

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH80227-SB-20 (03/20)

Short Title: Amend Marine Fisheries Laws.

(Public)

Sponsors: Representative Wainwright.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE DEADLINE BY WHICH COASTAL HABITAT PROTECTION PLANS MUST BE ADOPTED, TO AUTHORIZE THE FISHERIES DIRECTOR TO ISSUE PROCLAMATIONS THAT BECOME EFFECTIVE IMMEDIATELY UPON ISSUANCE, TO ALLOW MARINE FISHERIES INSPECTORS TO ACCEPT DELEGATION OF LAW ENFORCEMENT POWERS FROM THE NATIONAL MARINE FISHERIES SERVICE, TO EXPAND THE ENFORCEMENT AUTHORITY OF MARINE PATROL INSPECTORS, AND TO MAKE OTHER TECHNICAL, CLARIFYING, AND CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 6.9 of S.L. 1997-400 reads as rewritten:

"**Section 6.9.** All of the Coastal Habitat Protection Plans required by G.S. 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than ~~1 July 2003~~ December 31, 2004. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall make the first report on progress in developing and implementing Coastal Habitat Protection Plans, as required by G.S. 143B-279.8(e), as enacted by Section 3.1 of this act, on or before 1 September 1999. The Secretary of Environment, Health, and Natural Resources shall make the first report on progress in developing and implementing Fishery Management Plans, as required by G.S. 113-182.1(f), as enacted by Section 3.4 of this act, on or before 1 September 1999."

SECTION 2. G.S. 113-221 reads as rewritten:

"**§ 113-221. ~~Rules; proclamations; emergency Commission meetings.~~ Rules.**

(a) Chapter 150B of the General Statutes governs the adoption of rules under this ~~Article, other than proclamations issued under this Article.~~ Article. Chapter 150B does not apply to proclamations issued under this Article.

1 (b) Upon purchasing a license, each licensee shall be given a copy of the rules
2 concerning the activities authorized by the license.

3 (c) The Fisheries Director shall notify licensees of a new rule or change to a rule
4 by sending each licensee either a newsletter containing the text of the rule or change or
5 an updated codification of the rules of the Marine Fisheries Commission that contains
6 the new rule or change.

7 (d) Unless there are overriding policy considerations involved, any rule of the
8 Marine Fisheries Commission ~~which will in the judgment of the Marine Fisheries~~
9 ~~Commission that will result in severe curtailment of the usefulness or value of~~
10 ~~equipment in which fishermen have any substantial investment should shall be given~~
11 ~~such a future effective date so as to minimize undue potential economic loss to~~
12 ~~fishermen. Whether or not any provision may cause potential economic loss rule will~~
13 ~~result in severe curtailment of the usefulness or value of equipment in which fishermen~~
14 ~~have any substantial investment and whether or not a future effective date should be set~~
15 ~~is a matter within the complete sole discretion of the Marine Fisheries Commission. The~~
16 ~~Marine Fisheries Commission need not set any future effective date more than two~~
17 ~~years in advance of the passage adoption of any rule.~~

18 (e) ~~The Marine Fisheries Commission may delegate to the Fisheries Director the~~
19 ~~authority to issue proclamations suspending or implementing, in whole or in part,~~
20 ~~particular rules of the Commission which may be affected by variable conditions. Such~~
21 ~~proclamations are to be issued by the Fisheries Director or by a person designated by~~
22 ~~the Fisheries Director. All proclamations must state the hour and date upon which they~~
23 ~~become effective and must be issued at least 48 hours in advance of the effective date~~
24 ~~and time. In those situations in which the proclamation prohibits the taking of certain~~
25 ~~fisheries resources for reasons of public health, the proclamation can be made effective~~
26 ~~immediately upon issuance. Notwithstanding any other provisions of this subsection, a~~
27 ~~proclamation can be issued at least 12 hours in advance of the effective date and time to~~
28 ~~reopen the taking of certain fisheries resources closed for reason of public health~~
29 ~~through a prior proclamation made effective immediately upon issuance. Persons~~
30 ~~violating any proclamation which is made effective immediately shall not be charged~~
31 ~~with a criminal offense during the time between the issuance and 48 hours after such~~
32 ~~issuance unless such person had actual notice of the issuance of such proclamation.~~
33 ~~Fisheries resources taken or possessed by any person in violation of any proclamation~~
34 ~~may be seized regardless of whether such person had actual notice of the proclamation.~~
35 ~~A permanent file of the text of all proclamations shall be maintained in the office of the~~
36 ~~Fisheries Director. Certified copies of proclamations are entitled to judicial notice in~~
37 ~~any civil or criminal proceeding.~~

38 ~~The Fisheries Director must make every reasonable effort to give actual notice of the~~
39 ~~terms of any proclamation to the persons who may be affected thereby. Reasonable~~
40 ~~effort includes press releases to communications media, posting of notices at docks and~~
41 ~~other places where persons affected may gather, personal communication by inspectors~~
42 ~~and other agents of the Fisheries Director, and such other measures designed to reach~~
43 ~~the persons who may be affected. It is a defense to an enforcement action for a violation~~
44 ~~of a proclamation that a licensee was prevented from receiving notice of the~~

1 proclamation due to a natural disaster or other act of God occasioned exclusively by
2 violence of nature without interference of any human agency and that could not have
3 been prevented or avoided by the exercise of due care or foresight.

4 (e1) Pursuant to the request of five or more members of the Marine Fisheries
5 Commission, its chairman may call an emergency meeting of the Commission to
6 review: (1) a proposed issuance or issuance of proclamations under the authority
7 delegated to the Fisheries Director pursuant to (e) of this section, except those
8 proclamations issued for reasons of public health; or (2) the need to issue a
9 proclamation to allow the taking of certain fisheries resources in areas not opened
10 through proclamations issued by the Fisheries Director. At least 48 hours prior to any
11 such meeting, a public announcement of the meeting shall be issued that describes the
12 action requested by the members of the Commission; and the Department must make
13 every reasonable effort to give actual notice of the meeting to persons who may be
14 affected thereby. After its review is complete, the Marine Fisheries Commission,
15 consistent with its duty to protect, preserve, and enhance the commercial and sports
16 fisheries resources of the State, may (1) approve, cancel, or modify the proposed
17 proclamation or issued proclamation under review; or (2) direct the Fisheries Director to
18 issue a proclamation that allows the taking of certain fisheries resources.

19 The variable conditions that affect such resource management decisions require that
20 these emergency meetings and any resulting orders by the Commission be exempt from
21 the provisions of Article 2A of Chapter 150B. The decisions of the Marine Fisheries
22 Commission shall be the final decision of the State and shall not be set aside on judicial
23 review unless found to be arbitrary and capricious.

24 (f) All persons who may be affected by them rules adopted by the Marine
25 Fisheries Commission and proclamations issued by the Fisheries Director are under a
26 duty to keep themselves informed of current rules of the Marine Fisheries Commission
27 and proclamations of the Fisheries Director. the current rules and proclamations. It is no
28 defense in any criminal prosecution for the defendant to show that he the defendant in
29 fact received no notice of a particular rule or proclamation. In any prosecution for
30 violation of the provisions of any rule or proclamation, or in which proof of matter
31 contained in a rule or proclamation is involved, the Department is deemed to have
32 complied with publication procedures and the burden is on the defendant to show by the
33 greater weight of the evidence substantial failure of compliance by the Department with
34 the required publication procedures.

35 (g) Every court ~~must~~ shall take judicial notice of any codification of rules issued
36 by the Fisheries Director within two years preceding the date of the offense charged or
37 transaction in issue. In the absence of any indication to the contrary, ~~such~~ the
38 codifications are to be deemed accurate and current statements of the text of the rules in
39 question and it is incumbent upon any person asserting that a relevant portion of the
40 codified text is inaccurate, or has been amended or deleted, to satisfy the court as to the
41 text of the rules ~~which that~~ is in fact properly applicable.

42 (h) Repealed by Session Laws 1983, c. 221, s. 1."

43 **SECTION 3.** Article 17 of Chapter 113 of the General Statutes is amended
44 by adding a new section to read:

1 **§ 113-221.1. Proclamations; emergency review.**

2 (a) The Marine Fisheries Commission may delegate to the Fisheries Director the
3 authority to issue proclamations suspending or implementing, in whole or in part,
4 particular rules of the Commission that may be affected by variable conditions. These
5 proclamations shall be issued by the Fisheries Director or by a person designated by the
6 Fisheries Director. Except as provided in this subsection, all proclamations shall state
7 the hour and date upon which they become effective and shall be issued at least 48
8 hours in advance of the effective date and time. A proclamation that prohibits the taking
9 of certain fisheries resources for reasons of public health or that governs a
10 quota-managed fishery may be made effective immediately upon issuance. A
11 proclamation to reopen the taking of certain fisheries resources closed for reasons of
12 public health through a prior proclamation made effective immediately upon issuance
13 may be issued at least 12 hours in advance of the effective date and time of the
14 reopening. A person violating any proclamation that is made effective immediately
15 upon issuance shall not be charged with a criminal offense during the time between the
16 issuance and 48 hours after the issuance unless the person had actual notice of the
17 issuance of the proclamation. Fisheries resources taken or possessed by any person in
18 violation of any proclamation may be seized regardless of whether the person had actual
19 notice of the proclamation. A permanent file of the text of all proclamations shall be
20 maintained in the office of the Fisheries Director. Certified copies of proclamations are
21 entitled to judicial notice in any civil or criminal proceeding. The Fisheries Director
22 shall make every reasonable effort to give actual notice of the terms of any proclamation
23 to persons who may be affected by the proclamation. Reasonable effort includes a press
24 release to communications media, posting of a notice at docks and other places where
25 persons affected may gather, personal communication by inspectors and other agents of
26 the Fisheries Director, and other measures designed to reach the persons who may be
27 affected. It is a defense to an enforcement action for a violation of a proclamation that a
28 person was prevented from receiving notice of the proclamation due to a natural disaster
29 or other act of God occasioned exclusively by violence of nature without interference of
30 any human agency and that could not have been prevented or avoided by the exercise of
31 due care or foresight.

32 (b) Pursuant to the request of five or more members of the Marine Fisheries
33 Commission, the Chair of the Marine Fisheries Commission may call an emergency
34 meeting of the Commission to review an issuance or proposed issuance of
35 proclamations under the authority delegated to the Fisheries Director pursuant to
36 subsection (a) of this section or to review the desirability of directing the Fisheries
37 Director to issue a proclamation to allow the taking of certain fisheries resources. At
38 least 48 hours prior to any emergency meeting called pursuant to this subsection, a
39 public announcement of the meeting shall be issued that describes the action requested
40 by the members of the Marine Fisheries Commission. The Department shall make every
41 reasonable effort to give actual notice of the meeting to persons who may be affected.
42 After its review is complete, the Marine Fisheries Commission, consistent with its duty
43 to protect, preserve, and enhance the commercial and sports fisheries resources of the
44 State, may approve, cancel, or modify the previously issued or proposed proclamation

1 under review or may direct the Fisheries Director to issue a proclamation that allows the
2 taking of certain fisheries resources. An emergency meeting called pursuant to this
3 subsection and any resulting orders issued by the Marine Fisheries Commission are
4 exempt from the provisions of Article 2A of Chapter 150B of the General Statutes. The
5 decisions of the Marine Fisheries Commission shall be the final decision of the State
6 and shall not be set aside on judicial review unless found to be arbitrary and capricious."

7 **SECTION 4.** G.S. 143B-289.52(a)(8) reads as rewritten:

8 **"§ 143B-289.52. Marine Fisheries Commission – powers and duties.**

9 (a) The Marine Fisheries Commission shall adopt rules to be followed in the
10 management, protection, preservation, and enhancement of the marine and estuarine
11 resources within its jurisdiction, as described in G.S. 113-132, including commercial
12 and sports fisheries resources. The Marine Fisheries Commission shall have the power
13 and duty:

14 ...

15 (8) To delegate to the Fisheries Director the authority by proclamation to
16 suspend or implement, in whole or in part, a particular rule of the
17 Commission that may be affected by variable conditions as provided in
18 ~~G.S. 113-221(e)~~.G.S. 113-221.1."

19 **SECTION 5.** G.S. 113-134.1 reads as rewritten:

20 **"§ 113-134.1. Jurisdiction over marine fisheries resources in Atlantic**
21 **Ocean-Ocean; delegation of law enforcement powers from the National**
22 **Marine Fisheries Service.**

23 (a) The Marine Fisheries Commission is directed to exercise all regulatory
24 authority over the conservation of marine fisheries resources in the Atlantic Ocean to
25 the seaward extent of the State jurisdiction over the resources as now or hereafter
26 defined. Marine fisheries inspectors may enforce these regulations and all other
27 provisions of law applicable under the authority granted in this section in the same
28 manner and with the same powers elsewhere granted them as enforcement officers.

29 (b) If authorized by the Fisheries Director or a designee of the Fisheries Director,
30 an inspector may accept delegation of law enforcement powers from the National
31 Marine Fisheries Service over matters within the jurisdiction of the Service. For
32 purposes of this subsection, the office of inspector may be held concurrently with any
33 other elected or appointed office, as authorized by G.S. 128-1.1 and Article VI, Section
34 9 of the Constitution of North Carolina."

35 **SECTION 6.** Subsection (d1) of G.S. 113-136 is repealed.

36 **SECTION 7.** G.S. 113-136 is amended by adding two new subsections to
37 read:

38 "(d2) In addition to law enforcement authority granted elsewhere, an inspector or
39 protector has the authority to enforce criminal laws when the inspector or protector has
40 probable cause to believe that a person has committed a criminal offense in the presence
41 of the inspector or protector and, at the time of the violation, the inspector or protector is
42 engaged in the enforcement of laws otherwise within the jurisdiction of the inspector or
43 protector. When acting pursuant to this subsection, an inspector or protector shall have
44 the same powers invested in law enforcement officers by statute or common law.

1 Nothing in this subsection shall be construed to expand the authority of an inspector or
2 protector to initiate or conduct an independent investigation into violations of criminal
3 laws outside the scope of the subject matter or territorial jurisdiction of the inspector or
4 protector.

5 (d3) In addition to law enforcement authority granted elsewhere, an inspector or
6 protector has the authority to enforce criminal laws when the inspector or protector is
7 asked to provide temporary assistance by the head of a State or local law enforcement
8 agency or the designee of the head of a State or local law enforcement agency and the
9 request is within the scope of the subject matter jurisdiction of the agency. When acting
10 pursuant to this subsection, an inspector or protector shall have the same powers
11 invested in law enforcement officers by statute or common law. When acting pursuant
12 to this subsection, an inspector or protector shall not be considered an officer, employee,
13 or agent for the State or local law enforcement agency or designee asking for temporary
14 assistance. Nothing in this subsection shall be construed to expand the authority of an
15 inspector or protector to initiate or conduct an independent investigation into violations
16 of criminal laws outside the scope of the subject matter or territorial jurisdiction of the
17 inspector or protector."

18 **SECTION 8.** Sections 2, 3, and 4 of this act become effective July 1, 2003.
19 All other sections of this act are effective when it becomes law.