

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2017-190
SENATE BILL 410

AN ACT TO ESTABLISH A PROGRAM FOR THE LEASING OF PUBLIC BOTTOM AND SUPERJACENT WATER COLUMN FOR MARINE AQUACULTURE, TO REQUIRE THE DIVISION OF MARINE FISHERIES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO REQUEST THE ISSUANCE OF FEDERAL RULES TO ALLOW MARINE AQUACULTURE IN FEDERAL WATERS OFF THE COAST OF THE STATE, AND TO ESTABLISH ADDITIONAL TRANSPARENCY REQUIREMENTS FOR MEMBERS OF THE MARINE FISHERIES COMMISSION.

The General Assembly of North Carolina enacts:

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

"Article 16A.
"Marine Aquaculture.

"§ 113-215. Definitions.

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

- (1) Marine aquaculture. – The propagation and rearing of marine aquatic species in controlled or selected environments, including, but not limited to, ocean ranching, marine hatcheries, and other deep water fish farming operations in the coastal fishing waters of the State and, to the extent not inconsistent with federal law, to the limits of the United States exclusive economic zone, as that term is defined in the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq.
- (2) Marine aquaculture lease. – A lease of the public bottom and superjacent water column granted by the Secretary for marine aquaculture.
- (3) Marine aquatic species. – Any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant, and including, but not limited to, "fish" and "fishes," as defined in G.S. 113-129(7), found exclusively or for part of its life cycle in coastal fishing waters.

"§ 113-216. Legislative findings and declaration of policy.

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

"§ 113-217. New leases for marine aquaculture.

(a) To increase the use of suitable areas underlying coastal fishing waters for establishment of marine aquaculture, the Secretary may grant marine aquaculture leases under the terms of this section when the Secretary determines, in accordance with the Secretary's duty to conserve the marine and estuarine resources of the State, that the public interest will benefit



from issuance of the lease. Suitable areas for marine aquaculture shall meet the following minimum standards:

- (1) The area leased must not contain a natural commercially significant shellfish bed.
- (2) The marine aquaculture operation in the leased area will not unreasonably interfere 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.
- (3) The operation of a marine aquaculture operation in the leased area will not unreasonably interfere upon the rights of riparian owners.
- (4) The area leased must not include an area designated for inclusion in the Department's Shellfish Management Program.
- (5) The area leased must not include an area that the State Health Director has recommended be closed to shellfish harvest by reason of pollution.
- (6) The marine aquaculture operation would not unreasonably interfere with public access and use of waters of the State, taking into account the potential economic impact of the operation.
- (7) Aquaculture use of the leased area must not significantly impair navigation.
- (8) The leased area must not be within a navigation channel marked or maintained by a State or federal agency.
- (9) The leased area must not be within an area traditionally used and available for significant levels of fishing or hunting activities incompatible with the activities proposed by the leaseholder, such as trawling or seining.
- (10) Aquaculture use of the leased area must not significantly interfere with the exercise of riparian rights by adjacent property owners, including access to navigation channels from piers or other means of access.

(b) The Secretary 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. The Secretary shall enter into memoranda of agreement with the United States Army Corps of Engineers or any other appropriate State or federal regulatory agencies to provide for appropriate standards and markings for marine aquaculture structures to avoid impairment of navigation.

(c) No person, including a corporate entity or single family unit, may acquire and hold by lease, lease renewal, or purchase more than 1,500 acres under marine aquaculture leases. No individual lease may exceed 100 acres. For purposes of this subsection, the number of acres of leases held by a person includes acres held by a corporation in which the person holds an interest.

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

(e) The map or diagram must conform to standards prescribed by the Secretary concerning accuracy of map or diagram and the amount of detail that must be shown. If, on the basis of the application information and map or diagram, the Secretary deems that granting the lease would benefit the marine aquaculture industry of North Carolina, the Secretary must order an investigation of the area proposed to be leased. The investigation is to be made by the Secretary or the Secretary's authorized agent to determine whether the area proposed to be leased is consistent with the standards in subsection (a) of this section. In the event the Secretary finds the application inconsistent with the applicable standards, the Secretary shall deny the application or propose that a conditional lease be issued that is consistent with the

applicable standards. In the event the Secretary authorizes amendment of the application, the applicant must furnish a new map or diagram meeting requisite standards showing the area proposed to be leased under the amended application. At the time of making an application for an initial lease, the applicant must pay a filing fee of two hundred dollars (\$200.00).

(f) The area proposed to be leased must be as compact as possible, taking into consideration the shape of the body of water, the consistency of the bottom, and the desirability of separating the boundaries of a leasehold by a sufficient distance from any other marine aquaculture operations or shellfish leases.

(g) Within 60 days after receipt of an application that complies with subsection (e) of this section, the Secretary shall notify the applicant of the intended action on the lease application. If the intended action is approval of the application as submitted, or approval with a modification to which the applicant agrees, the Secretary shall conduct a public hearing in the county where the proposed leasehold lies. The Secretary must publish at least two notices of the intention to lease in a newspaper of general circulation in the county in which the proposed leasehold lies. The first publication must precede the public hearing by more than 20 days; the second publication must follow the first by seven to 11 days. The notice of intention to lease must contain a description of the area of the proposed leasehold sufficient to establish its boundaries with reasonable ease and certainty and must also contain the date, hour, and place of the hearing.

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

(i) After a lease application is approved by the Secretary, the applicant shall submit to the Secretary information sufficient to define the bounds of the area approved for leasing with markers in accordance with the rules of the Commission. The information shall conform to standards prescribed by the Secretary concerning accuracy of survey and the amount of detail to be shown. When information 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. 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.

(j) Initial leases begin upon the issuance of the lease by the Secretary and expire at noon on the first day of July following the twentieth anniversary of the granting of the lease. Renewal leases are issued for a period of 20 years from the time of expiration of the previous lease. At the time of making application for renewal of a lease, the applicant must pay a filing fee of one hundred dollars (\$100.00). The rental for initial leases and renewed leases is two hundred ten dollars (\$210.00) per acre, per year. Rental must be paid annually in advance prior to the first day of April each year. Upon initial granting of a lease, the pro rata amount for the portion of the year left until the first day of July must be paid in advance at the rate of two hundred ten dollars (\$210.00) per acre, per year; then, on or before the first day of April next, the lessee must pay the rental for the next full year.

(k) Except as otherwise restricted by this Article, leaseholds granted under this section are to be treated as if they were real property and are subject to all laws relating to taxation, sale, devise, inheritance, gift, seizure and sale under execution or other legal process, and the

like. Leases properly acknowledged and probated are eligible for recordation in the same manner as instruments conveying an estate in real property. Within 30 days after transfer of beneficial ownership of all or any portion of or interest in a leasehold to another, the new owner must notify the Secretary of such fact. Such transfer is not valid until notice is furnished to the Secretary.

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

- (1) Failure to pay the annual rent in advance.
- (2) Failure to file information required by the Secretary upon annual remittance of rental or filing false information on the form required to accompany the annual remittance of rental.
- (3) Failure by new owner to report a transfer of beneficial ownership of all, or any portion of, or interest in the leasehold.
- (4) Failure to mark the boundaries in the leasehold and to keep them marked as required in the rules of the Marine Fisheries Commission.
- (5) Failure to utilize the leasehold on a continuing basis for marine aquaculture purposes, except if marine aquaculture activities under the lease are suspended as a part of a disease or biosecurity plan.

(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 initiate a contested case by filing a petition under G.S. 150B-23 within 30 days of receipt of notice of intention to terminate. Where the leaseholder does not initiate a contested case, or the final decision upholds termination, 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, or of the final agency decision, as appropriate. 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 a contested case initiated by the leaseholder.

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 and by posting the notices on the Commission's Web site. The format for notice by publication shall be approved by the Attorney General.

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

(o) Every year between January 1 and February 15, the Secretary must mail to all leaseholders a notice of the annual rental due and include forms designed by the Secretary for determining the amount of harvest gathered. Such forms may contain other pertinent questions relating to the utilization of the leasehold in the best interests of the aquaculture industry of the State and must be executed and returned by the leaseholder with the payment of the leaseholder's rental. Any leaseholder or the leaseholder's agent executing such forms for the

leaseholder who knowingly makes a false statement on such forms is guilty of a Class 1 misdemeanor.

"§ 113-218. Protection of private marine aquaculture rights.

It is unlawful for any person, other than the holder of a lease issued under this Article, to take or attempt to take marine species being produced under the license and associated lease from any privately leased, franchised, or deeded marine aquaculture operation without written authorization of the holder and with actual knowledge it is a marine aquaculture leased area. Actual knowledge will be presumed when the marine species are taken or attempted to be taken under the following circumstances:

- (1) From within the confines of posted boundaries of the area as identified by signs, whether the whole or any part of the area is posted; or
- (2) When the area has been regularly posted and identified and the person knew the area to be the subject of private marine aquaculture rights.

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

SECTION 2. The Division of Marine Fisheries of the Department of Environmental Quality shall do the following:

- (1) Request that the Mid-Atlantic and South Atlantic Fishery Management Councils develop a Fishery Management Plan for regulating offshore aquaculture in federal waters offshore from the North Carolina coast.
- (2) Petition the National Oceanic and Atmospheric Administration to initiate rule-making proceedings to implement a comprehensive regulatory program for managing the development of an environmentally sound and economically sustainable aquaculture fishery in federal waters offshore from the North Carolina coast.

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

SECTION 3. G.S. 143B-289.54 is amended by adding a new subsection to read:

"(m) Transparency. – The Commission shall establish official e-mail accounts for all Commission members. These e-mail accounts shall be used for all electronic communications related to the work of the Commission and those communications shall be considered public records under Chapter 132 of the General Statutes. Other than routine communication sent from Division staff to all Commission members, electronic communications among a majority of the Commission shall be an "official meeting" as defined in Article 33C of Chapter 143 of the General Statutes. Failure to comply with this subsection shall be subject to investigation by the State Ethics Commission as unethical conduct and removal under subsection (h) of this section as misfeasance. Nothing in this subsection is intended to limit or eliminate any privilege existing at common law or under statute."

SECTION 3.1.(a) Definitions. – "Importation of Marine and Estuarine Organisms Rule" means 15A NCAC 03I .0104 (Introduce, Transfer or Hold Imported Marine and Estuarine Organisms) for purposes of this section and its implementation.

SECTION 3.1.(b) Importation of Marine and Estuarine Organisms Rule. – Until the effective date of the revised permanent rule that the Marine Fisheries Commission is required to adopt pursuant to subsection (d) of this section, the Commission and the Division of

Marine Fisheries of the Department of Environmental Quality shall implement the Importation of Marine and Estuarine Organisms Rule, as provided in subsection (c) of this section.

SECTION 3.1.(c) Implementation. – Use of American eels imported from Virginia or South Carolina in an aquaculture operation is exempt from the permitting requirements of the Importation of Marine and Estuarine Organisms Rule.

SECTION 3.1.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the Importation of Marine and Estuarine Organisms Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission, pursuant to this section, shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 3.1.(e) Sunset. – This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

STATE PARTICIPATION IN SITING OF ATLANTIC INTRACOASTAL WATERWAY DREDGED MATERIAL DISPOSAL EASEMENTS

SECTION 3.2.(a) The Division of Water Resources of the Department of Environmental Quality and the State Property Office are authorized to negotiate with appropriate agencies of the federal government an agreement for the State to assume responsibility for acquiring dredged material easement sites appropriate for maintenance dredging of the Atlantic Intracoastal Waterway between the border with the state of South Carolina and the border with the Commonwealth of Virginia in exchange for the reduction in size and possible change in location of dredged material disposal easement sites currently held by the federal government. The agreement shall provide for the federal government to relinquish certain dredged material disposal easements that are excess to maintenance project needs in exchange for the acquisition and furnishing to the federal government other easements that are sited and permitted by the Division of Coastal Management and acquired by the State Property Office under its powers of condemnation or otherwise using such funds as may be appropriated by the General Assembly from the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund established under Part 8B of Article 21 of Chapter 143 of the General Statutes for that purpose.

SECTION 3.2.(b) G.S. 143-215.73F(b) is amended by adding a new subdivision to read:

"(4) To provide funding for siting and acquisition of dredged disposal easement sites associated with the maintenance of the Atlantic Intracoastal Waterway between the border with the state of South Carolina and the border with the Commonwealth of Virginia, under a Memorandum of Agreement between the State and the federal government."

SECTION 4. Section 1 of this act becomes effective October 1, 2017. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2017.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 8:31 a.m. this 27th day of July, 2017