

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 302  
PROPOSED COMMITTEE SUBSTITUTE H302-PCS10347-RI-10

Short Title: Strengthen Oyster Industry.

(Public)

Sponsors:

Referred to:

March 19, 2015

1 A BILL TO BE ENTITLED  
2 AN ACT TO STRENGTHEN AND PROTECT THE OYSTER INDUSTRY IN NORTH  
3 CAROLINA AND TO AMEND THE SEDIMENTATION POLLUTION CONTROL ACT  
4 TO EXEMPT ACTIVITIES TO RESTORE THE WETLANDS FUNCTION OF PRIOR  
5 CONVERTED CROPLAND.

6 The General Assembly of North Carolina enacts:

7  
8 **STUDY SHELLFISH AQUACULTURE**

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

26  
27 **CIVIL PENALTY AUTHORITY FOR CERTAIN SHELLFISH OFFENSES**

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

30 **"§ 113-211. Civil penalties.**

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

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



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

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

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

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

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

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

35  
36 **AMEND SENATOR JEAN PRESTON MARINE SHELLFISH SANCTUARY**  
37 **LEGISLATION**

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

39 **"SENATOR JEAN PRESTON MARINE ~~SHELLFISH~~ OYSTER SANCTUARY**  
40 **PROGRAM**

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

50           **"SECTION 44.(b)** ~~The Division of Marine Fisheries of the Department of Environment~~  
51 ~~and Natural Resources shall designate an area of appropriate acreage within the Pamlico Sound~~

1 as a recommendation to the Environmental Review Commission for establishment of the  
2 "~~Senator Jean Preston Marine Shellfish Sanctuary~~" and create a plan for managing the  
3 sanctuary that includes develop a plan to construct and manage additional oyster habitat. The  
4 new sanctuaries, along with selected existing oyster sanctuaries, will be included in the Senator  
5 Jean Preston Oyster Sanctuary Network. The plan will include the following components:

- 6 (1) Location and delineation of the sanctuary.—oyster sanctuaries. — The plan  
7 should include a location~~locations~~ for the sanctuary~~sanctuary network~~  
8 components that minimizes minimize the impact on commercial trawling. In  
9 addition, the sanctuary should be gridded into areas leased to private parties  
10 for restoration and harvest and areas operated and maintained by the State  
11 for restoration that are not open for harvest. The leased and unleased areas  
12 should be arranged in a pattern where leased squares are surrounded on four  
13 sides by unleased squares. The location of sanctuaries shall take into account  
14 connectivity to existing oyster sanctuaries and proposed oyster enhancement  
15 sites. New oyster sanctuaries shall be designed to provide hook-and-line  
16 fishing while allowing the development of complex fish habitat and  
17 brood-stock oysters that will enhance recruitment in the surrounding reefs.  
18 The plan should outline a 10-year development project to accomplish the  
19 expansion.
- 20 (2) Administration.— The plan should include the prices to be charged for the  
21 leased portions of the sanctuary, including an administration fee to be  
22 retained by the Division to support the leasing and monitoring program. The  
23 plan shall also provide that the balance of lease payments collected by the  
24 Division be transferred to the General Fund with a recommendation that  
25 some or all of the proceeds be used for the support of the State's special  
26 education programs in memory of Senator Jean Preston.
- 27 (3) Enhancement of oyster habitat restoration. — The General Assembly finds  
28 that the lack of a reliable State-based supply of oyster seed and inadequate  
29 funding for cultch planting are limitations to the expansion of oyster  
30 harvesting and the restoration of wild oyster habitat in North Carolina.  
31 Therefore, the plan should include the following:
- 32 a. Provisions and recommendations to facilitate the availability of  
33 oyster seed produced in North Carolina for wild oyster habitat  
34 restoration projects as well as oyster aquaculture and to reduce  
35 potential negative impacts from importation of non-native oyster  
36 seed.
- 37 b. Plans, where feasible, for public-private partnerships for State-based  
38 production of viable oyster seed through the creation of one or more  
39 production hatcheries and recommendations for increased support of  
40 the existing research hatchery at UNC-Wilmington.
- 41 c. Plans and cost estimates for an expansion of cultch planting in  
42 suitable areas of the State's coastal waters in order to expand areas  
43 suitable for development of wild oyster habitat.
- 44 (4) Economic relief. — The plan should consider a waiver of application fees and  
45 yearly rental fees for new shellfish leases for an established period of time to  
46 further promote and support shellfish aquaculture in North Carolina. The  
47 new leasing fee waiver program should include measures to discourage  
48 speculation and target persons with a genuine interest in starting a shellfish  
49 aquaculture business, such as a requirement that the lease be nontransferable  
50 for a five-year period.

- 1           (5)    Outreach. – The plan should include outreach and education that promotes,  
 2           whenever possible, public-private partnerships utilizing the Sea Grant  
 3           College Program, local colleges, and other nongovernmental organizations  
 4           to (i) encourage shellfish aquaculture and provide technical assistance to  
 5           broaden cost-effective technologies available to leaseholders; (ii) encourage  
 6           best management practices to leaseholders; and (iii) inform fishermen and  
 7           the public on the benefits provided by the Senator Jean Preston Oyster  
 8           Sanctuary Network.
- 9           (6)    Monitoring. – The plan should include a monitoring plan designed to (i)  
 10           determine the success of oyster reef construction and (ii) evaluate the cost  
 11           benefit of the oyster sanctuary network and harvestable enhancement sites.
- 12           ~~(3)~~(7) Funding. – The plan should include a request for appropriations sufficient to  
 13           ~~provide funds for the construction of appropriate bottom habitat and shellfish~~  
 14           ~~seeding and for Division staff necessary to conduct oyster restoration and~~  
 15           ~~monitoring activities. The plan should provide that, whenever possible,~~  
 16           ~~construction and shellfish seeding be carried out by contract with private~~  
 17           ~~entities for Division staff to expand oyster restoration and monitoring~~  
 18           activities for 10 years. The plan should provide that, whenever possible,  
 19           public-private partnerships are employed to meet the construction, seeding,  
 20           and outreach requirements of the plan.
- 21           (4)    ~~Commercial fisherman relief.~~ – To promote the diversification of  
 22           ~~commercial fishing opportunities, the plan should include a program to~~  
 23           ~~award free or discounted leases under this section to commercial fishermen~~  
 24           ~~who (i) have held one or more commercial fishing licenses continually for a~~  
 25           ~~period of 10 or more years and (ii) receive at least fifty percent (50%) of~~  
 26           ~~their income from commercial fishing with those licenses.~~
- 27           ~~(5)~~(8) Recommendations. – The plan ~~should~~ shall include recommendations for  
 28           statutory or regulatory changes needed to expedite the expansion of shellfish  
 29           restoration and harvesting in order to improve water quality, restore  
 30           ecological habitats, provide enhanced recreational and commercial fishing  
 31           opportunities, and expand the coastal economy.

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

### 37    **CORE SOUND SHELLFISH LEASING**

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

### 45    **RESTORE JOINT LEGISLATIVE OVERSIGHT COMMISSION ON SEAFOOD AND** 46    **AQUACULTURE**

47           **SECTION 5.1.** Subdivisions 1.2(a)(5) and 1.2(b)(3) and Sections 2.26 through  
 48           2.29 of S.L. 2011-291 are repealed, and Article 12F of Chapter 120 of the General Statutes, as  
 49           it existed prior to its repeal by S.L. 2011-291, is reenacted.

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

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

3 **"§ 120-70.62. Powers and duties.**

4       The Commission shall have the following powers and duties:

- 5           (1) To monitor and study the current seafood industry in North Carolina  
6 including studies of the feasibility of increasing the State's production,  
7 processing, and marketing of ~~seafood;~~seafood.
- 8           (2) To study the potential for increasing the role of aquaculture in all regions of  
9 the ~~State;~~State.
- 10          (3) To evaluate the feasibility of creating a central permitting office for fishing  
11 and aquaculture ~~matters;~~matters.
- 12          (4) To evaluate actions of the Division of Marine Fisheries of the Department of  
13 Environment and Natural Resources, the Wildlife Resources ~~Commission of~~  
14 ~~the Department of Environment and Natural Resources~~Commission, and of  
15 any other board, commission, department, or agency of the State or local  
16 government as such actions relate to the seafood and aquaculture  
17 ~~industries;~~industries.
- 18          (5) ~~To make recommendations regarding regulatory matters relating to the~~  
19 ~~seafood and aquaculture industries including, but not limited to:~~  
20           a. ~~Increasing the State's representation and decision making ability by~~  
21 ~~dividing the State between the Atlantic and South Atlantic regions of~~  
22 ~~the National Division of Marine Fisheries; and~~  
23           b. ~~Evaluating the necessity to substantially increase~~To evaluate the  
24 adequacy of penalties for trespass and theft of shellfish and other  
25 aquaculture products;~~products.~~
- 26          (6) To review and evaluate changes in federal law and regulations, relevant  
27 court decisions, and changes in technology affecting the seafood and  
28 aquaculture ~~industries;~~industries.
- 29          (7) To review existing and proposed State law and rules affecting the seafood  
30 and aquaculture industries and to determine whether any modification of law  
31 or rules is in the public ~~interest;~~interest.
- 32          (8) To make reports and recommendations, including draft legislation, to the  
33 General Assembly from time to time as to any matter relating to the powers  
34 and duties set out in this ~~section;~~and section.
- 35          (9) To undertake such additional studies as it deems appropriate or as may from  
36 time to time be requested by the President of the Senate, the President Pro  
37 Tempore of the Senate, the Speaker of the House of Representatives, either  
38 house of the General Assembly, the Legislative Research Commission, or  
39 the Joint Legislative Commission on Governmental Operations, and to make  
40 such reports and recommendations to the General Assembly regarding such  
41 studies as it deems appropriate."  
42

43 **AMEND THE SEDIMENTATION POLLUTION CONTROL ACT TO EXEMPT**  
44 **ACTIVITIES TO RESTORE THE WETLANDS FUNCTION OF PRIOR CONVERTED**  
45 **CROPLAND**

46       **SECTION 6.** G.S. 113A-52.01 is amended by adding a new subdivision to read:

47 **"§ 113A-52.01. Applicability of this Article.**

48       This Article shall not apply to the following land-disturbing activities:

- 49           (1) Activities, including the breeding and grazing of livestock, undertaken on  
50 agricultural land for the production of plants and animals useful to man,  
51 including, but not limited to:

- 1 a. Forages and sod crops, grains and feed crops, tobacco, cotton, and  
2 peanuts.  
3 b. Dairy animals and dairy products.  
4 c. Poultry and poultry products.  
5 d. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies,  
6 mules, and goats.  
7 e. Bees and apiary products.  
8 f. Fur producing animals.  
9 (2) Activities undertaken on forestland for the production and harvesting of  
10 timber and timber products and conducted in accordance with best  
11 management practices set out in Forest Practice Guidelines Related to Water  
12 Quality, as adopted by the Department.  
13 (3) Activities for which a permit is required under the Mining Act of 1971,  
14 Article 7 of Chapter 74 of the General Statutes.  
15 (4) For the duration of an emergency, activities essential to protect human life,  
16 including activities specified in an executive order issued under  
17 G.S. 166A-19.30(a)(5).  
18 (5) Activities undertaken pursuant to Natural Resources Conservation Service  
19 standards to restore the wetlands functions of converted wetlands as defined  
20 in 7 Code of Federal Regulations § 12.2 (January 1, 2014 Edition)."  
21

**EFFECTIVE DATE**

22 **SECTION 7.** This act is effective when it becomes law.  
23