

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

House Committee Substitute Favorable 5/7/93

House Committee Substitute #2 Favorable 7/14/93

Short Title: Shellfish Leases/Crab License.

(Public)

Sponsors:

Referred to:

February 9, 1993

A BILL TO BE ENTITLED

AN ACT TO VEST AUTHORITY IN THE SECRETARY OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO GRANT SHELLFISH CULTIVATION LEASES, TO MAKE CHANGES TO CHAPTER 113 OF THE NORTH CAROLINA GENERAL STATUTES, AND TO PREVENT MARINE LITTER.

The General Assembly of North Carolina enacts:

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

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

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

- (1) The area leased must be suitable for the cultivation and harvesting of shellfish in commercial quantities.
- (2) The area leased must not contain a natural shellfish bed.

1 (3) Cultivation of shellfish in the leased area will be compatible with  
2 lawful utilization by the public of other marine and estuarine  
3 resources. Other public uses which may be considered include, but are  
4 not limited to, navigation, fishing and recreation.

5 (4) Cultivation of shellfish in the leased area will not impinge upon the  
6 rights of riparian owners.

7 (5) The area leased must not include an area designated for inclusion in  
8 the Department's Shellfish Management Program.

9 (6) The area leased must not include an area which the State Health  
10 Director has recommended be closed to shellfish harvest by reason of  
11 pollution.

12 (b) ~~The Marine Fisheries Commission Secretary~~ may delete any part of an area  
13 proposed for lease or may condition a lease to protect the public interest with respect to  
14 the factors enumerated in subsection (a) of this section. ~~The Marine Fisheries Commission~~  
15 Secretary may not grant a new lease in an area heavily used for recreational purposes.

16 (c) No person, including a corporate entity, or single family unit may acquire and  
17 hold by lease, lease renewal, or purchase more than 50 acres of public bottoms under  
18 shellfish cultivation leases.

19 (d) Any person desiring to apply for a lease must make written application to the  
20 Secretary on forms prepared by the Department containing such information as deemed  
21 necessary to determine the desirability of granting or not granting the lease requested.  
22 Except in the case of renewal leases, the application must be accompanied by a map or  
23 diagram made at the expense of the applicant, showing the area proposed to be leased.

24 The map or diagram must conform to standards prescribed by the Secretary  
25 concerning accuracy of map or diagram and the amount of detail that must be shown. If  
26 on the basis of the application information and map or diagram the Secretary deems that  
27 granting the lease would benefit the shellfish culture of North Carolina, the Secretary, in  
28 the case of initial lease applications, must order an investigation of the bottom proposed  
29 to be leased. The investigation is to be made by the Secretary or his authorized agent to  
30 determine whether the area proposed to be leased is consistent with the standards in  
31 subsection (a) and any other applicable standards under this Article and the rules  
32 of the Marine Fisheries Commission. In the event the Secretary finds the application  
33 inconsistent with the applicable standards, the Secretary shall ~~recommend that the~~  
34 ~~application be denied~~ deny the application or propose that a conditional lease be issued  
35 ~~which that~~ is consistent with the applicable standards. In the event the Secretary  
36 authorizes amendment of the application, the applicant must furnish a new map or  
37 diagram meeting requisite standards showing the area proposed to be leased under the  
38 amended application. At the time of making application for an initial lease, the applicant  
39 must pay a filing fee of one hundred dollars (\$100.00).

40 (e) The area of bottom applied for in the case of an initial lease or amended  
41 initial lease must be as compact as possible, taking into consideration the shape of the  
42 body of water, the consistency of the bottom, and the desirability of separating the  
43 boundaries of a leasehold by a sufficient distance from any known natural shellfish bed

1 to prevent the likelihood of disputes arising between the leaseholder and members of the  
2 public taking shellfish from the natural bed.

3 (f) Within a reasonable time after receipt of an application that complies with  
4 subsection (d), the Secretary shall notify the applicant ~~whether he recommends approval,~~  
5 ~~disapproval, or modification of the intended action on the~~ lease application. ~~In the event~~  
6 ~~the Secretary recommends approval or~~ If the intended action is approval of the application  
7 as submitted or approval with a modification to which the applicant agrees, the  
8 Secretary shall conduct a public hearing in the county where the proposed leasehold  
9 lies. The Secretary must publish at least two notices of the intention to lease in a  
10 newspaper of general circulation in the county in which the proposed leasehold lies. The  
11 first publication must precede the public hearing by more than 20 days; the second  
12 publication must follow the first by seven to 11 days. The notice of intention to lease  
13 must contain a sufficient description of the area of the proposed leasehold that its  
14 boundaries may be established with reasonable ease and certainty and must also contain  
15 the date, hour and place of the hearing. ~~The Secretary's recommendation of disapproval~~  
16 ~~shall become the final agency decision of the application unless the applicant requests in~~  
17 ~~writing within 20 days of notice of such action an administrative hearing before the Marine~~  
18 ~~Fisheries Commission.~~

19 (g) ~~Protests to the granting of a proposed lease shall be made either in writing~~  
20 ~~under oath prior to the public hearing held by the Secretary or by testimony under oath~~  
21 ~~during the public hearing.~~ After consideration of the protests public comment received  
22 and any additional investigations he the Secretary orders to evaluate the protests,  
23 comments, the Secretary shall send to notify the applicant and protesting parties in  
24 person or by certified or registered mail of his final recommendation the decision on the  
25 lease application. The Secretary shall also notify persons who submitted comments at  
26 the public hearing and requested notice of the lease decision. An applicant who is  
27 dissatisfied with the Secretary's decision or another person aggrieved by the decision  
28 may commence a contested case by filing a petition under G.S. 150B-23 within 20 days  
29 after receiving notice of the Secretary's decision. In the event the Secretary's final  
30 recommendation decision is a modification to which the applicant agrees, the lease  
31 applicant must furnish an amended map or diagram before the Secretary's final  
32 recommendation can be presented to the Marine Fisheries Commission. lease can be  
33 issued by the Secretary. In the event the Secretary's final recommendation is  
34 inconsistent with a protest, the person filing the protest may request in writing within 20  
35 days of notice of such action an administrative hearing before the Marine Fisheries  
36 Commission. The Secretary's final recommendation of disapproval shall become the  
37 final agency decision of the application unless the applicant requests in writing within  
38 20 days of notice of such action an administrative hearing before the Marine Fisheries  
39 Commission. The Secretary shall make the final agency decision in a contested case.

40 (h) ~~The Secretary shall present all lease applications recommended for approval~~  
41 ~~to the Marine Fisheries Commission for final determination. In addition to his final~~  
42 ~~recommendation, the Secretary shall present the official record of the application as~~  
43 ~~developed pursuant to the requirements of this action. The applicants and persons who~~  
44 ~~protested the application shall be given an opportunity to present oral and written~~

1 arguments based on the official record. Unless the Marine Fisheries Commission, in its  
2 discretion, refers the matter for an administrative hearing, the Marine Fisheries  
3 Commission shall determine all lease applications presented by the Secretary during the  
4 public meetings when the matter is presented. The Marine Fisheries Commission,  
5 Secretary, in its his discretion, may lease or decline to lease public bottoms in  
6 accordance with its his duty to conserve the marine and estuarine resources of the State.

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

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

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

43 (k) Except as restricted by this Subchapter, leaseholds granted under this section  
44 are to be treated as if they were real property and are subject to all laws relating to

1 taxation, sale, devise, inheritance, gift, seizure and sale under execution or other legal  
2 process, and the like. Leases properly acknowledged and probated are eligible for  
3 recordation in the same manner as instruments conveying an estate in real property.  
4 Within 30 days after transfer of beneficial ownership of all or any portion of or interest  
5 in a leasehold to another, the new owner must notify the Secretary of such fact. Such  
6 transfer is not valid until notice is furnished the Secretary. In the event such transferee is  
7 a nonresident, the Secretary must initiate proceedings to terminate the lease.

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

- 10 (1) Failure to pay the annual rent in advance.
- 11 (2) Failure to file information required by the Secretary upon annual  
12 remittance of rental or filing false information on the form required to  
13 accompany the annual remittance of rental.
- 14 (3) Failure by new owner to report a transfer of beneficial ownership of all  
15 or any portion of or interest in the leasehold.
- 16 (4) Failure to mark the boundaries in the leasehold and to keep them  
17 marked as required in the rules of the Marine Fisheries Commission.
- 18 (5) Failure to utilize the leasehold on a continuing basis for the  
19 commercial production of shellfish.
- 20 (6) Transfer of all or part of the beneficial ownership of a leasehold to a  
21 nonresident.
- 22 (7) Substantial breach of compliance with the provisions of this Article or  
23 of rules of the Marine Fisheries Commission governing use of the  
24 leasehold.

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

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

1 ~~prevail, the leaseholder does not initiate a contested case, or the Secretary's final~~  
2 decision upholds termination, the Secretary must send a final letter of termination to the  
3 leaseholder. The final letter of termination may not be mailed sooner than 30 days after  
4 receipt by the leaseholder of the Secretary's notice of intention to ~~terminate-terminate,~~ or  
5 of the Secretary's final agency decision, as appropriate. The lease is terminated effective  
6 at midnight on the day the final notice of termination is served on the leaseholder. The  
7 final notice of termination may not be issued pending hearing of ~~any appeal by the Marine~~  
8 ~~Fisheries Commission-a contested case initiated by the leaseholder.~~

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

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

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

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

40 The General Assembly declares it to be contrary to public policy to the oyster and  
41 clam bottoms which were leased prior to January 1, 1966, and which are not being used  
42 to produce oysters and clams in commercial quantities to continue to be held by private  
43 individuals, thus depriving the public of a resource which belongs to all the people of  
44 the State. Therefore, when the Secretary determines, after due notice to the lessee, and

1 after opportunity for the lessee to be heard, that oysters or clams are not being produced  
2 in commercial quantities, due to the lessee's failure to make diligent effort to produce  
3 oysters and clams in commercial quantities, the Secretary may decline to renew, at the  
4 end of the current term, any oyster or clam bottom lease which was executed prior to  
5 January 1, 1966. The lessee may appeal the denial of the Secretary to renew the lease to  
6 ~~the Marine Fisheries Commission in which event the lessee shall be granted an opportunity to~~  
7 ~~be heard, de novo, by the Marine Fisheries Commission and by initiating a contested case~~  
8 pursuant to G.S. 150B-23. In such contested cases, the burden of proof, by the greater  
9 weight of the evidence, shall be on the lessee. The Marine Fisheries Commission, by  
10 majority vote, may affirm or reverse the action of the Secretary. No appeal shall be allowed  
11 from the action of the Marine Fisheries Commission.

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

13 Sec. 2. G.S. 113-202.1, as amended by Chapter 322 of the 1993 Session  
14 Laws, reads as rewritten:

15 "**§ 113-202.1. Water column leases for aquaculture.**

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

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

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

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

- 40 (1) The leaseholder submits an application, accompanied by a  
41 nonrefundable application fee of one hundred dollars (\$100.00), which  
42 conforms to the standards for lease applications in G.S. 113-202(d)  
43 and the duly adopted rules of the Commission;

- 1           (2)    The proposed amendment has been noticed consistent with G.S. 113-  
2           202(f);
- 3           (3)    Public hearings have been conducted consistent with G.S. 113-202(g);
- 4           (4)    The aspects of the proposals which require use and dedication of the  
5           water column have been documented and are recognized by the  
6           ~~Commission~~-Secretary as commercially feasible forms of aquaculture  
7           which will enhance shellfish production on the leased area;
- 8           (5)    It is not feasible to undertake the aquaculture activity outside of coastal  
9           fishing waters; and
- 10          (6)    The authorized water column use has the least disruptive effect on  
11          other public trust uses of the waters of any available technology to  
12          produce the shellfish identified in the proposal.

13          (d)    Amendments of shellfish cultivation leases to authorize use of the water  
14          column are issued for a period of five years or the remainder of the term of the lease,  
15          whichever is shorter. The annual rental for an initial water column amendment is one  
16          hundred dollars (\$100.00) an acre for each of the first four years for which the  
17          amendment is issued and five hundred dollars (\$500.00) an acre for the fifth year for  
18          which the amendment is issued. The annual rental for a renewed water column  
19          amendment is five hundred dollars (\$500.00) an acre. If a year for which a water  
20          column amendment is issued is less than a 12-month period, the rental for that year shall  
21          be prorated based on the number of months in the year. The annual rental for an  
22          amendment is payable at the beginning of the year. The rental is in addition to that  
23          required in G.S. 113-202.

24          (e)    Amendments of shellfish cultivation leases to authorize use of the water  
25          column are subject to termination in accordance with the procedures established in G.S.  
26          113-202 for the termination of shellfish cultivation leases. Additionally, such  
27          amendments may be terminated for unauthorized or unlawful interference with the  
28          exercise of public trust rights by the leaseholder, agents and employees of the  
29          leaseholder.

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

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

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



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

11 Sec. 3. G.S. 113-202.2, as amended by Chapter 322 of the 1993 Session  
12 Laws, reads as rewritten:

13 **"§ 113-202.2. Water column leases for aquaculture for perpetual franchises.**

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

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

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

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

- 3 (1) The perpetual franchise holder submits an application, accompanied by  
4 a nonrefundable application fee of one hundred dollars (\$100.00),  
5 which conforms to the standards for lease applications in G.S. 113-  
6 202(d) and rules adopted by the Commission;  
7 (2) Notice of the proposed lease has been given consistent with G.S. 113-  
8 202(f);  
9 (3) Public hearings have been conducted consistent with G.S. 113-202(g);  
10 (4) The aspects of the proposals which require use and dedication of the  
11 water column have been documented and are recognized by the  
12 ~~Commission~~ Secretary as commercially feasible forms of aquaculture  
13 which will enhance shellfish production;  
14 (5) It is not feasible to undertake the aquaculture activity outside of coastal  
15 fishing waters; and  
16 (6) The authorized water column use has the least disruptive effect on  
17 other public trust uses of the waters of any available technology to  
18 produce the shellfish identified in the proposal.

19 (d) Water column leases to perpetual franchises shall be issued for a period of  
20 five years and may be renewed pursuant to subsection (g) of this section. The rental for  
21 an initial water column lease issued under this section is the same as the rental set in  
22 G.S. 113-202.1 for an initial water column amendment issued under that section, and  
23 the rental for a renewed water column lease issued under this section is the same as the  
24 rental set in G.S. 113-202.1 for a renewed water column amendment issued under that  
25 section.

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

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

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

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

43 (i) Demonstration or research aquaculture development projects may be  
44 authorized for two years with no more than one renewal and when the project is

1 proposed or formally sponsored by an educational institution which conducts  
2 aquaculture research or demonstration projects. Production of shellfish with a sales  
3 value in excess of one thousand dollars (\$1,000) per acre per year shall constitute  
4 commercial production. Demonstration or research aquaculture development projects  
5 shall be exempt from the rental rate in subsection (d) of this section unless commercial  
6 production occurs as a result of the project."

7 Sec. 4. G.S. 113-154 reads as rewritten:

8 "**§ 113-154. ~~Oyster, scallop and clam~~ Shellfish and crab licenses.**

9 (a) ~~In addition to all other license requirements, every individual engaged in taking~~  
10 ~~oysters, scallops, or clams~~ It is unlawful for an individual to take shellfish or crabs from  
11 the public or private grounds of North Carolina by mechanical means or for commercial  
12 use by any means ~~whatever must have~~ without having first procured an individual ~~oyster,~~  
13 ~~scallops, and clam~~ shellfish and crab license.

14 (b) It is unlawful for any individual to take ~~oysters, scallops, or clams~~ shellfish or  
15 crabs for commercial use from the public or private grounds of North Carolina without  
16 having ready at hand for inspection a current and valid ~~oyster, scallop, and clam~~ shellfish  
17 and crab license issued to him personally and bearing his correct name and address. It is  
18 unlawful for any such individual taking or possessing freshly taken ~~oysters, scallops, or~~  
19 ~~clams~~ shellfish or crabs to refuse to exhibit his license upon the request of an officer  
20 authorized to enforce the fishing laws.

21 (c) ~~Oyster, scallop, and clam~~ Shellfish and crab licenses are issued annually on a  
22 fiscal year basis upon payment of a fee of ~~four dollars (\$4.00)~~ fifteen dollars (\$15.00)  
23 upon proof that the license applicant is a resident of North Carolina: Provided, that  
24 persons under 16 years of age are exempt from the license requirements of this section  
25 if they are accompanied by their parent or guardian who is in compliance with the  
26 requirements of this section or if they have in their possession their parent's or  
27 guardian's ~~oyster, scallop, and clam~~ shellfish and crab license. Notwithstanding G.S. 113-  
28 130, for purposes of this subsection, a North Carolina resident means a person that has  
29 resided in North Carolina for six months immediately preceding the application for the  
30 shellfish and crab license.

31 (d) In the event an individual possessing ~~an oyster, scallop, and clam~~ a shellfish and  
32 crab license changes his name or address or receives one erroneous in this respect, he  
33 must within 30 days surrender the license for one bearing the correct name and address.  
34 An individual prosecuted for failure to possess a valid license is exonerated if he can  
35 show that the invalidity consisted solely of an incorrect name or address appearing in a  
36 license to which he was lawfully entitled and that the erroneous condition had not  
37 existed for longer than 30 days.

38 (e) It is unlawful for an individual issued ~~an oyster, scallop, and clam~~ a shellfish  
39 and crab license to transfer or offer to transfer his license, either temporarily or  
40 permanently, to another. It is unlawful for an individual to secure or attempt to secure ~~an~~  
41 ~~oyster, scallop, or clam~~ a shellfish and crab license from a source not authorized by the  
42 Marine Fisheries Commission."

43 Sec. 5. G.S. 14-399 reads as rewritten:

44 "**§ 14-399. Littering.**

1 (a) No person, including but not limited to, any firm, organization, private  
2 corporation, ~~or governing body, agents or employees or agent or employee~~ of any  
3 municipal corporation shall intentionally or recklessly throw, scatter, spill or place or  
4 intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or  
5 otherwise dispose of any litter upon any public property or private property not owned  
6 by him within this State or in the waters of this State including, but not limited to, any  
7 public highway, public park, lake, river, ocean, beach, campground, forest land,  
8 recreational area, trailer park, highway, road, street or alley except:

9 (1) When such property is designated by the State or political subdivision  
10 thereof for the disposal of garbage and refuse, and such person is  
11 authorized to use such property for such purpose; or

12 (2) Into a litter receptacle in such a manner that the litter will be prevented  
13 from being carried away or deposited by the elements upon any part of  
14 such private or public property or waters.

15 (a1) When an item, such as a fishing net, a fishing line, or a rope, is placed in the  
16 waters of this State for a purpose other than its disposal and is then left in the waters of  
17 this State after this purpose is served, the person who placed the item in the waters is  
18 considered to have disposed of the item in the waters unless all of the following apply:

19 (1) The person made a good faith effort to recover the item from the  
20 waters.

21 (2) Despite this effort, the person could not recover all of the item.

22 (3) The person caused the part of the item that remained in the water to  
23 sink.

24 (b) When litter is blown, scattered, spilled, ~~thrown or placed~~ thrown, placed, or  
25 otherwise disposed of from a vehicle or watercraft, the operator thereof shall be  
26 presumed to have committed such offense. This presumption, however, does not apply  
27 to a vehicle transporting agricultural products or supplies when the litter from that  
28 vehicle is a nontoxic, biodegradable agricultural product or supply.

29 (c) Any person who violates this section in an amount not exceeding 15 pounds  
30 and not for commercial purposes is guilty of a misdemeanor punishable by a fine of not  
31 less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00)  
32 for the first offense. Any second or subsequent offense is punishable by a fine of not  
33 less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000).  
34 In addition, the court may require the violator to pick up litter or perform other labor  
35 commensurate with the offense committed.

36 (d) Any person who violates this section in an amount exceeding 15 pounds but  
37 not exceeding 500 pounds and not for commercial purposes is guilty of a misdemeanor  
38 punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one  
39 thousand dollars (\$1,000). In addition, the court shall require the violator to pick up  
40 litter or perform other community service commensurate with the offense committed.

41 (e) Any person who violates this section in an amount exceeding 500 pounds or  
42 in any quantity for commercial purposes, or who discards litter that is a hazardous waste  
43 as defined in G.S. 130A-290 is guilty of a Class J felony. In addition, the court may  
44 order the violator to:

- 1 (1) Remove, or render harmless, the litter that he discarded in violation of  
2 this section;
- 3 (2) Repair or restore property damaged by, or pay damages for any  
4 damage arising out of, his discarding litter in violation of this section;  
5 or
- 6 (3) Perform community public service relating to the removal of litter  
7 discarded in violation of this section or to the restoration of an area  
8 polluted by litter discarded in violation of this section.
- 9 (f) A court may enjoin a violation of this section.
- 10 (fl) If a violation of this section involves the operation of a motor vehicle, upon a  
11 finding of guilt, the court shall forward a record of the finding to the Department of  
12 Transportation, Division of Motor Vehicles, which shall record a penalty of one point  
13 on the violator's drivers license pursuant to the point system established by G.S. 20-16.  
14 There shall be no insurance premium surcharge or assessment of points under the  
15 classification plan adopted pursuant to G.S. 58-30.4 for a finding of guilt under this  
16 section.
- 17 (g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine  
18 involved in the disposal of more than 500 pounds of litter in violation of this section is  
19 declared contraband and is subject to seizure and summary forfeiture to the State.
- 20 (h) If a person sustains damages arising out of a violation of this section that is  
21 punishable as a felony, a court, in a civil action for such damages, shall order the person  
22 to pay the injured party threefold the actual damages or two hundred dollars (\$200.00),  
23 whichever amount is greater. In addition, the court shall order the person to pay the  
24 injured party's court costs and attorney's fees.
- 25 (i) For the purpose of the section, unless the context requires otherwise:
- 26 (1) 'Aircraft' means a motor vehicle or other vehicle that is used or  
27 designed to fly, but does not include a parachute or any other device  
28 used primarily as safety equipment.
- 29 (2) 'Commercial vehicle' means a vehicle that is owned or used by a  
30 business, corporation, association, partnership, or sole proprietorship  
31 or any other entity conducting business for economic gain.
- 32 (3) 'Law enforcement officer' means any officer of the North Carolina  
33 Highway Patrol, the State Bureau of Investigation, the Division of  
34 Motor Vehicles of the Department of Transportation, a county sheriff's  
35 department, a municipal law enforcement department, a law  
36 enforcement department of any other political subdivision, the  
37 Department, or the North Carolina Wildlife Resources Commission.  
38 In addition, and solely for the purposes of this section, "law  
39 enforcement officer" means any employee of a county or municipality  
40 designated by the county or municipality as a litter enforcement  
41 officer; or wildlife protectors as defined in G.S. 113-128(9);
- 42 (4) 'Litter' means any garbage, rubbish, trash, refuse, can, bottle, box,  
43 container, wrapper, paper, paper product, fishing net, fishing line,  
44 crabpot retrieval or marker line, tire, appliance, mechanical equipment

1 or part, building or construction material, tool, machinery, wood,  
2 motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or  
3 equipment, sludge from a waste treatment facility, water supply  
4 treatment plant, or air pollution control facility, dead animal, or  
5 discarded material in any form resulting from domestic, industrial,  
6 commercial, mining, agricultural, or governmental operations. 'Litter'  
7 does not include political pamphlets, handbills, religious tracts,  
8 newspapers, and other such printed materials the unsolicited  
9 distribution of which is protected by the Constitution of the United  
10 States or the Constitution of North Carolina.

11 (5) 'Vehicle' has the same meaning as in G.S. 20-4.01(49); and

12 (6) 'Watercraft' means any boat or vessel used for transportation across the  
13 water.

14 (j) It shall be the duty of all law enforcement officers to enforce the provisions of  
15 this section.

16 (k) This section does not limit the authority of any State or local agency to  
17 enforce other laws, rules or ordinances relating to litter or solid waste management."

18 Sec. 6. Article 21 of Chapter 143 of the General Statutes is amended by  
19 adding a new section to read:

20 "**§ 143B-214.2B. Storage of waste on vessels.**

21 The operator of a vessel in the State's waters shall store the following items carried  
22 on the vessel in one or more closed containers that are adequate to prevent the release of  
23 the items into the waters should the containers fall into the waters:

24 (1) Fuel, oil, paint, varnish, solvent, pesticide, insecticide, fungicide,  
25 algicide, or another hazardous liquid.

26 (2) Any type of plastic, such as a synthetic rope, a plastic fishing net, a  
27 plastic fishing line, or a plastic garbage bag.

28 (3) Any other solid waste.

29 The requirement imposed by this section does not apply to bait or substances  
30 intended for human consumption or while a vessel is taking on or unloading cargo and  
31 provisions."

32 Sec. 7. The provisions of this act are severable. If a court determines that a  
33 provision of this act is invalid, the invalidity does not affect other provisions of this act  
34 that can be given effect without the invalid provision.

35 Sec. 8. This act becomes effective January 1, 1994.