

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1448*
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Short Title: 1998 Marine Fisheries Amendments.

(Public)

Sponsors:

Referred to:

May 25, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE FISHERIES REFORM ACT OF 1997 AND RELATED
3 MARINE FISHERIES LAWS AND TO RECOGNIZE THE COMMON LAW
4 RIGHT OF THE PUBLIC TO THE CUSTOMARY FREE USE AND ENJOYMENT
5 OF THE OCEAN BEACHES.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. MARINE FISHERIES COMMISSION**
9

10 Section 1.1. G.S. 113-128(5a) reads as rewritten:

11 "(5a) Marine Fisheries Commission. – The Marine Fisheries Commission of
12 the Department as established by ~~Part 5A~~ Part 5D of Article 7 of Chapter
13 143B of the General Statutes."

14 Section 1.2. G.S. 120-123(53) reads as rewritten:

15 "(53) The North Carolina Marine Fisheries Commission as established by ~~G.S.~~
16 ~~143B-289.5~~ G.S. 143B-289.51."

1 Section 1.3. G.S. 143B-289.52(b)(3) reads as rewritten:

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

4 Section 1.4. G.S. 143B-289.52 is amended by adding a new subsection to
5 read:

6 "(d1) The Commission may regulate participation in a fishery that is subject to a
7 federal fishery management plan if that plan imposes a quota on the State for the harvest
8 or landing of fish in the fishery. If the Commission regulates participation in a fishery
9 under this subsection, the Division may issue a license to participate in the fishery to a
10 person who:

11 (1) Held a valid license issued by the Division to harvest, land, or sell fish
12 during at least two of the three license years immediately preceding the
13 date adopted by the Commission to determine participation in the
14 fishery; and

15 (2) Participated in the fishery during at least two of those license years by
16 landing in the State at least the minimum number of pounds of fish
17 adopted by the Commission to determine participation in the fishery."

18 Section 1.5. G.S. 143B-289.52(e) reads as rewritten:

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

29 Section 1.6. G.S. 143B-289.54(c) reads as rewritten:

30 "(c) Additional Considerations. – In making appointments to the Commission, the
31 Governor shall provide for appropriate representation of women and minorities on the
32 Commission. The Governor shall make appointments to the Commission consistent with
33 the restrictions of G.S. 113-200(g)."

34 Section 1.7. G.S. 143B-289.54(h) reads as rewritten:

35 "(h) Removal. – The Governor may remove, as provided in ~~G.S. 143-13~~, G.S. 143B-
36 13, any member of the Commission for misfeasance, malfeasance, or nonfeasance."

37 Section 1.8. G.S. 143B-289.56 reads as rewritten:

38 "**§ 143B-289.56. Marine Fisheries Commission – meetings; quorum.**

39 (a) The Commission shall meet at least once each calendar quarter and may hold
40 additional meetings at any time and place within the State at the call of the Chair or upon
41 the written request of at least four members. At least three of the four quarterly meetings
42 of the Commission shall be held in one of the coastal regions designated in G.S. 143B-
43 289.54.

1 (b) (1) ~~Five~~Six members of the Commission shall constitute a
2 quorum for the transaction of business.

3 (2) A quorum of the Commission may transact business only if one
4 member, other than the Chair, appointed pursuant to subdivision (1),
5 (2), or (3) of G.S. 143B-289.54(a) and one member, other than the
6 Chair, appointed pursuant to subdivision (4), (5), or (6) of G.S. 143B-
7 289.54(a) are present.

8 (c) If the Commission is unable to transact business because the requirements of
9 subdivision (2) of subsection (b) of this section are not met, the Chair shall call another
10 meeting of the Commission within 30 days and shall place on the agenda for that meeting
11 every matter with respect to which the Commission was unable to transact business. Five
12 members of the Commission shall constitute a quorum for the transaction of business at a
13 meeting called under this subsection. The requirements of subdivision (2) of subsection
14 (b) of this section shall not apply to a meeting called under this subsection."

15 16 PART II. FISHERY MANAGEMENT PLANS

17
18 Section 2.1. G.S. 113-182.1 reads as rewritten:

19 "§ 113-182.1. (Effective July 1, 1998) Fishery Management Plans.

20 (a) The Department shall prepare proposed Fishery Management Plans for
21 adoption by the Marine Fisheries Commission for all commercially or recreationally
22 significant species or fisheries that comprise State marine or estuarine resources.
23 Proposed Fishery Management Plans shall be developed in accordance with the Priority
24 List, Schedule, and guidance criteria established by the Marine Fisheries Commission
25 under ~~G.S. 143B-289.22.~~ G.S. 143B-289.52.

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

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

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

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

40 (c) To assist in the development of each Fishery Management Plan, the Chair of
41 the Marine Fisheries Commission shall appoint ~~an Advisory Council.~~ a fishery
42 management plan advisory committee. ~~Each Advisory Council fishery management plan~~
43 advisory committee shall be composed of commercial fishermen, recreational fishermen,

1 and scientists, all with expertise in the fishery for which the Fishery Management Plan is
2 being developed.

3 (c1) The Department shall consult with the regional advisory committees
4 established pursuant to G.S. 143B-289.57(e) regarding the preparation of each Fishery
5 Management Plan. Before submission of a plan for review by the Joint Legislative
6 Commission on Seafood and Aquaculture or the Environmental Review Commission, the
7 Department shall review any comment or recommendation regarding the plan that a
8 regional advisory committee submits to the Department within the time limits established
9 in the Schedule for the development and adoption of Fishery Management Plans
10 established by G.S. 143B-289.52. The Commission shall consult with the regional
11 advisory committees regarding the development of any temporary management measure
12 that the Commission determines to be necessary to ensure the viability of the species or
13 fishery while the plan is being developed and regarding the development of any
14 management measure to implement the plan. Before the Commission adopts a temporary
15 management measure or a management measure to implement a plan, the Commission
16 shall review any comment or recommendation regarding the management measure that a
17 regional advisory committee submits to the Commission.

18 (d) Each Fishery Management Plan shall be revised at least once every three years.
19 The Marine Fisheries Commission may revise the Priority List and guidance criteria
20 whenever it determines that a revision of the Priority List or guidance criteria will
21 facilitate or improve the development of Fishery Management Plans or is necessary to
22 restore, conserve, or protect the marine and estuarine resources of the State. The Marine
23 Fisheries Commission may not revise the Schedule for the development of a ~~Fisheries~~
24 Fishery Management Plan, once adopted, without the approval of the Secretary of
25 Environment and Natural Resources.

26 (e) The Secretary of Environment and Natural Resources shall monitor progress in
27 the development and adoption of Fishery Management Plans in relation to the Schedule
28 for development and adoption of the plans established by the Marine Fisheries
29 Commission. The Secretary of Environment and Natural Resources shall report to the
30 Joint Legislative Commission on Seafood and Aquaculture and the Environmental
31 Review Commission on progress in developing and implementing the Fishery
32 Management Plans on or before 1 September of each year. The Secretary of
33 Environment and Natural Resources shall report to the Joint Legislative Commission on
34 Seafood and Aquaculture and the Environmental Review Commission within 30 days of
35 the completion or substantial revision of each proposed Fishery Management Plan. The
36 Joint Legislative Commission on Seafood and Aquaculture and the Environmental
37 Review Commission shall concurrently review each proposed Fishery Management Plan
38 within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint
39 Legislative Commission on Seafood and Aquaculture and the Environmental Review
40 Commission may submit comments and recommendations on the proposed Plan to the
41 Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

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

1 (g) To achieve optimal yield under a Fishery Management Plan, the Marine
2 Fisheries Commission may include in the Plan a recommendation that the General
3 Assembly limit the number of fishermen authorized to participate in the fishery. The
4 Commission may recommend that the General Assembly limit participation in a fishery
5 only if the Commission determines that optimal yield cannot otherwise be achieved. In
6 determining whether to recommend that the General Assembly limit participation in a
7 fishery, the Commission shall consider all of the following factors:

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

9 (2) Past fishing practices in the fishery.

10 (3) Economics of the fishery.

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

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

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

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

17 (8) Any other relevant considerations."

18 19 **PART III. MARINE FISHERIES LAW ENFORCEMENT**

20
21 Section 3.1. G.S. 113-136(b) reads as rewritten:

22 "(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of
23 the Department set out in this Subchapter, Part ~~5A-5D~~ of Article 7 of Chapter 143B of the
24 General Statutes, Article 5 of Chapter 76 of the General Statutes, and Article 2 of Chapter
25 77 of the General Statutes, and to all other matters within the jurisdiction of the
26 Department which it directs inspectors to enforce. In addition, inspectors have
27 jurisdiction over all offenses involving property of or leased to or managed by the
28 Department in connection with the conservation of marine and estuarine resources."

29 Section 3.2. G.S. 113-136(g) reads as rewritten:

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

39 Section 3.3. G.S. 113-184(a) reads as rewritten:

40 "(a) It is unlawful to carry aboard any vessel subject to licensing requirements
41 under ~~Article 14~~ Article 14A under way or at anchor in coastal fishing waters during the
42 regular closed oyster season any scoops, scrapes, dredges, or winders such as are usually
43 or can be used for taking oysters. Provided that when such vessels are engaged in

1 lawfully permitted oyster harvesting operations on any privately held shellfish bottom
2 lease under G.S. 113-202 or G.S. 113-205, the vessel shall be exempt from this
3 requirement."

4 Section 3.4. G.S. 113-185(a) reads as rewritten:

5 "(a) It is unlawful to fish in the ocean from vessels or with a net within 750 feet of
6 an ocean pier licensed in accordance with ~~G.S. 113-156.1~~. G.S. 113-169.4. The prohibition
7 shall be effective when:

8 (1) Buoys or beach markers, placed at the owner's expense in accordance
9 with the rules adopted by the Marine Fisheries Commission, indicate
10 clearly to fishermen in vessels and on the beach the requisite distance of
11 750 feet from the pier, and

12 (2) The public is allowed to fish from the pier for a reasonable fee.

13 The prohibition shall not apply to littoral proprietors whose property is within 750 feet of
14 a duly licensed ocean pier."

15 Section 3.5. G.S. 113-191(d) reads as rewritten:

16 "(d) In determining the amount of the penalty, the Secretary shall consider the
17 factors set out in ~~G.S. 143B-289.23(b)~~. G.S. 143B-289.53(b). The procedures set out in
18 ~~G.S. 143B-289.23~~ G.S. 143B-289.53 shall apply to civil penalty assessments that are
19 presented to the Commission for final agency decision."

20 Section 3.6. G.S. 113-191(f) reads as rewritten:

21 "(f) Requests for remission of civil penalties shall be filed with the Secretary.
22 Remission requests shall not be considered unless filed within 30 days of receipt of the
23 notice of assessment. Remission requests must be accompanied by a waiver of the right
24 to a contested case hearing pursuant to Chapter 150B of the General Statutes and a
25 stipulation of the facts on which the assessment was based. Consistent with the
26 limitations in ~~G.S. 143B-289.23(e)~~, G.S. 143B-289.53(c), remission requests may be
27 resolved by the Secretary and the violator. If the Secretary and the violator are unable to
28 resolve the request, the Secretary shall deliver remission requests and his recommended
29 action to the Committee on Civil Penalty Remissions of the Marine Fisheries
30 Commission appointed pursuant to ~~G.S. 143B-289.23(e)~~. G.S. 143B-289.53(c)."

31 Section 3.7. G.S. 113-208(a) reads as rewritten:

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

37 (1) From within the confines of posted boundaries of the area as identified
38 by signs, whether the whole or any part of the area is posted, or

39 (2) When the area has been regularly posted and identified and the person
40 knew the area to be the subject of private shellfish rights.

41 A violation of this section shall constitute a ~~Class 2~~ Class A1 misdemeanor, which may
42 include a fine of not more than five thousand dollars (\$5,000). The written authorization
43 shall include the lease number or deed reference, name and address of authorized person,

1 date of issuance, and date of expiration, and it must be signed by the holder of the private
2 shellfish right. Identification signs shall include the lease number or deed reference and
3 the name of the holder."

4 Section 3.8. G.S. 113-221(e) reads as rewritten:

5 "(e) The Marine Fisheries Commission may delegate to the Fisheries Director the
6 authority to issue proclamations suspending or implementing, in whole or in part,
7 particular rules of the Commission which may be affected by variable conditions. Such
8 proclamations are to be issued by the Fisheries Director or by a person designated by the
9 Fisheries Director. All proclamations must state the hour and date upon which they
10 become effective and must be issued at least 48 hours in advance of the effective date and
11 time. In those situations in which the proclamation prohibits the taking of certain fisheries
12 resources for reasons of public health, the proclamation can be made effective
13 immediately upon issuance. Notwithstanding any other provisions of this subsection, a
14 proclamation can be issued at least 12 hours in advance of the effective date and time to
15 reopen the taking of certain fisheries resources closed for reason of public health through
16 a prior proclamation made effective immediately upon issuance. Persons violating any
17 proclamation which is made effective immediately shall not be charged with a criminal
18 offense during the time between the issuance and 48 hours after such issuance unless
19 such person had actual notice of the issuance of such proclamation. Fisheries resources
20 taken or possessed by any person in violation of any proclamation may be seized
21 regardless of whether such person had actual notice of the proclamation. A permanent file
22 of the text of all proclamations shall be maintained in the office of the Fisheries Director.
23 Certified copies of proclamations are entitled to judicial notice in any civil or criminal
24 proceeding.

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

38 Section 3.9. G.S. 113-268 reads as rewritten:

39 "**§ 113-268. Robbing or injuring. Injuring, destroying, stealing, or stealing from nets,**
40 **seines, buoys, pots, etc.**

41 (a) It is unlawful for any person without the authority of the owner of the
42 equipment to take fish from nets, traps, pots, and other devices to catch fish which have
43 been lawfully placed in the open waters of the State.

1 (b) It is unlawful for any master or other person having the management or control
2 of a vessel in the navigable waters of the State to willfully, wantonly, and unnecessarily
3 do injury to any seine, net or pot which may lawfully be hauled, set, or fixed in such
4 waters for the purpose of taking fish except that a net set across a channel may be
5 temporarily moved to accommodate persons engaged in drift netting, provided that no
6 fish are removed and no damage is done to the net moved.

7 (c) It is unlawful for any person to willfully ~~destroy~~ steal, destroy, or injure any
8 buoys, markers, stakes, nets, pots, or other devices on property lawfully set out in the
9 open waters of the State in connection with any fishing or fishery.

10 (d) Violation of subsections (a), (b), or (c) is a ~~Class 2 misdemeanor for a first~~
11 ~~conviction, and a Class 1 misdemeanor for a second or subsequent conviction.~~ Class A1
12 misdemeanor.

13 (e) The Department may, either before or after the institution of any other action
14 or proceeding authorized by this section, institute a civil action for injunctive relief to
15 restrain a violation or threatened violation of subsections (a), (b), or (c) of this section
16 pursuant to G.S. 113-131. The action shall be brought in the superior court of the county
17 in which the violation or threatened violation is occurring or about to occur and shall be
18 in the name of the State upon the relation of the Secretary. The court, in issuing any final
19 order in any action brought pursuant to this subsection may, in its discretion, award costs
20 of litigation including reasonable attorney and expert-witness fees to any party."

21 Section 3.10. G.S. 113-277(a3) reads as rewritten:

22 "(a3) As used in this Article, the term 'conviction' has the same meaning assigned to
23 it in ~~G.S. 113-166(a).~~ G.S. 113-171."

24 25 **PART IV. FISHING LICENSES; TRANSITIONAL PROVISIONS**

26
27 Section 4.1. G.S. 75A-5(h) reads as rewritten:

28 "(h) Each certificate of number awarded pursuant to this Chapter must be renewed
29 on or before the first day of the month next succeeding that during which the same
30 expires; otherwise, such certificate shall lapse and be void until such time as it may
31 thereafter be renewed. Application for renewal shall be submitted on a form approved by
32 the Wildlife Resources Commission and shall be accompanied by a fee of eight dollars
33 (\$8.00) for a one-year period or by a fee of twenty dollars (\$20.00) for a three-year
34 period; provided, there shall be no fee required for renewal of certificates of number
35 which have been previously issued to commercial fishing ~~boats~~ vessels as defined in G.S.
36 75A-5.1, upon compliance with all of the requirements of that section."

37 Section 4.2. G.S. 75A-5.1 reads as rewritten:

38 "**§ 75A-5.1. Commercial fishing ~~boats~~; vessels; renewal of number.**

39 (a) The owner ~~or operator~~ of any commercial fishing boat ~~which is currently licensed~~
40 ~~for the use of commercial fishing gear shall be entitled to renewal of vessel that is registered~~
41 ~~under the provisions of G.S. 113-152, G.S. 113-168.6 may renew the certificate of number~~
42 ~~of such boat~~ the vessel when ~~such~~ the owner has complied with all of the conditions of this
43 section.

1 (b) For the purpose of this section, ~~commercial fishing boats are defined as vessels~~
2 ~~which are used primarily for commercial fishing operations, from which operations the~~
3 ~~owners and/or operators thereof derived more than one half of their gross incomes during~~
4 ~~the preceding calendar year. As used in this section, 'commercial fishing vessel' is a~~
5 ~~vessel used in a commercial fishing operation, as defined in G.S. 113-168.~~

6 (c) In order to be entitled to renewal of certificate of number under the provisions
7 of this section, the owner of the ~~boat~~ vessel shall submit, and the Wildlife Resources
8 Commission shall require:

- 9 (1) The regular application for renewal of the certificate of number of ~~such~~
10 ~~boat, the vessel~~, as provided by G.S. 75A-5;
- 11 (2) A statement, on a form to be supplied by the Commission, and signed
12 by the applicant, that the ~~boat~~ vessel for which the application for
13 renewal is made is a commercial fishing ~~boat as herein defined;~~ vessel;
14 and
- 15 (3) A receipt, signed by an authorized agent of the Department of
16 Environment and Natural Resources, and bearing the number awarded
17 to the boat under the provisions of this Chapter, showing that the
18 commercial fishing ~~boat license tax imposed by G.S. 113-152~~ vessel
19 registration fee imposed by G.S. 113-168.6 has been paid for ~~such boat~~
20 the vessel for the period during which the application for renewal of the
21 certificate of number is submitted.

22 (d) Any person who shall willfully give false information upon the application or
23 the statement required by ~~the preceding paragraph, this section~~ or who shall falsify any ~~tax~~
24 registration fee receipt thereby required, required by this section shall be guilty of a Class
25 1 misdemeanor."

26 Section 4.3. G.S. 105-164.13(9) reads as rewritten:

27 "(9) Sales of boats, fuel oil, lubricating oils, machinery, equipment, nets,
28 rigging, paints, parts, accessories, and supplies to persons for use by
29 them principally in commercial fishing operations within the meaning of
30 ~~G.S. 113-152, G.S. 113-168,~~ except when the property is for use by
31 persons principally to take fish for recreation or personal use or
32 consumption. As used in this subdivision, 'fish' is defined as in G.S.
33 113-129(7)."

34 Section 4.4. The title for Article 14 of Chapter 113 of the General Statutes
35 reads as rewritten:

36 "ARTICLE 14.

37 **COMMERCIAL AND SPORTS FISHERIES ~~LICENSES AND TAXES.~~** 38 **LICENSES.**"

39 Section 4.5. Subsections (d) and (e) of G.S. 113-154.1 read as rewritten:

40 "(d) Application for Non-Vessel Endorsement. – An application for issuance or
41 renewal of an endorsement to sell shall be filed with the Morehead City ~~offices~~ office of
42 the Division of Marine Fisheries or license agents authorized to sell licenses under this
43 Article. An application shall be accompanied by the fee established in subsection (b) of

1 this section. Applications shall not be accepted from persons ineligible to hold a license
2 issued by the Marine Fisheries Commission, including any applicant whose endorsement
3 is suspended or revoked on the date of the application. The applicant shall be provided
4 with a copy of the application marked received. The copy shall serve as the endorsement
5 to sell, until the endorsement issued by the Division is received or the Division
6 determines that the applicant is ineligible to hold an endorsement. In addition to the
7 information required in subsection (c) of this section, the applicant shall disclose on the
8 application a valid address, and such other information as the Division may require.

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

15 Section 4.6. G.S. 113-154.1(h1) reads as rewritten:

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

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

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

33 Section 4.7. G.S. 113-154.1(i) is repealed.

34 Section 4.8. G.S. 113-156(i) is repealed.

35 Section 4.9. G.S. 113-168 reads as rewritten:

36 **"§ 113-168. Definitions.**

37 As used in this Article:

38 (1) 'Commercial fishing operation' means any activity preparatory to,
39 during, or subsequent to the taking of any fish, the taking of which is
40 subject to regulation by the Commission, either with the use of
41 commercial fishing equipment or gear, or by any means if the purpose
42 of the taking is to obtain fish for sale. ~~Commercial fishing operation~~
43 ~~includes taking people fishing for hire.~~ Commercial fishing operation does

1 not include (i) the taking of fish as part of a recreational fishing
2 tournament, unless commercial fishing equipment or gear is used or (ii)
3 the taking of fish under a RCGL.

4 (2) 'Commission' means the Marine Fisheries Commission.

5 (3) 'Division' means the Division of Marine Fisheries in the Department of
6 Environment and Natural Resources.

7 (3a) 'Immediate family' means the mother, father, brothers, sisters, spouse,
8 children, stepparents, stepbrothers, stepsisters, and stepchildren of a
9 person.

10 (4) 'License year' means the period beginning 1 July of a year and ending
11 on 30 June of the following year.

12 (5) 'North Carolina resident' means a person who is a resident within the
13 meaning of G.S. 113-130(4). ~~G.S. 113-130(4) and who filed a State~~
14 ~~income tax return as a resident of the State for the previous calendar or~~
15 ~~tax year.~~

16 (6) 'RCGL' means Recreational Commercial Gear License.

17 (7) 'RSCFL' means Retired Standard Commercial Fishing License.

18 (8) 'SCFL' means Standard Commercial Fishing License."

19 Section 4.10. G.S. 113-168.1 reads as rewritten:

20 **"§ 113-168.1. General provisions for commercial governing licenses and**
21 **endorsements.**

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

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

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

1 (d) No Dual Residency. – It is unlawful for any person to hold any currently valid
2 license issued under this Article to the person as a North Carolina resident if that person
3 holds any currently valid commercial or recreational fishing license issued by another
4 state to the person as a resident of that state.

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

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

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

29 (h) Replacement Licenses and Endorsements. – The Division shall issue a
30 replacement license, including any endorsements, to a licensee for a license that has not
31 been suspended or revoked. A licensee may apply for a replacement license for a license
32 that has been lost, stolen, or destroyed and shall apply for a replacement license within 30
33 days of a change in the licensee's name or address. A licensee may apply for a
34 replacement license in person at any office of the Division or by mail to the Morehead
35 City office of the Division. A licensee may use a copy of the application for a
36 replacement license that has been filed with the Division as a temporary license until the
37 licensee receives the replacement license. The Commission may establish a fee for each
38 type of replacement license, not to exceed ten dollars (\$10.00), that compensates the
39 Division for the administrative costs associated with issuing the replacement license.

40 (i) Cancellation. – The Division may cancel a license or endorsement issued on
41 the basis of an application that contains false information supplied by the applicant. A
42 cancelled license or endorsement is void from the date of issuance. A person in
43 possession of a cancelled license or endorsement shall surrender the cancelled license or

1 endorsement to the Division. It is unlawful to refuse to surrender a cancelled license or
2 endorsement upon demand of any authorized agent of the Division."

3 Section 4.11. G.S. 113-168.2 reads as rewritten:

4 **"§ 113-168.2. Standard Commercial Fishing License.**

5 (a) Requirement. ~~—No person shall~~ Except as otherwise provided in this Article, it
6 is unlawful for any person to engage in a commercial fishing operation in the coastal
7 fishing waters without holding a Standard Commercial Fishing License SCFL issued by the
8 Division. A person who works as a member of the crew of a vessel engaged in a
9 commercial fishing operation under the direction of a person who holds a valid SCFL or
10 RSCFL is not required to hold a SCFL or RSCFL. SCFL. A person who holds a SCFL is
11 not authorized to take shellfish unless the SCFL is endorsed as provided in G.S. 113-
12 168.5(d) or the person holds a shellfish license issued pursuant to G.S. 113-169.2.

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

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

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

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

38 (e) Fees. ~~—~~ The annual SCFL fee for a North Carolina resident of this State shall be
39 two hundred dollars (\$200.00). The annual SCFL fee for a person who is not a resident
40 of North Carolina this State shall be eight hundred dollars (\$800.00) or the amount
41 charged to a North Carolina resident of this State in the nonresident's state, whichever is
42 less. In no event, however, may the fee be less than two hundred dollars (\$200.00). For

1 purposes of this subsection, a 'resident of this State' is a person who is a resident within
2 the meaning of:

3 (1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State
4 income tax return as a resident of North Carolina for the previous
5 calendar or tax year, or

6 (2) G.S. 113-130(4)e.

7 (f) Assignment. – The holder of a SCFL may assign the SCFL to any individual,
8 ~~provided that a SCFL or RSCFL issued to the individual is not suspended or revoked.~~ individual
9 who is eligible to hold a SCFL under this Article. If the SCFL is endorsed for one or more
10 vessels, each vessel endorsement may be assigned, independently of the SCFL, to another holder
11 of a SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a holder
12 or assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed.–The
13 assignment shall be in writing on a form provided by the Division and shall include the
14 name of the licensee, the license number, any endorsements, the assignee's ~~name and~~
15 name, mailing address, physical or residence address, and the duration of the assignment.
16 ~~A notarized copy of the assignment shall be filed with the Division. If a notarized copy of an~~
17 assignment is not filed with the Morehead City office of the Division within five days of
18 the date of the assignment, the assignment shall expire. The assignee shall carry the
19 assignment on the assignee's person and have the assignment available for inspection at all times
20 while using the vessel. It is unlawful for the assignee of a SCFL to assign the SCFL. The
21 assignment may be revoked by: (i) shall terminate:

22 (1) Upon written notification by the assignor to the assignee and the
23 Division that the assignment has been terminated; or (ii) a terminated.

24 (1a) Upon written notification by the estate of the assignor to the assignee
25 and the Division that the assignment has been terminated.

26 (2) ~~determination by the Division~~ If the Division determines that the assignee
27 is operating in violation of the terms and conditions applicable to the
28 assignment.

29 (3) If the assignee becomes ineligible to hold a license under this Article.

30 (4) Upon the death of the assignee.

31 (5) If the Division suspends or revokes the assigned SCFL.

32 (6) At the end of the license year.

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

34 (1) ~~By the license holder to a member of the license holder's immediate~~
35 ~~family.~~

36 (2) ~~By the State to the estate of the license holder upon the death of the~~
37 ~~license holder.~~

38 (3) ~~By a surviving family member to whom a license was transferred~~
39 ~~pursuant to subdivision (2) of this subsection to a third party purchaser~~
40 ~~of the license holder's fishing vessel upon the death of the license~~
41 ~~holder.~~

1 (4) ~~By the license holder to a third-party purchaser of the license holder's~~
2 ~~fishing vessel upon retirement of the license holder from commercial~~
3 ~~fishing.~~

4 (5) ~~Under any other circumstance authorized by rule of the Commission.~~
5 ~~transferred only by the Division. A SCFL may be transferred pursuant to rules adopted~~
6 ~~by the Commission or upon the request of:~~

7 (1) A licensee, from the licensee to a member of the licensee's immediate
8 family who is eligible to hold a SCFL under this Article.

9 (2) The administrator or executor of the estate of a deceased licensee, to the
10 administrator or executor of the estate if a surviving member of the
11 deceased licensee's immediate family is eligible to hold a SCFL under
12 this Article. The administrator or executor must request a transfer under
13 this subdivision within six months after the administrator or executor
14 qualifies under Chapter 28A of the General Statutes. An administrator
15 or executor who holds a SCFL under this subdivision may, for the
16 benefit of the estate of the deceased licensee:

17 a. Engage in a commercial fishing operation under the SCFL if the
18 administrator or executor is eligible to hold a SCFL under this
19 Article.

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

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

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

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

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

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

35 (i) Record-Keeping Requirements. – The fish dealer shall record each transaction
36 at the time and place of landing on a form provided by the Division. The transaction
37 form shall include the information on the ~~SCFL, RSCFL, SCFL~~ or shellfish license, the
38 quantity of the fish, the identity of the fish dealer, and other information as the Division
39 deems necessary to accomplish the purposes of this Subchapter. The person who records
40 the transaction shall provide a completed copy of the transaction form to the Division and
41 to the other party of the transaction. The Division's copy of each transaction form shall
42 be transmitted to the Division by the fish dealer on or before the tenth day of the month
43 following the transaction."

1 Section 4.12. G.S. 113-168.3 reads as rewritten:

2 **"§ 113-168.3. Retired Standard Commercial Fishing License.**

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

6 (b) Eligibility; Fees. – Any ~~person~~ individual who is 65 years of age or older and
7 who is ~~otherwise~~ eligible for a SCFL under G.S. 113-168.2 may ~~purchase a~~ apply for either
8 a SCFL or RSCFL. An applicant for a RSCFL shall provide proof of age. Proof of age
9 shall be supplied at the time the application is made. The annual fee for a RSCFL for a
10 ~~North Carolina~~ resident of this State shall be one hundred dollars (\$100.00). The annual
11 fee for a RSCFL for a person who is not a resident of ~~North Carolina~~ this State shall be
12 eight hundred dollars (\$800.00) or the amount charged to a ~~North Carolina~~ resident of this
13 State in the nonresident's state, whichever is less. In no event, however, shall the fee be
14 less than one hundred dollars (\$100.00). For purposes of this subsection, a 'resident of
15 this State' is a person who is a resident within the meaning of:

16 (1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State
17 income tax return as a resident of North Carolina for the previous
18 calendar or tax year, or

19 (2) G.S. 113-130(4)e.

20 (c) Transfer. – The holder of a RSCFL may transfer the RSCFL as provided in
21 ~~G.S. 113-168.2. G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-~~
22 ~~party purchaser of the RSCFL holder's fishing vessel.~~

23 (1) If the ~~third-party purchaser~~ transferee is less than 65 years of age, that
24 ~~purchaser~~ the transferee holds a SCFL. When the transferee renews the
25 SCFL, the transferee shall pay the fee for the SCFL set forth out in G.S.
26 113-168.2.

27 (2) If the transferee is 65 years of age or older, the transferee may elect to
28 hold either a SCFL or RSCFL. If the transferee elects to hold a SCFL,
29 the transferee shall pay the fee set out in G.S. 113-168.2. If the
30 transferee elects to hold a RSCFL, the transferee shall pay the fee set
31 out in this section.

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

33 Section 4.13. G.S. 113-168.4 reads as rewritten:

34 **"§ 113-168.4. Regulations concerning the sale Sale of fish.**

35 (a) Except as otherwise provided in this section, it is unlawful for any person who
36 takes or lands any species of fish under the authority of the Commission from coastal
37 fishing waters by any means whatever, including mariculture operations, to sell, offer for
38 sale, barter or exchange these fish for anything of value for merchandise these fish, without
39 holding a current and valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a
40 valid shellfish license issued under G.S. 113-169.2. without holding a license required to sell
41 the type of fish being offered. It is unlawful for fish dealers to buy fish unless the seller
42 presents a current and valid SCFL, RSCFL, or shellfish license at the time of the transaction.

1 ~~Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under~~
2 ~~G.S. 113-169.3.~~

3 (b) It is unlawful for any person licensed under this ~~section~~ Article to sell fish taken
4 outside the territorial waters of the State or to sell fish taken from coastal fishing waters
5 except to:

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

7 (2) The public, if the seller is also licensed as a fish dealer under G.S. 113-
8 169.3.

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

21 Section 4.14. G.S. 113-168.5 reads as rewritten:

22 "**§ 113-168.5. License endorsements for Standard Commercial Fishing License and**
23 **Retired Standard Commercial Fishing License.**

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

26 (b) ~~Vessel Endorsements.—~~

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

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

32 b. ~~A certificate of title has been issued for the vessel under Article 4~~
33 ~~of Chapter 75A of the General Statutes; or~~

34 c. ~~A certification of documentation has been issued for the vessel~~
35 ~~that lists a home port in the State under 42 U.S.C. § 12101, et~~
36 ~~seq., as amended.~~

37 (2) ~~It is unlawful to use a vessel in a commercial fishing operation in the~~
38 ~~coastal fishing waters of the State without a vessel endorsement of the~~
39 ~~license required under this Article for that commercial fishing operation.~~
40 ~~It is unlawful to use a North Carolina vessel to land or sell fish in the~~
41 ~~State that are taken during a commercial fishing operation outside the~~
42 ~~coastal fishing waters of the State without a vessel endorsement of the~~
43 ~~license required under this Article for that commercial fishing operation.~~

1 No endorsement is required, however, for a vessel of any length that
2 does not have a motor if the vessel is used only in connection with
3 another vessel for which the required license has been properly
4 endorsed.

5 (3) The fee for a vessel endorsement shall be determined by the length of
6 the vessel and shall be in addition to the fee for a SCFL, RSCFL, or
7 shellfish license. The length of a vessel shall be determined by
8 measuring the distance between the ends of the vessel along the deck
9 and through the cabin, excluding the sheer. The fee for a vessel
10 endorsement is:

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

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

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

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

17 (4) A vessel endorsement may be assigned as provided in G.S. 113-
18 168.2(f).

19 (5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish
20 license has been endorsed transfers ownership of the vessel to a holder
21 of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be
22 transferred from the former owner's SCFL, RSCFL, or shellfish license
23 to the new owner's SCFL, RSCFL, or shellfish license upon the request
24 of the new owner. The new owner of the vessel shall notify the
25 Division of the change in ownership and request that the vessel
26 endorsement be transferred within 30 days of the date on which the
27 transfer of ownership occurred. The notification of a change in the
28 ownership of a vessel and request that the vessel endorsement be
29 transferred shall be made on a form provided by the Division and shall
30 be accompanied by satisfactory proof of the transfer of vessel
31 ownership. Transfer of vessel ownership may be proven by a notarized
32 copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a
33 vessel documentation transfer.

34 (c) Menhaden Endorsements. – Except as provided in G.S. 113-169, it is
35 unlawful to use a vessel to take menhaden by purse seine in ~~the coastal fishing waters of~~
36 ~~the State, waters,~~ to land menhaden taken by purse seine, in the State, or to sell menhaden
37 ~~from a vessel in the State taken by purse seine~~ without obtaining a menhaden endorsement
38 of a ~~SCFL or RSCFL.~~ SCFL. The fee for a menhaden endorsement shall be two dollars
39 (\$2.00) per ton, based on gross tonnage as determined by the custom house measurement
40 for the mother ship. The menhaden endorsement shall be required for the mother ship but
41 no separate endorsement shall be required for a purse boat carrying a purse seine. The
42 application for a menhaden endorsement must state the name of the person in command

1 of the vessel. Upon a change in command of a menhaden vessel, the owner must notify
2 the Division in writing within 30 days.

3 (d) Shellfish Endorsement for North Carolina Residents. – The Division shall issue
4 a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at no charge.
5 The holder of a SCFL with a shellfish endorsement is authorized to take and sell
6 shellfish."

7 Section 4.15. Article 14A of Chapter 113 of the General Statutes is amended
8 by adding a new section to read:

9 "**§ 113-168.6. Commercial fishing vessel registration.**

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

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

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

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

18 (b) The owner of a vessel used in a commercial fishing operation in the coastal
19 fishing waters of the State or a North Carolina vessel used to land or sell fish in the State
20 shall register the vessel with the Division. It is unlawful to use a vessel that is not
21 registered with the Division in a commercial fishing operation in the coastal fishing
22 waters of the State. It is unlawful to use a North Carolina vessel that is not registered
23 with the Division to land or sell fish in the State. No registration is required for a vessel
24 of any length that does not have a motor if the vessel is used only in connection with
25 another vessel that is properly registered.

26 (c) The annual fee for a commercial fishing vessel registration shall be determined
27 by the length of the vessel and shall be in addition to the fee for other licenses issued
28 under this Article. The length of a vessel shall be determined by measuring the distance
29 between the ends of the vessel along the deck and through the cabin, excluding the sheer.
30 The annual fee for a commercial fishing vessel registration is:

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

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

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

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

37 (d) A vessel may be registered at any office of the Division. A commercial fishing
38 vessel registration expires on the last day of the license year.

39 (e) Within 30 days of the date on which the owner of a registered vessel transfers
40 ownership of the vessel, the new owner of the vessel shall notify the Division of the
41 change in ownership and apply for a replacement commercial fishing vessel registration.
42 An application for a replacement commercial fishing vessel registration shall be

1 accompanied by proof of the transfer of the vessel. The provisions of G.S. 113-168.1(h)
2 apply to a replacement commercial fishing vessel registration."

3 Section 4.16. G.S. 113-169 reads as rewritten:

4 **"§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.**

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

19 Section 4.17. G.S. 113-169.2 reads as rewritten:

20 **"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

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

29 (b) ~~Purchase; Renewal.~~ – ~~A person may purchase a shellfish license at any office~~
30 ~~of the Division. The shellfish license and endorsements may be renewed by mail by~~
31 ~~forwarding a completed application, including applicable fees, to the Division's~~
32 ~~Morehead City Office. Any person who is issued a shellfish license is eligible to renew~~
33 ~~the shellfish license and any endorsements if the shellfish license has not been suspended~~
34 ~~or revoked.~~

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

38 (d) License Available for Inspection. – It is unlawful for any individual to take
39 shellfish ~~for commercial use in quantities greater than the personal use limits set forth in~~
40 subsection (i) of this section from the public or private grounds of the State without
41 having ready at hand for inspection a current and valid shellfish license issued to the
42 licensee personally and bearing the licensee's correct name and address. It is unlawful for

1 any individual taking or possessing freshly taken shellfish to refuse to exhibit the
2 individual's license upon the request of an officer authorized to enforce the fishing laws.

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

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

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

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

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

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

- 24 a. One bushel of oysters per day.
25 b. One-half bushel of scallops per day.
26 c. One hundred clams per day.
27 d. Ten conchs per day.
28 e. One hundred mussels per day.

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

- 32 a. Two bushels of oysters per day.
33 b. One bushel of scallops per day.
34 c. Two hundred clams per day.
35 d. Twenty conchs per day.
36 e. Two hundred mussels per day."

37 Section 4.18. G.S. 113-169.3 reads as rewritten:

38 "**§ 113-169.3. Licenses for fish dealers.**

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

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

14 (c) License Requirement. – Any person subject to the licensing requirements of
15 this section is a fish dealer. Any person subject to the licensing requirements of this
16 section shall obtain a separate license for each physical location conducting activities
17 required to be licensed under this section. Except as otherwise provided in this section, it
18 is unlawful for any person not licensed pursuant to this ~~article~~: Article:

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

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

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

- 36 (1) The fish are sold by persons whose dealings in fish are primarily
37 educational, scientific, or official, and who have been issued a permit by
38 the Division that authorizes the educational, scientific, or official agency
39 to sell fish taken or processed in connection with research or
40 demonstration projects;
41 (2) The fish are sold by individual employees of fish dealers when
42 transacting the business of their duly licensed employer;
43 (3) The fish are shipped to a person by a dealer from without the State;

1 (4) The fish are of a kind the sale of which is regulated exclusively by the
2 Wildlife Resources Commission; or

3 (5) The fish are purchased from a licensed dealer.

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

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

10 (1) Dealing in oysters: \$50.00;

11 (2) Dealing in scallops: \$50.00;

12 (3) Dealing in clams: \$50.00;

13 (4) Dealing in hard or soft crabs: \$50.00;

14 (5) Dealing in shrimp, including bait: \$50.00;

15 (6) Dealing in finfish, including bait: \$50.00;

16 (7) Operating menhaden or other fish-dehydrating or oil-extracting
17 processing plants: \$50.00; or

18 (8) Consolidated license (all categories): \$300.00.

19 (f1) Other License Categories. – Any person subject to fish dealer licensing
20 requirements who deals in fish not included in the ~~above~~ categories listed in subsection (f)
21 of this section shall secure a finfish dealer license. The Commission may adopt rules
22 implementing and clarifying the dealer categories of this ~~subsection.~~ section. Bait
23 operations shall be licensed under either the finfish or shrimp dealer license categories.

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

28 (h) ~~Application for Replacement License.~~ – ~~A replacement license shall only be~~
29 ~~obtained from an office of the Division. The Division shall not accept an application for a~~
30 ~~replacement license unless the Division determines that the applicant's current license has~~
31 ~~not been suspended or revoked. A copy of an application duly filed with the Division~~
32 ~~shall serve as the license until the replacement license has been received. If the licensee~~
33 ~~fails to comply with the requirements of G.S. 113-168.1(h), the license is revoked.~~

34 (i) Unlawful Purchase and Sale of Fish. – It is unlawful for a fish dealer to
35 purchase, possess, or sell fish taken from coastal fishing waters in violation of this
36 Subchapter or the rules adopted by the Commission implementing this Subchapter. It is
37 unlawful for a fish dealer to buy or accept fish unless the ~~unless~~, at the time of the
38 transaction:

39 (1) The seller or donor possesses ~~presents~~ a current and valid SCFL,
40 RSCFL, shellfish license, menhaden license for nonresidents, or a
41 special fisheries sale permit issued under G.S. 113-168.4(e), license to
42 sell the type of fish being offered;

1 (2) The seller or donor presents the commercial fishing vessel registration
2 of the vessel that was used to take the fish being offered; and the

3 (3) The dealer records the transaction consistent with the record-keeping
4 requirements of G.S. 113-168.2(i).

5 ~~It is unlawful for any person to purchase, possess, or sell fish taken from coastal fishing~~
6 ~~waters in violation of this Subchapter or the rules adopted by the Commission~~
7 ~~implementing this Subchapter.~~

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

12 Section 4.19. G.S. 113-169.4(b) reads as rewritten:

13 "(b) Within 30 days following a change of ownership of a pier, or a change as to the
14 manager, the manager or new manager shall secure a replacement pier license ~~from the~~
15 ~~Division. The replacement license is issued without charge.~~ as provided in G.S. 113-
16 168.1(h)."

17 Section 4.20. G.S. 113-170.1 reads as rewritten:

18 **"§ 113-170.1. Nonresidents reciprocal agreements.**

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

29 Section 4.21. G.S. 113-173 reads as rewritten:

30 **"§ 113-173. Recreational Commercial Gear License.**

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

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

42 (c) Authorized Commercial Gear. – The Commission shall adopt rules authorizing
43 the use of a limited amount of commercial fishing equipment or gear for recreational

1 fishing under a RCGL. The Commission may authorize the limited use of commercial
2 gear on a uniform basis in all coastal fishing waters or may vary the limited use of
3 commercial gear within specified areas of the coastal fishing waters. The Commission
4 shall periodically evaluate and revise the authorized use of commercial gear for
5 recreational fishing. Authorized commercial gear shall be identified by visible colored
6 tags or other means specified by the Commission in order to distinguish between
7 commercial gear used in a commercial operation and commercial gear used for
8 recreational purposes.

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

12 (e) Replacement RCGL. ~~—Upon receipt of a proper application and a two-dollar~~
13 ~~(\$2.00) replacement fee, the Division may issue a duplicate RCGL to replace an~~
14 ~~unexpired RCGL that has been lost or destroyed. The provisions of G.S 113-168.1(h)~~
15 ~~apply to this section.~~

16 (f) Duration; Fees. – The RCGL shall be valid for a one-year period from the date
17 of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars
18 (\$35.00). The fee for a RCGL for an individual who is not a North Carolina resident shall
19 be two hundred fifty dollars (\$250.00).

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

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

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

32 (j) Exemptions. –

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

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

- 1 (3) A person who is on a vessel may take fish for recreational purposes by
2 means of authorized commercial gear without holding a RCGL if there
3 is another person on the vessel who holds a valid RCGL. This
4 exemption does not authorize the use of commercial gear in excess of
5 that authorized for use by the person who holds the valid RCGL or, if
6 more than one person on the vessel holds a RCGL, in excess of that
7 authorized for use by those persons.
- 8 (4) A person using nonmechanical means may take shellfish for personal
9 use within the limits specified in G.S. 113-169.2(i) without holding a
10 RCGL."

11 Section 4.22. G.S. 113-223 reads as rewritten:

12 **"§ 113-223. Reciprocal agreements by Department generally.**

13 Subject to the specific provisions of ~~G.S. 113-153~~ G.S. 113-169.5 and ~~G.S. 113-161~~
14 G.S. 113-170.1 relating to reciprocal provisions as to landing and selling catch and as to
15 licenses, the Department is empowered to make reciprocal agreements with other
16 jurisdictions respecting any of the matters governed in this Subchapter. Pursuant to such
17 agreements the Department may modify provisions of this Subchapter in order to
18 effectuate the purposes of such agreements, in the overall best interests of the
19 conservation of marine and estuarine resources."

20 Section 4.23. Article 19A of Chapter 113 of the General Statutes reads as
21 rewritten:

22 **"ARTICLE 19A.**

23 **~~"SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL. COUNCILS.~~**

24 **"§ 113-259. North Carolina members of the South Atlantic Fishery Management**
25 **Council.**

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

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

33 (c) Pursuant to the enabling legislation, other members from the State of North
34 Carolina are selected by the United States Secretary of Commerce from a list of qualified
35 individuals submitted by the Governor of the State. The list of nominees shall be
36 compiled by the Marine Fisheries Commission and must be comprised of individuals who
37 are knowledgeable and experienced with regard to the management, conservation, or
38 commercial or recreational harvest of the fishery resources in the Atlantic Ocean seaward
39 of the ~~States~~ states of North Carolina, South Carolina, Georgia, and Florida. Prior to
40 submission of the list of nominees, the Governor may consult with the Commission
41 regarding additions to the list of nominees to be submitted. Should it be necessary for the
42 Governor to submit additional nominees, the list of nominees shall be compiled by the
43 Marine Fisheries Commission.

1 **"§ 113-260. North Carolina members of the Mid-Atlantic Fishery Management**
2 **Council.**

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

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

9 (c) Pursuant to the enabling legislation, other members from the State of North
10 Carolina are selected by the United States Secretary of Commerce from a list of qualified
11 individuals submitted by the Governor of the State. The list of nominees shall be
12 compiled by the Marine Fisheries Commission and must be comprised of individuals who
13 are knowledgeable and experienced with regard to the management, conservation, or
14 commercial or recreational harvest of the fishery resources in the Atlantic Ocean seaward
15 of the states of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and
16 North Carolina. Prior to submission of the list of nominees, the Governor may consult
17 with the Commission regarding additions to the list of nominees to be submitted. Should
18 it be necessary for the Governor to submit additional nominees, the list of nominees shall
19 be compiled by the Marine Fisheries Commission."

20 Section 4.24. Section 5.2 of S.L. 1997-400 reads as rewritten:

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

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

34 (c) Temporary Cap. There is hereby imposed a temporary cap on the total number
35 of SCFLs that the Division may issue. The temporary cap equals the total number of
36 endorsements to sell fish that establish eligibility for a SCFL under subsection (g) of this
37 section plus 500 additional SCFLs, authorized by subsection (d) of this section.

38 (d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is
39 authorized to issue SCFLs as provided in subsection (g) of this section plus an additional
40 500 SCFLs using the procedure set out in subsection (h) of this section.

41 (e) Subsequent License Years. For license years beginning with the 2000-01
42 license year, the Commission is authorized to issue SCFLs from the pool of available

1 SCFLs as provided in subsection (f) of this section using the procedure set out in
2 subsection (h) of this section.

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

15 (g) Eligibility for SCFL. Any person who holds a valid endorsement to sell fish of
16 a vessel license on ~~1 July 30 June 1999~~ is eligible to receive a SCFL. Any person who
17 holds a valid nonvessel endorsement to sell fish, other than a nonvessel endorsement to
18 sell fish issued for an aquaculture operation or a fishing tournament, on 30 June 1999 is
19 eligible to receive a SCFL. The Division shall issue a SCFL to any person who is eligible
20 under this subsection upon receipt of an application and required fees. If the person held
21 more than one endorsement to sell fish, the person is eligible to receive a SCFL for each
22 endorsement to sell previously held. Eligibility to receive a SCFL under this subsection
23 shall expire ~~1 July 30 June 2000~~.

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

42 (i) SCFL Eligibility Board. There is established a SCFL Eligibility Board. The
43 Board shall apply the eligibility criteria adopted by the Commission to determine whether

1 an applicant for a SCFL is eligible for a SCFL under subsection (h) of this section. The
2 Board shall consist of the Secretary of Environment and Natural Resources or the
3 Secretary's designee, the Fisheries Director or the Director's designee, and the Chair of
4 the Commission or the Chair's designee. The Secretary shall designate one member of
5 the Board to serve as Chair of the Board. The Commission shall adopt rules to govern
6 the operation of the Board. The Board is exempt from the provisions of Article 3 of
7 Chapter 150B of the General Statutes. Decisions of the Board shall be subject to judicial
8 review under the provisions of Article 4 of Chapter 150B of the General Statutes."

10 PART V. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

11
12 Section 5.1. G.S. 77-20 reads as rewritten:

13 "§ 77-20. Seaward boundary of coastal lands.

14 (a) The seaward boundary of all property within the State of North Carolina, not
15 owned by the State, which adjoins the ocean, is the mean high water mark. Provided, that
16 this section shall not apply where title below the mean high water mark is or has been
17 specifically granted by the State.

18 (b) Notwithstanding any other provision of law, no agency shall issue any rule or
19 regulation which adopts as the seaward boundary of privately owned property any line
20 other than the mean high water mark. The mean high water mark also shall be used as the
21 seaward boundary for determining the area of any property when such determination is
22 necessary to the application of any rule or regulation issued by any agency.

23 (c) For purposes of this Article, 'agency' means any part, branch, division, or
24 instrumentality of the State; any county, municipality, or special district; or any
25 commission, committee, council, or board established by the State, or by any county or
26 municipality.

27 (d) The public having made frequent, uninterrupted, and unobstructed use of the
28 full width and breadth of the ocean beaches of this State from time immemorial, this
29 section shall not be construed to impair the right of the people to the customary free use
30 and enjoyment of the ocean beaches, which rights remain reserved to the people of this
31 State under the common law and are a part of the common heritage of the State
32 recognized by Article XIV, Section 5 of the Constitution of North Carolina. These public
33 trust rights in the ocean beaches are established in the common law as interpreted and
34 applied by the courts of this State.

35 (e) As used in this section, 'ocean beaches' means the area adjacent to the ocean
36 and ocean inlets that is subject to public trust rights. This area is in constant flux due to
37 the action of wind, waves, tides, and storms and includes the wet sand area of the beach
38 that is subject to regular flooding by tides and the dry sand area of the beach that is
39 subject to occasional flooding by tides, including wind tides other than those resulting
40 from a hurricane or tropical storm. The landward extent of the ocean beaches is
41 established by the common law as interpreted and applied by the courts of this State.
42 Natural indicators of the landward extent of the ocean beaches include, but are not

1 limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the
2 storm trash line."

3 Section 5.2. The Joint Legislative Commission on Seafood and Aquaculture,
4 with the advice and assistance of the Advisory Committee created pursuant to Section
5 6.11 of S.L. 1997-400, shall study the biological, habitat, and socioeconomic impacts of
6 the use of trawl nets in the sounds, estuaries, and rivers of the State. The Commission
7 and the Advisory Committee shall conduct this study in conjunction with any similar or
8 related studies funded by the Fishery Resource Grant Program. The Commission shall
9 report its findings and recommendations, if any, to the 1999 General Assembly.

10 Section 5.3. Unless otherwise expressly provided, every agency to which this
11 act applies shall adopt rules to implement the provisions of this act only in accordance
12 with the provisions of Chapter 150B of the General Statutes. This act constitutes a recent
13 act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to
14 which this act applies that is authorized to adopt rules to implement the provisions of this
15 act may adopt temporary rules to implement the provisions of this act. This section shall
16 continue in effect until all rules necessary to implement the provisions of this act have
17 become effective as either temporary rules or permanent rules.

18 Section 5.4. The headings to the Parts of this act are a convenience to the
19 reader and are for reference only. The headings do not expand, limit, or define the text of
20 this act.

21 Section 5.5. If any section or provision of this act is declared unconstitutional
22 or invalid by the courts, the unconstitutional or invalid section or provision does not
23 affect the validity of this act as a whole or any part of this act other than the part declared
24 to be unconstitutional or invalid.

25 Section 5.6. Sections 1.3, 1.5, 1.8, 2.1, 3.2, 3.8, 4.4, 4.5, 4.23, 5.1, 5.2, 5.3,
26 5.4, 5.5, and 5.6 of this act are effective when this act becomes law. Sections 3.7 and 3.9
27 of this act become effective December 1, 1998, and apply to offenses committed on or
28 after that date. Sections 1.4, 3.3, 3.4, 3.10, 4.1, 4.2, 4.3, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14,
29 4.15, 4.16, 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, and 4.24 become effective July 1, 1999.
30 Section 4.6 is effective retroactively to August 14, 1997. Sections 1.1, 1.2, 1.6, 1.7, 3.1,
31 3.5, 3.6, 4.7, and 4.8 are effective retroactively to September 1, 1997. Section 4.15
32 expires September 1, 2003.