

APPENDIX A

SB 151 LEGISLATION

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**SESSION LAW 2013-384
SENATE BILL 151**

AN ACT TO AMEND MARINE FISHERIES LAWS; AMEND THE LAWS GOVERNING
THE CONSTRUCTION OF TERMINAL GROINS; AND CLARIFY THAT CITIES
MAY ENFORCE ORDINANCES WITHIN THE STATE'S PUBLIC TRUST AREAS.

The General Assembly of North Carolina enacts:

PART I. AMEND MARINE FISHERIES LAW

SECTION 1. G.S. 113-172 reads as rewritten:

"§ 113-172. License agents.

(a) The Secretary shall designate license agents for the Department. ~~At least one license agent shall be designated for each county that contains or borders on coastal fishing waters. The Secretary may designate additional license agents in any county if the Secretary determines that additional agents are needed to provide efficient service to the public.~~ 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. 114-15.1.

(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."

SECTION 2.(a) G.S. 113-168.5 reads as rewritten:

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

(a), (b) Repealed by Session Laws 1998-225, s. 4.14.

(c) ~~Menhaden Endorsements.— Except as provided in G.S. 113-169, it is unlawful to use a vessel to take menhaden by purse seine in coastal fishing waters, to land menhaden taken by purse seine, or to sell menhaden taken by purse seine without obtaining a menhaden endorsement of a SCFL. The fee for a menhaden endorsement shall be two dollars (\$2.00) per ton, based on gross tonnage as determined by the custom house measurement for the mother ship. The menhaden endorsement shall be required for the mother ship but no separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden endorsement must state the name of the person in command of the vessel. Upon a change in command of a menhaden vessel, the owner must notify the Division in writing within 30 days.~~

(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."

SECTION 2.(b) G.S. 113-169 is repealed.

SECTION 2.(c) G.S. 113-168.2(a1) reads as rewritten:



"(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, or menhaden operation."

PART II. AMEND TERMINAL GROIN CONSTRUCTION LAW

SECTION 3.(a) G.S. 113A-115.1 reads as rewritten:

"§ 113A-115.1. Limitations on erosion control structures.

(a) As used in this section:

(1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure.

(1a) "Estuarine shoreline" means all shorelines that are not ocean shorelines that border estuarine waters as defined in G.S. 113A-113(b)(2).

(2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands adjacent to an ocean inlet but does not include that portion of any inlet and lands adjacent to the inlet that exhibits characteristics of estuarine shorelines.

~~(3) "Terminal groin" means a structure that is constructed on the side of an inlet at the terminus of an island generally perpendicular to the shoreline to limit or control sediment passage into the inlet channel.~~

(3) "Terminal groin" means one or more structures constructed at the terminus of an island or on the side of an inlet, with a main stem generally perpendicular to the beach shoreline, that is primarily intended to protect the terminus of the island from shoreline erosion and inlet migration. A "terminal groin" shall be pre-filled with beach quality sand and allow sand moving in the littoral zone to flow past the structure. A "terminal groin" may include other design features, such as a number of smaller supporting structures, that are consistent with sound engineering practices and as recommended by a professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes. A "terminal groin" is not a jetty.

(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This section subsection shall not apply to any of the following:

(1) Any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to July 1, 2003.

(2) Any permanent erosion control structure that was originally constructed prior to July 1, 1974, and that has since been in continuous use to protect an inlet that is maintained for navigation.

(3) Any terminal groin permitted pursuant to this section.

(b1) This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion control structures in estuarine shorelines.

(c) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to July 1, 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to July 1, 1995, if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in the original permit; (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(d) Any rule that prohibits permanent erosion control structures shall not apply to terminal groins permitted pursuant to this section.

(e) In addition to the requirements of Part 4 of Article 7 of Chapter 113A of the General Statutes, an applicant for a permit for the construction of a terminal groin shall submit all of the following to the Commission:

(1) ~~Information to demonstrate that structures or infrastructure are imminently threatened by erosion, and nonstructural approaches to erosion control,~~

~~including relocation of threatened structures, are impractical.~~threatened by erosion.

- (2) An environmental impact statement that satisfies the requirements of G.S. 113A-4. An environmental impact statement prepared pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, et seq., for the construction of the terminal groin shall satisfy the requirements of this subdivision.
- (3) A list of property owners and local governments that may be affected by the construction of the proposed terminal groin and its accompanying beach fill project and proof that the property owners and local governments have been notified of the application for construction of the terminal groin and its accompanying beach fill project.
- (4) A plan for the construction and maintenance of the terminal groin and its accompanying beach fill project prepared by a professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes.
- (5) A plan for the management of the inlet and the estuarine and ocean shorelines immediately adjacent to and under the influence of the inlet. The inlet management plan monitoring and mitigation requirements must be reasonable and not impose requirements whose costs outweigh the benefits. The inlet management plan is not required to address sea level rise. The inlet management plan shall do all of the following relative to the terminal groin and its accompanying beach fill project:
 - a. Describe the post-construction activities that the applicant will undertake to monitor the impacts on coastal resources.
 - b. Define the baseline for assessing any adverse impacts and the thresholds for when the adverse impacts must be mitigated.
 - c. Provide for mitigation measures to be implemented if adverse impacts reach the thresholds defined in the plan.
 - d. Provide for modification or removal of the terminal groin if the adverse impacts cannot be mitigated.
- (6) Proof of financial assurance verified by the Commission or the Secretary of Environment and Natural Resources in the form of a bond, insurance policy, escrow account, guaranty, local government taxing or assessment authority, a property owner association's approved assessment, or other financial instrument or combination of financial instruments that is adequate to cover the cost of implementing all of the following components of the inlet management plan:
 - a. Long-term maintenance and monitoring of the terminal groin.
 - b. ~~Implementation of mitigation measures as provided in the inlet management plan measures.~~
 - c. ~~Modification or removal of the terminal groin as provided in the inlet management plan groin.~~
 - d. ~~Restoration of public, private, or public trust property if the groin has an adverse impact on the environment or property.~~

(f) The Commission shall issue a permit for the construction of a terminal groin if the Commission finds no grounds for denying the permit under G.S. 113A-120 and the Commission finds all of the following:

- (1) The applicant has complied with all of the requirements of subsection (e) of this section.
- (2) ~~The applicant has demonstrated that structures or infrastructure are imminently threatened by erosion and that nonstructural approaches to erosion control, including relocation of threatened structures, are impractical.~~
- (3) The terminal groin will be accompanied by a concurrent beach fill project to prefill the groin.
- (4) Construction and maintenance of the terminal groin will not result in significant adverse impacts to private property or to the public recreational beach. In making this finding, the Commission shall take into account the potential benefits of the project, including protection of the terminus of the

island from shoreline erosion and inlet migration, beaches, protective dunes, wildlife habitats, roads, homes, and infrastructure, and mitigation measures, including the accompanying beach fill project, that will be incorporated into the project design and construction and the inlet management plan.

(5) The inlet management plan is adequate for purposes of monitoring the impacts of the proposed terminal groin and mitigating any adverse impacts identified as a result of the monitoring.

(6) Except to the extent expressly modified by this section, the project complies with State guidelines for coastal development adopted by the Commission pursuant to G.S. 113A-107.

(g) The Commission may issue no more than four permits for the construction of a terminal groin pursuant to this section.

(h) ~~No permit may be issued where funds are~~ A local government may not use funds generated from any of the following financing mechanisms ~~and would be used~~ for any activity related to the terminal groin or its accompanying beach fill project:

(1) Special obligation bonds issued pursuant to Chapter 159I of the General Statutes.

(2) Nonvoted general obligation bonds issued pursuant to G.S. 159-48(b)(4).

(3) Financing contracts entered into under G.S. 160A-20 or G.S. 159-148.

(i) No later than September 1 of each year, the Coastal Resources Commission shall report to the Environmental Review Commission on the implementation of this section. The report shall provide a detailed description of each proposed and permitted terminal groin and its accompanying beach fill project, including the information required to be submitted pursuant to subsection (e) of this section. For each permitted terminal groin and its accompanying beach fill project, the report shall also provide all of the following:

(1) The findings of the Commission required pursuant to subsection (f) of this section.

(2) The status of construction and maintenance of the terminal groin and its accompanying beach fill project, including the status of the implementation of the plan for construction and maintenance and the inlet management plan.

(3) A description and assessment of the benefits of the terminal groin and its accompanying beach fill project, if any.

(4) A description and assessment of the adverse impacts of the terminal groin and its accompanying beach fill project, if any, including a description and assessment of any mitigation measures implemented to address adverse impacts."

SECTION 3.(b) Section 3 of S.L. 2011-387 is repealed.

PART III. CITIES ENFORCE ORDINANCES WITHIN PUBLIC TRUST AREAS

SECTION 4.(a) Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read as follows:

"§ 160A-203. Cities enforce ordinances within public trust areas.

(a) Notwithstanding the provisions of G.S. 113-131 or any other provision of law, a city may, by ordinance, define, prohibit, regulate, or abate acts, omissions, or conditions upon the State's ocean beaches and prevent or abate any unreasonable restriction of the public's rights to use the State's ocean beaches. In addition, a city may, in the interest of promoting the health, safety, and welfare of the public, regulate, restrict, or prohibit the placement, maintenance, location, or use of equipment, personal property, or debris upon the State's ocean beaches. A city may enforce any ordinance adopted pursuant to this section or any other provision of law upon the State's ocean beaches located within or adjacent to the city's jurisdictional boundaries to the same extent that a city may enforce ordinances within the city's jurisdictional boundaries. A city may enforce an ordinance adopted pursuant to this section by any remedy provided for in G.S. 160A-175. For purposes of this section, the term "ocean beaches" has the same meaning as in G.S. 77-20(e).

(b) Nothing in this section shall be construed to (i) limit the authority of the State or any State agency to regulate the State's ocean beaches as authorized by G.S. 113-131, or common law as interpreted and applied by the courts of this State; (ii) limit any other authority granted to cities by the State to regulate the State's ocean beaches; (iii) deny the existence of the authority recognized in this section prior to the date this section becomes effective; (iv) impair

the right of the people of this State to the customary free use and enjoyment of the State's ocean beaches, which rights remain reserved to the people of this State as provided in G.S. 77-20(d); (v) change or modify the riparian, littoral, or other ownership rights of owners of property bounded by the Atlantic Ocean; or (vi) apply to the removal of permanent residential or commercial structures and appurtenances thereto from the State's ocean beaches."

SECTION 4.(b) G.S. 113-131 reads as rewritten:

"§ 113-131. Resources belong to public; stewardship of conservation agencies; grant and delegation of powers; injunctive relief.

(a) The marine and estuarine and wildlife resources of the State belong to the people of the State as a whole. The Department and the Wildlife Resources Commission are charged with stewardship of these resources.

(b) The following powers are hereby granted to the Department and the Wildlife Resources Commission and may be delegated to the Fisheries Director and the Executive Director:

- (1) Comment on and object to permit applications submitted to State agencies which may affect the public trust resources in the land and water areas subject to their respective management duties so as to conserve and protect the public trust rights in such land and water areas;
- (2) Investigate alleged encroachments upon, usurpations of, or other actions in violation of the public trust rights of the people of the State; and
- (3) Initiate contested case proceedings under Chapter 150B for review of permit decisions by State agencies which will adversely affect the public trust rights of the people of the State or initiate civil actions to remove or restrain any unlawful or unauthorized encroachment upon, usurpation of, or any other violation of the public trust rights of the people of the State or legal rights of access to such public trust areas.

(c) Whenever there exists reasonable cause to believe that any person or other legal entity has unlawfully encroached upon, usurped, or otherwise violated the public trust rights of the people of the State or legal rights of access to such public trust areas, a civil action may be instituted by the responsible agency for injunctive relief to restrain the violation and for a mandatory preliminary injunction to restore the resources to an undisturbed condition. The action shall be brought in the superior court of the county in which the violation occurred. The institution of an action for injunctive relief under this section shall not relieve any party to such proceeding from any civil or criminal penalty otherwise prescribed for the violation.

(d) The Attorney General shall act as the attorney for the agencies and shall initiate actions in the name of and at the request of the Department or the Wildlife Resources Commission.

(e) In this section, the term "public trust resources" means land and water areas, both public and private, subject to public trust rights as that term is defined in G.S. 1-45.1.

(f) Notwithstanding the provisions of this section, a city may adopt and enforce ordinances as provided in G.S. 160A-203."

PART IV. EFFECTIVE DATE

SECTION 5. Section 3 of this act is effective when the act becomes law and applies to permit applications submitted on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of July, 2013.

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 10:45 a.m. this 23rd day of August, 2013