

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 410*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/21/17

Short Title: Marine Aquaculture Development Act.

(Public)

Sponsors:

Referred to:

March 29, 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 AND BY
IMPOSING ADDITIONAL TRANSPARENCY REQUIREMENTS ON THE MEMBERS
OF THE MARINE FISHERIES COMMISSION.

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 16B.

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

"§ 113-215. Legislative findings and declaration of policy.

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

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

(a) To increase the use of suitable areas underlying coastal fishing waters for establishment of marine aquaculture operations, the Secretary may grant marine aquaculture leases for the public bottom under the terms of this section to persons who reside in North Carolina when the Secretary determines, in accordance with the Secretary's duty to conserve the marine and estuarine resources of the State, that the public interest will benefit from issuance of the lease. Suitable areas for marine aquaculture shall meet the following minimum standards:

- (1) The area leased must not contain a natural commercially significant shellfish bed.
- (2) The marine aquaculture operation in the leased area will not unreasonably interfere with lawful utilization by the public of other marine and estuarine resources. Other public uses which may be considered include, but are not limited to, navigation, fishing, and recreation.
- (3) The operation of a marine aquaculture operation in the leased area will not unreasonably interfere upon the rights of riparian owners.



- 1 (4) The area leased must not include an area designated for inclusion in the
2 Department's Shellfish Management Program.
- 3 (5) The area leased must not include an area that the State Health Director has
4 recommended be closed to shellfish harvest by reason of pollution.
- 5 (6) The marine aquaculture operation would not unreasonably interfere with
6 public access and use of waters of the State, taking into account the potential
7 economic impact of the operation.

8 (b) The Secretary may delete any part of an area proposed for lease or may condition a
9 lease to protect the public interest with respect to the factors enumerated in subsection (a) of
10 this section. The Secretary shall enter into memoranda of agreement with the United States
11 Army Corps of Engineers or any other appropriate State or federal regulatory agencies to
12 provide for appropriate standards and markings for marine aquaculture structures to avoid
13 impairment of navigation.

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

19 (d) The map or diagram must conform to standards prescribed by the Secretary
20 concerning accuracy of map or diagram and the amount of detail that must be shown. If, on the
21 basis of the application information and map or diagram, the Secretary deems that granting the
22 lease would benefit the marine aquaculture industry of North Carolina, the Secretary must order
23 an investigation of the bottom proposed to be leased. The investigation is to be made by the
24 Secretary or the Secretary's authorized agent to determine whether the area proposed to be
25 leased is consistent with the standards in subsection (a) of this section and any other applicable
26 standards under this Article and the rules of the Marine Fisheries Commission. In the event the
27 Secretary finds the application inconsistent with the applicable standards, the Secretary shall
28 deny the application or propose that a conditional lease be issued that is consistent with the
29 applicable standards. In the event the Secretary authorizes amendment of the application, the
30 applicant must furnish a new map or diagram meeting requisite standards showing the area
31 proposed to be leased under the amended application. At the time of making an application for
32 an initial lease, the applicant must pay a filing fee of two hundred dollars (\$200.00).

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

37 (f) Within 60 days after receipt of an application that complies with subsection (d) of
38 this section, the Secretary shall notify the applicant of the intended action on the lease
39 application. If the intended action is approval of the application as submitted, or approval with
40 a modification to which the applicant agrees, the Secretary shall conduct a public hearing in the
41 county where the proposed leasehold lies. The Secretary must publish at least two notices of the
42 intention to lease in a newspaper of general circulation in the county in which the proposed
43 leasehold lies. The first publication must precede the public hearing by more than 20 days; the
44 second publication must follow the first by seven to 11 days. The notice of intention to lease
45 must contain a description of the area of the proposed leasehold sufficient to establish its
46 boundaries with reasonable ease and certainty and must also contain the date, hour, and place
47 of the hearing.

48 (g) After consideration of the public comment received and any additional
49 investigations the Secretary orders to evaluate the comments, the Secretary shall notify the
50 applicant in person or by certified or registered mail of the decision on the lease application.
51 The Secretary shall also notify persons who submitted comments at the public hearing and

1 requested notice of the lease decision. An applicant who is dissatisfied with the Secretary's
2 decision or another person aggrieved by the decision may commence a contested case by filing
3 a petition under G.S. 150B-23 within 20 days after receiving notice of the Secretary's decision.
4 In the event the Secretary's decision is a modification to which the applicant agrees, the lease
5 applicant must furnish an amended map or diagram before the lease can be issued by the
6 Secretary.

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

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

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

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

- 36 (1) Failure to pay the annual rent in advance.
- 37 (2) Failure to file information required by the Secretary upon annual remittance
38 of rental or filing false information on the form required to accompany the
39 annual remittance of rental.
- 40 (3) Failure by new owner to report a transfer of beneficial ownership of all, or
41 any portion of, or interest in the leasehold.
- 42 (4) Failure to mark the boundaries in the leasehold and to keep them marked as
43 required in the rules of the Marine Fisheries Commission.
- 44 (5) Failure to utilize the leasehold on a continuing basis for marine aquaculture
45 purposes, except if marine aquaculture activities under the lease are
46 suspended as a part of a disease or biosecurity plan.
- 47 (6) Transfer of all or part of the beneficial ownership of a leasehold to a
48 nonresident.
- 49 (7) Substantial breach of compliance with the provisions of this Article, of the
50 Marine Aquaculture Propagation and Production Facility License issued

1 under Article 16A of this Chapter, or of rules of the Marine Fisheries
2 Commission governing use of the leasehold.

3 (l) In the event the leaseholder takes steps within 30 days to remedy the situation upon
4 which the notice of intention to terminate was based, and the Secretary is satisfied that
5 continuation of the lease is in the best interests of the shellfish culture of the State, the
6 Secretary may discontinue termination procedures. Where there is no discontinuance of
7 termination procedures, the leaseholder may initiate a contested case by filing a petition under
8 G.S. 150B-23 within 30 days of receipt of notice of intention to terminate. Where the
9 leaseholder does not initiate a contested case, or the final decision upholds termination, the
10 Secretary must send a final letter of termination to the leaseholder. The final letter of
11 termination may not be mailed sooner than 30 days after receipt by the leaseholder of the
12 Secretary's notice of intention to terminate, or of the final agency decision, as appropriate. The
13 lease is terminated effective at midnight on the day the final notice of termination is served on
14 the leaseholder. The final notice of termination may not be issued pending hearing of a
15 contested case initiated by the leaseholder.

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

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

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

39 **"§ 113-217. Lease of superjacent water column for marine aquaculture.**

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

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

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

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

- 1 (3) The leased area must not be within an area traditionally used and available
2 for significant levels of fishing or hunting activities incompatible with the
3 activities proposed by the leaseholder, such as trawling or seining.
4 (4) Aquaculture use of the leased area must not significantly interfere with the
5 exercise of riparian rights by adjacent property owners, including access to
6 navigation channels from piers or other means of access.
7 (5) Use of the superjacent water column is necessary for exercise of activities
8 permitted under the Marine Aquaculture Propagation and Production Facility
9 License granted by the Department under Article 16A of this Chapter.
10 (6) Any additional standards, established by the Commission in duly adopted
11 rules, to protect the public interest in coastal fishing waters.

12 **"§ 113-218. Protection of private marine aquaculture rights.**

13 Protection of Private Marine Aquaculture Rights. – It is unlawful for any person, other than
14 the holder of a lease issued under this Article, to take or attempt to take marine species being
15 produced under the license and associated lease from any privately leased, franchised, or
16 deeded marine aquaculture operation without written authorization of the holder and with
17 actual knowledge it is a marine aquaculture leased area. Actual knowledge will be presumed
18 when the marine species are taken or attempted to be taken under the following circumstances:

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

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

29 **SECTION 2.** The Division of Marine Fisheries of the Department of
30 Environmental Quality shall do the following:

- 31 (1) Request that the Mid-Atlantic and South Atlantic Fishery Management
32 Councils develop a Fishery Management Plan for regulating offshore
33 aquaculture in federal waters offshore from the North Carolina coast.
34 (2) Petition the National Oceanic and Atmospheric Administration to initiate
35 rule-making proceedings to implement a comprehensive regulatory program
36 for managing the development of an environmentally sound and
37 economically sustainable aquaculture fishery in federal waters offshore from
38 the North Carolina coast.

39 The Division shall provide an interim report to the Joint Legislative Oversight
40 Committee on Agriculture and Natural and Economic Resources no later than February 1,
41 2018, regarding their progress in implementing this section and a final report on or before May
42 1, 2018, that includes the request and petition required by this section.

43 **SECTION 3.** G.S. 143B-289.54 is amended by adding a new subsection to read:

44 "(m) Transparency. – The Commission shall establish official e-mail accounts for all
45 Commission members. These e-mail accounts shall be used for all electronic communications
46 related to the work of the Commission, and those communications shall be considered public
47 records under Chapter 132 of the General Statutes. Electronic communications among a
48 majority of the Commission shall be an "official meeting" as defined in Article 33C of Chapter
49 143 of the General Statutes. Failure to comply with this subsection shall be subject to
50 investigation by the State Ethics Commission as unethical conduct and removal under
51 subsection (h) of this section as misfeasance."

1 **SECTION 4.** Section 1 of this act becomes effective October 1, 2017. The
2 remainder of this act is effective when it becomes law.