

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

S

2

SENATE BILL 317

Agriculture, Energy, and Environment Committee Substitute Adopted 3/30/21

Short Title: Marine Fisheries Reform.

(Public)

Sponsors:

Referred to:

March 18, 2021

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7 **SECTION 1.1.(a)** G.S. 113-182.1 is repealed.

8 **SECTION 1.1.(b)** Article 15 of Chapter 113 of the General Statutes is amended by
9 adding a new section to read:

10 **"§ 113-182.2. Fishery Management Plans.**

11 (a) The Division of Marine Fisheries shall prepare Fishery Management Plans and
12 Fishery Management Plan Amendments for adoption by the Marine Fisheries Commission to
13 ensure a sustainable harvest for all significant species and for State marine and estuarine fisheries
14 identified by the Division that are not included under a federal or interstate management plan.
15 The Division shall establish Fishery Management Plans and Fishery Management Plan
16 Amendments based on fishery management standards and best available scientific, technical, and
17 economic data. Management measures adopted by the Commission for inclusion in a Fishery
18 Management Plan or Fishery Management Plan Amendment shall be consistent with such
19 standards and data. Fishery Management Plans and Fishery Management Plan Amendments shall
20 be developed in accordance with a schedule established by the Division. The Division may
21 establish guidance criteria as to the contents and development process of Fishery Management
22 Plans and Fishery Management Plan Amendments.

23 (b) Each Fishery Management Plan and Fishery Management Plan Amendment shall be
24 designed to reflect that fishery's unique fishing practices so that one Fishery Management Plan
25 or Fishery Management Plan Amendment may apply to a specific fishery, while other Fishery
26 Management Plans or Fishery Management Plan Amendments may use alternative approaches
27 such as ecosystem-based management, gear, or geographic areas. Each Fishery Management
28 Plan or Fishery Management Plan Amendment shall:

29 (1) Contain necessary information pertaining to the fishery or fisheries, including
30 management recommendations, strategies, goals, and objectives; species
31 stock assessments, when applicable; fishery habitat and water quality
32 considerations consistent with Coastal Habitat Protection Plans adopted
33 pursuant to G.S. 143B-279.8; and social and economic impact of the fishery
34 to the State; and associated fishery ecosystem impacts.



- 1 (2) Recommend management actions, including adaptive management measures
2 that address the long-term viability, recovery, and conservation of stocks, to
3 ensure a sustainable harvest.
- 4 (3) Include conservation and management measures that will provide the greatest
5 overall benefit to the State, particularly with respect to commercial and
6 recreational opportunities, and the protection of marine ecosystems.
- 7 (4) Specify a time period, not to exceed two years from the date of the adoption
8 of the Fishery Management Plan or Fishery Management Plan Amendment,
9 to end overfishing. This subdivision shall not apply if the Fisheries Director
10 determines that the biology of the fish, environmental conditions, or lack of
11 sufficient scientific or technical data make implementing the requirements of
12 this subdivision incompatible with fishery management standards.
- 13 (5) Specify a time period, not to exceed 10 years from the date of the adoption of
14 the Fishery Management Plan or Fishery Management Plan Amendment, for
15 achieving a sustainable harvest. Notwithstanding subsequent rules or
16 proclamations, adoption of the Fishery Management Plan or Fishery
17 Management Plan Amendment means the time when the Commission votes
18 affirmatively to adopt the Fishery Management Plan or Fishery Management
19 Plan Amendment. This subdivision shall not apply if the Fisheries Director
20 determines that the biology of the fish, environmental conditions, or lack of
21 sufficient scientific or technical data make implementing the requirements of
22 this subdivision incompatible with fishery management standards.
- 23 (6) Each Fishery Management Plan or Fishery Management Plan Amendment
24 shall include a rebuilding schedule to achieve and maintain a sustainable
25 harvest. This subdivision shall not apply if the Fisheries Director determines
26 that the biology of the fish, environmental conditions, or lack of sufficient
27 scientific or technical data make implementing the requirements of this
28 subdivision incompatible with fishery management standards.
- 29 (c) Once an initial Fishery Management Plan is adopted, management recommendations,
30 strategies, and measures shall be modified only through a Fishery Management Plan Amendment
31 consistent with G.S. 113-221.1. Fishery Management Plan Amendments may be specific to
32 single or multiple management priorities and may be based on information used to develop the
33 Fishery Management Plan.
- 34 (d) In the event of new, unanticipated, or unforeseen data, the time periods prescribed in
35 a Fishery Management Plan or Fishery Management Plan Amendment may be adjusted
36 consistent with subdivisions (4) and (5) of subsection (b) of this section as necessary by the
37 Fisheries Director and proposed for adoption by the Commission. Any adjustments to the time
38 periods to end overfishing and achieve a sustainable harvest shall be determined by the Division
39 using science-based methodology.
- 40 (e) To assist the Division in the development of each Fishery Management Plan and
41 Fishery Management Plan Amendment, the Fisheries Director shall provide a list of qualified
42 candidates to the Chair of the Marine Fisheries Commission from which the Chair shall appoint
43 members to each Fishery Management Plan Advisory Committee. Each Fishery Management
44 Plan Advisory Committee shall be composed of commercial fishermen, recreational fishermen,
45 and scientists, all with expertise in the fishery for which the Fishery Management Plan or Fishery
46 Management Plan Amendment is being developed.
- 47 (f) The Division shall consult with the regional advisory committees established pursuant
48 to G.S. 143B-289.57(e) regarding the preparation of each Fishery Management Plan or Fishery
49 Management Plan Amendment. Before submission of a Fishery Management Plan or Fishery
50 Management Plan Amendment for review by the Joint Legislative Oversight Committee on
51 Agriculture and Natural and Economic Resources, the Division shall seek advice from the

1 regional advisory committees and review any comment or recommendation that a regional
2 advisory committee submits to the Division within the time limits established in the schedule for
3 the development and adoption of Fishery Management Plans or Fishery Management Plan
4 Amendments. Before the Commission adopts a Fishery Management Plan or Fishery
5 Management Plan Amendment, the Commission shall consider any comment or recommendation
6 regarding the management measure that a regional advisory committee submits to the Division.

7 (g) Each Fishery Management Plan or Fishery Management Plan Amendment shall be
8 reviewed every five years to ensure that management measures meet the rebuilding schedule
9 defined in the Fishery Management Plan or Fishery Management Plan Amendment to achieve a
10 sustainable harvest. An annual update shall be presented to the Commission during the
11 Commission's first business meeting each fiscal year. A Fishery Management Plan or Fishery
12 Management Plan Amendment may be retired from the schedule when it is determined that the
13 objectives of the Fishery Management Plan or Fishery Management Plan Amendment are assured
14 under a federal or interstate plan or the species or stock is no longer a significant fishery in the
15 State.

16 (h) The Division may revise the schedule for development of Fishery Management Plans
17 and Fishery Management Plan Amendments. The Commission may provide recommendations
18 to the Division regarding such revisions. The annual update process shall guide the Division
19 regarding potential schedule adjustments necessary to restore, conserve, or protect the State's
20 marine and estuarine resources for a sustainable harvest.

21 (i) The Secretary of Environmental Quality shall monitor progress in the development
22 and adoption of Fishery Management Plans and Fishery Management Plan Amendments. The
23 Secretary shall report to the Joint Legislative Oversight Committee on Agriculture and Natural
24 and Economic Resources and the Fiscal Research Division within 30 days of the completion of
25 each Fishery Management Plan or Fishery Management Plan Amendment. The Committee shall
26 review each Fishery Management Plan and Fishery Management Plan Amendment within 30
27 days of the date the Fishery Management Plan or Fishery Management Plan Amendment is
28 submitted by the Secretary. The Committee may submit comments and recommendations on the
29 Fishery Management Plan or Fishery Management Plan Amendment to the Secretary within 30
30 days of the date the Fishery Management Plan or Fishery Management Plan Amendment was
31 submitted by the Secretary.

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

34 (k) To achieve sustainable harvest under a Fishery Management Plan, the Marine
35 Fisheries Commission may include in the Plan a recommendation that the General Assembly
36 limit the number of fishermen authorized to participate in the fishery. The Commission may
37 recommend that the General Assembly limit participation in a fishery only if the Commission
38 determines that sustainable harvest cannot otherwise be achieved. In determining whether to
39 recommend that the General Assembly limit participation in a fishery, the Commission shall
40 consider all of the following 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 (l) 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.(c)** Sections 1.1(a) and 1.1(b) of this act become effective July 1,
15 2021. G.S. 113-182.2, as enacted by Section 1.1(b) of this act, applies to Fishery Management
16 Plans and Fishery Management Plan Amendments developed on or after that date. Fishery
17 Management Plans and Fishery Management Plan Amendments that were under development
18 prior to July 1, 2021, shall continue under the process set out in G.S. 113-182.1, as repealed by
19 Section 1.1(a) of this act.

20 **SECTION 1.2.** G.S. 113-221.1 reads as rewritten:

21 "**§ 113-221.1. Proclamations; emergency review.**

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

24 (b) The Marine Fisheries Commission may delegate to the Fisheries Director the
25 authority to issue proclamations suspending or implementing, in whole or in part, particular rules
26 of the Commission ~~that whose application~~ may be affected by variable conditions. Proclamations
27 shall be consistent with management measures adopted pursuant to G.S. 113-182.2 or as
28 otherwise provided by rules of the Commission. These proclamations shall be issued by the
29 Fisheries Director or by a person designated by the Fisheries Director. Except as provided in this
30 subsection, all proclamations shall state the hour and date upon which they become effective and
31 shall be issued at least 48 hours in advance of the effective date and time. A proclamation that
32 prohibits the taking of certain fisheries resources for reasons of public health or that governs a
33 quota-managed fishery may be made effective immediately upon issuance. A proclamation to
34 reopen the taking of certain fisheries resources closed for reasons of public health shall be issued
35 at least 12 hours in advance of the effective date and time of the reopening. A person who violates
36 a proclamation that is made effective immediately upon issuance shall not be charged with a
37 criminal offense for the violation if the violation occurred between the time of issuance and 48
38 hours after the issuance and the person did not have actual notice of the issuance of the
39 proclamation. Fisheries resources taken or possessed by any person in violation of any
40 proclamation may be seized regardless of whether the person had actual notice of the
41 proclamation. A permanent file of the text of all proclamations shall be maintained in the office
42 of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any
43 civil or criminal proceeding. The Fisheries Director shall make every reasonable effort to give
44 actual notice of the terms of any proclamation to persons who may be affected by the
45 proclamation. Reasonable effort includes a press release to communications media, posting of a
46 notice at docks and other places where persons affected may gather, personal communication by
47 inspectors and other agents of the Fisheries Director, and other measures designed to reach the
48 persons who may be affected. It is a defense to an enforcement action for a violation of a
49 proclamation that a person was prevented from receiving notice of the proclamation due to a
50 natural disaster or other act of God occasioned exclusively by violence of nature without

1 interference of any human agency and that could not have been prevented or avoided by the
2 exercise of due care or foresight.

3 (c) All persons who may be affected by proclamations issued by the Fisheries Director
4 are under a duty to keep themselves informed of current proclamations. It is no defense in any
5 criminal prosecution for the defendant to show that the defendant in fact received no notice of a
6 particular proclamation. In any prosecution for violation of a proclamation, or in which proof of
7 matter contained in a proclamation is involved, the Department is deemed to have complied with
8 publication procedures; and the burden is on the defendant to show, by the greater weight of the
9 evidence, substantial failure of compliance by the Department with the required publication
10 procedures.

11 (d) Pursuant to the request of five or more members of the Marine Fisheries Commission,
12 the Chair of the Marine Fisheries Commission may call an emergency meeting of the
13 Commission to review an issuance or proposed issuance of proclamations under the authority
14 delegated to the Fisheries Director pursuant to subsection (b) of this section or to review the
15 desirability of directing the Fisheries Director to issue a proclamation to prohibit or allow the
16 taking of certain fisheries ~~resources-resources, except for management measures already adopted~~
17 pursuant to G.S. 113-182.2. At least 48 hours prior to any emergency meeting called pursuant to
18 this subsection, a public announcement of the meeting shall be issued that describes the action
19 requested by the members of the Marine Fisheries Commission. The Department shall make
20 every reasonable effort to give actual notice of the meeting to persons who may be affected. After
21 its review is complete, the Marine Fisheries Commission, consistent with its duty to protect,
22 preserve, and enhance the commercial and sports fisheries resources of the State, may approve,
23 cancel, or modify the previously issued or proposed proclamation under review or may direct the
24 Fisheries Director to issue a proclamation that prohibits or allows the taking of certain fisheries
25 resources. An emergency meeting called pursuant to this subsection and any resulting orders
26 issued by the Marine Fisheries Commission are exempt from the provisions of Article 2A of
27 Chapter 150B of the General Statutes. The decisions of the Marine Fisheries Commission shall
28 be the final decision of the State and shall not be set aside on judicial review unless found to be
29 arbitrary and capricious."
30

31 **AMEND MARINE FISHERIES COMMISSION**

32 **SECTION 2.1.** G.S. 143B-289.52 reads as rewritten:

33 "**§ 143B-289.52. Marine Fisheries Commission – powers and duties.**

34 (a) The Marine Fisheries Commission shall adopt rules to be followed in the
35 management, protection, preservation, and enhancement of the marine and estuarine resources
36 within its jurisdiction, as described in G.S. 113-132, including commercial and sports fisheries
37 resources. Rules adopted by the Commission and management measures included in the rules
38 shall be based on recognized fishery management standards and the best available scientific,
39 technical, and economic data. The Marine Fisheries Commission shall have the power and duty:

- 40 (1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of
41 marine and estuarine resources in coastal fishing waters with respect to:
 - 42 a. Time, place, character, or dimensions of any methods or equipment
43 that may be employed in taking fish.
 - 44 b. Seasons for taking fish.
 - 45 c. Size limits on and maximum quantities of fish that may be taken,
46 possessed, bailed to another, transported, bought, sold, or given away.
- 47 (2) To provide fair regulation of commercial and recreational fishing groups in
48 the interest of the public.
- 49 (3) To adopt rules and take all steps necessary to develop and improve
50 mariculture, including the cultivation, harvesting, and marketing of shellfish

- 1 and other marine resources in the State, involving the use of public grounds
2 and private beds as provided in G.S. 113-201.
- 3 (4) To close areas of public bottoms under coastal fishing waters for such time as
4 may be necessary in any program of propagation of shellfish as provided in
5 G.S. 113-204.
- 6 (5) In the interest of conservation of the marine and estuarine resources of the
7 State, to institute an action in the superior court to contest the claim of title or
8 claimed right of fishery in any navigable waters of the State registered with
9 the Department as provided in G.S. 113-206(d).
- 10 (6) To make reciprocal agreements with other jurisdictions respecting any of the
11 matters governed in this Subchapter as provided by G.S. 113-223.
- 12 (7) To adopt relevant provisions of federal laws and regulations as State rules
13 pursuant to G.S. 113-228.
- 14 (8) To delegate to the Fisheries Director the authority by proclamation to suspend
15 or implement, in whole or in part, a particular rule of the Commission that
16 may be affected by variable conditions or circumstances to a fishery resource
17 or habitat as provided in G.S. 113-221.1.
- 18 (9) To comment on and otherwise participate in the determination of permit
19 applications received by State agencies that may have an effect on the marine
20 and estuarine resources of the State.
- 21 (10) To adopt Fishery Management Plans ~~as provided in G.S. 113-182.1, to~~
22 ~~establish a Priority List to determine the order in which Fishery Management~~
23 ~~Plans are developed, to establish a Schedule for the development and adoption~~
24 ~~of each Fishery Management Plan, and to establish guidance criteria as to the~~
25 ~~contents of Fishery Management Plans and Fishery Management Plan~~
26 Amendments as provided in G.S. 113-182.2.
- 27 (11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.
- 28 (12) Except as may otherwise be provided, to make the final agency decision in all
29 contested cases involving matters within the jurisdiction of the Commission.
- 30 (13) To adopt rules to define fishing gear as either recreational gear or commercial
31 gear.
- 32 (b) The Marine Fisheries Commission shall have the power and duty to establish
33 standards and adopt rules:
- 34 (1) To implement the provisions of Subchapter IV of Chapter 113 as provided in
35 G.S. 113-134.
- 36 (2) To manage the disposition of confiscated property as set forth in
37 G.S. 113-137.
- 38 (3) To govern all license requirements prescribed in Article 14A of Chapter 113
39 of the General Statutes.
- 40 (4) To regulate the importation and exportation of fish, including non-native
41 species, and equipment that may be used in taking or processing fish,
42 including non-native species, as necessary to enhance the conservation of
43 marine and estuarine resources of the State as provided in G.S. 113-170.
- 44 (5) To regulate the possession, transportation, and disposition of seafood, as
45 provided in G.S. 113-170.4.
- 46 (6) To regulate the disposition of the young of edible fish, as provided by
47 G.S. 113-185.
- 48 (7) To manage the leasing of public grounds for mariculture, including oysters
49 and clam production, as provided in G.S. 113-202.
- 50 (8) To govern the utilization of private fisheries, as provided in G.S. 113-205.

- 1 (9) To impose further restrictions upon the throwing of fish offal in any coastal
2 fishing waters, as provided in G.S. 113-265.
- 3 (10) To regulate the location and utilization of artificial reefs in coastal waters.
- 4 (11) To regulate the placement of nets and other sports or commercial fishing
5 apparatus in coastal fishing waters with regard to navigational or recreational
6 safety as well as from a conservation standpoint.
- 7 (c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:
- 8 (1) The opening and closing of coastal fishing waters, except as to inland game
9 fish, whether entirely or only as to the taking of particular classes of fish, use
10 of particular equipment, or as to other activities.
- 11 (2) The possession, cultivation, transportation, importation, exportation, sale,
12 purchase, acquisition, and disposition of all marine and estuarine resources
13 and all related equipment, implements, vessels, and conveyances as necessary
14 to carry out its duties.
- 15 (d) The Commission may adopt rules required by the federal government for
16 grants-in-aid for coastal resource purposes that may be made available to the State by the federal
17 government. This section is to be liberally construed in order that the State and its citizens may
18 benefit from federal grants-in-aid.
- 19 (d1) The Commission may regulate participation in a fishery that is subject to a federal
20 fishery management plan if that plan imposes a quota or allocation on the State for the harvest or
21 landing of fish in the fishery. The Commission may use any additional criteria aside from holding
22 a Standard Commercial Fishing License or licenses issued under Article 14B of Chapter 113 of
23 the General Statutes to develop limited-entry fisheries. The Commission may establish a fee for
24 each license established pursuant to this subsection in an amount that does not exceed five
25 hundred dollars (\$500.00).
- 26 (d2) To ensure an orderly transition from one permit year to the next, the Division may
27 issue a permit prior to July 1 of the permit year for which the permit is valid. Revenue that the
28 Division receives for the issuance of a permit prior to the beginning of a permit year shall not
29 revert at the end of the fiscal year in which the revenue is received and shall be credited and
30 available to the Division for the permit year in which the permit is valid.
- 31 (e) The Commission may adopt rules to implement or comply with a fishery management
32 plan adopted by the Atlantic States Marine Fisheries Commission or adopted by the United States
33 Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and
34 Management Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission
35 may adopt temporary rules under this subsection at any time within six months of the adoption
36 or amendment of a fishery management plan or the notification of a change in management
37 measures needed to remain in compliance with a fishery management plan.
- 38 (e1) A supermajority of the Commission shall be six members. A supermajority shall be
39 necessary to override recommendations from the Division of Marine Fisheries regarding
40 measures needed to end overfishing or to rebuild overfished stocks.
- 41 (f) The Commission shall adopt rules as provided in this Chapter. All rules adopted by
42 the Commission shall be enforced by the Department of Environmental Quality.
- 43 (g) As a quasi-judicial agency, the Commission, in accordance with Article IV, Section
44 3 of the Constitution of North Carolina, has those judicial powers reasonably necessary to
45 accomplish the purposes for which it was created.
- 46 (h) Social security numbers and identifying information obtained by the Commission or
47 the Division of Marine Fisheries shall be treated as provided in G.S. 132-1.10. For purposes of
48 this subsection, "identifying information" also includes a person's mailing address, residence
49 address, e-mail address, Commission-issued customer identification number, date of birth, and
50 telephone number.

1 (i) The Commission may adopt rules to exempt individuals who participate in organized
2 fishing events held in coastal or joint fishing waters from recreational fishing license
3 requirements for the specified time and place of the event when the purpose of the event is
4 consistent with the conservation objectives of the Commission."
5

6 AMEND ENFORCEMENT OF MARINE FISHERIES LAWS

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

8 "**§ 113-136. Enforcement authority of inspectors and protectors; refusal to obey or allow**
9 **inspection by inspectors and protectors.**

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

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

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

- 24 (1) Boating and water safety;
- 25 (2) Hunting and trapping;
- 26 (3) Fishing, exclusive of fishing under the jurisdiction of the Marine Fisheries
27 Commission; and
- 28 (4) Activities in woodlands and on inland waters governed by G.S. 106-908 to
29 G.S. 106-910.

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

35 (c1) Inspectors and protectors have jurisdiction to enforce the provisions of Article 19B of
36 Chapter 106 of the General Statutes pursuant to and within the parameters of a formal agreement
37 entered into under G.S. 106-202.15(10).

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

44 (d1) In addition to law enforcement authority granted elsewhere, ~~a protector has inspectors~~
45 and protectors have the authority to enforce criminal laws under the following circumstances:

- 46 (1) When the inspector or protector has probable cause to believe that a person
47 committed a criminal offense in his presence and at the time of the violation
48 the inspector or protector is engaged in the enforcement of laws otherwise
49 within his jurisdiction; or

1 (2) When the inspector or protector is asked to provide temporary assistance by
2 the head of a State or local law enforcement agency or his designee and the
3 request is within the scope of the agency's subject matter jurisdiction.

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

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

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

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

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

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

35 (k) It is unlawful to refuse to exhibit upon request by any inspector, protector, or other
36 law enforcement officer any item required to be carried by any law or rule as to which inspectors
37 or protectors have enforcement jurisdiction. The items that must be exhibited include boating
38 safety or other equipment or any license, permit, tax receipt, certificate, or identification. It is
39 unlawful to refuse to allow inspectors, protectors, or other law enforcement officers to inspect
40 weapons or ~~equipment if~~ equipment, fish, or wildlife that the officer reasonably believes ~~them~~
41 to be possessed incident to an activity regulated by any law or rule as to which inspectors and
42 protectors have enforcement jurisdiction ~~and the officer has a reasonable suspicion that a~~
43 ~~violation has been committed, except that an officer may inspect a shotgun to confirm whether it~~
44 ~~is plugged or unplugged without a reasonable suspicion that a violation has been committed. It~~
45 ~~is unlawful to refuse to allow inspectors, protectors, or other law enforcement officers to inspect~~
46 ~~fish or wildlife for the purpose of ensuring compliance with bag limits and size limits. Except as~~
47 ~~authorized by G.S. 113-137, nothing in this section gives an inspector, protector, or other law~~
48 ~~enforcement officer the authority to inspect, in the absence of a person in apparent control of the~~
49 ~~item to be inspected, any of the following:~~ jurisdiction.

50 (1) ~~Weapons.~~

- 1 (2) ~~Equipment, except for equipment left unattended in the normal operation of~~
2 ~~the equipment, including, but not limited to, traps, trot lines, crab pots, and~~
3 ~~fox pens.~~
4 (3) ~~Fish.~~
5 (4) ~~Wildlife.~~
6 (l) Nothing in this section authorizes searches within the curtilage of a dwelling or of the
7 living quarters of a vessel in contravention of constitutional prohibitions against unreasonable
8 searches and seizures."
9

10 MISCELLANEOUS AMENDMENTS TO MARINE FISHERIES LAWS

11 SECTION 4.1. G.S. 113-132 reads as rewritten:

12 "§ 113-132. Jurisdiction of fisheries agencies.

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

18 (b) The Wildlife Resources Commission has jurisdiction over the conservation of wildlife
19 resources. Except as may be otherwise provided by law, it has jurisdiction over all activities
20 connected with the conservation and regulation of wildlife resources.

21 (c) Notwithstanding the provisions of this Article, this Subchapter does not give the
22 Marine Fisheries Commission or the Wildlife Resources Commission jurisdiction over matters
23 clearly within the jurisdiction vested in the Department of Agriculture and Consumer Services,
24 the North Carolina Pesticide Board, the Commission for Public Health, the Environmental
25 Management Commission, or other division of the Department regulating air or water pollution.

26 (d) To the extent that the grant of jurisdiction to the Marine Fisheries Commission and
27 the Wildlife Resources Commission may overlap, the Marine Fisheries Commission and the
28 Wildlife Resources Commission are granted concurrent jurisdiction. In cases of conflict between
29 actions taken or regulations promulgated by either agency, as respects the activities of the other,
30 pursuant to the dominant purpose of such jurisdiction, the Marine Fisheries Commission and the
31 Wildlife Resources Commission are empowered to make agreements concerning the harmonious
32 settlement of such conflict in the best interests of the conservation of the marine and estuarine
33 and wildlife resources of the State. In the event the Marine Fisheries Commission and the
34 Wildlife Resources Commission cannot agree, the Governor is empowered to resolve the
35 differences.

36 (e) Those coastal fishing waters in which are found a significant number of freshwater
37 fish, as agreed upon by the Marine Fisheries Commission and the Wildlife Resources
38 Commission, may be denominated joint fishing waters. These waters are deemed coastal fishing
39 waters from the standpoint of laws and regulations administered by the Department and are
40 deemed inland fishing waters from the standpoint of laws and regulations administered by the
41 Wildlife Resources Commission. The Marine Fisheries Commission and the Wildlife Resources
42 Commission may make joint regulations governing the responsibilities of each agency and
43 modifying the applicability of licensing and other regulatory provisions as may be necessary for
44 rational and compatible management of the marine and estuarine and wildlife resources in joint
45 fishing waters.

46 (f) The granting of jurisdiction in this section pertains to the power of agencies to enact
47 regulations and ordinances. Nothing in this section or in G.S. 113-138 is designed to prohibit
48 law-enforcement officers who would otherwise have jurisdiction from making arrests or in any
49 manner enforcing the provisions of this Subchapter."

50 SECTION 4.2. G.S. 113-170 reads as rewritten:

51 "§ 113-170. Exportation and importation of fish and equipment.

1 The Commission may adopt rules governing the importation and exportation of fish, and
2 equipment that may be used in taking or processing fish, as necessary to enhance the conservation
3 of marine and estuarine resources of the State. These rules may regulate, license, prohibit, or
4 restrict importation into the ~~State-State, holding or maintaining in marine aquaculture operations~~
5 within the State, and exportation from the State of any and all species of fish that are native to
6 coastal fishing waters or non-native species that may thrive if introduced into these waters."

7 **SECTION 4.3.** G.S. 113-170.3(c) reads as rewritten:

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

28 **SECTION 4.4.(a)** G.S. 113-181 is repealed.

29 **SECTION 4.4.(b)** Article 15 of Chapter 113 of the General Statutes is amended by
30 adding a new section to read:

31 **§ 113-181.1. Duties and powers of Department.**

32 (a) The Department shall administer and enforce the provisions of this Subchapter
33 pertaining to the conservation and management of marine and estuarine resources and develop
34 and implement Fishery Management Plans and Fishery Management Plan Amendments pursuant
35 to G.S. 113-182.2 and Coastal Habitat Protection Plans pursuant to G.S. 143B-279.8. The
36 Department may enter into reciprocal agreements with other jurisdictions with regard to the
37 conservation of marine and estuarine resources.

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

40 **SECTION 4.5.** G.S. 113-228 reads as rewritten:

41 **§ 113-228. Adoption of federal regulations.**

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

50
51 **SEVERABILITY CLAUSE AND EFFECTIVE DATE**

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

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