

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 987
Committee Substitute Favorable 4/29/03
Senate Agriculture/Environment/Natural Resources Committee Substitute
Adopted 5/13/03

Short Title: Amend Fisheries Proclamation Process.

(Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE FISHERIES DIRECTOR TO ISSUE
PROCLAMATIONS THAT BECOME EFFECTIVE IMMEDIATELY UPON
ISSUANCE AND TO MAKE OTHER TECHNICAL, CLARIFYING, AND
CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-221 reads as rewritten:

"§ 113-221. ~~Rules; proclamations; emergency Commission meetings.~~Rules.

(a) Chapter 150B of the General Statutes governs the adoption of rules under this Article, other than proclamations issued under this Article. Chapter 150B does not apply to proclamations issued under this Article.

(b) Upon purchasing a license, each licensee shall be given a copy of the rules concerning the activities authorized by the license.

(c) The Fisheries Director shall notify licensees of a new rule or change to a rule by sending each licensee either a newsletter containing the text of the rule or change or an updated codification of the rules of the Marine Fisheries Commission that contains the new rule or change.

(d) Unless there are overriding policy considerations involved, any rule of the Marine Fisheries Commission ~~which will in the judgment of the Marine Fisheries Commission that will~~ result in severe curtailment of the usefulness or value of equipment in which fishermen have any substantial investment ~~should~~ shall be given ~~such~~ a future effective date so as to minimize undue potential economic loss to fishermen. Whether or not any ~~provision may cause potential economic loss rule will~~ result in severe curtailment of the usefulness or value of equipment in which fishermen have any substantial investment and whether or not a future effective date should be set is a matter within the ~~complete~~ sole discretion of the Marine Fisheries Commission. ~~The Marine Fisheries Commission need not set any future effective date more than two~~

1 ~~years in advance of the passage of any rule. This subsection does not require the Marine~~
2 ~~Fisheries Commission to establish an effective date that is more than two years later~~
3 ~~than the date on which the rule is adopted.~~

4 ~~(e) The Marine Fisheries Commission may delegate to the Fisheries Director the~~
5 ~~authority to issue proclamations suspending or implementing, in whole or in part,~~
6 ~~particular rules of the Commission which may be affected by variable conditions. Such~~
7 ~~proclamations are to be issued by the Fisheries Director or by a person designated by~~
8 ~~the Fisheries Director. All proclamations must state the hour and date upon which they~~
9 ~~become effective and must be issued at least 48 hours in advance of the effective date~~
10 ~~and time. In those situations in which the proclamation prohibits the taking of certain~~
11 ~~fisheries resources for reasons of public health, the proclamation can be made effective~~
12 ~~immediately upon issuance. Notwithstanding any other provisions of this subsection, a~~
13 ~~proclamation can be issued at least 12 hours in advance of the effective date and time to~~
14 ~~reopen the taking of certain fisheries resources closed for reason of public health~~
15 ~~through a prior proclamation made effective immediately upon issuance. Persons~~
16 ~~violating any proclamation which is made effective immediately shall not be charged~~
17 ~~with a criminal offense during the time between the issuance and 48 hours after such~~
18 ~~issuance unless such person had actual notice of the issuance of such proclamation.~~
19 ~~Fisheries resources taken or possessed by any person in violation of any proclamation~~
20 ~~may be seized regardless of whether such person had actual notice of the proclamation.~~
21 ~~A permanent file of the text of all proclamations shall be maintained in the office of the~~
22 ~~Fisheries Director. Certified copies of proclamations are entitled to judicial notice in~~
23 ~~any civil or criminal proceeding.~~

24 ~~The Fisheries Director must make every reasonable effort to give actual notice of the~~
25 ~~terms of any proclamation to the persons who may be affected thereby. Reasonable~~
26 ~~effort includes press releases to communications media, posting of notices at docks and~~
27 ~~other places where persons affected may gather, personal communication by inspectors~~
28 ~~and other agents of the Fisheries Director, and such other measures designed to reach~~
29 ~~the persons who may be affected. It is a defense to an enforcement action for a violation~~
30 ~~of a proclamation that a licensee was prevented from receiving notice of the~~
31 ~~proclamation due to a natural disaster or other act of God occasioned exclusively by~~
32 ~~violence of nature without interference of any human agency and that could not have~~
33 ~~been prevented or avoided by the exercise of due care or foresight.~~

34 ~~(e1) Pursuant to the request of five or more members of the Marine Fisheries~~
35 ~~Commission, its chairman may call an emergency meeting of the Commission to~~
36 ~~review: (1) a proposed issuance or issuance of proclamations under the authority~~
37 ~~delegated to the Fisheries Director pursuant to (e) of this section, except those~~
38 ~~proclamations issued for reasons of public health; or (2) the need to issue a~~
39 ~~proclamation to allow the taking of certain fisheries resources in areas not opened~~
40 ~~through proclamations issued by the Fisheries Director. At least 48 hours prior to any~~
41 ~~such meeting, a public announcement of the meeting shall be issued that describes the~~
42 ~~action requested by the members of the Commission; and the Department must make~~
43 ~~every reasonable effort to give actual notice of the meeting to persons who may be~~
44 ~~affected thereby. After its review is complete, the Marine Fisheries Commission,~~

1 consistent with its duty to protect, preserve, and enhance the commercial and sports
2 fisheries resources of the State, may (1) approve, cancel, or modify the proposed
3 proclamation or issued proclamation under review; or (2) direct the Fisheries Director to
4 issue a proclamation that allows the taking of certain fisheries resources.

5 The variable conditions that affect such resource management decisions require that
6 these emergency meetings and any resulting orders by the Commission be exempt from
7 the provisions of Article 2A of Chapter 150B. The decisions of the Marine Fisheries
8 Commission shall be the final decision of the State and shall not be set aside on judicial
9 review unless found to be arbitrary and capricious.

10 (f) All persons who may be affected by ~~them~~ rules adopted by the Marine
11 Fisheries Commission are under a duty to keep themselves informed of ~~current rules of~~
12 ~~the Marine Fisheries Commission and proclamations of the Fisheries Director.~~ the
13 current rules. It is no defense in any criminal prosecution for the defendant to show that
14 ~~he~~ the defendant in fact received no notice of a particular ~~rule or proclamation.~~ rule. In
15 any prosecution for violation of ~~the provisions of any rule or proclamation,~~ a rule, or in
16 which proof of matter contained in a ~~rule or proclamation~~ is involved, the Department is
17 deemed to have complied with publication procedures and the burden is on the
18 defendant to show by the greater weight of the evidence substantial failure of
19 compliance by the Department with the required publication procedures.

20 (g) Every court ~~must~~ shall take judicial notice of any codification of rules issued
21 by the Fisheries Director within two years preceding the date of the offense charged or
22 transaction in issue. In the absence of any indication to the contrary, ~~such~~ the
23 codifications are to be deemed accurate and current statements of the text of the rules in
24 question and it is incumbent upon any person asserting that a relevant portion of the
25 codified text is inaccurate, or has been amended or deleted, to satisfy the court as to the
26 text of the rules ~~which~~ that is in fact properly applicable.

27 (h) Repealed by Session Laws 1983, c. 221, s. 1."

28 **SECTION 2.** Article 17 of Chapter 113 of the General Statutes is amended
29 by adding a new section to read:

30 "**§ 113-221.1. Proclamations; emergency review.**

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

33 (b) The Marine Fisheries Commission may delegate to the Fisheries Director the
34 authority to issue proclamations suspending or implementing, in whole or in part,
35 particular rules of the Commission that may be affected by variable conditions. These
36 proclamations shall be issued by the Fisheries Director or by a person designated by the
37 Fisheries Director. Except as provided in this subsection, all proclamations shall state
38 the hour and date upon which they become effective and shall be issued at least 48
39 hours in advance of the effective date and time. A proclamation that prohibits the taking
40 of certain fisheries resources for reasons of public health or that governs a
41 quota-managed fishery may be made effective immediately upon issuance. A
42 proclamation to reopen the taking of certain fisheries resources closed for reasons of
43 public health shall be issued at least 12 hours in advance of the effective date and time
44 of the reopening. A person who violates a proclamation that is made effective

1 immediately upon issuance shall not be charged with a criminal offense for the violation
2 if the violation occurred between the time of issuance and 48 hours after the issuance
3 and the person did not have actual notice of the issuance of the proclamation. Fisheries
4 resources taken or possessed by any person in violation of any proclamation may be
5 seized regardless of whether the person had actual notice of the proclamation. A
6 permanent file of the text of all proclamations shall be maintained in the office of the
7 Fisheries Director. Certified copies of proclamations are entitled to judicial notice in
8 any civil or criminal proceeding. The Fisheries Director shall make every reasonable
9 effort to give actual notice of the terms of any proclamation to persons who may be
10 affected by the proclamation. Reasonable effort includes a press release to
11 communications media, posting of a notice at docks and other places where persons
12 affected may gather, personal communication by inspectors and other agents of the
13 Fisheries Director, and other measures designed to reach the persons who may be
14 affected. It is a defense to an enforcement action for a violation of a proclamation that a
15 person was prevented from receiving notice of the proclamation due to a natural disaster
16 or other act of God occasioned exclusively by violence of nature without interference of
17 any human agency and that could not have been prevented or avoided by the exercise of
18 due care or foresight.

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

27 (d) Pursuant to the request of five or more members of the Marine Fisheries
28 Commission, the Chair of the Marine Fisheries Commission may call an emergency
29 meeting of the Commission to review an issuance or proposed issuance of
30 proclamations under the authority delegated to the Fisheries Director pursuant to
31 subsection (b) of this section or to review the desirability of directing the Fisheries
32 Director to issue a proclamation to prohibit or allow the taking of certain fisheries
33 resources. At least 48 hours prior to any emergency meeting called pursuant to this
34 subsection, a public announcement of the meeting shall be issued that describes the
35 action requested by the members of the Marine Fisheries Commission. The Department
36 shall make every reasonable effort to give actual notice of the meeting to persons who
37 may be affected. After its review is complete, the Marine Fisheries Commission,
38 consistent with its duty to protect, preserve, and enhance the commercial and sports
39 fisheries resources of the State, may approve, cancel, or modify the previously issued or
40 proposed proclamation under review or may direct the Fisheries Director to issue a
41 proclamation that prohibits or allows the taking of certain fisheries resources. An
42 emergency meeting called pursuant to this subsection and any resulting orders issued by
43 the Marine Fisheries Commission are exempt from the provisions of Article 2A of
44 Chapter 150B of the General Statutes. The decisions of the Marine Fisheries

1 Commission shall be the final decision of the State and shall not be set aside on judicial
2 review unless found to be arbitrary and capricious."

3 **SECTION 3.** G.S. 143B-289.52(a)(8) reads as rewritten:

4 "**§ 143B-289.52. Marine Fisheries Commission – powers and duties.**

5 (a) The Marine Fisheries Commission shall adopt rules to be followed in the
6 management, protection, preservation, and enhancement of the marine and estuarine
7 resources within its jurisdiction, as described in G.S. 113-132, including commercial
8 and sports fisheries resources. The Marine Fisheries Commission shall have the power
9 and duty:

10 ...

11 (8) To delegate to the Fisheries Director the authority by proclamation to
12 suspend or implement, in whole or in part, a particular rule of the
13 Commission that may be affected by variable conditions as provided in
14 ~~G.S. 113-221(e)~~.G.S. 113-221.1."

15 **SECTION 4.** This act becomes effective July 1, 2003.