

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 810
Apr 16, 2019
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10488-MH-139

Short Title: Marine Fisheries Reforms. (Public)

Sponsors: Representative Yarborough.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REFORM THE MANAGEMENT OF MARINE FISHERIES IN NORTH
3 CAROLINA.

4 The General Assembly of North Carolina enacts:

5
6 **AMEND FISHERIES MANAGEMENT PROCESS**

7 **SECTION 1.1.(a)** G.S. 113-182.1 reads as rewritten:

8 **"§ 113-182.1. Fishery Management Plans.**

9 (a) The Department shall prepare proposed Fishery Management Plans and Fishery
10 Management Plan Amendments for adoption by the Marine Fisheries Commission for all
11 commercially or recreationally significant species or fisheries that comprise State marine or
12 estuarine resources. In the case of interjurisdictional fisheries stocks or species for which the
13 Atlantic States Marine Fisheries Commission compact (ASMFC) has prepared a Fishery
14 Management Plan, the State may adopt that plan as its Fishery Management Plan under this
15 section only if an analysis by the Division of Marine Fisheries shows that the portion of the stock
16 or species residing in North Carolina would meet the definition of "sustainable harvest" set out
17 in G.S. 113-129(14a) if managed separately from the ASMFC plan. Proposed Fishery
18 Management Plans and Fishery Management Plan Amendments shall be developed in
19 accordance with the Priority List, Schedule, and guidance criteria established by the Marine
20 Fisheries Commission under G.S. 143B-289.52.

21 (b) The goal of ~~the plans~~ Fishery Management Plans and Fishery Management Plan
22 Amendments shall be to ensure the long-term viability of the State's commercially and
23 recreationally significant species or fisheries. Each ~~plan~~ Fishery Management Plan and Fishery
24 Management Plan Amendment shall be designed to reflect that fishery's unique fishing practices
25 so that one plan Fishery Management Plan or Fishery Management Plan Amendment may apply
26 to a specific fishery, while other ~~plans~~ Fishery Management Plans or Fishery Management Plan
27 Amendments ~~may be based on gear use alternate approaches such as ecosystem-based~~
28 management, gear, or geographic areas. Each ~~plan~~ Fishery Management Plan or Fishery
29 Management Plan Amendment shall:

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



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- 1 (2) Recommend management actions pertaining to the fishery or fisheries actions,
2 including adaptive management measures that address the long-term viability,
3 recovery, and conservation of stocks to ensure a sustainable harvest, including
4 all of the following:
- 5 a. Threshold biomass levels that would conserve a proportion of the
6 unfished adult stock biomass sufficient to prevent overfishing.
- 7 b. Target biomass levels that exceed the threshold biomass level
8 sufficiently to provide a conservation buffer between the threshold and
9 target biomass levels.
- 10 c. An ecosystem buffer, set as a percentage of the stock biomass based
11 on the species life history characteristics and contribution to
12 ecosystem stability that is added to the target biomass level to ensure
13 stock conservation by accounting for forage species, species diversity,
14 and other critical ecosystem functions.
- 15 d. Minimum size limits that would allow at least seventy-five percent
16 (75%) of juvenile fishes to survive harvest mortality and reach
17 spawning age.
- 18 e. Biological benchmarks for a species based on precautionary principles
19 of fisheries management, in order to measure progress in achieving or
20 maintaining sustainability of the fishery.
- 21 f. An assessment of stock status and target biomass levels as it relates to
22 overfishing, and management measures to timely end overfishing as
23 required by this Article.
- 24 g. Allowable catch limits for commercial and recreational fisheries with
25 accountability measures in the event catch limits are exceeded.
- 26 h. Management measures to minimize bycatch mortality of nontargeted
27 species in the fishery.
- 28 i. Management measures related to the annual collection and analysis of
29 stock size and age structure data as a measure of stock health and
30 sustainability status.
- 31 (3) Include conservation and management measures that will provide the greatest
32 overall benefit to the State, particularly with respect to ~~food production,~~
33 commercial and recreational opportunities, and the protection of marine
34 ecosystems, and that will produce a sustainable harvest.ecosystems.
- 35 (4) Repealed by Session Laws 2010-13, s. 1, effective June 23, 2010.
- 36 (5) Specify a time period, not to exceed two years from the date of the adoption
37 of the ~~plan,~~ Fishery Management Plan or Fishery Management Plan
38 Amendment, to end overfishing. ~~This subdivision shall not apply if the~~
39 Fisheries Director determines that the biology of the fish, environmental
40 conditions, or lack of sufficient data make implementing the requirements of
41 this subdivision incompatible with professional standards for fisheries
42 management.
- 43 (5a) At the Commission's first regular meeting following the end of the two-year
44 period described in subdivision (5) of this subsection, the Division shall report
45 to the Commission whether overfishing has ended under the Fishery
46 Management Plan or Fishery Management Plan Amendment. If the
47 Commission determines that management measures under the Fishery
48 Management Plan or Fishery Management Plan Amendment have been
49 insufficient to end overfishing within two years, the Commission shall have
50 the authority to implement as an temporary rule under G.S. 150B-21.1 those
51 measures recommended by the Division necessary to end overfishing

1 immediately. The Commission shall concurrently begin the process of
2 adopting a Fishery Management Plan Amendment necessary to end
3 overfishing in that fishery. While the Commission is developing and
4 implementing temporary rules, the Fisheries Director shall exercise the
5 Director's delegated proclamation authority under G.S. 143B-289.52(a)(8) to
6 close the fishery to further harvest until the temporary rules are in effect. The
7 management requirements set forth in this subdivision shall also apply at any
8 time following the two-year period described in subdivision (5) of this
9 subsection where the Division determines that overfishing is occurring in a
10 fishery.

11 (6) Specify a time period, not to exceed 10 years from the date of the adoption of
12 the plan, Fishery Management Plan or Fishery Management Plan Amendment
13 for achieving a sustainable harvest. This subdivision shall not apply if the
14 Fisheries Director determines that the biology of the fish, environmental
15 conditions, or lack of sufficient data make implementing the requirements of
16 this subdivision incompatible with professional standards for fisheries
17 management. Notwithstanding subsequent rules or proclamations, adoption of
18 the Fishery Management Plan or Fishery Management Plan Amendment
19 means the time when the Commission votes affirmatively to adopt the Fishery
20 Management Plan or Fishery Management Plan Amendment.

21 (7) Include a standard of at least fifty percent (50%) probability of achieving
22 sustainable harvest for the fishery or fisheries. This subdivision shall not apply
23 if the Fisheries Director determines that the biology of the fish, environmental
24 conditions, or lack of sufficient data make implementing the requirements of
25 this subdivision incompatible with professional standards for fisheries
26 management.

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

32 (e1) The Department shall consult with the regional advisory committees established
33 pursuant to G.S. 143B-289.57(e) regarding the preparation of each Fishery Management Plan.
34 Before submission of a plan for review by the Joint Legislative Commission on Governmental
35 Operations, the Department shall review any comment or recommendation regarding the plan
36 that a regional advisory committee submits to the Department within the time limits established
37 in the Schedule for the development and adoption of Fishery Management Plans established by
38 G.S. 143B-289.52. Before the Commission adopts a management measure to implement a plan,
39 the Commission shall review any comment or recommendation regarding the management
40 measure that a regional advisory committee submits to the Commission.

41 (d) Each Fishery Management Plan and Fishery Management Plan Amendment shall be
42 reviewed at least once every five years, years to ensure that management measures meet the
43 rebuilding objectives defined in the Fishery Management Plan or Fishery Management Plan
44 Amendment to achieve a sustainable harvest. An annual update shall be presented to the
45 Commission during the Commission's first business meeting each fiscal year. A Fishery
46 Management Plan or Fishery Management Plan Amendment may be retired when it is determined
47 that the objectives of the Fishery Management Plan or Fishery Management Plan Amendment
48 are assured under a federal or interstate plan as limited by subsection (a) of this section or the
49 species or stock is no longer a significant fishery in the State.

50 (d1) The Marine Fisheries Commission may revise the Priority List and guidance criteria
51 whenever it determines that a revision of the Priority List or guidance criteria will facilitate or

1 improve the development of Fishery Management Plans and Fishery Management Plan
2 Amendments or is necessary to restore, conserve, or protect the marine and estuarine resources
3 of the State. The Marine Fisheries Commission may not revise the Schedule for the development
4 of a Fishery Management ~~Plan~~, Plan or Fishery Management Plan Amendment, once adopted,
5 without the approval of the Secretary of Environmental Quality.

6 (e) The Secretary of Environmental Quality shall monitor progress in the development
7 and adoption of Fishery Management Plans and Fishery Management Plan Amendments in
8 relation to the Schedule for development and adoption of the plans established by the Marine
9 Fisheries Commission. The Secretary of Environmental Quality shall report to the Joint
10 Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the
11 Fiscal Research Division within 30 days of the completion or substantial revision of each
12 proposed Fishery Management ~~Plan~~, Plan or Fishery Management Plan Amendment. ~~The Joint~~
13 ~~Legislative Oversight Committee on Agriculture and Natural and Economic Resources~~
14 Committee shall review each proposed Fishery Management Plan and Fishery Management Plan
15 Amendment within 30 days of the date the proposed Plan or Plan Amendment is submitted by
16 the Secretary. ~~The Joint Legislative Oversight Committee on Agriculture and Natural and~~
17 ~~Economic Resources~~ may submit comments and recommendations on the proposed Plan to the
18 Secretary within 30 days of the date the proposed Plan or Plan Amendment is submitted by the
19 Secretary.

20 (e1) If the Secretary determines that it is in the interest of the long-term viability of a
21 fishery, the Secretary may authorize the Commission to develop temporary management
22 measures to supplement an existing Fishery Management Plan pursuant to this subsection.
23 Development of temporary management measures pursuant to this subsection is exempt from
24 subsections (c), (c1), and (e) of this section and the Priority List, Schedule, and guidance criteria
25 established by the Marine Fisheries Commission under G.S. 143B-289.52. During the next
26 review period for a Fishery Management Plan supplemented pursuant to this subsection, the
27 Commission shall either incorporate the temporary management measures into the revised
28 Fishery Management Plan or the temporary management measures shall expire on the date the
29 revised Fishery Management Plan is adopted.

30 (f) The Marine Fisheries Commission shall adopt rules to implement Fishery
31 Management Plans and Fishery Management Plan Amendments in accordance with Chapter
32 150B of the General Statutes.

33 (g) To achieve sustainable harvest under a Fishery Management ~~Plan~~, Plan or Fishery
34 Management Plan Amendment, the Marine Fisheries Commission may include in the Plan or
35 Plan Amendment a recommendation that the General Assembly limit the number of fishermen
36 authorized to participate in the fishery. The Commission may recommend that the General
37 Assembly limit participation in a fishery only if the Commission determines that sustainable
38 harvest cannot otherwise be achieved. In determining whether to recommend that the General
39 Assembly limit participation in a fishery, the Commission shall consider all of the following
40 factors:

- 41 (1) Current participation in and dependence on the fishery.
- 42 (2) Past fishing practices in the fishery.
- 43 (3) Economics of the fishery.
- 44 (4) Capability of fishing vessels used in the fishery to engage in other fisheries.
- 45 (5) Cultural and social factors relevant to the fishery and any affected fishing
46 communities.
- 47 (6) Capacity of the fishery to support biological parameters.
- 48 (7) Equitable resolution of competing social and economic interests.
- 49 (8) Any other relevant considerations.

50 (h) If the Secretary, in consultation with the Fisheries Director, determines that it is in the
51 interest of maintaining a sustainable harvest for a fishery, the Secretary may authorize the

1 development of a Fishery Management Plan Supplement to an existing Fishery Management Plan
2 or Fishery Management Plan Amendment. A Fishery Management Plan Supplement is a
3 temporary mechanism contemplated for conditions or circumstances when available science
4 indicates that an emergency exists affecting the sustainable harvest of a fishery and it is
5 impracticable to address through the Fishery Management Plan or Fishery Management Plan
6 Amendment process. To assist the Secretary, the Division shall provide the Secretary with
7 pertinent scientific and technical information. Development of a Fishery Management Plan
8 Supplement pursuant to this subsection shall be exempt from subsections (e), (f), and (i) of this
9 section, the Schedule established by the Division, and Division guidance criteria for Fishery
10 Management Plans and Fishery Management Plan Amendments. Fishery Management Plan
11 Supplements shall either be incorporated into the Fishery Management Plan or Fishery
12 Management Plan Amendment or expire upon the adoption of a Fishery Management Plan or
13 Fishery Management Plan Amendment."

14 **SECTION 1.1.(b)** This section becomes effective July 1, 2019, and applies to
15 Fishery Management Plans and Fishery Management Plan Amendments developed or adopted
16 on or after that date.

17 **SECTION 1.2.** G.S. 113-221.1 reads as rewritten:
18 **"§ 113-221.1. Proclamations; emergency review.**

19 (a) Chapter 150B of the General Statutes does not apply to proclamations issued under
20 this Article.

21 (b) The Marine Fisheries Commission may delegate to the Fisheries Director the
22 authority to issue proclamations suspending or implementing, in whole or in part, particular rules
23 of the Commission ~~that whose application~~ may be affected by variable conditions. Proclamations
24 shall be consistent with management measures adopted pursuant to G.S. 113-182.1 or as
25 otherwise provided by rules of the Commission. These proclamations shall be issued by the
26 Fisheries Director or by a person designated by the Fisheries Director. Except as provided in this
27 subsection, all proclamations shall state the hour and date upon which they become effective and
28 shall be issued at least 48 hours in advance of the effective date and time. A proclamation that
29 prohibits the taking of certain fisheries resources for reasons of public health or that governs a
30 quota-managed fishery may be made effective immediately upon issuance. A proclamation to
31 reopen the taking of certain fisheries resources closed for reasons of public health shall be issued
32 at least 12 hours in advance of the effective date and time of the reopening. A person who violates
33 a proclamation that is made effective immediately upon issuance shall not be charged with a
34 criminal offense for the violation if the violation occurred between the time of issuance and 48
35 hours after the issuance and the person did not have actual notice of the issuance of the
36 proclamation. Fisheries resources taken or possessed by any person in violation of any
37 proclamation may be seized regardless of whether the person had actual notice of the
38 proclamation. A permanent file of the text of all proclamations shall be maintained in the office
39 of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any
40 civil or criminal proceeding. The Fisheries Director shall make every reasonable effort to give
41 actual notice of the terms of any proclamation to persons who may be affected by the
42 proclamation. Reasonable effort includes a press release to communications media, posting of a
43 notice at docks and other places where persons affected may gather, personal communication by
44 inspectors and other agents of the Fisheries Director, and other measures designed to reach the
45 persons who may be affected. It is a defense to an enforcement action for a violation of a
46 proclamation that a person was prevented from receiving notice of the proclamation due to a
47 natural disaster or other act of God occasioned exclusively by violence of nature without
48 interference of any human agency and that could not have been prevented or avoided by the
49 exercise of due care or foresight.

50"
51

1 **AMEND MARINE FISHERIES COMMISSION**2 **SECTION 2.1.** G.S. 143B-289.52 reads as rewritten:3 **"§ 143B-289.52. Marine Fisheries Commission – powers and duties.**4 (a) The Marine Fisheries Commission shall adopt rules to be followed in the
5 management, protection, preservation, and enhancement of the marine and estuarine resources
6 within its jurisdiction, as described in G.S. 113-132, including commercial and sports fisheries
7 resources. Rules adopted by the Commission and management measures included in the rules
8 shall be based on recognized fishery management standards and the best available scientific,
9 technical, and economic data. The Marine Fisheries Commission shall have the power and duty:

- 10 (1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of
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- 11 marine and estuarine resources in coastal fishing waters with respect to:
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- 12 a. Time, place, character, or dimensions of any methods or equipment
-
- 13 that may be employed in taking fish.
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- 14 b. Seasons for taking fish.
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- 15 c. Size limits on and maximum quantities of fish that may be taken,
-
- 16 possessed, bailed to another, transported, bought, sold, or given away.
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- 17 (2) To provide fair regulation of commercial and recreational fishing groups in
-
- 18 the interest of the public.
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- 19 (3) To adopt rules and take all steps necessary to develop and improve
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- 20 mariculture, including the cultivation, harvesting, and marketing of shellfish
-
- 21 and other marine resources in the State, involving the use of public grounds
-
- 22 and private beds as provided in G.S. 113-201.
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- 23 (4) To close areas of public bottoms under coastal fishing waters for such time as
-
- 24 may be necessary in any program of propagation of shellfish as provided in
-
- 25 G.S. 113-204.
-
- 26 (5) In the interest of conservation of the marine and estuarine resources of the
-
- 27 State, to institute an action in the superior court to contest the claim of title or
-
- 28 claimed right of fishery in any navigable waters of the State registered with
-
- 29 the Department as provided in G.S. 113-206(d).
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- 30 (6) To make reciprocal agreements with other jurisdictions respecting any of the
-
- 31 matters governed in this Subchapter as provided by G.S. 113-223.
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- 32 (7) To adopt relevant provisions of federal laws and regulations as State rules
-
- 33 pursuant to G.S. 113-228.
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- 34 (8) To delegate to the Fisheries Director the authority by proclamation to suspend
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- 35 or implement, in whole or in part, a particular rule of the Commission that
-
- 36 may be affected by variable conditions
- or circumstances to a fishery resource
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- 37
- or habitat
- as provided in G.S. 113-221.1.
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- 38 (9) To comment on and otherwise participate in the determination of permit
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- 39 applications received by State agencies that may have an effect on the marine
-
- 40 and estuarine resources of the State.
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- 41 (10) To adopt Fishery Management Plans
- and Fishery Management Plan
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- 42
- Amendments
- as provided in G.S. 113-182.1, to establish a Priority List to
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- 43 determine the order in which Fishery Management Plans
- and Fishery
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- 44
- Management Plan Amendments
- are developed, to establish a Schedule for the
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- 45 development and adoption of each
- ~~Fishery Management Plan, Fishery~~
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- ~~Management Plan and subsequent Fishery Management Plan Amendment,~~
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- 47 and to establish guidance criteria as to the contents of
- ~~Fishery Management~~
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- 48
- ~~Plans.~~
- Fishery Management Plan and Fishery Management Plan Amendments
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- 49
- as provided in G.S. 113-182.1.
-
- 50 (11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.

- 1 (12) Except as may otherwise be provided, to make the final agency decision in all
2 contested cases involving matters within the jurisdiction of the Commission.
- 3 (13) To adopt rules to define fishing gear as either recreational gear or commercial
4 gear.
- 5 (b) The Marine Fisheries Commission shall have the power and duty to establish
6 standards and adopt rules:
- 7 (1) To implement the provisions of Subchapter IV of Chapter 113 as provided in
8 G.S. 113-134.
- 9 (2) To manage the disposition of confiscated property as set forth in
10 G.S. 113-137.
- 11 (3) To govern all license requirements prescribed in Article 14A of Chapter 113
12 of the General Statutes.
- 13 (4) To regulate the importation and exportation of fish, including non-native
14 species, and equipment that may be used in taking or processing fish,
15 including non-native species, as necessary to enhance the conservation of
16 marine and estuarine resources of the State as provided in G.S. 113-170.
- 17 (5) To regulate the possession, transportation, and disposition of seafood, as
18 provided in G.S. 113-170.4.
- 19 (6) To regulate the disposition of the young of edible fish, as provided by
20 G.S. 113-185.
- 21 (7) To manage the leasing of public grounds for mariculture, including oysters
22 and clam production, as provided in G.S. 113-202.
- 23 (8) To govern the utilization of private fisheries, as provided in G.S. 113-205.
- 24 (9) To impose further restrictions upon the throwing of fish offal in any coastal
25 fishing waters, as provided in G.S. 113-265.
- 26 (10) To regulate the location and utilization of artificial reefs in coastal waters.
- 27 (11) To regulate the placement of nets and other sports or commercial fishing
28 apparatus in coastal fishing waters with regard to navigational or recreational
29 safety as well as from a conservation standpoint.
- 30 (c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:
- 31 (1) The opening and closing of coastal fishing waters, except as to inland game
32 fish, whether entirely or only as to the taking of particular classes of fish, use
33 of particular equipment, or as to other activities.
- 34 (2) The possession, cultivation, transportation, importation, exportation, sale,
35 purchase, acquisition, and disposition of all marine and estuarine resources
36 and all related equipment, implements, vessels, and conveyances as necessary
37 to carry out its duties.
- 38 (d) The Commission may adopt rules required by the federal government for
39 grants-in-aid for coastal resource purposes that may be made available to the State by the federal
40 government. This section is to be liberally construed in order that the State and its citizens may
41 benefit from federal grants-in-aid.
- 42 (d1) The Commission may regulate participation in a fishery that is subject to a federal
43 fishery management plan if that plan imposes a quota or allocation on the State for the harvest or
44 landing of fish in the fishery. The Commission may use any additional criteria aside from holding
45 a Standard Commercial Fishing License or licenses issued under Article 14B of Chapter 113 of
46 the General Statutes to develop limited-entry fisheries. The Commission may establish a fee for
47 each license established pursuant to this subsection in an amount that does not exceed five
48 hundred dollars (\$500.00).
- 49 (d2) To ensure an orderly transition from one permit year to the next, the Division may
50 issue a permit prior to July 1 of the permit year for which the permit is valid. Revenue that the
51 Division receives for the issuance of a permit prior to the beginning of a permit year shall not

1 revert at the end of the fiscal year in which the revenue is received and shall be credited and
2 available to the Division for the permit year in which the permit is valid.

3 (e) The Commission may adopt rules to implement or comply with a fishery management
4 plan adopted by the Atlantic States Marine Fisheries Commission or adopted by the United States
5 Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and
6 Management Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission
7 may adopt temporary rules under this subsection at any time within six months of the adoption
8 or amendment of a fishery management plan or the notification of a change in management
9 measures needed to remain in compliance with a fishery management plan.

10 (e1) A supermajority of the Commission shall be six members. A supermajority shall be
11 necessary to override recommendations from the Division of Marine Fisheries regarding
12 measures needed to end overfishing or to rebuild overfished stocks.

13 (f) The Commission shall adopt rules as provided in this Chapter. All rules adopted by
14 the Commission shall be enforced by the Department of Environmental Quality.

15 (g) As a quasi-judicial agency, the Commission, in accordance with Article IV, Section
16 3 of the Constitution of North Carolina, has those judicial powers reasonably necessary to
17 accomplish the purposes for which it was created.

18 (h) Social security numbers and identifying information obtained by the Commission or
19 the Division of Marine Fisheries shall be treated as provided in G.S. 132-1.10. For purposes of
20 this subsection, "identifying information" also includes a person's mailing address, residence
21 address, e-mail address, Commission-issued customer identification number, date of birth, and
22 telephone number.

23 (i) The Commission may adopt rules to exempt individuals who participate in organized
24 fishing events held in coastal or joint fishing waters from recreational fishing license
25 requirements for the specified time and place of the event when the purpose of the event is
26 consistent with the conservation objectives of the Commission."

27 **SECTION 2.2.** G.S. 143B-289.54 reads as rewritten:

28 "**§ 143B-289.54. Marine Fisheries Commission – members; appointment; term; oath;**
29 **ethical standards; removal; compensation; ~~staff~~; ~~staff~~; transparency.**

30 (a) Members, Selection. – The Marine Fisheries Commission shall consist of nine
31 members appointed by the Governor as follows:

- 32 (1) One person actively engaged in, or recently retired from, commercial fishing
33 as demonstrated by currently or recently deriving at least fifty percent (50%)
34 of annual earned income from ~~taking and selling~~ selling wild or aquacultured
35 fishery resources in coastal fishing waters of the State. The spouse of a
36 commercial fisherman who meets the criteria of this subdivision may be
37 appointed under this subdivision.
- 38 (2) One person actively engaged in, or recently retired from, commercial fishing
39 as demonstrated by currently or recently deriving at least fifty percent (50%)
40 of annual earned income from ~~taking and selling fishery~~ selling wild or
41 aquacultured resources in coastal fishing waters of the State. The spouse of a
42 commercial fisherman who meets the criteria of this subdivision may be
43 appointed under this subdivision.
- 44 (3) One person actively connected with, and experienced as, a licensed fish dealer
45 or in seafood processing or distribution as demonstrated by deriving at least
46 fifty percent (50%) of annual earned income from activities involving the
47 buying, selling, processing, or distribution of seafood landed in this State. The
48 spouse of a person qualified under this subdivision may be appointed provided
49 that the spouse is actively involved in the qualifying business.

- 1 (4) One person actively engaged in recreational sports fishing in coastal waters in
2 this State. An appointee under this subdivision may not derive more than ten
3 percent (10%) of annual earned income from sports fishing activities.
- 4 (5) One person actively engaged in recreational sports fishing in coastal waters in
5 this State. An appointee under this subdivision may not derive more than ten
6 percent (10%) of annual earned income from sports fishing activities.
- 7 (6) One person actively engaged in the for-hire or sports fishing industry as
8 demonstrated by deriving at least fifty percent (50%) of annual earned income
9 from selling goods or services in this State. industry. The spouse of a person
10 qualified under this subdivision may be appointed provided that the spouse is
11 actively involved in the qualifying business.
- 12 (7) One person having general knowledge of and experience related to subjects
13 and persons regulated by the Commission.
- 14 (8) One person having general knowledge of and experience related to subjects
15 and persons regulated by the Commission.
- 16 (9) One person who is a recognized fisheries scientist having special training and
17 expertise in marine and estuarine fisheries biology, ecology, population
18 dynamics, water quality, habitat protection, or similar knowledge. A person
19 appointed under this subdivision may not receive more than ten percent (10%)
20 of annual earned income from either the commercial or sports fishing
21 industries, including the processing and distribution of seafood.
- 22 (b) Residential Qualifications. – For purposes of providing regional representation on the
23 Commission, the following three coastal regions of the State are designated: (i) Northeast Coastal
24 Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford,
25 Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties, (ii) Central
26 Coastal Region comprised of Beaufort, Carteret, Craven, Hyde, Jones, and Pamlico Counties;
27 and (iii) Southeast Coastal Region comprised of Bladen, Brunswick, Columbus, New Hanover,
28 Onslow, and Pender Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of
29 subsection (a) of this section shall be residents of one of the coastal regions of the State. The
30 membership of the Commission shall include at least one person who is a resident of ~~each of the~~
31 ~~three coastal regions of the State.~~ the Northeast Coastal Region, one person who is a resident of
32 the Central Coastal Region, and one person who is a resident of the Southeast Coastal Region.
- 33 (c) Additional Considerations. – In making appointments to the Commission, the
34 Governor shall provide for appropriate representation of women and minorities on the
35 Commission.
- 36 (d) Terms. – The term of office of members of the Commission is three years. A member
37 may be reappointed to any number of successive three-year terms. Upon the expiration of a
38 three-year term, a member shall continue to serve until a successor is appointed and duly qualified
39 as provided by G.S. 128-7. The term of members appointed under subdivisions (1), (4), and (7)
40 of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The
41 term of members appointed under subdivisions (2), (5), and (8) of subsection (a) of this section
42 shall expire on 30 June of years that precede by one year those years that are evenly divisible by
43 three. The term of members appointed under subdivisions (3), (6), and (9) of subsection (a) of
44 this section shall expire on 30 June of years that follow by one year those years that are evenly
45 divisible by three.
- 46 (e) Vacancies. – An appointment to fill a vacancy shall be for the unexpired balance of
47 the term.
- 48 (f) Oath of Office. – Each member of the Commission, before assuming the duties of
49 office, shall take an oath of office as provided in Chapter 11 of the General Statutes.
- 50 (g) Ethical Standards. –

- 1 (1) Disclosure statements. – Any person under consideration for appointment to
2 the Commission shall provide both a financial disclosure statement and a
3 potential bias disclosure statement to the Governor. A financial disclosure
4 statement shall include statements of the nominee's financial interests in and
5 related to State fishery resources use, licenses issued by the Division of
6 Marine Fisheries held by the nominee or any business in which the nominee
7 has a financial interest, and uses made by the nominee or by any business in
8 which the nominee has a financial interest of the regulated resources. A
9 potential bias disclosure statement shall include a statement of the nominee's
10 membership or other affiliation with, including offices held, in societies,
11 organizations, or advocacy groups pertaining to the management and use of
12 the State's coastal fishery resources. Disclosure statements shall be treated as
13 public records under Chapter 132 of the General Statutes and shall be updated
14 on an annual basis.
- 15 (2) Voting/conflict of interest. – A member of the Commission shall not vote on
16 any issue before the Commission that would have a "significant and
17 predictable effect" on the member's financial interest. For purposes of this
18 subdivision, "significant and predictable effect" means there is or may be a
19 close causal link between the decision of the Commission and an expected
20 disproportionate financial benefit to the member that is shared only by a
21 minority of persons within the same industry sector or gear group. A member
22 of the Commission shall also abstain from voting on any petition submitted
23 by an advocacy group of which the member is an officer or sits as a member
24 of the advocacy group's board of directors. A member of the Commission shall
25 not use the member's official position as a member of the Commission to
26 secure any special privilege or exemption of substantial value for any person.
27 No member of the Commission shall, by the member's conduct, create an
28 appearance that any person could improperly influence the member in the
29 performance of the member's official duties.
- 30 (3) Regular attendance. – It shall be the duty of each member of the Commission
31 to regularly attend meetings of the Commission.
- 32 (h) Removal. – The Governor may remove, as provided in G.S. 143B-13, any member of
33 the Commission for misfeasance, malfeasance, or nonfeasance.
- 34 (i) Office May Be Held Concurrently With Others. – The office of member of the Marine
35 Fisheries Commission may be held concurrently with any other elected or appointed office, as
36 authorized by Article VI, Section 9, of the Constitution of North Carolina.
- 37 (j) Compensation. – Members of the Commission who are State officers or employees
38 shall receive no per diem compensation for serving on the Commission, but shall be reimbursed
39 for their expenses in accordance with G.S. 138-6. Members of the Commission who are full-time
40 salaried public officers or employees other than State officers or employees shall receive no per
41 diem compensation for serving on the Commission, but shall be reimbursed for their expenses in
42 accordance with G.S. 138-6 in the same manner as State officers or employees. All other
43 Commission members shall receive per diem compensation and reimbursement in accordance
44 with the compensation rate established in G.S. 93B-5.
- 45 (k) Staff. – All clerical and other services required by the Commission shall be supplied
46 by the Fisheries Director and the Department.
- 47 (l) Legal Services. – The Attorney General shall: (i) act as attorney for the Commission;
48 (ii) at the request of the Commission, initiate actions in the name of the Commission; and (iii)
49 represent the Commission in any appeal or other review of any order of the Commission.
- 50 (m) ~~Transparency.~~ Commission Communications. – The Commission shall establish
51 official e-mail accounts for all Commission members. These e-mail accounts shall be used for

1 all electronic communications related to the work of the Commission and those communications
2 shall be considered public records under Chapter 132 of the General Statutes. Other than routine
3 communication sent from Division staff to all Commission members, ~~electronic~~ any electronic,
4 oral, or other communications among a majority of the Commission shall be an "official meeting"
5 as defined in Article 33C of Chapter 143 of the General Statutes. Failure to comply with this
6 subsection shall be subject to investigation by the Bipartisan State Board of Elections and Ethics
7 Enforcement as unethical conduct and removal under subsection (h) of this section as
8 misfeasance. Nothing in this subsection is intended to limit or eliminate any privilege existing at
9 common law or under statute."

10 **SECTION 2.3.** G.S. 143B-289.57 is repealed.

11 **SECTION 2.4.** Notwithstanding the amendments to G.S. 143B-289.54 set out in
12 Section 2.2 of this act, a person who is serving on the Marine Fisheries Commission at the time
13 this act becomes law may continue to serve for their remaining term even if they no longer meet
14 the qualifications of G.S. 143B-289.54, as amended.

15 16 **AMEND ENFORCEMENT OF MARINE FISHERIES LAWS**

17 **SECTION 3.1.** G.S. 113-136 reads as rewritten:

18 **"§ 113-136. Enforcement authority of inspectors and protectors; refusal to obey or allow**
19 **inspection by inspectors and protectors.**

20 (a) Inspectors and protectors are granted the powers of peace officers anywhere in this
21 State, and beyond its boundaries to the extent provided by law, in enforcing all matters within
22 their respective subject-matter jurisdiction as set out in this section.

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

30 (c) The jurisdiction of protectors extends to all matters within the jurisdiction of the
31 Wildlife Resources Commission, whether set out in this Chapter, Chapter 75A, Chapter 143,
32 Chapter 143B, or elsewhere. The Wildlife Resources Commission is specifically granted
33 jurisdiction over all aspects of:

- 34 (1) Boating and water safety;
- 35 (2) Hunting and trapping;
- 36 (3) Fishing, exclusive of fishing under the jurisdiction of the Marine Fisheries
37 Commission; and
- 38 (4) Activities in woodlands and on inland waters governed by G.S. 106-908 to
39 G.S. 106-910.

40 In addition, protectors have jurisdiction over all offenses involving property of or leased by the
41 Wildlife Resources Commission or occurring on wildlife refuges, game lands, or boating and
42 fishing access areas managed by the Wildlife Resources Commission. The authority of protectors
43 over offenses on public hunting grounds is governed by the jurisdiction granted the Commission
44 in G.S. 113-264(c).

45 (d) Inspectors and protectors are additionally authorized to arrest without warrant under
46 the terms of G.S. 15A-401(b) for felonies, for breaches of the peace, for assaults upon them or in
47 their presence, and for other offenses evincing a flouting of their authority as enforcement
48 officers or constituting a threat to public peace and order which would tend to subvert the
49 authority of the State if ignored. In particular, they are authorized, subject to the direction of the
50 administrative superiors, to arrest for violations of G.S. 14-223, 14-225, 14-269, and 14-277.

1 (d1) In addition to law enforcement authority granted elsewhere, a protector has the
2 authority to enforce criminal laws under the following circumstances:

- 3 (1) When the protector has probable cause to believe that a person committed a
4 criminal offense in his presence and at the time of the violation the protector
5 is engaged in the enforcement of laws otherwise within his jurisdiction; or
6 (2) When the protector is asked to provide temporary assistance by the head of a
7 State or local law enforcement agency or his designee and the request is within
8 the scope of the agency's subject matter jurisdiction.

9 While acting pursuant to this subsection, a protector shall have the same powers invested in
10 law enforcement officers by statute or common law. When acting pursuant to (2) of this
11 subsection a protector shall not be considered an officer, employee, or agent for the state or local
12 law enforcement agency or designee asking for temporary assistance. Nothing in this subsection
13 shall be construed to expand the authority of protectors to initiate or conduct an independent
14 investigation into violations of criminal laws outside the scope of their subject matter or territorial
15 jurisdiction.

16 (e) Inspectors and protectors may serve arrest warrants, search warrants, orders for arrest,
17 criminal summonses, subpoenas, and all other process connected with any cases within their
18 subject-matter jurisdiction. In the exercise of their law enforcement powers, inspectors are
19 subject to provisions relating to police officers in general set out in Chapter 15, Chapter 15A,
20 and elsewhere.

21 (f) Inspectors and protectors are authorized to stop temporarily any persons they
22 reasonably believe to be engaging in activity regulated by their respective agencies to determine
23 whether such activity is being conducted within the requirements of the law, including license
24 requirements. If the person stopped is in a motor vehicle being driven at the time and the inspector
25 or protector in question is also in a motor vehicle, the inspector or protector is required to sound
26 a siren or activate a special light, bell, horn, or exhaust whistle approved for law-enforcement
27 vehicles under the provisions of G.S. 20-125(b) or 20-125(c).

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

36 (h), (i) Repealed by Session Laws 1979, c. 830, s. 1.

37 (j) The refusal of any person to stop in obedience to the directions of an inspector or
38 protector acting under the authority of this section is unlawful. A violation of this subsection is a
39 Class 3 misdemeanor and may include a fine of not less than fifty dollars (\$50.00).

40 (k) It is unlawful to refuse to exhibit upon request by any ~~inspector, protector, protector~~
41 or other law enforcement officer any item required to be carried by any law or rule as to which
42 ~~inspectors or protectors~~ have enforcement jurisdiction. The items that must be exhibited include
43 boating safety or other equipment or any license, permit, tax receipt, certificate, or identification.
44 It is unlawful to refuse to allow ~~inspectors, protectors, protectors~~ or other law enforcement
45 officers to inspect weapons or equipment if the officer reasonably believes them to be possessed
46 incident to an activity regulated by any law or rule as to which ~~inspectors and protectors~~ have
47 enforcement jurisdiction and the officer has a reasonable suspicion that a violation has been
48 committed, except that an officer may inspect a shotgun to confirm whether it is plugged or
49 unplugged without a reasonable suspicion that a violation has been committed. It is unlawful to
50 refuse to allow ~~inspectors, protectors, protectors~~ or other law enforcement officers to inspect fish
51 or wildlife for the purpose of ensuring compliance with bag limits and size limits. Except as

1 authorized by G.S. 113-137, nothing in this section gives ~~an inspector, protector, a protector~~ or
 2 other law enforcement officer the authority to inspect, in the absence of a person in apparent
 3 control of the item to be inspected, any of the following:

4 (1) Weapons.

5 (2) Equipment, except for equipment left unattended in the normal operation of
 6 the equipment, including, but not limited to, traps, trot lines, crab pots, and
 7 fox pens.

8 (3) Fish.

9 (4) Wildlife.

10 (k1) It is unlawful to refuse to exhibit upon request by any inspector or other law
 11 enforcement officer any item required to be carried by any law or rule as to which inspectors
 12 have enforcement jurisdiction. The items that must be exhibited include boating safety or other
 13 equipment or any license, permit, tax receipt, certificate, or identification. It is unlawful to refuse
 14 to allow inspectors or other law enforcement officers to inspect equipment and fish that the
 15 officer reasonably believes to be possessed incident to an activity regulated by any law or rule as
 16 to which inspectors have enforcement jurisdiction.

17 (l) Nothing in this section authorizes searches within the curtilage of a dwelling or of the
 18 living quarters of a vessel in contravention of constitutional prohibitions against unreasonable
 19 searches and seizures."
 20

21 MISCELLANEOUS AMENDMENTS TO MARINE FISHERIES LAWS

22 SECTION 4.1. G.S. 113-129 reads as rewritten:

23 "§ 113-129. Definitions relating to resources.

24 The following definitions and their cognates apply in the description of the various marine
 25 and estuarine and wildlife resources:

26 ...

27 (12c) Non-native species. – All fish not found in the Atlantic Ocean or in coastal
 28 fishing waters.

29 ~~(12e)~~(12d) Overfished. – The condition of a fishery that occurs when the spawning
 30 stock biomass of the fishery is below the level that is adequate for the
 31 recruitment class of a fishery to replace the spawning class of the fishery.

32 ~~(12d)~~(12e) Overfishing. – Fishing that causes a level of mortality that prevents a
 33 fishery from producing a sustainable harvest.

34 ...

35 (14a) Sustainable harvest. – The amount of fish that can be taken from a fishery on
 36 a continuing basis without ~~reducing the stock biomass of the fishery or causing~~
 37 ~~the fishery to become overfished.~~overfished or reducing the stock biomass of
 38 the fishery below levels commensurate with the public trust nature of the
 39 resource.

40"

41 SECTION 4.2. G.S. 113-132(a) reads as rewritten:

42 "(a) The Marine Fisheries Commission has jurisdiction over the conservation of marine
 43 and estuarine resources. Except as may be otherwise provided by law, it has jurisdiction over all
 44 activities connected with the conservation and regulation of marine and estuarine resources,
 45 including the regulation of aquaculture facilities as defined in G.S. 106-758 which cultivate or
 46 rear marine and estuarine ~~resources-resources,~~ marine aquatic species, or non-native species."

47 SECTION 4.3. G.S. 113-170 reads as rewritten:

48 "§ 113-170. Exportation and importation of fish and equipment.

49 The Commission may adopt rules governing the importation and exportation of fish, and
 50 equipment that may be used in taking or processing fish, as necessary to enhance the conservation
 51 of marine and estuarine resources of the State. These rules may regulate, license, prohibit, or

1 restrict importation into the ~~State~~State, holding or maintaining in marine aquaculture operations
2 within the State, and exportation from the State of any and all species of fish that are native to
3 coastal fishing waters or non-native species that may thrive if introduced into these waters."

4 **SECTION 4.4.** G.S. 113-170.3(c) reads as rewritten:

5 "(c) The following records collected and compiled or received by the Department shall
6 not be considered public records within the meaning of Chapter 132 of the General Statutes, but
7 shall be confidential and shall be used only for the equitable and efficient administration and
8 enforcement of this Article or for determining conservation policy, and shall not be disclosed
9 except when required by the order of a court of competent jurisdiction: all records, accounts, and
10 reports that licensees are required by the Commission to make, keep, and exhibit pursuant to the
11 provisions of this section, and all records, accounts, and memoranda compiled by the Department
12 from records, accounts, and reports of licensees and from investigations and inspections,
13 containing data and information concerning the business and operations of licensees reflecting
14 their assets, liabilities, inventories, revenues, and profits; the number, capacity, capability, and
15 type of fishing vessels owned and operated; the type and quantity of fishing gear used; the catch
16 of fish or other seafood by species in numbers, size, weight, quality, and value; the areas in which
17 fishing was engaged in; the location of catch; the time of fishing, number of hauls, and the
18 disposition of the fish and other ~~seafood~~seafood; and confidential federal fishery data and
19 records concerning species significant to the State that are maintained by and received from the
20 National Oceanic and Atmospheric Administration. The Department may compile statistical
21 information in any aggregate or summary form that does not directly or indirectly disclose the
22 identity of any licensee who is a source of the information, and any compilation of statistical
23 information by the Department shall be a public record open to inspection and examination by
24 any person, and may be disseminated to the public by the Department."

25 **SECTION 4.5.(a)** G.S. 113-181 is repealed.

26 **SECTION 4.5.(b)** Article 15 of Chapter 113 of the General Statutes is amended by
27 adding a new section to read:

28 "**§ 113-181.1. Duties and powers of Department.**

29 (a) The Department shall administer and enforce the provisions of this Subchapter
30 pertaining to the conservation and management of marine and estuarine resources and develop
31 and implement Fishery Management Plans and Fishery Management Plan Amendments pursuant
32 to G.S. 113-182.1 and Coastal Habitat Protection Plans pursuant to G.S. 143B-279.8. The
33 Department may enter into reciprocal agreements with other jurisdictions with regard to the
34 conservation of marine and estuarine resources.

35 (b) The Department is directed to make every reasonable effort to carry out the duties
36 imposed in this Subchapter."

37 **SECTION 4.6.** G.S. 113-215 reads as rewritten:

38 "**§ 113-215. Definitions.**

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

- 41 (1) Marine aquaculture. – The propagation and rearing of marine aquatic species
42 and non-native species in controlled or selected environments, including, but
43 not limited to, ocean ranching, marine hatcheries, and other deep water fish
44 farming operations in the coastal fishing waters of the State and, to the extent
45 not inconsistent with federal law, to the limits of the United States exclusive
46 economic zone, as that term is defined in the Magnuson-Stevens Fishery
47 Conservation and Management Act, 16 U.S.C. § 1801, et seq.
- 48 (2) Marine aquaculture lease. – A lease of the public bottom and superjacent water
49 column granted by the Secretary for marine aquaculture.
- 50 (3) Marine aquatic species. – Any species of finfish, mollusk, crustacean, or other
51 aquatic invertebrate, amphibian, reptile, or aquatic plant, and including, but

1 not limited to, "fish" and "fishes," as defined in G.S. 113-129(7), found
2 exclusively or for part of its life cycle in coastal fishing waters."

3 **SECTION 4.7.** G.S. 113-228 reads as rewritten:

4 **"§ 113-228. Adoption of federal regulations.**

5 To the extent that the Department is granted authority in this Subchapter over subject matter
6 as to which there is concurrent federal or interstate jurisdiction, the Marine Fisheries Commission
7 in its discretion may by reference in its rules adopt relevant provisions of federal ~~laws and~~
8 ~~regulations~~ or interstate laws, regulations, and management measures as State rules. To prevent
9 confusion or conflict of jurisdiction in enforcement, the Marine Fisheries Commission is exempt
10 from any conflicting limitations in G.S. 150B-21.6 so that it may provide for automatic
11 incorporation by reference into its rules of future changes within any particular set of federal laws
12 or regulations relating to some subject clearly within the jurisdiction of the Department."
13

14 **SEVERABILITY CLAUSE AND EFFECTIVE DATE**

15 **SECTION 5.1.** If any provision of this act or the application thereof to any person
16 or circumstances is held invalid, such invalidity shall not affect other provisions or applications
17 of this act that can be given effect without the invalid provision or application, and, to this end,
18 the provisions of this act are declared to be severable.

19 **SECTION 5.2.** Except as otherwise provided, this act is effective when it becomes
20 law.