

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 1049
May 30, 2018
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10463-MHa-128B

Short Title: Support Sustainable Fisheries Communities. (Public)

Sponsors: Representative Speciale.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO RESTORE THE JOINT LEGISLATIVE OVERSIGHT COMMISSION ON
3 SEAFOOD AND AQUACULTURE, TO REFORM THE STATUTES GOVERNING
4 APPOINTMENTS TO THE MARINE FISHERIES COMMISSION, AND TO IMPOSE A
5 MORATORIUM ON CERTAIN RULE-MAKING POWERS OF THE MARINE
6 FISHERIES COMMISSION PENDING A STUDY OF ITS STRUCTURE AND
7 FUNCTIONING.

8 The General Assembly of North Carolina enacts:

9 SECTION 1.1. This act shall be known as the "Sustainable Coastal Fisheries
10 Community Preservation and Economic Development Act of 2018."

11 SECTION 1.2. The General Assembly finds the following:

- 12 (1) The General Assembly finds that the reestablishment of an oversight
13 committee for the review and study of issues pertaining to the management
14 and promotion of coastal fisheries, aquaculture, and mariculture during times
15 when the General Assembly is not in session will provide greater opportunity
16 for stakeholder input and promote well-reasoned policy decisions supported
17 by sound research.
- 18 (2) The need for well-reasoned policy decision is highlighted by recent actions of
19 the Marine Fisheries Commission (Commission) that are contrary to the
20 legislative intent and express provisions of the Fisheries Reform Act of 1997,
21 S.L. 1997-400, which significantly revised the State's approach to fisheries
22 management based on the recognition by the General Assembly of the need
23 to protect our coastal fishery resources and to balance the commercial and
24 recreational interests in those fisheries through better management of these
25 resources.
- 26 (3) The Fisheries Reform Act established a fishery management plan (FMP)
27 development process that professionalized the North Carolina fisheries
28 conservation efforts and provided for structured participation of citizen
29 advisory committees and guidance from scientific experts with the North
30 Carolina Division of Marine Fisheries (Division).
- 31 (4) The Commission recently approved a Petition for Rule Making regarding the
32 North Carolina shrimp trawl fishery and conservation of spot and Atlantic
33 croaker that undermined the FMP process and was in many respects contrary
34 to the existing North Carolina Shrimp FMP and the current FMPs for spot and
35 Atlantic croaker. By approving the Petition, the Commission rejected without
36 explanation unanimous recommendations by its standing advisory committees



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1 to deny the Petition. This action will likely discourage future participation by
2 stakeholders on the advisory committees.

3 (5) The Commission also recently approved on an expedited basis a Southern
4 Flounder FMP Supplement that was significantly more restrictive than
5 measures recommended by the Division staff and was subsequently partially
6 enjoined on judicial review in the State's courts by North Carolina courts.

7 (6) The Commission has also acted in a manner that is inconsistent with the State's
8 open meeting statutes, which were enacted to provide citizens of the State
9 transparency with respect to the activities of State boards and commissions in
10 carrying out their statutory duties.

11 (7) The Fisheries Reform Act envisioned an appointment structure for the
12 Commission that is fair and balanced with respect to various fisheries
13 stakeholders, but recent votes by the Commission on controversial measures
14 frequently passed with recreational fishing, scientist, and at-large seats all
15 voting for significantly restrictive measures and commercial representatives
16 voting against the measures.

18 RESTORE JOINT LEGISLATIVE OVERSIGHT COMMISSION ON SEAFOOD AND 19 AQUACULTURE

20 **SECTION 2.1.** Subdivisions 1.2(a)(5) and 1.2(b)(3) and Sections 2.26 through 2.29
21 of S.L. 2011-291 are repealed, and Article 12F of Chapter 120 of the General Statutes, as it
22 existed prior to its repeal by S.L. 2011-291, is reenacted.

23 **SECTION 2.2.** G.S. 120-70.62, as reenacted by Section 2.1 of this act, reads as
24 rewritten:

25 "§ 120-70.62. Powers and duties.

26 The Commission shall have the following powers and duties:

27 (1) To monitor and study the current seafood industry in North Carolina including
28 studies of the feasibility of increasing the State's production, processing, and
29 marketing of ~~seafood~~; seafood.

30 (2) To study the potential for increasing the role of aquaculture in all regions of
31 the ~~State~~; State.

32 (3) To evaluate the feasibility of creating a central permitting office for fishing
33 and aquaculture ~~matters~~; matters.

34 (4) To evaluate actions of the Division of Marine Fisheries of the Department of
35 ~~Environment and Natural Resources~~; Environmental Quality, the Wildlife
36 Resources ~~Commission of the Department of Environment and Natural~~
37 ~~Resources~~ Commission, and of any other board, commission, department, or
38 agency of the State or local government as such actions relate to the seafood
39 and aquaculture ~~industries~~; industries.

40 (5) ~~To make recommendations regarding regulatory matters relating to the~~
41 ~~seafood and aquaculture industries including, but not limited to:~~

42 a. ~~Increasing the State's representation and decision making ability by~~
43 ~~dividing the State between the Atlantic and South Atlantic regions of~~
44 ~~the National Division of Marine Fisheries; and~~

45 b. ~~Evaluating the necessity to substantially increase~~ To evaluate the
46 adequacy of penalties for trespass and theft of shellfish and other
47 aquaculture ~~products~~; products.

48 (6) To review and evaluate changes in federal law and regulations, relevant court
49 decisions, and changes in technology affecting the seafood and aquaculture
50 ~~industries~~; industries.

- 1 (7) To review existing and proposed State law and rules affecting the seafood and
 2 aquaculture industries and to determine whether any modification of law or
 3 rules is in the public ~~interest;~~interest.
 4 (8) To make reports and recommendations, including draft legislation, to the
 5 General Assembly from time to time as to any matter relating to the powers
 6 and duties set out in this ~~section;~~and section.
 7 (9) To undertake such additional studies as it deems appropriate or as may from
 8 time to time be requested by the President of the Senate, the President Pro
 9 Tempore of the Senate, the Speaker of the House of Representatives, either
 10 house of the General Assembly, the Legislative Research Commission, or the
 11 Joint Legislative Commission on Governmental Operations, and to make such
 12 reports and recommendations to the General Assembly regarding such studies
 13 as it deems appropriate."

14 **SECTION 2.3.** The ongoing duties of the Joint Legislative Oversight Committee on
 15 Seafood and Aquaculture recreated by this act shall include the following actions:

- 16 (1) Review and provide recommendations for reforms to the Fisheries
 17 Management Plan adoption and amendment process.
 18 (2) Review and provide recommendations for revisions to membership and
 19 appointment procedures of the Marine Fisheries Commission.
 20 (3) Review and provide recommendations for changes to aquaculture and
 21 shellfish leasing and permitting programs including recommendations for
 22 training and start-up funding for new participants in those programs.
 23 (4) With the cooperation and assistance of the Joint Legislative Transportation
 24 Oversight Committee examine dredging needs for coastal inlets and
 25 waterways and other waterborne transportation issues that impact the safe and
 26 efficient access to coastal fisheries.
 27 (5) Review guidance documents, proclamations, or other regulatory actions taken
 28 by the Division of Marine Fisheries.
 29 (6) Any other issues the Committee finds to important in strengthening the
 30 economic impact and sustainability of coastal fisheries.

31 **SECTION 2.4.** G.S. 120-76(15) is repealed.

32 **SECTION 2.5.** G.S. 113-182 is amended by adding a new subsection to read:

33 "(c) The Department shall annually report no later than September 1 to the Joint
 34 Legislative Oversight Commission on Seafood and Aquaculture regarding the status of the
 35 marine and estuarine resources within the jurisdiction of the Division of Marine Fisheries."

36 **SECTION 2.6.(a)** There is appropriated from the General Fund to the General
 37 Assembly the sum of one hundred thousand dollars (\$100,000) in nonrecurring funds for the
 38 2018-2019 fiscal year for the review and study of the issues set forth in Section 2.3 of this act.

39 **SECTION 2.6.(b)** There is appropriated from the General Fund to the Department
 40 of Environmental Quality the sum of one hundred thousand dollars (\$100,000) in nonrecurring
 41 funds for the 2018-2019 fiscal year for the completion of the directives to the Division of Marine
 42 Fisheries imposed by this act.
 43

44 **MARINE FISHERIES COMMISSION CHANGES**

45 **SECTION 3.1.** G.S. 143B-289.54(a)(7) reads as rewritten:

- 46 "(7) One person having general knowledge of and experience related to subjects
 47 and persons regulated by the Commission actively connected with, and
 48 experienced as, a licensed fish dealer or in seafood processing or distribution
 49 as demonstrated by deriving at least fifty percent (50%) of annual earned
 50 income from activities involving the buying, selling, processing, or
 51 distribution of seafood landed in this State. The spouse of a person qualified

1 under this subdivision may be appointed provided that the spouse is actively
2 involved in the qualifying business."

3 **SECTION 3.2.** G.S. 143B-289.54(a)(8) reads as rewritten:

4 "(8) One person ~~having general knowledge of and experience related to subjects~~
5 ~~and persons regulated by the Commission~~actively engaged in the sports
6 fishing industry as demonstrated by deriving at least fifty percent (50%) of
7 annual earned income from selling goods or services in this State. The spouse
8 of a person qualified under this subdivision may be appointed provided that
9 the spouse is actively involved in the qualifying business."

10 **SECTION 3.3.** Notwithstanding the term of office set forth in G.S. 143B-289.54(d),
11 the term of the member of the Marine Fisheries Commission appointed under subdivision (7) of
12 G.S. 143B-289.54(a) shall expire on June 30, 2018. The Governor shall then appoint new
13 members under that subdivision and subdivision (8) of G.S. 143B-289.54, as amended by
14 Sections 3.1 and 3.2 of this act. The member appointed under subdivision (7) of
15 G.S. 143B-289.54(a) shall serve a term expiring on June 30, 2022, and thereafter three-year terms
16 as set forth in G.S. 143B-289.54(d).

17 18 **MARINE FISHERIES COMMISSION RULE-MAKING MORATORIUM**

19 **SECTION 4.(a)** Notwithstanding any other provision of law, there is hereby
20 established a moratorium on the authority of the Marine Fisheries Commission to propose and
21 adopt rules to carry out the duties specified in G.S. 143B-289.52(a). This subsection shall not
22 apply to any of the following:

- 23 (1) Rules necessary to carry out the duties specified in subdivisions (3), (4), (5),
24 (6), and (11) of G.S. 143B-289.52(a).
25 (2) Rules prevent overfishing of a species as documented in a stock assessment
26 that has been approved for management purposes by peer reviewers and
27 accepted by the Director of the Division of Marine Fisheries.
28 (3) Rules required by a provision of federal law or regulation to avoid federal
29 assumption of fisheries management in the State.

30 **SECTION 4.(b)** During the moratorium on rule-making authority set forth in
31 subsection (a) of this section, the Joint Legislative Commission on Seafood and Aquaculture
32 reestablished by this act shall conduct a study of the Marine Fisheries Commission that includes,
33 but is not limited to, an analysis of the following:

- 34 (1) The Marine Fisheries Commission's membership, appointment, and terms as
35 specified in G.S. 143B-289.54.
36 (2) The Marine Fisheries Commission's meeting and quorum requirements as
37 specified in G.S. 143B-289.57.

38 **SECTION 4.(c)** This section expires on the earlier of (i) the thirty-first legislative
39 day, or, in the case of a regular session lasting less than thirty-one days, the date of adjournment
40 of the next regular session of the General Assembly beginning after the date the Joint Legislative
41 Commission on Seafood and Aquaculture adopts a report setting forth the results of the study
42 required by this section and its recommendations for legislative action, or (ii) the date the General
43 Assembly convenes for its 2021 Regular Session.

44 45 **EFFECTIVE DATE**

46 **SECTION 5.** Sections 3.1, 3.2, and 3.3 of this act become effective June 30, 2018.
47 The remainder of this act is effective when it becomes law.