

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

5

HOUSE BILL 831*
Committee Substitute Favorable 5/20/03
Committee Substitute #2 Favorable 7/9/03
Committee Substitute #3 Favorable 7/17/03
Fifth Edition Engrossed 7/19/03

Short Title: Coastal Recreational Fishing License.

(Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A COASTAL RECREATIONAL FISHING LICENSE.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that coastal recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State, nation, and world, and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; and

Whereas, the General Assembly is committed to the continued viability of both recreational and commercial fishing industries in the State; and

Whereas, the General Assembly intends that the commercial fishing industry be allowed to continue to take fish by means of all methods traditionally employed in commercial fishing operations, including the use of nets and trawls; and

Whereas, the General Assembly finds that in order to protect coastal fishery resources, it is essential that the recreational as well as the commercial fishing sectors

1 provide data on use of fishery resources for the development of scientifically valid plans
2 to manage fishery resources; and

3 Whereas, the General Assembly finds that it is essential to the success of
4 efforts to better manage fishery resources that both the recreational and commercial
5 fishing sectors are involved in and support these efforts; and

6 Whereas, management of marine resources can achieve significant restoration
7 of stocks as demonstrated by the role regulation of overfishing has played in restoring
8 stocks of species such as striped bass; and

9 Whereas, a system for licensing coastal recreational fishers would enable the
10 Division of Marine Fisheries to better disseminate information to and gather
11 information from recreational fishers, the largest marine resources user group in our
12 State; and

13 Whereas, North Carolina is the only coastal state between Delaware and
14 Texas that is not benefiting from a system for licensing coastal recreational fishing;
15 Now, therefore,

16 The General Assembly of North Carolina enacts:

17 **SECTION 1.** Chapter 113 of the General Statutes is amended by adding two
18 new Articles to read:

19 "Article 14B.

20 "Coastal Recreational Fishing Licenses.

21 **"§ 113-174. Definitions.**

22 As used in this Article:

23 (1) 'Commission' means the Marine Fisheries Commission.

24 (2) 'CRFL' means Coastal Recreational Fishing License.

25 (3) 'Division' means the Division of Marine Fisheries in the Department of
26 Environment and Natural Resources.

27 (4) 'North Carolina resident' means an individual who is a resident within
28 the meaning of G.S. 113-130(4).

29 (5) 'RCGL' means Recreational Commercial Gear License.

30 (6) 'Recreational fishing' means any activity preparatory to, during, or
31 subsequent to the taking of any fish, the taking of which is subject to
32 regulation by the Commission, by any means:

33 a. That does not constitute a commercial fishing operation as
34 defined in G.S. 113-168.

35 b. Except as provided in G.S. 113-261.

36 (7) 'RSCFL' means Retired Standard Commercial Fishing License issued
37 pursuant to G.S. 113-168.3.

38 (8) 'SCFL' means Standard Commercial Fishing License issued pursuant
39 to G.S. 113-168.2.

40 **"§ 113-174.1. General provisions governing recreational licenses.**

41 (a) License Required to Engage in Recreational Fishing. – It is unlawful for any
42 individual to engage in recreational fishing in coastal fishing waters without holding a
43 license required by this Article. It is unlawful for any individual to engage in

1 recreational fishing without complying with the provisions of this Article and rules
2 adopted by the Commission under this Article.

3 (b) Sale of Fish Prohibited. – A license issued under this Article does not
4 authorize an individual who takes or lands any species of fish under the authority of the
5 Commission to sell, offer for sale, barter, or exchange the fish for anything of value.
6 Except as provided in G.S. 113-168.4, it is unlawful for any individual who takes or
7 lands any species of fish under the authority of the Commission by any means to sell,
8 offer for sale, barter, or exchange these fish for anything of value.

9 (c) Assignment and Transfer Prohibited. – Except as provided in G.S.
10 113-174.3(e)(1), it is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a
11 license issued under this Article or to attempt to buy, sell, lend, borrow, assign, or
12 otherwise transfer a license issued under this Article.

13 (d) Format. – A license issued under this Article shall be issued in the name of
14 the applicant. A license shall show the type of license; the name, mailing address,
15 physical or residence address, and date of birth of the licensee; the date on which the
16 license is issued; the date on which the license expires; and any other information that
17 the Commission or the Division determines to be necessary to accomplish the purposes
18 of this Subchapter.

19 (e) Licenses Available for Inspection. – It is unlawful for any individual to
20 engage in recreational fishing in coastal fishing waters in the State without having ready
21 at hand for inspection all licenses required under this Article. It is unlawful for an
22 individual to refuse to exhibit any license required by this Article upon the request of an
23 inspector or other law enforcement officer authorized to enforce federal or State laws,
24 regulations, or rules relating to marine fisheries.

25 (f) Replacement Licenses. – The Division shall issue a replacement license to a
26 licensee for a license that has not been suspended or revoked. A licensee may apply for
27 a replacement license for a license that has been lost, stolen, or destroyed and shall
28 apply for a replacement license within 30 days of a change in the licensee's name or
29 address. A licensee may apply for a replacement license in person at any office of the
30 Division or by mail to the Morehead City office of the Division. A licensee may use a
31 copy of the application for a replacement license that has been filed with the Division as
32 a temporary license until the licensee receives the replacement license. The Commission
33 may establish a fee for each type of replacement license, not to exceed five dollars
34 (\$5.00), that compensates the Division for the administrative costs associated with
35 issuing the replacement license.

36 (g) No Dual Residency. – It is unlawful for any individual to hold any license
37 issued under this Article to the individual as a North Carolina resident if that individual
38 holds any commercial or recreational fishing license issued by another state to the
39 individual as a resident of that state.

40 (h) Limitations on Eligibility. – An individual is not eligible to obtain a license
41 under this Article if, at the time the individual applies for the license, any other license
42 or endorsement issued to the individual under this Article is suspended or revoked. An
43 individual is not eligible to obtain a license under this Article if, within the three years
44 prior to the date of application, the individual has been determined to be responsible for

1 four or more violations of State laws, regulations, or rules governing the management of
2 marine and estuarine resources. An applicant for a license under this Article shall certify
3 that the applicant has not been determined to be responsible for four or more violations
4 of State laws, regulations, or rules governing the management of marine and estuarine
5 resources during the previous three years. The Division may also consider violations of
6 federal law and regulations governing the management of marine and estuarine
7 resources in determining whether an applicant is eligible for a license.

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

13 (j) Reporting Requirements. – The holder of a license issued under this Article
14 shall comply with the biological data sampling and survey programs of the Commission
15 and the Division.

16 (k) Confidentiality of Information. – Information collected pursuant to this
17 Article, including the names and addresses of licensed individuals, is confidential and is
18 not a public record under Chapter 132 of the General Statutes.

19 **"§ 113-174.2. Coastal Recreational Fishing License.**

20 (a) License Required. – Except as otherwise provided in this Article, it is
21 unlawful for any individual to engage in recreational fishing in coastal fishing waters by
22 means of recreational gear without holding a CRFL issued under this section. It is
23 unlawful for any individual licensed under this section or fishing under a CRFL to
24 possess fish in excess of recreational size or possession limits.

25 (b) Purchase; Renewal. – Any license issued under this section may be purchased
26 at designated offices of the Division or from the Division by mail. A license issued
27 under subdivisions (1) and (2) of subsection (c) of this section may also be purchased
28 through a license agent authorized under G.S. 113-174.4. Any license issued under this
29 section may be renewed by mail.

30 (c) Types of CRFLs; Fees; Duration. – The Division shall issue the following
31 CRFLs:

32 (1) Standard CRFL. – \$10.00. This license is valid for a period of one year
33 from the date of issuance.

34 (2) Ten-Day CRFL. – \$5.00. This license is valid for a period of 10 days.

35 (3) Lifetime CRFL. – This license is valid for the lifetime of the licensee.
36 The fee for the Lifetime CRFL, based on the age of the prospective
37 licensee as of the date on which the application is filed with the
38 Division, is:

39 a. Younger than 18 years of age \$150.00

40 b. 18 years of age to younger than 62 years of age \$200.00

41 (4) Disabled Individual CRFL. – An applicant for a license under this
42 subdivision shall provide documentation to the Division to
43 demonstrate that the applicant is disabled as determined by a licensed
44 medical doctor. A license issued under this subdivision shall be issued

1 without charge and is valid for the lifetime of the individual so long as
2 the individual remains disabled.

3 (5) Disabled Veteran CRFL. – An applicant for a license under this
4 subdivision shall provide documentation to the Division to
5 demonstrate that the applicant is a fifty percent (50%) or more disabled
6 veteran as determined by the United States Department of Veterans
7 Affairs. A license issued under this subdivision shall be issued without
8 charge and is valid for the lifetime of the individual so long as the
9 individual remains fifty percent (50%) or more disabled.

10 (6) Legally Blind Lifetime CRFL. – An applicant for a license under this
11 subdivision shall provide documentation to the Division to
12 demonstrate that the applicant is legally blind. A license issued under
13 this subdivision shall be issued without charge and is valid for the
14 lifetime of the licensee.

15 (d) Exemptions. – An individual may engage in recreational fishing by means of
16 recreational gear without holding a CRFL if the individual:

17 (1) Is under 16 years of age.

18 (2) Is 62 years of age or older.

19 (3) Holds a SCFL or a RSCFL.

20 (4) Holds a Lifetime Resident Comprehensive Fishing License under G.S.
21 113-271(d)(3) or a Lifetime Sportsman License under G.S.
22 113-270.1D(b).

23 (5) Is fishing from a public bridge.

24 (6) Is fishing from the shore or a shore-based structure.

25 (7) Is fishing with hook and line in the county of the individual's residence
26 using natural bait.

27 (e) Notwithstanding the fee for the Standard CRFL specified in subdivision (1)
28 of subsection (c) of this section, if the Commission finds that a state has established a
29 coastal recreational fishing license fee that exceeds the fee for the Standard CRFL, the
30 Commission may increase the fee for the Standard CRFL applicable to residents of that
31 state to an amount equal to the fee a North Carolina resident is required to pay for a
32 coastal recreational fishing license in that state. The action of the Commission to
33 increase a fee pursuant to this subsection is not subject to the provisions of Article 2A of
34 Chapter 150B of the General Statutes. The action of the Commission to increase a fee
35 pursuant to this subsection becomes effective on the date specified by the Commission.

36 (f) Fees collected under this section shall be credited to the General Fund and
37 shall be used exclusively for the management, protection, restoration, and enhancement
38 of the marine resources of the State.

39 "**§ 113-174.3. Recreational Commercial Gear License.**

40 (a) License Required. – Except as provided in subsection (e) of this section, it is
41 unlawful for any individual to engage in recreational fishing by means of commercial
42 fishing equipment or gear in coastal fishing waters without holding a RCGL. The RCGL
43 entitles the licensee to use authorized commercial gear to take fish for personal use
44 subject to recreational size and possession limits. It is unlawful for any individual

1 licensed under this section or fishing under a RCGL to possess fish in excess of
2 recreational size or possession limits.

3 (b) Authorized Commercial Gear. –

4 (1) The Commission shall adopt rules authorizing the use of a limited
5 amount of commercial fishing equipment or gear for recreational
6 fishing under a RCGL. The Commission may authorize the limited use
7 of commercial gear on a uniform basis in all coastal fishing waters or
8 may vary the limited use of commercial gear within specified areas of
9 the coastal fishing waters. The Commission shall periodically evaluate
10 and revise the authorized use of commercial gear for recreational
11 fishing. Authorized commercial gear shall be identified by visible
12 colored tags or other means specified by the Commission in order to
13 distinguish between commercial gear used in a commercial fishing
14 operation as defined in G.S. 113-168 and commercial gear used for
15 recreational purposes.

16 (2) An individual who holds a RCGL may use up to 100 yards of gill net
17 to take fish for recreational purposes. Two individuals who each hold a
18 RCGL and who are fishing from a single vessel may use up to a
19 combined 200 yards of gill net to take fish for recreational purposes.
20 No more than 200 yards of gill net may be used to take fish for
21 recreational purposes from a single vessel regardless of the number of
22 individuals aboard the vessel who hold a RCGL.

23 (c) Purchase; Renewal. – A RCGL may be purchased at designated offices of the
24 Division and from a license agent authorized under G.S. 113-174.4. A RCGL may be
25 renewed by mail.

26 (d) Duration; Fees. – The RCGL shall be valid for a one-year period from the
27 date of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five
28 dollars (\$35.00). The fee for a RCGL for an individual who is not a North Carolina
29 resident shall be two hundred fifty dollars (\$250.00).

30 (e) Exemptions. –

31 (1) An individual who is under 16 years of age may engage in recreational
32 fishing by means of authorized commercial gear without holding a
33 RCGL if the individual is accompanied by a parent, grandparent, or
34 guardian who holds a valid RCGL or if the individual has in the
35 individual's possession a valid RCGL issued to the individual's parent,
36 grandparent, or guardian.

37 (2) An individual may engage in recreational fishing for crabs by means of
38 one or more crab pots attached to the shore along privately owned land
39 or to a privately owned pier without holding a RCGL provided that the
40 crab pots are attached with the permission of the owner of the land or
41 pier.

42 (3) An individual who is on a vessel may engage in recreational fishing by
43 means of authorized commercial gear without holding a RCGL if there
44 is another individual on the vessel who holds a valid RCGL. This

1 exemption does not authorize the use of commercial gear in excess of
2 that authorized for use by the individual who holds the valid RCGL or,
3 if more than one individual on the vessel holds a RCGL, in excess of
4 that authorized for use by those individuals.

5 (4) An individual using nonmechanical means may take shellfish for
6 personal use within the limits specified in G.S. 113-169.2(i) without
7 holding a RCGL.

8 (5) An individual may take fish for recreational purposes by means of a
9 gig without holding a RCGL.

10 **"§ 113-174.4. License agents.**

11 (a) The Secretary shall designate license agents for the Department. At least one
12 license agent shall be designated for each county that contains or borders on coastal
13 fishing waters. The Secretary may designate additional license agents in any county if
14 the Secretary determines that additional agents are needed to provide efficient service to
15 the public. The Division and license agents designated by the Secretary under this
16 section shall issue licenses authorized under this Article in accordance with this Article
17 and the rules of the Commission.

18 (b) The Secretary may require license agents to enter into a contract that provides
19 for their duties and compensation, post a bond, and submit to reasonable inspections and
20 audits. If a license agent violates any provision of this Article, the rules of the
21 Commission, or the terms of the contract, the Secretary may initiate proceedings for the
22 forfeiture of the license agent's bond and may summarily suspend, revoke, or refuse to
23 renew a designation as a license agent and may impound or require the return of all
24 licenses, moneys, record books, reports, license forms, and other documents, ledgers,
25 and materials pertinent or apparently pertinent to the license agency. The Secretary shall
26 report evidence of misuse of State property, including license fees, by a license agent to
27 the State Bureau of Investigation as provided by G.S. 114-15.1.

28 (c) A license agent may deduct a fee of six percent (6%) from the amount
29 collected for each license."

30 **SECTION 2.** G.S. 113-168(1) reads as rewritten:

31 "(1) 'Commercial fishing operation' means any activity preparatory to,
32 during, or subsequent to the taking of any fish, the taking of which is
33 subject to regulation by the Commission, either with the use of
34 commercial fishing equipment or gear, or by any means if the purpose
35 of the taking is to obtain fish for sale. Commercial fishing operation
36 does not include (i) the taking of fish as part of a recreational fishing
37 tournament, unless commercial fishing equipment or gear is ~~used or~~
38 used, (ii) the taking of fish under a ~~RCGL.~~ RCGL, or (iii) the taking of
39 fish as provided in G.S. 113-261."

40 **SECTION 3.** The catch line of G.S. 113-168.1 reads as rewritten:

41 **"§ 113-168.1. General provisions governing commercial licenses and**
42 **endorsements."**

43 **SECTION 4.** G.S. 113-168.1(a) reads as rewritten:

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

6 **SECTION 5.** G.S. 113-168.1(f) reads as rewritten:

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

13 **SECTION 6.** G.S. 113-172 is repealed.

14 **SECTION 7.** G.S. 113-173 is repealed.

15 **SECTION 8.** G.S. 143B-289.52(a) is amended by adding a new subdivision
16 to read:

17 "(13) To adopt rules to define fishing gear as either recreational gear or
18 commercial gear for purposes of implementing Article 14B of Chapter
19 113 of the General Statutes."

20 **SECTION 9.** Of the funds appropriated to the Department of Environment
21 and Natural Resources by S.L. 2003-284, the Department may use up to one million one
22 hundred thousand dollars (\$1,100,000) for the 2003-2004 fiscal year and up to two
23 million dollars (\$2,000,000) for the 2004-2005 fiscal year to implement the provisions
24 of this act. However, no funds appropriated to the Division of Forestry Resources or the
25 Division of Soil and Water Conservation shall be used for the implementation of this
26 act.

27 **SECTION 10.** Unless otherwise expressly provided, every agency to which
28 this act applies shall adopt rules to implement the provisions of this act only in
29 accordance with the provisions of Chapter 150B of the General Statutes. This act
30 constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1.
31 Every agency to which this act applies that is authorized to adopt rules to implement the
32 provisions of this act may adopt temporary rules to implement the provisions of this act.
33 This section shall continue in effect until all rules necessary to implement the provisions
34 of this act have become effective as either temporary rules or permanent rules.

35 **SECTION 11.** If any section or provision of this act is declared
36 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
37 provision does not affect the validity of this act as a whole or any part of this act other
38 than the part declared to be unconstitutional or invalid.

39 **SECTION 13.** Sections 8, 9, 10, 11, 12, and 13 of this act are effective when
40 this act becomes law. All other sections of this act become effective March 1, 2005.