

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

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**SENATE BILL 1111\***

Short Title: Est. Marine Fisheries Violation Points System. (Public)

Sponsors: Senators Albertson; Garwood, Lucas, and Moore.

Referred to: Agriculture/Environment/Natural Resources.

May 17, 2004

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH A VIOLATIONS POINTS SYSTEM FOR THE  
3 SUSPENSION, REVOCATION, AND REISSUANCE OF MARINE FISHING  
4 LICENSES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 113-171 is repealed.

7 **SECTION 2.** Article 14A of Chapter 113 of the General Statutes is amended  
8 by adding a new section to read:

9 **"§ 113-171.2. Violation points system for the suspension, revocation, and**  
10 **reissuance of licenses.**

11 (a) Definitions. – As used in this section:

12 (1) "Commercial fishing license" means any license used to engage in a  
13 commercial fishing operation. A fish dealer license issued under  
14 G.S. 113-169.3 is not a commercial fishing license.

15 (2) "Conviction" means a plea of guilty or nolo contendere, any other  
16 termination of a criminal prosecution unfavorable to the defendant  
17 after jeopardy has attached, any substitute for criminal prosecution  
18 whereby the defendant expressly or impliedly confesses the  
19 defendant's guilt, procedures whereby bond forfeitures are accepted in  
20 lieu of proceeding to trial, or cases indefinitely continued upon arrest  
21 of judgment or prayer for judgment continued.

22 (3) "Fishery offense" means a criminal offense within the jurisdiction of  
23 the Division under the provisions of this Subchapter or of rules of the  
24 Commission adopted under the authority of this Subchapter.

25 (4) "License" means all licenses, assignments, endorsements, registrations,  
26 and permits issued by the Division and the privilege to hold licenses,  
27 assignments, endorsements, registrations, and permits issued by the  
28 Division.

1           (5) "Licensee" means a person who holds a license issued under this  
2           Article.

3           (6) "Recreational fishing license" means a RCGL.

4           (7) "Reliable notice" means information furnished to the Fisheries  
5           Director in prosecution or other reports from inspectors.

6           (b) Duty to Revoke or Suspend Licenses. – Upon receipt of reliable notice that a  
7           licensee has had imposed against the licensee a conviction of a fisheries offense, the  
8           Fisheries Director shall suspend or revoke all licenses held by the licensee as provided  
9           in this section.

10          (c) Notice of Convictions. – The Fisheries Director shall initiate an  
11          administrative procedure designed to give the Fisheries Director reliable notice of all  
12          convictions of fisheries offenses by licensees.

13          (d) Assessment and Recordation of Points. – The Fisheries Director shall  
14          maintain a record of the convictions of fisheries offenses of each licensee. The Fisheries  
15          Director shall assess to the record of each licensee, as of the date of the commission of  
16          the fisheries offense, a number of points for each conviction as provided in the schedule  
17          set out in subsection (f) of this section. The Fisheries Director shall assess points for any  
18          conviction in which any of the following are the case:

19               (1) No notice of appeal has been given.

20               (2) The time for appeal has expired without an appeal having been  
21               perfected.

22               (3) The conviction is sustained on appeal. Where there is a new trial,  
23               finality of any subsequent conviction will be determined in the manner  
24               set out above.

25          (e) Designation of Fisheries Offenses and Multiple Offenses. – The Fisheries  
26          Director shall designate in the record whether a fisheries offense was related to  
27          commercial fishing activity or recreational fishing activity. The Fisheries Director shall  
28          designate in the record whether a fisheries offense was related to the harvest of fish or  
29          the sale of fish. These designations are within the sole discretion of the Fisheries  
30          Director. Where several convictions for fisheries offenses result from a single  
31          transaction or occurrence, the licensee shall be assessed for one fisheries offense only  
32          and if the fisheries offenses have different point values, the licensee shall be assessed  
33          for the fisheries offense having the greater point value.

34          (f) Violation Points Schedule. – The Fisheries Director shall assess points for  
35          convictions of fisheries offenses as follows:

36               (1) Felony                               36 points.

37               (2) Class A1 misdemeanor               12 points.

38               (3) Class 1 misdemeanor               10 points.

39               (4) Class 2 misdemeanor               6 points.

40               (5) Class 3 misdemeanor               3 points.

41          (g) General Revocation and Suspension Schedule. – Except as provided in  
42          subsections (h) and (i) of this section, the Fisheries Director shall suspend or revoke all  
43          of the licenses held by a licensee as follows:

- 1           (1)    The assessment of 18 to 25 points within a three-year period shall  
2           result in a 30-day suspension.
- 3           (2)    The assessment of 26 to 35 points within a three-year period shall  
4           result in a six-month suspension.
- 5           (3)    The assessment of 36 or more points within a three-year period shall  
6           result in a minimum one-year revocation. Where 36 or more points  
7           have been assessed within a three-year period, the Fisheries Director  
8           may, in the Director's sole discretion, revoke all of the licenses of a  
9           licensee for a specified period of time greater than one year or may  
10          permanently revoke all of the licenses of a licensee.

11          (h)    Limitation on Revocation and Suspension Based on Type of Fishery Offense.  
12          – The Fisheries Director shall suspend or revoke a recreational fishing license based  
13          only on points assessed for fisheries offenses related to recreational fishing activity. The  
14          Fisheries Director shall suspend or revoke a commercial fishing license based only on  
15          points assessed for fisheries offenses related to commercial fishing activity. The  
16          Fisheries Director shall suspend or revoke a SCFL or RSCFL based only on points  
17          assessed for fisheries offenses related to the harvest of fish. The Fisheries Director shall  
18          suspend or revoke a fish dealer license based only on points assessed for fisheries  
19          offenses related to the sale of fish, unless the holder of the fish dealer license was  
20          clearly in collusion or in a conspiracy with fishermen to commit fisheries offenses  
21          related to commercial fishing activity.

22          (i)    Specific Revocation and Suspension Requirements Based on Type of Fishery  
23          Offense. – Except where subsection (g) of this section would result in a longer  
24          suspension or revocation and as provided in subsection (h) of this section, the Fisheries  
25          Director shall suspend or revoke all of the licenses held by a licensee as follows:

- 26          (1)    The Fisheries Director shall suspend for 30 days all of the licenses of a  
27          licensee who has either of the following:
- 28                  a.    Second conviction of refusal to stop for an inspector.  
29                  b.    Second conviction of refusal to obey or allow inspection by an  
30                  officer.
- 31          (2)    The Fisheries Director shall suspend for six months all of the licenses  
32          of a licensee who has any of the following:
- 33                  a.    Second conviction of taking fish or possession of commercial  
34                  quantities without holding the proper commercial licenses.  
35                  b.    Second conviction of selling fish without the proper license.  
36                  c.    Second conviction for abandoning gear.  
37                  d.    First conviction of robbing, stealing, or willfully injuring gear.
- 38          (3)    The Fisheries Director shall revoke for one year all of the licenses of a  
39          licensee who has any of the following:
- 40                  a.    First conviction of assault upon a governmental official or law  
41                  enforcement officer as a result of the performance of duties  
42                  related to marine fisheries.  
43                  b.    Second conviction of taking shellfish from a temporarily closed  
44                  polluted area.

- 1           c.     Second conviction of using prohibited gear in a Primary  
2                 Nursery Area.
- 3           d.     Second conviction of robbing, stealing, or willfully injuring  
4                 gear.
- 5           e.     Third conviction for abandoning gear.
- 6           f.     Three suspensions in one, three-year period.
- 7           g.     Conviction of a criminal offense covered by subsection (a) of  
8                 this section during a period of suspension.
- 9           (4)    The Fisheries Director shall revoke for two years all of the licenses of  
10               a licensee who has any of the following:
- 11           a.     Second conviction of assault upon a governmental official or  
12                 law enforcement officer as a result of the performance of duties  
13                 related to marine fisheries.
- 14           b.     First conviction of taking shellfish from a permanently closed  
15                 area.
- 16           c.     Third conviction of taking shellfish from a temporarily closed  
17                 polluted area.
- 18           d.     Third conviction of selling fish without the proper license.
- 19           e.     Fourth conviction of purchasing fish without a proper license  
20                 for the sale of those fish or purchasing fish from a seller who  
21                 does not possess a proper license for the sale of those fish.
- 22           f.     Third conviction for using prohibited gear in a Primary Nursery  
23                 Area.
- 24           g.     Third conviction of robbing, stealing, or willfully injuring gear.
- 25           h.     Third conviction of refusal to obey or allow inspection by an  
26                 officer.
- 27           i.     Third conviction of refusal to stop for an inspector.
- 28           j.     Third conviction of taking fish or possession of commercial  
29                 quantities of fish without proper commercial licenses.
- 30           (5)    The Fisheries Director shall permanently revoke all of the licenses of a  
31               licensee who has any of the following:
- 32           a.     Third conviction of assault upon a governmental official or law  
33                 enforcement officer as a result of the performance of duties  
34                 related to marine fisheries.
- 35           b.     Second conviction of taking shellfish from a permanently  
36                 closed area.
- 37           c.     Fourth conviction of taking shellfish from a temporarily closed  
38                 polluted area.
- 39           d.     Fourth conviction of selling fish without the proper license.
- 40           e.     Fifth conviction of purchasing fish without a proper license for  
41                 the sale of those fish or purchasing fish from a seller who does  
42                 not possess a proper license for the sale of those fish.
- 43           f.     Fourth conviction of using prohibited gear in a Primary Nursery  
44                 Area.

- 1           g.     Third conviction of robbing, stealing, or willfully injuring gear.  
2           h.     Fourth conviction of refusal to obey or allow inspection by an  
3                 officer.  
4           i.     Fourth conviction of refusal to stop for an inspector.  
5           j.     Fourth conviction for abandoning gear.  
6           k.     Fourth conviction of taking fish or possession of commercial  
7                 quantities without proper commercial licenses.

8           (j)    Conviction During Revocation. – Conviction of a fishery offense during a  
9                 period of revocation shall extend the period of revocation by one year.

10          (k)    Assignment and Transfer. – Except as provided by rules adopted by the  
11                 Commission pursuant to this subsection, any assignment or transfer made from the time  
12                 of the offense that triggered a suspension or revocation to the end of the period of  
13                 suspension or revocation is void. The Commission may adopt rules to allow the transfer  
14                 of a suspended or revoked pound net permit.

15          (l)    Cancellation of Points. – Upon revocation of a license, the assessed points  
16                 that resulted in the revocation shall be cancelled and removed from the former licensee's  
17                 record. Upon suspension of a license, one-half of the assessed points that resulted in the  
18                 suspension, rounded down, shall be cancelled and removed from the former licensee's  
19                 record.

20          (m)    Reissuance. – Where a commercial fishing license has been suspended or  
21                 revoked, the former licensee is not eligible to apply for the reissuance of the license or  
22                 to apply for the issuance of a different type of commercial fishing license during the  
23                 period of suspension or revocation. Where a recreational fishing license has been  
24                 suspended or revoked, the former licensee is not eligible to apply for the reissuance of  
25                 the license or to apply for the issuance of a different type of recreational fishing license  
26                 during the period of suspension or revocation. Where a license has been suspended, the  
27                 Fisheries Director shall return the license to the former licensee at the end of a period of  
28                 suspension. Where a commercial fishing license has been revoked for a specified period  
29                 of time, the former licensee is not eligible to apply for the reissuance of the license or to  
30                 apply for the issuance of a different type of commercial fishing license until six months  
31                 following the end of the period of revocation. Where a recreational fishing license has  
32                 been revoked for a specified period of time, the former licensee is not eligible to apply  
33                 for the reissuance of the license or to apply for the issuance of a different type of  
34                 recreational fishing license until six months following the end of the period of  
35                 revocation. Where a commercial fishing license has been permanently revoked, the  
36                 former licensee is not eligible to apply for the reissuance of the license or to apply for  
37                 the issuance of a different type of commercial fishing license until at least six years  
38                 following the end of the period of revocation. Where a recreational fishing license has  
39                 been permanently revoked, the former licensee is not eligible to apply for the reissuance  
40                 of the license or to apply for the issuance of a different type of recreational fishing  
41                 license until at least six years following the end of the period of revocation. Where a  
42                 license has been revoked, the former licensee shall satisfy the Fisheries Director that the  
43                 licensee will strive in the future to conduct the operations for which the license is sought  
44                 in accord with all applicable laws and the Fisheries Director, in the Director's sole

1 discretion, may issue one license sought but not another, as deemed necessary to  
2 prevent the hazard of recurring violations of the law.

3 (n) Notice of Suspension or Revocation. – Upon a determination that suspension  
4 or revocation is required by subsection (g) or (i) of this section, the Fisheries Director  
5 shall promptly cause the licensee to be personally served with written notice of  
6 suspension or revocation. Where the licensee is not an individual, the written notice  
7 may be served upon any responsible individual affiliated with the corporation,  
8 partnership, or association. The notice of suspension or revocation may be served by an  
9 inspector or other agent of the Division, shall state the ground upon which it is based,  
10 and take effect within 10 days of service, as specified in the notice. The agent of the  
11 Fisheries Director making service shall collect all license certificates, license plates, and  
12 other forms or records relating to the license as directed by the Fisheries Director. It is  
13 unlawful for any licensee willfully to evade the personal service prescribed in this  
14 subsection.

15 (o) Administrative Review for Suspension or Revocation. – A licensee served  
16 with a notice of suspension or revocation may obtain an administrative review of the  
17 suspension or revocation by filing a petition for a contested case under G.S. 150B-23  
18 within 20 days after receiving the notice. The only issue in the hearing shall be whether  
19 the licensee was convicted of the criminal offense on which the suspension or  
20 revocation is based. A license remains suspended or revoked pending the final decision  
21 by the Fisheries Director.

22 (p) Administrative Review for Reissuance. – If the Fisheries Director refuses to  
23 reissue a license of or issue an additional license to an applicant whose license was  
24 revoked, the applicant may contest the decision by filing a petition for a contested case  
25 under G.S. 150B-23 within 20 days after the Fisheries Director makes the decision. The  
26 Commission shall make the final agency decision in a contested case under this  
27 subsection. An applicant whose license is denied under this subsection may not reapply  
28 for the same license for at least six months.

29 (q) The Commission may adopt rules to provide for the disclosure of the identity  
30 of any individual or individuals in responsible positions of control respecting operations  
31 of any licensee that is not an individual. For the purposes of this section, individuals in  
32 responsible positions of control are deemed to be individual licensees subject to the  
33 suspension and revocation requirements of this section with regard to any applications  
34 for license they may make either as individuals or as persons in responsible positions of  
35 control in any corporation, partnership, or association. In the case of individual  
36 licensees, the individual applying for a license or licensed under this Article shall be the  
37 real party in interest."

38 **SECTION 3.** G.S. 113-277(a3) reads as rewritten:

39 "(a3) As used in this Article, the term "conviction" has the same meaning assigned  
40 to it in ~~G.S. 113-171~~.G.S. 113-171.2."

41 **SECTION 4.** This act becomes effective December 1, 2004, and applies to  
42 offenses committed on or after that date. Suspensions and revocations for offenses  
43 committed before the effective date of this act are not abated or affected by this act, and

- 1 the statutes that would be applicable but for this act remain applicable to those
- 2 suspensions and revocations.