



SENATE BILL 554: Marine Fisheries Reforms.

2019-2020 General Assembly

Committee: Senate Rules and Operations of the Senate	Date: May 6, 2019
Introduced by: Sens. Sanderson, Brown, Tillman	Prepared by: Jeff Hudson
Analysis of: Second Edition	Staff Attorney

OVERVIEW: *Senate Bill 554 would amend the process for managing marine fisheries in North Carolina.*

CURRENT LAW AND BILL ANALYSIS:

Amend Fisheries Management Process

The marine fisheries resources of the State are largely managed through the Fishery Management Plan Process. The Division of Marine Fisheries (DMF) of the Department of Environmental Quality (DEQ) prepares proposed Fishery Management Plans (FMPs) for adoption by the Marine Fisheries Commission (MFC) for all commercially or recreationally significant species or fisheries. The goal of the FMPs is to ensure the long term viability of the State's commercially and recreationally significant species or fisheries.

Section 1.1 would repeal the existing FMP statute and recodify it with the following changes:

- Provide that FMPs do not have to be prepared for species regulated under a federal or interstate fishery management plan.
- Provide that FMPs and management measures to implement them should be based on fishery management standards and best available scientific, technical, and economic data.
- Provide that FMPs will be developed according to a schedule determined by DMF rather than the MFC. DMF may revise the schedule and the MFC may make recommendations regarding such revisions.
- Provide that FMPs may only be modified through a FMP Amendment.
- Provide that adjustments to the time periods in FMPs and FMP Amendments may be proposed by the Fisheries Director to be adopted by the MFC and must be based on science-based methodology.
- Provide that the Fisheries Director will recommend qualified candidates to the Chair of the MFC for appointment to FMP Advisory Committees.
- Provide that a FMP may be retired if the objectives of the FMP are assured under a federal or interstate fishery management plan or the species is no longer a significant fishery to the State.
- Clarify when temporary management measures may be used and provide a larger role for DMF in the development of such measures.

Section 1.2 would amend the Fisheries Director's proclamation authority to provide that proclamations must be consistent with FMP management measures.

Amend Marine Fisheries Commission

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

Senate Bill 554

Page 2

The MFC is charged with adopting rules for the management, protection, preservation, and enhancement of the marine resources of the State. The MFC is composed of nine members appointed by the Governor as follows:

- 2 commercial fishing seats.
- 1 fish dealer seat.
- 2 recreational fishing seats.
- 1 recreational fishing industry seat.
- 2 seats for persons with general knowledge of and experienced related to marine fisheries.
- 1 fisheries scientist seat.

Section 2.1 would make the following changes to the powers of the MFC:

- Provide that rules adopted by the MFC must be based on recognized fishery management standards and the best available scientific, technical, and economic data.
- Provide that the MFC has the power and duty to regulate the importation and exportation of non-native species.

Section 2.2 would make the following changes to the membership of the MFC:

- Repeal the provision that would allow the spouse of a commercial fisherman to serve in a commercial fishing seat.
- Change one of the general knowledge and experience seats to a seat for a habitat, water quality, or ecosystem scientist.
- Change one of the general knowledge and experience seats to a seat for a fisheries scientist.

The changes to the requirements for membership on the MFC would not affect any members sitting on the MFC at the time the bill became law.

- Clarify that oral communications between a majority of members of the MFC constitutes an official meeting.
- Require the MFC to publish written agendas for its meetings and prohibit the MFC from adding items to the agenda once the meeting has been convened.

Section 2.3 would require the MFC to provide written reasons to any of its advisory committees if it rejects their recommendations.

Senate Bill 554

Page 3

Prior to 2015, it was unlawful to refuse to allow Marine Fisheries Inspectors and Wildlife Protectors to inspect weapons, equipment, fish, or wildlife that the officer reasonably believed to be possessed incident to an activity regulated by marine fisheries or wildlife laws.

In 2015, the General Assembly amended this requirement to provide that:

- Marine Fisheries Inspectors and Wildlife Protectors must have reasonable suspicion that a violation of law has occurred in order to inspect weapons and equipment.
- Marine Fisheries Inspectors and Wildlife Protectors could not generally inspect weapons, equipment, fish, or wildlife in the absence of a person in apparent control of the item to be inspected.

Section 3.1 would return the law to the pre-2015 requirements.

Miscellaneous Amendments to Marine Fisheries Law

Sections 4.1 through 4.5 would make the following miscellaneous changes to marine fisheries laws:

- Explicitly state that the MFC does not have jurisdiction over matters clearly within the jurisdiction of the Department of Environmental Quality (DEQ).
- Provide that the MFC's authority to adopt rules regulating the exportation and importation of fish and equipment includes regulation of holding or maintaining fish in marine aquaculture operations and regulation of non-native species.
- Provide that information that DEQ must hold as confidential includes confidential federal fishery data and records maintained by and received from the National Oceanic and Atmospheric Administration.
- Repeal and recodify the duties and powers of DEQ to administer and enforce marine fisheries laws.
- Provide that the MFC may adopt by reference interstate laws, regulations, and management measures as State rules.

EFFECTIVE DATE: Except as otherwise provided, this act would become effective when it becomes law.



SENATE BILL 648: Support Shellfish Aquaculture.

2019-2020 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	May 6, 2019
Introduced by:	Sens. Sanderson, Rabon	Prepared by:	Jeff Hudson
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *Senate Bill 648 would make various changes to State laws governing shellfish aquaculture.*

BILL ANALYSIS:

Authorize Establishment of Shellfish Aquaculture Enterprise Areas

Section 1 would authorize the Secretary of the Department of Environmental Quality (Secretary) to establish Shellfish Aquaculture Enterprise Areas and the Marine Fisheries Commission (MFC) to adopt rules necessary to implement the process for establishing Shellfish Aquaculture Enterprise Areas. Section 1 would also direct the Division of Marine Fisheries (DMF) of the Department of Environmental Quality (DEQ) to identify areas in waters that are under a shellfish leasing moratorium that could potentially be established as Shellfish Aquaculture Enterprise Areas.

Establish Pamlico Sound Shellfish Aquaculture Pilot Project

Section 2 would establish a pilot project under which the Secretary could grant up to three shellfish cultivation leases or water column leases in Pamlico Sound. Each lease could be up to 50 acres in size, must be separated from any other lease and from the shoreline by at least 250 yards, and no person could hold more than 100 acres of leases. DMF will study the advantages and disadvantages associated with leasing such areas within Pamlico Sound and will submit an interim report to the General Assembly no later than January 1, 2025, and a final report no later than January 1, 2030. In its final report, DMF will include a recommendation on whether the pilot project should be terminated, be made permanent, or be expanded. The pilot project would terminate July 1, 2030, and any leases granted pursuant to it would terminate no later than July 1, 2031.

Increase Production and Planting Requirements for Shellfish Leases

Section 3 would increase the annual production and planting requirements for shellfish cultivation leases as follows:

- For shellfish bottom leases:
 - Production requirements would be increased from 10 bushels of shellfish per acre to 20 bushels of shellfish per acre.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

Senate Bill 648

Page 2

- For intensive culture bottom operations, the planting requirements would be increased from 25 bushels of seed shellfish per acre or 50 bushels of cultch per acre to purchasing 23,000 shellfish seed per acre.
- For extensive culture bottom operations, the planting requirements would be increased from 25 bushels of seed shellfish per acre or 50 bushels of cultch per acre to purchasing 15,000 shellfish seed per acre.
- For water column leases:
 - Production requirements would be increased from 40 bushels of shellfish per acre to 50 bushels of shellfish per acre.
 - Planting requirements would be increased from 100 bushels of seed shellfish or cultch to 23,000 shellfish seed per acre.

Facilitate the Transition of Terminated Leases to Productive Uses

Section 4 would provide that, in addition to throwing open terminated shellfish leases for public use, the Secretary could also make the bottom available for new lease applications for a period of 18 months or designate the bottom as a Shellfish Aquaculture Enterprise Area. Section 4 would also provide that the former holders of a terminated lease must remove gear in addition to markers.

Allow Transplanting of Seed Oysters and Seed Clams from Permitted Aquaculture Operations Nursery Facilities in Prohibited Waters

Section 5 would allow the transport of seed oysters and seed clams from aquaculture operations in prohibited waters unless the Secretary determines that it would be a risk to public health.

Administrative Remedy for Shellfish Leasing Appeals

Section 6 would establish a new process for appeals of shellfish lease decisions. Under the new process, the Chair of the MFC would appoint a three- member Shellfish Cultivation Lease Review Committee to determine whether a contested case is appropriate for a person, other than the lease applicant, who is affected by the decision and wishes to appeal it.

Moratorium on Shellfish Leasing in the New Hanover County Area

Section 7 would provide that until July 1, 2021, a moratorium on new shellfish cultivation leases and new water column leases for aquaculture would be established for the New Hanover County area.

Moratorium on Shellfish Leasing in Bogue Sound

Section 8 would provide that until July 1, 2021, a moratorium on new shellfish cultivation leases and new water column leases for aquaculture would be established for Bogue Sound.

Senate Bill 648

Page 3

Studies

Sections 9 through 12 would establish the following studies related to shellfish aquaculture:

- Direct DMF and the MFC to study how to reduce user conflict related to shellfish cultivation leases.
- Direct DMF to study penalties associated with violations of law regarding taking shellfish and shellfish aquaculture operations.
- Direct the North Carolina Coastal Federation to study a low-interest loan program to provide start-up and expansion capital to shellfish growers in North Carolina.
- Direct the Department of Agriculture and Consumer Services to study crop insurance and other risk of loss mitigation and protection programs available to shellfish growers.

EFFECTIVE DATE: Except as otherwise provided, the act would become effective July 1, 2019.



HOUSE BILL 479: ERC Studies/Scope.

2019-2020 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	May 1, 2019
Introduced by:	Rep. Dixon	Prepared by:	Chris Saunders
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *House Bill 479 would (i) direct the Environmental Review Commission to study matters related to the decommissioning of utility-scale solar projects, the solid waste disposal tax, the process for adoption of general permits for animal waste management systems, and ways to optimize and modernize North Carolina's recycling requirements for discarded computer equipment and televisions; and (ii) modify the scope of the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources to include oversight of marine fisheries issues.*

BILL ANALYSIS:

Section 1 of the bill would direct the ERC to study matters related to the decommissioning of utility-scale solar projects and report its findings, including any legislative proposals to the 2020 Regular Session of the 2019 General Assembly upon its convening. The study must include analysis of the need for performance bonding to ensure proper decommissioning and closure of future-built solar facilities, whether materials used in utility scale solar projects are classified as hazardous material, whether solar panels can be safely disposed of in construction and demolition or municipal solid waste landfills, and other issues.

Section 2 would direct the ERC to study North Carolina's solid waste disposal tax of two dollars (\$2.00) per ton of waste and report its findings, including any legislative proposals to the 2020 Regular Session of the 2019 General Assembly upon its convening. The ERC would be directed to study (i) a history of the annual revenue generated from the tax, and its distribution over time; (ii) a history of expenditures by the Department of Environmental Quality (DEQ) of tax proceeds received to date; (iii) all work completed by DEQ using proceeds of the tax; (iv) plans for future work to be conducted by DEQ using proceeds of the tax; (v) the current balance of the Inactive Hazardous Sites Cleanup Fund; and (vi) any other issue ERC deems relevant.

Section 3 would direct the ERC to study DEQ's process for the development and adoption of general permits for animal waste management systems for swine, cattle, and poultry operations, which must specifically include consideration of whether the general permit process should comply with the Administrative Procedure Act, and report its findings and recommendations, including any legislative proposals, to the 2020 Regular Session of the 2019 General Assembly upon its convening.

Section 4 would grant the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources legislative oversight authority over the management of marine fisheries in the State, and would direct DEQ to submit Fishery Management Plans adopted by the Marine Fisheries Commission to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House Bill 479

Page 2

Section 5 would direct the ERC to study ways to optimize and modernize North Carolina's recycling requirements for discarded computer equipment and televisions, and report its findings, together with any proposed legislation to modernize the recycling requirements for computers and televisions, to the 2021 Regular Session of the General Assembly upon its convening.

EFFECTIVE DATE: This act would be effective when it becomes law.



HOUSE BILL 483: Let Them Spawn.

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2019-2020 General Assembly

Committee:	House Wildlife Resources. If favorable, re- refer to Environment. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	April 16, 2019
Introduced by:	Reps. Yarborough, Saine, Wray, B. Turner	Prepared by:	Jeff Hudson
Analysis of:	PCS to First Edition H483-CSSB-3		Staff Attorney

OVERVIEW: *The Proposed Committee Substitute for House Bill 483 would require that each Fishery Management Plan for a species that has contributed historically and significantly to the fisheries of North Carolina include a minimum size limit to ensure that 75% of the juvenile fish of that species reach maturity and have an opportunity to spawn at least once.*

CURRENT LAW: Under current law, the Department of Environmental Quality (Department) and its Division of Marine Fisheries (Division) must prepare proposed Fishery Management Plans (FMPs) for adoption by the Marine Fisheries Commission (Commission) for all commercially or recreationally significant species or fisheries that comprise the marine or estuarine resources of the State. The goal of the FMPs is to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Among other things, each FMP must:

- Contain necessary information pertaining to the fishery or fisheries.
- Recommend management actions pertaining to the fishery or fisheries.
- Include conservation and management measures that will provide the greatest overall benefit to the State and that will produce a sustainable harvest.
- Specify a time period, not to exceed two years from the date of the adoption of the FMP, to end overfishing.
- Specify a time period, not to exceed 10 years from the date of the adoption of the FMP, for achieving a sustainable harvest.
- Include a standard of at least fifty percent (50%) probability of achieving sustainable harvest for the fishery or fisheries.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 483 (PCS) would add an additional requirement that each FMP must include a minimum size limit for every species of marine fish that has contributed historically and significantly to the fisheries of North Carolina, including spot, Atlantic croaker, kingfishes, striped mullet, southern flounder, and bluefish, to ensure that 75% of the juvenile fish at the minimum size limit established for the species have reached the size of maturity and have had an opportunity to spawn at least once. The PCS requires the Commission to adopt rules to implement the act for every species of marine fish listed in the Division's Stock Status Report. While the revised FMPs are being developed, the Division and Commission will establish temporary management measures for the minimum size limits required by the act.

EFFECTIVE DATE: This act would become effective when it becomes law and apply to current and future FMPs.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



HOUSE BILL 486: Commercial Fishing License Reforms.

2019-2020 General Assembly

Committee:	House Wildlife Resources. If favorable, re-refer to Finance. If favorable, re-refer to Appropriations, Agriculture and Natural and Economic Resources. If favorable, re-refer to Appropriations. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	April 16, 2019
Introduced by:	Reps. Yarborough, Dixon, Cunningham, Wray	Prepared by:	Jeff Hudson
Analysis of:	First Edition		Staff Attorney

OVERVIEW: *House Bill 486 would amend the State's commercial fishing license laws, repeal the Recreational Commercial Gear License, and increase fees for various commercial and recreational coastal fishing licenses.*

CURRENT LAW AND BILL ANALYSIS:

Amendments to Commercial Fishing License Laws:

Under current law, the State requires that persons be licensed in order to engage in particular activities related to taking and selling marine fish. The different types of licenses include the Standard Commercial Fishing License (SCFL) and the Retired Standard Commercial Fishing License (RSCFL).

House Bill 486 would make the following changes to the State's commercial fishing license laws:

- Provide that it is unlawful for any person to hold more than one of each type of commercial fishing license.
- Amend provisions related to the SCFL as follows:
 - Increase the annual SCFL fee from \$400.00 to \$800.00.
 - Limit the ability to assign and transfer SCFLs to members of the SCFL holder's immediate family or to a business in which the SCFL holder has a controlling interest.
 - Add a reporting requirement for fish that are caught, but are not sold.
 - Establish a Heritage Standard Commercial Fishing License (HSCFL) and a process for converting SCFLs to HSCFLs and vice versa.
- Increase the annual fee for RSCFLs for residents from \$200.00 to \$400.00 and for non-residents from \$260.00 to \$520.00.
- Establish a Commercial Fishing Crew License (CFCL) as follows:
 - A person serving on the crew of a vessel engaged in a commercial fishing operation under the direction of a person who holds a SCFL may apply for a CFCL.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House Bill 486

Page 2

- A person who holds a CFCL for three consecutive years will be eligible to apply for a SCFL without meeting the eligibility requirements established by the Marine Fisheries Commission (MFC).
- The annual fee for a CFCL would be \$100.00 for a resident and \$130.00 for a nonresident.
- Establish a reporting requirement for fishing tournaments.
- Effective June 30, 2022, establish a minimum effort requirement in order to be able to renew a SCFL.
- Direct the MFC and the Division of Marine Fisheries (DMF) to develop a plan to expand opportunities for commercial fishermen for access to and harvest of commercial fisheries, including extension of fishing seasons, higher trip limits, and authorization of hook and line as an allowable gear for all species.
- Modifies and updates the provisions governing the available pool of SCFLs and directs the MFC to use 100 of the available licenses to establish an apprentice program.

Repeal Recreational Commercial Gear License and Adjust Allowable Gear under the Coastal Recreational Fishing License

Under current law, a Recreational Commercial Gear License (RCGL) allows the holder to use some commercial fishing gear for recreational purposes while a Coastal Recreational Fishing License (CRFL) allows the holder to use recreational gear only.

Effective June 30, 2019, House Bill 486 would repeal the RCGL and direct the MFC to adopt rules to allow CRFL holders to use bait seines and up to five crab pots to take fish for recreational purposes.

Increase Fees for Coastal Recreational Fishing Licenses

Effective October 1, 2019, House Bill 486 would increase the fees for certain CRFLs as follows:

- Annual Resident CRFL: From \$15.00 to \$20.00.
- Annual Nonresident CRFL: From \$30.00 to \$36.00.
- Ten-Day Resident CRFL: From \$5.00 to \$7.00.
- Ten-Day Nonresident CRFL: From \$10.00 to \$18.00.

EFFECTIVE DATE: Except as otherwise provided, this act would become effective when it becomes law.