

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2017

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HOUSE BILL 1049

Short Title: Support Sustainable Fisheries Communities. (Public)

Sponsors: Representative Speciale.

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Wildlife Resources, if favorable, Appropriations

May 31, 2018

A BILL TO BE ENTITLED

AN ACT TO RESTORE THE JOINT LEGISLATIVE OVERSIGHT COMMISSION ON SEAFOOD AND AQUACULTURE, TO REFORM THE STATUTES GOVERNING APPOINTMENTS TO THE MARINE FISHERIES COMMISSION, AND TO IMPOSE A MORATORIUM ON CERTAIN RULE-MAKING POWERS OF THE MARINE FISHERIES COMMISSION PENDING A STUDY OF ITS STRUCTURE AND FUNCTIONING.

The General Assembly of North Carolina enacts:

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

**SECTION 1.2.** The General Assembly finds the following:

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



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1 explanation unanimous recommendations by its standing advisory committees  
 2 to deny the Petition. This action will likely discourage future participation by  
 3 stakeholders on the advisory committees.

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

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

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

## 18 19 **RESTORE JOINT LEGISLATIVE OVERSIGHT COMMISSION ON SEAFOOD AND** 20 **AQUACULTURE**

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

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

### 26 **"§ 120-70.62. Powers and duties.**

27 The Commission shall have the following powers and duties:

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

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

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

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

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

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

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

49 (6) To review and evaluate changes in federal law and regulations, relevant court  
 50 decisions, and changes in technology affecting the seafood and aquaculture  
 51 ~~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.

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#### 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 **MARINE FISHERIES COMMISSION RULE-MAKING MORATORIUM**

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

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

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

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

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

### 43 **EFFECTIVE DATE**

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