

1 15A NCAC 03O .0201 is proposed for reoption with substantive changes as follows:

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3 **15A NCAC 03O .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH BOTTOM LEASES**
4 **AND FRANCHISES AND WATER COLUMN LEASES**

5 (a) All areas of the public bottom underlying Coastal Fishing Waters shall meet the following standards and
6 requirements, in addition to the standards in G.S. 113-202, in order to be deemed suitable for leasing for shellfish
7 cultivation purposes:

8 (1) the proposed lease area shall not contain a "natural shellfish bed," as defined in G.S. 113-201.1, or
9 have 10 bushels or more of shellfish per acre;

10 (2) the proposed lease area shall not be closer than ~~400~~ 250 feet to a developed shoreline, except no
11 minimum setback is required when the area to be leased borders the applicant's property, the
12 property of "riparian owners" as defined in G.S. 113-201.1 who have consented in a notarized
13 statement, or is in an area bordered by undeveloped shoreline; ~~and~~

14 ~~(3)~~ the proposed lease area shall not be closer than 250 feet to an existing shellfish lease;

15 ~~(4)~~ the proposed lease area, either alone or when considered cumulatively with existing shellfish leases
16 in the area, will not interfere with public navigation or with existing, traditional uses of the area
17 other than navigation pursuant to G.S. 113-201(b); and

18 ~~(5)~~ (5) the proposed lease area shall not be less than one-half acre and shall not exceed 10 acres.

19 (b) To be suitable for leasing for aquaculture purposes, water columns superjacent to leased bottom shall meet the
20 standards in G.S. 113-202.1 and water columns superjacent to franchises recognized pursuant to G.S. 113-206 shall
21 meet the standards in G.S. 113-202.2.

22 (c) Franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases shall be terminated unless they meet
23 the following requirements, in addition to the standards in and as allowed by G.S. 113-202:

24 (1) they produce and market 10 bushels of shellfish per acre per year; and

25 (2) they are planted with 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre
26 per year, or a combination of cultch and seed shellfish where the percentage of required cultch
27 planted and the percentage of required seed shellfish planted totals at least 100 percent.

28 (d) Water column leases shall be terminated unless they meet the following requirements, in addition to the standards
29 in and as allowed by G.S. 113-202.1 and 113-202.2:

30 (1) they produce and market 40 bushels of shellfish per acre per year; or

31 (2) the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.

32 (e) The following standards shall be applied to determine compliance with Paragraphs (c) and (d) of this Rule:

33 (1) Only shellfish marketed, planted, or produced as defined in 15A NCAC 03I .0101 as the fishing
34 activities "shellfish marketing from leases and franchises," "shellfish planting effort on leases and
35 franchises," or "shellfish production on leases and franchises" shall be included in the lease and
36 franchise reports required by Rule .0207 of this Section.

- 1 (2) If more than one lease or franchise is used in the production of shellfish, one of the leases or
2 franchises used in the production of the shellfish shall be designated as the producing lease or
3 franchise for those shellfish. Each bushel of shellfish shall be produced by only one lease or
4 franchise. Shellfish transplanted between leases or franchises shall be credited as planting effort on
5 only one lease or franchise.
- 6 (3) Production and marketing information and planting effort information shall be compiled and
7 averaged separately to assess compliance with the requirements of this Rule. The lease or franchise
8 shall meet both the production requirement and the planting effort requirement within the dates set
9 forth in G.S. 113-202.1 and G.S. 202.2 to be deemed in compliance for shellfish bottom leases. The
10 lease or franchise shall meet either the production requirement or the planting effort requirement
11 within the dates set forth in G.S. 113-202.1 and G.S. 202.2 to be deemed in compliance for water
12 column leases.
- 13 (4) All bushel measurements shall be in standard U.S. bushels.
- 14 (5) In determining production and marketing averages and planting effort averages for information not
15 reported in bushel measurements, the following conversion factors shall be used:
- 16 (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
17 (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds
18 of fossil stone equal one bushel.
- 19 (6) Production and marketing rate averages shall be computed irrespective of transfer of the lease or
20 franchise. The production and marketing rates shall be averaged for the following situations using
21 the time periods described:
- 22 (A) for an initial bottom lease or franchise, over the consecutive full calendar years remaining
23 on the bottom lease or franchise contract after December 31 following the second
24 anniversary of the initial bottom lease or franchise;
- 25 (B) for a renewal bottom lease or franchise, over the consecutive full calendar years beginning
26 January 1 of the final year of the previous bottom lease or franchise term and ending
27 December 31 of the final year of the current bottom lease or franchise contract;
- 28 (C) for a water column lease, over the first five-year period for an initial water column lease
29 and over the most recent five-year period thereafter for a renewal water column lease; or
30 (D) for a bottom lease or franchise issued an extension period under Rule .0208 of this Section,
31 over the most recent five-year period.
- 32 (7) In the event that a portion of an existing lease or franchise is obtained by a new owner, the production
33 history for the portion obtained shall be a percentage of the originating lease or franchise production
34 equal to the percentage of the area of lease or franchise site obtained to the area of the originating
35 lease or franchise.

1 (f) Persons holding five or more acres under all shellfish bottom leases and franchises combined shall meet the
2 requirements established in Paragraph (c) of this Rule before submitting an application for additional shellfish lease
3 acreage to the Division of Marine Fisheries.

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5 *History Note: Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52;*

6 *Eff. January 1, 1991;*

7 *Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; September 1, 1991;*

8 *Temporary Amendment Eff. October 1, 2001;*

9 *Amended Eff. May 1, 2017; October 1, 2008; April 1, 2003;*

10 *Readopted Eff. April 1, 2021.*

1 15A NCAC 03O .0202 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 03O .0202 SHELLFISH BOTTOM AND WATER COLUMN LEASE APPLICATIONS**

4 (a) Application forms are available from the Division's office headquarters at 3441 Arendell Street, Morehead City,
5 NC 28557 for persons desiring to apply for shellfish bottom and water column leases. Each application shall be
6 accompanied by a map or diagram prepared at the applicant's expense including an inset vicinity map showing the
7 location of the proposed lease with detail sufficient to permit on-site identification and ~~must~~ shall meet the information
8 requirements pursuant to G.S. 113-202(d).

9 (b) As a part of the application, the applicant shall submit a ~~management plan~~ Shellfish Lease Management Plan for
10 the area to be leased on a form provided by the Division ~~which meets the following standards:~~ that shall:

- 11 (1) ~~States~~ state the methods through which the applicant will cultivate and produce shellfish consistent
12 with the minimum requirements ~~set forth~~ in 15A NCAC 03O .0201; accordance with Rule .0201 of
13 this Section;
- 14 (2) ~~States~~ state the time intervals during which various phases of the cultivation and production plan
15 will be achieved;
- 16 (3) ~~States~~ state the materials and techniques that will be utilized in management of the lease;
- 17 (4) ~~Forecasts~~ forecast the results expected to be achieved by the management activities; ~~and~~
- 18 (5) ~~Describes~~ describe the productivity of any other leases or franchises held by the ~~applicant.~~ applicant;
19 and
- 20 (6) state the locations of each corner defining the area to be leased with no more than eight corners.

21 (c) The completed application, map or diagram, and ~~management plan~~ Shellfish Lease Management Plan for the
22 requested lease shall be accompanied by the non-refundable filing fee set forth in G.S. 113-202(d1). An incomplete
23 application shall be returned and not considered further until re-submitted complete with all required information.

24 (d) Applicants and transferees not currently holding a shellfish cultivation lease, and applicants and transferees
25 holding one or more shellfish cultivation leases which are not meeting production requirements, shall complete ~~and~~
26 ~~submit an examination, with a minimum of 70 percent correct answers, based on an educational package~~ the Shellfish
27 Aquaculture Education Program provided by the Division of Marine Fisheries. ~~The examination~~ Shellfish
28 Aquaculture Education Program shall demonstrate the applicant's knowledge of: provide the applicant information on
29 shellfish aquaculture including:

- 30 (1) ~~the shellfish lease application process;~~
- 31 (2) ~~shellfish lease planting and production requirements;~~
- 32 (3) ~~lease marking requirements;~~
- 33 (4) ~~lease fees;~~
- 34 (5) ~~shellfish harvest area closures due to pollution;~~
- 35 (6) ~~safe handling practices;~~
- 36 (7) ~~lease contracts and renewals;~~
- 37 (8) ~~lease termination criteria; and~~

1 ~~(9) shellfish cultivation techniques.~~

2 (1) shellfish lease application process;

3 (2) shellfish lease requirements and techniques;

4 (3) shellfish sanitation and National Shellfish Sanitation Program requirements;

5 (4) shellfish harvest requirements;

6 (5) aquaculture permits;

7 (6) best management practices; and

8 (7) shellfish lease user conflict avoidance.

9 (e) After an application is deemed to have met all requirements and is accepted by the Division, the applicant shall
10 identify the area for which a lease is requested with stakes at each corner in accordance with ~~15A NCAC 030~~
11 ~~.0204(a)(1)(A)~~. Rule .0204(a)(1)(A) of this Section. The applicant shall attach to each stake a sign, provided by the
12 Division containing the name of the applicant, the date the application was filed, and the estimated acres. The applicant
13 shall be responsible for ensuring the sign remains in place until the lease application process is completed.

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15 *History Note: Authority G.S. 113-134; 113-201; 113-202; 143B-289.52;*

16 *Eff. January 1, 1991;*

17 *Amended Eff. April 1, 2011; September 1, 2005; May 1, 1997; September 1, 1991;*

18 *Readopted Eff. April 1, 2021.*

1 15A NCAC 03O .0204 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 03O .0204 MARKING SHELLFISH LEASES AND WATER COLUMN LEASES AND**
4 **FRANCHISES**

5 (a) All shellfish bottom leases, franchises, and water column leases shall be marked as follows:

6 (1) Shellfish bottom leases and franchises shall be marked by:

7 (A) ~~Stakes~~ stakes of wood or plastic material ~~at least three inches in diameter no less than three~~
8 inches in diameter and no more than 12 inches in diameter at the water level and extending
9 at least four feet above the high water ~~mark.~~ mark for each corner. The stakes shall be
10 firmly jettied or driven into the bottom at each ~~corner.~~ corner as set forth in Rule .0202(b)(6)
11 of this Section.

12 (B) ~~Signs~~ signs displaying the number of the lease or franchise and the name of the owner
13 printed in letters at least three inches high must be firmly attached to each corner stake.

14 (C) ~~yellow light reflective tape or yellow light reflective devices on each corner marker. The~~
15 yellow light reflective tape or yellow light reflective devices shall be affixed to each corner
16 marker, shall cover a vertical distance of not less than 12 inches, and shall be visible from
17 all directions.

18 ~~(C)(D)~~ Supplementary ~~supplementary~~ stakes of wood or plastic material, not farther apart than 50
19 ~~yards~~ 150 feet or closer together than 50 feet and extending at least four feet above the high
20 water mark, ~~must~~ shall be placed along each boundary, except ~~when such would interfere~~
21 if doing so interferes with the use of traditional navigation channels.

22 (2) Water column leases shall be marked ~~by anchoring two yellow buoys, meeting the material and~~
23 ~~minimum size requirements specified in 15A NCAC 3J .0103(b) at each corner of the area or by~~
24 ~~larger buoys, posts and~~ by signs giving notice and providing caution in addition to the required signs
25 as identified and approved by the Secretary in the Management Plan.

26 (b) Stakes marking areas of management within shellfish bottom leases or franchises, as approved in the management
27 plan, must conform to Subparagraph ~~(a)(1)(C)~~ (a)(1)(D) of this Rule and may not exceed one for each 1,200 square
28 feet. Marking at concentrations of stakes greater than one for each 1,200 square feet constitutes use of the water
29 column and a water column lease is required in accordance with G.S. 113-202.1 or G.S. 113-202.2.

30 (c) All areas claimed in filings made pursuant to G.S. 113-205 as deeded bottoms through oyster grants issued by the
31 county clerk of court or as private bottoms through perpetual franchises issued by the Shellfish Commission shall be
32 marked in accordance with Paragraph (a) of this Rule, except the sign shall include the number of the franchise rather
33 than the number of the lease. However, claimed areas not being managed and cultivated shall not be marked.

34 (d) It is unlawful to fail to remove all stakes, signs, and markers within 30 days of receipt of notice from the Secretary
35 pursuant to Departmental Rule 15A NCAC 1G .0207 that a G.S. 113-205 claim to a marked area has been denied.

1 (e) It is unlawful to exclude or attempt to exclude the public from allowable public trust use of navigable waters on
2 shellfish leases and franchises including, but not limited to, fishing, hunting, swimming, ~~wading~~ wading, and
3 navigation.

4 (f) The Division has no duty to protect any shellfish bottom lease, franchise, or water column lease not marked in
5 accordance with Paragraph (a) of this Rule.

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7 *History Note: Authority G.S. 76-40; 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205;*
8 *143B-289.52;*

9 *Eff. January 1, 1991;*

10 *Amended Eff. September 1, 1997; March 1, 1994; October 1, 1992; September 1, 1991;*

11 *Readopted Eff. April 1, 2021.*