

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1448\*

Short Title: 1998 Marine Fisheries Amendments.

(Public)

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Sponsors: Representatives Preston and Redwine.

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Referred to: Environment, if favorable, Finance.

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May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FISHERIES REFORM ACT OF 1997 AND RELATED  
MARINE FISHERIES LAWS, AS RECOMMENDED BY THE JOINT  
LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

**PART I. MARINE FISHERIES COMMISSION**

Section 1.1. G.S. 143B-289.52(b)(3) reads as rewritten:

"(3) To govern all license requirements ~~and taxes~~ prescribed in Article 14 of  
Chapter 113 of the General Statutes."

Section 1.2. G.S. 143B-289.52(e) reads as rewritten:

"(e) The Commission may adopt rules to implement or comply with a fisheries  
management plan adopted by the Atlantic States Marine Fisheries Commission or ~~an~~  
~~interstate fisheries management council~~ adopted by the United States Secretary of  
Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management  
Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission may  
adopt temporary rules under this subsection at any time within six months of the adoption  
or amendment of a fisheries management plan ~~by the Atlantic States Marine Fisheries~~  
~~Council [Commission] or an interstate fisheries management council.~~ or the notification of a

1 change in management measures needed to remain in compliance with a fisheries  
2 management plan."

## 3 4 **PART II. FISHERY MANAGEMENT PLANS**

5  
6 Section 2.1. G.S. 113-182.1 reads as rewritten:

### 7 **"§ 113-182.1. (Effective July 1, 1998) Fishery Management Plans.**

8 (a) The Department shall prepare proposed Fishery Management Plans for  
9 adoption by the Marine Fisheries Commission for all commercially or recreationally  
10 significant species or fisheries that comprise State marine or estuarine resources.  
11 Proposed Fishery Management Plans shall be developed in accordance with the Priority  
12 List, Schedule, and guidance criteria established by the Marine Fisheries Commission  
13 under G.S. 143B-289.22.

14 (b) The goal of the plans shall be to ensure the long-term viability of the State's  
15 commercially and recreationally significant species or fisheries. Each plan shall be  
16 designed to reflect fishing practices so that one plan may apply to a specific fishery,  
17 while other plans may be based on gear or geographic areas. Each plan shall:

18 (1) Contain necessary information pertaining to the fishery or fisheries,  
19 including management goals and objectives, status of relevant fish  
20 stocks, stock assessments for multiyear species, fishery habitat and  
21 water quality considerations consistent with Coastal Habitat Protection  
22 Plans adopted pursuant to G.S. 143B-279.8, social and economic impact  
23 of the fishery to the State, and user conflicts.

24 (2) Recommend management actions pertaining to the fishery or fisheries.

25 (3) Include conservation and management measures that prevent  
26 overfishing, while achieving, on a continuing basis, the optimal yield  
27 from each fishery.

28 (c) To assist in the development of each Fishery Management Plan, the Chair of  
29 the Marine Fisheries Commission shall appoint ~~an Advisory Council.~~ a fishery  
30 management plan advisory committee. ~~Each Advisory Council fishery management plan~~  
31 advisory committee shall be composed of commercial fishermen, recreational fishermen,  
32 and scientists, all with expertise in the fishery for which the Fishery Management Plan is  
33 being developed.

34 (d) Each Fishery Management Plan shall be revised at least once every three years.  
35 The Marine Fisheries Commission may revise the Priority List and guidance criteria  
36 whenever it determines that a revision of the Priority List or guidance criteria will  
37 facilitate or improve the development of Fishery Management Plans or is necessary to  
38 restore, conserve, or protect the marine and estuarine resources of the State. The Marine  
39 Fisheries Commission may not revise the Schedule for the development of a Fisheries  
40 Management Plan, once adopted, without the approval of the Secretary of Environment  
41 and Natural Resources.

42 (e) The Secretary of Environment and Natural Resources shall monitor progress in  
43 the development and adoption of Fishery Management Plans in relation to the Schedule

1 for development and adoption of the plans established by the Marine Fisheries  
2 Commission. The Secretary of Environment and Natural Resources shall report to the  
3 Joint Legislative Commission on Seafood and Aquaculture and the Environmental  
4 Review Commission on progress in developing and implementing the Fishery  
5 Management Plans on or before 1 September of each year. The Secretary of  
6 Environment and Natural Resources shall report to the Joint Legislative Commission on  
7 Seafood and Aquaculture and the Environmental Review Commission within 30 days of  
8 the completion or substantial revision of each proposed Fishery Management Plan. The  
9 Joint Legislative Commission on Seafood and Aquaculture and the Environmental  
10 Review Commission shall concurrently review each proposed Fishery Management Plan  
11 within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint  
12 Legislative Commission on Seafood and Aquaculture and the Environmental Review  
13 Commission may submit comments and recommendations on the proposed Plan to the  
14 Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

15 (f) The Marine Fisheries Commission shall adopt rules to implement Fishery  
16 Management Plans in accordance with Chapter 150B of the General Statutes.

17 (g) To achieve optimal yield under a Fishery Management Plan, the Marine  
18 Fisheries Commission may include in the Plan a recommendation that the General  
19 Assembly limit the number of fishermen authorized to participate in the fishery. The  
20 Commission may recommend that the General Assembly limit participation in a fishery  
21 only if the Commission determines that optimal yield cannot otherwise be achieved. In  
22 determining whether to recommend that the General Assembly limit participation in a  
23 fishery, the Commission shall consider all of the following factors:

24 (1) Current participation in and dependence on the fishery.

25 (2) Past fishing practices in the fishery.

26 (3) Economics of the fishery.

27 (4) Capability of fishing vessels used in the fishery to engage in other  
28 fisheries.

29 (5) Cultural and social factors relevant to the fishery and any affected  
30 fishing communities.

31 (6) Capacity of the fishery to support biological parameters.

32 (7) Equitable resolution of competing social and economic interests.

33 (8) Any other relevant considerations."

### 34 35 **PART III. MARINE FISHERIES LAW ENFORCEMENT**

36  
37 Section 3.1. G.S. 113-221(e) reads as rewritten:

38 "(e) The Marine Fisheries Commission may delegate to the Fisheries Director the  
39 authority to issue proclamations suspending or implementing, in whole or in part,  
40 particular rules of the Commission which may be affected by variable conditions. Such  
41 proclamations are to be issued by the Fisheries Director or by a person designated by the  
42 Fisheries Director. All proclamations must state the hour and date upon which they  
43 become effective and must be issued at least 48 hours in advance of the effective date and

1 time. In those situations in which the proclamation prohibits the taking of certain fisheries  
2 resources for reasons of public health, the proclamation can be made effective  
3 immediately upon issuance. Notwithstanding any other provisions of this subsection, a  
4 proclamation can be issued at least 12 hours in advance of the effective date and time to  
5 reopen the taking of certain fisheries resources closed for reason of public health through  
6 a prior proclamation made effective immediately upon issuance. Persons violating any  
7 proclamation which is made effective immediately shall not be charged with a criminal  
8 offense during the time between the issuance and 48 hours after such issuance unless  
9 such person had actual notice of the issuance of such proclamation. Fisheries resources  
10 taken or possessed by any person in violation of any proclamation may be seized  
11 regardless of whether such person had actual notice of the proclamation. A permanent file  
12 of the text of all proclamations shall be maintained in the office of the Fisheries Director.  
13 Certified copies of proclamations are entitled to judicial notice in any civil or criminal  
14 proceeding.

15 The Fisheries Director must make every reasonable effort to give actual notice of the  
16 terms of any proclamation to the persons who may be affected thereby. Reasonable effort  
17 includes press releases to communications media, posting of notices at docks and other  
18 places where persons affected may gather, personal communication by inspectors and  
19 other agents of the Fisheries Director, and such other measures designed to reach the  
20 persons who may be affected. ~~The Fisheries Director may determine, on a case-by-case basis~~  
21 ~~and at the Fisheries Director's sole discretion, that a proclamation did not apply to an individual~~  
22 ~~licensee when an act of God occurred that prevented the licensee from receiving notice of the~~  
23 ~~proclamation.~~ It is a defense to an enforcement action for a violation of a proclamation  
24 that a licensee was prevented from receiving notice of the proclamation due to a natural  
25 disaster or other act of God occasioned exclusively by violence of nature without  
26 interference of any human agency and that could not have been prevented or avoided by  
27 the exercise of due care or foresight."

#### 28 29 **PART IV. FISHING LICENSES; TRANSITIONAL PROVISIONS**

30  
31 Section 4.1. The catch line for Article 14 of Chapter 113 of the General  
32 Statutes reads as rewritten:

33 **"ARTICLE 14.**  
34 **COMMERCIAL AND SPORTS FISHERIES LICENSES AND TAXES.**  
35 **LICENSES."**

36 Section 4.2. Subsections (d) and (e) of G.S. 113-154.1 read as rewritten:  
37 "(d) Application for Non-Vessel Endorsement. – An application for issuance or  
38 renewal of an endorsement to sell shall be filed with the Morehead City ~~offices-office~~ of  
39 the Division of Marine Fisheries or license agents authorized to sell licenses under this  
40 Article. An application shall be accompanied by the fee established in subsection (b) of  
41 this section. Applications shall not be accepted from persons ineligible to hold a license  
42 issued by the Marine Fisheries Commission, including any applicant whose endorsement  
43 is suspended or revoked on the date of the application. The applicant shall be provided

1 with a copy of the application marked received. The copy shall serve as the endorsement  
2 to sell, until the endorsement issued by the Division is received or the Division  
3 determines that the applicant is ineligible to hold an endorsement. In addition to the  
4 information required in subsection (c) of this section, the applicant shall disclose on the  
5 application a valid address, and such other information as the Division may require.

6 (e) Application for Replacement Non-Vessel Endorsement to Sell. – A  
7 replacement endorsement shall only be obtained from the Morehead City ~~offices~~office of  
8 the Division of Marine Fisheries. The Division shall not accept an application for a  
9 replacement endorsement unless the Division determines that the applicant's current  
10 license has not been suspended or revoked. A copy of an application duly filed with the  
11 Division shall serve as the endorsement until the replacement license has been received."

12 Section 4.3. G.S. 113-154.1(h1) reads as rewritten:

13 "(h1) Transfer of Endorsement to Sell Fish on a Vessel ~~License; Limitation on Use of~~  
14 ~~Endorsement to Sell Fish on a Vessel License by Other Persons.~~License. – A valid  
15 endorsement to sell fish on a vessel license may be transferred with the vessel license  
16 when the vessel license is transferred by the vessel licensee to (i) another vessel  
17 purchased by the vessel licensee or (ii) a vessel that is purchased by another person who  
18 is otherwise qualified to hold the vessel license and endorsement under this Article. Upon  
19 application to the Morehead City office of the Division of Marine Fisheries by a vessel  
20 licensee who is eligible to transfer an endorsement to sell fish on a vessel license under  
21 this subsection, the Division shall transfer the endorsement to sell fish on the vessel  
22 license. ~~It is unlawful to use an endorsement to sell fish on a vessel license issued to another~~  
23 ~~person in the sale or attempted sale of fish or for the holder of an endorsement to sell fish on a~~  
24 ~~vessel license to allow fish to be sold under the endorsement by any other person except that a~~  
25 ~~person:~~

26 (1) ~~Under the age of 16 may sell fish under the endorsement to sell fish on a~~  
27 ~~vessel license of a relative or guardian.~~

28 (2) ~~May sell fish that are taken in a fishing operation in which that person~~  
29 ~~and the holder of the endorsement both participated."~~

30 Section 4.4. G.S. 113-154.1(i) is repealed.

31 Section 4.5. G.S. 113-156(i) is repealed.

32 Section 4.6. G.S. 113-168 reads as rewritten:

33 "**§ 113-168. Definitions.**

34 As used in this Article:

35 (1) 'Commercial fishing operation' means any activity preparatory to,  
36 during, or subsequent to the taking of any fish, the taking of which is  
37 subject to regulation by the Commission, either with the use of  
38 commercial fishing equipment or gear, or by any means if the purpose  
39 of the taking is to obtain fish for sale. ~~Commercial fishing operation~~  
40 ~~includes taking people fishing for hire.~~Commercial fishing operation does  
41 not include (i) the taking of fish as part of a recreational fishing  
42 tournament, unless commercial fishing equipment or gear is used or (ii)  
43 the taking of fish under a RCGL.

- 1 (2) 'Commission' means the Marine Fisheries Commission.  
2 (3) 'Division' means the Division of Marine Fisheries in the Department of  
3 Environment and Natural Resources.  
4 (3a) 'Immediate family' means the mother, father, brother, sister, spouse, and  
5 child of a person.  
6 (4) 'License year' means the period beginning 1 July of a year and ending  
7 on 30 June of the following year.  
8 (5) 'North Carolina resident' means a person who is a resident within the  
9 meaning ~~of~~ of:  
10 a. Sub-divisions a. through d. of G.S. 113-130(4) and who filed a  
11 State income tax return as a resident of the State for the previous  
12 calendar or tax year-year, or  
13 b. G.S. 113-130(4)e.  
14 (6) 'RCGL' means Recreational Commercial Gear License.  
15 (7) 'RSCFL' means Retired Standard Commercial Fishing License.  
16 (8) 'SCFL' means Standard Commercial Fishing License."

17 Section 4.7. G.S. 113-168.1 reads as rewritten:

18 "**§ 113-168.1. General provisions for ~~commercial~~ governing licenses and**  
19 **endorsements.**

20 (a) Duration, Fees. – Except as provided in G.S. 113-173(f), All licenses and  
21 endorsements issued under this Article expire on the last day of the license year-year or  
22 upon the death of the licensee, whichever occurs first. An applicant for any license or  
23 endorsement shall pay the full annual license-fee at the time the applicant applies for the  
24 license or endorsement regardless of when application is made.

25 (b) Licenses Required to Engage in Commercial Fishing. – It is unlawful for any  
26 person to engage in a commercial fishing operation without being licensed as holding a  
27 license and any endorsements required by this Article. It is unlawful for anyone to  
28 command a vessel engaged in a commercial fishing operation without complying with the  
29 provisions of this Article and rules adopted by the Commission under this Article.

30 (c) ~~Licenses~~ Licenses, Assignments, and Endorsements Available for Inspection. –  
31 It is unlawful for any person to engage in a commercial fishing operation in the State  
32 without having ready at hand for inspection all valid ~~licenses~~ licenses, assignments, and  
33 endorsements required under this Article. To comply with this subsection, a person must  
34 have any required endorsements and either a currently valid (i) license issued in the  
35 person's true name and bearing the person's current address or (ii) SCFL and an  
36 assignment of a the SCFL authorized under this Article. ~~A licensee or assignee shall not~~ It  
37 is unlawful for a person to refuse to exhibit the licenses and endorsements any license,  
38 assignment, or endorsement required by this Article upon the request of an inspector or  
39 any other law enforcement officer authorized to enforce federal or State laws, regulations,  
40 or rules relating to marine fisheries.

41 (d) No Dual Residency. – It is unlawful for any person to hold any currently valid  
42 license issued under this Article to the person as a North Carolina resident if that person

1 holds any currently valid commercial or recreational fishing license issued by another  
2 state to the person as a resident of that state.

3 (e) License Format. – Licenses issued under this Article shall be issued in the  
4 name of the applicant. Each license shall show the type of license and any endorsements;  
5 the name, mailing address, physical or residence address, and date of birth of the  
6 licensee; the date on which the license is issued; the date on which the license expires;  
7 and any other information that the Commission or the Division determines to be  
8 necessary to accomplish the purposes of this Subchapter.

9 (f) License Issuance and Renewal. – Except as provided in G.S. 113-173(d), a  
10 person may be issued a license or endorsement under this Article at any office of the  
11 Division or by mail from the Morehead City office of the Division. A license or  
12 endorsement may be renewed in person at any office of the Division or by mail to the  
13 Morehead City office of the Division. Eligibility to renew an expired SCFL shall end one  
14 year after the date of expiration of the SCFL.

15 (g) Limitations on Eligibility. – A person is not eligible to obtain or renew a  
16 license or endorsement under this Article if, at the time the person applies for the license  
17 or endorsement, any other license or endorsement issued to the person under this Article  
18 is suspended or revoked. A person is not eligible to obtain a license or endorsement  
19 under this Article if, within the three years prior to the date of application, the person has  
20 been determined to be responsible for four or more violations of federal or state laws,  
21 regulations, or rules governing the management of marine and estuarine resources. An  
22 applicant shall certify that the applicant has not been determined to be responsible for  
23 four or more violations of federal or state laws, regulations, or rules governing the  
24 management of marine and estuarine resources during the previous three years.

25 (h) Replacement Licenses and Endorsements. – The Division shall issue a  
26 replacement license, including any endorsements, to a licensee for a license that has been  
27 lost, stolen, or destroyed and that has not been suspended or revoked. To obtain a  
28 replacement license, a licensee shall pay a replacement fee of ten dollars (\$10.00). A  
29 licensee may apply for a replacement license in person at any office of the Division or by  
30 mail to the Morehead City office of the Division. A licensee may use a copy of the  
31 application for a replacement license that has been filed with the Division as a temporary  
32 license until the licensee receives the replacement license.

33 (i) Cancellation. – The Division may cancel a license or endorsement issued on  
34 the basis of false or incorrect information. A cancelled license or endorsement is void  
35 from the date of issuance. A person in possession of a cancelled license or endorsement  
36 shall surrender the cancelled license or endorsement to the Division. It is unlawful to  
37 refuse to surrender a cancelled license or endorsement upon demand of any authorized  
38 agent of the Division."

39 Section 4.8. G.S. 113-168.2 reads as rewritten:

40 "**§ 113-168.2. Standard Commercial Fishing License.**

41 (a) Requirement. – ~~No person shall~~ Except as otherwise provided in this Article, it  
42 is unlawful for any person to engage in a commercial fishing operation in the coastal  
43 fishing waters without holding a ~~Standard Commercial Fishing License~~ SCFL issued by the

1 Division. A person who works as a member of the crew of a vessel engaged in a  
2 commercial fishing operation—operation, other than the taking of shellfish by  
3 nonmechanical means, under the direction of a person who holds a valid SCFL ~~or RSCFL~~  
4 is not required to hold a ~~SCFL or RSCFL.~~ SCFL.

5 (a1) Use of Vessels. — The holder of a SCFL is authorized to use only one vessel in  
6 a commercial fishing operation at any given time. The Commission may adopt a rule to  
7 exempt from this requirement a person in command of a vessel that is auxiliary to a  
8 vessel engaged in a pound net operation, long-haul operation, beach seine operation, or  
9 menhaden operation.

10 (b) ~~Purchase; Renewal.~~ — A person may purchase a SCFL at any office of the  
11 Division. ~~The SCFL and endorsements may be renewed by mail by forwarding a~~  
12 ~~completed application, including applicable fees, to the Division's Morehead City office.~~  
13 ~~Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL or RSCFL~~  
14 ~~and any endorsements if the SCFL or RSCFL has not been suspended or revoked.~~

15 (c) ~~Replacement License.~~ — A licensee may obtain a replacement license for a lost  
16 or destroyed license, including all endorsements, upon receipt of a proper application in  
17 the offices of the Division together with a ten-dollar (\$10.00) fee. ~~The Division shall not~~  
18 ~~accept an application for a replacement license unless the Division determines that the~~  
19 ~~applicant's current license has not been suspended or revoked. A copy of an application~~  
20 ~~duly filed with the Division shall serve as the license until the replacement license has~~  
21 ~~been received. The Commission may provide by rule for the replacement of lost,~~  
22 ~~obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the~~  
23 ~~original license receipt or upon other evidence that the Commission deems sufficient.~~

24 (d) ~~Nonresident Certification Required.~~ — Persons obtaining licenses who are not  
25 North Carolina residents shall certify that their conviction record in their state of  
26 residence is such that they would not be denied a license under the standards in G.S. 113-  
27 171. ~~When a license application is denied for violations of fisheries laws, whether the~~  
28 ~~violations occurred in North Carolina or another jurisdiction, the license fees shall not be~~  
29 ~~refunded and shall be applied to the costs of processing the application.~~

30 (e) Fees. — The annual SCFL fee for a North Carolina resident shall be two  
31 hundred dollars (\$200.00). The annual SCFL fee for a person who is not a resident of  
32 North Carolina shall be eight hundred dollars (\$800.00) or the amount charged to a North  
33 Carolina resident in the nonresident's state, whichever is less. In no event, however, may  
34 the fee be less than two hundred dollars (\$200.00).

35 (f) Assignment. — The holder of a SCFL may assign the SCFL to any ~~individual,~~  
36 ~~provided that a SCFL or RSCFL issued to the individual is not suspended or revoked.~~ individual  
37 who is eligible to hold a SCFL under this Article. ~~If the SCFL is endorsed for one or more~~  
38 ~~vessels, each vessel endorsement may be assigned, independently of the SCFL, to another holder~~  
39 ~~of a SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a holder~~  
40 ~~or assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed.~~ ~~The~~  
41 ~~assignment shall be in writing on a form provided by the Division and shall include the~~  
42 ~~name of the licensee, the license number, any endorsements, the assignee's name and~~  
43 name, mailing address, physical or residence address, and the duration of the assignment.



1 ~~A notarized copy of the assignment shall be filed with the Division. If a notarized copy of an~~  
2 ~~assignment is not filed with the Morehead City office of the Division within five days of~~  
3 ~~the date of the assignment, the assignment shall expire. The assignee shall carry the~~  
4 ~~assignment on the assignee's person and have the assignment available for inspection at all times~~  
5 ~~while using the vessel. It is unlawful for the assignee of a SCFL to assign the SCFL. The~~  
6 ~~assignment may be revoked by: (i) shall terminate:~~

- 7       (1) ~~Upon written notification by the assignor to the assignee and the~~  
8       ~~Division that the assignment has been terminated; or (ii) a terminated~~  
9       (2) ~~determination by the Division. If the Division determines that the assignee~~  
10       ~~is operating in violation of the terms and conditions applicable to the~~  
11       ~~assignment.~~  
12       (3) ~~If the assignee becomes ineligible to hold a license under this Article.~~  
13       (4) ~~Upon the death of the assignor or assignee.~~  
14       (5) ~~If the Division suspends or revokes the assigned SCFL.~~  
15       (6) ~~At the end of the license year.~~

16 (g) ~~Transfer. – A SCFL may be transferred:~~

- 17       (1) ~~By the license holder to a member of the license holder's immediate~~  
18       ~~family.~~  
19       (2) ~~By the State to the estate of the license holder upon the death of the~~  
20       ~~license holder.~~  
21       (3) ~~By a surviving family member to whom a license was transferred~~  
22       ~~pursuant to subdivision (2) of this subsection to a third party purchaser~~  
23       ~~of the license holder's fishing vessel upon the death of the license~~  
24       ~~holder.~~  
25       (4) ~~By the license holder to a third party purchaser of the license holder's~~  
26       ~~fishing vessel upon retirement of the license holder from commercial~~  
27       ~~fishing.~~  
28       (5) ~~Under any other circumstance authorized by rule of the Commission.~~  
29 ~~transferred only by the Division pursuant to rules adopted by the Commission or upon the~~  
30 ~~request of:~~

- 31       (1) ~~A licensee, from the licensee to a member of the licensee's immediate~~  
32       ~~family who is eligible to hold a SCFL under this Article.~~  
33       (2) ~~The administrator or executor of the estate of a deceased licensee, to the~~  
34       ~~administrator or executor of the estate if a surviving member of the~~  
35       ~~deceased licensee's immediate family is eligible to hold a SCFL under~~  
36       ~~this Article. The administrator or executor must request a transfer under~~  
37       ~~this subdivision within six months after administrator or executor~~  
38       ~~qualifies under Chapter 28A of the General Statutes. An administrator~~  
39       ~~or executor who holds a SCFL under this subdivision may, for the~~  
40       ~~benefit of the estate of the deceased licensee:~~  
41       a. ~~Engage in a commercial fishing operation under the SCFL if the~~  
42       ~~administrator or executor is eligible to hold a SCFL under this~~  
43       ~~Article.~~

1           b.     Assign the SCFL as provided in subsection (f) of this section.

2           c.     Renew the SCFL as provided in G.S. 113-168.1.

3           (3)    An administrator or executor to whom a SCFL was transferred pursuant  
4           to subdivision (2) of this subsection, to a surviving member of the  
5           deceased licensee's immediate family who is eligible to hold a SCFL  
6           under this Article.

7           (4)    The surviving member of the deceased licensee's immediate family to  
8           whom a SCFL was transferred pursuant to subdivision (3) of this  
9           subsection, to a third-party purchaser of the deceased licensee's fishing  
10          vessel.

11          (5)    A licensee who is retiring from commercial fishing, to a third-party  
12          purchaser of the licensee's fishing vessel.

13          (h)    Identification as Commercial Fisherman. – The receipt of a current and valid  
14          ~~SCFL, RSCFL, SCFL~~ or shellfish license issued by the Division shall serve as proper  
15          identification of the licensee as a commercial fisherman.

16          (i)    Record-Keeping Requirements. – The fish dealer shall record each transaction  
17          at the time and place of landing on a form provided by the Division. The transaction  
18          form shall include the information on the ~~SCFL, RSCFL, SCFL~~ or shellfish license, the  
19          quantity of the fish, the identity of the fish dealer, and other information as the Division  
20          deems necessary to accomplish the purposes of this Subchapter. The person who records  
21          the transaction shall provide a completed copy of the transaction form to the Division and  
22          to the other party of the transaction. The Division's copy of each transaction form shall  
23          be transmitted to the Division by the fish dealer on or before the tenth day of the month  
24          following the transaction."

25                Section 4.9. G.S. 113-168.3 reads as rewritten:

26          "**§ 113-168.3. Retired Standard Commercial Fishing License.**

27          (a)    SCFL Provisions Applicable. – Except as provided in this section, the  
28          provisions set forth in ~~G.S. 113-168.2~~ this Article concerning the SCFL shall apply to the  
29          RSCFL.

30          (b)    Eligibility; Fees. – Any ~~person~~ individual who is 65 years of age or older and  
31          who is otherwise eligible for a SCFL under G.S. 113-168.2 may ~~purchase~~ be issued a  
32          RSCFL. Proof of age shall be supplied at the time the application is made. The annual  
33          fee for a RSCFL for a North Carolina resident shall be one hundred dollars (\$100.00).  
34          The annual fee for a RSCFL for a person who is not a resident of North Carolina shall be  
35          eight hundred dollars (\$800.00) or the amount charged to a North Carolina resident in the  
36          nonresident's state, whichever is less. In no event, however, shall the fee be less than one  
37          hundred dollars (\$100.00).

38          (c)    Transfer. – The holder of a RSCFL may transfer the RSCFL as provided in  
39          G.S. 113-168.2. ~~G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-~~  
40          ~~party purchaser of the RSCFL holder's fishing vessel.~~ If the third-party purchaser  
41          transferee is less than 65 years of age, that purchaser the transferee holds a SCFL, and  
42          when the transferee renews the SCFL, the transferee shall pay the fee for the SCFL set  
43          forth in G.S. 113-168.2.

1 (d) Assignment. – The RSCFL shall not be assignable."

2 Section 4.10. G.S. 113-168.4 reads as rewritten:

3 **"§ 113-168.4. Regulations concerning the sale Sale of fish.**

4 (a) Except as otherwise provided in this section, it is unlawful for any person who  
5 takes or lands any species of fish under the authority of the Commission from coastal  
6 fishing waters by any means whatever, including mariculture operations, to sell, offer for  
7 sale, barter or exchange these fish for anything of value for merchandise these fish, without  
8 holding a current and valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a  
9 valid shellfish license issued under G.S. 113-169.2, without holding a license required to sell  
10 the type of fish being offered. It is unlawful for fish dealers to buy fish unless the seller  
11 presents a current and valid SCFL, RSCFL, or shellfish license at the time of the transaction.  
12 Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under  
13 G.S. 113-169.3.

14 (b) It is unlawful for any person licensed under this section to sell fish taken  
15 outside the territorial waters of the State or to sell fish taken from coastal fishing waters  
16 except to:

17 (1) Fish dealers licensed under G.S. 113-169.3; or

18 (2) The public, if the seller is also licensed as a fish dealer under G.S. 113-  
19 169.3.

20 (c) A person who organizes a ~~nonprofit~~ recreational fishing tournament may sell  
21 fish taken in connection with the tournament pursuant to a recreational fishing  
22 tournament license to sell fish. A person who organizes a nonprofit recreational fishing  
23 tournament may obtain a recreational fishing tournament license to sell fish upon  
24 application to the Division and payment of a fee of one hundred dollars (\$100.00). It is  
25 unlawful for any person licensed under this subsection to sell fish to any person other  
26 than a fish dealer licensed under G.S. 113-169.3 unless the seller is also a licensed fish  
27 dealer. A recreational fishing tournament is an organized fishing competition occurring  
28 within a specified time period not to exceed one week and that is not a commercial  
29 fishing operation. Proceeds derived Gross proceeds from the sale of fish may be used only  
30 for ~~charitable purposes~~ charitable, religious, educational, civic, or conservation purposes  
31 and shall not be used to pay tournament expenses."

32 Section 4.11. G.S. 113-168.5 reads as rewritten:

33 **"§ 113-168.5. License endorsements for Standard Commercial Fishing License and**  
34 **Retired Standard Commercial Fishing License.**

35 (a) ~~A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a~~  
36 ~~commercial fishing operation.~~

37 (b) ~~Vessel Endorsements.—~~

38 (1) ~~As used in this subsection, a North Carolina vessel is a vessel that has~~  
39 ~~its primary situs in the State. A vessel has its primary situs in the State~~  
40 ~~if:~~

41 a. ~~A certificate of number has been issued for the vessel under~~  
42 ~~Article 1 of Chapter 75A of the General Statutes;~~

- 1           b.     A certificate of title has been issued for the vessel under Article 4  
2           of Chapter 75A of the General Statutes; or
- 3           e.     A certification of documentation has been issued for the vessel  
4           that lists a home port in the State under 42 U.S.C. § 12101, et  
5           seq., as amended.
- 6       (2)    ~~It is unlawful to use a vessel in a commercial fishing operation in the  
7           coastal fishing waters of the State without a vessel endorsement of the  
8           license required under this Article for that commercial fishing operation.  
9           It is unlawful to use a North Carolina vessel to land or sell fish in the  
10          State that are taken during a commercial fishing operation outside the  
11          coastal fishing waters of the State without a vessel endorsement of the  
12          license required under this Article for that commercial fishing operation.  
13          No endorsement is required, however, for a vessel of any length that  
14          does not have a motor if the vessel is used only in connection with  
15          another vessel for which the required license has been properly  
16          endorsed.~~
- 17       (3)    ~~The fee for a vessel endorsement shall be determined by the length of  
18           the vessel and shall be in addition to the fee for a SCFL, RSCFL, or  
19           shellfish license. The length of a vessel shall be determined by  
20           measuring the distance between the ends of the vessel along the deck  
21           and through the cabin, excluding the sheer. The fee for a vessel  
22           endorsement is:~~
- 23           a.     One dollar (\$1.00) per foot for a vessel not over 18 feet in length.  
24           b.     One dollar and fifty cents (\$1.50) per foot for a vessel over 18  
25           feet but not over 38 feet in length.  
26           c.     Three dollars (\$3.00) per foot for a vessel over 38 feet but not  
27           over 50 feet in length.  
28           d.     Six dollars (\$6.00) per foot for a vessel over 50 feet in length.
- 29       (4)    ~~A vessel endorsement may be assigned as provided in G.S. 113-  
30           168.2(f).~~
- 31       (5)    ~~When the owner of a vessel for which a SCFL, RSCFL, or shellfish  
32           license has been endorsed transfers ownership of the vessel to a holder  
33           of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be  
34           transferred from the former owner's SCFL, RSCFL, or shellfish license  
35           to the new owner's SCFL, RSCFL, or shellfish license upon the request  
36           of the new owner. The new owner of the vessel shall notify the  
37           Division of the change in ownership and request that the vessel  
38           endorsement be transferred within 30 days of the date on which the  
39           transfer of ownership occurred. The notification of a change in the  
40           ownership of a vessel and request that the vessel endorsement be  
41           transferred shall be made on a form provided by the Division and shall  
42           be accompanied by satisfactory proof of the transfer of vessel  
43           ownership. Transfer of vessel ownership may be proven by a notarized~~

1 copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a  
2 vessel documentation transfer.

3 (c) Menhaden Endorsements. – Except as provided in G.S. 113-169, it is  
4 unlawful to use a vessel to take menhaden by purse seine in ~~the coastal fishing waters of~~  
5 ~~the State, waters, to land menhaden taken by purse seine, in the State, or to sell menhaden~~  
6 ~~from a vessel in the State taken by purse seine~~ without obtaining a menhaden endorsement  
7 of a SCFL or RSCFL. SCFL. The fee for a menhaden endorsement shall be two dollars  
8 (\$2.00) per ton, based on gross tonnage as determined by the custom house measurement  
9 for the mother ship. The menhaden endorsement shall be required for the mother ship but  
10 no separate endorsement shall be required for a purse boat carrying a purse seine. The  
11 application for a menhaden endorsement must state the name of the person in command  
12 of the vessel. Upon a change in command of a menhaden vessel, the owner must notify  
13 the Division in writing within 30 days.

14 (d) Shellfish Endorsement for North Carolina Residents. – The Division shall issue  
15 a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at no charge.  
16 The holder of a SCFL with a shellfish endorsement is authorized to harvest and sell  
17 shellfish."

18 Section 4.12. Article 14A of Chapter 113 of the General Statutes is amended  
19 by adding a new section to read:

20 "**§ 113-168.6. Vessel registration.**

21 (a) As used in this subsection, a North Carolina vessel is a vessel that has its  
22 primary situs in the State. A vessel has its primary situs in the State if:

23 (1) A certificate of number has been issued for the vessel under Article 1 of  
24 Chapter 75A of the General Statutes;

25 (2) A certificate of title has been issued for the vessel under Article 4 of  
26 Chapter 75A of the General Statutes; or

27 (3) A certification of documentation has been issued for the vessel that lists  
28 a home port in the State under 46 U.S.C. § 12101, et seq., as amended.

29 (b) The owner of a vessel used in a commercial fishing operation in the coastal  
30 fishing waters of the State or a North Carolina vessel used to land or sell fish in the State  
31 shall register the vessel with the Division. It is unlawful to use a vessel that is not  
32 registered with the Division in a commercial fishing operation in the coastal fishing  
33 waters of the State. It is unlawful to use a North Carolina vessel that is not registered  
34 with the Division to land or sell fish in the State. No registration is required for a vessel  
35 of any length that does not have a motor if the vessel is used only in connection with  
36 another vessel that is properly registered.

37 (c) The annual fee for a vessel registration shall be determined by the length of the  
38 vessel and shall be in addition to the fee for other licenses issued under this Article. The  
39 length of a vessel shall be determined by measuring the distance between the ends of the  
40 vessel along the deck and through the cabin, excluding the sheer. The annual fee for a  
41 vessel registration is:

42 (1) One dollar (\$1.00) per foot for a vessel not over 18 feet in length.

1           (2) One dollar and fifty cents (\$1.50) per foot for a vessel over 18 feet but  
2           not over 38 feet in length.

3           (3) Three dollars (\$3.00) per foot for a vessel over 38 feet but not over 50  
4           feet in length.

5           (4) Six dollars (\$6.00) per foot for a vessel over 50 feet in length.

6           (d) A vessel may be registered at any office of the Division. A vessel registration  
7           expires on the last day of the license year.

8           (e) Within 30 days of the date on which the owner of a registered vessel transfers  
9           ownership of the vessel, the new owner of the vessel shall notify the Division of the  
10           change in ownership and request that the Division transfer the vessel registration to the  
11           new owner. The notification of a change in the ownership of a vessel and request that the  
12           vessel registration be transferred shall be accompanied by proof of the transfer of the  
13           vessel."

14           Section 4.13. G.S. 113-169 reads as rewritten:

15           "**§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.**

16           A person who is not a resident of North Carolina, who is not eligible for a SCFL  
17           under this Article, and who only seeks to engage in ~~menhaden fishing~~ a commercial  
18           fishing operation for the harvest and sale of menhaden is eligible to ~~purchase~~ obtain a  
19           menhaden license for nonresidents. The fee for the menhaden license for nonresidents  
20           shall be two dollars (\$2.00) per ton, gross tonnage, customhouse measurements for the  
21           mother ship. The menhaden license for nonresidents shall be required for the mother ship  
22           to take, land, or sell menhaden in North Carolina taken by purse seine. No separate  
23           endorsement shall be required for a purse boat carrying a purse seine. The application for  
24           a menhaden license for nonresidents must state the name of the person in command of the  
25           vessel. Upon change in command of a menhaden vessel, the owner must notify the  
26           Division within 30 days. A person who works as a member of the crew of a vessel  
27           engaged in a commercial fishing operation for the harvest and sale of menhaden under  
28           the direction of a person who holds a valid menhaden license for nonresidents is not  
29           required to hold a menhaden license for nonresidents or a SCFL."

30           Section 4.14. G.S. 113-169.2 reads as rewritten:

31           "**§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

32           (a) License or Endorsement Necessary to Take or Sell Shellfish. – It is unlawful  
33           for an individual to take shellfish from the public or private grounds of the State by  
34           mechanical means or ~~for commercial use in quantities greater than the personal use limits~~  
35           set forth in subsection (i) of this section by any means without holding either a shellfish  
36           license or a shellfish endorsement of a ~~SCFL or RSCFL.~~ SCFL. A North Carolina resident  
37           who seeks only to take and sell shellfish shall be eligible to ~~purchase~~ obtain a shellfish  
38           license without holding a ~~SCFL or RSCFL.~~ SCFL. ~~The license includes the privilege.~~ The  
39           shellfish license authorizes the licensee to sell shellfish to a licensed fish dealer. ~~shellfish.~~

40           (b) ~~Purchase; Renewal.~~ – ~~A person may purchase a shellfish license at any office~~  
41           ~~of the Division. The shellfish license and endorsements may be renewed by mail by~~  
42           ~~forwarding a completed application, including applicable fees, to the Division's~~  
43           ~~Morehead City Office. Any person who is issued a shellfish license is eligible to renew~~

1 ~~the shellfish license and any endorsements if the shellfish license has not been suspended~~  
2 ~~or revoked.~~

3 (c) Fees. – Shellfish licenses shall be issued annually upon payment of a fee of  
4 twenty-five dollars (\$25.00) upon proof that the license applicant is a resident of North  
5 Carolina.

6 (d) License Available for Inspection. – It is unlawful for any individual to take  
7 shellfish ~~for commercial use~~ in quantities greater than the personal use limits set forth in  
8 subsection (i) of this section from the public or private grounds of the State without  
9 having ready at hand for inspection a current and valid shellfish license issued to the  
10 licensee personally and bearing the licensee's correct name and address. It is unlawful for  
11 any individual taking or possessing freshly taken shellfish to refuse to exhibit the  
12 individual's license upon the request of an officer authorized to enforce the fishing laws.

13 ~~(e) Vessel Endorsement Required. – A license holder under this section shall be~~  
14 ~~required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the~~  
15 ~~take or sale of shellfish. A vessel endorsement of a shellfish license does not authorize~~  
16 ~~the use of the vessel for any commercial fishing operation other than the taking or selling~~  
17 ~~of shellfish.~~

18 (f) Name or Address Change. – In the event of a change in name or address or upon  
19 receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a  
20 replacement shellfish license bearing the correct name and address. Upon a showing by  
21 the individual that the name or address change occurred within the past 30 days, the trial  
22 court or prosecutor shall dismiss any charges brought pursuant to this subsection.

23 (g) Transfer Prohibited. – It is unlawful for an individual issued a shellfish license  
24 to transfer or offer to transfer the license, either temporarily or permanently, to another.  
25 It is unlawful for an individual to secure or attempt to secure a shellfish license from a  
26 source not authorized by the Commission.

27 (h) Exemption. – Persons under 16 years of age are exempt from the license  
28 requirements of this section if accompanied by a parent, grandparent, or guardian who is  
29 in compliance with the requirements of this section or if in possession of a parent's,  
30 grandparent's or guardian's shellfish license.

31 (i) Taking Shellfish Without a License for Personal Use. –

32 (1) A person may take shellfish for personal use without obtaining a license  
33 under this section in quantities up to:

- 34 a. One bushel of oysters per day.  
35 b. One-half bushel of scallops per day.  
36 c. One hundred clams per day.  
37 d. Ten conchs per day.  
38 e. One hundred mussels per day.

39 (2) Two or more persons who are using a vessel to take shellfish may take  
40 shellfish for personal use without obtaining a license under this section  
41 in quantities up to:

- 42 a. Two bushels of oysters per day.  
43 b. One bushel of scallops per day.

- 1 c. Two hundred clams per day.  
2 d. Twenty conchs per day.  
3 e. Two hundred mussels per day."

4 Section 4.15. G.S. 113-169.3 reads as rewritten:

5 "**§ 113-169.3. Licenses for fish dealers.**

6 (a) Eligibility. – A fish dealer license shall be issued to a North Carolina resident  
7 upon receipt of a proper application ~~in the Morehead City Office~~ at any office of the  
8 Division together with all license fees including the total number of dealer categories set  
9 forth in this section. The license shall be issued in the name of the applicant and shall  
10 include all dealer categories on the license.

11 (b) Application for License. – Applications shall not be accepted from persons  
12 ineligible to hold a license issued by the Division, including any applicant whose license  
13 is suspended or revoked on the date of the application. The applicant shall be provided  
14 with a copy of the application marked received. The copy shall serve as the fish dealer's  
15 license until the license issued by the Division is received, or the Division determines that  
16 the applicant is ineligible to hold a license. Where an applicant does not have an  
17 established location for transacting the fisheries business within the State, the license  
18 application shall be denied unless the applicant satisfies the Secretary that his residence,  
19 or some other office or address within the State, is a suitable substitute for an established  
20 location and that records kept in connection with licensing, sale, and purchase  
21 requirements will be available for inspection when necessary. Fish dealers' licenses are  
22 issued on a fiscal year basis upon payment of a fee as set forth herein upon proof,  
23 satisfactory to the Secretary, that the license applicant is a North Carolina resident.

24 (c) License Requirement. – Except as otherwise provided in this section, it is  
25 unlawful for any person not licensed pursuant to this ~~article~~: Article:

- 26 (1) To buy fish for resale from any person involved in a commercial fishing  
27 operation that takes any species of fish from coastal fishing waters. For  
28 purposes of this subdivision, a retailer who purchases fish from a fish  
29 dealer shall not be liable if the fish dealer has not complied with the  
30 licensing requirements of this section;  
31 (2) To sell fish to the public; or  
32 (3) To sell to the public any species of fish under the authority of the  
33 Commission taken from coastal fishing waters.

34 Any person subject to the licensing requirements of this section is a fish dealer. Any  
35 person subject to the licensing requirements of this section shall obtain a separate license  
36 for each physical location conducting activities required to be licensed under this section.

37 (d) Exceptions to License Requirements. – The Commission may adopt rules to  
38 implement this subsection including rules to clarify the status of the listed classes of  
39 exempted persons, require submission of statistical data, and require that records be kept  
40 in order to establish compliance with this section. Any person not licensed pursuant to  
41 this section is exempt from the licensing requirements of this section if all fish handled  
42 within any particular licensing category meet one or more of the following requirements:



- 1 (1) The fish are sold by persons whose dealings in fish are primarily  
2 educational, scientific, or official, and who have been issued a permit by  
3 the Division that authorizes the educational, scientific, or official agency  
4 to sell fish taken or processed in connection with research or  
5 demonstration projects;
- 6 (2) The fish are sold by individual employees of fish dealers when  
7 transacting the business of their duly licensed employer;
- 8 (3) The fish are shipped to a person by a dealer from without the State;
- 9 (4) The fish are of a kind the sale of which is regulated exclusively by the  
10 Wildlife Resources Commission; or
- 11 (5) The fish are purchased from a licensed dealer.

12 (e) Application Fee for New Fish Dealers. – An applicant for a new fish dealer  
13 license shall pay a nonrefundable application fee of fifty dollars (\$50.00) in addition to  
14 the license category fees set forth in this section.

15 (f) License Category Fees. – Every fish dealer subject to licensing requirements  
16 shall secure an annual license at each established location for each of the following  
17 activities transacted there, upon payment of the fee set out:

- 18 (1) Dealing in oysters: \$50.00;
- 19 (2) Dealing in scallops: \$50.00;
- 20 (3) Dealing in clams: \$50.00;
- 21 (4) Dealing in hard or soft crabs: \$50.00;
- 22 (5) Dealing in shrimp, including bait: \$50.00;
- 23 (6) Dealing in finfish, including bait: \$50.00;
- 24 (7) Operating menhaden or other fish-dehydrating or oil-extracting  
25 processing plants: \$50.00; or
- 26 (8) Consolidated license (all categories): \$300.00.

27 Any person subject to fish dealer licensing requirements who deals in fish not included in  
28 the above categories shall secure a finfish dealer license. The Commission may adopt  
29 rules implementing and clarifying the dealer categories of this subsection. Bait  
30 operations shall be licensed under either the finfish or shrimp dealer license categories.

31 (g) License Format. – The format of the license shall include the name of the  
32 licensee, date of birth, name and physical address of each business location, expiration  
33 date of the license, and any other information the Division deems necessary to  
34 accomplish the purposes of this Subchapter.

35 ~~(h) Application for Replacement License. – A replacement license shall only be  
36 obtained from an office of the Division. The Division shall not accept an application for a  
37 replacement license unless the Division determines that the applicant's current license has  
38 not been suspended or revoked. A copy of an application duly filed with the Division  
39 shall serve as the license until the replacement license has been received.~~

40 (h1) Name or Address Change. – If the name or address of a licensee changes, the  
41 licensee shall, within 30 days, apply for a replacement fish dealer license bearing the  
42 correct name and address. If the licensee fails to comply with this requirement, the  
43 license is revoked. A revocation under this subsection is not subject to G.S. 150B-3.

1 (i) Purchase and Sale of Fish. – It is unlawful for a fish dealer to buy or accept  
2 fish ~~unless~~ unless, at the time of the transaction, the seller or donor possesses ~~presents~~ a  
3 current and valid SCFL, RSCFL, shellfish license, menhaden license for nonresidents, or a  
4 ~~special fisheries sale permit issued under G.S. 113-168.4(e),~~ license to sell the type of fish  
5 being offered and the dealer records the transaction consistent with the record-keeping  
6 requirements of G.S. 113-168.2(i). It is unlawful for any person to purchase, possess, or  
7 sell fish taken from coastal fishing waters in violation of this Subchapter or the rules  
8 adopted by the Commission implementing this Subchapter.

9 (j) Transfer Prohibited. – Any fish dealer license issued under this section is  
10 nontransferable. It is unlawful to use a fish dealer license issued to another person in the  
11 sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for  
12 the purpose of circumventing the requirements of this section."

13 Section 4.16. G.S. 113-170.1 reads as rewritten:

14 **"§ 113-170.1. Nonresidents reciprocal agreements.**

15 Persons who are not North Carolina residents are not ~~entitled~~ eligible to obtain  
16 licenses under the provisions of this Article except as provided in this section. Residents  
17 of jurisdictions that sell commercial fishing licenses to North Carolina residents are  
18 ~~entitled to~~ eligible to hold North Carolina commercial fishing licenses under the  
19 provisions of G.S. 113-168.2. Licenses may be restricted in terms of area, gear, and  
20 fishery by the Commission so that the nonresidents are licensed to engage in North  
21 Carolina fisheries on the same or similar terms that North Carolina residents can be  
22 licensed to engage in the fisheries of other jurisdictions. The Secretary may enter into  
23 reciprocal agreements with other jurisdictions as necessary to allow nonresidents to  
24 obtain commercial fishing licenses in the State subject to the foregoing provisions."

25 Section 4.17. G.S. 113-173 reads as rewritten:

26 **"§ 113-173. Recreational Commercial Gear License.**

27 (a) License Required. – Except as provided in subsection (j) of this section, it is  
28 unlawful for any person to take or attempt to take fish for recreational purposes by means  
29 of commercial fishing equipment or gear in coastal fishing waters without holding a  
30 RCGL. As used in this section, fish are taken for recreational purposes if the fish are not  
31 taken for the purpose of sale. The RCGL entitles the licensee to use authorized  
32 commercial gear to take fish for personal use subject to recreational ~~quotas or possession~~  
33 limits. It is unlawful for any person licensed under this section or fishing under a RCGL  
34 to possess fish in excess of recreational possession limits.

35 (b) Sale of Fish Prohibited. – It is unlawful for the holder of a RCGL or for a  
36 person who is exempt under subsection (j) of this section to sell fish taken under the  
37 RCGL or pursuant to the exemption.

38 (c) Authorized Commercial Gear. – The Commission shall adopt rules authorizing  
39 the use of a limited amount of commercial fishing equipment or gear for recreational  
40 fishing under a RCGL. The Commission may authorize the limited use of commercial  
41 gear on a uniform basis in all coastal fishing waters or may vary the limited use of  
42 commercial gear within specified areas of the coastal fishing waters. The Commission  
43 shall periodically evaluate and revise the authorized use of commercial gear for

1 recreational fishing. Authorized commercial gear shall be identified by visible colored  
2 tags or other means specified by the Commission in order to distinguish between  
3 commercial gear used in a commercial operation and commercial gear used for  
4 recreational purposes.

5 (d) Purchase; Renewal. – A RCGL may be purchased at designated offices of the  
6 Division and from a license agent authorized under G.S. 113-172. A RCGL may be  
7 renewed by mail.

8 (e) Replacement RCGL. – Upon receipt of a proper application and a two-dollar  
9 (\$2.00) replacement fee, the Division may issue a duplicate RCGL to replace an  
10 unexpired RCGL that has been lost or destroyed.

11 (f) Duration; Fees. – The RCGL shall be valid for a one-year period from the date  
12 of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars  
13 (\$35.00). The fee for a RCGL for an individual who is not a North Carolina resident shall  
14 be two hundred fifty dollars (\$250.00).

15 (g) RCGL Available for Inspection. – It is unlawful for any person to engage in  
16 recreational fishing by means of restricted commercial gear in the State without having  
17 ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to  
18 exhibit the RCGL upon the request of an inspector or any other law enforcement officer  
19 authorized to enforce federal or State laws, regulations, or rules relating to marine  
20 fisheries.

21 (h) Assignment and Transfer Prohibited. – A RCGL is not transferable. Except as  
22 provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow, assign,  
23 or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or  
24 otherwise transfer a RCGL.

25 (i) Reporting Requirements. – The holder of a RCGL shall comply with the  
26 biological data sampling and survey programs of the Commission and the Division.

27 (j) Exemptions. –

28 (1) A person who is under 16 years of age may take fish for recreational  
29 purposes by means of authorized commercial gear without holding a  
30 RCGL if the person is accompanied by a parent, grandparent, or  
31 guardian who holds a valid RCGL or if the person has in the person's  
32 possession a valid RCGL issued to the person's parent, grandparent, or  
33 guardian.

34 (2) A person may take crabs for recreational purposes by means of one or  
35 more crab pots attached to the shore along privately owned land or to a  
36 privately owned pier without holding a RCGL provided that the crab  
37 pots are attached with the permission of the owner of the land or pier.

38 (3) A person who is on a vessel may take fish for recreational purposes by  
39 means of authorized commercial gear without holding a RCGL if there  
40 is another person on the vessel who holds a valid RCGL. This  
41 exemption does not authorize the use of commercial gear in excess of  
42 that authorized for use by the person who holds the valid RCGL or, if

1 more than one person on the vessel holds a RCGL, in excess of that  
2 authorized for use by those persons.

3 (4) A person using nonmechanical means may take shellfish for personal  
4 use within the limits specified in G.S. 113-169.2(i) without holding a  
5 RCGL."

6 Section 4.18. Article 19A of Chapter 113 of the General Statutes reads as  
7 rewritten:

8 "ARTICLE 19A.

9 ~~"SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL. COUNCILS.~~

10 "**§ 113-259. North Carolina members of the South Atlantic Fishery Management**  
11 **Council.**

12 (a) In pursuance of Section 302 of the ~~Magnuson-Magnuson~~ -Stevens Fishery  
13 Conservation and Management Act, 16 ~~United States Code~~ -U.S.C. § 1801-~~et seq.~~, et seq.,  
14 there shall be at least two members of the South Atlantic Fishery Management Council  
15 from the State of North Carolina.

16 (b) The first Council member shall be the principal State official with marine  
17 fishery management responsibility and expertise in the State, which official is the  
18 Director of the Division of Marine Fisheries of the Department or his designee.

19 (c) Pursuant to the enabling legislation, other members from the State of North  
20 Carolina are selected by the United States Secretary of Commerce from a list of qualified  
21 individuals submitted by the Governor of the State. The list of nominees shall be  
22 compiled by the Marine Fisheries Commission and must be comprised of individuals who  
23 are knowledgeable and experienced with regard to the management, conservation, or  
24 recreational harvest of the fishery resources in the Atlantic Ocean seaward of the ~~States~~  
25 states of North Carolina, South Carolina, Georgia, and Florida. Prior to submission of the  
26 list of nominees, the Governor may consult with the Commission regarding additions to  
27 the list of nominees to be submitted. Should it be necessary for the Governor to submit  
28 additional nominees, the list of nominees shall be compiled by the Marine Fisheries  
29 Commission.

30 "**§ 113-260. North Carolina members of the Mid-Atlantic Fishery Management**  
31 **Council.**

32 (a) In pursuance of Section 302 of the Magnuson-Stevens Fishery Conservation  
33 and Management Act, 16 U.S.C. § 1801, et seq., there shall be at least two members of  
34 the Mid-Atlantic Fishery Management Council from the State of North Carolina.

35 (b) The first Council member shall be the principal State official with marine  
36 fishery management responsibility and expertise in the State, which official is the  
37 Director of the Division of Marine Fisheries of the Department or his designee.

38 (c) Pursuant to the enabling legislation, other members from the State of North  
39 Carolina are selected by the United States Secretary of Commerce from a list of qualified  
40 individuals submitted by the Governor of the State. The list of nominees shall be  
41 compiled by the Marine Fisheries Commission and must be comprised of individuals who  
42 are knowledgeable and experienced with regard to the management, conservation, or  
43 recreational harvest of the fishery resources in the Atlantic Ocean seaward of the states of

1 New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North  
2 Carolina. Prior to submission of the list of nominees, the Governor may consult with the  
3 Commission regarding additions to the list of nominees to be submitted. Should it be  
4 necessary for the Governor to submit additional nominees, the list of nominees shall be  
5 compiled by the Marine Fisheries Commission."

6 Section 4.19. Subsection (c2) of Section 3 of Chapter 576 of the 1993 Session  
7 Laws, as added to that section by subsection (d) of Section 26.5 of Chapter 507 of the  
8 1995 Session Laws, reads as rewritten:

9 "~~(c2) During the moratorium, a~~ The Marine Fisheries Commission may regulate  
10 participation in a fishery regulated by a federal fisheries management plan. A license  
11 required to participate in a fishery regulated by a federal fisheries management plan under  
12 G.S. 113-182(b)(3) may only be issued may be issued only to a person who:

- 13 (1) Held a valid vessel license issued under G.S. 113-152, a valid land or  
14 sell license issued under G.S. 113-153, or a combination of the two  
15 licenses, during at least two of the three license years immediately  
16 preceding ratification; beginning 1 July 1992 and ending 30 June 1995  
17 and
- 18 (2) Participated in the fishery ~~for which a license or permit is required~~  
19 ~~during at least two of the three years immediately preceding ratification;~~
- 20 (3) ~~Landed in North Carolina during each year of participation in the fishery in at~~  
21 ~~least two of those license years by landing in the State, while properly~~  
22 ~~licensed, at least the minimum number of pounds of fish as established~~  
23 ~~by the Commission in duly adopted rules. by rule."~~

24 Section 4.20. Subsection (c2) of Section 3 of Chapter 576 of the 1993 Session  
25 Laws, as added to that section by subsection (d) of Section 26.5 of Chapter 507 of the  
26 1995 Session Laws and amended by Section 4.19 of this act, is repealed.

27 Section 4.21. Section 5.2 of S.L. 1997-400 reads as rewritten:

28 "Section 5.2. (a) Definitions; Citations. The definitions set out in G.S. 113-168 apply  
29 to this section. A citation to a provision of the General Statutes in this section means that  
30 provision of the General Statutes as enacted by this act.

31 (b) Transitional Provisions. In order to effect an orderly implementation of this  
32 Part and the transition from the moratorium imposed by subsection (a) of Section 3 of  
33 Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3  
34 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of  
35 Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of S.L. 1997-256;  
36 Section 3 of S.L. 1997-347; and Section 6.1 of this act, to the licensing provision of  
37 Article 14A of Chapter 113 of the General Statutes, the provisions of this section shall  
38 apply to the issuance of licenses under Article 14A of Chapter 113 of the General  
39 Statutes until all Fishery Management Plans have been adopted as required by G.S. 113-  
40 182.1 and G.S. 143B-289.22.

41 (c) Temporary Cap. There is hereby imposed a temporary cap on the total number  
42 of SCFLs that the Division may issue. The temporary cap equals the total number of

1 endorsements to sell fish that establish eligibility for a SCFL under subsection (g) of this  
2 section plus 500 additional SCFLs, authorized by subsection (d) of this section.

3 (d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is  
4 authorized to issue SCFLs as provided in subsection (g) of this section plus an additional  
5 500 SCFLs using the procedure set out in subsection (h) of this section.

6 (e) Subsequent License Years. For license years beginning with the 2000-01  
7 license year, the Commission is authorized to issue SCFLs from the pool of available  
8 SCFLs as provided in subsection (f) of this section using the procedure set out in  
9 subsection (h) of this section.

10 (f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of  
11 available SCFLs in license years beginning with the 2000-01 license year is the  
12 temporary cap less the number of SCFLs that ~~are renewed~~ were issued during the  
13 previous license year. The Commission may increase or decrease the number of SCFLs  
14 that are issued from the pool of available SCFLs. The Commission may increase the  
15 number of SCFLs that are issued from the pool of available SCFLs up to the temporary  
16 cap. The Commission may decrease the number of SCFLs that are issued from the pool  
17 of available SCFLs but may not refuse to renew a SCFL that is issued during the previous  
18 license year and that has not been suspended or revoked. The Commission shall increase  
19 or decrease the number of SCFLs that are issued to reflect its determination as to the  
20 effort that the fishery can support, based on the best available scientific evidence.

21 (g) Eligibility for SCFL. Any person who holds a valid endorsement to sell fish of  
22 a vessel license on ~~4 July~~ 30 June 1999 is eligible to receive a SCFL. Any person who  
23 holds a valid nonvessel endorsement to sell fish, other than a nonvessel endorsement to  
24 sell fish issued for an aquaculture operation or a fishing tournament, on 30 June 1999 is  
25 eligible to receive a SCFL. The Division shall issue a SCFL to any person who is eligible  
26 under this subsection upon receipt of an application and required fees. If the person held  
27 more than one endorsement to sell fish, the person is eligible to receive a SCFL for each  
28 endorsement to sell previously held. Eligibility to receive a SCFL under this subsection  
29 shall expire ~~4 July~~ 30 June 2000.

30 (h) Procedure for Issuing Additional SCFLs. The Commission shall determine a  
31 procedure for issuing the 500 additional SCFLs authorized by subsection (d) of this  
32 section for the 1999-2000 license year and for issuing SCFLs from the pool of available  
33 SCFLs authorized by subsection (e) of this section. The procedure shall set a date on  
34 which the Division will begin receiving applications and a date on which the  
35 determination by lot of which applicants will receive a SCFL will be made. The  
36 Commission shall develop criteria ~~for~~ to be used by the SCFL Eligibility Board in  
37 determining eligibility for a SCFL under this subsection. Criteria shall include the past  
38 involvement of the applicant and the applicant's family in commercial fishing; the extent  
39 to which the applicant has relied on commercial fishing for the applicant's livelihood; the  
40 extent to which the applicant has complied with federal and State laws, regulations, and  
41 rules relating to coastal fishing and protection of the environment; and any other factors  
42 the Commission determines to be relevant. ~~The Division~~ SCFL Eligibility Board shall  
43 review each application for a SCFL that ~~it~~ the Division receives during the application

1 period to determine whether the applicant is eligible for a SCFL under the eligibility  
2 criteria established by the Commission. The Division shall issue SCFLs under this  
3 subsection by lot. All applicants who are determined to be eligible shall have an equal  
4 chance of being issued a SCFL.

5 (i) SCFL Eligibility Board. There is established a SCFL Eligibility Board. The  
6 Board shall apply the eligibility criteria adopted by the Commission to determine whether  
7 an applicant for a SCFL is eligible for a SCFL under subsection (h) of this section. The  
8 Board shall consist of the Secretary of Environment and Natural Resources or the  
9 Secretary's designee, the Fisheries Director or the Director's designee, and the Chair of  
10 the Commission or the Chair's designee. The Secretary shall designate one member of  
11 the Board to serve as Chair of the Board. The Commission shall adopt rules to govern  
12 the operation of the Board. The Board is exempt from the provisions of Article 3 of  
13 Chapter 150B of the General Statutes. Decisions of the Board shall be subject to judicial  
14 review under the provisions of Article 4 of Chapter 150B of the General Statutes."

## 15 16 **PART V. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES**

17  
18 Section 5.1. G.S. 113-136(g) reads as rewritten:

19 "(g) Protectors may not temporarily stop or inspect vehicles proceeding along  
20 primary highways of the State without clear evidence that someone within the vehicle is  
21 or has recently been engaged in an activity regulated by the Wildlife Resources  
22 Commission. Inspectors may temporarily stop vehicles, boats, airplanes, and other  
23 conveyances upon reasonable grounds to believe that they are transporting ~~taxable~~  
24 seafood products; they are authorized to inspect any seafood products being transported  
25 to determine whether they were taken in accordance with law and to require exhibition of  
26 any applicable license, ~~tax~~-receipts, permits, bills of lading, or other identification  
27 required to accompany such seafood products."

28 Section 5.2. Unless otherwise expressly provided, every agency to which this  
29 act applies shall adopt rules to implement the provisions of this act only in accordance  
30 with the provisions of Chapter 150B of the General Statutes. This act constitutes a recent  
31 act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to  
32 which this act applies that is authorized to adopt rules to implement the provisions of this  
33 act may adopt temporary rules to implement the provisions of this act. This section shall  
34 continue in effect until all rules necessary to implement the provisions of this act have  
35 become effective as either temporary rules or permanent rules.

36 Section 5.3. The headings to the Parts of this act are a convenience to the  
37 reader and are for reference only. The headings do not expand, limit, or define the text of  
38 this act.

39 Section 5.4. If any section or provision of this act is declared unconstitutional  
40 or invalid by the courts, the unconstitutional or invalid section or provision does not  
41 affect the validity of this act as a whole or any part of this act other than the part declared  
42 to be unconstitutional or invalid.

1           Section 5.5. Sections 1.1, 1.2, 2.1, 3.1, 4.1, 4.2, 4.18, 5.1, 5.2, 5.3, 5.4, and 5.5  
2 of this act are effective when this act becomes law. Sections 4.6, 4.7, 4.8, 4.9, 4.10, 4.11,  
3 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.19, and 4.21 become effective July 1, 1999. Section  
4 4.3 is effective retroactively to August 14, 1997. Sections 4.4 and 4.5 are effective  
5 retroactively to September 1, 1997. Section 4.20 of this act becomes effective September  
6 1, 2003. Section 4.12 expires September 1, 2003.