

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

H

8

HOUSE BILL 831*
Committee Substitute Favorable 5/20/03
Committee Substitute #2 Favorable 7/9/03
Committee Substitute #3 Favorable 7/17/03
Fifth Edition Engrossed 7/19/03
Corrected Copy 7/20/03
Senate Agriculture/Environment/Natural Resources Committee Substitute
Adopted 7/6/04
Eighth Edition Engrossed 7/6/04

Short Title: Saltwater Fishing Fund/Holdover Appointments.

(Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH THE NORTH CAROLINA SALTWATER FISHING
2 FUND AND LICENSE AND TO PROVIDE THAT VACANCIES MAY BE
3 FILLED IN CERTAIN OFFICES DURING A HOLDOVER PERIOD.
4

5 Whereas, the State of North Carolina has one of the most diverse fisheries in
6 the United States; and

7 Whereas, the General Assembly recognizes that for many citizens fishing is
8 an important recreational activity and that saltwater fishing is a source of great personal
9 enjoyment and satisfaction; and

10 Whereas, the General Assembly recognizes the importance of providing
11 plentiful fishery resources to maintain and enhance tourism as a major contributor to the
12 economy of the State; and

13 Whereas, the General Assembly recognizes that commercial fishermen
14 perform an essential function by providing wholesome food for the citizens of the State,
15 nation, and world, and thereby properly earn a livelihood; and

16 Whereas, the General Assembly recognizes the economic contribution and
17 important heritage of traditional full-time and part-time commercial fishing; and

18 Whereas, the General Assembly recognizes the need to protect our coastal
19 fishery resources and to balance the commercial and recreational interests through better
20 management of these resources; and

21 Whereas, the General Assembly is committed to the continued viability of
22 both recreational and commercial fishing industries in the State; and

1 independent, but for administrative purposes shall be located under the Department of
2 Environment and Natural Resources.

3 (b) Membership; Qualifications. – The Board of Trustees shall consist of 11
4 members as follows:

5 (1) One individual appointed by the Governor, who has purchased a
6 current Saltwater Fishing License at the time of the appointment.

7 (2) One individual appointed by the Governor, who has purchased a
8 current Saltwater Fishing License at the time of the appointment.

9 (3) One individual appointed by the Governor, who has purchased a
10 current Saltwater Fishing License at the time of the appointment.

11 (4) One individual appointed by the General Assembly upon the
12 recommendation of the Speaker of the House of Representatives in
13 accordance with G.S. 120-121, who has purchased a current Saltwater
14 Fishing License at the time of appointment.

15 (5) One individual appointed by the General Assembly upon the
16 recommendation of the Speaker of the House of Representatives in
17 accordance with G.S. 120-121, who has purchased a current Saltwater
18 Fishing License at the time of appointment.

19 (6) One individual appointed by the General Assembly upon the
20 recommendation of the Speaker of the House of Representatives in
21 accordance with G.S. 120-121, who has purchased a current Saltwater
22 Fishing License at the time of appointment.

23 (7) One individual appointed by the General Assembly upon the
24 recommendation of the President Pro Tempore of the Senate in
25 accordance with G.S. 120-121, who has purchased a current Saltwater
26 Fishing License at the time of appointment.

27 (8) One individual appointed by the General Assembly upon the
28 recommendation of the President Pro Tempore of the Senate in
29 accordance with G.S. 120-121, who has purchased a current Saltwater
30 Fishing License at the time of appointment.

31 (9) One individual appointed by the General Assembly upon the
32 recommendation of the President Pro Tempore of the Senate in
33 accordance with G.S. 120-121, who has purchased a current Saltwater
34 Fishing License at the time of appointment.

35 (10) The Director of the Division of Marine Fisheries or the Director's
36 designee shall serve as a nonvoting, ex officio member of the Board of
37 Trustees.

38 (11) The Chair of the Marine Fisheries Commission, or the Chair's designee
39 shall serve as a nonvoting, ex officio member of the Board of Trustees.

40 (c) Officers. – The Governor shall appoint a member of the Board of Trustees to
41 serve as Chair. The Chair shall serve at the pleasure of the Governor. The Board of
42 Trustees shall elect one of its members to serve as Vice-Chair. The Vice-Chair shall
43 serve a one-year term beginning July 1 and ending June 30 of the following year. The
44 Vice-Chair may serve any number of consecutive terms.

1 (d) Terms. – The term of office of members of the Board of Trustees appointed
 2 under subdivisions (1) through (9) of subsection (b) of this section is three years. A
 3 member appointed under subdivisions (1) through (9) of subsection (b) of this section
 4 may be reappointed to any number of successive three-year terms. Upon the expiration
 5 of a three-year term, a member shall continue to serve until a successor is appointed and
 6 duly qualified as provided by G.S. 128-7. The term of members appointed under
 7 subdivisions (1), (4), and (7) of subsection (b) of this section shall expire on June 30 of
 8 years evenly divisible by three. The term of members appointed under subdivisions (2),
 9 (5), and (8) of subsection (b) of this section shall expire on June 30 of years that precede
 10 by one year those years that are evenly divisible by three. The term of members
 11 appointed under subdivisions (3), (6), and (9) of subsection (b) of this section shall
 12 expire on June 30 of years that follow by one year those years that are evenly divisible
 13 by three. An individual appointed under subdivisions (1) through (9) of subsection (b)
 14 of this section must continue to have a current Saltwater Fishing License in order to
 15 remain eligible to serve on the Board of Trustees.

16 (e) Vacancies. – An appointment to fill a vacancy shall be for the unexpired
 17 balance of the term. If a vacancy occurs for a member subject to appointment by the
 18 General Assembly upon the recommendation of the Speaker of the House of
 19 Representatives or the President Pro Tempore of the Senate, the vacancy shall be filled
 20 in accordance with G.S. 120-122.

21 (f) Meetings; Frequency. – The Board of Trustees shall meet at least twice each
 22 year and may hold special meetings at the call of the Chair or a majority of the
 23 members. Six members of the Board of Trustees shall constitute a quorum for the
 24 transaction of business.

25 (g) Per Diem and Expenses. – The Trustees shall receive per diem and necessary
 26 travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per
 27 diem, travel, and subsistence expenses shall be paid from the Fund.

28 **"§ 113-175.3. Allocation of investment income of the Fund; other powers and**
 29 **duties.**

30 (a) Disbursement of Funds. – The State Treasurer shall disburse investment
 31 income only upon the written direction of the Board of Trustees.

32 (1) The Board of Trustees may authorize the disbursement of investment
 33 income that accrues to the Fund for:

- 34 a. Resource and habitat enhancement, including, but not limited
 35 to, creation of natural nursery areas, construction of artificial
 36 reefs, restoration and enhancement of submerged aquatic
 37 vegetation, creation and restoration of oyster habitat, and
 38 acquisition of land or an interest in land that provides for the
 39 preservation of critical fisheries habitat.
- 40 b. Grants to fund fisheries management research for specifically
 41 designated species.
- 42 c. Acquisition of land or an interest in land that provides for the
 43 enhancement of fishery habitat or public access to coastal
 44 fishing waters.

1 **"§ 113-174. Definitions.**

2 As used in this Article:

- 3 (1) 'Commission' means the Marine Fisheries Commission.
4 (2) 'SFL' means Saltwater Fishing License.
5 (3) 'Division' means the Division of Marine Fisheries in the Department of
6 Environment and Natural Resources.
7 (4) 'North Carolina resident' means an individual who is a resident within
8 the meaning of G.S. 113-130(4).
9 (5) 'Recreational fishing' means any activity preparatory to, during, or
10 subsequent to the taking of any fish, the taking of which is subject to
11 regulation by the Commission, by any means:
12 a. That does not constitute a commercial fishing operation as
13 defined in G.S. 113-168.
14 b. Except as provided in G.S. 113-261.

15 **"§ 113-174.1. General provisions governing licenses.**

16 (a) License Purchase Required to Engage in Recreational Fishing. – It is
17 unlawful for any individual to engage in recreational fishing in coastal fishing waters
18 without having purchased a current license required by this Article. It is unlawful for
19 any individual to engage in recreational fishing without complying with the provisions
20 of this Article and rules adopted by the Commission under this Article.

21 (b) Sale of Fish Prohibited. – A license issued under this Article does not
22 authorize an individual who takes or lands any species of fish under the authority of the
23 Commission to sell, offer for sale, barter, or exchange the fish for anything of value.
24 Except as provided in G.S. 113-168.4, it is unlawful for any individual who takes or
25 lands any species of fish under the authority of the Commission by any means to sell,
26 offer for sale, barter, or exchange these fish for anything of value.

27 (c) Assignment and Transfer Prohibited. – It is unlawful to buy, sell, lend,
28 borrow, assign, or otherwise transfer a license issued under this Article or to attempt to
29 buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article.

30 (d) General Enforcement. – It is unlawful for any individual to engage in
31 recreational fishing in coastal fishing waters in the State without providing the
32 individual's name and residence address upon the request of an inspector or other law
33 enforcement officer authorized to enforce federal or State laws, regulations, or rules
34 relating to marine fisheries.

35 (e) Enforcement for Charterboats and Headboats. – An inspector or other law
36 enforcement officer may only verify the licensure of an individual fishing from a
37 charterboat or headboat after the charterboat or headboat has returned to shore and the
38 individual has disembarked from the charterboat or headboat. Except as provided in
39 G.S. 113-174.2(d), each individual on board a charterboat or headboat engaged in
40 recreational fishing, other than crew members who do not engage in recreational
41 fishing, must have purchased a current SFL issued pursuant to G.S. 113-174.2. An
42 owner, operator, or crew member of a charterboat or headboat is not responsible for the
43 licensure of a customer fishing from a charterboat or headboat.

1 (f) Cancellation. – The Division may cancel a license issued on the basis of false
 2 information supplied by the license applicant. A cancelled license is void from the date
 3 of issuance.

4 (g) Reporting Requirements. – A person licensed under this Article shall comply
 5 with the biological data sampling and survey programs of the Commission and the
 6 Division.

7 **§ 113-174.2. Saltwater Fishing License.**

8 (a) License Required. – Except as otherwise provided in this Article, it is
 9 unlawful for any individual to engage in recreational fishing in coastal fishing waters by
 10 means of recreational gear without having purchased a current SFL issued under this
 11 section. It is unlawful for any individual fishing under a SFL to possess fish in excess of
 12 recreational possession limits.

13 (b) Purchase; Renewal. – Any license issued under this section may be purchased
 14 or renewed at designated offices of the Division; from the Division by mail, electronic
 15 mail, the Internet, or telephone; or at locations designated by the North Carolina
 16 Saltwater Fishing Fund Board of Trustees.

17 (c) Types of SFLs; Fees; Duration. – The Division shall issue the following
 18 SFLs:

19 (1) One-year SFL. – \$15.00. This license is valid for a period of one year
 20 from the date of issuance.

21 (2) Two-year SFL. – \$30.00. This license is valid for a period of two years
 22 from the date of issuance.

23 (3) Three-year SFL. – \$45.00. This license is valid for a period of three
 24 years from the date of issuance.

25 (4) Seven-day SFL. – \$1.00. This license is valid for a period of seven
 26 consecutive days. An individual may purchase this license only once in
 27 any 12-month period.

28 (5) Subsistence SFL. – An applicant for a license under this subdivision
 29 shall provide to the Division a certification from the Department of
 30 Health and Human Services that the individual falls below the federal
 31 poverty level. A license issued under this subdivision shall be issued
 32 without charge and is valid for a period of one year from the date of
 33 issuance.

34 (6) Lifetime SFL. – This license is valid for the lifetime of the licensee.
 35 The fee for the Lifetime SFL, based on the age of the prospective
 36 licensee as of the date on which the application is filed with the
 37 Division, is:

- | | | | |
|----|----|---|-----------------|
| 38 | a. | <u>Younger than six years of age</u> | <u>\$100.00</u> |
| 39 | b. | <u>Six years of age to younger than 11 years of age</u> | <u>\$150.00</u> |
| 40 | c. | <u>11 years of age to younger than 18 years of age</u> | <u>\$200.00</u> |
| 41 | d. | <u>18 years of age or older</u> | <u>\$500.00</u> |

42 (d) Exemptions. – An individual may engage in recreational fishing by means of
 43 recreational gear without having purchased a SFL if the individual is 18 years of age or

1 younger and is currently enrolled in school and is making progress toward obtaining a
2 high school diploma or its equivalent."

3 SECTION 3. G.S. 113-169.2 reads as rewritten:

4 "§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.

- 5 (a) ~~License or Endorsement Necessary to Take or Sell Shellfish.—Requirement.~~
6 ~~— It is unlawful for an individual to take shellfish from the public or~~
7 ~~private grounds of the State by mechanical means or in quantities~~
8 ~~greater than the personal use limits set forth in subsection (i) of this~~
9 ~~section by any means as part of a commercial fishing operation~~
10 ~~without holding either a shellfish license or a shellfish endorsement of~~
11 ~~a SCFL. A North Carolina resident who seeks only to take and sell~~
12 ~~shellfish shall be eligible to obtain a shellfish license without holding a~~
13 ~~SCFL. The shellfish license authorizes the licensee to sell shellfish.~~
- 14 (b) Repealed by Session Laws 1998-225, s. 4.17.
- 15 (c) Fees. – Shellfish licenses shall be issued annually upon payment of a fee of
16 twenty-five dollars (\$25.00) upon proof that the license applicant is a
17 North Carolina resident.
- 18 (d) ~~License Available for Inspection.— It is unlawful for any individual to take~~
19 ~~shellfish in quantities greater than the personal use limits set forth in~~
20 ~~subsection (i) of this section from the public or private grounds of the~~
21 ~~State without having ready at hand for inspection a current and valid~~
22 ~~shellfish license issued to the licensee personally and bearing the~~
23 ~~licensee's correct name and address. It is unlawful for any individual~~
24 ~~taking or possessing freshly taken shellfish to refuse to exhibit the~~
25 ~~individual's license upon the request of an officer authorized to enforce~~
26 ~~the fishing laws.~~
- 27 (e) Repealed by Session Laws 1998-225, s. 4.17.
- 28 (f) Name or Address Change. – In the event of a change in name or address or
29 upon receipt of an erroneous shellfish license, the licensee shall, within
30 30 days, apply for a replacement shellfish license bearing the correct
31 name and address. Upon a showing by the individual that the name or
32 address change occurred within the past 30 days, the trial court or
33 prosecutor shall dismiss any charges brought pursuant to this
34 subsection.
- 35 (g) Transfer Prohibited. – It is unlawful for an individual issued a shellfish
36 license to transfer or offer to transfer the license, either temporarily or
37 permanently, to another. It is unlawful for an individual to secure or
38 attempt to secure a shellfish license from a source not authorized by
39 the Commission.
- 40 (h) Exemption. – Persons under 16 years of age are exempt from the license
41 requirements of this section if accompanied by a parent, grandparent,
42 or guardian who is in compliance with the requirements of this section
43 or if in possession of a parent's, ~~grandparent's~~ grandparent's, or

guardian's shellfish ~~license~~ license or a parent's, grandparent's, or guardian's shellfish endorsement of a SCFL.

(i) ~~Taking Shellfish Without a License for Personal Use.—~~

(1) ~~A person may take shellfish for personal use without obtaining a license under this section in quantities up to:~~

a. ~~One bushel of oysters per day.~~

b. ~~One half bushel of scallops per day.~~

c. ~~One hundred clams per day.~~

d. ~~Ten conchs per day.~~

e. ~~One hundred mussels per day.~~

(2) ~~Two or more persons who are using a vessel to take shellfish may take shellfish for personal use without obtaining a license under this section in quantities up to:~~

a. ~~Two bushels of oysters per day.~~

b. ~~One bushel of scallops per day.~~

c. ~~Two hundred clams per day.~~

d. ~~Twenty conchs per day.~~

e. ~~Two hundred mussels per day."~~

SECTION 4. G.S. 113-173(j)(4) is repealed.

SECTION 5. G.S. 120-122 reads as rewritten:

"§ 120-122. Vacancies in legislative appointments.

When a vacancy ~~occurs, other than by the expiration of term,~~ occurs in any office subject to appointment by the General Assembly upon the recommendation of the Speaker of the House of Representatives, upon the recommendation of the President Pro Tempore of the Senate, or upon the recommendation of the President of the Senate, and the vacancy occurs either: (i) after election of the General Assembly but before convening of the regular session; (ii) when the General Assembly has adjourned to a date certain, which date is more than 20 days after the date of adjournment; ~~or~~ (iii) after sine die adjournment of the regular ~~session,~~ session; or (iv) when the term of office expires and a successor has not been appointed, then the Governor may appoint a person to serve until the expiration of the term or until the General Assembly fills the vacancy, whichever occurs first. The General Assembly may fill the vacancy in accordance with G.S. 120-121 during a regular or extra session. When a person is holding over in office after the expiration of the term, for the purpose of this section that office may be filled as if it were vacant. Before making an appointment, the Governor shall consult the officer who recommended the original appointment to the General Assembly (the Speaker of the House of Representatives, the President Pro Tempore of the Senate, or the President of the Senate), and ask for a written recommendation. After receiving the written recommendation, the Governor must within 30 days either appoint the person recommended or inform the officer who made the recommendation that he is rejecting the recommendation. Failure to act within 30 days as required under the provisions of the preceding sentence shall be deemed to be approval of the candidate, and the candidate shall be eligible to enter the office in as full and ample extent as if the Governor had executed the appointment. The Governor shall not appoint a person other

1 than the person so recommended. Any position subject to initial appointment by the
2 General Assembly but not filled prior to sine die adjournment of the Session at which
3 the position was created or adjournment to a date certain which date is more than 20
4 days after the date of adjournment of the session at which the position was created may
5 be filled by the Governor under this section as if it were a vacancy occurring after the
6 General Assembly had made an appointment."

7 **SECTION 6.** G.S. 113-168(1) reads as rewritten:

8 "(1) 'Commercial fishing operation' means any activity preparatory to,
9 during, or subsequent to the taking of any fish, the taking of which is
10 subject to regulation by the Commission, either with the use of
11 commercial fishing equipment or gear, or by any means if the purpose
12 of the taking is to obtain fish for sale. Commercial fishing operation
13 does not include (i) the taking of fish as part of a recreational fishing
14 tournament, unless commercial fishing equipment or gear is ~~used or~~
15 used, (ii) the taking of fish under a ~~RCGL~~ RCGL, or (iii) the taking of
16 fish as provided in G.S. 113-261."

17 **SECTION 7.** G.S. 143B-289.52(a) is amended by adding a new subdivision
18 to read:

19 "(13) To adopt rules to define fishing gear as either recreational gear or
20 commercial gear."

21 **SECTION 8.** G.S. 143B-289.52 is amended by adding a new subsection to
22 read:

23 "(h) Neither the Commission nor the Department may disclose personal
24 information provided by an applicant for a license issued under Article 14A or 14B of
25 Chapter 113 of the General Statutes."

26 **SECTION 9.** In order to establish a schedule of staggered terms of three
27 years for the Board of Trustees of the North Carolina Saltwater Fishing Fund, the terms
28 of members of the Board initially filling positions established by subdivisions (1), (4),
29 and (7) of subsection (b) of G.S. 113-175.2, as enacted by Section 1 of this act, shall
30 begin on the date the member is appointed and duly qualified and shall expire on June
31 30, 2010; the terms of members of the Board initially filling positions established by
32 subdivisions (2), (5), and (8) of subsection (b) of G.S. 113-175.2, as enacted by Section
33 1 of this act, shall begin on the date the member is appointed and duly qualified and
34 shall expire on June 30, 2009; the terms of members of the Commission initially filling
35 positions established by subdivisions (3), (6), and (9) of subsection (b) of
36 G.S. 113-175.2, as enacted by Section 1 of this act, shall begin on the date the member
37 is appointed and duly qualified and shall expire on June 30, 2008.

38 **SECTION 10.** Notwithstanding G.S. 113-175.3, the Board of Trustees of the
39 North Carolina Saltwater Fishing Fund may authorize disbursement and the State
40 Treasurer may disburse up to fifty percent (50%) of the license revenues in the North
41 Carolina Saltwater Fishing Fund during fiscal years 2005-2006 through 2015-2016.

42 **SECTION 11.** The first report required pursuant to G.S. 113-175.4, as
43 enacted by Section 1 of this act, is due by September 30, 2005.

1 **SECTION 12.(a)** The Board of Trustees of the North Carolina Saltwater
2 Fishing Fund shall develop a plan for the implementation of Section 2 of this act. The
3 plan shall provide that:

- 4 (1) Licenses may be purchased or renewed via mail, electronic mail, the
5 Internet, or telephone.
- 6 (2) The licensing and renewal system shall be fully automated and shall
7 allow for the purchase or renewal of licenses at any time, without
8 delay.
- 9 (3) The licensing system shall not require individuals to hold a physical
10 license.
- 11 (4) Verification of licensure shall be accomplished by an individual
12 providing only the individual's name and residence address.

13 **SECTION 12.(b)** The Board of Trustees of the North Carolina Saltwater
14 Fishing Fund shall determine a date by which the plan developed pursuant to subsection
15 (a) of this section would be fully implemented.

16 **SECTION 12.(c)** The Board of Trustees of the North Carolina Saltwater
17 Fishing Fund shall study issues related to the establishment of a unified recreational
18 fishing license for recreational fishing in both the inland and coastal fishing waters of
19 the State. The Board shall make specific findings as to whether a unified licensing
20 system should be adopted for recreational fishing in the State and, if so, what the system
21 should be and how it should be implemented.

22 **SECTION 12.(d)** A report on the implementation plan, the determination of
23 the date of full implementation, and the unified fishing license study required by
24 subsections (a), (b), and (c) of this section shall be submitted to the Joint Legislative
25 Commission on Seafood and Aquaculture no later than April 15, 2005.

26 **SECTION 12.(e)** Notwithstanding the provisions of G.S. 113-175.2 as
27 enacted by Section 1 of this act, the requirement that members of the Board of Trustees
28 of the North Carolina Saltwater Fishing Fund must have purchased a current Saltwater
29 Fishing License at the time of appointment and the requirement that members of the
30 Board of Trustees must continue to have a current Saltwater Fishing License in order to
31 remain eligible to serve on the Board of Trustees shall not apply until such time as the
32 Saltwater Fishing License becomes available.

33 **SECTION 13.** There is appropriated from the General Fund to the North
34 Carolina Saltwater Fishing Fund for fiscal year 2004-2005 up to the sum of five million
35 dollars (\$5,000,000). Notwithstanding G.S. 113-175.3, as enacted by Section 1 of this
36 act, the Board of Trustees of the North Carolina Saltwater Fishing Fund shall use these
37 funds to implement the provisions of this act. Notwithstanding G.S. 113-175.3, as
38 enacted by Section 1 of this act, the Board of Trustees shall repay funds appropriated
39 pursuant to this section to the General Fund by July 1, 2010.

40 **SECTION 14.** If any section or provision of this act is declared
41 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
42 provision does not affect the validity of this act as a whole or any part of this act other
43 than the part declared to be unconstitutional or invalid.

1 **SECTION 15.** Sections 2, 3, and 4 of this act become effective January 1,
2 2006. All other sections of this act become effective when the act becomes law.