

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 524\*

Short Title: Marine Aquaculture Development Act. (Public)

Sponsors: Representatives Boswell and Shepard (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Environment, if favorable, Regulatory Reform

March 30, 2017

A BILL TO BE ENTITLED

AN ACT TO CREATE A PROGRAM FOR THE PERMITTING OF MARINE  
AQUACULTURE ACTIVITIES AND TO REQUIRE THE DIVISION OF MARINE  
FISHERIES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO  
REQUEST THE ISSUANCE OF FEDERAL RULES TO ALLOW MARINE  
AQUACULTURE IN FEDERAL WATERS OFF THE COAST OF THE STATE.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 113 of the General Statutes is amended by adding a new  
Article to read:

"Article 16A.

"Marine Aquaculture.

**"§ 113-211. Definitions.**

In addition to the definitions in G.S. 113-128 and G.S. 113-129, the following definitions  
shall apply in this Article.

(1) Marine aquaculture. – The propagation and rearing of aquatic species in  
controlled or selected environments, including, but not limited to, ocean  
ranching, marine hatcheries, and other deep water fish farming operations in  
the coastal and ocean waters of the State and, to the extent not inconsistent  
with federal law, to the limits of the United States exclusive economic zone,  
as that term is defined in the Magnuson-Stevens Fishery Conservation and  
Management Act, 16 U.S.C. § 1801, et seq.

(2) Marine aquaculture facility. – Any land, structure, or other appurtenance that  
is used for aquaculture, including, but not limited to, any laboratory,  
hatchery, rearing pond, raceway, pen, incubator, or other equipment used in  
aquaculture.

(3) Marine aquatic species. – Any species of finfish, mollusk, crustacean, or  
other aquatic invertebrate, amphibian, reptile, or aquatic plant, and  
including, but not limited to, "fish" and "fishes" as defined in  
G.S. 113-129(7) found exclusively or for part of its life cycle in coastal  
fishing waters.

**"§ 113-212. Marine Aquaculture Facility Licensing.**

(a) The Marine Fisheries Commission shall, by rule, designate the species of fish,  
crustaceans, and shellfish that may be produced and sold under a Marine Aquaculture  
Propagation and Production Facility License as set forth in subsection (b) of this section. The  
Board shall take into account all of the following factors in its designation of species:



- 1                   (1)   The potential market for the species, both domestic and export.  
 2                   (2)   If the species is not native to State waters or is a genetically engineered  
 3                   variant of a native species, the potential for genetic contamination of or  
 4                   undesired interbreeding with wild stocks of the species.  
 5                   (3)   Whether public access and use of waters of the State would be unduly  
 6                   impacted by the private leasing of public submerged lands and the  
 7                   superjacent water column necessary to support propagation or production  
 8                   facilities for the species, when compared to the potential economic impact of  
 9                   those facilities.

10           (b)   Marine Aquaculture Propagation and Production Facility License. – The Marine  
 11 Fisheries Commission may, by rule, authorize and license the operation of fish hatcheries and  
 12 production facilities for species of fish designated as set forth in subsection (a) of this section.  
 13 The Commission shall (i) consult with the National Marine Fisheries Service regarding  
 14 appropriate measures to protect wild stocks from disease or genetic contamination and (ii) enter  
 15 into memoranda of agreement with the United States Army Corps of Engineers and any other  
 16 appropriate State or federal regulatory agencies regarding appropriate standards and markings  
 17 for marine aquaculture structures to avoid impairment of navigation. Marine aquaculture  
 18 facilities that require the use of public bottom lands underlying waters of the State or the  
 19 superjacent water column will also require a lease pursuant to Article 16B of this Chapter. The  
 20 Commission may prescribe standards of operation, qualifications of operators, and the  
 21 conditions under which fish may be commercially reared, transported, possessed, bought, and  
 22 sold. Marine Aquaculture Propagation and Production Facility Licenses issued by the  
 23 Department shall be valid for a period of five years.

24           (c)   Protection of Private Marine Aquaculture Rights. – It is unlawful for any person,  
 25 other than the holder of a Marine Aquaculture Propagation and Production Facility License and  
 26 associated lease under Article 16B of Chapter 113 of the General Statutes, to take or attempt to  
 27 take marine species being produced under the license and associated lease from any privately  
 28 leased, franchised, or deeded marine aquaculture operation without written authorization of the  
 29 holder and with actual knowledge it is a marine aquaculture leased area. Actual knowledge will  
 30 be presumed when the marine species are taken or attempted to be taken under the following  
 31 circumstances:

- 32                   (1)   From within the confines of posted boundaries of the area as identified by  
 33                   signs, whether the whole or any part of the area is posted; or  
 34                   (2)   When the area has been regularly posted and identified and the person knew  
 35                   the area to be the subject of private marine aquaculture rights.

36           A violation of this subsection shall constitute a Class A1 misdemeanor, which may include  
 37 a fine of not more than five thousand dollars (\$5,000). The written authorization shall include  
 38 the lease number or deed reference, name and address of authorized person, date of issuance,  
 39 and date of expiration, and it must be signed by the holder of the marine aquaculture rights.  
 40 Identification signs shall include the lease number or deed reference and the name of the  
 41 holder."

42           **SECTION 2.** Chapter 113 of the General Statutes is amended by adding a new  
 43 Article to read:

44                                   "Article 16B.

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

46                   **§ 113-215. Legislative findings and declaration of policy.**

47                   The General Assembly finds that development of a marine aquaculture industry in the State  
 48 provides increased seafood production and long-term economic and employment opportunities.  
 49 The General Assembly declares that it is the policy of the State to encourage the development  
 50 of private, commercial marine aquaculture in ways that are compatible with other public uses  
 51 of marine and estuarine resources such as navigation, fishing, and recreation.

1 "§ 113-216. New leases for marine aquaculture.

2 (a) To increase the use of suitable areas underlying coastal fishing waters for  
3 establishment of marine aquaculture operations, the Secretary may grant marine aquaculture  
4 leases for the public bottom under the terms of this section to persons who reside in North  
5 Carolina and who have obtained a Marine Aquaculture Propagation and Production Facility  
6 License under Article 16A of this Chapter when the Secretary determines, in accordance with  
7 the Secretary's duty to conserve the marine and estuarine resources of the State, that the public  
8 interest will benefit from issuance of the lease. Suitable areas for marine aquaculture shall meet  
9 the following minimum standards:

10 (1) The area leased must not contain a natural shellfish bed.

11 (2) The marine aquaculture operation in the leased area will be compatible with  
12 lawful utilization by the public of other marine and estuarine resources.  
13 Other public uses which may be considered include, but are not limited to,  
14 navigation, fishing, and recreation.

15 (3) The operation of a marine aquaculture operation in the leased area will not  
16 impinge upon the rights of riparian owners.

17 (4) The area leased must not include an area designated for inclusion in the  
18 Department's Shellfish Management Program.

19 (5) The area leased must not include an area that the State Health Director has  
20 recommended be closed to shellfish harvest by reason of pollution.

21 (b) The Secretary may delete any part of an area proposed for lease or may condition a  
22 lease to protect the public interest with respect to the factors enumerated in subsection (a) of  
23 this section. The Secretary may not grant a new lease in an area heavily used for recreational  
24 purposes.

25 (c) Any person desiring to apply for a lease must make written application to the  
26 Secretary on forms prepared by the Department containing such information as deemed  
27 necessary to determine the desirability of granting or not granting the lease requested. Except in  
28 the case of renewal leases, the application must be accompanied by a map or diagram made at  
29 the expense of the applicant, showing the area proposed to be leased.

30 (d) The map or diagram must conform to standards prescribed by the Secretary  
31 concerning accuracy of map or diagram and the amount of detail that must be shown. If, on the  
32 basis of the application information and map or diagram, the Secretary deems that granting the  
33 lease would benefit the marine aquaculture industry of North Carolina, the Secretary must order  
34 an investigation of the bottom proposed to be leased. The investigation is to be made by the  
35 Secretary or the Secretary's authorized agent to determine whether the area proposed to be  
36 leased is consistent with the standards in subsection (a) of this section, with the terms of the  
37 Marine Aquaculture Propagation and Production Facility License issued by the Department of  
38 Agriculture and Consumer Services and any other applicable standards under this Article and  
39 the rules of the Marine Fisheries Commission. In the event the Secretary finds the application  
40 inconsistent with the applicable standards, the Secretary shall deny the application or propose  
41 that a conditional lease be issued that is consistent with the applicable standards. In the event  
42 the Secretary authorizes amendment of the application, the applicant must furnish a new map or  
43 diagram meeting requisite standards showing the area proposed to be leased under the amended  
44 application. At the time of making an application for an initial lease, the applicant must pay a  
45 filing fee of two hundred dollars (\$200.00).

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

50 (f) Within a reasonable time after receipt of an application that complies with  
51 subsection (d) of this section, the Secretary shall notify the applicant of the intended action on

1 the lease application. If the intended action is approval of the application as submitted, or  
2 approval with a modification to which the applicant agrees, the Secretary shall conduct a public  
3 hearing in the county where the proposed leasehold lies. The Secretary must publish at least  
4 two notices of the intention to lease in a newspaper of general circulation in the county in  
5 which the proposed leasehold lies. The first publication must precede the public hearing by  
6 more than 20 days; the second publication must follow the first by seven to 11 days. The notice  
7 of intention to lease must contain a description of the area of the proposed leasehold sufficient  
8 to establish its boundaries with reasonable ease and certainty and must also contain the date,  
9 hour, and place of the hearing.

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

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

29 (i) Initial leases begin upon the issuance of the lease by the Secretary and expire at  
30 noon on the first day of July following the 10th anniversary of the granting of the lease.  
31 Renewal leases are issued for a period of 10 years from the time of expiration of the previous  
32 lease. At the time of making application for renewal of a lease, the applicant must pay a filing  
33 fee of one hundred dollars (\$100.00). The rental for initial leases is ten dollars (\$10.00) per  
34 acre, per year. Rental must be paid annually in advance prior to the first day of April each year.  
35 Upon initial granting of a lease, the pro rata amount for the portion of the year left until the first  
36 day of July must be paid in advance at the rate of ten dollars (\$10.00) per acre per year; then,  
37 on or before the first day of April next, the lessee must pay the rental for the next full year.

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

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

49 (1) Failure to pay the annual rent in advance.

- 1           (2)    Failure to file information required by the Secretary upon annual remittance  
2           of rental or filing false information on the form required to accompany the  
3           annual remittance of rental.
- 4           (3)    Failure by new owner to report a transfer of beneficial ownership of all, or  
5           any portion of, or interest in the leasehold.
- 6           (4)    Failure to mark the boundaries in the leasehold and to keep them marked as  
7           required in the rules of the Marine Fisheries Commission.
- 8           (5)    Failure to utilize the leasehold on a continuing basis for marine aquaculture  
9           purposes.
- 10          (6)    Transfer of all or part of the beneficial ownership of a leasehold to a  
11          nonresident.
- 12          (7)    Substantial breach of compliance with the provisions of this Article, of the  
13          Marine Aquaculture Propagation and Production Facility License issued  
14          under Article 16A of this Chapter, or of rules of the Marine Fisheries  
15          Commission governing use of the leasehold.

16          (l)    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  
19          Secretary may discontinue termination procedures. Where there is no discontinuance of  
20          termination procedures, the leaseholder may initiate a contested case by filing a petition under  
21          G.S. 150B-23 within 30 days of receipt of notice of intention to terminate. Where the  
22          leaseholder does not initiate a contested case, or the final decision upholds termination, the  
23          Secretary must send a final letter of termination to the leaseholder. The final letter of  
24          termination may not be mailed sooner than 30 days after receipt by the leaseholder of the  
25          Secretary's notice of intention to terminate, or of the final agency decision, as appropriate. The  
26          lease is terminated effective at midnight on the day the final notice of termination is served on  
27          the leaseholder. The final notice of termination may not be issued pending hearing of a  
28          contested case initiated by the leaseholder.

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

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

44          (n)    Every year between January 1 and February 15, the Secretary must mail to all  
45          leaseholders a notice of the annual rental due and include forms designed by the Secretary for  
46          determining the amount of harvest gathered. Such forms may contain other pertinent questions  
47          relating to the utilization of the leasehold in the best interests of the aquaculture industry of the  
48          State and must be executed and returned by the leaseholder with the payment of the  
49          leaseholder's rental. Any leaseholder or the leaseholder's agent executing such forms for the  
50          leaseholder who knowingly makes a false statement on such forms is guilty of a Class 1  
51          misdemeanor.

1 **"§ 113-217. Lease of superjacent water column for marine aquaculture.**

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

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

9 (1) Aquaculture use of the leased area must not significantly impair navigation.

10 (2) The leased area must not be within a navigation channel marked or  
11 maintained by a State or federal agency.

12 (3) The leased area must not be within an area traditionally used and available  
13 for fishing or hunting activities incompatible with the activities proposed by  
14 the leaseholder, such as trawling or seining.

15 (4) Aquaculture use of the leased area must not significantly interfere with the  
16 exercise of riparian rights by adjacent property owners, including access to  
17 navigation channels from piers or other means of access.

18 (5) Use of the superjacent water column is necessary for exercise of activities  
19 permitted under the Marine Aquaculture Propagation and Production Facility  
20 License granted by the Department under Article 16A of this Chapter.

21 (6) Any additional standards, established by the Commission in duly adopted  
22 rules, to protect the public interest in coastal fishing waters."

23 **SECTION 3.** The Division of Marine Fisheries of the Department of  
24 Environmental Quality shall do the following:

25 (1) Request that the Mid-Atlantic and South Atlantic Fishery Management  
26 Councils develop a Fishery Management Plan for regulating offshore  
27 aquaculture in federal waters offshore from the North Carolina coast.

28 (2) Petition the National Oceanic and Atmospheric Administration to initiate  
29 rule-making proceedings to implement a comprehensive regulatory program  
30 for managing the development of an environmentally sound and  
31 economically sustainable aquaculture fishery in federal waters offshore from  
32 the North Carolina coast.

33 The Division shall provide an interim report to the Joint Legislative Oversight  
34 Committee on Agriculture and Natural and Economic Resources no later than February 1,  
35 2018, regarding their progress in implementing this section and a final report on or before May  
36 1, 2018, that includes the request and petition required by this section.

37 **SECTION 4.** Sections 1 and 2 of this act become effective October 1, 2017. The  
38 remainder of this act is effective when it becomes law.