

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 361

Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted
6/6/18

Proposed Conference Committee Substitute H361-PCCS40771-MH-1

Short Title: Support Shellfish Industry.

(Public)

Sponsors:

Referred to:

March 16, 2017

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL SUPPORT FOR THE STATE'S SHELLFISH
INDUSTRY BY REFORMING AND MODERNIZING THE STATUTES GOVERNING
SHELLFISH AND AQUACULTURE BOTTOMLAND LEASING.

The General Assembly of North Carolina enacts:

PART I. SHELLFISH AQUACULTURE REFORMS

SHELLFISH BOTTOM LEASING AMENDMENTS

SECTION 1.1.(a) G.S. 113-202 reads as rewritten:

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

(a) To increase the use of suitable areas underlying coastal fishing waters for the
production of shellfish, the Secretary may grant shellfish cultivation leases to persons who reside
in North Carolina under the terms of this section when the Secretary determines, in accordance
with his 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 the production of shellfish shall meet
the following minimum standards:

- (1) The area leased must be suitable for the cultivation and harvesting of shellfish
in commercial quantities.
- (2) The area leased must not contain a natural shellfish bed.
- (3) Cultivation of shellfish in the leased area will be compatible with lawful
utilization by the public of other marine and estuarine ~~resources~~resources near
the leased area. Other public uses which may be considered include, but are
not limited to, navigation, fishing and recreation.
- (4) Cultivation of shellfish in the leased area will not ~~impinge upon the rights of
riparian owners~~unreasonably conflict with the riparian rights of adjacent
property owners.
- (4a) The leased area must be located a minimum of 100 feet from the shoreline of
any private property. The 100-foot minimum shall not apply when (i) the
adjacent private property is owned by the lease applicant or (ii) the owner of
the private property has provided consent in the form of a written and
notarized statement.



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- 1 (5) The area leased must not include an area designated for inclusion in the
2 Department's Shellfish Management Program.
- 3 (6) The area leased must not include ~~an area which the State Health Director has~~
4 ~~recommended be closed to shellfish harvest by reason of pollution waters that~~
5 have been classified as prohibited, restricted, or conditionally approved closed
6 with respect to shellfish harvesting at the time of filing of the lease application.
- 7 (7) The area leased under a single lease shall be as follows:
- 8 a. For coastal fishing waters located in and south of Core Sound, the area
9 leased under a single lease shall not be less than one-half acre or
10 exceed 10 acres, except in areas designated by the Department as
11 Shellfish Aquaculture Enterprise Areas under subsection (s) of this
12 section. For purposes of this subdivision, Core Sound shall have the
13 definition set forth in Section 1(b) of Chapter 44 of the 1993 Session
14 Laws.
- 15 b. For other coastal fishing waters, the area leased under a single lease
16 shall not be less than one-half acre or exceed 50 acres, except in areas
17 designated by the Department as Shellfish Aquaculture Enterprise
18 Areas under subsection (s) of this section.
- 19 (b) The Secretary may delete any part of an area proposed for lease or may condition a
20 lease to protect the public interest with respect to the factors enumerated in subsection (a) of this
21 section. The Secretary may not grant a new lease in an area heavily used for recreational
22 purposes. Except as prohibited by federal law, the Secretary shall not exclude any area from
23 leasing solely on the basis that the area contains submerged aquatic vegetation and shall make
24 specific findings based on the standards set forth in subsection (a) of this section prior to reaching
25 a decision not to grant or renew a lease for shellfish cultivation for any area containing submerged
26 aquatic vegetation.
- 27 (c) No person, including a corporate entity, or single family unit may acquire and hold
28 by lease, lease renewal, or purchase ~~shellfish cultivation leases covering more than 50 acres of~~
29 ~~public bottoms under shellfish cultivation leases. the acreage of public bottoms set forth in this~~
30 subsection. For purposes of this subsection, the number of acres of leases held by a person
31 includes acres held by a corporation in which the person holds an interest. The Marine Fisheries
32 Commission may adopt rules to require the submission of information necessary to ensure
33 compliance with this subsection.
- 34 (1) With respect to coastal fishing waters that are (i) designated as a Shellfish Best
35 Use Area under subsection (t) of this section and (ii) located north of Core
36 Sound, the limit is 200 acres. For purposes of this subdivision, Core Sound
37 shall have the definition set forth in Section 1(b) of Chapter 44 of the 1993
38 Session Laws.
- 39 (2) With respect to all other coastal fishing waters, the limit is 50 acres.
- 40 (d) Any person desiring to apply for a lease must make written application to the
41 Secretary on forms prepared by the Department containing such information as deemed
42 necessary to determine the desirability of granting or not granting the lease requested. Except in
43 the case of renewal leases, the application must be accompanied by a map or diagram made at
44 the expense of the applicant, showing the area proposed to be leased.
- 45 (d1) The map or diagram must conform to standards prescribed by the Secretary
46 concerning accuracy of map or diagram and the amount of detail that must be shown. If on the
47 basis of the application information and map or diagram the Secretary deems that granting the
48 lease would benefit the shellfish culture of North Carolina, the Secretary, in the case of initial
49 lease applications, must order an investigation of the bottom proposed to be leased. The
50 investigation is to be made by the Secretary or his authorized agent to determine whether the area
51 proposed to be leased is consistent with the standards in subsection (a) of this section and any

1 other applicable standards under this Article and the rules of the Marine Fisheries Commission.
2 In the event the Secretary finds the application inconsistent with the applicable standards, the
3 Secretary shall deny the application or propose that a conditional lease be issued that is consistent
4 with the applicable standards. In the event the Secretary authorizes amendment of the application,
5 the applicant must furnish a new map or diagram meeting requisite standards showing the area
6 proposed to be leased under the amended application. At the time of making application for an
7 initial lease, the applicant must pay a filing fee of two hundred dollars (\$200.00).

8 (e) The area of bottom applied for in the case of an initial lease or amended initial lease
9 must be as compact as possible, taking into consideration the shape of the body of water, the
10 consistency of the bottom, and the desirability of separating the boundaries of a leasehold by a
11 sufficient distance from any known natural shellfish bed to prevent the likelihood of disputes
12 arising between the leaseholder and members of the public taking shellfish from the natural bed.

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

23 (g) After consideration of the public comment received and any additional investigations
24 the Secretary orders to evaluate the comments, the Secretary shall notify the applicant in person
25 or by certified or registered mail of the decision on the lease application. The Secretary shall also
26 notify persons who submitted comments at the public hearing and requested notice of the lease
27 decision. An applicant who is dissatisfied with the Secretary's decision ~~or another person~~
28 ~~aggrieved by the decision~~ may commence a contested case by filing a petition under
29 G.S. 150B-23 within ~~20-30~~ days after receiving notice of the Secretary's decision. In the event
30 the Secretary's decision is a modification to which the applicant agrees, the lease applicant must
31 furnish an amended map or diagram before the lease can be issued by the Secretary. A person
32 other than the applicant who is aggrieved by the Secretary's decision may file a petition for a
33 contested case hearing only if the Shellfish Cultivation Lease Review Committee established
34 pursuant to G.S. 143B-289.57(f) determines that a hearing is appropriate. A request for a
35 determination of the appropriateness of a contested case hearing shall be made in writing and
36 received by the Review Committee within 30 days after the disputed decision is made. A
37 determination of the appropriateness of a contested case shall be made by the Review Committee
38 within 90 days after a request for a determination is received and shall be based on whether the
39 person seeking to commence a contested case:

40 (1) Has alleged that the decision is contrary to a statute or rule;

41 (2) Is directly affected by the decision; and

42 (3) Has alleged facts or made legal arguments that demonstrate that the request
43 for the hearing is not frivolous.

44 If the Review Committee determines that a contested case is appropriate, the petition for a
45 contested case shall be filed within 30 days after the Review Committee makes its determination.
46 A determination that a person may not commence a contested case is a final agency decision and
47 is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on
48 judicial review, the court determines that the Review Committee erred in determining that a
49 contested case would not be appropriate, the court shall remand the matter for a contested case
50 hearing under G.S. 150B-23 and final decision on the permit pursuant to G.S. 113A-122.

1 Decisions in such cases shall be rendered pursuant to those rules, regulations, and other
2 applicable laws in effect at the time of the commencement of the contested case.

3 The applicant or another person aggrieved by a final decision under this section may appeal
4 the decision to the superior court of the county where the proposed lease or any part thereof is
5 located, pursuant to the provisions of Chapter 150B of the General Statutes.

6 (h) Repealed by Session Laws 1993, c. 466, s. 1.

7 (i) After a lease application is approved by the Secretary, the applicant shall submit to
8 the Secretary information sufficient to define the bounds of the area approved for leasing with
9 markers in accordance with the rules of the Commission. The information shall conform to
10 standards prescribed by the Secretary concerning accuracy and the amount of detail to be shown.
11 When information is submitted, the boundaries are marked and all fees and rents due in advance
12 are paid, the Secretary shall execute the lease on forms approved by the Attorney General. The
13 Secretary is authorized, with the approval of the lessee, to amend an existing lease by reducing
14 the area under lease or by combining contiguous leases without increasing the total area leased.
15 The information required by this subsection may be based on coordinate information produced
16 using a device equipped to receive global positioning system data.

17 (j) Initial leases begin upon the issuance of the lease by the Secretary and expire at noon
18 on the first day of July following the tenth anniversary of the granting of the lease. Renewal
19 leases are issued for a period of 10 years from the time of expiration of the previous lease. At the
20 time of making application for renewal of a lease, the applicant must pay a filing fee of one
21 hundred dollars (\$100.00). The rental for initial leases is one dollar (\$1.00) per acre until noon
22 on the first day of July following the first anniversary of the lease. Thereafter, for initial leases
23 and from the beginning for renewals of leases entered into after that date, the rental is ten dollars
24 (\$10.00) per acre per year. Rental must be paid annually in advance prior to the first day of July
25 each year. Upon initial granting of a lease, the pro rata amount for the portion of the year left
26 until the first day of July must be paid in advance at the rate of one dollar (\$1.00) per acre per
27 year; then, on or before the first day of July next, the lessee must pay the rental for the next full
28 year.

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

38 (l) Upon receipt of notice by the Secretary of any of the following occurrences, he must
39 commence action to terminate the leasehold:

- 40 (1) Failure to pay the annual rent in advance.
- 41 (2) Failure to file information required by the Secretary upon annual remittance
42 of rental or filing false information on the form required to accompany the
43 annual remittance of rental.
- 44 (3) Failure by new owner to report a transfer of beneficial ownership of all or any
45 portion of or interest in the leasehold.
- 46 (4) Failure to mark the boundaries in the leasehold and to keep them marked as
47 required in the rules of the Marine Fisheries Commission.
- 48 (5) Failure to utilize the leasehold on a continuing basis for the commercial
49 production of shellfish.
- 50 (6) Transfer of all or part of the beneficial ownership of a leasehold to a
51 nonresident.

- 1 (7) Substantial breach of compliance with the provisions of this Article or of rules
2 of the Marine Fisheries Commission governing use of the leasehold.
3 (8) Failure to comply with the training requirements established by the Marine
4 Fisheries Commission pursuant to G.S. 113-201(c).

5 (l) The Marine Fisheries Commission is authorized to make rules defining commercial
6 production of shellfish, based upon the productive potential of particular areas climatic or
7 biological conditions at particular areas or particular times, availability of seed shellfish,
8 availability for purchase by lessees of shells or other material to which oyster spat may attach,
9 and the like. Commercial production may be defined in terms of planting effort made as well as
10 in terms of quantities of shellfish harvested. Provided, however, that if a lessee has made a
11 diligent effort to effectively and efficiently manage his lease according to accepted standards and
12 practices in such management, and because of reasons beyond his control, such as acts of God,
13 such lessee has not and cannot meet the requirements set out by the Marine Fisheries Commission
14 under the provisions of this subsection, his leasehold shall not be terminated under subdivision
15 (5) of subsection (l) of this section.

16 (m) In the event the leaseholder takes steps within 30 days to remedy the situation upon
17 which the notice of intention to terminate was based and the Secretary is satisfied that
18 continuation of the lease is in the best interests of the shellfish culture of the State, the Secretary
19 may discontinue termination procedures. Where there is no discontinuance of termination
20 procedures, the leaseholder may initiate a contested case by filing a petition under G.S. 150B-23
21 within 30 days of receipt of notice of intention to terminate. Where the leaseholder does not
22 initiate a contested case, or the final decision upholds termination, the Secretary must send a final
23 letter of termination to the leaseholder. The final letter of termination may not be mailed sooner
24 than 30 days after receipt by the leaseholder of the Secretary's notice of intention to terminate, or
25 of the final agency decision, as appropriate. The lease is terminated effective at midnight on the
26 day the final notice of termination is served on the leaseholder. The final notice of termination
27 may not be issued pending hearing of a contested case initiated by the leaseholder.

28 Service of any notice required in this subsection may be accomplished by certified mail,
29 return receipt requested; personal service by any law-enforcement officer; or upon the failure of
30 these two methods, publication. Service by publication shall be accomplished by publishing such
31 notices in a newspaper of general circulation within the county where the lease is located for at
32 least once a week for three successive weeks. The format for notice by publication shall be
33 approved by the Attorney General.

34 (n) Upon final termination of any leasehold, ~~the bottom in question is thrown open to the~~
35 ~~public for use in accordance with laws and rules governing use of public grounds generally. the~~
36 Secretary may either (i) re-lease the area to the first qualified applicant to file an application
37 following the procedures set forth in this Article for renewal of a lease or (ii) designate the area
38 as a Shellfish Aquaculture Enterprise Area under subsection (s) of this section. Within 30 days
39 of final termination of the leasehold, the former leaseholder shall remove all abandoned markers
40 and gear denominating the area of the leasehold as a private bottom. The State may, after 10 days'
41 notice to the owner of the abandoned ~~markers thereof, remove the abandoned structure and~~
42 markers and gear, have the area cleaned up. The cost of such removal and cleanup shall be
43 payable by the owner of the abandoned markers and gear and the State may bring suit to recover
44 ~~the costs thereof.~~ costs, including legal fees.

45 (o) Every year between January 1 and February 15 the Secretary must mail to all
46 leaseholders a notice of the annual rental due and include forms designed by him for determining
47 the amount of shellfish or shells planted on the leasehold during the preceding calendar year, and
48 the amount of harvest gathered. Such forms may contain other pertinent questions relating to the
49 utilization of the leasehold in the best interests of the shellfish culture of the State, and must be
50 executed and returned by the leaseholder with the payment of his rental. Any leaseholder or his

1 agent executing such forms for him who knowingly makes a false statement on such forms is
2 guilty of a Class 1 misdemeanor.

3 (p) All leases and renewal leases granted after the effective date of this Article are made
4 subject to this Article and to reasonable amendment of governing statutes, rules of the Marine
5 Fisheries Commission, and requirements imposed by the Secretary or his agents in regulating the
6 use of the leasehold or in processing applications of rentals. This includes such statutory increase
7 in rentals as may be necessitated by changing conditions and refusal to renew lease after
8 expiration, in the discretion of the Secretary. No increase in rentals, however, may be given
9 retroactive effect.

10 The General Assembly declares it to be contrary to public policy to the oyster and clam
11 bottoms which were leased prior to January 1, 1966, and which are not being used to produce
12 oysters and clams in commercial quantities to continue to be held by private individuals, thus
13 depriving the public of a resource which belongs to all the people of the State. Therefore, when
14 the Secretary determines, after due notice to the lessee, and after opportunity for the lessee to be
15 heard, that oysters or clams are not being produced in commercial quantities, due to the lessee's
16 failure to make diligent effort to produce oysters and clams in commercial quantities, the
17 Secretary may decline to renew, at the end of the current term, any oyster or clam bottom lease
18 which was executed prior to January 1, 1966. The lessee may appeal the denial of the Secretary
19 to renew the lease by initiating a contested case pursuant to G.S. 150B-23. In such contested
20 cases, the burden of proof, by the greater weight of the evidence, shall be on the lessee.

21 (q) Repealed by Session Laws 1983, c. 621, s. 16.

22 (r) A lease under this section shall include the right to place devices or equipment related
23 to the cultivation or harvesting of marine resources on or within 18 inches of the leased bottom.
24 Devices or equipment not resting on the bottom or extending more than 18 inches above the
25 bottom will require a water column lease under G.S. 113-202.1.

26 (s) To facilitate shellfish aquaculture opportunities through advanced siting and
27 preapprovals from relevant federal and State agencies, the Secretary may establish Shellfish
28 Aquaculture Enterprise Areas. The Secretary shall only issue nontransferrable leases to residents
29 of North Carolina within designated Shellfish Aquaculture Enterprise Areas. Any leased parcel
30 within a Shellfish Aquaculture Enterprise Area that is relinquished or terminated shall revert to
31 the State and be made available to other applicants.

32 (t) To facilitate siting of shellfish leases, the Secretary may conduct preliminary site
33 assessment and public scoping activities in order to designate Shellfish Best Use Areas in coastal
34 fishing waters north of Core Sound. Prior to designating a Shellfish Best Use Area, the Secretary
35 may gather information needed to determine suitable coastal fishing waters for a Shellfish Best
36 Use Area, including site investigations and mapping, initiate interagency review, and hold public
37 meetings. Upon final designation, the Secretary shall post the Shellfish Best Use Areas on the
38 Web site of the Division of Marine Fisheries. For purposes of this subsection, Core Sound shall
39 have the definition set forth in Section 1(b) of Chapter 44 of the 1993 Session Laws."

40 **SECTION 1.1.(b)** G.S. 113-201.1(1) reads as rewritten:

41 "(1) "Natural shellfish bed" means an area of public bottom where oysters, clams,
42 scallops, mussels or other shellfish are found to ~~be growing in sufficient~~
43 ~~quantities to be valuable to the public~~ contain at least 10 bushels of shellfish
44 per acre and that does not include an area previously leased under this Article
45 and terminated by the Secretary for failure to meet the requirements of this
46 section within the 12 months directly preceding the date of the lease
47 application."

48 **SECTION 1.1.(c)** G.S. 113-130(4) reads as rewritten:

49 "(4) Resident. – In the case of:

- 50 a. Individuals. – One who at the time in question has resided in North
51 Carolina for the preceding six months or has been domiciled in North

1 Carolina for the preceding 60 days. When domicile in the State for a
2 period of 60 days up to six months is the basis for establishing
3 residence, the individual must sign a certificate on a form supplied by
4 the Department or the Wildlife Resources Commission, as the case
5 may be, stating the necessary facts and the intent to establish domicile
6 here.

7 b. Corporations. – A corporation which is chartered under the laws of
8 North Carolina and has its principal office within the State. With
9 respect to leases issued under Article 16 of this Chapter, a corporation
10 is defined as a corporation which is chartered under the laws of North
11 Carolina.

12 c. Partnerships. – A partnership in which all partners are residents of
13 North Carolina and which has its principal office in the State. With
14 respect to leases issued under Article 16 of this Chapter, a partnership
15 is defined as a partnership in which all partners are residents of North
16 Carolina.

17 d. Other Associations and Groups Fitting the Definition of Person. – An
18 association or group principally composed of individual residents of
19 North Carolina, with its principal office, if any, in the State, and
20 organized for a purpose that contemplates more involvement or
21 contact with this State than any other state.

22 e. Military Personnel and Their Dependents. – A member of the Armed
23 Forces of the United States stationed at a military facility in North
24 Carolina, the member's spouse, and any dependent under 18 years of
25 age residing with the member are deemed residents of the State, of the
26 county in which they live, and also, if different, of any county in which
27 the military facility is located. A member of the Armed Forces of the
28 United States on active duty outside the State of North Carolina shall
29 be deemed an individual resident of the State for purposes of all the
30 following licenses:

- 31 1. Coastal Recreational Fishing Licenses issued pursuant to
32 G.S. 113-174.2(c)(1) and (c)(4).
- 33 2. Combination Hunting and Inland Fishing Licenses issued
34 pursuant to G.S. 113-270.1C(b)(1).
- 35 3. Sportsman Licenses issued pursuant to G.S. 113-270.1D(a).
- 36 4. Hunting Licenses issued pursuant to G.S. 113-270.2(c)(1) and
37 (c)(5).
- 38 5. Special Activity Licenses issued pursuant to
39 G.S. 113-270.3(b)(1).
- 40 6. Trapping Licenses issued pursuant to G.S. 113-270.5(b)(1).
- 41 7. Hook-and-Line Licenses issued pursuant to
42 G.S. 113-271(d)(1), (d)(2), and (d)(6)a.
- 43 8. Unified Hunting and Fishing Licenses issued pursuant to
44 G.S. 113-351(c)(1) and (c)(2).

45 f. Students. – Nonresident students attending a university, college, or
46 community college in the State."

47 **SECTION 1.1.(d)** As part of the Shellfish Mariculture Plan required by Section
48 13.13 of S.L. 2017-57, the North Carolina Policy Collaboratory and the Division of Marine
49 Fisheries shall study and recommend whether the establishment of a Shellfish Mariculture
50 Commission to oversee shellfish bottom leasing and other aspects of shellfish aquaculture would
51 substantially advance and promote the State's shellfish aquaculture industry. The

1 recommendation shall include proposals for additional or reallocated funding as well as proposed
2 legislation necessary to implement the recommendation.

3 **SECTION 1.1.(e)** As part of the Shellfish Mariculture Plan required by Section
4 13.13 of S.L. 2017-57, the North Carolina Policy Collaboratory shall establish a stakeholder
5 process to study and recommend whether the shellfish leasing moratoria established by Section
6 2 of Chapter 876 of the 1967 Session Laws and Section 1(c) of S.L. 2003-64 should apply to
7 Shellfish Aquaculture Enterprise Areas.

9 **ADMINISTRATIVE REMEDY FOR SHELLFISH BOTTOM LEASING APPEALS**

10 **SECTION 1.2.** G.S. 143B-289.57 is amended by adding a new subsection to read:

11 "(f) The Chair of the Commission shall appoint a three-member Shellfish Cultivation
12 Lease Review Committee to hear appeals of decisions of the Secretary regarding shellfish
13 cultivation leases issued under G.S. 113-202. The Committee shall include one Commission
14 member, who shall serve as the hearing officer, and two public members. One public member
15 shall have expertise or other relevant experience in shellfish aquaculture, and the other public
16 member shall have expertise or other relevant experience with respect to coastal property or
17 property assessment. The Commission shall adopt rules to establish procedures for the appeals
18 and may adopt temporary rules."

20 **EXPAND SHELLFISH NURSERY AREAS AND UNDER DOCK OYSTER CULTURE** 21 **SITING**

22 **SECTION 1.3.(a)** G.S. 113-203 reads as rewritten:

23 "**§ 113-203. Transplanting of oysters and clams.**

24 ...

25 (a2) It is unlawful to do any of the following:

- 26 (1) Transplant oysters or clams taken from public grounds to private beds except
27 when lawfully taken during open season and transported directly to a private
28 bed in accordance with rules of the Marine Fisheries Commission.
- 29 (2) Transplant oysters or clams taken from permitted aquaculture operations to
30 private beds except from waters in the approved classification.
- 31 (3) Transplant oysters or clams from public grounds or permitted aquaculture
32 operations utilizing waters in the prohibited, restricted or conditionally
33 approved classification to private beds except when the transplanting is done
34 in accordance with the provisions of this section and implementing rules.

35 (a3) ~~Unless the Secretary determines that the nursery of shellfish in an area will present~~
36 a risk to public health, it is lawful to transplant seed oysters or seed clams taken from permitted
37 aquaculture operations that use waters in the prohibited, restricted or conditionally approved
38 classification to private beds pursuant to an Aquaculture Seed Transplant Permit issued by the
39 Secretary that sets times during which transplant is permissible and other reasonable restrictions
40 imposed by the Secretary under either of the following circumstances:

- 41 (1) When transplanting seed clams less than 12 millimeters in their largest
42 dimension.
- 43 (2) When transplanting seed oysters less than 25 millimeters in their largest
44 dimension.

45"

46 **SECTION 1.3.(b)** G.S. 113-210(c) reads as rewritten:

47 "(c) Issuance. – The Director of the Division of Marine Fisheries shall issue an Under
48 Dock Oyster Culture Permit only if the Director determines all of the following:

- 49 (1) ~~That~~If the dock or pier is ~~not~~ located in an area that the State Health Director
50 has recommended be closed to shellfish harvest due to pollution or that has
51 been closed to harvest by statute, rule, or proclamation due to suspected

1 ~~pollution~~pollution, the owner of the dock or pier has signed a written
2 acknowledgement that oysters produced under the permit are intended for
3 restoration purposes and not for consumption.

4 "

6 SHELLFISH AQUACULTURE ENTERPRISE AND BEST USE AREAS

7 **SECTION 1.4.** G.S. 113-201.1, as amended by Section 1.1(b) of this act, reads as
8 rewritten:

9 "§ 113-201.1. Definitions.

10 As used in this Article:

11 ...

12 (3a) "Shellfish Aquaculture Enterprise Area" means an area designated and
13 permitted by the Secretary that is subdivided into parcels and made available
14 for shellfish aquaculture leasing.

15 (3b) "Shellfish Best Use Area" means an area designated by the Secretary based
16 on a finding that the area is compatible with larger acreage shellfish
17 aquaculture leasing.

18 "

20 MORATORIUM ON SHELLFISH LEASING IN THE NEW HANOVER COUNTY 21 AREA

22 **SECTION 1.5.** Notwithstanding G.S. 113-202 and G.S. 113-202.1, a moratorium on
23 new shellfish cultivation leases and new water column leases for aquaculture shall be imposed
24 for all those waters bordered in the north by a line beginning at a point 34° 13.10221' N – 77°
25 48.79544' W on the mainland near the Wrightsville Beach Bridge; running southeasterly to a
26 point 34° 12.51584' N – 77° 47.81847' W on Wrightsville Beach; and bordered in the south by a
27 line beginning at a point 34° 07.77029' N – 77° 52.08320' W on the mainland near Peden Point;
28 running easterly near IWW Marker #141 to a point 34° 07.60069' N – 77° 51.03281' on
29 Masonboro Island, to include the waters of Masonboro Sound and Greenville Sound. The
30 moratorium shall expire July 1, 2020. For purposes of this section, a new shellfish cultivation
31 lease or water column lease shall include applications for either type of lease received by the
32 Secretary, but not granted as of July 1, 2018.

34 MORATORIUM ON SHELLFISH LEASING IN BOGUE SOUND

35 **SECTION 1.6.(a)** Notwithstanding G.S. 113-202 and G.S. 113-202.1, a moratorium
36 on new shellfish cultivation leases and new water column leases for aquaculture shall be imposed
37 for all those waters bordered in the west by a line beginning at a point 34° 40.77658' N – 77°
38 04.02674' W on the mainland near the Emerald Isle High Rise Bridge; running southeasterly
39 following the bridge to a point 34° 40.05410' N – 77° 03.80531' W on Emerald Isle; bordered in
40 the north by a line beginning at a point 34° 43.24641' N – 76° 41.68436' W; running easterly
41 following the Highway 70 High Rise Bridge to a point 34° 43.27819' N – 76° 41.22259' W; and
42 bordered in the east by a line beginning at a point 34° 42.37275' N – 76° 40.80078' W on the
43 southern tip of Radio Island; running southerly to a point 34° 41.98273' N – 76° 40.81929' on
44 Bogue Banks near the U.S. Coast Guard Station. The moratorium shall expire July 1, 2020. For
45 purposes of this section, a new shellfish cultivation lease or water column lease shall include
46 applications for either type of lease received by the Secretary, but not granted as of July 1, 2018.

47 **SECTION 1.6.(b)** During the process for establishing Shellfish Aquaculture
48 Enterprise Areas, the Division of Marine Fisheries of the Department of Environmental Quality
49 shall identify areas in Bogue Sound where there are fewer anticipated user conflicts with shellfish
50 leases. The Division shall report its findings to the General Assembly no later than July 1, 2019.

PART II. REVISE OYSTER STUDIES REPORTING DATES

SECTION 2.1.(a) Section 14.11(f) of S.L. 2016-94 reads as rewritten:

"**SECTION 14.11.(f)** The University of North Carolina at Chapel Hill shall report the results of its study, including any recommendations and suggested legislation needed to implement the recommendations, to the Fiscal Research Division, the Environmental Review Commission, and the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources no later than ~~December 31, 2018.~~December 31, 2018, which may be extended to June 30, 2019, by written notice to the Fiscal Research Division if the University determines additional time is needed to complete the study."

SECTION 2.1.(b) Section 13.13(b) of S.L. 2017-57 reads as rewritten:

"**SECTION 13.13.(b)** In addition to the study required by Section 14.11(d) of S.L. 2016-94, as amended by subsection (a) of this section, the North Carolina Policy Collaboratory shall also prepare and deliver a Shellfish Mariculture Plan by ~~December 31, 2018.~~December 31, 2018, which may be extended to June 30, 2019, by written notice to the Fiscal Research Division if the Collaboratory determines additional time is needed to complete the study. Except as otherwise prohibited by State or federal law, all State entities shall provide all information, resources, and support deemed relevant by the Collaboratory for the creation of the Shellfish Mariculture Plan. The plan shall be submitted to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the Fiscal Research Division and shall consider the following:

...."

PART III. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 3.1. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

SECTION 3.2. This act becomes effective July 1, 2018.