

Article 14A.

Coastal and Estuarine Commercial Fishing Licenses.

**§ 113-168. Definitions.**

As used in this Article:

- (1) "Commercial fishing operation" means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. Commercial fishing operation does not include (i) the taking of fish as part of a recreational fishing tournament, unless commercial fishing equipment or gear is used, (ii) the taking of fish under a RCGL, or (iii) the taking of fish as provided in G.S. 113-261.
- (2) "Commission" means the Marine Fisheries Commission.
- (3) "Division" means the Division of Marine Fisheries in the Department of Environmental Quality.
- (3a) "Immediate family" means the mother, father, brothers, sisters, spouse, children, stepparents, stepbrothers, stepsisters, and stepchildren of a person.
- (4) "License year" means the period beginning 1 July of a year and ending on 30 June of the following year.
- (5) "North Carolina resident" means a person who is a resident within the meaning of G.S. 113-130(4).
- (6) "RCGL" means Recreational Commercial Gear License.
- (7) "RSCFL" means Retired Standard Commercial Fishing License.
- (8) "SCFL" means Standard Commercial Fishing License. (1997-400, s. 5.1; 1997-443, s. 11A.119(b); 1998-225, s. 4.9; 2001-213, s. 2; 2004-187, s. 6; 2015-241, s. 14.30(u).)

**§ 113-168.1. General provisions governing licenses and endorsements.**

(a) Duration, Fees. – Except as provided in G.S. 113-173(f), all licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license or endorsement shall pay the full annual fee at the time the applicant applies for the license or endorsement regardless of when application is made.

(b) Licenses Required to Engage in Commercial Fishing. – It is unlawful for any person to engage in a commercial fishing operation without holding a license and any endorsements required by this Article. It is unlawful for anyone to command a vessel engaged in a commercial fishing operation without complying with the provisions of this Article and rules adopted by the Commission under this Article.

(c) Licenses, Assignments, and Endorsements Available for Inspection. – It is unlawful for any person to engage in a commercial fishing operation in the State without having ready at hand for inspection all valid licenses, assignments, and endorsements required under this Article. To comply with this subsection, a person must have any required endorsements and either a currently valid (i) license issued in the person's true name and bearing the person's current address or (ii) SCFL and an assignment of the SCFL authorized under this Article. It is unlawful for a person to refuse to exhibit any license, assignment, or endorsement required by this Article upon the request of an inspector or other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(d) No Dual Residency. – It is unlawful for any person to hold any currently valid license issued under this Article to the person as a North Carolina resident if that person holds any currently valid commercial or recreational fishing license issued by another state to the person as a resident of that state.

(e) License Format. – Licenses issued under this Article shall be issued in the name of the applicant. Each license shall show the type of license and any endorsements; the name, mailing address, physical or residence address, and date of birth of the licensee; the date on which the license is issued; the date on which the license expires; and any other information that the Commission or the Division determines to be necessary to accomplish the purposes of this Subchapter.

(f) License Issuance and Renewal. – Except as provided in G.S. 113-173(d), the Division shall issue licenses and endorsements under this Article to eligible applicants at any office of the Division or by mail from the Morehead City office of the Division. A license or endorsement may be renewed in person at any office of the Division or by mail to the Morehead City office of the Division. Eligibility to renew an expired SCFL shall end one year after the date of expiration of the SCFL.

(g) Limitations on Eligibility. – A person is not eligible to obtain or renew a license or endorsement under this Article if, at the time the person applies for the license or endorsement, any other license or endorsement issued to the person under this Article is suspended or revoked. A person is not eligible to obtain a license or endorsement under this Article if, within the three years prior to the date of application, the person has been determined to be responsible for four or more violations of state laws, regulations, or rules governing the management of marine and estuarine resources. An applicant shall certify that the applicant has not been determined to be responsible for four or more violations of state laws, regulations, or rules governing the management of marine and estuarine resources during the previous three years. The Division may also consider violations of federal law and regulations governing the management of marine and estuarine resources in determining whether an applicant is eligible for a license.

(h) Replacement Licenses and Endorsements. – The Division shall issue a replacement license, including any endorsements, to a licensee for a license that has not been suspended or revoked. A licensee may apply for a replacement license for a license that has been lost, stolen, or destroyed and shall apply for a replacement license within 30 days of a change in the licensee's name or address. A licensee may apply for a replacement license in person at any office of the Division or by mail to the Morehead City office of the Division. A licensee may use a copy of the application for a replacement license that has been filed with the Division as a temporary license until the licensee receives the replacement license. The Commission may establish a fee for each type of replacement license, not to exceed twelve dollars and fifty cents (\$12.50), that compensates the Division for the administrative costs associated with issuing the replacement license.

(i) Cancellation. – The Division may cancel a license or endorsement issued on the basis of an application that contains false information supplied by the applicant. A cancelled license or endorsement is void from the date of issuance. A person in possession of a cancelled license or endorsement shall surrender the cancelled license or endorsement to the Division. It is unlawful to refuse to surrender a cancelled license or endorsement upon demand of any authorized agent of the Division.

(j) Advance Sale of Licenses, License Revenue. – To ensure an orderly transition from one license year to the next, the Division may issue a license or endorsement prior to 1 July of the license year for which the license or endorsement is valid. Revenue that the Division receives for

the issuance of a license or endorsement prior to the beginning of a license year shall not revert at the end of the fiscal year in which the revenue is received and shall be credited and available to the Division only for the license year in which the license or endorsement is valid. Any license revenue carried forward from one fiscal year to the next under this subsection that remains unencumbered and unexpended at the end of the fiscal year in which the license or endorsement is valid shall revert to the General Fund. (1997-400, s. 5.1; 1998-225, s. 4.10; 1999-209, s. 6; 2001-213, s. 2; 2013-360, s. 14.8(a); 2014-100, s. 14.10.)

### **§ 113-168.2. Standard Commercial Fishing License.**

(a) Requirement. – Except as otherwise provided in this Article, it is unlawful for any person to engage in a commercial fishing operation in the coastal fishing waters without holding a SCFL issued by the Division. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation under the direction of a person who holds a valid SCFL is not required to hold a SCFL. A person who holds a SCFL is not authorized to take shellfish unless the SCFL is endorsed as provided in G.S. 113-168.5.

(a1) Use of Vessels. – The holder of a SCFL is authorized to use only one vessel in a commercial fishing operation at any given time. The Commission may adopt a rule to exempt from this requirement a person in command of a vessel that is auxiliary to a vessel engaged in a pound net operation, long-haul operation, or beach seine operation. A person who works as a member of the crew of a vessel engaged in a mechanical shellfish operation under the direction of a person who holds a valid SCFL with a shellfish endorsement is not required to hold a shellfish license.

(b) through (d) Repealed by Session Laws 1998-225, s. 4.11, effective July 1, 1999.

(e) Fees. – The annual SCFL fee for a resident of this State shall be four hundred dollars (\$400.00). The annual SCFL fee for a person who is not a resident of this State shall be the amount charged to a resident of this State in the nonresident's state. In no event, however, may the fee be less than four hundred dollars (\$400.00). For purposes of this subsection, a "resident of this State" is a person who is a resident within the meaning of:

- (1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State income tax return as a resident of North Carolina for the previous calendar or tax year, or
- (2) G.S. 113-130(4)e.

(f) Assignment. – The holder of a SCFL may assign the SCFL to any individual who is eligible to hold a SCFL under this Article. It is unlawful for the holder of an SCFL to assign a shellfish endorsement of an SCFL to any individual who is not a resident of this State. The assignment shall be in writing on a form provided by the Division and shall include the name of the licensee, the license number, any endorsements, the assignee's name, mailing address, physical or residence address, and the duration of the assignment. If a notarized copy of an assignment is not filed with the Morehead City office of the Division within five days of the date of the assignment, the assignment shall expire. It is unlawful for the assignee of a SCFL to assign the SCFL. The assignment shall terminate:

- (1) Upon written notification by the assignor to the assignee and the Division that the assignment has been terminated.
- (2) Upon written notification by the estate of the assignor to the assignee and the Division that the assignment has been terminated.
- (3) If the Division determines that the assignee is operating in violation of the terms and conditions applicable to the assignment.

- (4) If the assignee becomes ineligible to hold a license under this Article.
  - (5) Upon the death of the assignee.
  - (6) If the Division suspends or revokes the assigned SCFL.
  - (7) At the end of the license year.
- (g) Transfer. – A SCFL may be transferred only by the Division. A SCFL may be transferred pursuant to rules adopted by the Commission or upon the request of:
- (1) A licensee, from the licensee to a member of the licensee's immediate family who is eligible to hold a SCFL under this Article.
  - (2) The administrator or executor of the estate of a deceased licensee, to the administrator or executor of the estate if a surviving member of the deceased licensee's immediate family is eligible to hold a SCFL under this Article. The administrator or executor must request a transfer under this subdivision within six months after the administrator or executor qualifies under Chapter 28A of the General Statutes. An administrator or executor who holds a SCFL under this subdivision may, for the benefit of the estate of the deceased licensee:
    - a. Engage in a commercial fishing operation under the SCFL if the administrator or executor is eligible to hold a SCFL under this Article.
    - b. Assign the SCFL as provided in subsection (f) of this section.
    - c. Renew the SCFL as provided in G.S. 113-168.1.
  - (3) An administrator or executor to whom a SCFL was transferred pursuant to subdivision (2) of this subsection, to a surviving member of the deceased licensee's immediate family who is eligible to hold a SCFL under this Article.
  - (4) The surviving member of the deceased licensee's immediate family to whom a SCFL was transferred pursuant to subdivision (3) of this subsection, to a third-party purchaser of the deceased licensee's fishing vessel.
  - (5) A licensee who is retiring from commercial fishing, to a third-party purchaser of the licensee's fishing vessel.
- (h) Identification as Commercial Fisherman. – The receipt of a current and valid SCFL or shellfish license issued by the Division shall serve as proper identification of the licensee as a commercial fisherman.
- (i) Record-Keeping Requirements. – The fish dealer shall record each transaction at the time and place of landing on a form provided by the Division. The transaction form shall include the information on the SCFL or shellfish license, the quantity of the fish, the identity of the fish dealer, and other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Division and to the other party of the transaction. The Division's copy of each transaction form shall be transmitted to the Division by the fish dealer on or before the tenth day of the month following the transaction. (1997-400, s. 5.1; 1998-225, s. 4.11; 2001-213, s. 2; 2013-360, s. 14.8(b); 2013-384, s. 2(c); 2014-100, s. 14.9(b).)

**§ 113-168.3. Retired Standard Commercial Fishing License.**

- (a) SCFL Provisions Applicable. – Except as provided in this section, the provisions set forth in this Article concerning the SCFL shall apply to the RSCFL.
- (b) Eligibility; Fees. – Any individual who is 65 years of age or older and who is eligible for a SCFL under G.S. 113-168.2 may apply for either a SCFL or RSCFL. An applicant for a RSCFL shall provide proof of age at the time the application is made. The annual fee for a RSCFL

for a resident of this State shall be two hundred dollars (\$200.00). The annual fee for a RSCFL for a person who is not a resident of this State shall be two hundred sixty dollars (\$260.00). For purposes of this subsection, a "resident of this State" is a person who is a resident within the meaning of:

- (1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State income tax return as a resident of North Carolina for the previous calendar or tax year, or
  - (2) G.S. 113-130(4)e.
- (c) Transfer. – The holder of a RSCFL may transfer the RSCFL as provided in G.S. 113-168.2.
- (1) If the transferee is less than 65 years of age, the transferee holds a SCFL. When the transferee renews the SCFL, the transferee shall pay the fee set out in G.S. 113-168.2.
  - (2) If the transferee is 65 years of age or older, the transferee may elect to hold either a SCFL or RSCFL. If the transferee elects to hold a SCFL, the transferee shall pay the fee set out in G.S. 113-168.2. If the transferee elects to hold a RSCFL, the transferee shall pay the fee set out in this section.
- (d) Assignment. – The RSCFL shall not be assignable. (1997-400, s. 5.1; 1998-225, s. 4.12; 2001-213, s. 2; 2013-360, s. 14.8(c); 2014-100, s. 14.9(c).)

#### **§ 113-168.4. Sale of fish.**

(a) Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Commission from coastal fishing waters by any means whatever, including mariculture operations, to sell, offer for sale, barter or exchange these fish for anything of value without holding a license required to sell the type of fish being offered.

(b) Except as otherwise provided in this section, it is unlawful for any person licensed under this Article to sell fish taken outside the territorial waters of the State or to sell fish taken from coastal fishing waters. A person licensed under this Article may sell fish taken outside the territorial waters of the State or sell fish taken from coastal fishing waters under any of the following circumstances:

- (1) The sale is to a fish dealer licensed under G.S. 113-169.3.
  - (2) The sale is to the public and the seller is a licensed fish dealer under G.S. 113-169.3.
  - (3) The sale is of oysters or clams from a hatchery or aquaculture operation to the holder of an Aquaculture Operation Permit, an Under Dock Culture Permit, or a shellfish cultivation lease for further grow out.
- (c) A person who organizes a recreational fishing tournament may sell fish taken in connection with the tournament pursuant to a recreational fishing tournament license to sell fish. A person who organizes a recreational fishing tournament may obtain a recreational fishing tournament license to sell fish upon application to the Division and payment of a fee of one hundred twenty-five dollars (\$125.00). It is unlawful for any person licensed under this subsection to sell fish to any person other than a fish dealer licensed under G.S. 113-169.3 unless the seller is also a licensed fish dealer. A recreational fishing tournament is an organized fishing competition occurring within a specified time period not to exceed one week and that is not a commercial fishing operation. Gross proceeds from the sale of fish may be used only for charitable, religious, educational, civic, or conservation purposes and shall not be used to pay tournament expenses. (1997-400, s. 5.1; 1998-225, s. 4.13; 2001-213, s. 2; 2009-433, s. 1; 2013-360, s. 14.8(d).)

**§ 113-168.5. License endorsements for Standard Commercial Fishing License.**

- (a), (b) Repealed by Session Laws 1998-225, s. 4.14, effective July 1, 1999.
- (c) Repealed by Session Laws 2013-384, s. 2(a), effective August 23, 2013.
- (d) Shellfish Endorsement for North Carolina Residents. – The Division shall issue a shellfish endorsement of a SCFL to a North Carolina resident at no charge. The holder of a SCFL with a shellfish endorsement is authorized to take and sell shellfish. (1997-400, s. 5.1; 1998-225, s. 4.14; 2001-213, s. 2; 2013-384, s. 2(a).)

**§ 113-168.6. Commercial fishing vessel registration.**

(a) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel has its primary situs in the State if:

- (1) A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;
- (2) A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or
- (3) A certification of documentation has been issued for the vessel that lists a home port in the State under 46 U.S.C. § 12101, et seq., as amended.

(b) The owner of a vessel used in a commercial fishing operation in the coastal fishing waters of the State or a North Carolina vessel used to land or sell fish in the State shall register the vessel with the Division. It is unlawful to use a vessel that is not registered with the Division in a commercial fishing operation in the coastal fishing waters of the State. It is unlawful to use a North Carolina vessel that is not registered with the Division to land or sell fish in the State. No registration is required for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel that is properly registered.

(b1) The vessel owner at the time of application for registration under subsection (b) of this section shall obtain either a commercial vessel endorsement if the vessel is intended to be used primarily for the harvest of fish for sale, a for-hire endorsement if the vessel is intended to be used primarily for for-hire activities, or both endorsements if the vessel is intended to be engaged in both activities. The owner of a vessel applying for a commercial fishing vessel registration with a for-hire endorsement must affirm liability coverage and knowledge of applicable United States Coast Guard safety requirements.

(c) The annual fee for a commercial fishing vessel registration shall be determined by the length of the vessel and shall be in addition to the fee for other licenses issued under this Article. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The annual fee for a commercial fishing vessel registration is:

- (1) One dollar and twenty-five cents (\$1.25) per foot for a vessel not over 18 feet in length.
- (2) One dollar and ninety cents (\$1.90) per foot for a vessel over 18 feet but not over 38 feet in length.
- (3) Three dollars and seventy-five cents (\$3.75) per foot for a vessel over 38 feet but not over 50 feet in length.
- (4) Seven dollars and fifty cents (\$7.50) per foot for a vessel over 50 feet in length.

(d) A vessel may be registered at any office of the Division. A commercial fishing vessel registration expires on the last day of the license year.

(e) Within 30 days of the date on which the owner of a registered vessel transfers ownership of the vessel, the new owner of the vessel shall notify the Division of the change in ownership and apply for a replacement commercial fishing vessel registration. An application for a replacement commercial fishing vessel registration shall be accompanied by proof of the transfer of the vessel. The provisions of G.S. 113-168.1(h) apply to a replacement commercial fishing vessel registration. (1998-225, s. 4.15; 2001-213, s. 3; 2013-360, s. 14.8(e).)

**§ 113-169:** Repealed by Session Laws 2013-384, s. 2(b), effective August 23, 2013.

**§ 113-169.1. Permits for gear, equipment, and other specialized activities authorized.**

(a) The Commission may adopt rules to establish permits for gear, equipment, and specialized activities, including commercial fishing operations that do not involve the use of a vessel and transplanting oysters or clams. The Commission may establish a fee for each permit established pursuant to this subsection in an amount that compensates the Division for the administrative costs associated with the permit but that does not exceed one hundred dollars (\$100.00) per permit.

(b) The Commission may adopt rules to establish gear specific permits to take striped bass from the Atlantic Ocean and to limit the number and type of these permits that may be issued to a person. The Commission may establish a fee for each permit established pursuant to this subsection in an amount that compensates the Division for the administrative costs associated with the permit but that does not exceed thirty dollars (\$30.00) per permit.

(c) To ensure an orderly transition from one permit year to the next, the Division may issue a permit prior to July 1 of the permit year for which the permit is valid. Revenue that the Division receives for the issuance of a permit prior to the beginning of a permit year shall not revert at the end of the fiscal year in which the revenue is received and shall be credited and available to the Division for the permit year in which the permit is valid. (1997-400, s. 5.1; 2000-172, s. 6.1; 2001-213, s. 2; 2006-254, s. 1; 2013-360, s. 14.8(f).)

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

(a) License or Endorsement Necessary to Take or Sell Shellfish Taken by Hand Methods. – It is unlawful for an individual to take shellfish from the public or private grounds of the State as part of a commercial fishing operation by hand methods without holding either a shellfish license or a shellfish endorsement of a SCFL. A North Carolina resident who seeks only to take shellfish by hand methods and sell such shellfish shall be eligible to obtain a shellfish license without holding a SCFL. The shellfish license authorizes the licensee to sell shellfish.

(a1) License Necessary to Take or Sell Shellfish Taken by Mechanical Means. – Except as provided in subsection (i) of this section, an individual who takes shellfish from the public or private grounds of the State by mechanical means must obtain an SCFL under the provisions of G.S. 113-168.2.

(b) Repealed by Session Laws 1998-225, s. 4.17, effective July 1, 1999.

(c) Fees. – Shellfish licenses issued under this section shall be issued annually upon payment of a fee of fifty dollars (\$50.00) upon proof that the license applicant is a North Carolina resident.

(d) License Available for Inspection. – It is unlawful for any individual to take shellfish as part of a commercial fishing operation from the public or private grounds of the State without having ready at hand for inspection a current and valid shellfish license issued to the licensee

personally and bearing the licensee's correct name and address. It is unlawful for any individual taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the request of an officer authorized to enforce the fishing laws.

(e) Repealed by Session Laws 1998-225, s. 4.17, effective July 1, 1999.

(f) Name or Address Change. – In the event of a change in name or address or upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a replacement shellfish license bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(g) Transfer Prohibited. – It is unlawful for an individual issued a shellfish license to transfer or offer to transfer the license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Commission.

(h) Exemption. – Persons under 16 years of age are exempt from the license requirements of this section if accompanied by a parent, grandparent, or guardian who is in compliance with the requirements of this section or if in possession of a parent's, grandparent's or guardian's shellfish license.

(i) Taking Shellfish Without a License for Personal Use or as Employee of Certain License Holders. – Shellfish may be taken without a license under the following circumstances:

- (1) For personal use in quantities established by rules of the Marine Fisheries Commission.
- (2) When the taking is from an area leased for the cultivation of shellfish under Article 16 of this Chapter by a person who is an employee of a leaseholder holding a valid SCFL issued under the provisions of G.S. 113-168.2, and the person provides an authorization letter with the leaseholder's SCFL number and signature. (1997-400, s. 5.1; 1998-225, s. 4.17; 2001-213, s. 2; 2004-187, s. 3; 2005-455, s. 1.18; 2009-433, s. 2; 2013-360, s. 14.8(g); 2014-100, s. 14.9(d); 2015-241, s. 14.10B.)

### **§ 113-169.3. Licenses for fish dealers.**

(a) Eligibility. – A fish dealer license shall be issued to a North Carolina resident upon receipt of a proper application at any office of the Division together with all license fees including the total number of dealer categories set forth in this section. The license shall be issued in the name of the applicant and shall include all dealer categories on the license.

(b) Application for License. – Applications shall not be accepted from persons ineligible to hold a license issued by the Division, including any applicant whose license is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the fish dealer's license until the license issued by the Division is received, or the Division determines that the applicant is ineligible to hold a license. Where an applicant does not have an established location for transacting the fisheries business within the State, the license application shall be denied unless the applicant satisfies the Secretary that his residence, or some other office or address within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and purchase requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Secretary, that the license applicant is a North Carolina resident.

(c) License Requirement. – Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section. Except as otherwise provided in this section, it is unlawful for any person not licensed pursuant to this Article:

- (1) To buy fish for resale from any person involved in a commercial fishing operation that takes any species of fish from coastal fishing waters. For purposes of this subdivision, a retailer who purchases fish from a fish dealer shall not be liable if the fish dealer has not complied with the licensing requirements of this section;
- (2) To sell fish to the public; or
- (3) To sell to the public any species of fish under the authority of the Commission taken from coastal fishing waters.

(d) Exceptions to License Requirements. – The Commission may adopt rules to implement this subsection including rules to clarify the status of the listed classes of exempted persons, require submission of statistical data, and require that records be kept in order to establish compliance with this section. Any person not licensed pursuant to this section is exempt from the licensing requirements of this section if all fish handled within any particular licensing category meet one or more of the following requirements:

- (1) The fish are sold by persons whose dealings in fish are primarily educational, scientific, or official, and who have been issued a permit by the Division that authorizes the educational, scientific, or official agency to sell fish taken or processed in connection with research or demonstration projects;
- (2) The fish are sold by individual employees of fish dealers when transacting the business of their duly licensed employer;
- (3) The fish are shipped to a person by a dealer from without the State;
- (4) The fish are of a kind the sale of which is regulated exclusively by the Wildlife Resources Commission; or
- (5) The fish are purchased from a licensed dealer.

(e) Application Fee for New Fish Dealers. – An applicant for a new fish dealer license shall pay a nonrefundable application fee of one hundred dollars (\$100.00) in addition to the license category fees set forth in this section.

(f) License Category Fees. – Every fish dealer subject to licensing requirements shall secure an annual license at each established location for each of the following activities transacted there, upon payment of the fee set out:

- (1) Dealing in oysters: \$100.00.
- (2) Dealing in scallops: \$100.00.
- (3) Dealing in clams: \$100.00.
- (4) Dealing in hard or soft crabs: \$100.00.
- (5) Dealing in shrimp, including bait: \$100.00.
- (6) Dealing in finfish, including bait: \$100.00.
- (7) Operating menhaden or other fish-dehydrating or oil-extracting processing plants: \$100.00.
- (8) Consolidated license (all categories): \$600.00.

(f1) Other License Categories. – Any person subject to fish dealer licensing requirements who deals in fish not included in the categories listed in subsection (f) of this section shall secure a

finfish dealer license. The Commission may adopt rules implementing and clarifying the dealer categories of this section. Bait operations shall be licensed under either the finfish or shrimp dealer license categories.

(g) Repealed by Session Laws 1998-225, s. 4.18, effective July 1, 1999.

(h) Replacement License. – If the licensee fails to comply with the requirements of G.S. 113-168.1(h), the license is revoked.

(i) Unlawful Purchase and Sale of Fish. – It is unlawful for a fish dealer to purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter. It is unlawful for a fish dealer to buy or accept fish unless, at the time of the transaction:

- (1) The seller or donor presents a current and valid license to sell the type of fish being offered;
- (2) The seller or donor presents the commercial fishing vessel registration of the vessel that was used to take the fish being offered; and
- (3) The dealer records the transaction consistent with the record-keeping requirements of G.S. 113-168.2(i).

(j) Transfer Prohibited. – Any fish dealer license issued under this section is nontransferable. It is unlawful to use a fish dealer license issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for the purpose of circumventing the requirements of this section. (1997-400, s. 5.1; 1998-225, s. 4.18; 2001-213, s. 2; 2013-360, ss. 14.8(h), (i); 2014-100, s. 14.9(e).)

#### **§ 113-169.4. Licensing of ocean fishing piers; fees.**

(a) The owner or operator of an ocean fishing pier within the coastal fishing waters who charges the public a fee to fish in any manner from the pier shall secure a current and valid pier license from the Division. An application for a pier license shall disclose the names of all parties involved in the pier operations, including the owner of the property, owner of the pier if different, and all leasehold or other corporate arrangements, and all persons with a substantial financial interest in the pier.

(b) Within 30 days following a change of ownership of a pier, or a change as to the manager, the manager or new manager shall secure a replacement pier license as provided in G.S. 113-168.1(h).

(c) Pier licenses are issued upon payment of four dollars and fifty cents (\$4.50) per linear foot, to the nearest foot, that the pier extends into coastal fishing waters beyond the mean high waterline. The length of the pier shall be measured to include all extensions of the pier.

(d) The manager who secures the pier license shall be the individual with the duty of executive-level supervision of pier operations.

(e) The pier license issued under this section authorizes any individual who does not hold a Coastal Recreational Fishing License under Article 14B or Article 25A of this Chapter to engage in recreational fishing while on the pier. (1997-400, s. 5.1; 1998-225, s. 4.19; 2001-213, s. 2; 2013-360, s. 14.8(j).)

#### **§ 113-169.5. Land or sell license; vessels fishing beyond territorial waters.**

(a) Persons aboard vessels not having their primary situs in the State that are carrying a cargo of fish taken outside the waters of the State may land or sell their catch in the State by purchasing a land or sell license as set forth in this section with respect to the vessel in question.

The Commission may by rule modify the land or sell licensing procedure in order to devise an efficient and convenient procedure for licensing out-of-state vessels to only land, or after landing to permit sale of cargo.

(b) The fee for a land or sell license for a vessel not having its primary situs in North Carolina is four hundred dollars (\$400.00), or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater. Persons aboard vessels having a primary situs in a jurisdiction that would allow North Carolina vessels without restriction to land or sell their catch, taken outside the jurisdiction, may land or sell their catch in the State without complying with this section if the persons are in possession of a valid license from their state of residence. (1997-400, s. 5.1; 2001-213, s. 2; 2013-360, s. 14.8(k); 2014-100, s. 14.9(f).)

### **§ 113-170. Exportation and importation of fish and equipment.**

The Commission may adopt rules governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State. These rules may regulate, license, prohibit, or restrict importation into the State and exportation from the State of any and all species of fish that are native to coastal fishing waters or may thrive if introduced into these waters. (1997-400, s. 5.1; 2001-213, s. 2.)

#### **§ 113-170.1. Nonresidents reciprocal agreements.**

Persons who are not North Carolina residents are not eligible to obtain licenses under the provisions of this Article except as provided in this section. Residents of jurisdictions that sell commercial fishing licenses to North Carolina residents are eligible to hold North Carolina commercial fishing licenses under the provisions of G.S. 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the Commission so that the nonresidents are licensed to engage in North Carolina fisheries on the same or similar terms that North Carolina residents can be licensed to engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions as necessary to allow nonresidents to obtain commercial fishing licenses in the State subject to the foregoing provisions. (1997-400, s. 5.1; 1998-225, s. 4.20; 2001-213, s. 2.)

#### **§ 113-170.2. Fraud or deception as to licenses, permits, or records.**

(a) It is unlawful for any person to give any false information or willfully to omit giving required information to the Division or any license agent when the information is material to the securing of any license or permit under this Article. It is unlawful to falsify, fraudulently alter, or counterfeit any license, permit, identification, or record to which this Article applies or otherwise practice any fraud or deception designed to evade the provisions of this Article or reasonable administrative directives made under the authority of this Article.

(b) A violation of this section is punishable by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). (1997-400, s. 5.1; 2001-213, s. 2.)

#### **§ 113-170.3. Record-keeping requirements.**

(a) The Commission may require all licensees under this Article to keep and to exhibit upon the request of an authorized agent of the Department records and accounts as may be necessary to the equitable and efficient administration and enforcement of this Article. In addition, licensees may be required to keep additional information of a statistical nature or relating to

location of catch as may be needed to determine conservation policy. Records and accounts required to be kept must be preserved for inspection for not less than three years.

(b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse to keep records and accounts as may be reasonably required. The Department may distribute forms to licensees to aid in securing compliance with its requirements, or it may inform licensees of requirements in other effective ways such as distributing memoranda and sending agents of the Department to consult with licensees who have been remiss. Detailed forms or descriptions of records, accounts, collection and inspection procedures, and the like that reasonably implement the objectives of this Article need not be embodied in rules of the Commission in order to be validly required.

(c) The following records collected and compiled by the Department shall not be considered public records within the meaning of Chapter 132 of the General Statutes, but shall be confidential and shall be used only for the equitable and efficient administration and enforcement of this Article or for determining conservation policy, and shall not be disclosed except when required by the order of a court of competent jurisdiction: all records, accounts, and reports that licensees are required by the Commission to make, keep, and exhibit pursuant to the provisions of this section, and all records, accounts, and memoranda compiled by the Department from records, accounts, and reports of licensees and from investigations and inspections, containing data and information concerning the business and operations of licensees reflecting their assets, liabilities, inventories, revenues, and profits; the number, capacity, capability, and type of fishing vessels owned and operated; the type and quantity of fishing gear used; the catch of fish or other seafood by species in numbers, size, weight, quality, and value; the areas in which fishing was engaged in; the location of catch; the time of fishing, number of hauls, and the disposition of the fish and other seafood. The Department may compile statistical information in any aggregate or summary form that does not directly or indirectly disclose the identity of any licensee who is a source of the information, and any compilation of statistical information by the Department shall be a public record open to inspection and examination by any person, and may be disseminated to the public by the Department. (1997-400, s. 5.1; 2001-213, s. 2.)

#### **§ 113-170.4. Rules as to possession, transportation, and disposition of fisheries resources.**

The Commission may adopt rules governing possession, transportation, and disposition of fisheries resources by all persons, including those not subject to fish dealer licensing requirements, in order that inspectors may adequately distinguish regulated coastal fisheries resources from those not so regulated and enforce the provisions of this Article equitably and efficiently. These rules may include requirements as to giving notice, filing declarations, securing permits, marking packages, and the like. (1997-400, s. 5.1; 2001-213, s. 2.)

#### **§ 113-170.5. Violations with respect to coastal fisheries resources.**

It is unlawful to take, possess, transport, process, sell, buy, or in any way deal in coastal fisheries resources without conforming with the provisions of this Article or of rules adopted under the authority of this Article. (1997-400, s. 5.1; 2001-213, s. 2.)

#### **§ 113-171. Suspension, revocation, and reissuance of licenses.**

(a) Upon receipt of reliable notice that a person licensed under this Article, Article 14B, or Article 25A of Chapter 113 of the General Statutes to take resources under the jurisdiction of the Marine Fisheries Commission has had imposed against the person a conviction of a criminal

offense within the jurisdiction of the Department under the provisions of this Subchapter or of rules of the Commission adopted under the authority of this Subchapter, the Secretary must suspend, revoke, and reissue all licenses held by the person in accordance with the terms of this section and rules adopted by the Commission. Reliable notice includes information furnished the Secretary in prosecution or other reports from inspectors. As used in this section, a conviction includes a plea of guilty or nolo contendere, any other termination of a criminal prosecution unfavorably to the defendant after jeopardy has attached, or any substitute for criminal prosecution whereby the defendant expressly or impliedly confesses the defendant's guilt. In particular, procedures whereby bond forfeitures are accepted in lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or prayer for judgment continued are deemed convictions. The Secretary may act to suspend or revoke licenses upon the basis of any conviction in which:

- (1) No notice of appeal has been given;
- (2) The time for appeal has expired without an appeal having been perfected; or
- (3) The conviction is sustained on appeal. Where there is a new trial, finality of any subsequent conviction will be determined in the manner set out above.

(b) The Secretary must initiate an administrative procedure designed to give the Secretary systematic notice of all convictions of criminal offenses by licensees covered by subsection (a) of this section above and keep a file of all convictions reported.

(c), (d) Repealed by Session Laws 2010-145, s. 2, effective October 1, 2012.

(e) A licensee served with a notice of suspension or revocation may obtain an administrative review of the suspension or revocation by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing shall be whether the licensee was convicted of a criminal offense for which a license must be suspended or revoked. A license remains suspended or revoked pending the final decision.

(f) If the Secretary refuses to reissue the license of or issue an additional license to an applicant whose license was revoked, the applicant may contest the decision by filing a petition for a contested case under G.S. 150B-23 within 20 days after the Secretary makes the decision. The Commission shall make the final agency decision in a contested case under this subsection. An applicant whose license is denied under this subsection may not reapply for the same license for at least six months.

(g) The Commission may adopt rules to provide for the disclosure of the identity of any individual or individuals in responsible positions of control respecting operations of any licensee that is not an individual. For the purposes of this section, individuals in responsible positions of control are deemed to be individual licensees and subject to suspension and revocation requirements in regard to any applications for license they may make – either as individuals or as persons in responsible positions of control in any corporation, partnership, or association. In the case of individual licensees, the individual applying for a license or licensed under this Article, Article 14B, or Article 25A of Chapter 113 of the General Statutes to take resources under the jurisdiction of the Marine Fisheries Commission must be the real party in interest.

(h) In determining whether a conviction is a second or subsequent offense under the provisions of this section, the Secretary may not consider convictions for:

- (1) Offenses that occurred three years prior to the effective date of this Article; or
- (2) Offenses that occurred more than three years prior to the time of the latest offense the conviction for which is in issue as a subsequent conviction. (1997-400, s. 5.1; 2001-213, s. 2; 2010-145, s. 2; 2011-398, s. 34.)

**§ 113-171.1. Use of spotter planes in commercial fishing operations regulated.**

(a) Spotter Plane Defined. – A "spotter plane" is an aircraft used for aerial identification of the location of fish in coastal fishing waters so that a vessel may be directed to the fish.

(b) License. – Before an aircraft is used as a spotter plane in a commercial fishing operation, the owner or operator of the aircraft must obtain a license for the aircraft from the Division. The fee for a license for a spotter plane is one hundred twenty-five dollars (\$125.00). An applicant for a license for a spotter plane shall include in the application the identity, either by boat or by company, of the specific commercial fishing operations in which the spotter plane will be used during the license year. If, during the course of the license year, the aircraft is used as a spotter plane in a commercial fishing operation that is not identified in the original license application, the owner or operator of the aircraft shall amend the license application to add the identity of the additional commercial fishing operation.

(c) Unlawful Activity. – It shall be unlawful to:

- (1) Use a spotter plane directed at food fish, except in connection with a purse seine operation authorized by a rule of the Commission.
- (2) Use or permit the use of an unlicensed spotter plane or a licensed spotter plane whose license application does not identify the specific commercial fishing operation involved.
- (3) Participate knowingly in a commercial fishing operation that uses an unlicensed spotter plane or a licensed spotter plane whose license application does not identify the specific commercial fishing operation involved.

(d) Violation a Misdemeanor. – A violation of subsection (c) of this section is a Class 1 misdemeanor. (1997-400, s. 5.1; 2001-213, s. 2; 2013-360, s. 14.8(l).)

**§ 113-172. License agents.**

(a) The Secretary shall designate license agents for the Department. The Division and license agents designated by the Secretary under this section shall issue licenses authorized under this Article in accordance with this Article and the rules of the Commission. The Secretary may require license agents to enter into a contract that provides for their duties and compensation, post a bond, and submit to reasonable inspections and audits. If a license agent violates any provision of this Article, the rules of the Commission, or the terms of the contract, the Secretary may initiate proceedings for the forfeiture of the license agent's bond and may summarily suspend, revoke, or refuse to renew a designation as a license agent and may impound or require the return of all licenses, moneys, record books, reports, license forms and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency. The Secretary shall report evidence or misuse of State property, including license fees, by a license agent to the State Bureau of Investigation as provided by G.S. 143B-920.

(b) License agents shall be compensated by adding a surcharge of one dollar (\$1.00) to each license sold and retaining the surcharge. If more than one license is listed on a consolidated license form, the license agent shall be compensated as if a single license were sold. It is unlawful for a license agent to add more than the surcharge authorized by this section to the fee for each license sold. (1997-400, s. 5.1; 1999-209, s. 3; 2001-213, s. 2; 2013-384, s. 1; 2014-100, s. 17.1(qq).)

**§ 113-173. Recreational Commercial Gear License.**

(a) License Required. – Except as provided in subsection (j) of this section, it is unlawful for any person to take or attempt to take fish for recreational purposes by means of commercial fishing equipment or gear in coastal fishing waters without holding a RCGL. As used in this section, fish are taken for recreational purposes if the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use authorized commercial gear to take fish for personal use subject to recreational possession limits. It is unlawful for any person licensed under this section or fishing under a RCGL to possess fish in excess of recreational possession limits.

(b) Sale of Fish Prohibited. – It is unlawful for the holder of a RCGL or for a person who is exempt under subsection (j) of this section to sell fish taken under the RCGL or pursuant to the exemption.

(c) Authorized Commercial Gear. –

(1) The Commission shall adopt rules authorizing the use of a limited amount of commercial fishing equipment or gear for recreational fishing under a RCGL. The Commission may authorize the limited use of commercial gear on a uniform basis in all coastal fishing waters or may vary the limited use of commercial gear within specified areas of the coastal fishing waters. The Commission shall periodically evaluate and revise the authorized use of commercial gear for recreational fishing. Authorized commercial gear shall be identified by visible colored tags or other means specified by the Commission in order to distinguish between commercial gear used in a commercial operation and commercial gear used for recreational purposes.

(2) A person who holds a RCGL may use up to 100 yards of gill net to take fish for recreational purposes. Two persons who each hold a RCGL and who are fishing from a single vessel may use up to a combined 200 yards of gill net to take fish for recreational purposes. No more than 200 yards of gill net may be used to take fish for recreational purposes from a single vessel regardless of the number of persons aboard the vessel who hold a RCGL.

(d) Purchase; Renewal. – A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RCGL may be renewed by mail.

(e) Replacement RCGL. – The provisions of G.S. 113-168.1(h) apply to this section.

(f) Duration; Fees. – The RCGL shall be valid from the date of issue for a period of 12 months as defined by G.S. 113-270.1B(b) and G.S. 113-270.1B(c). The fee for a RCGL for a North Carolina resident shall be seventy dollars (\$70.00). The fee for a RCGL for an individual who is not a North Carolina resident shall be five hundred dollars (\$500.00).

(g) RCGL Available for Inspection. – It is unlawful for any person to engage in recreational fishing by means of restricted commercial gear in the State without having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to exhibit the RCGL upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(h) Assignment and Transfer Prohibited. – A RCGL is not transferable. Except as provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

(i) Reporting Requirements. – The holder of a RCGL shall comply with the biological data sampling and survey programs of the Commission and the Division.

(j) Exemptions. –

- (1) A person who is under 16 years of age may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if the person is accompanied by a parent, grandparent, or guardian who holds a valid RCGL or if the person has in the person's possession a valid RCGL issued to the person's parent, grandparent, or guardian.
- (2) A person may take crabs for recreational purposes by means of one or more crab pots attached to the shore along privately owned land or to a privately owned pier without holding a RCGL provided that the crab pots are attached with the permission of the owner of the land or pier.
- (3) A person who is on a vessel may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if there is another person on the vessel who holds a valid RCGL. This exemption does not authorize the use of commercial gear in excess of that authorized for use by the person who holds the valid RCGL or, if more than one person on the vessel holds a RCGL, in excess of that authorized for use by those persons.
- (4) A person using nonmechanical means may take shellfish for personal use within the limits specified in G.S. 113-169.2(i) without holding a RCGL.
- (5) A person may take fish for recreational purposes by means of a gig without holding a RCGL. (1997-400, s. 5.1; 1997-456, s. 55.7; 1998-225, s. 4.21; 1999-209, s. 9; 2000-139, s. 1; 2001-213, s. 2; 2003-340, s. 1.2; 2004-187, s. 4; 2005-455, s. 1.18; 2013-360, s. 14.8(m); 2014-100, ss. 14.9(g), 14.25(c).)

**§ 113-173.1. North Carolina Commercial Fishing Resource Fund.**

(a) Establishment. – There is hereby established the North Carolina Commercial Fishing Resources Fund (Fund) as a nonreverting special revenue fund in the office of the State Treasurer. The purpose of the Fund is to provide funding for the development of sustainable commercial fishing in the State. The principal of the Fund shall consist of all of the following:

- (1) Two hundred dollars (\$200.00) from each Standard Commercial Fishing License issued pursuant to G.S. 113-168.2.
- (2) One hundred dollars (\$100.00) from each Retired Standard Commercial Fishing License issued pursuant to G.S. 113-168.3.
- (3) Twenty-five dollars (\$25.00) from each shellfish license issued pursuant to G.S. 113-169.2.
- (4) Fifty dollars (\$50.00) from each fish dealer license issued pursuant to G.S. 113-169.3.
- (5) Two hundred dollars (\$200.00) from each land or sell license issued pursuant to G.S. 113-169.5.
- (6) Thirty-five dollars (\$35.00) from each Recreational Commercial Gear License issued pursuant to G.S. 113-173.

The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Fund in accordance with the provisions of G.S. 147-69.2, except that interest and other income received on the fund balance shall be treated as set forth in G.S. 147-69.1(d).

(b) Use of Funds. – The North Carolina Commercial Fishing Resource Fund created by this section shall be used only for the following purposes, in order of priority:

- (1) First, the Fund shall fully fund the State's incidental take permits for the commercial fishing industry under the federal Endangered Species Act of 1973 (Public Law 93-205) or the federal Marine Mammal Protection Act of 1972 (Public Law 92-522).
- (2) After the priority set forth in subdivision (1) of this section has been fully funded, the Fund may be used for other projects to develop and support sustainable commercial fishing in the State.

(c) Procedure for Fund Disbursements. – With respect to funds used pursuant to subdivision (b)(1) of this section, the State Treasurer shall disburse the principal of the Fund only upon the written direction of the Director of the Division. With respect to funds used pursuant to subdivision (b)(2) of this section, the State Treasurer shall disburse the principal of the Fund only upon the written direction of both the Marine Fisheries Commission and the Funding Committee established by subsection (d) of this section following the procedures set forth in the memorandum of understanding developed under subsection (f) of this section. In the event of a disagreement between the Commission and the Committee, the Secretary of Environmental Quality shall decide between the directions proposed by the Commission and by the Committee.

(d) Funding Committee. – The Funding Committee for the North Carolina Commercial Fishing Resource Fund (Committee) is established and shall consist of six members who shall serve staggered terms. Each of the following commercial fishing organizations shall appoint one member for an initial term as indicated and provide notice of that appointment in the manner set forth in G.S. 143-47.6:

- (1) North Carolina Fisheries Association, Inc., for a term of three years.
- (2) North Carolina Watermen United, Inc., for a term of two years.
- (3) Ocracoke Working Watermen's Association, for a term of one year.
- (4) Brunswick County Fishermen's Association, for a term of three years.
- (5) Carteret County Fishermen's Association, for a term of two years.
- (6) Albemarle Fishermen's Association, for a term of one year.

Upon the expiration of the terms of the initial Committee members, each member shall be appointed by the appointing organizations designated in subdivisions (1) through (6) of this subsection for a three-year term and shall serve until a successor is appointed and qualified. Members may be reappointed, but no member may serve more than two consecutive full terms. The Committee shall elect annually a chair and other officers as it deems necessary to carry out the purposes of this section, who shall serve a term of one year corresponding to the calendar year.

(e) Vacancies, Meetings, Quorum. – Vacancies in the Committee shall be filled in the same manner as the original appointment. The Committee may meet at any time upon the call of the chair. A quorum of the group shall consist of four members.

(f) Memorandum of Understanding. – The Marine Fisheries Commission and the Committee shall develop and implement a memorandum of understanding setting forth the procedures for agreeing to and authorizing the disbursements from the Fund created in this section for the purposes described by subdivision (b)(2) of this section.

(g) Ethics. – Members of the Committee are public servants as defined in sub-subdivision i. of subdivision (70) of G.S. 138A-3. (2014-100, s. 14.9(i); 2015-241, s. 14.30(y); 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)