

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 18
SENATE BILL 99

AN ACT TO TRANSFER AUTHORITY FROM THE WILDLIFE RESOURCES
COMMISSION TO THE DEPARTMENT OF AGRICULTURE TO REGULATE
THE PRODUCTION AND SALE OF COMMERCIALY RAISED
FRESHWATER FISH AND FRESHWATER CRUSTACEAN SPECIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-758 reads as rewritten:

"§ 106-758. Definitions.

In addition to the definitions in G.S. 113-129, the following definitions shall apply as ~~As~~ used in this Article,

- (1) 'Aquaculture' means the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching;
- (2) 'Aquaculture facility' means any land, structure or other appurtenance that is used for aquaculture, including, but not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture;
- (3) 'Aquatic species' means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant, and including, but not limited to, 'fish' and 'fishes' as defined in G.S. ~~413-129(f);~~ 113-129(7);
- (4) 'Commissioner' means the Commissioner of Agriculture;
- (5) 'Department' means the North Carolina Department of Agriculture."

Sec. 2. Article 63 of Chapter 106 is amended by adding the following new sections to read:

"§ 106-761. Aquaculture facility registration and licensing.

(a) Authority. The North Carolina Department of Agriculture shall regulate the production and sale of commercially raised freshwater fish and freshwater crustacean species. The Board of Agriculture shall promulgate rules for the registration of facilities for the production and sale of freshwater aquaculturally raised species. The Board may prescribe standards under which commercially reared fish may be transported, possessed, bought, and sold. The Department of Agriculture and Board of Agriculture authority shall be limited to commercially reared fish and shall not include authority over the wild fishery resource which is managed under the authority of the North Carolina Wildlife Resources Commission. The authority granted herein to regulate facilities licensed pursuant to this section does not authorize the Department of

Agriculture or the Board of Agriculture to promulgate rules that (i) are inconsistent with rules adopted by any other State agency; or (ii) exempt such facilities from the rules adopted by any other State agency.

(b) Species subject to this section. The following species are exempt from special restrictions on introduction of exotic species promulgated by the Wildlife Resources Commission except to prevent disease. All other species are prohibited from propagation and production unless the applicant for the permit first obtains written permission from the Wildlife Resources Commission.

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| <u>(1)</u> | <u>Bluegill</u> | <u>Lepomis macrochirus</u> |
| <u>(2)</u> | <u>Redear Sunfish</u> | <u>Lepomis microlophus</u> |
| <u>(3)</u> | <u>Redbreast Sunfish</u> | <u>Lepomis auritus</u> |
| <u>(4)</u> | <u>Green Sunfish</u> | <u>Lepomis cyanellus</u> |
| <u>(5)</u> | <u>Any hybrids using above species of the genus Lepomis</u> | |
| <u>(6)</u> | <u>Black Crappie</u> | <u>Pomoxis nigromaculatus</u> |
| <u>(7)</u> | <u>White Crappie</u> | <u>Pomoxis annularis</u> |
| <u>(8)</u> | <u>Largemouth Bass</u> | <u>Micropterus salmoides (northern strain)</u> |
| <u>(9)</u> | <u>Smallmouth Bass</u> | <u>Micropterus dolomieu</u> |
| <u>(10)</u> | <u>White Catfish</u> | <u>Ictalurus catus</u> |
| <u>(11)</u> | <u>Channel Catfish</u> | <u>Ictalurus punctatus</u> |
| <u>(12)</u> | <u>Golden Shiner</u> | <u>Notemigonus crysoleucas</u> |
| <u>(13)</u> | <u>Fathead Minnow</u> | <u>Pimephales promelas</u> |
| <u>(14)</u> | <u>Goldfish</u> | <u>Carassius auratus</u> |
| <u>(15)</u> | <u>Rainbow Trout</u> | <u>Oncorhynchus mykiss</u> |
| <u>(16)</u> | <u>Brown Trout</u> | <u>Salmo trutta</u> |
| <u>(17)</u> | <u>Brook Trout</u> | <u>Salvelinus fontinalis</u> |
| <u>(18)</u> | <u>Common Carp</u> | <u>Cyprinus carpio</u> |
| <u>(19)</u> | <u>Crayfish</u> | <u>Procambarus species</u> |

(c) Hybrid striped bass. The hybrid striped bass shall be subject to rules adopted by the Board of Agriculture in all river basins of the State except for the Neuse, Roanoke, and Tar/Pamlico River basins. In these basins production, propagation, and holding facilities shall comply with additional escapement prevention measures as prescribed by the Wildlife Resources Commission.

(d) Aquaculture Propagation and Production Facility License. The Board of Agriculture may, by rule, authorize and license the operation of fish hatcheries and production facilities for species of fish listed in subsection (b) of this section. The Board may prescribe standards of operation, qualifications of operators, and the conditions under which fish may be commercially reared, transported, possessed, bought, and sold. Aquaculture Propagation and Production Licenses issued by the North Carolina Department of Agriculture shall be valid for a period of five years.

(e) Commercial Catchout Facility License.

- (1) Commercial catchout facilities must be stocked exclusively with hatchery reared fish obtained from hatcheries approved by the Department of Agriculture to prevent the introduction of diseases. The Board of Agriculture may, by rule, prescribe standards of operation

and conditions under which fish from such ponds may be taken, transported, possessed, bought, and sold.

- (2) The Commercial Catchout Facility License shall be valid for a period of five years. A pond owner or operator licensed under this subsection shall be authorized to sell fish taken by fishermen from the pond to such fishermen. Fish sold at such facilities shall be limited to those fish covered under this section.
- (3) The holder of the Catchout Facility License shall provide receipts to the purchasers of fish. The receipt shall describe the species, number, total weight, and the location of the catchout facility.
- (4) No fish taken from a commercial catchout facility may be resold by the purchasing angler for any purpose.
- (5) No fishing, special trout, or other license shall be required of anglers fishing in licensed commercial catchout facilities.

(f) Holding Pond/Tank Permit. All facilities holding live food or bait species for sale must obtain a Holding Pond/Tank Permit. Permits shall be valid for a period of two years and shall only authorize possession of fish specified in this section. All fish held live for sale shall be kept in accordance with rules promulgated by the Board of Agriculture. Possession of an Aquaculture Propagation and Production Facility or Commercial Catchout Facility License shall serve in lieu of a Holding Pond/Tank Permit for possession both on and off their facilities premises. No permit shall be required for holding lobsters for sale.

(g) Possession of species other than those listed in subsection (b) of this section or as authorized in writing by the Wildlife Resources Commission shall be a violation which shall result in the revocation of the Aquaculture Propagation and Production Facility or Commercial Catchout Facility License until such time that proper authorization is received from the Wildlife Resources Commission or the unauthorized species is removed from the facility. In the event of possession of unauthorized fish species, the Wildlife Resources Commission may take further regulatory action. The Department of Agriculture and the Wildlife Resources Commission shall have authority to enter the premises of such facilities to inspect for the possession of a species other than those authorized in subsection (b) of this section or authorized by written permission of the Wildlife Resources Commission.

(h) Nothing in this act shall apply to the aquarium or ornamental trade in fish. The Wildlife Resources Commission may by rule identify species for which possession in the State is prohibited.

"§ 106-762. Fish disease management.

(a) The North Carolina Department of Agriculture shall, with the assistance of the Wildlife Resources Commission, develop and implement a fish disease management plan to prevent the introduction of fish diseases through aquaculture facilities subject to the provisions and duly adopted rules of this section into the State.

(b) Release of fish. It shall be unlawful to willfully release domestically raised fish into the waters of the State, other than in private ponds as defined by G.S. 113-129,

without written permission of the Wildlife Resources Commission, or the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources.

"§ 106-763. Fish passage and residual stream flow.

(a) Natural watercourses as designated by law or regulation shall not be blocked with a stand, dam, weir, hedge, or other water diversion structure to supply an aquaculture facility that in any way prevents or fails to maintain the free passage of anadromous or indigenous fish.

(b) Residual flow in a natural watercourse below the point of water withdrawal supplying an aquaculture operation shall be sufficient to prevent destruction or serious diminution of downstream fishery habitat and shall be consistent with rules adopted by the Environmental Management Commission.

"§ 106-764. Violation.

A person who violates this act or a rule of the Board of Agriculture adopted hereunder is guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00) or imprisonment for not more than 30 days, or both."

Sec. 3. G.S. 113-273 reads as rewritten:

"§ 113-273. Dealer licenses.

(a) 'Dealer' Defined; All Licenses Annual. – As used in this section, the word 'dealer' includes all persons or individuals required to be licensed under the terms of this section. Except when indicated otherwise, dealer licenses are annual licenses issued beginning January 1 each year running until the following December 31.

(b) License Required; Rules Governing Licensee. – Except as otherwise provided, no person may engage in any activity for which a dealer license is provided under this section without first having procured a current and valid dealer license for that activity. In implementing the provisions of this section, the Wildlife Resources Commission may by rule govern every aspect of the licensee's dealings in wildlife resources. Specifically, these rules may require dealers to:

- (1) Implement a system of tagging or otherwise identifying and controlling species regulated under the license and pay a reasonable fee, not to exceed two dollars and twenty-five cents (\$2.25), for each tag furnished by the Wildlife Resources Commission;
- (2) Keep records and statistics in record books furnished by the Wildlife Resources Commission, and pay a reasonable charge to defray the cost of furnishing the books;
- (3) Be subject to inspection at reasonable hours and audit of wildlife resources and pertinent records and equipment;
- (4) Make periodic reports;
- (5) Post performance bonds payable to the Wildlife Resources Commission conditioned upon faithful compliance with provisions of law; and
- (6) Otherwise comply with reasonable rules and administrative requirements that may be imposed under the authority of this section.

(c) ~~Commercial Trout Pond License. – As used in this subsection, a "commercial trout pond" is a fish tank meeting standards set by the Wildlife Resources Commission~~

~~or an artificial impoundment of three acres or less lying on private land and not on a natural stream, but which may be supplied through screened and regulated supply lines. A commercial trout pond must be stocked exclusively with hatchery reared mountain trout obtained from hatcheries approved by the Wildlife Resources Commission. The Wildlife Resources Commission may by rule prescribe qualifications of operators of commercial trout ponds, standards of operation, and the conditions under which trout from such ponds may be taken, transported, possessed, bought, and sold. Commercial trout pond licenses issued by the Wildlife Resources Commission are as follows:~~

- ~~(1) Commercial trout fishing pond license, twenty five dollars (\$25.00). Authorizes the responsible licensed pond owner or operator to sell trout taken by fishermen from the pond to such fishermen.~~
- ~~(2) Commercial trout holding pond license, five dollars (\$5.00). Authorizes the responsible licensed pond owner or operator to hold live trout for sale under conditions prescribed by the Wildlife Resources Commission. No person holding a fish propagation license for trout under subsection (e) need also procure this license.~~

~~(d) Repealed by Session Laws 1979, c. 830, s. 1.~~

~~(e) Fish Propagation License. — The Wildlife Resources Commission may by rule authorize and license the operation of fish hatcheries for species of fish which may be found in inland fishing waters. The Wildlife Resources Commission may prescribe standards of operation, qualifications of operators, and the conditions under which fish may be taken, transported, possessed, bought, and sold. Fish propagation licenses issued by the Wildlife Resources Commission are as follows:~~

- ~~(1) Trout propagation license, twenty five dollars (\$25.00). Authorizes artificial propagation and sale of all species of freshwater trout permitted under the rules of the Wildlife Resources Commission in accordance with those rules.~~
- ~~(2) Restricted propagation license, twenty five dollars (\$25.00). Authorizes artificial propagation and sale of species of fish other than trout designated in the license, in accordance with governing rules of the Wildlife Resources Commission.~~

~~(f) Fur-Dealer License. — Except as otherwise provided in this subsection, any individual in this State who deals in furs must obtain an appropriate fur-dealer license. For the purposes of this subsection, 'dealing in furs' is engaging in the business of buying or selling fur-bearing animals or other wild animals that may lawfully be sold, the raw furs, pelts, or skins of those animals, or the furs, pelts, or skins of wild animals which may not themselves be sold but whose fur, pelt, or skin may lawfully be sold. A hunter or trapper who has lawfully taken wild animals whose fur, pelt, or skin is permitted to be sold under this subsection is not considered a fur dealer if he exclusively sells the animals or the furs, pelts, and skins, as appropriate, to licensed fur dealers. All fur-dealer licenses are annual licenses issued beginning July 1 each year running until the following June 30. Fur-dealer licenses issued by the Wildlife Resources Commission are as follows:~~

- (1) Resident fur-dealer license, sixty dollars (\$60.00). Authorizes an individual resident of the State to deal in furs in accordance with the rules of the Wildlife Resources Commission.
- (2) Nonresident fur-dealer license, three hundred dollars (\$300.00). Authorizes an individual within the State to deal in furs in accordance with the rules of the Wildlife Resources Commission.
- (3) Fur-dealer station license, one hundred twenty dollars (\$120.00). Authorizes a person or individual to deal in furs at an established location where fur dealings occur under the supervision of a responsible individual manager named in the license. Individual employees of the business dealing in furs solely at the established location under the supervision of the manager need not acquire an individual license. Any employee who also deals in furs outside the established location must obtain the appropriate individual license. Individuals dealing in furs at an established location may elect to do so under their individual licenses.

The Executive Director may administratively provide for reissuance of a station license without charge for the remainder of the year when either a business continues at an established location under a new supervising manager or the business changes to a new location. Before reissuing the license, however, the Executive Director must satisfy himself that there is a continuation of essentially the same business previously licensed and that any new supervising manager meets the qualifications imposed by rules of the Wildlife Resources Commission. The supervising manager must file the names of all employees of the business covered by a fur-dealer station license, whether temporary or permanent, including employees who process or skin the animals.

The Executive Director must furnish supervising managers and individual licensees with forms or record books for recording required information as to purchase, sale, importation, exportation, and other dealings, and make a reasonable charge to cover the costs of any record books furnished. It is unlawful for anyone dealing in furs to fail to submit reports required by rules or reasonable administrative directives.

(g) Controlled Hunting Preserve Operator License. – The Wildlife Resources Commission is authorized by rule to set standards for and to license the operation of controlled hunting preserves operated by private persons. Controlled hunting preserves are of two types: one is an area marked with appropriate signs along the outside boundaries on which only domestically raised game birds other than wild turkeys are taken; the other is an area enclosed with a dog-proof fence on which foxes may be hunted with dogs only. A controlled fox hunting preserve operated for private use may be of any size; a controlled hunting preserve operated for commercial purposes shall be an area of not less than 500 acres or of such size as set by regulation of the Wildlife Resources Commission, which shall take into account differences in terrain and topography, as well as the welfare of the foxes.

Operators of controlled fox hunting preserves may purchase live foxes from licensed trappers who live-trap foxes during any open season for trapping them and may, at any time, take live foxes from their preserves for sale to other licensed operators. The controlled hunting preserve operator license may be purchased for a fee of fifty dollars (\$50.00), and is an annual license issued beginning August 1 each year running until the following July 1.

(h) Game Bird Propagation License. – No person may propagate game birds in captivity or possess game birds for propagation without first procuring a license under this subsection. The Wildlife Resources Commission may by rule prescribe the activities to be covered by the propagation license, which species of game birds may be propagated, and the manner of keeping and raising the birds, in accordance with the overall objectives of conservation of wildlife resources. Except as limited by this subsection, propagated game birds may be raised and sold for purposes of propagation, stocking, food, or taking in connection with dog training as authorized in G.S. 113-291.1(d). Migratory game bird operations authorized under this subsection must also comply with any applicable provisions of federal law and rules. The Wildlife Resources Commission may impose requirements as to shipping, marking packages, banding, tagging, or wrapping the propagated birds and other restrictions designed to reduce the change of illicit game birds being disposed of under the cover of licensed operations. The Wildlife Resources Commission may make a reasonable charge for any bands, tags, or wrappers furnished propagators. The game bird propagation license is issued by the Wildlife Resources Commission upon payment of a fee of five dollars (\$5.00). It authorizes a person or individual to propagate and sell game birds designated in the license, in accordance with the rules of the Wildlife Resources Commission, except:

- (1) Wild turkey and ruffed grouse may not be sold for food.
- (2) Production and sale of pen-raised quail for food purposes is under the exclusive control of the Department of Agriculture. The Wildlife Resources Commission, however, may regulate the possession, propagation, and transportation of live pen-raised quail.

Wild turkey acquired or raised under a game bird propagation license shall be confined in a cage or pen approved by the Wildlife Resources Commission and no such wild turkey shall be released for any purpose or allowed to range free. It is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00) in addition to such other punishment the court may impose in its discretion to sell wild turkey or ruffed grouse for food purposes, to sell quail other than lawfully acquired pen-raised quail for food purposes, or to release or allow wild turkey to range free.

(i) Furbearer Propagation License. – No person may engage in propagation in captivity or possess any species of furbearers for propagation for the purpose of selling the animals or their pelts for use as fur without first procuring a license under this subsection. The furbearer propagation license is issued by the Wildlife Resources Commission upon payment of a fee of twenty-five dollars (\$25.00). It authorizes the propagation or sale of the pelts or carcasses of the species of furbearing animals named therein, including bobcats, opossums and raccoons, or red and silver foxes (*Vulpes vulpes*), for use as fur. The Wildlife Resources Commission may by rule prescribe the

activities covered by the license, the manner of keeping and raising the animals and the manner of killing them prior to sale, in accordance with overall objectives of conservation of wildlife resources and humane treatment of wild animals raised in captivity. The Wildlife Resources Commission may require tagging of the pelts or carcasses of the animals prior to sale in accordance with the provisions of G.S. 113-276.1(5) and G.S. 113-291.4(g). It is unlawful for any person licensed under this subsection to sell any pelt or carcass of any furbearing animal or fox to any other person who is not lawfully authorized to buy and possess the same, or to sell or deliver a live specimen of any such animal to any person who is not authorized to buy or receive and to hold the animal in captivity.

(j) [Reserved.]

(k) Taxidermy License. – Any individual who engages in taxidermy involving wildlife for any compensation, including reimbursement for the cost of materials, must first procure a taxidermy license. This license is an annual license issued by the Wildlife Resources Commission for ten dollars (\$10.00). The Wildlife Resources Commission must require a licensee to keep records concerning any wildlife taken or possessed by him; to keep records of the names and addresses of persons bringing him wildlife, the names and addresses of persons taking the wildlife if different, and other information concerning the origin of the wildlife; to inspect any applicable licenses or permits pertaining to the taking and possession of wildlife brought to him; to restrict him to taxidermy upon lawfully acquired wildlife; and to keep other pertinent records. No taxidermist subject to license requirements may sell any game or game fish in which he deals except that a taxidermist may acquire a valid possessory lien upon game or game fish under the terms of Chapter 44A of the General Statutes and, with a permit from the Executive Director, may sell the game or game fish under the procedure authorized in Chapter 44A. Wildlife acquired by a taxidermist is deemed 'personal property' for the purposes of Chapter 44A."

Sec. 4. G.S. 113-274(c)(3b) reads as rewritten:

~~"(3b) Trout Sale Permit. — Authorizes the sale at wholesale or retail of dead artificially propagated mountain trout for food purposes if the trout have been lawfully acquired from a hatchery approved by the Wildlife Resources Commission and are appropriately wrapped or otherwise identified as hatchery reared trout as required by governing rules. No person who holds a license that authorizes the sale of trout need purchase this permit."~~

Sec. 4.1. The Revisor of Statutes shall codify the material shown with double underlining in G.S. 105-761(b) as enacted by Section 2 of this act with single underlining.

Sec. 5. This act becomes effective January 1, 1994.

In the General Assembly read three times and ratified this the 13th day of April, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives