

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2359

Short Title: Marine Fisheries-License to Sell.

(Public)

Sponsors: Representative Stamey.

Referred to: Basic Resources.

June 6, 1990

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A LICENSE TO SELL FISH TAKEN FROM COASTAL
FISHING WATERS.

The General Assembly of North Carolina enacts:

Section 1. Article 14 of Chapter 113 of the General Statutes is amended by
adding the following new section:

"§ 113-154.1. License To Sell Fish.

(a) Except as otherwise provided in this Article, it is unlawful for any person to sell fish taken from coastal fishing waters by any means whatever, including aquaculture operations, without having first procured a current and valid individual license to sell fish. Persons licensed as fish dealers under G.S. 113-156 are not subject to the licensing requirements of this section. Persons licensed under this section are authorized only to sell fish taken in conformity with law to licensed fish dealers.

(b) It is unlawful for any person to sell fish to a licensed fish dealer without having ready at hand for inspection a current and valid license to sell fish issued to him personally and bearing his correct name and address. It is unlawful for any such individual selling fish to a licensed fish dealer to refuse to exhibit his license upon the request of an officer authorized to enforce the fishing laws.

(c) Licenses to sell fish are issued annually on a calendar-year basis upon payment of a fee of two hundred fifty dollars (\$250.00) upon proof that the applicant is licensed to engage in commercial fishing operations under G.S. 113-152 or G.S. 113-154. The Marine Fisheries Commission may adopt rules to clarify and implement the requirements for a license to sell fish. Upon receipt of a proper application together

1 with a fee of five dollars (\$5.00), the Marine Fisheries Commission may issue a new
2 license to sell fish to replace one that has been lost or destroyed.

3 (d) All licenses to sell fish issued under this Article are nontransferable. It is
4 unlawful to buy, sell, lend, borrow, transfer or receive a license to sell fish or attempt
5 any such activity for the purpose of circumventing the requirements of this Article.

6 (e) The net proceeds of all sales of licenses to sell fish made pursuant to G.S.
7 113-154.1 must be devoted to new or expanded marine fisheries programs or projects
8 administered by the Marine Fisheries Commission or the Division of Marine Fisheries
9 which enhance knowledge of and use of marine and estuarine resources."

10 Sec. 2. G.S. 113-151.1 reads as rewritten:

11 **"§ 113-151.1. License agents.**

12 (a) The Secretary shall commission such persons as in his discretion he deems
13 necessary to be license agents for the Department; provided, that at least one such
14 license agent shall be appointed in each county which contains or borders on coastal
15 fishing waters. Such agents together with the Department shall have the authority and
16 duty to sell all licenses provided for by this Article. The Secretary may require license
17 agents to post bonds and enter into contracts for keeping records, making reports
18 concerning licenses and receipts, and be subject to necessary audits and inspections.
19 Upon any violation by a license agent of the requirements of this section or any contract
20 entered into under the terms of this section, the Secretary may initiate proceedings for
21 the forfeiture of the license agent's bond and may summarily suspend, revoke, or refuse
22 to renew a person's commission as a license agent pursuant to G.S. 150B-3, and
23 impound or require the return of all licenses, moneys, record books, reports, license
24 forms and other documents, ledgers, and materials pertinent or apparently pertinent to
25 the license agency. The Secretary shall report evidence of misuse of State property,
26 including license fees, by a license agent to the State Bureau of Investigation as
27 provided by G.S. 114-15.1.

28 (b) License agents shall be compensated by ~~retaining fifty cents (50¢) from adding~~
29 ~~a surcharge of one dollar (\$1.00) to each license sold~~ and retaining the one dollar
30 (\$1.00) surcharge. If more than one license is listed on a consolidated license form, the
31 license agent shall be compensated as if a single license were sold and he shall retain fifty
32 cents (50¢). ~~sold. It is unlawful for a license agent to add more than the surcharge~~
33 authorized by this section to the fee for each license sold."

34 Sec. 3. G.S. 113-152 reads as rewritten:

35 **"§ 113-152. Licensing of vessels, equipment and operations; fees.**

36 (a) The following vessels are subject to the licensing requirements of this
37 section:

- 38 (1) All vessels engaged in commercial fishing operations in coastal fishing
39 waters;
- 40 (2) All North Carolina vessels engaged in commercial fishing operations
41 without the State which result in landing ~~and selling~~ fish in North
42 Carolina. North Carolina vessels are those which have their primary
43 situs in North Carolina. Motorboats with North Carolina numbers
44 under the provisions of Chapter 75A of the General Statutes are

1 deemed to have their primary situs in North Carolina: documented
2 vessels which list a North Carolina port as home port are deemed to
3 have their primary situs in North Carolina; and

4 (3) All nonresident vessels engaged in commercial fishing operations
5 within the State or engaged in commercial fishing operations without
6 the State that result in landing ~~and selling~~ fish in North Carolina.

7 'Commercial fishing operations' are all operations preparatory to, during, and
8 subsequent to the taking of fish:

9 (1) With the use of commercial fishing equipment; or

10 (2) By any means, if ~~a primary purpose of the taking is to sell the fish.~~ any of
11 the fish taken are sold.

12 Commercial fishing operations also includes taking people fishing for hire.

13 It is unlawful for the owner of a vessel subject to licensing requirements to permit it
14 to engage in commercial fishing operations without having first procured the
15 appropriate licenses including vessel, gear, or other license required by the Commission.
16 It is unlawful for anyone to command such a vessel engaged in commercial fishing
17 operations without complying with the provisions of this section and of rules made
18 under the authority of this Article. It is unlawful for anyone to command such a vessel
19 engaged in commercial fishing operations that does not meet the license requirements of
20 this Article or of rules made under the authority of the Article, or without making
21 reasonably certain that all persons on board are in compliance with the provisions of this
22 Article and rules made under the authority of this Article. It is unlawful to participate in
23 any commercial fishing operation in connection with which there is a vessel subject to
24 licensing requirements not meeting the licensing requirements under the provisions of
25 this Article or of rules made under the authority of this Article.

26 Nothing in this section shall require the licensing of any vessel used solely for
27 ~~oystering, scalloping, or clamming~~ taking shellfish by a person not required to have ~~an~~
28 ~~oyster, scallop, and clam~~ a shellfish license under the provisions of G.S. 113-154. Spears
29 or gigs shall not be deemed commercial fishing equipment unless used in an operation
30 the purpose of which is the taking of fish for commercial purposes.

31 (b) Any license that may be required by this section is to be issued in the name of
32 the owner of the vessel. It is unlawful for the individual or corporate owner of a licensed
33 vessel or any persons with the authority to authorize the use of a licensed vessel to
34 permit any individual who is not eligible to have the license issued to him in his own
35 right to command such licensed vessel for the purpose of engaging in commercial
36 fishing operations. It is unlawful for such an ineligible person to command a licensed
37 vessel for such purposes. The license application for a menhaden vessel must state the
38 name of the person in command of the vessel. Upon change in command of a menhaden
39 vessel, the owner must notify the Secretary within 30 days. Upon change in ownership
40 of any licensed vessel, the new owner must notify the Secretary within 30 days. The
41 Marine Fisheries Commission may provide by rule for the replacement of lost,
42 obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the
43 original license receipt or upon other evidence that the Marine Fisheries Commission

1 deems sufficient. The Department may charge a fee of ~~fifty cents (50¢)~~ five dollars
2 (\$5.00) for replacement of a plate or decal.

3 (c) Licenses are issued annually upon a calendar-year basis for vessels of various
4 lengths (length measured straight through the cabin and along the deck, from end to end,
5 excluding the sheer) and types as follows for the fees indicated:

6 (1) Vessels, without motors, regardless of length when used in connection
7 with other licensed vessels, no license required.

8 (2) Vessels with or without motors not over 18 feet in length, one dollar
9 (\$1.00) per foot.

10 (3) Vessels with or without motors over 18 feet but not over 38 feet in
11 length, one dollar and fifty cents (\$1.50) per foot.

12 (4) Vessels with or without motors over 38 feet in length, three dollars
13 (\$3.00) per foot.

14 (4a) Vessels owned by persons who are not residents of North Carolina,
15 two hundred dollars (\$200.00) or an amount equal to the nonresident
16 fee charged by the nonresident's state, whichever is greater, in addition
17 to the fee requirement otherwise applicable under this subsection or
18 subsection (d).

19 (5) Vessels engaged in menhaden fishing shall be taxed, based on tonnage,
20 as prescribed in subsection (d).

21 (6) Vessels engaged in commercial fishing operations for which the
22 Commission requires a gear or equipment license shall be subject to
23 fees as prescribed in subsection (g).

24 Length is measured from end to end over the deck excluding sheer.

25 (d) Vessels engaging in menhaden fishing are subject to the following license
26 and fee requirements:

27 (1) For the mother ship, two dollars (\$2.00) per ton, gross tonnage,
28 customhouse measurements.

29 (2) For each purse boat carrying a purse seine used in connection with a
30 licensed mother ship, no license required.

31 (3) Repealed by Session Laws 1983, c. 570, s. 6, effective January 1,
32 1984.

33 (e) Unless otherwise indicated, all licenses in this Article expire on December 31
34 of each year and are subject to the full license fee regardless of when issued. ~~Unless a~~
35 ~~nonresident vessel is eligible for a land and sell license pursuant to G.S. 113-153, nonresident~~
36 ~~licenses may not be obtained from license agents and shall be obtained from the Morehead City~~
37 ~~offices of Marine Fisheries. Applications, including license fees, must be submitted by~~
38 ~~nonresidents and received by the Division at least 45 days prior to issuance of a license during~~
39 ~~which period it shall be ascertained whether the applicant would be denied a license under the~~
40 ~~standards in G.S. 113-166. Nonresidents obtaining licenses must certify that their~~
41 ~~conviction record in their state of residence is such that they would not be denied a~~
42 ~~license under the standards in G.S. 113-166. When a license application is denied for~~
43 ~~violations of fisheries laws, whether the violations occurred in North Carolina or~~

1 another jurisdiction, the license fees shall not be refunded and shall be applied to the
2 costs of processing the application.

3 (f) No person exempt from the ~~oyster, scallop, and clam~~ shellfish license under the
4 provisions of this Article may take more than:

5 (1) One bushel of oysters per person per day, not to exceed two bushels
6 per vessel per day;

7 (2) One-half bushel of scallops per person per day, not to exceed one
8 bushel per vessel; and

9 (3) One hundred clams per person per day, not to exceed two hundred per
10 vessel per day.

11 (g) Gear or equipment licenses shall be issued upon the payment of fees as
12 prescribed by the Commission in its duly adopted rules at a rate to be established by the
13 Commission between twenty-five dollars (\$25.00) and five hundred dollars (\$500.00)
14 per license. The fee rate for gear or equipment licenses, at a minimum, shall be
15 adequate to compensate the Department for the actual and administrative cost associated
16 with the conservation and management of the fishery. Gear or equipment licenses may
17 be required for commercial fishing operations that do not involve the use of a vessel."

18 Sec. 4. G.S. 113-153 reads as rewritten:

19 "**§ 113-153. Vessels fishing beyond territorial waters.**

20 (a) Persons aboard vessels not having their primary situs in North Carolina which
21 are carrying a cargo of fish taken outside the waters of North Carolina may land ~~and sell~~
22 their catch in North Carolina by complying with the licensing provisions of G.S. 113-
23 152 with respect to the vessel in question. The Marine Fisheries Commission may by
24 rule modify the licensing procedure set out in G.S. 113-152 in order to devise an
25 efficient and convenient procedure for licensing out-of-state vessels after landing in
26 order to permit sale of cargo. Provided, that persons aboard vessels having a primary
27 situs in a jurisdiction that would allow North Carolina vessels without restriction to land
28 ~~and sell~~ their catch, taken outside such jurisdiction, may land ~~and sell~~ their catch in North
29 Carolina without complying with this section if such persons are in possession of a
30 valid license from their state of residence.

31 (b) It is unlawful for persons aboard vessels not having a primary situs in North
32 Carolina to sell fish taken outside the waters of North Carolina without first having
33 procured a license to sell fish under G.S. 113-154.1. An out-of-state vessel must
34 comply with G.S. 113-152 in order to be eligible for a license to sell fish under G.S.
35 113-154.1."

36 Sec. 5. G.S. 113-154 reads as rewritten:

37 "**§ 113-154. ~~Oyster, scallop and clam~~ Shellfish licenses.**

38 (a) It is unlawful for an individual to take shellfish ~~In addition to all other license~~
39 ~~requirements, every individual engaged in taking oysters, scallops, or clams from the public~~
40 ~~or private grounds of North Carolina by mechanical means or for commercial use by~~
41 ~~any means whatever must have without having first procured an individual shellfish~~
42 ~~license. oyster, scallops, and clam license.~~

43 (b) It is unlawful for any individual to take ~~oysters, scallops, or clams~~ shellfish for
44 commercial use from the public or private grounds of North Carolina without having

1 ready at hand for inspection a current and valid ~~oyster, scallop, and clam~~ shellfish license
2 issued to him personally and bearing his correct name and address. It is unlawful for any
3 such individual taking or possessing freshly taken ~~oysters, scallops, or clams~~ shellfish to
4 refuse to exhibit his license upon the request of an officer authorized to enforce the
5 fishing laws.

6 (c) ~~Oyster, scallop, and clam~~ Shellfish licenses are issued annually on a calendar-
7 year basis upon payment of a fee of ~~four dollars (\$4.00)~~ fifteen dollars (\$15.00) upon
8 proof that the license applicant is a resident of North Carolina: Provided, that persons
9 under 16 years of age are exempt from the license requirements of this section if they
10 are accompanied by their parent or guardian who is in compliance with the
11 requirements of this section or if they have in their possession their parent's or
12 guardian's ~~oyster, scallop, and clam~~ shellfish license.

13 (d) In the event an individual possessing ~~an oyster, scallop, and clam~~ a shellfish
14 license changes his name or address or receives one erroneous in this respect, he must
15 within 30 days surrender the license for one bearing the correct name and address. An
16 individual prosecuted for failure to possess a valid license is exonerated if he can show
17 that the invalidity consisted solely of an incorrect name or address appearing in a license
18 to which he was lawfully entitled and that the erroneous condition had not existed for
19 longer than 30 days.

20 (e) It is unlawful for an individual issued ~~an oyster, scallop, and clam~~ a shellfish
21 license to transfer or offer to transfer his license, either temporarily or permanently, to
22 another. It is unlawful for an individual to secure or attempt to secure ~~an oyster, scallop,~~
23 ~~or clam~~ a shellfish license from a source not authorized by the Marine Fisheries
24 Commission."

25 Sec. 6. G.S. 113-155.1 reads as rewritten:

26 "**§ 113-155.1. Commercial fisherman; identification.**

27 The ~~receipt~~ purchase by persons actively connected with and having experience in
28 commercial fishing of a current and valid commercial fishing license issued by the
29 Marine Fisheries Commission shall serve as proper identification of the licensee as a
30 commercial fisherman."

31 Sec. 7. G.S. 113-156 reads as rewritten:

32 "**§ 113-156. Licenses for fish dealers.**

33 (a) Except as otherwise provided in this Article, it is unlawful for any person not
34 licensed pursuant to this section to buy or sell fish or to have every person who sells fish
35 ~~or has~~ any connection whatever with fish that results in his enrichment is as a fish
36 dealer, provided that individual employees of fish dealers are not fish dealers merely by
37 virtue of transacting the business of their employers. Any person who makes a public
38 offer to sell fish or who peddles fish is a fish dealer.

39 (b) It is unlawful for a fish dealer to buy fish from any person not in possession
40 of a current and valid fish dealer license issued under this section or a current and valid
41 license to sell fish issued under G.S. 113-154.1. The Marine Fisheries Commission may
42 make reasonable rules to implement this section by clarifying the status of particular
43 classes of persons as regards fish ~~dealerships.~~ dealerships, require submission of
44 statistical data by fish dealers in connection with the license to sell fish required by G.S.

1 113-154.1, and require that records be kept in order to establish compliance with this
2 section. Persons all of whose dealings with a category of fish fall under one or more of
3 the following headings are not fish dealers as respects that category:

4 (1) ~~Persons whose dealings in fish are primarily educational, scientific, or~~
5 ~~official.~~ official, and who hold a permit issued by the division which
6 authorizes the educational, scientific or official agency to ~~Scientific,~~
7 ~~educational, or official agencies may sell fish harvested or processed in~~
8 ~~connection with research or demonstration projects without being~~
9 ~~deemed dealers, but such sales projects. Such sales are subject to such~~
10 reasonable rules as the Marine Fisheries Commission may make
11 governing such sales.

12 (2) ~~Individuals selling legally acquired fish other than oysters and clams~~
13 ~~to individuals other than dealers on a casual, noncommercial basis,~~
14 ~~provided that such sales do not net in excess of five hundred dollars~~
15 ~~(\$500.00) in cash or equivalent value in any 12 month period. Any~~
16 ~~public offer to sell, or peddling of fish, is deemed commercial.~~

17 (3) ~~Fishermen who sell their catch exclusively to fish dealers licensed~~
18 ~~under this section if the fish taken by any fisherman meets one of the~~
19 ~~following requirements:~~

20 a. ~~The fish were taken lawfully in coastal fishing waters other than~~
21 ~~through the use of a vessel licensed under G.S. 113-152, and the~~
22 ~~value of such fish sold does not exceed five hundred dollars~~
23 ~~(\$500.00) in any 12 month period.~~

24 b. ~~The fish were taken in a commercial fishing operation meeting~~
25 ~~all licensing requirements, and he was a party to the operation.~~

26 e. ~~The fish were taken by him, whether by sports or commercial~~
27 ~~methods, through the use of a vessel currently and validly~~
28 ~~licensed under G.S. 113-152.~~

29 d. ~~The fish were taken by him in inland fishing waters in~~
30 ~~conformity with the laws and rules administered by the Wildlife~~
31 ~~Resources Commission and are of a type permitted to be sold~~
32 ~~by the Wildlife Resources Commission.~~

33 e. ~~The fish taken were oysters, scallops, or clams and the person~~
34 ~~satisfies the dealer that he took them or participated in the~~
35 ~~taking, that he then had a current and valid oyster, scallop, and~~
36 ~~clam license issued to him personally, and that they were taken~~
37 ~~lawfully.~~

38 (4) Fishermen selling fish that were taken in inland fishing waters in
39 conformity with the laws and rules administered by the Wildlife
40 Resources Commission and the fish are of a type permitted to be sold
41 by the Wildlife Resources Commission.

42 (c) Every fish dealer is subject to the licensing requirements of this section unless all
43 fish handled within any particular licensing category meet one or more of the following
44 requirements:

- 1 (1) The fish are shipped to him by a dealer from without the State.
2 ~~(2) The fish are nongame fish taken in inland fishing waters.~~
3 (3) The fish are of a kind the sale of which is regulated exclusively by the
4 Wildlife Resources Commission.
5 (4) The fish are purchased from a licensed dealer.

6 In the event the seller is a licensed fish dealer, he must satisfy any purchasing fish
7 dealer, whether licensed or unlicensed, that the fish were acquired in conformity with
8 law. It is unlawful for a fish dealer to purchase or sell or in any manner deal in fish
9 except in conformity with the provisions of this section.

10 (d) Every fish dealer subject to the licensing provisions of this section must
11 secure a separate license or set of licenses for each established location. Where a dealer
12 does not have an established location for transacting the fisheries business within the
13 State, the license application must be denied unless the applicant satisfies the Secretary
14 that his residence, or some other office or address, within the State, is a suitable
15 substitute for an established location and that records kept in connection with licensing,
16 sale, and tax requirements will be available for inspection when necessary. Fish dealers'
17 licenses are issued on a calendar-year basis upon payment of a fee as set forth herein
18 upon proof, satisfactory to the Secretary, that the license applicant is a resident of North
19 Carolina.

20 (e) Every fish dealer subject to licensing requirements must secure an annual
21 license at each established location for each of the following activities transacted there,
22 upon payment of the fee set out:

- 23 (1) Dealing in oysters:
24 a. Oyster shucker-packer (including sale of shell stock), one
25 hundred dollars (\$100.00).
26 b. Oyster shell stock shipper, fifty dollars (\$50.00).
27 (2) Dealing in scallops:
28 a. Scallop shucker-packer (including sale of shell stock), one
29 hundred dollars (\$100.00).
30 b. Scallop shell stock shipper, fifty dollars (\$50.00).
31 (3) Dealing in clams:
32 a. Clam shucker-packer (including sale of shell stock), one
33 hundred dollars (\$100.00).
34 b. Clam shell stock shipper, fifty dollars (\$50.00).
35 (4) Dealing in hard and soft crabs:
36 a. Crab processor (including dealing in unprocessed crabs), one
37 hundred dollars (\$100.00).
38 b. Unprocessed crab dealer, fifty dollars (\$50.00).
39 (5) Dealing in shrimp:
40 a. Shrimp processor (including dealing in unprocessed shrimp),
41 one hundred dollars (\$100.00).
42 b. Unprocessed shrimp dealer, fifty dollars (\$50.00).
43 (6) Dealing in finfish:
44 a. Finfish processor (including dealing in

1 unprocessed finfish), one hundred dollars (\$100.00).

2 b. Unprocessed finfish dealer, fifty dollars (\$50.00).

3 (7) Operating menhaden processing plant, one hundred dollars (\$100.00).

4 (8) Operating any other fish-dehydrating or oil-extracting plant, fifty
5 dollars (\$50.00).

6 Any person subject to fish-dealer licensing requirements who deals in fish not
7 included in the above categories must secure a finfish dealer license. The Marine
8 Fisheries Commission may make reasonable rules implementing and clarifying the
9 dealer categories of this subsection."

10 Sec. 8. G.S. 113-161 reads as rewritten:

11 **"§ 113-161. Nonresidents reciprocal agreements.**

12 Persons who are not residents of North Carolina are not entitled to obtain licenses
13 under the provisions of G.S. 113-152 or G.S. 113-154.1 except as hereinafter provided.
14 Residents of jurisdictions which sell commercial fishing licenses to North Carolina
15 residents are entitled to North Carolina commercial fishing licenses under the provisions
16 of ~~G.S. 113-152.~~ G.S. 113-152 or G.S. 113-154.1. Such licenses may be restricted in
17 terms of area, gear and fishery by the commission so that the nonresidents are licensed
18 to engage in North Carolina fisheries on the same or similar terms that North Carolina
19 residents can be licensed to engage in the fisheries of such other jurisdiction. The
20 Secretary may enter into such reciprocal agreements with other jurisdictions as are
21 necessary to allow nonresidents to obtain commercial fishing licenses in North Carolina
22 subject to the foregoing provisions."

23 Sec. 9. G.S. 113-129(14) reads as rewritten:

24 "(14) Shellfish. – Mollusca, specifically including oysters, clams, mussels,
25 ~~and scallops.~~ scallops, conchs, and whelks."

26 Sec. 10. This act shall become effective January 1, 1991.