

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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HOUSE BILL 987

Short Title: Amend Marine Fisheries Laws.

(Public)

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Sponsors: Representative Wainwright.

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Referred to: Environment and Natural Resources.

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April 9, 2003

A BILL TO BE ENTITLED

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

10 The General Assembly of North Carolina enacts:

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

12 **"Section 6.9.** All of the Coastal Habitat Protection Plans required by G.S.  
13 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than ~~1 July~~  
14 ~~2003.~~December 31, 2004. The Coastal Resources Commission, the Environmental  
15 Management Commission, and the Marine Fisheries Commission shall make the first  
16 report on progress in developing and implementing Coastal Habitat Protection Plans, as  
17 required by G.S. 143B-279.8(e), as enacted by Section 3.1 of this act, on or before 1  
18 September 1999. The Secretary of Environment, Health, and Natural Resources shall  
19 make the first report on progress in developing and implementing Fishery Management  
20 Plans, as required by G.S. 113-182.1(f), as enacted by Section 3.4 of this act, on or  
21 before 1 September 1999."

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

23 **"§ 113-221. Rules; proclamations; emergency Commission meetings. Rules.**

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

27 (b) Upon purchasing a license, each licensee shall be given a copy of the rules  
28 concerning the activities authorized by the license.  
29

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

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

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

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

1 violence of nature without interference of any human agency and that could not have  
2 been prevented or avoided by the exercise of due care or foresight.

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

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

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

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

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

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

44 "**§ 113-221.1. Proclamations; emergency review.**

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

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

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

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

7 "**§ 143B-289.52. Marine Fisheries Commission – powers and duties.**

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

13 ...

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

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

19 "**§ 113-134.1. Jurisdiction over marine fisheries resources in Atlantic**  
20 **Ocean.Ocean; delegation of law enforcement powers from the National**  
21 **Marine Fisheries Service.**

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

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

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

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

37 "(d2) In addition to law enforcement authority granted elsewhere, an inspector or  
38 protector has the authority to enforce criminal laws when the inspector or protector has  
39 probable cause to believe that a person has committed a criminal offense in the presence  
40 of the inspector or protector and, at the time of the violation, the inspector or protector is  
41 engaged in the enforcement of laws otherwise within the jurisdiction of the inspector or  
42 protector. When acting pursuant to this subsection, an inspector or protector shall have  
43 the same powers invested in law enforcement officers by statute or common law.  
44 Nothing in this subsection shall be construed to expand the authority of an inspector or

1 protector to initiate or conduct an independent investigation into violations of criminal  
2 laws outside the scope of the subject matter or territorial jurisdiction of the inspector or  
3 protector.

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

17 **SECTION 8.** Sections 2, 3, and 4 of this act become effective July 1, 2003.

18 All other sections of this act are effective when it becomes law.