

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

**H.B. 302**  
**Mar 18, 2015**  
**HOUSE PRINCIPAL CLERK**

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**HOUSE DRH10122-MH-67 (02/24)**

Short Title: Strengthen Oyster Industry. (Public)

Sponsors: Representatives Tine, McElraft, Millis, and Harrison (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO STRENGTHEN AND PROTECT THE OYSTER INDUSTRY IN NORTH  
3 CAROLINA.

4 The General Assembly of North Carolina enacts:

5  
6 **STUDY SHELLFISH AQUACULTURE**

7 **SECTION 1.** The Division of Marine Fisheries of the Department of Environment  
8 and Natural Resources shall study North Carolina's shellfish lease and franchise program,  
9 including (i) the regulatory, statutory, and other obstacles faced by the private shellfish  
10 aquaculture industry in establishing or expanding shellfish cultivation operations; (ii) a  
11 summary of shellfish leasing and franchising programs in other states and a comparison of the  
12 private shellfish aquaculture industry in North Carolina compared to other states; (iii) the  
13 economic and logistical feasibility for public-private partnerships to engage in State-based  
14 production of viable oyster seed through the creation of one or more production hatcheries in  
15 North Carolina; and (iv) recommendations for best practices to achieve greater opportunities  
16 for North Carolina's shellfish aquaculture industry and greater program efficiencies and  
17 outcomes, including the development of a 10-year plan for the encouragement and  
18 enhancement of shellfish aquaculture. The Division shall report its findings and  
19 recommendations, along with an update on the implementation of Section 3 of this act no later  
20 than April 1, 2016, to the Chairs of the Environmental Review Commission, the Chairs of the  
21 House of Representatives Appropriations Subcommittee on Agriculture and Natural and  
22 Economic Resources, the Chairs of the Senate Appropriations Committee on Natural and  
23 Economic Resources, and the Fiscal Research Division.

24  
25 **CIVIL PENALTY AUTHORITY FOR CERTAIN SHELLFISH OFFENSES**

26 **SECTION 2.** Article 16 of the General Statutes is amended by adding a new  
27 section to read:

28 **"§ 113-211. Civil penalties.**

29 (a) A civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by  
30 the Secretary against any person who does any of the following:

31 (1) Takes or attempts to take shellfish in violation of G.S. 113-208, or who  
32 takes, destroys or damages equipment or structures used for the cultivation  
33 of shellfish pursuant to and within the confines of a lease or franchise  
34 granted under the provisions of this Article.

35 (2) Takes or attempts to take shellfish in violation of G.S. 113-209 from areas  
36 closed to harvest by statute, rule, or proclamation.



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1           (3) Takes or attempts to take shellfish from an area designated as an oyster  
2           sanctuary by the Division of Marine Resources of the Department.

3           (b) In determining the amount of the penalty, the Secretary shall consider the factors set  
4           out in G.S. 143B-289.53(b), as well as the level of damage to the natural resources of the State,  
5           and, in the case of penalties levied under subdivision (a)(1) of this section, the amount and  
6           severity of physical and economic damage to the shellfish aquaculture operations of the holder  
7           of the lease or franchise. The procedures set out in G.S. 143B-289.53 shall apply to civil  
8           penalty assessments that are presented to the Commission for final agency decision.

9           (c) The Secretary shall notify any person assessed a civil penalty of the assessment and  
10          the specific reasons therefor by registered or certified mail or by any means authorized by  
11          G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30  
12          days of receipt of the notice of assessment.

13          (d) Requests for remission of civil penalties shall be filed with the Secretary. Remission  
14          requests shall not be considered unless filed within 30 days of receipt of the notice of  
15          assessment. Remission requests must be accompanied by a waiver of the right to a contested  
16          case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on  
17          which the assessment was based. Consistent with the limitations in G.S. 143B-289.53(c),  
18          remission requests may be resolved by the Secretary and the violator. If the Secretary and the  
19          violator are unable to resolve the request, the Secretary shall deliver remission requests and the  
20          Secretary's recommended action to the Committee on Civil Penalty Remissions of the Marine  
21          Fisheries Commission appointed pursuant to G.S. 143B-289.53(c).

22          (e) If any civil penalty has not been paid within 30 days after notice of assessment has  
23          been served on the violator, the Secretary shall request the Attorney General to institute a civil  
24          action in the superior court of any county in which the violator resides or has the violator's  
25          principal place of business to recover the amount of the assessment, unless the violator contests  
26          the assessment as provided in subsection (c) of this section or requests remission of the  
27          assessment in whole or in part as provided in subsection (d) of this section. If any civil penalty  
28          has not been paid within 30 days after the final agency decision or court order has been served  
29          on the violator, the Secretary shall request the Attorney General to institute a civil action in the  
30          superior court of any county in which the violator resides or has the violator's principal place of  
31          business to recover the amount of the assessment. Civil actions must be filed within three years  
32          of the date the final agency decision or court order was served on the violator."

33  
34 **AMEND SENATOR JEAN PRESTON MARINE SHELLFISH SANCTUARY**  
35 **LEGISLATION**

36           **SECTION 3.** Section 44 of S.L. 2014-120 reads as rewritten:

37 **"SENATOR JEAN PRESTON MARINE SHELLFISH—OYSTER SANCTUARY**  
38 **PROGRAM**

39           "**SECTION 44.(a)** It is the intent of the General Assembly to establish a marine shellfish  
40           sanctuary in the Pamlico Sound to be named in honor of former Senator Jean Preston, to be  
41           called the "Senator Jean Preston Marine Shellfish Sanctuary."to enhance shellfish habitat  
42           within the Albemarle and Pamlico Sounds and their tributaries to benefit fisheries, water  
43           quality, and the economy. This will be achieved through the establishment of a network of  
44           oyster sanctuaries, harvestable enhancement sites, and coordinated support for the development  
45           of shellfish aquaculture. The network of oyster sanctuaries is to be named in honor of  
46           Senator Jean Preston and will be called the "Senator Jean Preston Oyster Sanctuary  
47           Network."

48           "**SECTION 44.(b)** The Division of Marine Fisheries of the Department of Environment  
49           and Natural Resources shall designate an area of appropriate acreage within the Pamlico Sound  
50           as a recommendation to the Environmental Review Commission for establishment of the  
51           "Senator Jean Preston Marine Shellfish Sanctuary" and create a plan for managing the

1 ~~sanctuary that includes~~ develop a plan to construct and manage additional oyster habitat. The  
2 ~~new sanctuaries, along with selected existing oyster sanctuaries, will be included in the Senator~~  
3 ~~Jean Preston Oyster Sanctuary Network. The plan will include the following components:~~

4 (1) ~~Location and delineation of the sanctuary.~~ — ~~oyster sanctuaries.~~ — The plan  
5 should include a ~~location~~locations for the ~~sanctuary~~sanctuary network  
6 ~~components~~ that ~~minimizes~~minimize the impact on commercial trawling. In  
7 addition, the ~~sanctuary should be gridded into areas leased to private parties~~  
8 ~~for restoration and harvest and areas operated and maintained by the State~~  
9 ~~for restoration that are not open for harvest. The leased and unleased areas~~  
10 ~~should be arranged in a pattern where leased squares are surrounded on four~~  
11 ~~sides by unleased squares.~~The location of sanctuaries shall take into account  
12 ~~connectivity to existing oyster sanctuaries and proposed oyster enhancement~~  
13 ~~sites. New oyster sanctuaries shall be designed to provide hook and line~~  
14 ~~fishing while allowing the development of complex fish habitat and~~  
15 ~~brood-stock oysters that will enhance recruitment in the surrounding reefs.~~  
16 ~~The plan should outline a 10-year development project to accomplish the~~  
17 ~~expansion.~~

18 (2) ~~Administration.~~ — The plan should include the ~~prices to be charged for the~~  
19 ~~leased portions of the sanctuary, including an administration fee to be~~  
20 ~~retained by the Division to support the leasing and monitoring program. The~~  
21 ~~plan shall also provide that the balance of lease payments collected by the~~  
22 ~~Division be transferred to the General Fund with a recommendation that~~  
23 ~~some or all of the proceeds be used for the support of the State's special~~  
24 ~~education programs in memory of Senator Jean Preston.~~

25 (3) ~~Enhancement of oyster habitat restoration.~~ — The General Assembly finds  
26 ~~that the lack of a reliable State-based supply of oyster seed and inadequate~~  
27 ~~funding for cultch planting are limitations to the expansion of oyster~~  
28 ~~harvesting and the restoration of wild oyster habitat in North Carolina.~~  
29 ~~Therefore, the plan should include the following:~~

30 a. ~~Provisions and recommendations to facilitate the availability of~~  
31 ~~oyster seed produced in North Carolina for wild oyster habitat~~  
32 ~~restoration projects as well as oyster aquaculture and to reduce~~  
33 ~~potential negative impacts from importation of non-native oyster~~  
34 ~~seed.~~

35 b. ~~Plans, where feasible, for public-private partnerships for State-based~~  
36 ~~production of viable oyster seed through the creation of one or more~~  
37 ~~production hatcheries, and recommendations for increased support of~~  
38 ~~the existing research hatchery at UNC-Wilmington.~~

39 c. ~~Plans and cost estimates for an expansion of cultch planting in~~  
40 ~~suitable areas of the State's coastal waters in order to expand areas~~  
41 ~~suitable for development of wild oyster habitat.~~

42 (4) ~~Economic relief.~~ — The plan should consider a ~~waiver of application fees and~~  
43 ~~yearly rental fees for new shellfish leases for an established period of time to~~  
44 ~~further promote and support shellfish aquaculture in North Carolina. The~~  
45 ~~new leasing fee waiver program should include measures to discourage~~  
46 ~~speculation and target persons with a genuine interest in starting a shellfish~~  
47 ~~aquaculture business, such as a requirement that the lease be nontransferable~~  
48 ~~for a five-year period.~~

49 (5) ~~Outreach.~~ — The plan should include ~~outreach and education that promotes,~~  
50 ~~whenever possible, public-private partnerships utilizing the Sea Grant~~  
51 ~~College Program, local colleges and other nongovernmental organizations to~~

1 (i) encourage shellfish aquaculture and provide technical assistance to  
 2 broaden cost-effective technologies available to leaseholders; (ii) encourage  
 3 best management practices to leaseholders; and (iii) inform fishermen and  
 4 the public on the benefits provided by the Senator Jean Preston Oyster  
 5 Sanctuary Network.

6 (6) Monitoring. – The plan should include a monitoring plan designed to (i)  
 7 determine the success of oyster reef construction; and (ii) evaluate the cost  
 8 benefit of the oyster sanctuary network and harvestable enhancement sites.

9 ~~(3)(7)~~ Funding. – The plan should include a request for appropriations sufficient to  
 10 provide funds for the construction of appropriate bottom habitat and shellfish  
 11 seeding and for Division staff necessary to conduct oyster restoration and  
 12 monitoring activities. The plan should provide that, whenever possible,  
 13 construction and shellfish seeding be carried out by contract with private  
 14 entities for Division staff to expand oyster restoration and monitoring  
 15 activities for 10 years. The plan should provide that, whenever possible,  
 16 public-private partnerships are employed to meet the construction, seeding  
 17 and outreach requirements of the plan.

18 ~~(4)~~ Commercial fisherman relief. – To promote the diversification of  
 19 commercial fishing opportunities, the plan should include a program to  
 20 award free or discounted leases under this section to commercial fishermen  
 21 who (i) have held one or more commercial fishing licenses continually for a  
 22 period of 10 or more years and (ii) receive at least fifty percent (50%) of  
 23 their income from commercial fishing with those licenses.

24 ~~(5)(8)~~ Recommendations. – The plan should shall include recommendations for  
 25 statutory or regulatory changes needed to expedite the expansion of shellfish  
 26 restoration and harvesting in order to improve water quality, restore  
 27 ecological habitats, provide enhanced recreational and commercial fishing  
 28 opportunities, and expand the coastal economy.

29 ~~"SECTION 44.(e) – No later than December 1, 2014, and quarterly thereafter until~~  
 30 ~~submission of a final plan to the Environmental Review Commission, the Department of~~  
 31 ~~Environment and Natural Resources shall report to the Environmental Review Commission~~  
 32 ~~regarding its implementation of this section and its recommended plan."~~  
 33

#### 34 **CORE SOUND SHELLFISH LEASING**

35 **SECTION 4.** The Division of Marine Fisheries of the Department of Environment  
 36 and Natural Resources shall, in consultation with representatives of the commercial fishing  
 37 industry, representatives of the shellfish aquaculture industry, and relevant federal agencies,  
 38 create a proposal to open certain areas of Core Sound to shellfish cultivation leasing. The  
 39 Division will report regarding the plan no later than May 1, 2016, to the Joint Legislative  
 40 Commission on Government Operations.  
 41

#### 42 **RESTORE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON SEAFOOD AND** 43 **AQUACULTURE**

44 **SECTION 5.1.** Subdivisions 1.2(a)(5) and 1.2(b)(3) and Sections 2.26 through  
 45 2.29 of S.L. 2011-291 are repealed, and Article 12F of Chapter 120 of the General Statutes, as  
 46 it existed prior to its repeal by S.L. 2011-291, is reenacted.

47 **SECTION 5.2.** G.S. 120-76(15) is repealed.

48 **SECTION 5.3.** G.S. 120-70.62, as reenacted by Section 5.1 of this act, reads as  
 49 rewritten:

50 **"§ 120-70.62. Powers and duties.**

51 The Commission shall have the following powers and duties:

- 1 (1) To monitor and study the current seafood industry in North Carolina  
2 including studies of the feasibility of increasing the State's production,  
3 processing, and marketing of ~~seafood;~~seafood.  
4 (2) To study the potential for increasing the role of aquaculture in all regions of  
5 the ~~State;~~State.  
6 (3) To evaluate the feasibility of creating a central permitting office for fishing  
7 and aquaculture ~~matters;~~matters.  
8 (4) To evaluate actions of the Division of Marine Fisheries of the Department of  
9 Environment and Natural Resources, the Wildlife Resources ~~Commission of~~  
10 ~~the Department of Environment and Natural Resources~~Commission, and of  
11 any other board, commission, department, or agency of the State or local  
12 government as such actions relate to the seafood and aquaculture  
13 ~~industries;~~industries.  
14 (5) ~~To make recommendations regarding regulatory matters relating to the~~  
15 ~~seafood and aquaculture industries including, but not limited to:~~  
16 a. ~~Increasing the State's representation and decision-making ability by~~  
17 ~~dividing the State between the Atlantic and South Atlantic regions of~~  
18 ~~the National Division of Marine Fisheries; and~~  
19 b. ~~Evaluating the necessity to substantially increase~~To evaluate the  
20 adequacy of penalties for trespass and theft of shellfish and other  
21 aquaculture ~~products;~~products.  
22 (6) To review and evaluate changes in federal law and regulations, relevant  
23 court decisions, and changes in technology affecting the seafood and  
24 aquaculture ~~industries;~~industries.  
25 (7) To review existing and proposed State law and rules affecting the seafood  
26 and aquaculture industries and to determine whether any modification of law  
27 or rules is in the public ~~interest;~~interest.  
28 (8) To make reports and recommendations, including draft legislation, to the  
29 General Assembly from time to time as to any matter relating to the powers  
30 and duties set out in this ~~section; and~~section.  
31 (9) To undertake such additional studies as it deems appropriate or as may from  
32 time to time be requested by the President of the Senate, the President Pro  
33 Tempore of the Senate, the Speaker of the House of Representatives, either  
34 house of the General Assembly, the Legislative Research Commission, or  
35 the Joint Legislative Commission on Governmental Operations, and to make  
36 such reports and recommendations to the General Assembly regarding such  
37 studies as it deems appropriate."  
38

**EFFECTIVE DATE**

39 **SECTION 6.** This act is effective when it becomes law.  
40