

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE DRS45287-MH-90A (03/12)

Short Title: Strengthen Oyster Industry. (Public)

Sponsors: Senators Cook, Tillman, and Sanderson (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE AND PROMOTE THE AQUACULTURE AND OYSTER CULTIVATION INDUSTRIES BY CREATING AN ENTITY WITHIN THE NORTH CAROLINA ECONOMIC DEVELOPMENT PARTNERSHIP FOCUSED ON SHELLFISH AND AQUACULTURE, BY REDUCING REGULATORY BARRIERS TO SHELLFISH LEASING THROUGH REMOVAL OF OUTDATED REQUIREMENTS FOR SHELLFISH LEASING, AND EXTENSION OF LEASE TERMS, BY REQUIRING THE DIVISION OF MARINE FISHERIES TO DEVELOP A PROPOSAL TO REPEAL THE CORE SOUND SHELLFISH LEASING MORATORIUM, BY CREATING A PROGRAM FOR THE PERMITTING OF MARINE AQUACULTURE ACTIVITIES IN THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, AND BY CLARIFYING THE SCOPE OF AUTHORITY OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND THE MARINE FISHERIES COMMISSION WITH RESPECT TO MARINE AQUACULTURE ACTIVITIES.

The General Assembly of North Carolina enacts:

PART I. CREATE SHELLFISH PLANNING AND PROMOTION ENTITY WITHIN NC ECONOMIC DEVELOPMENT PARTNERSHIP

SECTION 1.1. G.S. 143B-431.01 reads as rewritten:

"§ 143B-431.01. Department of Commerce – contracting of functions.

...

(d) Limitations. – Prior to contracting with a North Carolina nonprofit corporation pursuant to this section and in order for the North Carolina nonprofit corporation to receive State funds, the following conditions shall be met:

...

(2) The nonprofit corporation adheres to the following governance provisions related to its governing board:

- a. The board shall be composed of 17 voting members as follows: eight members and the chair appointed by the Governor, four members appointed by the Speaker of the House of Representatives, and four members appointed by the President Pro Tempore of the Senate. The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate shall each use best efforts to select members so as to reflect the diversity of the State's geography. The Speaker of the House and the President Pro Tempore shall each select their appointed members so that one-fourth come from a



development tier one area, one-fourth come from a development tier two area, and no two members come from the same Collaboration for Prosperity Zone. The Governor shall select appointed members so that two-ninths come from a development tier one area, two-ninths come from a development tier two area, and no more than two members come from the same Collaboration for Prosperity Zone. The Governor shall use best efforts to ensure that each member appointed by the Governor has expertise in one or more of the following areas:

1. Agribusiness, as recommended by the Commissioner of Agriculture.
- 1a. Shellfish or other aquaculture.
2. Financial services.
3. Information technology.
4. Biotechnology or life sciences.
5. Energy.
6. Manufacturing.
7. Military or defense.
8. Tourism, as recommended by the North Carolina Travel and Tourism Coalition.
9. Tourism, as recommended by the North Carolina Travel Industry Association.

(e) Mandatory Contract Terms. – Any contract entered into under this section must include all of the following:

- (17) A provision requiring the nonprofit corporation to create an entity within the corporation responsible for developing a strategic plan to further economic development of and otherwise providing continuing assistance to the shellfish and other aquaculture industries in the State.

SECTION 1.2. The Department of Commerce shall take all necessary steps to ensure the contract required under G.S. 143B-431.01(e) is amended to comply with the requirements of Section 1.1 of this act.

PART II. REGULATORY REFORM FOR SHELLFISH CULTIVATION LEASES

SECTION 2.1. G.S. 113-202(i) reads as rewritten:

"§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.

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

SECTION 2.2. G.S. 113-202(j) reads as rewritten:

1 "(j) Initial leases begin upon the issuance of the lease by the Secretary and expire at
2 noon on the first day of July following the ~~fifth-tenth~~ anniversary of the granting of the lease.
3 Renewal leases are issued for a period of ~~five-ten~~ years from the time of expiration of the
4 previous lease. At the time of making application for renewal of a lease, the applicant must pay
5 a filing fee of one hundred dollars (\$100.00). The rental for initial leases is one dollar (\$1.00)
6 per acre for all leases entered into before July 1, 1965, and for all other leases until noon on the
7 first day of July following the first anniversary of the lease. Thereafter, for initial leases entered
8 into after July 1, 1965, and from the beginning for renewals of leases entered into after that
9 date, the rental is ten dollars (\$10.00) per acre per year. Rental must be paid annually in
10 advance prior to the first day of April each year. Upon initial granting of a lease, the pro rata
11 amount for the portion of the year left until the first day of July must be paid in advance at the
12 rate of one dollar (\$1.00) per acre per year; then, on or before the first day of April next, the
13 lessee must pay the rental for the next full year."
14

15 **PART III. DEVELOP PROPOSAL TO END CORE SOUND SHELLFISH LEASING** 16 **MORATORIUM**

17 **SECTION 3.** The Division of Marine Fisheries of the Department of Environment
18 and Natural Resources shall, in consultation with representatives of the commercial fishing
19 industry, representatives of the shellfish aquaculture industry, and relevant federal agencies,
20 create a proposal to open to shellfish cultivation leasing certain areas of Core Sound that are
21 currently subject to a moratorium on shellfish leasing. The Division will report regarding the
22 plan no later than May 1, 2016, to the Joint Legislative Commission on Governmental
23 Operations.
24

25 **PART IV. MARINE AQUACULTURE PERMITTING**

26 **SECTION 4.1.** G.S. 106-758 reads as rewritten:

27 **"§ 106-758. Definitions.**

28 In addition to the definitions in G.S. 113-129, the following definitions shall apply as used
29 in this Article,

- 30 (1) ~~"Aquaculture" means the~~Aquaculture. – The propagation and rearing of
31 aquatic species in controlled or selected environments, including, but not
32 limited to, ocean ~~ranching;~~ranching, marine hatcheries and other deep water
33 fish farming operations in the coastal and ocean waters of the State.
- 34 (2) ~~"Aquaculture facility" means any~~Aquaculture facility. – Any land, structure
35 or other appurtenance that is used for aquaculture, including, but not limited
36 to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, floating
37 cage, or other equipment used in aquaculture;
- 38 (3) ~~"Aquatic species" means any~~Aquatic species. – Any species of finfish,
39 mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or
40 aquatic plant, and including, but not limited to, "fish" and "fishes" as defined
41 in G.S. 113-129(7);
- 42 (4) ~~"Commissioner" means the~~Commissioner. – The Commissioner of
43 Agriculture;
- 44 (5) ~~"Department" means the~~Department. – The North Carolina Department of
45 Agriculture and Consumer Services."

46 **SECTION 4.2.** G.S. 106-761 reads as rewritten:

47 **"§ 106-761. Aquaculture facility registration and licensing.**

48 (a) Authority. The North Carolina Department of Agriculture and Consumer Services
49 shall regulate the production and sale of commercially raised ~~freshwater fish and freshwater~~
50 ~~crustacean species~~freshwater and saltwater fish and crustacean species. The Board of
51 Agriculture shall promulgate rules for the registration of facilities for the production and sale of

1 ~~freshwater~~ freshwater and saltwater aquaculturally raised species. The Board may prescribe
2 standards under which commercially reared fish may be transported, possessed, bought, and
3 sold. The Department and Board of Agriculture authority shall be limited to commercially
4 reared fish and shall not include authority over the wild fishery resource which is managed
5 under the authority of the North Carolina Wildlife Resources ~~Commission~~ Commission or the
6 Marine Fisheries Commission. The authority granted herein to regulate facilities licensed
7 pursuant to this section does not authorize the Department of Agriculture and Consumer
8 Services or the Board of Agriculture to promulgate rules that (i) are inconsistent with rules
9 adopted by any other State agency; or (ii) exempt such facilities from the rules adopted by any
10 other State agency.

11 ...

12 (c1) The Board of Agriculture shall by rule designate the species of fish, crustaceans,
13 and shellfish that may be produced and sold under a Marine Aquaculture Propagation and
14 Production Facility license as set forth in subsection (d1) of this section. The Board shall take
15 into account all of the following factors in its designation of species:

16 (1) The potential market for the species, both domestic and export.

17 (2) If the species is not native to State waters or is a genetically engineered
18 variant of a native species, the potential for genetic contamination of or
19 undesired interbreeding with wild stocks of the species.

20 (3) Whether public access and use of waters of the State would be unduly
21 impacted by the private leasing of public submerged lands and the
22 superjacent water column necessary to support propagation or production
23 facilities for the species, when compared to the potential economic impact of
24 those facilities.

25 ...

26 (d1) Marine Aquaculture Propagation and Production Facility License. – The Board of
27 Agriculture may, by rule, authorize and license the operation of fish hatcheries and production
28 facilities for species of fish listed in subsection (c1) of this section. The Board shall (i) consult
29 with the Marine Fisheries Commission and the National Marine Fisheries Service regarding
30 appropriate measures to protect wild stocks from disease or genetic contamination; and (ii)
31 enter into memoranda of agreement with the United States Army Corps of Engineers and any
32 other appropriate state or federal regulatory agencies regarding appropriate standards and
33 markings for marine aquaculture structures to avoid impairment of navigation. Marine
34 aquaculture facilities that require the use of public bottom lands underlying waters of the State
35 or the superjacent water column will also require a lease from the Department of Environment
36 and Natural Resources pursuant to Article 16A of Chapter 113 of the General Statutes. The
37 Board may prescribe standards of operation, qualifications of operators, and the conditions
38 under which fish may be commercially reared, transported, possessed, bought, and sold. Marine
39 Aquaculture Propagation and Production Licenses issued by the Department shall be valid for a
40 period of five years.

41 (d2) Protection of Private Marine Aquaculture Rights. – It is unlawful for any person,
42 other than the holder of a Marine Aquaculture Propagation and Production Facility License and
43 associated lease under Article 16A of Chapter 113 of the General Statutes, to take or attempt to
44 take marine species being produced under the license and associated lease from any privately
45 leased, franchised, or deeded marine aquaculture operation without written authorization of the
46 holder and with actual knowledge it is a marine aquaculture leased area. Actual knowledge will
47 be presumed when the marine species are taken or attempted to be taken under the following
48 circumstances:

49 (1) From within the confines of posted boundaries of the area as identified by
50 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 section 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 4.3. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"Article 16A.

"Leasing of Bottom Land and Waters of the State for Marine Aquaculture.

"§ 113-215. 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.

"§ 113-216. New leases for marine aquaculture.

(a) To increase the use of suitable areas underlying coastal fishing waters for establishment of marine aquaculture operations, the Secretary may grant marine aquaculture leases for the public bottom under the terms of this section to persons who reside in North Carolina and who have obtained a Marine Aquaculture Propagation and Production Facility License under Article 63 of Chapter 106 of the General Statutes 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 shellfish bed.
- (2) The marine aquaculture operation in the leased area will be compatible with lawful utilization by the public of other marine and estuarine resources. Other public uses which may be considered include, but are not limited to, navigation, fishing and recreation.
- (3) The operation of a marine aquaculture operation in the leased area will not impinge 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.

(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 may not grant a new lease in an area heavily used for recreational purposes.

(c) 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.

(d) 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

1 an investigation of the bottom proposed to be leased. The investigation is to be made by the
2 Secretary or the Secretary's authorized agent to determine whether the area proposed to be
3 leased is consistent with the standards in subsection (a) of this section, with the terms of the
4 Marine Aquaculture Propagation and Production Facility License issued by the Department of
5 Agriculture and Consumer Services and any other applicable standards under this Article and
6 the rules of the Marine Fisheries Commission. In the event the Secretary finds the application
7 inconsistent with the applicable standards, the Secretary shall deny the application or propose
8 that a conditional lease be issued that is consistent with the applicable standards. In the event
9 the Secretary authorizes amendment of the application, the applicant must furnish a new map or
10 diagram meeting requisite standards showing the area proposed to be leased under the amended
11 application. At the time of making application for an initial lease, the applicant must pay a
12 filing fee of two hundred dollars (\$200.00).

13 (e) The area of bottom applied for must be as compact as possible, taking into
14 consideration the shape of the body of water, the consistency of the bottom, and the desirability
15 of separating the boundaries of a leasehold by a sufficient distance from any other marine
16 aquaculture operations or shellfish leases.

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

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

38 (h) After a lease application is approved by the Secretary, the applicant shall submit to
39 the Secretary information sufficient to define the bounds of the area approved for leasing with
40 markers in accordance with the rules of the Commission. The information shall conform to
41 standards prescribed by the Secretary concerning accuracy of survey and the amount of detail
42 to be shown. When information is submitted, the boundaries are marked and all fees and rents
43 due in advance are paid, the Secretary shall execute the lease on forms approved by the
44 Attorney General. The Secretary is authorized, with the approval of the lessee, to amend an
45 existing lease by reducing the area under lease or by combining contiguous leases without
46 increasing the total area leased.

47 (i) Initial leases begin upon the issuance of the lease by the Secretary and expire at
48 noon on the first day of July following the tenth anniversary of the granting of the lease.
49 Renewal leases are issued for a period of 10 years from the time of expiration of the previous
50 lease. At the time of making application for renewal of a lease, the applicant must pay a filing
51 fee of one hundred dollars (\$100.00). The rental for initial leases is ten dollars (\$10.00) per acre

1 per year. Rental must be paid annually in advance prior to the first day of April each year.
2 Upon initial granting of a lease, the pro rata amount for the portion of the year left until the first
3 day of July must be paid in advance at the rate of ten dollars (\$10.00) per acre per year; then,
4 on or before the first day of April next, the lessee must pay the rental for the next full year.

5 (j) Except as restricted by this Subchapter, leaseholds granted under this section are to
6 be treated as if they were real property and are subject to all laws relating to taxation, sale,
7 devise, inheritance, gift, seizure and sale under execution or other legal process, and the like.
8 Leases properly acknowledged and probated are eligible for recordation in the same manner as
9 instruments conveying an estate in real property. Within 30 days after transfer of beneficial
10 ownership of all or any portion of or interest in a leasehold to another, the new owner must
11 notify the Secretary of such fact. Such transfer is not valid until notice is furnished to the
12 Secretary. In the event such transferee is a nonresident, the Secretary must initiate proceedings
13 to terminate the lease.

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

- 16 (1) Failure to pay the annual rent in advance.
- 17 (2) Failure to file information required by the Secretary upon annual remittance
18 of rental or filing false information on the form required to accompany the
19 annual remittance of rental.
- 20 (3) Failure by new owner to report a transfer of beneficial ownership of all or
21 any portion of or interest in the leasehold.
- 22 (4) Failure to mark the boundaries in the leasehold and to keep them marked as
23 required in the rules of the Marine Fisheries Commission.
- 24 (5) Failure to utilize the leasehold on a continuing basis for marine aquaculture
25 purposes.
- 26 (6) Transfer of all or part of the beneficial ownership of a leasehold to a
27 nonresident.
- 28 (7) Substantial breach of compliance with the provisions of this Article, of the
29 Marine Aquaculture Propagation and Production Facility License issued
30 under Article 63 of Chapter 106 of the General Statutes or of rules of the
31 Marine Fisheries Commission governing use of the leasehold.

32 (l) In the event the leaseholder takes steps within 30 days to remedy the situation upon
33 which the notice of intention to terminate was based, and the Secretary is satisfied that
34 continuation of the lease is in the best interests of the shellfish culture of the State, the
35 Secretary may discontinue termination procedures. Where there is no discontinuance of
36 termination procedures, the leaseholder may initiate a contested case by filing a petition under
37 G.S. 150B-23 within 30 days of receipt of notice of intention to terminate. Where the
38 leaseholder does not initiate a contested case, or the final decision upholds termination, the
39 Secretary must send a final letter of termination to the leaseholder. The final letter of
40 termination may not be mailed sooner than 30 days after receipt by the leaseholder of the
41 Secretary's notice of intention to terminate, or of the final agency decision, as appropriate. The
42 lease is terminated effective at midnight on the day the final notice of termination is served on
43 the leaseholder. The final notice of termination may not be issued pending hearing of a
44 contested case initiated by the leaseholder.

45 Service of any notice required in this subsection may be accomplished by certified mail,
46 return receipt requested; personal service by any law enforcement officer; or upon the failure of
47 these two methods, publication. Service by publication shall be accomplished by publishing
48 such notices in a newspaper of general circulation within the county where the lease is located
49 for at least once a week for three successive weeks and by posting the notices on the
50 Commission's Web site. The format for notice by publication shall be approved by the Attorney
51 General.

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

9 (n) Every year between January 1 and February 15, the Secretary must mail to all
10 leaseholders a notice of the annual rental due and include forms designed by the Secretary for
11 determining the amount of harvest gathered. Such forms may contain other pertinent questions
12 relating to the utilization of the leasehold in the best interests of the aquaculture industry of the
13 State, and must be executed and returned by the leaseholder with the payment of his rental. Any
14 leaseholder or his agent executing such forms for him who knowingly makes a false statement
15 on such forms is guilty of a Class 1 misdemeanor.

16 **"§ 113-217. Lease of superjacent water column for marine aquaculture.**

17 (a) To increase the productivity of marine aquaculture leases issued under
18 G.S. 113-216, the Secretary may include in marine aquaculture leases issued under
19 G.S. 113-216 provisions to authorize use of the water column superjacent to the leased bottom
20 under the terms of this section when the Secretary determines the public interest will benefit
21 from inclusion of water column provisions.

22 (b) Suitable areas for the authorization of water column use shall meet all of the
23 following minimum standards:

- 24 (1) Aquaculture use of the leased area must not significantly impair navigation.
- 25 (2) The leased area must not be within a navigation channel marked or
26 maintained by a State or federal agency.
- 27 (3) The leased area must not be within an area traditionally used and available
28 for fishing or hunting activities incompatible with the activities proposed by
29 the leaseholder, such as trawling or seining.
- 30 (4) Aquaculture use of the leased area must not significantly interfere with the
31 exercise of riparian rights by adjacent property owners, including access to
32 navigation channels from piers or other means of access.
- 33 (5) Use of the superjacent water column is necessary for exercise of activities
34 permitted under the Marine Aquaculture Propagation and Production Facility
35 License granted by the Department of Agriculture and Consumer Services
36 under Article 63 of Chapter 106 of the General Statutes.
- 37 (6) Any additional standards, established by the Commission in duly adopted
38 rules, to protect the public interest in coastal fishing waters."

39 **SECTION 4.4.** G.S. 113-134.1 reads as rewritten:

40 **"§ 113-134.1. Jurisdiction over marine fisheries resources in Atlantic Ocean.**

41 The Marine Fisheries Commission is directed to exercise all regulatory authority over the
42 conservation of marine fisheries resources in the Atlantic Ocean to the seaward extent of the
43 State jurisdiction over the resources as now or hereafter ~~defined-defined~~, provided that the
44 Department of Agriculture and Consumer Services shall exercise concurrent authority to the
45 extent necessary to effectuate the purposes of Article 63 of Chapter 106 of the General Statutes.
46 In the case of conflict between actions taken or regulations promulgated by either agency, as
47 respects the activities of the other, the Marine Fisheries Commission and the Department of
48 Agriculture and Consumer Services are empowered to make agreements concerning the
49 harmonious settlement of such conflict in the best interests of promoting marine aquacultural
50 resources, when not inconsistent with the conservation of the marine and estuarine resources of
51 the State. Marine fisheries inspectors may enforce these regulations and all other provisions of

1 law applicable under the authority granted in this section in the same manner and with the same
2 powers elsewhere granted them as enforcement officers."
3

4 **PART V. AMEND SENATOR JEAN PRESTON MARINE SHELLFISH SANCTUARY**
5 **LEGISLATION**

6 **SECTION 5.** Section 44 of S.L. 2014-120 reads as rewritten:

7 **"SENATOR JEAN PRESTON MARINE ~~SHELLFISH~~ OYSTER SANCTUARY**
8 **PROGRAM**

9 **"SECTION 44.(a)** It is the intent of the General Assembly ~~to establish a marine shellfish~~
10 ~~sanctuary in the Pamlico Sound to be named in honor of former Senator Jean Preston, to be~~
11 ~~called the "Senator Jean Preston Marine Shellfish Sanctuary."~~to enhance shellfish habitat
12 within the Albemarle and Pamlico Sounds and their tributaries to benefit fisheries, water
13 quality, and the economy. This will be achieved through the establishment of a network of
14 oyster sanctuaries, harvestable enhancement sites, and coordinated support for the development
15 of shellfish aquaculture. The network of oyster sanctuaries is to be named in honor of
16 Senator Jean Preston and will be called the "Senator Jean Preston Oyster Sanctuary
17 Network."

18 **"SECTION 44.(b)** The Division of Marine Fisheries of the Department of Environment
19 and Natural Resources shall ~~designate an area of appropriate acreage within the Pamlico Sound~~
20 ~~as a recommendation to the Environmental Review Commission for establishment of the~~
21 ~~"Senator Jean Preston Marine Shellfish Sanctuary" and create a plan for managing the~~
22 ~~sanctuary that includes develop a plan to construct and manage additional oyster habitat. The~~
23 ~~new sanctuaries, along with selected existing oyster sanctuaries, will be included in the Senator~~
24 ~~Jean Preston Oyster Sanctuary Network. The plan will include the following components:~~

25 (1) Location and delineation of ~~the sanctuary.~~ oyster sanctuaries. – The plan
26 should include ~~a location~~locations for the ~~sanctuaries~~sanctuary network
27 components that minimizes minimize the impact on commercial trawling. ~~In~~
28 ~~addition, the sanctuary should be gridded into areas leased to private parties~~
29 ~~for restoration and harvest and areas operated and maintained by the State~~
30 ~~for restoration that are not open for harvest. The leased and unleased areas~~
31 ~~should be arranged in a pattern where leased squares are surrounded on four~~
32 ~~sides by unleased squares.~~The location of sanctuaries shall take into account
33 connectivity to existing oyster sanctuaries and proposed oyster enhancement
34 sites. New oyster sanctuaries shall be designed to provide hook-and-line
35 fishing while allowing the development of complex fish habitat and
36 brood-stock oysters that will enhance recruitment in the surrounding reefs.
37 The plan should outline a 10-year development project to accomplish the
38 expansion.

39 (2) Administration. – ~~The plan should include the prices to be charged for the~~
40 ~~leased portions of the sanctuary, including an administration fee to be~~
41 ~~retained by the Division to support the leasing and monitoring program. The~~
42 ~~plan shall also provide that the balance of lease payments collected by the~~
43 ~~Division be transferred to the General Fund with a recommendation that~~
44 ~~some or all of the proceeds be used for the support of the State's special~~
45 ~~education programs in memory of Senator Jean Preston.~~

46 (3) Enhancement of oyster habitat restoration. – The General Assembly finds
47 that the lack of a reliable State-based supply of oyster seed and inadequate
48 funding for cultch planting are limitations to the expansion of oyster
49 harvesting and the restoration of wild oyster habitat in North Carolina.
50 Therefore, the plan should include the following:

- 1 a. Provisions and recommendations to facilitate the availability of
2 oyster seed produced in North Carolina for wild oyster habitat
3 restoration projects as well as oyster aquaculture and to reduce
4 potential negative impacts from importation of non-native oyster
5 seed.
- 6 b. Plans, where feasible, for public-private partnerships for State-based
7 production of viable oyster seed through the creation of one or more
8 production hatcheries, and recommendations for increased support of
9 the existing research hatchery at UNC-Wilmington.
- 10 c. Plans and cost estimates for an expansion of cultch planting in
11 suitable areas of the State's coastal waters in order to expand areas
12 suitable for development of wild oyster habitat.
- 13 (4) Economic relief. – The plan should consider a waiver of application fees and
14 yearly rental fees for new shellfish leases for an established period of time to
15 further promote and support shellfish aquaculture in North Carolina. The
16 new leasing fee waiver program should include measures to discourage
17 speculation and target persons with a genuine interest in starting a shellfish
18 aquaculture business, such as a requirement that the lease be nontransferable
19 for a five-year period.
- 20 (5) Outreach. – The plan should include outreach and education that promotes,
21 whenever possible, public-private partnerships utilizing the Sea Grant
22 College Program, local colleges and other nongovernmental organizations to
23 (i) encourage shellfish aquaculture and provide technical assistance to
24 broaden cost-effective technologies available to leaseholders; (ii) encourage
25 best management practices to leaseholders; and (iii) inform fishermen and
26 the public on the benefits provided by the Senator Jean Preston Oyster
27 Sanctuary Network.
- 28 (6) Monitoring. – The plan should include a monitoring plan designed to (i)
29 determine the success of oyster reef construction; and (ii) evaluate the cost
30 benefit of the oyster sanctuary network and harvestable enhancement sites.
- 31 ~~(3)~~(7) Funding. – The plan should include a request for appropriations sufficient to
32 provide funds for the construction of appropriate bottom habitat and shellfish
33 seeding and for Division staff necessary to conduct oyster restoration and
34 monitoring activities. The plan should provide that, whenever possible,
35 construction and shellfish seeding be carried out by contract with private
36 entities for Division staff to expand oyster restoration and monitoring
37 activities for 10 years. The plan should provide that, whenever possible,
38 public-private partnerships are employed to meet the construction, seeding
39 and outreach requirements of the plan.
- 40 (4) ~~Commercial fisherman relief. – To promote the diversification of~~
41 ~~commercial fishing opportunities, the plan should include a program to~~
42 ~~award free or discounted leases under this section to commercial fishermen~~
43 ~~who (i) have held one or more commercial fishing licenses continually for a~~
44 ~~period of 10 or more years and (ii) receive at least fifty percent (50%) of~~
45 ~~their income from commercial fishing with those licenses.~~
- 46 ~~(5)~~(8) Recommendations. – The plan should shall include recommendations for
47 statutory or regulatory changes needed to expedite the expansion of shellfish
48 restoration and harvesting in order to improve water quality, restore
49 ecological habitats, provide enhanced recreational and commercial fishing
50 opportunities, and expand the coastal economy.

1 ~~"SECTION 44.(c) No later than December 1, 2014, and quarterly thereafter until~~
2 ~~submission of a final plan to the Environmental Review Commission, the Department of~~
3 ~~Environment and Natural Resources shall report to the Environmental Review Commission~~
4 ~~regarding its implementation of this section and its recommended plan."~~
5

6 **PART VI. EFFECTIVE DATE**

7 **SECTION 6.** Sections 2.1 and 2.2 of this act are effective July 1, 2015, and apply
8 to applications for shellfish lease applications received by the Department of Environment and
9 Natural Resources on or after that date. The remainder of this act is effective when it becomes
10 law.