

NORTH CAROLINA GENERAL ASSEMBLY



JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE

REPORT TO THE 2010 REGULAR SESSION OF THE 2009 GENERAL ASSEMBLY

APRIL 27, 2010

A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE FOR
DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY

ROOMS 2126, 2226
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 733-7778

OR

ROOM 500
LEGISLATIVE OFFICE BUILDING
RALEIGH, NORTH CAROLINA 27603-5925
TELEPHONE: (919) 733-9390

TABLE OF CONTENTS

Transmittal Letter.....	4
Statutory Authority	5
Commission Membership.....	9
Commission Proceedings.....	11
Legislative Proposals	17

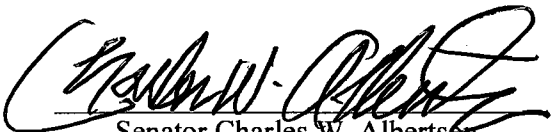
TRANSMITTAL LETTER

April 27, 2010

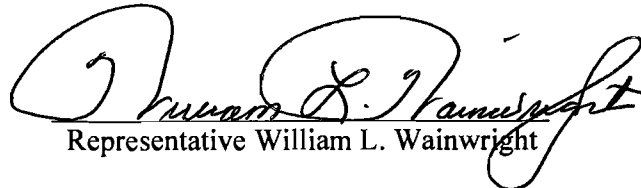
TO THE MEMBERS OF THE 2010 REGULAR SESSION
OF THE 2009 GENERAL ASSEMBLY

Pursuant to G.S. 120-70.62(8), the Joint Legislative Commission on Seafood and Aquaculture submits its report and recommendations to the 2010 Regular Session of the 2009 General Assembly.

Respectfully submitted,



Senator Charles W. Albertsen



Representative William L. Wainwright

Co-Chairs
Joint Legislative Commission on Seafood and Aquaculture

STATUTORY AUTHORITY

Article 12F.

Joint Legislative Commission on Seafood and Aquaculture.

§ 120-70.60. Commission established.

The Joint Legislative Commission on Seafood and Aquaculture is hereby established as a permanent joint committee of the General Assembly. As used in this Article, the term "Commission" means the Joint Legislative Commission on Seafood and Aquaculture. (1989, c. 802, s. 12.1; 2002-165, s. 1.3.)

§ 120-70.61. Membership; cochairs; vacancies; quorum.

(a) The Joint Legislative Commission on Seafood and Aquaculture shall consist of 15 members: four Senators appointed by the President Pro Tempore of the Senate; four Representatives appointed by the Speaker of the House of Representatives; four members appointed by the Governor; and three members appointed by the Commissioner of Agriculture. The members shall serve at the pleasure of their appointing officer.

(b) The President Pro Tempore of the Senate shall designate one Senator to serve as cochair, and the Speaker of the House of Representatives shall designate one Representative to serve as cochair.

(c) Except as otherwise provided in this section, a legislative member of the Commission shall serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the General Assembly who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A legislative member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from office on the Commission. Any vacancy that occurs on the Commission shall be filled in the same manner as the original appointment.

(d) A quorum of the Commission shall consist of eight members. (1989, c. 802, s. 12.1; 1991, c. 689, s. 184.1; 2005-386, s. 6; 2009-484, s. 9.)

§ 120-70.62. Powers and duties.

The Commission shall have the following powers and duties:

- (1) To monitor and study the current seafood industry in North Carolina including studies of the feasibility of increasing the State's production, processing, and marketing of seafood;
- (2) To study the potential for increasing the role of aquaculture in all regions of the State;
- (3) To evaluate the feasibility of creating a central permitting office for fishing and aquaculture matters;

- (4) To evaluate actions of the Division of Marine Fisheries of the Department of Environment and Natural Resources, the Wildlife Resources Commission of the Department of Environment and Natural Resources and of any other board, commission, department, or agency of the State or local government as such actions relate to the seafood and aquaculture industries;
- (5) To make recommendations regarding regulatory matters relating to the seafood and aquaculture industries including, but not limited to:
 - a. Increasing the State's representation and decision-making ability by dividing the State between the Atlantic and South Atlantic regions of the National Division of Marine Fisheries; and
 - b. Evaluating the necessity to substantially increase penalties for trespass and theft of shellfish and other aquaculture products;
- (6) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting the seafood and aquaculture industries;
- (7) To review existing and proposed State law and rules affecting the seafood and aquaculture industries and to determine whether any modification of law or rules is in the public interest;
- (8) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and
- (9) To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, or the Joint Legislative Commission on Governmental Operations, and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate. (1989, c. 802, s. 12.1; 1997-443, s. 11A.119(a); 2005-386, s. 1.8.)

§ 120-70.63. Additional powers.

(a) The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either cochair, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02. (1989, c. 802, s. 12.1; 2005-386, s. 1.9; 2006-255, s. 3.2.)

§ 120-70.64. Compensation and expenses of members.

Members of the Commission shall receive per diem and travel allowances in accordance with G.S. 120-3.1 for members who are legislators, and shall receive compensation and per diem and travel allowances in accordance with G.S. 138-5 for members who are not legislators. (1989, c. 802, s. 12.1.)

§ 120-70.65. Staffing.

The Legislative Services Officer shall assign as staff to the Commission professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Commission through the offices of the Directors of Legislative Assistants of the Senate and House of Representatives. The expenses of employment of clerical staff shall be borne by the Commission. (1989, c. 802, s. 12.1; 1996, 2nd Ex. Sess., c. 18, s. 8(h); 2007-495, s. 13.)

§ 120-70.66. Funding.

From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the Joint Legislative Commission on Seafood and Aquaculture. (1989, c. 802, s. 12.1.)

This page is intentionally left blank.

COMMISSION MEMBERSHIP

President Pro Tempore of the Senate Appointments:

Sen. Charles W. Albertson, Co-Chair
136 Henry Dunn Picket Road
Beulaville, NC 28518
(910) 298-4923
E-mail: Charlie.Albertson@ncleg.net

Senator Stan W. Bingham

292 North Main Street
Denton, NC 27239
(336) 859-0999; Fax: (336) 859-2261
Email: Stan.Bingham@ncleg.net

Senator Jean Preston

P.O. Box 4640
Emerald Isle, NC 28594
(252) 354-6993
Email: Jean.Preston@ncleg.net

Senator A.B. Swindell

P.O. Box 788
Nashville, NC 27856
Nashville: (252) 462-0190; Fax (252) 459-4385
In Raleigh: (919) 715-3030
Email: AB.Swindell@ncleg.net

Speaker of the House of Representatives Appointments:

Representative William L. Wainwright, Co-Chair

P. O. Box 33
Havelock, NC 28532
Home: (252) 447-7379
Business: (252) 633-2422
E-mail: William.Wainwright@ncleg.net

Representative Dewey L. Hill

P. O. Box 723
Whiteville, NC 28472
Home: (910) 642-6044
Business: (910) 642-6044
Email: Dewey.Hill@ncleg.net

Representative Timothy L. Spear

612 Mt. Tabor Rd.
Creswell, NC 27928
(252) 797-4481
Email: Tim.Spear@ncleg.net

Representative Alice G. Underhill

3910 Country Club Road
New Bern, NC 28562
Home: (252) 633-2270
Business: (252) 637-4147
E-mail: Alice.Underhill@ncleg.net

Governor Appointees:

Dr. James Nick Blackerby, MD

5315 Trent Woods Drive
New Bern, NC 28562
(252) 633-2789

Mr. Joey Daniels

Wanchese Seafood Company
PO Box 14
Wanchese, NC 27981

Mr. Gerry T. Smith, Sr.

P.O. Box 948
Beaufort, NC 28516

Ms. Susan B. West

P.O. Box 52
Buxton, NC 27920
(252) 995-4131

Commissioner of Agriculture Appointees:

Mr. Sean McKeon

NC Fisheries Association
P.O. Box 12303
New Bern, NC 28561
(252) 633-2288

Mr. Gary Propst

1925 East NC Hwy 152
China Grove, NC 28023

Mr. Jim Swartzenburg

NC Aquaculture Association
16 East Bayshore Boulevard
Jacksonville, NC 28540

Commission Staff:

Jeffery Hudson, Commission Counsel
Jennifer McGinnis, Commission Counsel
Tim Dodge, Commission Counsel
Mariah Matheson, Commission Assistant
Cindy Davis, Commission Clerk

COMMISSION PROCEEDINGS

The Joint Legislative Commission on Seafood and Aquaculture met three times during the interim between the 2009 Regular Session and 2010 Regular Session:

January 27, 2010 – 10:00 a.m.

Soundside Hall
North Carolina Aquarium
Pine Knoll Shores, North Carolina

1. Call to order
Senator Albertson, presiding
2. Introductory remarks by Co-chairs
Representative William Wainwright
Senator Charles Albertson
3. Report to Commission and explanation of agenda items
Jeff Hudson
Commission Counsel
4. [Report on the Waterfront Access and Marine Industry Fund](#)
Louis Daniel, Director
Division of Marine Fisheries, Department of Environment and Natural Resources (DENR)
5. [Reports on efforts to market North Carolina seafood and to encourage consumption of locally caught seafood](#)
William Small, Seafood Marketing Specialist
Marketing Division, Department of Agriculture and Consumer Services

Barry Nash, Seafood Technology and Marketing Specialist
North Carolina Sea Grant

[Pam Morris, President](#)
Carteret Catch

Mike Johnson, Chairman
Dare County Commission for Working Watermen
Commissioner, Dare County Board of Commissioners

David Hilton, President
Ocracoke Working Watermen's Association
President, Ocracoke Seafood Company

[Scott Baker on Brunswick Catch](#)

Fisheries Specialist, North Carolina Sea Grant

6. Report on the Fisheries Resource Grant Program
Mike Voiland, Executive Director
North Carolina Sea Grant

[Steve Rebach, Associate Director](#)
North Carolina Sea Grant
7. [Report on State efforts to address unauthorized interactions with endangered and threatened sea turtles](#)
Louis Daniel, Director
Division of Marine Fisheries, DENR
8. Report on the activities of the Atlantic States Marine Fisheries Commission
Louis Daniel, Director
Division of Marine Fisheries, DENR
9. Commission discussion and announcements
10. Adjourn

March 30, 2010 – 10:00 a.m.

Auditorium
North Carolina Aquarium
Manteo, North Carolina

1. Call to order
Representative William Wainwright, presiding
3. Introductory remarks by Co-chairs
Representative William Wainwright
Senator Charles Albertson
3. Report to Commission and explanation of agenda items
Jeff Hudson
Commission Counsel
4. [Annual report on the development, adoption, and implementation of the Coastal Habitat Protection Plan](#)
[Jimmy Johnson, Eastern Regional Field Officer](#)
Office of Conservation and Community Affairs, Department of Environment and Natural Resources
5. [Annual report on the development, adoption, and implementation of Fishery Management Plans](#)
Louis Daniel, Director
Division of Marine Fisheries, Department of Environment and Natural Resources (DENR)
6. [Report on the implementation of the Coastal Recreational Fishing License and on the Marine Resources Fund and the Marine Resources Endowment Fund](#)
Louis Daniel, Director
Division of Marine Fisheries, DENR
7. [Annual Report on the Shellfish Rehabilitation Program](#)
Louis Daniel, Director
Division of Marine Fisheries, DENR
8. [Review of the Fisheries Reform Act process for management of the marine resources of the State](#)
Louis Daniel, Director
Division of Marine Fisheries, DENR
9. Commission discussion and announcements
10. Adjourn

This page is intentionally left blank.

April 27, 2010 – 10:00 a.m.

Auditorium
Fort Fisher Aquarium
Kure Beach, North Carolina

1. Call to order
Representative William Wainwright, presiding
4. Introductory remarks by Co-chairs
Representative William Wainwright
Senator Charles Albertson
3. Report to Commission and explanation of agenda items
Jeff Hudson
Commission Counsel
4. Consideration of legislative proposals from the Marine Fisheries Commission
Louis Daniel, Director
Division of Marine Fisheries, Department of Environment and Natural Resources
 - a. [Fishery Management Plan Supplements](#)
 - b. [Study FMP Development Process](#)
 - c. [Observer Coverage Gear Permits](#)
 - d. [Suspension and Revocation of Fishing Licenses](#)
 - e. [Extend Credit for Oyster Shell Recycling](#)
 - f. [Improve Success of FMPs](#)

Jeff Hudson, Commission Counsel

 - g. [Promote North Carolina Seafood Marketing](#)
5. [Report on the impacts of endocrine disruptors on North Carolina fisheries](#)
B.J. Copeland, Vice Chairman
Marine Fisheries Commission
6. [Consideration of draft commission report to the 2010 Regular Session](#)
7. Commission discussion and announcements
8. Adjourn

This page is intentionally left blank.

LEGISLATIVE PROPOSALS

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN EXPEDITED PROCESS BY WHICH THE MARINE FISHERIES COMMISSION MAY SUPPLEMENT FISHERY MANAGEMENT PLANS, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-182.1 reads as rewritten:

"§ 113-182.1. Fishery Management Plans.

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.52.

(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

- (1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.
- (2) Recommend management actions pertaining to the fishery or fisheries.
- (3) Include conservation and management measures that will provide the greatest overall benefit to the State, particularly with respect to food production, recreational opportunities, and the protection of marine ecosystems, and that will produce a sustainable harvest.
- (4) Specify a time period, not to exceed 10 years from the date of the adoption of the plan, for ending overfishing and achieving a sustainable harvest. This subdivision shall only apply to a plan for a fishery that is overfished. This subdivision shall not apply to a plan for a fishery where the biology of the fish or environmental conditions make ending overfishing and achieving a sustainable harvest within 10 years impracticable.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint a fishery management plan advisory committee. Each fishery management plan advisory committee shall be

1 composed of commercial fishermen, recreational fishermen, and scientists, all with
2 expertise in the fishery for which the Fishery Management Plan is being developed.

3 (c1) The Department shall consult with the regional advisory committees
4 established pursuant to G.S. 143B-289.57(e) regarding the preparation of each Fishery
5 Management Plan. Before submission of a plan for review by the Joint Legislative
6 Commission on Seafood and Aquaculture, the Department shall review any comment
7 or recommendation regarding the plan that a regional advisory committee submits to
8 the Department within the time limits established in the Schedule for the development
9 and adoption of Fishery Management Plans established by G.S. 143B-289.52. The
10 Commission shall consult with the regional advisory committees regarding the
11 development of any temporary management measure that the Commission determines
12 to be necessary to ensure the viability of the species or fishery while the plan is being
13 developed and regarding the development of any management measure to implement
14 the plan. Before the Commission adopts a temporary management measure or a
15 management measure to implement a plan, the Commission shall review any
16 comment or recommendation regarding the management measure that a regional
17 advisory committee submits to the Commission.

18 (d) Each Fishery Management Plan shall be reviewed at least once every five
19 years. The Marine Fisheries Commission may revise the Priority List and guidance
20 criteria whenever it determines that a revision of the Priority List or guidance criteria
21 will facilitate or improve the development of Fishery Management Plans or is
22 necessary to restore, conserve, or protect the marine and estuarine resources of the
23 State. The Marine Fisheries Commission may not revise the Schedule for the
24 development of a Fishery Management Plan, once adopted, without the approval of
25 the Secretary of Environment and Natural Resources.

26 (e) The Secretary of Environment and Natural Resources shall monitor
27 progress in the development and adoption of Fishery Management Plans in relation to
28 the Schedule for development and adoption of the plans established by the Marine
29 Fisheries Commission. The Secretary of Environment and Natural Resources shall
30 report to the Joint Legislative Commission on Seafood and Aquaculture on progress
31 in developing and implementing the Fishery Management Plans on or before 1
32 September of each year. The Secretary of Environment and Natural Resources shall
33 report to the Joint Legislative Commission on Seafood and Aquaculture within 30
34 days of the completion or substantial revision of each proposed Fishery Management
35 Plan. The Joint Legislative Commission on Seafood and Aquaculture shall review
36 each proposed Fishery Management Plan within 30 days of the date the proposed Plan
37 is submitted by the Secretary. The Joint Legislative Commission on Seafood and
38 Aquaculture may submit comments and recommendations on the proposed Plan to the
39 Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

40 (e1) If the Secretary determines that it is in the interest of the long-term viability
41 of a fishery, the Secretary may authorize the Commission to develop temporary
42 measures to supplement an existing Fishery Management Plan pursuant to this
43 subsection. Development of temporary supplementary measures pursuant to this

1 subsection is exempt from subsections (c), (c1), and (e) of this section and the Priority
2 List, Schedule, and guidance criteria established by the Marine Fisheries Commission
3 under G.S. 143B-289.52. The Commission shall adopt rules to implement temporary
4 supplementary measures in accordance with Chapter 150B of the General Statutes.
5 During the next review period for a Fishery Management Plan supplemented pursuant
6 to this subsection, the Commission shall either incorporate the temporary
7 supplementary measures into the revised Fishery Management Plan or the temporary
8 supplementary measures shall expire on the date the revised Fishery Management
9 Plan is adopted.

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

12 (g) To achieve sustainable harvest under a Fishery Management Plan, the
13 Marine Fisheries Commission may include in the Plan a recommendation that the
14 General Assembly limit the number of fishermen authorized to participate in the
15 fishery. The Commission may recommend that the General Assembly limit
16 participation in a fishery only if the Commission determines that sustainable harvest
17 cannot otherwise be achieved. In determining whether to recommend that the General
18 Assembly limit participation in a fishery, the Commission shall consider all of the
19 following factors:

- 20 (1) Current participation in and dependence on the fishery.
- 21 (2) Past fishing practices in the fishery.
- 22 (3) Economics of the fishery.
- 23 (4) Capability of fishing vessels used in the fishery to engage in other
24 fisheries.
- 25 (5) Cultural and social factors relevant to the fishery and any affected
26 fishing communities.
- 27 (6) Capacity of the fishery to support biological parameters.
- 28 (7) Equitable resolution of competing social and economic interests.
- 29 (8) Any other relevant considerations."

30 **SECTION 2.** This act is effective when it becomes law.
31

This page is intentionally left blank.

1
2 **BILL TO BE ENTITLED**
3 AN ACT TO DIRECT THE DIVISION OF MARINE FISHERIES TO STUDY THE
4 FISHERY MANAGEMENT PLAN DEVELOPMENT PROCESS, AS
5 RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD
6 AND AQUACULTURE.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** The Division of Marine Fisheries shall study the Fishery
9 Management Plan development process. The Division shall specifically consider how the
10 process could be made more efficient without impairing public input into the process. The
11 Division shall report its findings and recommendations, including any legislative proposals,
12 to the Joint Legislative Commission on Seafood and Aquaculture no later than October 1,
13 2010.

13 **SECTION 2.** This act is effective when it becomes law.

This page is intentionally left blank.

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE MARINE FISHERIES COMMISSION TO ESTABLISH
3 PERMITS FOR GEAR USED IN A FISHERY FOR WHICH OBSERVER COVERAGE
4 IS REQUIRED, AS RECOMMENDED BY THE JOINT LEGISLATIVE
5 COMMISSION ON SEAFOOD AND AQUACULTURE .

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 113-169.1 reads as rewritten:

8 "**§ 113-169.1. Permits for gear, equipment, and other specialized activities**
9 **authorized.**

10 (a) The Commission may adopt rules to establish permits for gear, equipment,
11 and specialized activities, including commercial fishing operations that do not involve
12 the use of a vessel and transplanting oysters or clams.

13 (b) The Commission may adopt rules to establish gear specific permits to take
14 striped bass from the Atlantic Ocean and to limit the number and type of these permits
15 that may be issued to a person. The Commission may establish a fee for each permit
16 established pursuant to this subsection in an amount that compensates the Division for
17 the administrative costs associated with the permit but that does not exceed ten dollars
18 (\$10.00) per permit.

19 (c) The Commission may adopt rules to establish permits for gear used in a
20 fishery for which observer coverage is required by State or federal law. The
21 Commission may establish a fee for each permit established pursuant to this
22 subsection in an amount that compensates the Division for the administrative costs
23 associated with the permit and for the costs associated with implementing observer
24 coverage for the fishery."

25 **SECTION 2.** This act is effective when it becomes law.

This page is intentionally left blank

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE MARINE FISHERIES COMMISSION TO ADOPT RULES RELATED TO THE SUSPENSION, REVOCATION, AND REISSUANCE OF LICENSES AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

SECTION 1. The Marine Fisheries Commission shall adopt rules pursuant to and consistent with G.S. 113-171, as amended by Section 2 of this act, and G.S. 143B-289.52 for the suspension, revocation, and reissuance of marine resources licenses and permits issued under Articles 14A, 14B, and 25A of Chapter 113 of the General Statutes. Rules adopted pursuant to this section shall not become effective prior to October 1, 2012. In adopting rules pursuant to this section, the Commission shall consider all of the following:

- (1) Whether the rules should differentiate between minor and major violations.
- (2) How to define minor and major violations.
- (3) How service of revocation could be made more efficient.
- (4) How the rules should treat violations related to recreational fishing licenses and permits.
- (5) Whether violations related to littering or assault on a marine patrol inspector should be treated as grounds for suspension or revocation.
- (6) Whether suspension and revocation provisions should be strengthened in cases of harvesting shellfish from polluted waters.

SECTION 2. G.S. 113-171 reads as rewritten:

"§ 113-171. Suspension, revocation, and reissuance of licenses.

(a) Upon receipt of reliable notice that a person licensed under this ~~Article~~ Article, Article 14B, or Article 25A of Chapter 113 of the General Statutes to take resources under the jurisdiction of the Marine Fisheries Commission has had imposed against the person a conviction of a criminal offense within the jurisdiction of the Department under the provisions of this Subchapter or of rules of the Commission adopted under the authority of this Subchapter, the Secretary must suspend or revoke all licenses held by the person in accordance with the terms of this ~~section~~ section and rules adopted by the Commission. Reliable notice includes information furnished the Secretary in prosecution or other reports from inspectors. As used in this section, a conviction includes a plea of guilty or nolo contendere, any other termination of a criminal prosecution unfavorably to the defendant after jeopardy has attached, or any substitute for criminal prosecution whereby the defendant expressly or impliedly confesses the defendant's guilt. In particular, procedures whereby bond forfeitures are accepted in lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or prayer for judgment continued are deemed convictions. The Secretary may act to suspend or revoke licenses upon the basis of any conviction in which:

- (1) No notice of appeal has been given;
- (2) The time for appeal has expired without an appeal having been perfected; or

1 (3) The conviction is sustained on appeal. Where there is a new trial,
2 finality of any subsequent conviction will be determined in the
3 manner set out above.

4 (b) The Secretary must initiate an administrative procedure designed to give
5 the Secretary systematic notice of all convictions of criminal offenses by licensees
6 covered by subsection (a) of this section above and keep a file of all convictions
7 reported. ~~Upon receipt of notice of conviction, the Secretary must determine whether~~
8 ~~it is a first, a second, a third, or a fourth or subsequent conviction of some offense~~
9 ~~covered by subsection (a). In the case of second convictions, the Secretary must~~
10 ~~suspend all licenses issued to the licensee for a period of 10 days. In the case of third~~
11 ~~convictions, the Secretary must suspend all licenses issued to the licensee for a period~~
12 ~~of 30 days. In the case of fourth or subsequent convictions, the Secretary must revoke~~
13 ~~all licenses issued to the licensee. Where several convictions result from a single~~
14 ~~transaction or occurrence, they are to be treated as a single conviction so far as~~
15 ~~suspension or revocation of the licenses of any licensee is concerned. Anyone~~
16 ~~convicted of taking or of knowingly possessing, transporting, buying, selling, or~~
17 ~~offering to buy or sell oysters or clams from areas closed because of suspected~~
18 ~~pollution will be deemed by the Secretary to have been convicted of two separate~~
19 ~~offenses on different occasions for license suspension or revocation purposes.~~

20 (c) ~~Where a license has been suspended or revoked, the former licensee is not~~
21 ~~eligible to apply for reissuance of license or for any additional license authorized in~~
22 ~~this Article during the suspension or revocation period. Licenses must be returned to~~
23 ~~the licensee by the Secretary or the Secretary's agents at the end of a period of~~
24 ~~suspension. Where there has been a revocation, application for reissuance of license~~
25 ~~or for an additional license may not be made until six months following the date of~~
26 ~~revocation. In such case of revocation, the eligible former licensee must satisfy the~~
27 ~~Secretary that the licensee will strive in the future to conduct the operations for which~~
28 ~~the license is sought in accord with all applicable laws and rules. Upon the application~~
29 ~~of an eligible former licensee after revocation, the Secretary, in the Secretary's~~
30 ~~discretion, may issue one license sought but not another, as deemed necessary to~~
31 ~~prevent the hazard of recurring violations of the law.~~

32 (d) ~~Upon receiving reliable information of a licensee's conviction of a second~~
33 ~~or subsequent criminal offense covered by subsection (a) of this section, the Secretary~~
34 ~~shall promptly cause the licensee to be personally served with written notice of~~
35 ~~suspension or revocation, as the case may be. The written notice may be served upon~~
36 ~~any responsible individual affiliated with the corporation, partnership, or association~~
37 ~~where the licensee is not an individual. The notice of suspension or revocation may be~~
38 ~~served by an inspector or other agent of the Department, must state the ground upon~~
39 ~~which it is based, and takes effect immediately upon personal service. The agent of~~
40 ~~the Secretary making service shall then or subsequently, as may be feasible under the~~
41 ~~circumstances, collect all license certificates and plates and other forms or records~~
42 ~~relating to the license as directed by the Secretary. It is unlawful for any licensee~~
43 ~~willfully to evade the personal service prescribed in this subsection.~~

1 (e) A licensee served with a notice of suspension or revocation may obtain an
2 administrative review of the suspension or revocation by filing a petition for a
3 contested case under G.S. 150B-23 within 20 days after receiving the notice. The only
4 issue in the hearing shall be whether the licensee was convicted of a criminal offense
5 for which a license must be suspended or revoked. A license remains suspended or
6 revoked pending the final decision by the Secretary.

7 (f) If the Secretary refuses to reissue the license of or issue an additional
8 license to an applicant whose license was revoked, the applicant may contest the
9 decision by filing a petition for a contested case under G.S. 150B-23 within 20 days
10 after the Secretary makes the decision. The Commission shall make the final agency
11 decision in a contested case under this subsection. An applicant whose license is
12 denied under this subsection may not reapply for the same license for at least six
13 months.

14 (g) The Commission may adopt rules to provide for the disclosure of the
15 identity of any individual or individuals in responsible positions of control respecting
16 operations of any licensee that is not an individual. For the purposes of this section,
17 individuals in responsible positions of control are deemed to be individual licensees
18 and subject to suspension and revocation requirements in regard to any applications
19 for license they may make – either as individuals or as persons in responsible
20 positions of control in any corporation, partnership, or association. In the case of
21 individual licensees, the individual applying for a license or licensed under this
22 ~~Article~~ Article, Article 14B, or Article 25A of Chapter 113 of the General Statutes to
23 take resources under the jurisdiction of the Marine Fisheries Commission must be the
24 real party in interest.

25 (h) In determining whether a conviction is a second or subsequent offense
26 under the provisions of this section, the Secretary may not consider convictions
27 ~~for~~ for any of the following:

28 (1) Offenses that occurred three years prior to the effective date of this
29 ~~Article; or Article.~~

30 (1a) Offenses that occurred prior to October 1, 2009.

31 (2) Offenses that occurred more than three years prior to the time of the
32 latest offense the conviction for which is in issue as a subsequent
33 conviction."

34 **SECTION 3.** Section 2 of this act becomes effective October 1, 2012. The remainder of
35 this act is effective when it becomes law.

This page is intentionally left blank

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE TAX CREDITS FOR THE RECYCLING OF OYSTER SHELLS, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.48 reads as rewritten:

"§ 105-130.48. Credit for recycling oyster shells.

(a) Credit. – A taxpayer who donates oyster shells to the Division of Marine Fisheries of the Department of Environment and Natural Resources is eligible for a credit against the tax imposed by this Part. The amount of the credit is equal to one dollar (\$1.00) per bushel of oyster shells donated.

(b) Limitation. – The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except tax payment made by or on behalf of the taxpayer.

(c) Carryforward. – Any unused portion of a credit allowed in this section may be carried forward for the succeeding five years. A successor in business may take the carryforwards of a predecessor corporation as if they were carryforwards of a credit allowed to the successor in business.

(d) No Double Benefit. – No deduction is allowed under G.S. 105-130.5(b)(5) or G.S. 105-130.9 for the donation of oyster shells for which a credit is claimed under this section.

(e) Documentation of Credit. – Upon request, to support the credit allowed by this section, the taxpayer must file with its income tax return, for the taxable year in which the credit is claimed, a certification by the Department of Environment and Natural Resources stating the number of bushels of oyster shells donated by the taxpayer.

(f) Sunset. – This section is repealed effective for taxable years beginning on or after January 1, ~~2011~~2013."

SECTION 2. G.S. 105-151.30 reads as rewritten:

"§ 105-151.30. Credit for recycling oyster shells.

(a) Credit. – A taxpayer who donates oyster shells to the Division of Marine Fisheries of the Department of Environment and Natural Resources is eligible for a credit against the tax imposed by this Part. The amount of the credit is equal to one dollar (\$1.00) per bushel of oyster shells donated.

(b) Limitation. – The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except tax payment made by or on behalf of the taxpayer.

(c) Carryforward. – Any unused portion of a credit allowed in this section may be carried forward for the succeeding five years.

(d) Documentation of Credit. – Upon request, to support the credit allowed by this section, the taxpayer must file with its income tax return, for the taxable year in which the credit is claimed, a certification by the Department of Environment and Natural Resources stating the number of bushels of oyster shells donated by the taxpayer.

Legislative Proposals #e: Extend Credit for Oyster Shell Recycling

1 (e) No Double Benefit. – A taxpayer who claims a credit under this section
2 must add back to taxable income any amount deducted under the Code for the
3 donation of the oyster shells.

4 (f) Sunset. – This section is repealed effective for taxable years beginning on
5 or after January 1, ~~2011~~2013."

6 **SECTION 3.** This act is effective when it becomes law.

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT EACH FISHERY MANAGEMENT PLAN MUST SPECIFY TIME PERIODS FOR ENDING OVERFISHING AND ACHIEVING A SUSTAINABLE HARVEST AND INCLUDE A STANDARD OF AT LEAST FIFTY PERCENT PROBABILITY OF ACHIEVING A SUSTAINABLE HARVEST, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-182.1(b) reads as rewritten:

"(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

- (1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.
- (2) Recommend management actions pertaining to the fishery or fisheries.
- (3) Include conservation and management measures that will provide the greatest overall benefit to the State, particularly with respect to food production, recreational opportunities, and the protection of marine ecosystems, and that will produce a sustainable harvest.
- ~~(4) Specify a time period, not to exceed 10 years from the date of the adoption of the plan, for ending overfishing and achieving a sustainable harvest. This subdivision shall only apply to a plan for a fishery that is overfished. This subdivision shall not apply to a plan for a fishery where the biology of the fish or environmental conditions make ending overfishing and achieving a sustainable harvest within 10 years impracticable.~~
- (5) Specify a time period, not to exceed two years from the date of the adoption of the plan, for ending overfishing. This subdivision shall only apply to a plan for a fishery that is not producing a sustainable harvest.
- (6) Specify a time period, not to exceed 10 years from the date of the adoption of the plan, for achieving a sustainable harvest. This subdivision shall not apply if the Fisheries Director determines that the biology of the fish, environmental conditions, or lack of sufficient data make implementing the requirements of this subdivision incompatible with professional standards for fisheries management.

- 1 (7) Include a standard of at least fifty percent (50%) probability of
2 achieving sustainable harvest for the fishery or fisheries. This
3 subdivision shall not apply if the Fisheries Director determines that
4 the biology of the fish, environmental conditions, or lack of
5 sufficient data make implementing the requirements of this
6 subdivision incompatible with professional standards for fisheries
7 management."
8 **SECTION 2.** This act is effective when it becomes law.

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA SEAFOOD MARKETING GRANT PROGRAM, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that there is strong consumer demand for the North Carolina seafood made available by these diverse fisheries; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by harvesting North Carolina seafood for the citizens of the State and visitors to the State; and

Whereas, the General Assembly recognizes the importance of providing plentiful, high-quality North Carolina seafood to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly finds that consumers of seafood have a right to know the country of origin of the seafood that they consume; Now, therefore, The General Assembly of North Carolina enacts:

SECTION 1. Establish North Carolina Seafood Marketing Grant Program. – There is established in the Department of Agriculture and Consumer Services the North Carolina Seafood Marketing Grant Program. The purpose of the Program is to provide funding to local marketing programs that promote the increased purchase and consumption of North Carolina seafood.

SECTION 2. Eligibility Criteria. – The Department shall develop criteria for determining eligibility for funds from the Program. The Department may consult with local marketing programs to develop the criteria. The criteria shall, at a minimum, provide:

- (1) The grant applicant is a local marketing program that promotes the increased purchase and consumption of North Carolina seafood.
- (2) Standards for the amount of North Carolina seafood that must be purchased in order to participate in a local marketing program. The local seafood marketing program must require each program participant to purchase North Carolina seafood for at least ten percent (10%) of its seafood needs. The local seafood marketing program may provide higher levels of recognition for a participant that purchases North Carolina seafood for more than ten percent (10%) of its seafood needs.
- (3) For verification and enforcement of the local marketing program standards.
- (4) That each participant in the local marketing program provide information to its customers as to the countries of origin of its seafood products.

SECTION 3. Uses of Grants. – The Department shall develop a list of approved uses of grant funds that promote the increased purchase and consumption of North Carolina seafood.

SECTION 4. Appropriation. – There is appropriated from the General Fund to the Department of Agriculture and Consumer Services the sum of five hundred thousand

Legislative Proposals #g: Promote North Carolina Seafood Marketing

1 dollars (\$500,000) for the 2010-2011 fiscal year to implement the North Carolina seafood
2 marketing grant program.

3 **SECTION 5.** This act becomes effective July 1, 2010.