

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 621
SENATE BILL 579

AN ACT TO REVISE THE LEASE PROVISIONS PERTAINING TO
CULTIVATION OF OYSTERS AND CLAMS.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 16 of Chapter 113 is amended to read: "Cultivation of Shellfish".

Sec. 2. G.S. 113-201 is amended by deleting the words "oysters and clams" and substituting the word "shellfish".

Sec. 3. Article 16 of Chapter 113 of the General Statutes is amended to add a new section, G.S. 113-201.1, as follows:

"§ 113-201.1. Definitions. – As used in this Article:

- (1) 'Natural shellfish bed' means an area of public bottom where oysters, clams, scallops, mussels or other shellfish are found to be growing in sufficient quantities to be valuable to the public.
- (2) 'Riparian owner' means the holder(s) of the fee title to land that is bordered by waters of an arm of the sea or any other navigable body of water.
- (3) 'Shellfish' means oysters, clams, scallops, mussels or any other species of mollusks that the Marine Fisheries Commission determines suitable for cultivation, harvesting, and marketing from public grounds and private beds.
- (4) 'Single family unit' means the husband and wife and any unemancipated children in the household."

Sec. 4. G.S. 113-202(a) is rewritten to read:

"(a) To increase the use of suitable areas underlying coastal fishing waters for the production of shellfish, the Marine Fisheries Commission may grant shellfish cultivation leases to persons who reside in North Carolina under the terms of this section when it determines the public interest will benefit from issuance of the lease. Suitable areas for the production of shellfish shall meet the following minimum standards:

- (1) The area leased must be suitable for the cultivation and harvesting of shellfish in commercial quantities.
- (2) The area leased must not contain a natural shellfish bed.
- (3) Cultivation of shellfish in the leased area will be compatible with lawful utilization by the public of other marine and estuarine

resources. Other public uses which may be considered include, but are not limited to, navigation, fishing and recreation.

- (4) Cultivation of shellfish in the leased area will not impinge upon the rights of riparian owners.
- (5) The area leased must not include an area designated for inclusion in the Department's Shellfish Management Program.
- (6) The area leased must not include an area which the Department of Human Resources has recommended be closed to shellfish harvest by reason of pollution."

Sec. 5. G.S. 113-202(b) is rewritten to read as follows:

"(b) The Marine Fisheries Commission may delete any part of an area proposed for lease or may condition a lease to protect the public interest with respect to the factors enumerated in subsection (a) of this section."

Sec. 6. G.S. 113-202(c) is rewritten to read as follows:

"(c) No person, including a corporate entity, or single family unit may acquire and hold by lease, lease renewal, or purchase more than 50 acres of public bottoms under shellfish cultivation leases."

Sec. 7. G.S. 113-202(d), (e), (f), (g), (l) (m) and (o) are amended by deleting the word "survey" wherever it appears and substituting "map or diagram" and by deleting the words "oyster and clam", "oysters and clams", "oysters or clams", and "oyster or clam" wherever those words appear and substituting "shellfish".

Sec. 8. G.S. 113-202(d) is amended by rewriting the third and fourth sentences in the second paragraph to read:

"The investigation is to be made by the Secretary or his authorized agent to determine whether the area proposed to be leased is consistent with the standards in subsection (a) and any other applicable standards under this Article and the regulations of the Marine Fisheries Commission. In the event the Secretary finds the application inconsistent with the applicable standards, the Secretary shall recommend that the application be denied or that a conditional lease be issued which is consistent with the applicable standards."

Sec. 9. G.S. 113-202(h) is amended to read:

"(h) The Marine Fisheries Commission in its discretion may lease or decline to lease public bottoms for shellfish culture in accordance with its duty to conserve the marine and estuarine resources of the State. The Secretary must present all lease applications to the Marine Fisheries Commission as to which he has published a notice of intention to lease more than 20 days prior to the meeting of the Marine Fisheries Commission.

The Secretary shall notify the Marine Fisheries Commission of any protest which has been filed and present an evaluation of the protest. The Marine Fisheries Commission shall determine all lease applications during its public meetings and, during its review of the lease applications, shall allow any member of the public an opportunity to comment on any lease application under consideration by the Marine Fisheries Commission. The Marine Fisheries Commission may impose special conditions on leases so that leases may be issued which would otherwise be denied."

Sec. 10. G.S. 113-202(i) is amended to read:

"(i) After a lease application is approved by the Marine Fisheries Commission, the applicant shall submit to the Secretary a survey of the area approved for leasing and define the bounds of the area approved for leasing with markers in accordance with the regulations of the Commission. The survey shall conform to standards prescribed by the Secretary concerning accuracy of survey and the amount of detail to be shown. When an acceptable survey is submitted, the boundaries are marked and all fees and rents due in advance are paid, the Secretary shall execute the lease on forms approved by the Attorney General. If the applicant and the Secretary are unable to agree that the area approved for lease is that shown in the survey, the Secretary shall report the matter with reasonable dispatch to the Marine Fisheries Commission for resolution. The Secretary is authorized, with the approval of the lessee, to amend an existing lease by reducing the area under lease or by combining contiguous leases without increasing the total area leased."

Sec. 11. G.S. 113-202(k) is amended by substituting "30" for "15" in the third sentence.

Sec. 12. G.S. 113-202(l)(2) is amended by an addition at the end to read:

"or filing false information on the form required to accompany the annual remittance of rental."

Sec. 13. G.S. 113-202(m) is amended to read:

"(m) In the event the leaseholder takes steps within 30 days to remedy the situation upon which the notice of intention to terminate was based and the Secretary is satisfied that continuation of the lease is in the best interests of the shellfish culture of the State, the Secretary may discontinue termination procedures. Where there is no discontinuance of termination procedures, the leaseholder may appeal to the Marine Fisheries Commission. Where there is no appeal, or where an appeal does not prevail, the Secretary must send a final letter of termination to the leaseholder. The final letter of termination may not be mailed sooner than 30 days after receipt by the leaseholder of the Secretary's notice of intention to terminate. The lease is terminated effective at midnight on the day the final notice of termination is served on the leaseholder. The final notice of termination may not be issued pending hearing of any appeal by the Marine Fisheries Commission."

Sec. 14. G.S. 113-202(m) is further amended by an addition at the end to read:

"Service of any notice required in this subsection may be accomplished by certified mail, return receipt requested; personal service by any law enforcement officer; or upon the failure of these two methods, publication. Service by publication shall be accomplished by publishing such notices in a newspaper of general circulation within the county where the lease is located for at least once a week for three successive weeks. The format for notice by publication shall be approved by the Attorney General."

Sec. 15. G.S. 113-202(o) is amended by deleting from the first sentence the language "and the names and addresses of those to whom the harvest was sold or delivered" and inserting the word "and" between the words "year" and "the".

Sec. 16. G.S. 113-202(q) is repealed.

Sec. 17. This act shall become effective July 1, 1983.

In the General Assembly read three times and ratified, this the 24th day of June, 1983.