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SENATE BILL DRS55049-MH-34C* (01/27)

Short Title: Marine Aquaculture Development Act. (Public)

Sponsors: Senators Cook, Sanderson, and Tillman (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A PROGRAM FOR THE PERMITTING OF MARINE
3 AQUACULTURE ACTIVITIES AND TO REQUIRE THE DIVISION OF MARINE
4 FISHERIES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO
5 REQUEST THE ISSUANCE OF FEDERAL RULES TO ALLOW MARINE
6 AQUACULTURE IN FEDERAL WATERS OFF THE COAST OF THE STATE.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. Chapter 113 of the General Statutes is amended by adding a new
9 Article to read:

10 "Article 16A.

11 "Marine Aquaculture.

12 "**§ 113-211. Definitions.**

13 In addition to the definitions in G.S. 113-128 and G.S. 113-129, the following definitions
14 shall apply in this Article.

15 (1) Marine aquaculture. – The propagation and rearing of aquatic species in
16 controlled or selected environments, including, but not limited to, ocean
17 ranching, marine hatcheries, and other deep water fish farming operations in
18 the coastal and ocean waters of the State and, to the extent not inconsistent
19 with federal law, to the limits of the United States exclusive economic zone,
20 as that term is defined in the Magnuson-Stevens Fishery Conservation and
21 Management Act, 16 U.S.C. § 1801, et seq.

22 (2) Marine aquaculture facility. – Any land, structure, or other appurtenance that
23 is used for aquaculture, including, but not limited to, any laboratory,
24 hatchery, rearing pond, raceway, pen, incubator, or other equipment used in
25 aquaculture.

26 (3) Marine aquatic species. – Any species of finfish, mollusk, crustacean, or
27 other aquatic invertebrate, amphibian, reptile, or aquatic plant, and
28 including, but not limited to, "fish" and "fishes" as defined in
29 G.S. 113-129(7) found exclusively or for part of its life cycle in coastal
30 fishing waters.

31 "**§ 113-212. Marine Aquaculture Facility Licensing.**

32 (a) The Marine Fisheries Commission shall, by rule, designate the species of fish,
33 crustaceans, and shellfish that may be produced and sold under a Marine Aquaculture
34 Propagation and Production Facility License as set forth in subsection (b) of this section. The
35 Board shall take into account all of the following factors in its designation of species:

36 (1) The potential market for the species, both domestic and export.



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1 (2) If the species is not native to State waters or is a genetically engineered
2 variant of a native species, the potential for genetic contamination of or
3 undesired interbreeding with wild stocks of the species.

4 (3) Whether public access and use of waters of the State would be unduly
5 impacted by the private leasing of public submerged lands and the
6 superjacent water column necessary to support propagation or production
7 facilities for the species, when compared to the potential economic impact of
8 those facilities.

9 (b) Marine Aquaculture Propagation and Production Facility License. – The Marine
10 Fisheries Commission may, by rule, authorize and license the operation of fish hatcheries and
11 production facilities for species of fish designated as set forth in subsection (a) of this section.
12 The Commission shall (i) consult with the National Marine Fisheries Service regarding
13 appropriate measures to protect wild stocks from disease or genetic contamination and (ii) enter
14 into memoranda of agreement with the United States Army Corps of Engineers and any other
15 appropriate State or federal regulatory agencies regarding appropriate standards and markings
16 for marine aquaculture structures to avoid impairment of navigation. Marine aquaculture
17 facilities that require the use of public bottom lands underlying waters of the State or the
18 superjacent water column will also require a lease pursuant to Article 16B of this Chapter. The
19 Commission may prescribe standards of operation, qualifications of operators, and the
20 conditions under which fish may be commercially reared, transported, possessed, bought, and
21 sold. Marine Aquaculture Propagation and Production Facility Licenses issued by the
22 Department shall be valid for a period of five years.

23 (c) Protection of Private Marine Aquaculture Rights. – It is unlawful for any person,
24 other than the holder of a Marine Aquaculture Propagation and Production Facility License and
25 associated lease under Article 16B of Chapter 113 of the General Statutes, to take or attempt to
26 take marine species being produced under the license and associated lease from any privately
27 leased, franchised, or deeded marine aquaculture operation without written authorization of the
28 holder and with actual knowledge it is a marine aquaculture leased area. Actual knowledge will
29 be presumed when the marine species are taken or attempted to be taken under the following
30 circumstances:

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

33 (2) When the area has been regularly posted and identified and the person knew
34 the area to be the subject of private marine aquaculture rights.

35 A violation of this subsection shall constitute a Class A1 misdemeanor, which may include
36 a fine of not more than five thousand dollars (\$5,000). The written authorization shall include
37 the lease number or deed reference, name and address of authorized person, date of issuance,
38 and date of expiration, and it must be signed by the holder of the marine aquaculture rights.
39 Identification signs shall include the lease number or deed reference and the name of the
40 holder."

41 **SECTION 2.** Chapter 113 of the General Statutes is amended by adding a new
42 Article to read:

43 "Article 16B.

44 "Leasing of Bottom Land and Waters of the State for Marine Aquaculture.

45 "§ 113-215. Legislative findings and declaration of policy.

46 The General Assembly finds that development of a marine aquaculture industry in the State
47 provides increased seafood production and long-term economic and employment opportunities.
48 The General Assembly declares that it is the policy of the State to encourage the development
49 of private, commercial marine aquaculture in ways that are compatible with other public uses
50 of marine and estuarine resources such as navigation, fishing, and recreation.

51 "§ 113-216. New leases for marine aquaculture.

1 (a) To increase the use of suitable areas underlying coastal fishing waters for
2 establishment of marine aquaculture operations, the Secretary may grant marine aquaculture
3 leases for the public bottom under the terms of this section to persons who reside in North
4 Carolina and who have obtained a Marine Aquaculture Propagation and Production Facility
5 License under Article 16A of this Chapter when the Secretary determines, in accordance with
6 the Secretary's duty to conserve the marine and estuarine resources of the State, that the public
7 interest will benefit from issuance of the lease. Suitable areas for marine aquaculture shall meet
8 the following minimum standards:

9 (1) The area leased must not contain a natural shellfish bed.

10 (2) The marine aquaculture operation in the leased area will be compatible with
11 lawful utilization by the public of other marine and estuarine resources.
12 Other public uses which may be considered include, but are not limited to,
13 navigation, fishing, and recreation.

14 (3) The operation of a marine aquaculture operation in the leased area will not
15 impinge upon the rights of riparian owners.

16 (4) The area leased must not include an area designated for inclusion in the
17 Department's Shellfish Management Program.

18 (5) The area leased must not include an area that the State Health Director has
19 recommended be closed to shellfish harvest by reason of pollution.

20 (b) The Secretary may delete any part of an area proposed for lease or may condition a
21 lease to protect the public interest with respect to the factors enumerated in subsection (a) of
22 this section. The Secretary may not grant a new lease in an area heavily used for recreational
23 purposes.

24 (c) Any person desiring to apply for a lease must make written application to the
25 Secretary on forms prepared by the Department containing such information as deemed
26 necessary to determine the desirability of granting or not granting the lease requested. Except in
27 the case of renewal leases, the application must be accompanied by a map or diagram made at
28 the expense of the applicant, showing the area proposed to be leased.

29 (d) The map or diagram must conform to standards prescribed by the Secretary
30 concerning accuracy of map or diagram and the amount of detail that must be shown. If, on the
31 basis of the application information and map or diagram, the Secretary deems that granting the
32 lease would benefit the marine aquaculture industry of North Carolina, the Secretary must order
33 an investigation of the bottom proposed to be leased. The investigation is to be made by the
34 Secretary or the Secretary's authorized agent to determine whether the area proposed to be
35 leased is consistent with the standards in subsection (a) of this section, with the terms of the
36 Marine Aquaculture Propagation and Production Facility License issued by the Department of
37 Agriculture and Consumer Services and any other applicable standards under this Article and
38 the rules of the Marine Fisheries Commission. In the event the Secretary finds the application
39 inconsistent with the applicable standards, the Secretary shall deny the application or propose
40 that a conditional lease be issued that is consistent with the applicable standards. In the event
41 the Secretary authorizes amendment of the application, the applicant must furnish a new map or
42 diagram meeting requisite standards showing the area proposed to be leased under the amended
43 application. At the time of making an application for an initial lease, the applicant must pay a
44 filing fee of two hundred dollars (\$200.00).

45 (e) The area of bottom applied for must be as compact as possible, taking into
46 consideration the shape of the body of water, the consistency of the bottom, and the desirability
47 of separating the boundaries of a leasehold by a sufficient distance from any other marine
48 aquaculture operations or shellfish leases.

49 (f) Within a reasonable time after receipt of an application that complies with
50 subsection (d) of this section, the Secretary shall notify the applicant of the intended action on
51 the lease application. If the intended action is approval of the application as submitted, or

1 approval with a modification to which the applicant agrees, the Secretary shall conduct a public
2 hearing in the county where the proposed leasehold lies. The Secretary must publish at least
3 two notices of the intention to lease in a newspaper of general circulation in the county in
4 which the proposed leasehold lies. The first publication must precede the public hearing by
5 more than 20 days; the second publication must follow the first by seven to 11 days. The notice
6 of intention to lease must contain a description of the area of the proposed leasehold sufficient
7 to establish its boundaries with reasonable ease and certainty and must also contain the date,
8 hour, and place of the hearing.

9 (g) After consideration of the public comment received and any additional
10 investigations the Secretary orders to evaluate the comments, the Secretary shall notify the
11 applicant in person or by certified or registered mail of the decision on the lease application.
12 The Secretary shall also notify persons who submitted comments at the public hearing and
13 requested notice of the lease decision. An applicant who is dissatisfied with the Secretary's
14 decision or another person aggrieved by the decision may commence a contested case by filing
15 a petition under G.S. 150B-23 within 20 days after receiving notice of the Secretary's decision.
16 In the event the Secretary's decision is a modification to which the applicant agrees, the lease
17 applicant must furnish an amended map or diagram before the lease can be issued by the
18 Secretary.

19 (h) After a lease application is approved by the Secretary, the applicant shall submit to
20 the Secretary information sufficient to define the bounds of the area approved for leasing with
21 markers in accordance with the rules of the Commission. The information shall conform to
22 standards prescribed by the Secretary concerning accuracy of survey and the amount of detail
23 to be shown. When information is submitted, the boundaries are marked and all fees and rents
24 due in advance are paid, the Secretary shall execute the lease on forms approved by the
25 Attorney General. The Secretary is authorized, with the approval of the lessee, to amend an
26 existing lease by reducing the area under lease or by combining contiguous leases without
27 increasing the total area leased.

28 (i) Initial leases begin upon the issuance of the lease by the Secretary and expire at
29 noon on the first day of July following the 10th anniversary of the granting of the lease.
30 Renewal leases are issued for a period of 10 years from the time of expiration of the previous
31 lease. At the time of making application for renewal of a lease, the applicant must pay a filing
32 fee of one hundred dollars (\$100.00). The rental for initial leases is ten dollars (\$10.00) per
33 acre, per year. Rental must be paid annually in advance prior to the first day of April each year.
34 Upon initial granting of a lease, the pro rata amount for the portion of the year left until the first
35 day of July must be paid in advance at the rate of ten dollars (\$10.00) per acre per year; then,
36 on or before the first day of April next, the lessee must pay the rental for the next full year.

37 (j) Except as otherwise restricted by this Article, leaseholds granted under this section
38 are to be treated as if they were real property and are subject to all laws relating to taxation,
39 sale, devise, inheritance, gift, seizure and sale under execution or other legal process, and the
40 like. Leases properly acknowledged and probated are eligible for recordation in the same
41 manner as instruments conveying an estate in real property. Within 30 days after transfer of
42 beneficial ownership of all or any portion of or interest in a leasehold to another, the new owner
43 must notify the Secretary of such fact. Such transfer is not valid until notice is furnished to the
44 Secretary. In the event such transferee is a nonresident, the Secretary must initiate proceedings
45 to terminate the lease.

46 (k) Upon receipt of notice by the Secretary of any of the following occurrences, the
47 Secretary must commence action to terminate the leasehold:

48 (1) Failure to pay the annual rent in advance.

49 (2) Failure to file information required by the Secretary upon annual remittance
50 of rental or filing false information on the form required to accompany the
51 annual remittance of rental.

- 1 (3) Failure by new owner to report a transfer of beneficial ownership of all, or
2 any portion of, or interest in the leasehold.
- 3 (4) Failure to mark the boundaries in the leasehold and to keep them marked as
4 required in the rules of the Marine Fisheries Commission.
- 5 (5) Failure to utilize the leasehold on a continuing basis for marine aquaculture
6 purposes.
- 7 (6) Transfer of all or part of the beneficial ownership of a leasehold to a
8 nonresident.
- 9 (7) Substantial breach of compliance with the provisions of this Article, of the
10 Marine Aquaculture Propagation and Production Facility License issued
11 under Article 16A of this Chapter, or of rules of the Marine Fisheries
12 Commission governing use of the leasehold.

13 (D) In the event the leaseholder takes steps within 30 days to remedy the situation upon
14 which the notice of intention to terminate was based, and the Secretary is satisfied that
15 continuation of the lease is in the best interests of the shellfish culture of the State, the
16 Secretary may discontinue termination procedures. Where there is no discontinuance of
17 termination procedures, the leaseholder may initiate a contested case by filing a petition under
18 G.S. 150B-23 within 30 days of receipt of notice of intention to terminate. Where the
19 leaseholder does not initiate a contested case, or the final decision upholds termination, the
20 Secretary must send a final letter of termination to the leaseholder. The final letter of
21 termination may not be mailed sooner than 30 days after receipt by the leaseholder of the
22 Secretary's notice of intention to terminate, or of the final agency decision, as appropriate. The
23 lease is terminated effective at midnight on the day the final notice of termination is served on
24 the leaseholder. The final notice of termination may not be issued pending hearing of a
25 contested case initiated by the leaseholder.

26 Service of any notice required in this subsection may be accomplished by certified mail,
27 return receipt requested; personal service by any law enforcement officer; or upon the failure of
28 these two methods, publication. Service by publication shall be accomplished by publishing
29 such notices in a newspaper of general circulation within the county where the lease is located
30 for at least once a week for three successive weeks and by posting the notices on the
31 Commission's Web site. The format for notice by publication shall be approved by the Attorney
32 General.

33 (m) Upon final termination of any leasehold, the bottom in question is thrown open to
34 the public for use in accordance with laws and rules governing use of public grounds generally.
35 Within 30 days of final termination of the leasehold, the former leaseholder shall remove all
36 abandoned markers denominating the area of the leasehold as a private bottom. The State may,
37 after 10 days' notice to the owner of the abandoned markers thereof, remove the abandoned
38 structure and have the area cleaned up. The cost of such removal and cleanup shall be payable
39 by the owner of the abandoned markers and the State may bring suit to recover the costs
40 thereof.

41 (n) Every year between January 1 and February 15, the Secretary must mail to all
42 leaseholders a notice of the annual rental due and include forms designed by the Secretary for
43 determining the amount of harvest gathered. Such forms may contain other pertinent questions
44 relating to the utilization of the leasehold in the best interests of the aquaculture industry of the
45 State and must be executed and returned by the leaseholder with the payment of the
46 leaseholder's rental. Any leaseholder or the leaseholder's agent executing such forms for the
47 leaseholder who knowingly makes a false statement on such forms is guilty of a Class 1
48 misdemeanor.

49 **"§ 113-217. Lease of superjacent water column for marine aquaculture.**

50 (a) To increase the productivity of marine aquaculture leases issued under
51 G.S. 113-216, the Secretary may include in marine aquaculture leases issued under

1 G.S. 113-216 provisions to authorize use of the water column superjacent to the leased bottom
2 under the terms of this section when the Secretary determines the public interest will benefit
3 from inclusion of water column provisions.

4 (b) Suitable areas for the authorization of water column use shall meet all of the
5 following minimum standards:

6 (1) Aquaculture use of the leased area must not significantly impair navigation.

7 (2) The leased area must not be within a navigation channel marked or
8 maintained by a State or federal agency.

9 (3) The leased area must not be within an area traditionally used and available
10 for fishing or hunting activities incompatible with the activities proposed by
11 the leaseholder, such as trawling or seining.

12 (4) Aquaculture use of the leased area must not significantly interfere with the
13 exercise of riparian rights by adjacent property owners, including access to
14 navigation channels from piers or other means of access.

15 (5) Use of the superjacent water column is necessary for exercise of activities
16 permitted under the Marine Aquaculture Propagation and Production Facility
17 License granted by the Department under Article 16A of this Chapter.

18 (6) Any additional standards, established by the Commission in duly adopted
19 rules, to protect the public interest in coastal fishing waters."

20 **SECTION 3.** The Division of Marine Fisheries of the Department of
21 Environmental Quality shall do the following:

22 (1) Request that the Mid-Atlantic and South Atlantic Fishery Management
23 Councils develop a Fishery Management Plan for regulating offshore
24 aquaculture in federal waters offshore from the North Carolina coast.

25 (2) Petition the National Oceanic and Atmospheric Administration to initiate
26 rule-making proceedings to implement a comprehensive regulatory program
27 for managing the development of an environmentally sound and
28 economically sustainable aquaculture fishery in federal waters offshore from
29 the North Carolina coast.

30 The Division shall provide an interim report to the Joint Legislative Oversight
31 Committee on Agriculture and Natural and Economic Resources no later than February 1,
32 2018, regarding their progress in implementing this section and a final report on or before May
33 1, 2018, that includes the request and petition required by this section.

34 **SECTION 4.** Sections 1 and 2 of this act become effective October 1, 2017. The
35 remainder of this act is effective when it becomes law.