



SENATE BILL 410: Marine Aquaculture Development Act.

2017-2018 General Assembly

Committee:		Date:	September 7, 2017
Introduced by:		Prepared by:	Jeffrey Hudson
Analysis of:	S.L. 2017-190		Staff Attorney

OVERVIEW: *S.L. 2017-190 establishes a State marine aquaculture program with marine aquaculture leases. The new leasing program becomes effective October 1, 2017. The remainder of the act became effective July 27, 2017.*

CURRENT LAW:

Under current law, the State has a program for leasing public bottoms under coastal fishing waters and the water columns above them for the production of shellfish. These leased areas are subject to certain suitability criteria and fees, must be terminated under certain circumstances, and are protected from the unauthorized taking of shellfish.

BILL ANALYSIS:

Section 1 establishes definitions as follows:

- **Marine Aquaculture:** The propagation and rearing of marine aquatic species in controlled or selected environments, including, but not limited to, ocean ranching, marine hatcheries, and other deep water fish farming operations in the coastal fishing waters of the State and, to the extent not inconsistent with federal law, to the limits of the United States exclusive economic zone.
- **Marine aquaculture lease:** A lease of the public bottom and superadjacent water column granted by the Secretary for marine aquaculture.
- **Marine aquatic species:** Any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant found exclusively or for part of its life cycle in coastal fishing waters.

Section 1 authorizes the Secretary of Environmental Quality to grant marine aquaculture leases as follows:

- The area leased must meet certain criteria in order to be suitable for leasing.
- Leases are capped at 100 acres per lease and no person, corporation, or single family may lease or purchase more than 1,500 acres total.
- Leases are issued for a period of 20 years.
- Leases are subject to the following fees:
 - Initial lease application filing fee: \$200.00.
 - Renewal lease application filing fee: \$100.00.
 - Lease rental fee: \$210.00 per acre, per year.

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- The Secretary must terminate a lease under certain circumstances.
- It is unlawful for any person, other than the holder of the marine aquaculture operation lease, to take species produced from the operation without the written authorization of the lease holder and with actual knowledge it is a leased area. Violation of this provision would be a Class A1 misdemeanor, which could include a fine of up to \$5,000.

Section 2 directs the Division of Marine Fisheries of the Department of Environmental Quality (DMF) to:

- Request that the Mid Atlantic and South Atlantic Fishery Management Councils develop a Fishery Management Plan for regulating offshore aquaculture in federal waters offshore from the North Carolina coast.
- Petition the National Oceanic and Atmospheric Administration to initiate rule making proceedings to implement a comprehensive regulatory program for managing the development of an environmentally sound and economically sustainable aquaculture fishery in federal waters offshore from the North Carolina coast.

Section 2 also directs DMF to provide an interim report to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources no later than February 1, 2018, regarding its progress in implementing this section and a final report on or before May 1, 2018, that includes the request and petition required by this section.

Section 3 directs the Marine Fisheries Commission to establish official e-mail accounts for all Commission members as follows:

- Commission members must use the official e-mail accounts for all electronic communications related to the work of the Commission.
- Such communications are considered public records, unless protected by any common law or statutory privilege.
- If made among a majority of members of the Commission, such communications are an official meeting for purposes of the open meetings law, except if the communication is a routine communication sent from Division staff to all Commission members.
- Failure to comply with these requirements will subject a member to investigation by the State Ethics Commission for unethical conduct and to removal from the Commission for misfeasance.

Section 3.1 provides that the use of American eels imported from Virginia or South Carolina in an aquaculture operation is exempt from the permitting requirements of the Marine Fisheries Commission rule that regulates the importation of marine organisms into the State. This rule states, in part:

In order to protect the marine and estuarine resources of North Carolina from unacceptable risks from predators, pests, parasites, and disease, it is unlawful, without first obtaining a permit from the Fisheries Director or without obtaining live marine and estuarine organisms from a permit holder:

- To place into the coastal fishing waters of the State live marine and estuarine organisms not native to the State. ...
- To place into the coastal fishing waters of the state live marine and estuarine organisms which are native but which originated outside the State's boundaries... .

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- To hold or maintain any live marine or estuarine organism imported into the State in a quarantine or isolation system for live bait or use in an aquaculture operation....
- To sell for bait any live marine or estuarine organism imported into the State.

Any person desiring to obtain a Permit to Introduce, Transfer or Hold Imported Marine and Estuarine Organisms must make written application to the Division of Marine Fisheries In order for the Fisheries Director to determine the level of risk to any native marine resource or the environment, the applicant shall provide:

- A certification from a pathologist that a sample of 60 organisms from proposed shipments are disease free or a certification from a governmental veterinary service that the organisms to be shipped were produced in an area or facility free of diseases posing a risk to North Carolina's estuarine resources, or their environment, as determined by the Fisheries Director; and
- A certification from a biologist or veterinarian that macroscopic and microscopic examination indicates the shipment contains only those species identified on the permit application.

The Fisheries Director shall require disinfection, quarantine or destruction of organisms and transfer materials as a condition of the permit, upon finding the importation poses a risk to North Carolina's estuarine resources, or their environment.

The Fisheries Director may hold public meetings prior to granting permits ... to gather information concerning risks to native marine resources or the environment.

Section 3.2 authorizes the Division of Water Resources of the Department of Environmental Quality and the State Property Office to negotiate an agreement with appropriate agencies of the federal government for the State to assume responsibility for acquiring dredged material easement sites appropriate for maintenance dredging of the Atlantic Intracoastal Waterway in exchange for the reduction in size and possible change in location of dredged material disposal easement sites currently held by the federal government.

EFFECTIVE DATE:

The new leasing program becomes effective October 1, 2017. The remainder of the act became effective July 27, 2017.