

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1105

Short Title: Marine Fisheries-License To Sell.

(Public)

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Sponsors: Representatives Payne; and Stamey.

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Referred to: Agriculture.

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April 24, 1991

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A LICENSE TO SELL FISH TAKEN FROM COASTAL  
FISHING WATERS.

The General Assembly of North Carolina enacts:

Section 1. Article 14 of Chapter 113 of the General Statutes is amended by  
adding the following new section:

**"§ 113-154.1. License to sell fish.**

(a) Except as otherwise provided in this Article, it is unlawful for any person to sell fish taken from coastal fishing waters by any means whatever, including aquaculture operations, without having first procured a current and valid individual license to sell fish. Persons licensed as fish dealers under G.S. 113-156 are also subject to the licensing requirements of this section if such persons are taking the fish being sold. Persons licensed under this section are authorized only to sell fish taken in conformity with law to licensed fish dealers.

(b) It is unlawful for any person to sell fish to a licensed fish dealer without having ready at hand for inspection a current and valid license to sell fish issued to him personally and bearing his correct name and address. It is unlawful for any such individual selling fish to a licensed fish dealer to refuse to exhibit his license upon the request of an officer authorized to enforce the fishing laws.

(c) Licenses to sell fish are issued annually on a calendar-year basis only during the period January through March upon payment of a fee of one hundred dollars (\$100.00) and upon proof that the applicant is licensed to engage in commercial fishing operations under G.S. 113-152 or G.S. 113-154. Upon receipt of a proper application

1 together with a fee of five dollars (\$5.00), the Marine Fisheries Commission may issue a  
2 new license to sell fish to replace one that has been lost or destroyed.

3 (d) All licenses to sell fish issued under this Article are nontransferable. It is  
4 unlawful to buy, sell, lend, borrow, transfer, or receive a license to sell fish fish or  
5 attempt any such activity for the purpose of circumventing the requirements of this  
6 Article.

7 (e) Violation of this section is a misdemeanor punishable for a first conviction by  
8 a minimum fine of two hundred and fifty dollars (\$250.00) and punishable for a second  
9 or subsequent conviction within a three-year period by a minimum fine of five hundred  
10 dollars (\$500.00) and revocation of all licenses for a period of one year.

11 (f) The net proceeds of all sales of licenses to sell fish made pursuant to G.S.  
12 113-154.1 must be devoted to new or expanded marine fisheries programs or projects  
13 administered by the Marine Fisheries Commission or the Division of Marine Fisheries  
14 which enhance knowledge of and use of marine and estuarine resources."

15 Sec. 2. G.S. 113-151.1 reads as rewritten:

16 "**§ 113-151.1. License agents.**

17 (a) The Secretary shall commission such persons as in his discretion he deems  
18 necessary to be license agents for the Department; provided, that at least one such  
19 license agent shall be appointed in each county which contains or borders on coastal  
20 fishing waters. Such agents together with the Department shall have the authority and  
21 duty to sell all licenses provided for by this Article. The Secretary may require license  
22 agents to post bonds and enter into contracts for keeping records, making reports  
23 concerning licenses and receipts, and be subject to necessary audits and inspections.  
24 Upon any violation by a license agent of the requirements of this section or any contract  
25 entered into under the terms of this section, the Secretary may initiate proceedings for  
26 the forfeiture of the license agent's bond and may summarily suspend, revoke, or refuse  
27 to renew a person's commission as a license agent pursuant to G.S. 150B-3, and  
28 impound or require the return of all licenses, moneys, record books, reports, license  
29 forms, and other documents, ledgers and materials pertinent or apparently pertinent to  
30 the license agency. The Secretary shall report evidence of misuse of State property,  
31 including license fees, by a license agent to the State Bureau of Investigation per G.S.  
32 114-15.1.

33 (b) License agents shall be compensated by ~~retaining fifty cents (50¢) from adding~~  
34 a surcharge of one dollar (\$1.00) to each license sold and retaining the one dollar  
35 (\$1.00) surcharge. If more than one license is listed on a consolidated license form, the  
36 license agent shall be compensated as if a single license were sold ~~and he shall retain fifty~~  
37 ~~cents (50¢).~~ It is unlawful for a license agent to add more than the surcharge authorized  
38 by this section to the fee for each license sold."

39 Sec. 3. G.S. 113-152 reads as rewritten:

40 "**§ 113-152. Licensing of vessels, equipment and operations; fees.**

41 (a) The following vessels are subject to the licensing requirements of this  
42 section:

- 43 (1) All vessels engaged in commercial fishing operations in coastal fishing  
44 waters;

1 (2) All North Carolina vessels engaged in commercial fishing operations  
2 without the State which result in landing and selling fish in North  
3 Carolina. North Carolina vessels are those which have their primary  
4 situs in North Carolina. Motorboats with North Carolina numbers  
5 under the provisions of Chapter 75A of the General Statutes are  
6 deemed to have their primary situs in North Carolina: documented  
7 vessels which list a North Carolina port as home port are deemed to  
8 have their primary situs in North Carolina; and

9 (3) All nonresident vessels engaged in commercial fishing operations  
10 within the State or engaged in commercial fishing operations without  
11 the State that result in landing ~~and selling~~ fish in North Carolina.

12 'Commercial fishing operations' are all operations preparatory to, during, and  
13 subsequent to the taking of fish:

14 (1) With the use of commercial fishing equipment; or

15 (2) By any means, if ~~a primary purpose of the taking is to sell~~ any of the fish  
16 taken are sold.

17 Commercial fishing operations also includes taking people fishing for hire.

18 It is unlawful for the owner of a vessel subject to licensing requirements to permit it  
19 to engage in commercial fishing operations without having first procured the  
20 appropriate licenses including vessel, gear, or other license required by the Commission.  
21 It is unlawful for anyone to command such a vessel engaged in commercial fishing  
22 operations without complying with the provisions of this section and of rules made  
23 under the authority of this Article. It is unlawful for anyone to command such a vessel  
24 engaged in commercial fishing operations that does not meet the license requirements of  
25 this Article or of rules made under the authority of the Article, or without making  
26 reasonably certain that all persons on board are in compliance with the provisions of this  
27 Article and rules made under the authority of this Article. It is unlawful to participate in  
28 any commercial fishing operation in connection with which there is a vessel subject to  
29 licensing requirements not meeting the licensing requirements under the provisions of  
30 this Article or of rules made under the authority of this Article.

31 Nothing in this section shall require the licensing of any vessel used solely for  
32 ~~oystering, scalloping, or clamming~~ taking shellfish by a person not required to have an  
33 ~~oyster, scallop, and clam~~ a shellfish license under the provisions of G.S. 113-154. Spears  
34 or gigs shall not be deemed commercial fishing equipment unless used in an operation  
35 the purpose of which is the taking of fish for commercial purposes.

36 (b) Any license that may be required by this section is to be issued in the name of  
37 the owner of the vessel. It is unlawful for the individual or corporate owner of a licensed  
38 vessel or any persons with the authority to authorize the use of a licensed vessel to  
39 permit any individual who is not eligible to have the license issued to him in his own  
40 right to command such licensed vessel for the purpose of engaging in commercial  
41 fishing operations. It is unlawful for such an ineligible person to command a licensed  
42 vessel for such purposes. The license application for a menhaden vessel must state the  
43 name of the person in command of the vessel. Upon change in command of a menhaden  
44 vessel, the owner must notify the Secretary within 30 days. Upon change in ownership

1 of any licensed vessel, the new owner must notify the Secretary within 30 days. The  
2 Marine Fisheries Commission may provide by rule for the replacement of lost,  
3 obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the  
4 original license receipt or upon other evidence that the Marine Fisheries Commission  
5 deems sufficient. The Department may charge a fee of  ~~fifty cents (50¢)~~ five dollars  
6 (\$5.00) for replacement of a plate or decal.

7 (c) Licenses are issued annually upon a calendar-year basis for vessels of various  
8 lengths (length measured straight through the cabin and along the deck, from end to end,  
9 excluding the sheer) and types as follows for the fees indicated:

- 10 (1) Vessels, without motors, regardless of length when used in connection  
11 with other licensed vessels, no license required.
- 12 (2) Vessels with or without motors not over 18 feet in length, one dollar  
13 (\$1.00) per foot.
- 14 (3) Vessels with or without motors over 18 feet but not over 38 feet in  
15 length, one dollar and fifty cents (\$1.50) per foot.
- 16 (4) Vessels with or without motors over 38 feet in length, three dollars  
17 (\$3.00) per foot.
- 18 (4a) Vessels owned by persons who are not residents of North Carolina,  
19 two hundred dollars (\$200.00) or an amount equal to the nonresident  
20 fee charged by the nonresident's state, whichever is greater, in addition  
21 to the fee requirement otherwise applicable under this subsection or  
22 subsection (d).
- 23 (5) Vessels engaged in menhaden fishing shall be taxed, based on tonnage,  
24 as prescribed in subsection (d).
- 25 (6) Vessels engaged in commercial fishing operations for which the  
26 Commission requires a gear or equipment license shall be subject to  
27 fees as prescribed in subsection (g).

28 Length is measured from end to end over the deck excluding sheer.

29 (d) Vessels engaging in menhaden fishing are subject to the following license  
30 and fee requirements:

- 31 (1) For the mother ship, two dollars (\$2.00) per ton, gross tonnage,  
32 customhouse measurements.
- 33 (2) For each purse boat carrying a purse seine used in connection with a  
34 licensed mother ship, no license required.
- 35 (3) Repealed by Session Laws 1983, c. 570, s. 6, effective January 1,  
36 1984.

37 (e) Unless otherwise indicated, all licenses in this Article expire on December 31  
38 of each year and are subject to the full license fee regardless of when issued.  ~~Unless a  
39 nonresident vessel is eligible for a land and sell license pursuant to G.S. 113-153, nonresident  
40 licenses may not be obtained from license agents and shall be obtained from the Morehead City  
41 offices of Marine Fisheries. Applications, including license fees, must be submitted by  
42 nonresidents and received by the Division at least 45 days prior to issuance of a license during  
43 which period it shall be ascertained whether the applicant would be denied a license under the  
44 standards in G.S. 113-166. Nonresidents obtaining licenses must certify that their~~

1 conviction record in their state of residence is such that they would not be denied a  
2 license under the standards in G.S. 113-166. When a license application is denied for  
3 violations of fisheries laws, whether the violations occurred in North Carolina or  
4 another jurisdiction, the license fees shall not be refunded and shall be applied to the  
5 costs of processing the application.

6 (f) No person exempt from the ~~oyster, scallop, and clam~~ shellfish license under the  
7 provisions of this Article may take more than:

8 (1) One bushel of oysters per person per day, not to exceed two bushels  
9 per vessel per day;

10 (2) One-half bushel of scallops per person per day, not to exceed one  
11 bushel per vessel; and

12 (3) One hundred clams per person per day, not to exceed two hundred per  
13 vessel per day.

14 (g) Gear or equipment licenses shall be issued upon the payment of fees as  
15 prescribed by the Commission in its duly adopted rules at a rate to be established by the  
16 Commission between twenty-five dollars (\$25.00) and five hundred dollars (\$500.00)  
17 per license. The fee rate for gear or equipment licenses, at a minimum, shall be  
18 adequate to compensate the Department for the actual and administrative cost associated  
19 with the conservation and management of the fishery. Gear or equipment licenses may  
20 be required for commercial fishing operations that do not involve the use of a vessel."

21 Sec. 4. G.S. 113-153 reads as rewritten:

22 "**§ 113-153. Vessels fishing beyond territorial waters.**

23 (a) Persons aboard vessels not having their primary situs in North Carolina which  
24 are carrying a cargo of fish taken outside the waters of North Carolina may land and sell  
25 their catch in North Carolina by complying with the licensing provisions of G.S. 113-  
26 152 with respect to the vessel in question. The Marine Fisheries Commission may by  
27 rule modify the licensing procedure set out in G.S. 113-152 in order to devise an  
28 efficient and convenient procedure for licensing out-of-state vessels after landing in  
29 order to permit sale of cargo. Provided, that persons aboard vessels having a primary  
30 situs in a jurisdiction that would allow North Carolina vessels without restriction to land  
31 ~~and sell~~ their catch, taken outside such jurisdiction, may land ~~and sell~~ their catch in North  
32 Carolina without complying with this section if such persons are in possession of a  
33 valid license from their state of residence.

34 (b) It is unlawful for persons aboard vessels not having a primary situs in North  
35 Carolina to sell fish taken outside the waters of North Carolina without first having  
36 procured a license to sell fish under G.S. 113-154.1. License to sell fish issued for the  
37 purposes of this section will be available at any time. An out-of-state vessel must  
38 comply with G.S. 113-152 in order to be eligible for a license to sell fish under G.S.  
39 113-154.1."

40 Sec. 5. G.S. 113-154 reads as rewritten:

41 "**§ 113-154. ~~Oyster, scallop and clam~~ Shellfish licenses.**

42 (a) It is unlawful for an individual to take shellfish ~~In addition to all other license~~  
43 ~~requirements, every individual engaged in taking oysters, scallops, or clams~~ from the public  
44 or private grounds of North Carolina by mechanical means or for commercial use by

1 any means ~~whatever must have without having~~ first procured an individual shellfish  
2 license. ~~oyster, scallops, and clam license.~~

3 (b) It is unlawful for any individual to take ~~oysters, scallops, or clams~~ shellfish for  
4 commercial use from the public or private grounds of North Carolina without having  
5 ready at hand for inspection a current and valid ~~oyster, scallop, and clam~~ shellfish license  
6 issued to him personally and bearing his correct name and address. It is unlawful for any  
7 such individual taking or possessing freshly taken ~~oysters, scallops, or clams~~ shellfish to  
8 refuse to exhibit his license upon the request of an officer authorized to enforce the  
9 fishing laws.

10 (c) ~~Oyster, scallop, and clam~~ Shellfish licenses are issued annually on a calendar-  
11 year basis upon payment of a fee of four dollars (\$4.00) upon proof that the license  
12 applicant is a resident of North Carolina: Provided, that persons under 16 years of age  
13 are exempt from the license requirements of this section if they are accompanied by  
14 their parent or guardian who is in compliance with the requirements of this section or if  
15 they have in their possession their parent's or guardian's ~~oyster, scallop, and clam~~ shellfish  
16 license.

17 (d) In the event an individual possessing ~~an oyster, scallop, and clam~~ a shellfish  
18 license changes his name or address or receives one erroneous in this respect, he must  
19 within 30 days surrender the license for one bearing the correct name and address. An  
20 individual prosecuted for failure to possess a valid license is exonerated if he can show  
21 that the invalidity consisted solely of an incorrect name or address appearing in a license  
22 to which he was lawfully entitled and that the erroneous condition had not existed for  
23 longer than 30 days.

24 (e) It is unlawful for an individual issued ~~an oyster, scallop, and clam~~ a shellfish  
25 license to transfer or offer to transfer his license, either temporarily or permanently, to  
26 another. It is unlawful for an individual to secure or attempt to secure ~~an oyster, scallop,~~  
27 ~~or clam~~ a shellfish license from a source not authorized by the Marine Fisheries  
28 Commission."

29 Sec. 6. G.S. 113-155.1 reads as rewritten:

30 "**§ 113-155.1. Commercial fisherman; identification.**

31 The ~~receipt purchase, by persons actively connected with and having experience in~~  
32 commercial fishing, of a current and valid ~~commercial fishing~~ license to sell fish issued  
33 by the Marine Fisheries Commission in accordance with G.S. 113-154.1, shall serve as  
34 proper identification of the licensee as a commercial fisherman."

35 Sec. 7. G.S. 113-156 reads as rewritten:

36 "**§ 113-156. Licenses for fish dealers.**

37 (a) Except as otherwise provided in this Article, it is unlawful for any every  
38 person who sells not licensed pursuant to this section to buy or sell fish or to have has  
39 any connection whatever with fish that results in his enrichment is as a fish dealer,  
40 provided that individual employees of fish dealers are not fish dealers merely by virtue  
41 of transacting the business of their employers. Any person who makes a public offer to  
42 sell or who peddles fish is a fish dealer.

43 (b) It is unlawful for a fish dealer to buy fish from any person not in possession  
44 of a current and valid fish dealer license issued under this section or a current and valid

1 license to sell fish issued under G.S. 113-154.1. It is unlawful to use a dealer license to  
2 circumvent the requirement of a license to sell fish required under G.S. 113-154.1.  
3 Violation of this section is a misdemeanor for a first conviction by a minimum fine of  
4 two hundred fifty dollars (\$250.00) and punishable for a second or subsequent  
5 conviction within a three-year period by a minimum fine of five hundred dollars  
6 (\$500.00) and revocation of all dealer licenses for a period of one year. The Marine  
7 Fisheries Commission may make reasonable rules to implement this section by  
8 clarifying the status of particular classes of persons as regards fish ~~dealerships.~~  
9 dealerships, require submission of statistical data by fish dealers in connection with the  
10 license to sell fish required by G.S. 113-154.1, and require that records be kept in order  
11 to establish compliance with this section. Persons all of whose dealings with a category  
12 of fish fall under one or more of the following headings are not fish dealers as respects  
13 that category:

- 14 (1) ~~Persons whose dealings in fish are primarily educational, scientific, or~~  
15 ~~official. official, Scientific, educational, or official agencies may and hold~~  
16 ~~a permit issued by the Division which authorizes the educational,~~  
17 ~~scientific, or official agency to sell fish harvested or processed in~~  
18 ~~connection with research or demonstration projects projects. without~~  
19 ~~being deemed dealers, but such Such sales are subject to such reasonable~~  
20 ~~rules as the Marine Fisheries Commission may make governing such~~  
21 ~~sales.~~  
22 (2) ~~Individuals selling legally acquired fish other than oysters and clams~~  
23 ~~to individuals other than dealers on a casual, noncommercial basis,~~  
24 ~~provided that such sales do not net in excess of five hundred dollars~~  
25 ~~(\$500.00) in cash or equivalent value in any 12 month period. Any~~  
26 ~~public offer to sell, or peddling of fish, is deemed commercial.~~  
27 (3) ~~Fishermen who sell their catch exclusively to fish dealers licensed~~  
28 ~~under this section if the fish taken by any fisherman meets one of the~~  
29 ~~following requirements:~~
  - 30 a. ~~The fish were taken lawfully in coastal fishing waters other than~~  
31 ~~through the use of a vessel licensed under G.S. 113-152, and the~~  
32 ~~value of such fish sold does not exceed five hundred dollars~~  
33 ~~(\$500.00) in any 12 month period.~~
  - 34 b. ~~The fish were taken in a commercial fishing operation meeting~~  
35 ~~all licensing requirements, and he was a party to the operation.~~
  - 36 e. ~~The fish were taken by him, whether by sports or commercial~~  
37 ~~methods, through the use of a vessel currently and validly~~  
38 ~~licensed under G.S. 113-152.~~
  - 39 d. ~~The fish were taken by him in inland fishing waters in~~  
40 ~~conformity with the laws and rules administered by the Wildlife~~  
41 ~~Resources Commission and are of a type permitted to be sold~~  
42 ~~by the Wildlife Resources Commission.~~
  - 43 e. ~~The fish taken were oysters, scallops, or clams and the person~~  
44 ~~satisfies the dealer that he took them or participated in the~~

1                    ~~taking, that he then had a current and valid oyster, scallop, and~~  
2                    ~~clam license issued to him personally, and that they were taken~~  
3                    ~~lawfully.~~

4            (2)    Fishermen selling fish that were taken in inland fishing waters in  
5                    conformity with the laws and rules administered by the Wildlife  
6                    Resources Commission and the fish are of a type permitted to be sold  
7                    by the Wildlife Resources Commission.

8            (c)    Every fish dealer is subject to the licensing requirements of this section unless  
9                    all fish handled within any particular licensing category meet one or more of the  
10                   following requirements:

11                    (1)    The fish are shipped to him by a dealer from without the State.

12                    ~~(2)    The fish are nongame fish taken in inland fishing waters.~~

13                    ~~(2)-(3)~~ The fish are of a kind the sale of which is regulated exclusively by the  
14                    Wildlife Resources Commission.

15                    ~~(3)-(4)~~ The fish are purchased from a licensed dealer.

16            In the event the seller is a licensed fish dealer, he must satisfy any purchasing fish  
17                    dealer, whether licensed or unlicensed, that the fish were acquired in conformity with  
18                    law. It is unlawful for a fish dealer to purchase or sell or in any manner deal in fish  
19                    except in conformity with the provisions of this section.

20            (d)    Every fish dealer subject to the licensing provisions of this section must  
21                    secure a separate license or set of licenses for each established location. Where a dealer  
22                    does not have an established location for transacting the fisheries business within the  
23                    State, the license application must be denied unless the applicant satisfies the Secretary  
24                    that his residence, or some other office or address, within the State, is a suitable  
25                    substitute for an established location and that records kept in connection with licensing,  
26                    sale, and tax requirements will be available for inspection when necessary. Fish dealers'  
27                    licenses are issued on a calendar-year basis upon payment of a fee as set forth herein  
28                    upon proof, satisfactory to the Secretary, that the license applicant is a resident of North  
29                    Carolina.

30            (e)    Every fish dealer subject to licensing requirements must secure an annual  
31                    license at each established location for each of the following activities transacted there,  
32                    upon payment of the fee set out:

33                    (1)    Dealing in oysters:

34                            a.    Oyster shucker-packer (including sale of shell stock), one  
35    hundred dollars (\$100.00).

36                            b.    Oyster shell stock shipper, fifty dollars (\$50.00).

37                    (2)    Dealing in scallops:

38                            a.    Scallop shucker-packer (including sale of shell stock), one  
39    hundred dollars (\$100.00).

40                            b.    Scallop shell stock shipper, fifty dollars (\$50.00).

41                    (3)    Dealing in clams:

42                            a.    Clam shucker-packer (including sale of shell stock), one  
43    hundred dollars (\$100.00).

44                            b.    Clam shell stock shipper, fifty dollars (\$50.00).



- 1 (4) Dealing in hard and soft crabs:  
2 a. Crab processor (including dealing in unprocessed crabs), one  
3 hundred dollars (\$100.00).  
4 b. Unprocessed crab dealer, fifty dollars (\$50.00).  
5 (5) Dealing in shrimp:  
6 a. Shrimp processor (including dealing in unprocessed shrimp),  
7 one hundred dollars (\$100.00).  
8 b. Unprocessed shrimp dealer, fifty dollars (\$50.00).  
9 (6) Dealing in finfish:  
10 a. Finfish processor (including dealing in unprocessed finfish),  
11 one hundred dollars (\$100.00).  
12 b. Unprocessed finfish dealer, fifty dollars (\$50.00).  
13 (7) Operating menhaden processing plant, one hundred dollars (\$100.00).  
14 (8) Operating any other fish-dehydrating or oil-extracting plant, fifty  
15 dollars (\$50.00).

16 Any person subject to fish-dealer licensing requirements who deals in fish not  
17 included in the above categories must secure a finfish dealer license. The Marine  
18 Fisheries Commission may make reasonable rules implementing and clarifying the  
19 dealer categories of this subsection."

20 Sec. 8. G.S. 113-161 reads as rewritten:

21 "**§ 113-161. Nonresidents reciprocal agreements.**

22 Persons who are not residents of North Carolina are not entitled to obtain licenses  
23 under the provisions of G.S. 113-152 or G.S. 154.1 except as hereinafter provided.  
24 Residents of jurisdictions which sell commercial fishing licenses to North Carolina  
25 residents are entitled to North Carolina commercial fishing licenses under the provisions  
26 of G.S. 113-152 or G.S. 154.1. Such licenses may be restricted in terms of area, gear  
27 and fishery by the commission so that the nonresidents are licensed to engage in North  
28 Carolina fisheries on the same or similar terms that North Carolina residents can be  
29 licensed to engage in the fisheries of such other jurisdiction. The Secretary may enter  
30 into such reciprocal agreements with other jurisdictions as are necessary to allow  
31 nonresidents to obtain commercial fishing licenses in North Carolina subject to the  
32 foregoing provisions."

33 Sec. 9. G.S. 113-129(14) reads as rewritten:

34 "(14) Shellfish. – Mollusca, specifically including oysters, clams, mussels,  
35 and scallops, conchs and whelks."

36 Sec. 10. This act becomes effective January 1, 1992.