
- 13 (2) The leased water column area must not be within a navigation channel
14 marked or maintained by a State or federal agency;
- 15 (3) The leased water column area must not be within an area traditionally
16 used and available for fishing or hunting activities incompatible with
17 the activities proposed by the perpetual franchise holder, such as
18 trawling or seining;
- 19 (4) Aquaculture use of the leased water column area must not significantly
20 interfere with the exercise of riparian rights by adjacent property
21 owners including access to navigation channels from piers or other
22 means of access;
- 23 (5) The leased water column area may not exceed 10 acres for grants or
24 perpetual franchises recognized pursuant to G.S. 113-206;
- 25 (6) The leased water column area must not extend more than one-third of
26 the distance across any body of water or into the channel third of any
27 body of water for grants or perpetual franchises recognized pursuant to
28 G.S. 113-206; and
- 29 (7) Any additional rules to protect the public interest in coastal fishing
30 waters adopted by the Commission.

31 (c) The ~~Commission Secretary~~ shall not lease the water column superjacent to
32 oyster or other shellfish grants or perpetual franchises unless:

- 33 (1) The perpetual franchise holder submits an application, accompanied by
34 a nonrefundable application fee of one hundred dollars (\$100.00),
35 which conforms to the standards for lease applications in G.S. 113-
36 202(d) and rules adopted by the Commission;
- 37 (2) Notice of the proposed lease has been given consistent with G.S. 113-
38 202(f);
- 39 (3) Public hearings have been conducted consistent with G.S. 113-202(g);
- 40 (4) The aspects of the proposals which require use and dedication of the
41 water column have been documented and are recognized by the
42 ~~Commission Secretary~~ as commercially feasible forms of aquaculture
43 which will enhance shellfish production;

1 (5) It is not feasible to undertake the aquaculture activity outside of coastal
2 fishing waters; and

3 (6) The authorized water column use has the least disruptive effect on
4 other public trust uses of the waters of any available technology to
5 produce the shellfish identified in the proposal.

6 (d) Water column leases to perpetual franchises shall be issued for a period of
7 five years and may be renewed pursuant to subsection (g) of this section. The annual
8 rental for water column leases shall be five hundred dollars (\$500.00) per acre, prorated,
9 or the then current renewal rate, whichever is greater.

10 (e) Water column leases to perpetual franchises may be terminated for
11 unauthorized or unlawful interference with the exercise of public trust rights by the
12 leaseholder or his agents or employees.

13 (f) Water column leases to perpetual franchises are not transferrable except when
14 the ~~Commission~~ Secretary approves the transfer after public notice and hearing
15 consistent with G.S. 113-202(f) and (g).

16 (g) After public notice and hearing consistent with G.S. 113-202(f) and (g), the
17 ~~Commission~~ Secretary may renew a water column lease, in whole or in part, if the
18 leaseholder has produced commercial quantities of shellfish and has otherwise complied
19 with this section and the rules of the Commission. Renewals may be denied or reduced
20 in scope when the public interest so requires. Appeal of renewal decisions shall be
21 conducted in accordance with G.S. 113-202(p). Renewals are subject to the lease terms
22 and rates set out in subsection (d) of this section.

23 (h) The procedures and requirements of G.S. 113-202 shall apply to proposed
24 water column leases or water column leases to perpetual franchises considered under
25 this section except that more specific provisions of this section control conflicts between
26 the two sections.

27 (i) Demonstration or research aquaculture development projects may be
28 authorized for two years with no more than one renewal and when the project is
29 proposed or formally sponsored by an educational institution which conducts
30 aquaculture research or demonstration projects. Production of shellfish with a sales
31 value in excess of one thousand dollars (\$1,000) per acre per year shall constitute
32 commercial production. Demonstration or research aquaculture development projects
33 shall be exempt from the rental rate in subsection (d) of this section unless commercial
34 production occurs as a result of the project."

35 Sec. 4. G.S. 143B-289.4(2) reads as rewritten:

36 "(2) The Marine Fisheries Commission shall have the power and duty to
37 establish standards and adopt rules:

38 (a) Implementing the provisions of Subchapter IV of Chapter 113
39 as provided in G.S. 113-134 of the General Statutes of the State
40 of North Carolina;

41 (b) For the disposition of confiscated property as set forth in G.S.
42 113-137;

43 (c) Governing all license requirements and taxes prescribed in
44 Chapter 113, Article 14;

- 1 (d) Governing the importation and exportation of fish, and
2 equipment that may be used in taking or processing fish, as
3 necessary to enhance the conservation of marine and estuarine
4 resources of North Carolina as provided in G.S. 113-160;
- 5 (e) Governing the possession, transportation and disposition of
6 seafood, as provided in G.S. 113-164;
- 7 (f) Regarding the disposition of the young of edible fish, as
8 provided by G.S. 113-185;
- 9 ~~(g) Regarding the leasing of public grounds for aquaculture,~~
10 ~~including oysters and clam production, as provided in G.S. 113-~~
11 ~~202;~~
- 12 (h) Governing utilization of private fisheries, as provided in G.S.
13 113-205;
- 14 (i) Imposing further restrictions upon the throwing of fish offal in
15 any coastal fishing waters, as provided in G.S. 113-265;
- 16 (j) Governing the location and utilization of artificial reefs in
17 coastal waters; and
- 18 (k) Regulating the placement of nets and other sports or
19 commercial fishing apparatus in coastal fishing waters with
20 regard to navigational or recreational safety as well as from a
21 conservation standpoint."

22 Sec. 5. This act is effective upon ratification.