

RULEMAKING UPDATE

[RULEMAKING UPDATE MEMO](#)

[2019 - 2020 ANNUAL RULEMAKING CYCLE](#)

[2020 - 2021 RULEMAKING CYCLE PACKAGE A](#)

[2020 - 2021 RULEMAKING CYCLE PACKAGE B](#)

[MAY 1, 2021 MFC RULEBOOK SUPPLEMENT](#)

[2021 - 2022 RULEMAKING CYCLE PACKAGE A](#)

[2021 - 2022 RULEMAKING CYCLE PACKAGE B](#)



ROY COOPER
Governor

DIONNE DELLI-GATTI
Secretary

KATHY B. RAWLS
Director

May 5, 2021

MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: Catherine Blum, Rulemaking Coordinator
Marine Fisheries Commission Office

SUBJECT: Rulemaking Update

Issue

Update the N.C. Marine Fisheries Commission (MFC) on the status of the 2019-2020, 2020-2021, and 2021-2022 annual rulemaking cycles, including rulemaking in accordance with the Periodic Review and Expiration of Existing Rules per G.S. 150B-21.3A, and request the MFC vote on approval to begin the rulemaking process for rules in "Package A" for the 2021-2022 cycle.

Findings

- Periodic Review and Readoption of Rules – Requirements
 - North Carolina G.S. 150B-21.3A, adopted in 2013, requires state agencies to review existing rules every 10 years in accordance with a prescribed process that includes rule readoption.
 - 15A NCAC 03 – Marine Fisheries: On June 14, 2018, the Rules Review Commission (RRC) approved the readoption schedule of June 30, 2022 for 172 MFC rules.
 - 15A NCAC 18A – Sanitation: On Jan. 16, 2020, the RRC approved the readoption schedule of June 30, 2024 for 164 MFC rules.
 - The MFC must readopt these rules by these deadlines or the rules will expire and be removed from the N.C. Administrative Code.
- Periodic Review and Readoption of Rules – Rule Readoptions for May MFC Meeting
 - 15A NCAC 03 – Marine Fisheries
 - Rules with no changes in 15A NCAC 03I, 03J (11 rules)
 - Interjurisdictional species (8 rules)
 - 15A NCAC 18A – Sanitation
 - Rules with minor changes relating to standards for handling, packing, and shipping crustacea meat (34 rules)
 - Prohibit repacking of foreign crab meat in North Carolina (2 rule readoptions; 1 rule adoption)

Action Needed

In accordance with G.S. 150B-21.3A, the MFC is scheduled to begin the rule readoption and adoption process for the 56 rules in "Package A".

Recommendation

The division recommends the MFC vote on approval to begin the rule readoption and adoption process for the 56 listed rules. For more information, please refer to the [Rulemaking](#) section of the briefing materials.

2019-2020 Annual Rulemaking Cycle Update (2 rules)

At its February 2020 business meeting, the MFC gave final approval for readoption of two rules: 15A NCAC 03M .0509, Tarpon, and 15A NCAC 03O .0108, License and Commercial Fishing Vessel Registration Transfers. Both rules were subject to legislative review and became effective March 17, 2021. Rule 15A NCAC 03M .0509, as now amended, prohibits the possession of tarpon and makes it illegal to gaff, spear, or puncture tarpon by any method other than hook and line. Rule 15A NCAC 03O .0108, as now amended, clarifies the circumstances under which transfers of Standard and Retired Standard Commercial Fishing Licenses are allowed.

Text of the readopted rules can be found in the May 1, 2021 Supplement to the North Carolina Marina Fisheries Commission Rules April 1, 2020 on the division's website and in the [Rulemaking](#) section of the briefing materials. The corresponding news release and rulemaking cycle schedule are also available in the [Rulemaking](#) section of the briefing materials.

2020-2021 Annual Rulemaking Cycle Update

"Package A" (7 rules)

At its November 2020 business meeting, the MFC gave final approval for readoption of seven rules in 15A NCAC 18A .3401-.3407, Coastal Recreational Waters Monitoring, Evaluation, and Notification that became effective April 1, 2021. These rules were adopted in 2004 and needed updating to bring the Recreational Water Quality Program into compliance with new federal performance criteria and to be more efficient as a program in protecting public health by modifying the public notification process. The purpose of the program is to protect public health by monitoring recreational coastal waters and to notify the public when samples collected exceed the safe swimming standard. The rules, as now amended, also ensure equal protection for swimmers by requiring the same bacteriological threshold to trigger public health advisories for all swimming locations, regardless of usage frequency.

Text of the readopted rules can be found in the May 1, 2021 Supplement to the North Carolina Marina Fisheries Commission Rules April 1, 2020 on the division's website and in the [Rulemaking](#) section of the briefing materials. The corresponding news release and rulemaking cycle schedule are also available in the [Rulemaking](#) section of the briefing materials.

"Package B" (41 rules)

At its February 2021 business meeting, the MFC gave final approval for readoption and amendment of 41 rules for the following subjects:

- Shrimp Fishery Management Plan Amendment 1 Special Secondary Nursery Areas;
- Classification of shellfish growing waters and laboratory procedures;
- Rules with minor changes relating to standards for commercial shellfish sanitation and processing procedures;
- Oyster sanctuaries; and
- Shellfish lease user conflicts, per Session Law 2019-37.

The rules became effective May 1, 2021, except for the shellfish lease user conflict rules that are subject to legislative review.

Two rules, as amended, reclassify nine Special Secondary Nursery Areas to Secondary Nursery Areas, as recommended by the Shrimp Fishery Management Plan Amendment 1. The nine areas have not been opened to trawling since at least 2004, so there is no change to the shrimp trawl fishery. The reclassification results in additional small mesh gill net attendance requirements in all but one of the areas.

Additional rules pertaining to shellfish growing waters and processing of crustacea meat, as amended, update shellfish sanitation laboratory procedures, sanitary survey reporting requirements, standards for classifying shellfish waters, and definitions to conform with current national standards. One other rule updates oyster sanctuaries by adding five new sites, updating boundaries for three existing sites, and removing two sites that no longer function as sanctuaries.

Text of the readopted rules can be found in the May 1, 2021 Supplement to the North Carolina Marina Fisheries Commission Rules April 1, 2020 on the division's website and in the [Rulemaking](#) section of the briefing materials. The corresponding news release and rulemaking cycle schedule are also available in the [Rulemaking](#) section of the briefing materials.

2021-2022 Annual Rulemaking Cycle

"Package A" (56 rules)

Periodic Review and Expiration of Existing Rules – Rule Readoptions for May MFC Meeting

At its May 2021 business meeting, the MFC is scheduled to vote on approval to begin the rule readoption and adoption process for 56 rules. A summary of the proposed rules is provided here. Please refer to the materials for "Package A" in the [Rulemaking](#) section of the briefing materials, including the rulemaking cycle schedule and the fiscal analysis of each of the four subjects described below. The proposed rules are appended to each respective fiscal analysis. The intended effective date of the rule package is April 1, 2022. Rules with an asterisk (*) are subject to legislative review pursuant to Session Law 2019-198 and G.S. 14-4.1, Legislative review of regulatory crimes, and thus are expected to have a delayed effective date. The MFC may request a group of related rules to become effective at the same time per G.S. 150B-21.3.

RULES WITH NO CHANGES IN 15A NCAC 03I, 03J (11 rules)

(03I .0108, .0115, .0122, 03J .0103*, .0104*, .0106*, .0111*, .0202*, .0208*, .0401, .0402*)

The MFC is scheduled to vote on the proposed readoption of 11 rules in 15A NCAC 03 pursuant to the requirements of G.S. 150B-21.3A. The proposed readoptions consist of no changes.

INTERJURISDICTIONAL SPECIES (8 rules)

(15A NCAC 03L .0207, .0301*, .0302, 03M .0301, .0302*, .0511, .0516, .0519*)

The MFC is scheduled to vote on proposed amendments to readopt eight rules in 15A NCAC 03 pursuant to the requirements of G.S. 150B-21.3A. The management and harvest restrictions of North Carolina's interjurisdictional fishery species are implemented through a state fishery management plan and MFC rules that coordinate with relevant interstate and federal regulatory bodies. Since fish are not contained within political boundaries, state, interstate, federal and even international authorities share fisheries management responsibilities. Over time, regulation of these species in North Carolina has shifted towards ongoing proclamations and rule suspensions by the division director in order to keep pace with shifting interstate and federal regulations. The state is required by the Atlantic Coastal Fisheries Cooperative Management Act and the Magnuson-Stevens Fishery Conservation and Management Act to comply with interstate and federal restrictions.

The proposed amendments and repeals through readoption seek to formalize proclamation authority of these interjurisdictional species in rule language and remove existing harvest requirements that are likely to be invalidated. The proposed changes would conform with existing management practices by the division and would increase the division's efficiency in managing these species.

RULES WITH MINOR CHANGES RELATING TO STANDARDS FOR HANDLING, PACKING, AND SHIPPING CRUSTACEA MEAT (34 rules)
(15A NCAC 18A .0134, .0137-.0139, .0144, .0145, .0147-.0149, .0151-.0153, .0156-.0158, .0161, .0162, .0164-.0166, .0168, .0174-.0178, .0181-.0187, .0191)

The MFC is scheduled to vote on proposed amendments to readopt 34 rules in 15A NCAC 18A pursuant to the requirements of G.S. 150B-21.3A. The proposed readoptions consist of amendments that are of an administrative nature to update the rules. All proposed changes are either intended to provide heightened clarity to rule language, or to conform rule language for crustacea meat storage, processing, and facility maintenance to that of ongoing practice by the division staff and licensed seafood processors and dealers. The proposed changes would not affect the operations or material needs of the division or outside stakeholders.

PROHIBIT REPACKING OF FOREIGN CRAB MEAT IN NORTH CAROLINA (3 rules)
(15A NCAC 03L .0210*, 18A .0136, .0173)

The MFC is scheduled to vote on proposed amendments to readopt two rules in 15A NCAC 18A pursuant to the requirements of G.S. 150B-21.3A and adopt one rule in 15A NCAC 03. Following recent developments in North Carolina where foreign crab meat was fraudulently marketed and sold as domestic blue crab, the MFC requested the division develop rules to prohibit the repacking of foreign crab meat in the state to prevent future fraud and improve consumer confidence moving forward. After investigating its statutory authority over the issue, the division prepared a new rule for adoption in 15A NCAC 03 that prohibits the repacking of foreign crab meat in North Carolina into another container. This does not affect value-added crab products, such as crab cakes. Two existing rules for readoption in 15A NCAC 18A are proposed with conforming changes to address the new repacking rule.

"Package B" (approximately 110 rules)

At the May 2021 MFC business meeting, Division staff will provide a preview of rules for the MFC's 2021-2022 "Package B". There will be two packages of rules this year, similar to the 2020-2021 cycle, due to the number of rules remaining to be readopted. Please see Figure 1, detailed in the Background Information section below, that shows the MFC's rule readoption schedule. Also, the [Rulemaking](#) section of the briefing materials includes the rulemaking cycle schedule for "Package B".

Background Information

Periodic Review and Expiration of Existing Rules per G.S. 150B-21.3A

Session Law 2013-413, the Regulatory Reform Act of 2013, implemented requirements known as the "Periodic Review and Expiration of Existing Rules." These requirements are codified in a new section of Article 2A of Chapter 150B of the General Statutes in G.S. 150B-21.3A. Under the requirements, each agency is responsible for conducting a review of all its rules at least once every 10 years in accordance with a prescribed process.

The review has two parts. The first is a report phase, which has concluded, followed by the readoption of rules. An evaluation of the rules under the authority of the MFC was undertaken in two lots (see Figure 1.) The MFC has 211 rules in Chapter 03 (Marine Fisheries), of which 172 are subject to readoption, and 164 rules in Chapter 18, Subchapter 18A (Sanitation) that are also subject to readoption. The MFC is the body with the authority for the approval steps prescribed in the process.

Rules	2017	2018	2019	2020	2021	2022	2023	2024
Chapter 03 (172 rules)	Report	41 Rules Readopted	2 Rules Readopted	4 Rules Readopted	Rule Readoption (125)	6/30/22 deadline		
Subchapter 18A (164 rules)			Report	42 Rules Readopted	Rule Readoption (40)	Rule Readoption (82)	6/30/24 deadline	

Figure 1. Marine Fisheries Commission rule readoption schedule to comply with G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules.

N.C. Marine Fisheries Commission 2019-2020 Annual Rulemaking Cycle

May 2021

Time of Year	Action
April-July 2019	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
August 2019	MFC approved Notice of Text for Rulemaking
Oct. 1, 2019	Publication of proposed rules in the <i>North Carolina Register</i>
Oct. 16-Dec. 2, 2019	Public comment period held
Oct. 23, 2019	Public hearing held: 6 p.m., Division of Marine Fisheries, 5285 Highway 70 West, Morehead City, NC 28557
February 2020	Rules approved by MFC
April 2020	Rules approved by Office of Administrative Hearings/ Rules Review Commission
2021 legislative session	Possible effective date of rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
March 17, 2021	Effective date of rules
March 17, 2021	Rulebook supplement available online

Roy Cooper
Governor

Dionne Delli-Gatti
Secretary DEQ



John G. Batherson
Acting Director

Release: Immediate
Date: March 23, 2021

Contact: [Patricia Smith](#)
Phone: 252-726-7021

Changes to tarpon, commercial fishing license and vessel transfer rules now in effect

MOREHEAD CITY – Changes to two marine fisheries rules are now in effect. One of the rules pertains to tarpon and the other to the transfer of Standard and Retired Standard Commercial Fishing Licenses.

Marine Fisheries Commission rule 15A NCAC 03M .0509, as now amended, prohibits the possession of tarpon and makes it illegal to gaff, spear, or puncture tarpon by any method other than hook and line.

Rule 15A NCAC 03O .0108, as now amended, clarifies the circumstances under which transfers of Standard and Retired Standard Commercial Fishing Licenses are allowed, including the following changes:

1. Adds grandparents, grandchildren, and legal guardians to the list of immediate family members eligible to receive a transferred license.
2. Codifies the existing requirement of a certification statement from the transferee that affirms the information provided to the division is true and accurate.
3. Allows an individual license holder to transfer the license to a business in which the license holder is also an owner.
4. Allows a business that is dissolved to transfer a license to an individual owner of the business.
5. Allows a business that is sold to transfer a license to the successor business at the time of sale.
6. Allows a business to transfer a license back to an owner who is leaving the business if the owner originally held the license as an individual.
7. Restricts business transfers to corporations and limited liability companies.
8. Defines “owner” to include shareholder of a corporation and member of a limited liability company.

Specific wording of the amended rules in their entirety can be found in the North Carolina Marine Fisheries Commission Rules April 1, 2020 – Supplement – March 17, 2021 on the [Division of Marine Fisheries Rules and Regulations webpage](#). The Division of Marine Fisheries received official notification on March 22 that the rules became effective on March 17, 2021.

The Marine Fisheries Commission approved the rules in February 2020 after a public comment period in the fall of 2019; however, both rules were subject to legislative review under various statutes, which delayed the effective date.

For more information, contact [Catherine Blum](#), rules coordinator for the N.C. Division of Marine Fisheries, at 252-808-8014.

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N.C. Marine Fisheries Commission 2020-2021 Annual Rulemaking Cycle Package A

May 2021

Time of Year	Action
February-April 2020	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
May 2020	MFC approved Notice of Text for Rulemaking
Aug. 3, 2020	Publication of proposed rules in the <i>North Carolina Register</i>
Aug. 3-Oct. 2, 2020	Public comment period held
Aug. 26, 2020	Public hearing held via WebEx
November 2020	Rules approved by MFC
January 2021	Rules approved by Office of Administrative Hearings/ Rules Review Commission
April 1, 2021	Effective date of rules
April 1, 2021	Rulebook supplement available online

Roy Cooper
Governor

Dionne Delli-Gatti
Secretary DEQ



John G. Batherson
Acting Director

Release: Immediate
Date: April 1, 2021

Contact: [Patricia Smith](#)
Phone: 252-726-7021

Newly amended coastal recreational water quality rules take effect today

MOREHEAD CITY – Newly amended rules pertaining to coastal recreational water quality monitoring to protect the public health of swimmers go into effect today.

The rules, readopted by the Marine Fisheries Commission in November 2020 under a state-mandated periodic review schedule, include changes to 15A NCAC 18A .3400. Rules .3401, .3402, .3403, and .3405:

- Update biological standards for the N.C. Division of Marine Fisheries' Recreational Water Quality Program to align with new federal performance criteria.
- Ensure equal protection for swimmers by requiring the same bacteriological threshold to trigger public health advisories for all swimming locations, regardless of usage frequency.
- Modify terminology and the public notification process to reduce delays and confusion, without generating an increased frequency of swimming advisories for the public.

Other changes to the rules are technical in nature; two rules were repealed because they duplicated requirements.

Text of the readopted rules can be found in North Carolina Marine Fisheries Commission Rules April 1, 2020 – Supplement – April 1, 2021 on the N.C. Marine Fisheries Commission's [Rules and Regulations webpage](#).

For more information about changes to the N.C. Recreational Water Quality Program rules, email [Erin Bryan-Millush](#), who is the Division of Marine Fisheries' Recreational Water Quality Program manager or call her at 252-808-8153.

For more information about the rulemaking process, email [Catherine Blum](#), the division's rules coordinator.

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N.C. Marine Fisheries Commission 2020-2021 Annual Rulemaking Cycle Package B

May 2021

Time of Year	Action
February-July 2020	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
August 2020	MFC approved Notice of Text for Rulemaking
Oct. 1, 2020	Publication of proposed rules in the <i>North Carolina Register</i>
Oct. 1-Nov. 30, 2020	Public comment period held
Oct. 21 and 27, 2020	Public hearings held via WebEx
February 2021	Rules approved by MFC
April 2021	Rules approved by Office of Administrative Hearings/ Rules Review Commission
2022 legislative session	Possible effective date of three rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
May 1, 2021	Effective date of 38 rules
May 1, 2021	Rulebook supplement available online

Roy Cooper
Governor

Dionne Delli-Gatti
Secretary DEQ



John G. Batherson
Acting Director

Release: Immediate
Date: April 29, 2021

Contact: [Patricia Smith](#)
Phone: 252-726-7021

Newly amended rules take effect May 1

MOREHEAD CITY – Newly amended rules pertaining to special secondary nursery areas will go into effect Saturday, May 1.

The rule changes, readopted by the Marine Fisheries Commission in February 2021 under a state-mandated periodic review schedule, reclassify nine Special Secondary Nursery Areas to Secondary Nursery Areas, as recommended by the Shrimp Fishery Management Plan Amendment 1. The nine areas have not been opened to trawling since at least 2004, so there is no change to the shrimp trawl fishery. The reclassification results in additional small mesh gill net attendance requirements in most of the areas:

- Newport River, Cape Fear River, Lockwood Folly River, and Saucepan Creek, where attendance in all waters from May 1 - Nov. 30 is now required.
- Pungo Creek, Slade Creek, South Creek, and Bond/Muddy creeks, where year-round attendance within 200 yards of shore is maintained with an additional requirement of attendance in all waters from May 1 - Nov. 30.
- Scranton Creek, which has no change in its small mesh gill net attendance requirements from the reclassification.

Additional rules pertaining to shellfish growing waters, processing of crustacea meat, and oyster sanctuaries were also readopted and will go into effect May 1. Rules in 15A NCAC 03R and 18A:

- Amend the oyster sanctuaries rule by adding five new sites (Long Shoal, Little Creek, Pea Island, Raccoon Island, and Swan Island), updating boundaries for three existing sites (Neuse River, West Bluff, and Gibbs Shoal), and removing two sites that no longer function as sanctuaries (Ocracoke and Clam Shoal).
- Update shellfish sanitation laboratory procedures, sanitary survey reporting requirements, standards for classifying shellfish waters, and definitions to conform with current national standards.
- Correct grammar, typographical errors, and update agency names.

Text of the readopted rules will be posted Saturday in the May 1, 2021 Supplement to the North Carolina Marine Fisheries Commission Rules April 1, 2020 on the N.C. Marine Fisheries Commission's [Rules and Regulations webpage](#). Until May 1, the [April 1, 2021 Supplement to the North Carolina Marine Fisheries Commission Rules April 1, 2020](#) remains in effect.

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NORTH CAROLINA
MARINE FISHERIES COMMISSION
RULES

APRIL 1, 2020



SUPPLEMENT – MAY 1, 2021

MARINE FISHERIES COMMISSION
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Dionne Delli-Gatti, Secretary

DIVISION OF MARINE FISHERIES
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**NORTH CAROLINA ADMINISTRATIVE CODE
TITLE 15A – ENVIRONMENTAL QUALITY
CHAPTER 03 – MARINE FISHERIES**

THE FOLLOWING RULES ARE READOPTED OR AMENDED
EFFECTIVE MARCH 17, 2021 OR MAY 1, 2021.

PAGE

SUBCHAPTER 03M – FINFISH

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0509	TARPON	1
--------------------	--------------	---

SUBCHAPTER 03O – LICENSES, LEASES, FRANCHISES, AND PERMITS

SECTION .0100 – LICENSES

15A NCAC 03O .0108	LICENSE AND COMMERCIAL FISHING VESSEL REGISTRATION TRANSFERS.....	1
--------------------	--	---

SUBCHAPTER 03R – DESCRIPTIVE BOUNDARIES

SECTION .0100 – DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0104	PERMANENT SECONDARY NURSERY AREAS	3
15A NCAC 03R .0105	SPECIAL SECONDARY NURSERY AREAS	5
15A NCAC 03R .0117	OYSTER SANCTUARIES	6

**NORTH CAROLINA ADMINISTRATIVE CODE
TITLE 15A – ENVIRONMENTAL QUALITY
CHAPTER 18 – ENVIRONMENTAL HEALTH**

THE FOLLOWING RULES ARE READOPTED OR REPEALED
EFFECTIVE APRIL 1, 2021 OR MAY 1, 2021.

SUBCHAPTER 18A – SANITATION

SECTION .0100 – HANDLING: PACKING: AND SHIPPING OF CRUSTACEA MEAT

15A NCAC 18A .0140	FLOORS.....	8
15A NCAC 18A .0141	WALLS AND CEILINGS.....	8
15A NCAC 18A .0142	LIGHTING	8
15A NCAC 18A .0143	VENTILATION	8
15A NCAC 18A .0146	PREMISES	8
15A NCAC 18A .0150	SEWAGE DISPOSAL.....	9
15A NCAC 18A .0154	EMPLOYEES' PERSONAL ARTICLES.....	9
15A NCAC 18A .0155	SUPPLY STORAGE	9
15A NCAC 18A .0159	SEPARATION OF OPERATIONS.....	9
15A NCAC 18A .0160	RAW CRUSTACEA RECEIVING AND REFRIGERATION	9
15A NCAC 18A .0163	COOKED CRUSTACEA REFRIGERATION	9
15A NCAC 18A .0167	DELIVERY WINDOW OR SHELF	10
15A NCAC 18A .0169	FREEZING	10
15A NCAC 18A .0170	SHIPPING	10
15A NCAC 18A .0171	WHOLE CRUSTACEA OR CRUSTACEA PRODUCTS	10
15A NCAC 18A .0172	COOKED CLAW SHIPPING CONDITIONS.....	10

15A NCAC 18A .0179	RECALL PROCEDURE	11
15A NCAC 18A .0180	SAMPLING AND TESTING.....	11
15A NCAC 18A .0188	HAZARD ANALYSIS.....	11
15A NCAC 18A .0189	HACCP PLAN.....	11
15A NCAC 18A .0190	SANITATION MONITORING REQUIREMENTS.....	11

SECTION .0400 – SANITATION OF SHELLFISH - GENERAL OPERATION STANDARDS

15A NCAC 18A .0431	STANDARDS FOR AN APPROVED SHELLFISH GROWING AREA (REPEALED)	12
--------------------	--	----

SECTION .0700 – OPERATION OF DEPURATION (MECHANICAL PURIFICATION) FACILITIES

15A NCAC 18A .0704	LABORATORY PROCEDURES	12
--------------------	-----------------------------	----

SECTION .0900 – CLASSIFICATION OF SHELLFISH GROWING WATERS

15A NCAC 18A .0901	DEFINITIONS	12
15A NCAC 18A .0902	CLASSIFICATION OF SHELLFISH GROWING WATERS	13
15A NCAC 18A .0903	SANITARY SURVEY	14
15A NCAC 18A .0904	APPROVED WATERS	14
15A NCAC 18A .0905	CONDITIONALLY APPROVED WATERS	14
15A NCAC 18A .0906	RESTRICTED AREAS	15
15A NCAC 18A .0907	PROHIBITED WATERS	15
15A NCAC 18A .0908	UNSURVEYED AREAS (REPEALED)	16
15A NCAC 18A .0909	BUFFER ZONES	16
15A NCAC 18A .0910	RECLASSIFICATION (REPEALED).....	16
15A NCAC 18A .0913	PUBLIC HEALTH EMERGENCY	16
15A NCAC 18A .0914	LABORATORY PROCEDURES	16

SECTION .3400 – COASTAL RECREATIONAL WATERS MONITORING, EVALUATION, AND NOTIFICATION

15A NCAC 18A .3401	DEFINITIONS	17
15A NCAC 18A .3402	BACTERIOLOGICAL LIMITS FOR SWIMMING AREAS.....	17
15A NCAC 18A .3403	PUBLIC NOTICE OF INCREASED HEALTH RISKS IN SWIMMING AREAS ..	18
15A NCAC 18A .3404	SWIMMING ADVISORIES FOR POINT SOURCE DISCHARGES INTO SWIMMING AREAS.....	18
15A NCAC 18A .3405	RESCINDING A PENDING SWIMMING ADVISORY OR SWIMMING ADVISORY.....	19
15A NCAC 18A .3406	DESTRUCTION OF SIGNS (REPEALED).....	19
15A NCAC 18A .3407	APPLICABILITY OF RULES (REPEALED).....	19

INDEX		20
--------------------	--	----

**NORTH CAROLINA ADMINISTRATIVE CODE
TITLE 15A – ENVIRONMENTAL QUALITY
CHAPTER 03 – MARINE FISHERIES**

SUBCHAPTER 03M – FINFISH

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0509 TARPON

- (a) It shall be unlawful to possess, sell, or offer for sale tarpon.
- (b) It shall be unlawful to take tarpon by any method other than hook and line.
- (c) It shall be unlawful to gaff, spear, or puncture a tarpon.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. March 17, 2021.*

SUBCHAPTER 03O – LICENSES, LEASES, FRANCHISES, AND PERMITS

SECTION .0100 – LICENSES

15A NCAC 03O .0108 LICENSE AND COMMERCIAL FISHING VESSEL REGISTRATION TRANSFERS

- (a) To transfer a license or Commercial Fishing Vessel Registration, the license or registration shall not be expired prior to transfer.
- (b) Upon transfer of a license or Commercial Fishing Vessel Registration, the transferee becomes the licensee and assumes the privileges of holding the license or Commercial Fishing Vessel Registration.
- (c) A transfer application including a certification statement form shall be provided by the Division of Marine Fisheries. A transfer application shall be completed for each transfer including, but not limited to:
 - (1) the information required as set forth in Rule .0101(a) of this Section;
 - (2) a notarized statement from the transferee listing any violations involving marine or estuarine resources in the State of North Carolina during the previous three years; and
 - (3) a notarized statement from the transferee that the information and supporting documentation submitted with the transfer application is true and correct, and that the transferee acknowledges that it is unlawful for a person to accept transfer of a license for which they are ineligible.
- (d) A completed transfer application shall be returned to an office of the Division by mail or in person, except as set forth in Paragraph (e) of this Rule.
- (e) A transfer application submitted to the Division without complete and required information shall be deemed incomplete and shall not be considered further until resubmitted with all required information. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.
- (f) A License to Land Flounder from the Atlantic Ocean shall only be transferred:
 - (1) with the transfer of the ownership of a vessel that the licensee owns that individually met the eligibility requirements of Rule .0101 (b)(1)(A) and (b)(1)(B) of this Section to the new owner of that vessel; or
 - (2) by the owner of a vessel to another vessel under the same ownership.Transfer of a License to Land Flounder from the Atlantic Ocean transfers with it all flounder landings from the Atlantic Ocean associated with that vessel. Any transfer of license under this Paragraph shall only be processed through the Division of Marine Fisheries Morehead City Headquarters Office and no transfer is effective until approved and processed by the Division.
- (g) Transfer of a Commercial Fishing Vessel Registration: If transferring ownership of a vessel bearing a current Commercial Fishing Vessel Registration, the new owner:
 - (1) shall follow the requirements in Rule .0101 of this Section and pay a replacement fee as set forth in Rule .0107 of this Section for a replacement Commercial Fishing Vessel Registration; and
 - (2) shall submit a transfer application with the signatures of the former owner and the new owner notarized.
- (h) Transfer of a Standard or Retired Standard Commercial Fishing License:
 - (1) It is unlawful for a person to accept transfer of a Standard or Retired Standard Commercial Fishing License for which they are ineligible. Grandparents, grandchildren, and legal guardians of an individual are eligible to transfer a license and receive a transferred license.

- (2) A Standard or Retired Standard Commercial Fishing License shall only be transferred if both the transferor and the transferee have no current suspensions or revocations of any Marine Fisheries license privileges. In the event of the death of the transferor, this requirement shall only apply to the transferee.
- (3) For purposes of effecting transfers under this Paragraph:
 - (A) "business" shall mean corporations and limited liability companies that have been registered with the Secretary of State; and
 - (B) "owner" shall mean owner, shareholder, or manager of a business.
- (4) At the time of the transfer of a Standard or Retired Standard Commercial Fishing License, the transferor shall indicate the retainment or transfer of the landings history associated with that Standard or Retired Standard Commercial Fishing License. The transferor may retain a landings history only if the transferor holds an additional Standard or Retired Standard Commercial Fishing License. Transfer of a landings history is all or none.
- (5) To transfer a Standard or Retired Standard Commercial Fishing License, in addition to the requirements in Paragraph (c) of this Rule, the following information is required:
 - (A) information on the transferee as set forth in Rule .0101 of this Section;
 - (B) notarization of the transferor's and the transferee's signatures on the transfer application; and
 - (C) if the transferor is retiring from commercial fishing, evidence showing that such retirement has in fact occurred, which may include, but is not limited to, evidence of the transfer of all the transferor's Standard Commercial Fishing Licenses, sale of all the transferor's registered vessels, or discontinuation of any active involvement in commercial fishing.
- (6) The Standard or Retired Standard Commercial Fishing License that is being transferred shall be surrendered to the Division at the time of the transfer application.
- (7) Fees:
 - (A) The transferee shall pay a replacement fee as set forth in Rule .0107 of this Section.
 - (B) The transferee shall pay the differences in fees as specified in G.S. 113-168.2(e) or G.S. 113-168.3(b) if the transferee is a non-resident.
 - (C) The transferee shall pay the differences in fees as specified in G.S. 113-168.2(e) if the license to be transferred is a Retired Standard Commercial Fishing License and the transferee is less than 65 years old.
- (8) Transfer of Standard or Retired Standard Commercial Fishing License for a Business:
 - (A) An individual holding a Standard or Retired Standard Commercial Fishing License may transfer their license to a business in which the license holder is also an owner of the business in accordance with application requirements as set forth in Rule .0101(a) of this Section.
 - (B) If a business is dissolved, the business may transfer the license or licenses of the business to an individual owner of the dissolved business. A dissolved business holding multiple licenses may transfer one license or multiple licenses to one owner or multiple owners or any combination thereof. A notarized statement showing agreement for the transfer of all owners of the business is required to complete this transaction.
 - (C) If a business is sold, the business may transfer the license or licenses of the business to the successor business at the time of sale.
 - (D) If an owner leaves the business, any license owned by that owner may be transferred back to themselves as an individual at the time the owner leaves the business, provided the owner was the last individual to own the license before the business owned the license. A notarized statement showing agreement for the transfer of all owners of the business is required to complete this transaction.
- (9) Transfer of Standard or Retired Standard Commercial Fishing License for a Deceased Licensee:
 - (A) If an immediate surviving family member of the deceased licensee is eligible to hold the deceased licensee's Standard Commercial Fishing License or Retired Standard Commercial Fishing License, the Administrator or Executor shall give written notification within six months after the Administrator or Executor qualifies under G.S. 28A to the Division of the request to transfer the deceased's license to the estate Administrator or Executor.
 - (B) A transfer to the Administrator or Executor shall be made according to the provisions of Subparagraphs (2) through (4) of this Paragraph. The Administrator or Executor shall provide a copy of the deceased licensee's death certificate, a copy of the certificate of administration, and a list of eligible immediate family members to the Division.
 - (C) The Administrator or Executor shall only transfer a license in the Administrator or Executor name on behalf of the estate to an eligible surviving family member. The surviving family member transferee shall only transfer the license to a third party purchaser of the deceased licensee's fishing vessel. Transfers shall be made according to the provisions of Subparagraphs (2) through (4) of this Paragraph.

History Note: Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.3; 113-168.6; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1994; Temporary Amendment Eff. August 1, 1999; July 1, 1999; Amended Eff. August 1, 2000; Readopted Eff. March 17, 2021.

SUBCHAPTER 03R – DESCRIPTIVE BOUNDARIES

SECTION .0100 – DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0104 PERMANENT SECONDARY NURSERY AREAS

The permanent secondary nursery areas referenced in 15A NCAC 03N .0105(a) are delineated in the following coastal water areas:

- (1) Roanoke Sound:
Inner Shallowbag Bay - west of a line beginning on the northeast shore at a point 35° 54.6729' N – 75° 39.8099' W; running southerly to the southeast shore to a point 35° 54.1722' N – 75° 39.6806' W;
- (2) in the Pamlico Long Sound Area:
 - (a) Long Shoal River - north of a line beginning at the 5th Avenue Canal at a point 35° 35.2120' N – 75° 53.2232' W; running easterly to the east shore on Pains Point to a point 35° 35.0666' N – 75° 51.2000' W;
 - (b) Pains Bay - east of a line beginning on Pains Point at a point 35° 35.0666' N – 75° 51.2000' W; running southerly to Rawls Island to a point 35° 34.4666' N – 75° 50.9666' W; running easterly to the east shore to a point 35° 34.2309' N – 75° 50.2695' W;
 - (c) Wysocking Bay - northwest of a line beginning at Benson Point at a point 35° 22.9684' N – 76° 03.7129' W; running northeasterly to Long Point to a point 35° 24.6895' N – 76° 01.3155' W;
 - (d) Juniper Bay-Cunning Harbor - north of a line beginning on the west shore of Juniper Bay at a point 35° 20.6217' N – 76° 15.5447' W; running easterly to a point 35° 20.4372' N – 76° 13.2697' W; running easterly to the east shore of Cunning Harbor to a point 35° 20.3413' N – 76° 12.3378' W;
 - (e) Swanquarter Bay - north of a line beginning at The Narrows at a point 35° 20.9500' N – 76° 20.6409' W; running easterly to the east shore to a point 35° 21.5959' N – 76° 18.3580' W;
 - (f) Deep Cove - The Narrows - north and east of a line beginning on the west shore at a point 35° 20.9790' N – 76° 23.8577' W; running southeasterly to Swanquarter Island to a point 35° 20.5321' N – 76° 22.7869' W; and west of a line at The Narrows beginning on the north shore to a point 35° 20.9500' N – 76° 20.6409' W; running southerly to Swanquarter Island to a point 35° 20.7025' N – 76° 20.5620' W;
 - (g) Rose Bay - north of a line beginning on Long Point at a point 35° 23.3404' N – 76° 26.2491' W; running southeasterly to Drum Point to a point 35° 22.4891' N – 76° 25.2012' W;
 - (h) Spencer Bay - northwest of a line beginning on Roos Point at a point 35° 22.3866' N – 76° 27.9225' W; running northeasterly to Long Point to a point 35° 23.3404' N – 76° 26.2491' W;
 - (i) Abel Bay - northeast of a line beginning on the west shore at a point 35° 23.6463' N – 76° 31.0003' W; running southeasterly to the east shore to a point 35° 22.9353' N – 76° 29.7215' W;
 - (j) Mouse Harbor - west of a line beginning on Persimmon Tree Point at a point 35° 18.3915' N – 76° 29.0454' W; running southerly to Yaupon Hammock Point to a point 35° 17.1825' N – 76° 28.8713' W;
 - (k) Big Porpoise Bay - northwest of a line beginning on Big Porpoise Point at a point 35° 15.6993' N – 76° 28.2041' W; running southwesterly to Middle Bay Point to a point 35° 14.9276' N – 76° 28.8658' W;
 - (l) Middle Bay - west of a line beginning on Deep Point at a point 35° 14.8003' N – 76° 29.1923' W; running southerly to Little Fishing Point to a point 35° 13.5419' N – 76° 29.6123' W;
 - (m) Jones Bay - west of a line beginning on Mink Trap Point at a point 35° 13.4968' N – 76° 31.1040' W; running southerly to Boar Point to a point 35° 12.3253' N – 76° 31.2767' W; and
 - (n) in the Bay River Area:
 - (i) Bonner Bay - southeast of a line beginning on the west shore at a point 35° 09.6281' N – 76° 36.2185' W; running northeasterly to Davis Island Point to a point 35° 10.0888' N – 76° 35.2587' W; and
 - (ii) Gales Creek-Bear Creek - north and west of a line beginning on Sanders Point at a point 35° 11.2833' N – 76° 35.9000' W; running northeasterly to the east shore to a point 35° 11.9000' N – 76° 34.2833' W;
- (3) in the Pamlico and Pungo Rivers Area:
 - (a) Pungo River - north of a line beginning on the west shore at a point 35° 32.2000' N – 76° 29.2500' W; running east near Beacon "21" to the east shore to a point 35° 32.0833' N – 76° 28.1500' W;

- (b) Pungo Creek - west of a line beginning on Persimmon Tree Point at a point 35° 30.7633' N – 76° 38.2831' W; running southwesterly to Windmill Point to a point 35° 31.1546' N – 76° 37.7590' W;
 - (c) Scranton Creek - south and east of a line beginning on the west shore at a point 35° 30.6810' N – 76° 28.3435' W; running easterly to the east shore to a point 35° 30.7075' N – 76° 28.6766' W;
 - (d) Slade Creek - east of a line beginning on the west shore at a point 35° 27.8879' N – 76° 32.9906' W; running southeasterly to the east shore to a point 35° 27.6510' N – 76° 32.7361' W;
 - (e) Fortescue Creek - east of a line beginning on Pasture Point at a point 35° 25.9213' N – 76° 31.9135' W; running southerly to the Lupton Point shore to a point 35° 25.6012' N – 76° 31.9641' W;
 - (f) Pamlico River - west of a line beginning on Ragged Point at a point 35° 27.5768' N – 76° 54.3612' W; running southwesterly to Mauls Point to a point 35° 26.9176' N – 76° 55.5253' W;
 - (g) North Creek - north of a line beginning on the west shore at a point 35° 25.3988' N – 76° 40.0455' W; running southeasterly to the east shore to a point 35° 25.1384' N – 76° 39.6712' W;
 - (h) South Creek - west of a line beginning on Hickory Point at a point 35° 21.7385' N – 76° 41.5907' W; running southerly to Fork Point to a point 35° 20.7534' N – 76° 41.7870' W;
 - (i) Bond Creek/Muddy Creek - south of a line beginning on Fork Point at a point 35° 20.7534' N – 76° 41.7870' W; running southeasterly to Gum Point to a point 35° 20.5632' N – 76° 41.4645' W;
 - (j) in the Goose Creek Area, Campbell Creek - west of a line beginning on the north shore at a point 35° 17.3600' N – 76° 37.1096' W; running southerly to the south shore to a point 35° 16.9876' N – 76° 37.0965' W; and
 - (k) Oyster Creek-Middle Prong - southwest of a line beginning on Pine Hammock at a point 35° 19.5586' N – 76° 32.8830' W; running easterly to Cedar Island to a point 35° 19.5490' N – 76° 32.7365' W; and southwest of a line beginning on Cedar Island at a point 35° 19.4921' N – 76° 32.2590' W; running southeasterly to Beard Island Point to a point 35° 19.1265' N – 76° 31.7226' W;
- (4) in the Neuse River Area:
- (a) Lower Broad Creek - west of a line beginning on the north shore at a point 35° 05.8314' N – 76° 35.3845' W; running southwesterly to the south shore to a point 35° 05.5505' N – 76° 35.7249' W;
 - (b) Greens Creek - north of a line beginning on the west shore of Greens Creek at a point 35° 01.3476' N – 76° 42.1740' W; running northeasterly to the east shore to a point 35° 01.4899' N – 76° 41.9961' W;
 - (c) Dawson Creek - north of a line beginning on the west shore at a point 34° 59.5920' N – 76° 45.4620' W; running southeasterly to the east shore to a point 34° 59.5800' N – 76° 45.4140' W;
 - (d) Goose Creek - north and east of a line beginning at a point on the west shore at a point 35° 02.6642' N – 76° 56.4710' W; running southeasterly to a point on Cooper Point 35° 02.0908' N – 76° 56.0092' W;
 - (e) Upper Broad Creek - northeast of a line beginning at a point on Rowland Point on the north shore at a point 35° 02.6166' N – 76° 56.4500' W; running southeasterly to the south shore to a point 35° 02.8960' N – 76° 56.7865' W;
 - (f) Clubfoot Creek - south of a line beginning on the west shore at a point 34° 54.5424' N – 76° 45.7252' W; running easterly to the east shore to a point 34° 54.4853' N – 76° 45.4022' W; and
 - (g) in the Adams Creek Area, Cedar Creek - east of a line beginning on the north shore at a point 34° 56.1203' N – 76° 38.7988' W; running southerly to the south shore to a point 34° 55.8745' N – 76° 38.8153' W;
- (5) Newport River - west of a line beginning near Penn Point on the south shore at a point 34° 45.6960' N – 76° 43.5180' W; running northeasterly to the north shore to a point 34° 46.8490' N – 76° 43.3296' W;
 - (6) Virginia Creek - all waters of the natural channel northwest of the primary nursery area line;
 - (7) Old Topsail Creek - all waters of the dredged channel northwest of the primary nursery area line;
 - (8) Mill Creek - all waters west of a line beginning on the north shore at a point 34° 20.6420' N – 77° 42.1220' W; running southwesterly to the south shore to a point 34° 20.3360' N – 77° 42.2400' W;
 - (9) Pages Creek - all waters west of a line beginning on the north shore at a point 34° 16.1610' N – 77° 45.9930' W; running southwesterly to the south shore to a point 34° 15.9430' N – 77° 46.1670' W;
 - (10) Bradley Creek - all waters west of a line beginning on the north shore at a point 34° 12.7030' N – 77° 49.1230' W; running southerly near the dredged channel to a point 34° 12.4130' N – 77° 49.2110' W;
 - (11) Cape Fear River - all waters bounded by a line beginning on the south side of the Spoil Island at the intersection of the Intracoastal Waterway and the Cape Fear River ship channel at a point 34° 01.5780' N – 77° 56.0010' W; running easterly to the east shore of the Cape Fear River to a point 34° 01.7230' N – 77° 55.1010' W; running southerly and bounded by the shoreline to the Ferry Slip at Federal Point at a point 33° 57.8080' N – 77° 56.4120' W; running northerly to Bird Island to a point 33° 58.3870' N – 77° 56.5780' W; running northerly along the west shoreline of Bird Island and the Cape Fear River spoil islands back to the point of origin;

- (12) Lockwood Folly River - all waters north of a line beginning on Howells Point at a point 33° 55.3680' N – 78° 12.7930' W and running in a westerly direction along the Intracoastal Waterway near Intracoastal Waterway Marker "46" to a point 33° 55.3650' N – 78° 13.8500' W;
- (13) Saucepan Creek - all waters north of a line beginning on the west shore at a point 33° 54.6290' N – 78° 22.9170' W; running northeasterly to the east shore to a point 33° 54.6550' N – 78° 22.8670' W; and
- (14) Davis Creek - all waters east of a line beginning on Horse Island at a point 33° 55.0160' N – 78° 12.7380' W; running southerly to Oak Island to a point 33° 54.9190' N – 78° 12.7170' W; continuing upstream to the primary nursery line and Davis Canal, all waters southeast of a line beginning on Pinner Point at a point 33° 55.2930' N – 78° 11.6390' W; running southwesterly across the mouth of Davis Canal to the spoil island at the southwest intersection of the Intracoastal Waterway and Davis Canal to a point 33° 55.2690' N – 78° 11.6550' W.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1996; March 1, 1994; Recodified from 15A NCAC 3R .0004 Eff. December 17, 1996; Amended Eff. April 1, 2011; August 1, 2004; May 1, 1997; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. May 1, 2021.

15A NCAC 03R .0105 SPECIAL SECONDARY NURSERY AREAS

The special secondary nursery areas referenced in 15A NCAC 03N .0105(b) are designated in the following coastal water areas:

- (1) Roanoke Sound:
 - (a) Outer Shallowbag Bay - west of a line beginning on Baum Point at a point 35° 55.1461' N – 75° 39.5618' W; running southeasterly to Ballast Point to a point 35° 54.6250' N – 75° 38.8656' W; including the canal on the southeast shore of Shallowbag Bay; and
 - (b) Kitty Hawk Bay/Buzzard Bay - within the area designated by a line beginning at a point on the east shore of Colington Creek at a point 36° 02.4360' N – 75° 42.3189' W; running westerly to a point 36° 02.6630' N – 75° 41.4102' W; running along the shoreline to a point 36° 02.3264' N – 75° 42.3889' W; running southwesterly to a point 36° 02.1483' N – 75° 42.4329' W; running along the shoreline to a point 36° 01.6736' N – 75° 42.5313' W; running southwesterly to a point 36° 01.5704' N – 75° 42.5899' W; running along the shoreline to a point 36° 00.9162' N – 75° 42.2035' W; running southeasterly to a point 36° 00.8253' N – 75° 42.0886' W; running along the shoreline to a point 35° 59.9886' N – 75° 41.7284' W; running southwesterly to a point 35° 59.9597' N – 75° 41.7682' W; running along the shoreline to the mouth of Buzzard Bay to a point 35° 59.6480' N – 75° 32.9906' W; running easterly to Mann Point to a point 35° 59.4171' N – 75° 32.7361' W; running northerly along the shoreline to the point of beginning;
- (2) in the West Bay Area:
 - (a) West Thorofare Bay - south of a line beginning on the west shore at a point 34° 57.2199' N – 76° 24.0947' W; running easterly to the east shore to a point 34° 57.4871' N – 76° 23.0737' W;
 - (b) Long Bay-Ditch Bay - west of a line beginning on the north shore of Ditch Bay at a point 34° 57.9388' N – 76° 27.0781' W; running southwesterly to the south shore of Ditch Bay to a point 34° 57.2120' N – 76° 27.2185' W; then south of a line running southeasterly to the east shore of Long Bay to a point 34° 56.7633' N – 76° 26.3927' W; and
 - (c) Turnagain Bay - south of a line beginning on the west shore at a point 34° 59.4065' N – 76° 30.1906' W; running easterly to the east shore to a point 34° 59.5668' N – 76° 29.3557' W;
- (3) in the Core Sound Area:
 - (a) Cedar Island Bay - northwest of a line beginning near the gun club dock at a point 34° 58.7203' N – 76° 15.9645' W; running northeasterly to the south shore to a point 34° 57.7690' N – 76° 16.8781' W;
 - (b) Thorofare Bay-Barry Bay - northwest of a line beginning on Rumley Hammock at a point 34° 55.4853' N – 76° 18.2487' W; running northeasterly to Hall Point to a point 34° 54.4227' N – 76° 19.1908' W;
 - (c) Nelson Bay - northwest of a line beginning on the west shore of Nelson Bay at a point 34° 51.1353' N – 76° 24.5866' W; running northeasterly to Drum Point to a point 34° 51.6417' N – 76° 23.7620' W;
 - (d) Brett Bay - north of a line beginning on the west shore at a point 34° 49.4019' N – 76° 26.0227' W; running easterly to Piney Point to a point 34° 49.5799' N – 76° 25.0534' W; and
 - (e) Jarrett Bay - north of a line beginning on the west shore near Old Chimney at a point 34° 45.5743' N – 76° 30.0076' W; running easterly to a point east of Davis Island 34° 45.8325' N – 76° 28.7955' W;

- (4) in the North River Area:
 - (a) North River - north of a line beginning on the west shore at a point 34° 46.0383' N – 76° 37.0633' W; running easterly to a point on the east shore 34° 46.2667' N – 76° 35.4933' W; and
 - (b) Ward Creek - east of a line beginning on the north shore at a point 34° 46.2667' N – 76° 35.4933' W; running southerly to the south shore to a point 34° 45.4517' N – 76° 35.1767' W;
- (5) New River - all waters upstream of a line beginning on the north side of the N.C. Highway 172 Bridge at a point 34° 34.7680' N – 77° 23.9940' W; running southerly to the south side of the bridge at a point 34° 34.6000' N – 77° 23.9710' W;
- (6) Chadwick Bay - all waters west of a line beginning on the northeast side of Chadwick Bay at a point 34° 32.5630' N – 77° 21.6280' W; running southeasterly to a point near Marker "6" at 34° 32.4180' N – 77° 21.6080' W; running westerly to Roses Point at a point 34° 32.2240' N – 77° 22.2880' W; following the shoreline in Fullard Creek to a point 34° 32.0340' N – 77° 22.7160' W; running northwesterly to a point 34° 32.2210' N – 77° 22.8080' W; following the shoreline to the west point of Bump's Creek at a point 34° 32.3430' N – 77° 22.4570' W; running northeasterly to the east shore to a point 34° 32.4400' N – 77° 22.3830' W; following the shoreline of Chadwick Bay back to the point of origin; and
- (7) Intracoastal Waterway - all waters in the Intracoastal Waterway maintained channel from a point near Marker "17" north of Alligator Bay 34° 30.7930' N – 77° 23.1290' W; to a point near Marker "49" at Morris Landing at a point 34° 28.0820' N – 77° 30.4710' W; and all waters in the Intracoastal Waterway maintained channel and 100 feet on either side from Marker "49" to the N.C. Highway 50-210 Bridge at Surf City.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1996; March 1, 1994; Recodified from 15A NCAC 3R .0005 Eff. December 17, 1996; Amended Eff. April 1, 2011; August 1, 2004; May 1, 1997; Readopted Eff. May 1, 2021.

15A NCAC 03R .0117 OYSTER SANCTUARIES

The Oyster Sanctuaries referenced in 15A NCAC 03K .0209 are delineated in the following coastal water areas:

- (1) Pamlico Sound area:
 - (a) Croatan Sound: within the area described by a line beginning at a point 35° 48.2842' N - 75° 38.3360' W; running southerly to a point 35° 48.1918' N - 75° 38.3360' W; running westerly to a point 35° 48.1918' N - 75° 38.4575' W; running northerly to a point 35° 48.2842' N - 75° 38.4575' W; running easterly to the point of beginning.
 - (b) Crab Hole: within the area described by a line beginning at a point 35° 43.6833' N - 75° 40.5083' W; running southerly to a point 35° 43.5000' N - 75° 40.5083' W; running westerly to a point 35° 43.5000' N - 75° 40.7500' W; running northerly to a point 35° 43.6833' N - 75° 40.7500' W; running easterly to the point of beginning.
 - (c) Pea Island: within the area described by a line beginning at a point 35° 05.4760' N - 76° 23.5370' W; running southerly to a point 35° 05.4760' N - 76° 23.4040' W; running westerly to a point 35° 05.3680' N - 76° 23.4040' W; running northerly to a point 35° 05.3680' N - 76° 23.5370' W; running easterly to the point of beginning.
 - (d) Long Shoal: within the area described by a line beginning at a point 35° 33.8600' N - 75° 49.9000' W; running southerly to a point 35° 33.8600' N - 75° 49.7670' W; running westerly to a point 35° 33.7510' N - 75° 49.7670' W; running northerly to a point 35° 33.7510' N - 75° 49.9000' W; running easterly to the point of beginning.
 - (e) Gibbs Shoal: within the area described by a line beginning at a point 35° 27.3550' N - 75° 55.9190' W; running southerly to a point 35° 27.1010' N - 75° 55.9190' W; running westerly to a point 35° 27.1010' N - 75° 56.2300' W; running northerly to a point 35° 27.3550' N - 75° 56.2300' W; running easterly to the point of beginning.
 - (f) Deep Bay: within the area described by a line beginning at a point 35° 22.9126' N - 76° 22.1612' W; running southerly to a point 35° 22.7717' N - 76° 22.1612' W; running westerly to a point 35° 22.7717' N - 76° 22.3377' W; running northerly to a point 35° 22.9126' N - 76° 22.3377' W; running easterly to the point of beginning.

- (g) West Bluff: within the area described by a line beginning at a point 35° 18.3160' N - 76° 10.2960' W; running southerly to a point 35° 18.3160' N - 76° 10.0690' W; running westerly to a point 35° 18.1290' N - 76° 10.0690' W; running northerly to a point 35° 18.1290' N - 76° 10.2960' W; running easterly to the point of beginning.
 - (h) Middle Bay: within the area described by a line beginning at a point 35° 14.1580' N - 76° 30.1780' W; running southerly to a point 35° 14.1150' N - 76° 30.1780' W; running westerly to a point 35° 14.1150' N - 76° 30.3320' W; running northerly to a point 35° 14.1580' N - 76° 30.3320' W; running easterly to the point of beginning.
 - (i) Swan Island: within the area described by a line beginning at a point 35° 05.6170' N - 76° 27.5040' W; running southerly to a point 35° 05.6020' N - 76° 26.7650' W; running westerly to a point 35° 05.4850' N - 76° 26.7640' W; running northerly to a point 35° 05.4990' N - 76° 27.5030' W; running easterly to the point of beginning.
 - (j) Raccoon Island: within the area described by a line beginning at a point 35° 05.4760' N - 76° 23.5370' W; running southerly to a point 35° 05.4760' N - 76° 23.4040' W; running westerly to a point 35° 05.3860' N - 76° 23.4040' W; running northerly to a point 35° 05.3680' N - 76° 23.5370' W; running easterly to the point of beginning.
 - (k) West Bay: within the area described by a line beginning at a point 34° 58.8517' N - 76° 21.3632' W; running southerly to a point 34° 58.7661' N - 76° 21.3632' W; running westerly to a point 34° 58.7661' N - 76° 21.4735' W; running northerly to a point 34° 58.8517' N - 76° 21.4735' W; running easterly to the point of beginning.
- (2) Neuse River area:
- (a) Little Creek: within the area described by a line beginning at a point 35° 02.6940' N - 76° 30.9840' W; running southerly to a point 35° 02.6940' N - 76° 30.7940' W; running westerly to a point 35° 02.5380' N - 76° 30.7940' W; running northerly to a point 35° 02.5380' N - 76° 30.9840' W; running easterly to the point of beginning.
 - (b) Neuse River: within the area described by a line beginning at a point 35° 00.4910' N - 76° 31.9350' W; running southerly to a point 35° 00.3750' N - 76° 31.9350' W; running westerly to a point 35° 00.3750' N - 76° 32.0750' W; running northerly to a point 35° 00.4910' N - 76° 32.0750' W; running easterly to the point of beginning.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52; Eff. October 1, 2008; Amended Eff. April 1, 2011; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. May 1, 2021.

**NORTH CAROLINA ADMINISTRATIVE CODE
TITLE 15A – ENVIRONMENTAL QUALITY
CHAPTER 18 – ENVIRONMENTAL HEALTH**

SUBCHAPTER 18A – SANITATION

SECTION .0100 – HANDLING: PACKING: AND SHIPPING OF CRUSTACEA MEAT

15A NCAC 18A .0140 FLOORS

Floors shall be of concrete or other impervious material, constructed so that they are easily cleanable and shall be sloped so that water drains.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0141 WALLS AND CEILINGS

- (a) Walls and ceilings shall be constructed of smooth, easily cleanable, non-corrosive, impervious material.
- (b) Insulation on cooked crustacea cooler walls shall be covered to the ceiling with a smooth, easily cleanable, non-corrosive, impervious material.
- (c) Doors and windows shall be tightly fitted and maintained in good repair so as to keep insects and weather out of the facility.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0142 LIGHTING

- (a) Natural or artificial lighting shall be provided in all parts of the facility. Minimum lighting intensities shall be as follows:
 - (1) 50 foot-candles on working surfaces in the picking and packing rooms and areas.
 - (2) 10 foot-candles measured at a height of 30 inches above the floor throughout the rest of the processing portion of the facility.
- (b) Light bulbs within the processing portion of the facility shall be shatterproof or shielded to prevent product contamination in case of breakage.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0143 VENTILATION

All rooms and areas shall be ventilated.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0146 PREMISES

- (a) Premises under the control of the owner shall be kept clean at all times. Waste materials, rubbish, other articles, or litter shall not be permitted to accumulate on the premises.
- (b) Measures shall be taken to prevent the harborage and breeding of insects, rodents, and other vermin on premises.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0150 SEWAGE DISPOSAL

All sewage and other liquid wastes shall be disposed of in a public sewer system or in the absence of a public sewer system, by an on-site method approved by the Division of Marine Fisheries.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0154 EMPLOYEES' PERSONAL ARTICLES

Employees' street clothing, aprons, gloves, and personal articles shall not be stored in rooms or areas described in Rule .0159(b) of this Section.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0155 SUPPLY STORAGE

Shipping containers, boxes, and other supplies shall be stored in a storage room or area. The storage room or area shall be kept clean.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0159 SEPARATION OF OPERATIONS

(a) Facility design shall provide for continuous flow of raw materials and product to prevent contamination by exposure to areas involved in earlier processing steps, refuse, or other areas subject to contamination.

(b) The following processes shall be carried out in separate rooms or areas:

- (1) raw crustacea receiving or refrigeration;
- (2) crustacea cooking;
- (3) cooked crustacea air-cool;
- (4) cooked crustacea refrigeration;
- (5) picking;
- (6) packing;
- (7) picked crustacea meat refrigeration;
- (8) pasteurizing or thermal processing;
- (9) machine picking;
- (10) repacking; and
- (11) other processes when carried out in conjunction with the cooking of crustacea or crustacea meat.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Amended Eff. April 1, 1997;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0160 RAW CRUSTACEA RECEIVING AND REFRIGERATION

(a) Only fresh crustacea shall be accepted for processing.

(b) Within two hours of receipt at the facility, crustacea shall be cooked or placed in a refrigerated area maintaining a temperature of 50° F (10° C) or below.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0163 COOKED CRUSTACEA REFRIGERATION

(a) The cooked crustacea cooler shall be large enough to store all cooked crustacea and maintain a minimum temperature of 40° F (4.4° C). The cooler shall open directly into the picking room or into a clean, enclosed area leading into the picking room.

(b) Cooked crustacea shall be stored at a temperature between 33° F (0.5° C) and 40° F (4.4° C) ambient air temperature if not immediately processed. The cooler shall be equipped with an accurate, operating thermometer.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0167 DELIVERY WINDOW OR SHELF

A delivery window or a non-corrosive shelf shall be provided between the picking room and packing room or area. The delivery window shall be equipped with a shelf completely covered with smooth, non-corrosive metal or other material approved by the Division of Marine Fisheries and sloped to drain towards the picking room.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0169 FREEZING

- (a) If crustacea or crustacea meat is to be frozen, the code date shall be followed by the letter "F."
- (b) Frozen crustacea or crustacea meat shall be stored at a temperature of 0° F (-18° C) or less.
- (c) The frozen storage rooms shall be equipped with an accurate, operating thermometer.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Amended Eff. August 1, 2002; April 1, 1997;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0170 SHIPPING

Cooked crustacea and crustacea meat shall be shipped between 33° F (0.5° C) and 40° F (4.4° C). Frozen crustacea products shall be shipped at 0° F (-18° C) or below.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0171 WHOLE CRUSTACEA OR CRUSTACEA PRODUCTS

Whole crustacea, claws, or any other crustacea products shall be prepared, packaged, and labeled in accordance with the rules of this Section.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0172 COOKED CLAW SHIPPING CONDITIONS

- (a) Vehicles used to transport cooked claws shall be mechanically refrigerated, enclosed, tightly constructed, kept clean, and equipped with an operating thermometer.
- (b) Cooked crab claws shall be stored and transported between 33° F (0.5° C) and 40° F (4.4° C) ambient air temperature.
- (c) All vehicles shall be approved by the Division of Marine Fisheries prior to use.
- (d) Cooked claw shipping containers shall be marked for intended use, cleaned, and sanitized prior to use and shall meet the requirements in Rule .0156 of this Section.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0179 RECALL PROCEDURE

Each owner of a cooked crustacea or crustacea meat facility or repacker facility shall keep on file a written product recall procedure. A copy of this recall procedure shall be provided to the Division of Marine Fisheries.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0180 SAMPLING AND TESTING

Samples of cooked crustacea or crustacea meat may be taken and examined by the Division of Marine Fisheries at any time or place. Samples of cooked crustacea or crustacea meat shall be furnished by the owner or operator of facilities, trucks, carriers, stores, restaurants, and other places where cooked crustacea or crustacea meat are sold.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0188 HAZARD ANALYSIS

Each dealer shall conduct a hazard analysis to determine the food safety hazards that are reasonably likely to occur for each kind of crustacea or crustacea meat product processed by that dealer and to identify the preventative measures that the dealer can apply to control those hazards.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. August 1, 2000;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0189 HACCP PLAN

Each dealer shall have and implement a written HACCP plan. The owner or authorized designee shall sign the plan when implemented and after any modification. The plan shall be reviewed at least annually and updated if necessary. The plan shall, at a minimum:

- (1) list the food safety hazards that are reasonably likely to occur;
- (2) list the critical control points for each of the food safety hazards;
- (3) list the critical limits that must be met for each of the critical control points;
- (4) list the procedures, and frequency thereof, that will be used to monitor each of the critical control points to ensure compliance with the critical limits;
- (5) list any corrective action plans to be followed in response to deviations from critical limits at critical control points;
- (6) provide a record keeping system that documents critical control point monitoring; and
- (7) list the verification procedures, and frequency thereof, that the dealer will use.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. August 1, 2000;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0190 SANITATION MONITORING REQUIREMENTS

Each dealer shall monitor, at a minimum, the following sanitation items:

- (1) safety of water;
- (2) condition and cleanliness of food contact surfaces;
- (3) prevention of cross contamination;
- (4) maintenance of hand washing, hand sanitizing, and toilet facilities;
- (5) protection of crustacea or crustacea meat, crustacea or crustacea meat packaging materials, and food contact surfaces from adulteration;
- (6) proper labeling, storage, and use of toxic compounds;
- (7) control of employees with adverse health conditions; and
- (8) exclusion of pests from the facility.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. August 1, 2000;*

Readopted Eff. May 1, 2021.

SECTION .0400 – SANITATION OF SHELLFISH - GENERAL OPERATION STANDARDS

15A NCAC 18A .0431 STANDARDS FOR AN APPROVED SHELLFISH GROWING AREA

*History Note: Authority G.S. 130A-230;
Eff. February 1, 1987;
Repealed Eff. May 1, 2021.*

SECTION .0700 – OPERATION OF DEPURATION (MECHANICAL PURIFICATION) FACILITIES

15A NCAC 18A .0704 LABORATORY PROCEDURES

(a) All laboratory analyses used to evaluate the effectiveness of the depuration process shall be performed by a laboratory found by a Food and Drug Administration (FDA) Shellfish Laboratory Evaluation Officer or by an FDA-certified State Shellfish Laboratory Evaluation Officer to conform or provisionally conform to the requirements established under the National Shellfish Sanitation Program (NSSP).

(b) All methods for the analysis of depuration process water and shellfish that are used to evaluate the effectiveness of the depuration process shall be cited in the latest edition of the NSSP Guide for the Control of Molluscan Shellfish, Section IV: Guidance Documents, subsection Approved NSSP Laboratory Tests, which is incorporated by reference, including subsequent amendments and editions, and available at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp> at no cost, or validated for use by the NSSP under the Constitution, Bylaws and Procedures of the Interstate Shellfish Sanitation Conference, which is incorporated by reference, including subsequent amendments and editions, and available at <https://www.issc.org/constitution-bylaws-procedures>, at no cost. If there is an immediate or ongoing critical need for a method and no method approved for use within the NSSP exists, the following may be used:

- (1) a validated Association of Analytical Communities, Bacteriological Analysis Manual, or Environmental Protection Agency method; or
- (2) an Emergency Use Method as set forth in the latest approved edition of the NSSP Guide for the Control of Molluscan Shellfish.

(c) The laboratory shall conduct examinations of depuration process water and shellfish and conduct special examinations if necessary or required, in accordance with Rules .0706 through .0709 of this Section.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. February 1, 1987;
Amended Eff. September 1, 1991; September 1, 1990;
Readopted Eff. May 1, 2021.*

SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS

15A NCAC 18A .0901 DEFINITIONS

The following definitions shall apply to this Section.

- (1) "Approved" means shellfish growing waters determined suitable by the Division for the harvesting of shellfish for direct market purposes.
- (2) "Closed-system marina" means a marina constructed in canals, basins, tributaries, or any other area with restricted tidal flow.
- (3) "Colony forming unit" means an estimate of the number of viable bacteria cells in a sample as determined by a plate count.
- (4) "Commercial marina" means a marina that offers one or more of the following services: fuel, transient dockage, haul-out facilities, or repair services.
- (5) "Conditionally approved" means shellfish growing waters that are subject to predictable intermittent pollution but that may be used for harvesting shellfish for direct market purposes when management plan criteria are met.
- (6) "Division" means the Division of Marine Fisheries or its authorized agent.
- (7) "Estimated 90th percentile" means a statistic that measures the variability in a sample set that shall be calculated by:
 - (a) calculating the arithmetic mean and standard deviation of the sample result logarithms (base 10);
 - (b) multiplying the standard deviation in Sub-Item (a) of this Item by 1.28;
 - (c) adding the product from Sub-Item (b) of this Item to the arithmetic mean; and

- (d) taking the antilog (base 10) of the results from Sub-Item (c) of this Item to determine the estimated 90th percentile.
- (8) "Fecal coliform" means bacteria of the coliform group that will produce gas from lactose in a multiple tube procedure liquid medium (EC or A-1) within 24 plus or minus two hours at 44.5° C plus or minus 0.2° C in a water bath.
- (9) "Geometric mean" means the antilog (base 10) of the arithmetic mean of the sample result logarithm.
- (10) "Marina" means any water area with a structure (such as a dock, basin, floating dock) that is utilized for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than 10 boats.
- (11) "Marine biotoxins" means any poisonous compound produced by marine microorganisms and accumulated by shellstock.
- (12) "Median" means the middle number in a given sequence of numbers, taken as the average of the two middle numbers when the sequence has an even number of numbers.
- (13) "Most probable number (MPN)" means a statistical estimate of the number of bacteria per unit volume and is determined from the number of positive results in a series of fermentation tubes.
- (14) "National Shellfish Sanitation Program (NSSP)" means the cooperative federal-state-industry program for the sanitary control of shellfish that is adequate to ensure that the shellfish produced in accordance with the NSSP Guide For The Control Of Molluscan Shellfish will be safe and sanitary.
- (15) "Open-system marina" means a marina constructed in an area where tidal currents have not been impeded by natural or man-made barriers.
- (16) "Private marina" means any marina that is not a commercial marina as defined in this Rule.
- (17) "Prohibited" means shellfish growing waters unsuitable for the harvesting of shellfish for direct market purposes.
- (18) "Public health emergency" means any condition that may immediately cause shellfish waters to be unsafe for the harvest of shellfish for human consumption.
- (19) "Restricted" means shellfish growing waters from which shellfish may be harvested only by permit and are subjected to a treatment process through relaying or depuration that renders the shellfish safe for human consumption.
- (20) "Sanitary survey" means the written evaluation of factors that affect the sanitary quality of a shellfish growing area including sources of pollution, the effects of wind, tides, and currents in the distribution and dilution of polluting materials, and the bacteriological quality of water.
- (21) "Shellfish" means the term as defined in G.S. 113-129, except the term shall not include scallops when the final product is the shucked adductor muscle only.
- (22) "Shellfish growing area" means a management unit that defines the boundaries of a sanitary survey and that is used to track the location where shellfish are harvested.
- (23) "Shellfish growing waters" means marine or estuarine waters that support or could support shellfish life.
- (24) "Shellstock" means live molluscan shellfish in the shell.
- (25) "Shoreline survey" means an in-field inspection by the Division to identify and evaluate any potential or actual pollution sources or other environmental factors that may impact the sanitary quality of a shellfish growing area.
- (26) "Systematic random sampling strategy" means a sampling strategy designed to assess the bacteriological water quality of shellfish growing waters impacted by non-point sources of pollution and scheduled sufficiently far in advance to support random collection with respect to environmental conditions.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. June 1, 1989;
Amended Eff. August 1, 1998; February 1, 1997; September 1, 1990;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0902 CLASSIFICATION OF SHELLFISH GROWING WATERS

(a) All shellfish growing waters shall be classified by the Division of Marine Fisheries as to their suitability for shellfish harvesting. Shellfish growing waters shall be designated with one of the following classifications:

- (1) approved;
- (2) conditionally approved;
- (3) restricted; or
- (4) prohibited.

(b) Maps showing the classification of shellfish growing waters shall be maintained by the Division.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. June 1, 1989;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0903 SANITARY SURVEY

(a) Shellfish growing waters shall be divided into shellfish growing areas by the Division of Marine Fisheries. Maps showing the boundaries of these shellfish growing areas shall be maintained by the Division and can be found at: <https://deq.nc.gov/polluted-area-proclamations>.

(b) Except in shellfish growing areas where all shellfish growing waters are classified as prohibited, the Division shall complete a sanitary survey report for each shellfish growing area at least once every three years.

(c) A sanitary survey report shall include the following:

- (1) a shoreline survey.
- (2) an evaluation of meteorological, hydrodynamic, and geographic factors that may affect distribution of pollutants.
- (3) a microbiological survey to assess water quality. A microbiological survey shall include the collection of water samples and their analysis for fecal coliforms. The number and location of sampling stations shall be selected to produce the data necessary to effectively evaluate all point and non-point pollution sources identified during the shoreline survey. A minimum of six samples shall be collected annually from each designated sampling station.
- (4) a determination of the appropriate classification for all shellfish growing waters within the shellfish growing area in accordance with Rule .0902 of this Section.

(d) A sanitary survey report shall be required to designate any portion of a shellfish growing area with a classification other than prohibited, or for a reclassification from:

- (1) prohibited to any other classification;
- (2) restricted to conditionally approved or approved; or
- (3) conditionally approved to approved.

All other reclassifications may be made without a sanitary survey.

(e) In each calendar year that a shellfish growing area is not evaluated with a sanitary survey, a written annual evaluation report shall be completed by the Division and shall include the following:

- (1) a microbiological survey to assess water quality as set forth in Subparagraph (c)(3) of this Rule.
- (2) an evaluation of changes in pollution source impacts that may affect the classifications of the shellfish growing area.

If the annual evaluation determines conditions have changed and a classification for shellfish growing waters is incorrect, the Division shall initiate action to reclassify the shellfish growing waters in accordance with Rule .0902 of this Section.

(f) Sanitary survey reports and annual evaluation reports shall be maintained by the Division.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. June 1, 1989;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0904 APPROVED WATERS

Shellfish growing waters classified as approved for shellfish harvesting shall meet the following criteria as indicated by a sanitary survey, as set forth in Rule .0903 of this Section:

- (1) the shoreline survey indicates there are no significant point sources of pollution;
- (2) the area is not contaminated with fecal material, pathogenic microorganisms, poisonous or deleterious substances, or marine biotoxins that may render consumption of the shellfish hazardous; and
- (3) the microbiological survey, as set forth in Rule .0903(c)(3) of this Section, indicates the bacteriological water quality does not exceed the following standards based on results generated using the systematic random sampling strategy:
 - (a) a median fecal coliform most probable number (MPN) or geometric mean MPN of 14 per 100 milliliters;
 - (b) a median fecal coliform colony-forming units (CFU) or geometric mean CFU of 14 per 100 milliliters;
 - (c) an estimated 90th percentile of 43 MPN per 100 milliliters for a five-tube decimal dilution test; or
 - (d) an estimated 90th percentile of 31 CFU per 100 milliliters for a membrane filter membrane-Thermotolerant *Escherichia coli* (mTEC) test.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. June 1, 1989;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0905 CONDITIONALLY APPROVED WATERS

(a) Shellfish growing waters may be classified as conditionally approved if the Division of Marine Fisheries determines the following:

- (1) the sanitary survey indicates the shellfish growing waters will not meet the approved waters classification criteria as set forth in Rule .0904 of this Section under all conditions, but will meet those criteria under certain conditions;

- (2) the conditions when the shellfish growing waters will meet the approved waters classification criteria are known and predictable;
- (3) the public bottom within those shellfish growing waters support a population of harvestable shellfish; and
- (4) staff are available to carry out the requirements defined in the management plan, as set forth in Paragraph (b) of this Rule.

(b) A written management plan shall be developed by the Division for conditionally approved areas. This plan shall define the conditions under which the shellfish growing waters may be open to the harvest of shellfish. If the conditions defined in the management plan are not met, the Division shall immediately close the shellfish growing waters to shellfish harvesting.

(c) All conditionally approved growing waters shall be re-evaluated on an annual basis. A written report summarizing this re-evaluation shall be produced and shall include the following:

- (1) an evaluation of compliance with management plan criteria;
- (2) a review of the cooperation of all persons involved;
- (3) an evaluation of bacteriological water quality in the growing waters with respect to the standards for the classification; and
- (4) an evaluation of critical pollution sources.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. June 1, 1989;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0906 RESTRICTED AREAS

(a) Shellfish growing waters may be classified as restricted if:

- (1) a sanitary survey indicates there are no significant point sources of pollution; and
- (2) levels of fecal pollution, human pathogens, or poisonous or deleterious substances are at such levels that shellstock can be made safe for human consumption by either relaying or depuration.

(b) Relaying of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and 15A NCAC 18A .0300.

(c) Depuration of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and 15A NCAC 18A .0300 and .0700.

(d) For shellfish growing waters classified as restricted and used as a source of shellstock for depuration, the microbiological survey, as set forth in Rule .0903(c)(3) of this Section, shall indicate the bacteriological water quality does not exceed the following standards based on results generated using the systematic random sampling strategy:

- (1) a median fecal coliform most probable number (MPN) or geometric mean MPN of 88 per 100 milliliters;
- (2) a median fecal coliform colony-forming units (CFU) or geometric mean CFU of 88 per 100 milliliters;
- (3) an estimated 90th percentile of 260 MPN per 100 milliliters for a five-tube decimal dilution test; or
- (4) an estimated 90th percentile of 163 CFU per 100 milliliters for a membrane filter membrane-Thermotolerant Escherichia coli (mTEC) test.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. June 1, 1989;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0907 PROHIBITED WATERS

Shellfish growing waters shall be classified as prohibited if:

- (1) no current sanitary survey, as set forth in Rule .0903 of this Section, exists for the growing area; or
- (2) the sanitary survey determines:
 - (a) the shellfish growing waters are adjacent to a sewage treatment plant outfall or other point source outfall with public health significance; or
 - (b) the shellfish growing waters are contaminated with fecal material, pathogenic microorganisms, poisonous or deleterious substances, or marine biotoxins that render consumption of shellfish from those growing waters hazardous.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. June 1, 1989;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0908 UNSURVEYED AREAS

*History Note: Authority G.S. 130A-230;
Eff. June 1, 1989;
Repealed Eff. May 1, 2021.*

15A NCAC 18A .0909 BUFFER ZONES

(a) The Division of Marine Fisheries shall establish a buffer zone around the following:

- (1) marinas, in accordance with Rule .0911 of this Section; and
- (2) wastewater treatment plant outfalls or other point source outfalls determined to be of public health significance, in accordance with the latest approved edition of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, Section II: Model Ordinance, Chapter IV: Shellstock Growing Areas, which is incorporated by reference, including subsequent amendments and editions, and available at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp> at no cost.

(b) Buffer zones shall be classified as prohibited.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. June 1, 1989;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0910 RECLASSIFICATION

*History Note: Authority G.S. 130A-230;
Eff. June 1, 1989;
Repealed Eff. May 1, 2021.*

15A NCAC 18A .0913 PUBLIC HEALTH EMERGENCY

(a) The Division of Marine Fisheries shall immediately close any potentially impacted shellfish growing waters to the harvesting of shellfish in the event of a public health emergency.

(b) The Division may re-open shellfish growing waters if the condition causing the public health emergency no longer exists and shellfish have had time to purify naturally from possible contamination.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. June 1, 1989;
Readopted Eff. May 1, 2021.*

15A NCAC 18A .0914 LABORATORY PROCEDURES

(a) All laboratory analyses used for the evaluation of shellfish growing areas shall be performed by a laboratory found by a Food and Drug Administration (FDA) Shellfish Laboratory Evaluation Officer or by an FDA-certified State Shellfish Laboratory Evaluation Officer to conform or provisionally conform to the requirements established under the National Shellfish Sanitation Program (NSSP).

(b) All methods for the analysis of shellfish and shellfish growing waters that are used for the evaluation of shellfish growing areas shall be cited in the latest edition of the NSSP Guide for the Control of Molluscan Shellfish, Section IV: Guidance Documents, subsection Approved NSSP Laboratory Tests, which is incorporated by reference, including subsequent amendments and editions, and available at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp> at no cost, or validated for use by the NSSP under the Constitution, Bylaws and Procedures of the Interstate Shellfish Sanitation Conference, which is incorporated by reference, including subsequent amendments and editions, and available at <https://www.issc.org/constitution-bylaws-procedures>, at no cost. If there is an immediate or ongoing critical need for a method and no method approved for use within the NSSP exists, the following may be used:

- (1) a validated Association of Analytical Communities, Bacteriological Analysis Manual, or Environmental Protection Agency method; or
- (2) an Emergency Use Method as set forth in the latest approved edition of the NSSP Guide for the Control of Molluscan Shellfish.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. June 1, 1989;*

*Amended Eff. September 1, 1991; September 1, 1990;
Readopted Eff. May 1, 2021.*

SECTION .3400 – COASTAL RECREATIONAL WATERS MONITORING, EVALUATION, AND NOTIFICATION

15A NCAC 18A .3401 DEFINITIONS

The following definitions shall apply to this Section:

- (1) "Division" means the Division of Marine Fisheries or its authorized agent.
- (2) "Enterococcus" means a gram positive coccoid-shaped bacteria that is found in the intestinal tracts of warm-blooded animals that include *Enterococcus faecalis*, *Enterococcus faecium*, *Enterococcus avium*, and *Enterococcus gallinarum*.
- (3) "Geometric mean" means the mean of "n" positive numbers obtained by taking the "nth" root of the product of the numbers with at least five samples collected within a 30-day period.
- (4) "Pending swimming advisory" means a notification to the public that recommends no primary contact with the water in a designated swimming area when bacteriological limits are exceeded, but does not close a swimming area to the public. A pending swimming advisory shall include a public notification via social media release to notify the public of the risks of swimming in the area. A pending swimming advisory shall be followed by a resample that will determine if a swimming advisory will be issued.
- (5) "Point source discharge" means the discharge of liquids through a pipe, drain, ditch, or other conveyance into a swimming area.
- (6) "Primary contact" means an activity in water in which a person's head is partially or completely submerged.
- (7) "Resample" means a water sample that is collected by the Division of Marine Fisheries or its authorized agent after the results of the initial water sample collected are processed by the Division and the results are analyzed by the Division.
- (8) "Storm water discharge" means any natural or manmade conveyance of rainwater or the resultant runoff into coastal recreational waters.
- (9) "Swimming advisory" means a notification to the public that recommends no primary contact with the water in a designated swimming area when bacteriological limits are exceeded, but does not close a swimming area to the public. A swimming advisory shall include a sign posted at the site of the advisory and a public notification via social media and news release to notify the public of the risks of swimming in the area.
- (10) "Swimming area" means a coastal recreation area that is used for primary contact located within waters classified by the Division of Water Resources as SC, SA, or SB as set forth in 15A NCAC 02B .0220 through .0222, and is hereby incorporated by reference including subsequent amendments.
- (11) "Swimming season" means from April 1 through October 31 of each year.
- (12) "Tier I swimming area" means a swimming area used daily during the swimming season, including all oceanfront beaches that are monitored by the Division.
- (13) "Tier II swimming area" means a swimming area that is not used daily during the swimming season.

*History Note: Authority G.S. 113-134; 113-221.3; 143B-289.52;
Eff. February 1, 2004;
Readopted Eff. April 1, 2021.*

15A NCAC 18A .3402 BACTERIOLOGICAL LIMITS FOR SWIMMING AREAS

- (a) The enterococcus level in a Tier I swimming area shall not equal or exceed either:
 - (1) a geometric mean of 35 enterococci per 100 milliliters of water; or
 - (2) a single sample of 104 enterococci per 100 milliliters of water.
- (b) The enterococcus level in a Tier II swimming area shall not equal or exceed a single sample of 104 enterococci per 100 milliliters of water.

*History Note: Authority G.S. 113-134; 113-221.3; 143B-289.52;
Eff. February 1, 2004;
Readopted Eff. April 1, 2021.*

15A NCAC 18A .3403 PUBLIC NOTICE OF INCREASED HEALTH RISKS IN SWIMMING AREAS

(a) Tier I Swimming areas:

- (1) A pending swimming advisory shall be issued by the Division of Marine Fisheries if a water sample from a swimming area is equal to or exceeds the bacteriological limit set forth in Rule .3402(a)(2) of this Section during the swimming season.
- (2) A swimming advisory shall be issued by the Division if either of the following standards are exceeded during the swimming season:
 - (A) Both the initial water sample and resample collected from a swimming area are equal to or exceed the bacteriological limit set forth in Rule .3402(a)(2) of this Section; or
 - (B) The most recent five water samples collected within a 30-day period from a swimming area are equal to or exceed the bacteriological limit set forth in Rule .3402(a)(1) of this Section.

(b) Tier II swimming areas:

- (1) A pending swimming advisory shall be issued by the Division if a water sample from a swimming area is equal to or exceeds the bacteriological limit set forth in Rule .3402(a)(2) of this Section during the swimming season.
- (2) A swimming advisory shall be issued by the Division if both the initial water sample and resample collected from a swimming area are equal to or exceed the bacteriological limit set forth in Rule .3402(a)(2) of this Section during the swimming season.

(c) Signs posted pursuant to this Section shall be placed or erected in open view where the public may see the sign prior to entering the water.

(d) Signs shall state the following:

ATTENTION: SWIMMING IN THIS AREA IS NOT RECOMMENDED. BACTERIA TESTING INDICATES LEVELS OF CONTAMINATION THAT MAY BE HAZARDOUS TO YOUR HEALTH. THIS ADVISORY AFFECTS WATERS WITHIN 200' OF THIS SIGN. OFFICE OF THE STATE HEALTH DIRECTOR.

*History Note: Authority G.S. 113-134; 113-221.3; 143B-289.52;
Eff. February 1, 2004;
Readopted Eff. April 1, 2021.*

15A NCAC 18A .3404 SWIMMING ADVISORIES FOR POINT SOURCE DISCHARGES INTO SWIMMING AREAS

(a) The Division of Marine Fisheries shall post at least one sign at a wastewater treatment plant that discharges into swimming waters, which shall stay posted until the discharge is removed. The sign for a wastewater treatment plant discharge shall state the following:

WARNING! SEWAGE TREATMENT EFFLUENT DISCHARGE SITE. SWIMMING IS NOT ADVISED IN THESE WATERS BECAUSE OF THE INCREASED RISK OF ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.

(b) A swimming advisory shall be issued by the Division and at least one sign shall be posted at the public access to swimming waters that have been impacted by a wastewater system failure. The sign for waters impacted by a wastewater spill shall state the following:

WARNING! WASTEWATER SPILL. SWIMMING IS NOT ADVISED IN THESE WATERS BECAUSE OF THE INCREASED RISK OF ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.

(c) A swimming advisory shall be issued by the Division and at least one sign shall be posted at a storm drain or pipe or storm water discharge that is discharging into a Tier 1 swimming area. A sign shall be placed to advise the public as they enter the area impacted by the storm drain or pipe or storm water discharge. For dry weather discharges, the sign shall state the following:

WARNING! STORM WATER DISCHARGE AREA. SWIMMING WITHIN 200 YARDS OF THIS SIGN MAY INCREASE THE RISKS OF WATERBORNE ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.

For wet weather discharges, the sign shall state the following:

WARNING! STORM WATER DISCHARGE AREA. WATERS MAY BE CONTAMINATED BY DISCHARGE FROM PIPE. SWIMMING IS NOT RECOMMENDED WITHIN 200 YARDS OF THIS SIGN DURING ACTIVE DISCHARGE. FOR MORE INFORMATION, CALL 252-726-6827. OFFICE OF THE STATE HEALTH DIRECTOR.

(d) A swimming advisory shall be issued by the Division and at least two signs shall be posted at a storm drain or pipe where flood waters are being pumped into a swimming area. The signs shall state the following:

SWIMMING IS NOT RECOMMENDED BETWEEN SIGNS. WATERS MAY BE CONTAMINATED BY DISCHARGE FROM PIPE. OFFICE OF THE STATE HEALTH DIRECTOR.

(e) A swimming advisory shall be issued by the Division and at least two signs shall be posted at an area receiving dredge material on a swimming beach if the dredge material is being pumped from an area closed to shellfish harvesting. The signs shall state the following:

SWIMMING IS NOT RECOMMENDED BETWEEN SIGNS. WATERS MAY BE CONTAMINATED BY DISCHARGE FROM PIPE. OFFICE OF THE STATE HEALTH DIRECTOR.

History Note: Authority G.S. 113-134; 113-221.3; 143B-289.52;

Eff. January 1, 2004;
Readopted Eff. April 1, 2021.

15A NCAC 18A .3405 RESCINDING A PENDING SWIMMING ADVISORY OR SWIMMING ADVISORY

- (a) A pending swimming advisory shall be rescinded by the Division of Marine Fisheries via social media release when the resample collected meets the bacteriological limit set forth in Rule .3402(a)(2) of this Section.
- (b) A Tier I swimming area advisory shall be rescinded by the Division via social media and news release, including the removal of signs, when both of the following conditions are met:
- (1) the geometric mean has met the bacteriological limit set forth in Rule .3402(a)(1) of this Section; and
 - (2) two consecutive weekly water samples meet the bacteriological limit set forth in Rule .3402(a)(2) of this Section.
- (c) A Tier II swimming area advisory shall be rescinded by the Division via social media and news release, including the removal of signs, after water samples meet the bacteriological limit set forth in Rule .3402(b) of this Section.
- (d) A swimming advisory resulting from a flood water discharge or the discharge of dredge material shall be rescinded by the Division via social media and news release, including the removal of signs, 24 hours after the discharge has ceased, to allow for tidal dispersion.
- (e) A swimming advisory resulting from a wastewater system failure shall be rescinded by the Division via social media and news release, including the removal of signs, when failure has been corrected and water samples collected meet the bacteriological limit set forth in Rule .3402(a)(2) of this Section.

History Note: Authority G.S. 113-134; 113-221.3; 143B-289.52;
Eff. January 1, 2004;
Readopted Eff. April 1, 2021.

15A NCAC 18A .3406 DESTRUCTION OF SIGNS
15A NCAC 18A .3407 APPLICABILITY OF RULES

History Note: Authority G.S. 130A-233.1;
Eff. January 1, 2004;
Repealed Eff. April 1, 2021.

INDEX

A “♦” symbol is used in the index of the rulebook as a visual sign to alert readers there may be a public notice, or proclamation, for a subject. The Marine Fisheries Commission has the authority to delegate to the Fisheries Director the ability to issue proclamations, suspending or implementing particular commission rules that may be affected by variable conditions. For example, the index entry “species, sheepshead♦” indicates there may be a proclamation outlining harvest restrictions or other information for that species. Proclamations are not included in the rulebook because they change frequently.

Go to <http://portal.ncdenr.org/web/mf/proclamations> to view proclamations and learn about the restrictions. If you do not have Internet access, please call 252-726-7021 or 800-682-2632 to find out how to receive proclamation information. It is imperative that persons affected by proclamations keep themselves informed.

Please note: entries for fishing gear and equipment are listed alphabetically under the heading “gear.” **Other major headings** in the index include “lease,” “license,” “permit,” and “species.” For example, to look up information about a shellfish lease, see “lease, shellfish.”

B

- bacteriological standards
 - swimming areas, recreational17
- boundaries
 - nursery areas
 - secondary3
 - special secondary5
 - sanctuaries
 - oyster6
- buffer zones.....16

C

- certificate
 - death2
- colony forming unit, definition12
- crustacean
 - processing requirements
 - general.....8, 9, 10
 - recall.....11
 - sampling11

D

- discharge
 - point source, definition17
 - storm water, definition.....17
- Division (of Marine Fisheries)
 - definition12, 17

E

- enterococcus, definition17
- estimated 90th percentile, definition12

F

- fecal coliform, definition 13

G

- geometric mean, definition 13, 17

H

- harvest area classifications, shellfish 13
 - approved..... 12, 14
 - conditionally approved..... 12, 14
 - prohibited 13, 15
 - restricted..... 13, 15

L

- labeling
 - crustacean
 - claw.....10
- laboratory procedures 12, 16

license

- Commercial Fishing Vessel Registration
 - transfer 1
- Land Flounder from the Atlantic Ocean
 - transfer 1
- landings history, transfer2
- Retired Standard Commercial Fishing
 - transfer 1
- Standard Commercial Fishing
 - transfer 1
- transfer 1
 - landings history2

◆ = go to <http://portal.ncdenr.org/web/mf/proclamations> to check for proclamations

M

marina
 closed system, definition12
 commercial, definition.....12
 definition13
 open system, definition.....13
 private, definition13
 marine biotoxin, definition.....13
 median, definition13
 most probable number (MPN), definition.....13

N

National Shellfish Sanitation Program (NSSP), definition13
 nursery area
 secondary.....3
 special secondary.....5

P

permit
 crustacea, cooking, processing, and repacking
 record keeping11
 primary contact (with water), swimming, definition.....17
 public health emergency16
 definition13
 public health notices, swimming..... 18, 19

R

resample, definition17

S

sanctuaries
 oyster6

shellfish
 definition 13
 growing area, definition 13
 growing waters 14, 15
 definition..... 13
 harvest area classifications ..*See* harvest area classifications,
 shellfish
 shellstock, definition..... 13

species

oyster
 sanctuaries.....6
 tarpon 1

survey

sanitary 13, 14
 shoreline, definition..... 13

swimming

advisory, definition 17
 area, definition..... 17
 pending (swimming) advisory, definition 17
 season, definition..... 17
 tier areas, definition..... 17

swimming areas

bacteriological standards 17
 point source advisories 18
 public health notices..... 18, 19
 resample, definition 17
 systematic random sampling strategy, definition..... 13

T

temperature

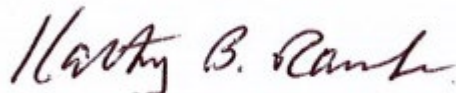
storage
 crustacean, cooked 9, 10

THE ORIGINAL AND OFFICIAL COPY OF TITLE 15A,
CHAPTER 03 AND SUBCHAPTER 18A OF THE N.C.
ADMINISTRATIVE CODE ARE ON FILE IN THE OFFICE OF
ADMINISTRATIVE HEARINGS AND ARE AVAILABLE FOR
PUBLIC INSPECTION DURING NORMAL WORKING HOURS.

THIS DOCUMENT IS AVAILABLE FROM:
N.C. DIVISION OF MARINE FISHERIES
P.O. BOX 769
3441 ARENDELL STREET
MOREHEAD CITY, NC 28557
1-800-682-2632 or 252-726-7021
<http://portal.ncdenr.org/web/mf>

CERTIFICATION

PURSUANT TO G.S. 113-221 (B) AND G.S. 113-221 (G), THIS IS TO
CERTIFY THAT THE PRECEDING “NORTH CAROLINA MARINE
FISHERIES COMMISSION RULES APRIL 1, 2020, SUPPLEMENT - MAY
1, 2021” IS THE OFFICIAL CODIFICATION OF THE RULES OF THE N.C.
MARINE FISHERIES COMMISSION EFFECTIVE AS OF MAY 1, 2021.



KATHY B. RAWLS, DIRECTOR
N.C. DIVISION OF MARINE FISHERIES

N.C. Marine Fisheries Commission 2021-2022 Annual Rulemaking Cycle Package A

May 2021

Time of Year	Action
February-April 2021	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
May 2021	MFC votes on approval of Notice of Text for Rulemaking
August 2021	Publication of proposed rules in the <i>North Carolina Register</i>
August-October 2021	Public comment period held
August 2021	Public hearing held via WebEx
November 2021	MFC votes on approval of permanent rules *
January 2022	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
2022 legislative session	Possible effective date of rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
April 1, 2022	Proposed effective date of rules not subject to legislative review
April 1, 2022	Rulebook supplement available online

* 15A NCAC 03 readoption deadline of June 30, 2022 for final MFC approval

**Rule Impact Analysis for Readoption of 15A NCAC 03 Rules
Pursuant to G.S. 150B-21.3A**

Rule Amendments: 15A NCAC 03I .0108, .0115, .0122
15A NCAC 03J .0103, .0104, .0106, .0111, .0202, .0208, .0401,
.0402

Name of Commission: N.C. Marine Fisheries Commission

Agency Contact: David Dietz, Fisheries Economics Program Manager
N.C. Division of Marine Fisheries
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Impact Summary: State government: No
Local government: No
Federal government: No
Substantial impact: No

Authority:

North Carolina General Statutes

G.S. 113-133.	Abolition of local coastal fishing laws.
G.S. 113-134.	Rules.
G.S. 113-173.	Recreational Commercial Gear License.
G.S. 113-181.	Duties and powers of Department.
G.S. 113-182.	Regulation of fishing and fisheries.
G.S. 113-221.	Rules.
G.S. 113-221.1.	Proclamations: emergency review.
G.S. 113-267.	Replacement costs of marine, estuarine, and wildlife resources; rules authorized; prima facie evidence.
G.S. 143B-289.52.	Marine Fisheries Commission - powers and duties.
G.S. 150B-21.3A.	Periodic review and expiration of existing rules.

I. Necessity:

General Statute 150B-21.3A requires state agencies to review their existing rules every 10 years to determine which rules are still necessary, and to either readopt or repeal each rule as appropriate. The agency proposes for readoption 11 rules in 15A NCAC 03 pursuant to this requirement.

II. Summary

These rules have been reviewed to conform to the requirements of G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules. The proposed readoptions consist of no substantive changes, resulting in no economic impact at any level.

III. Introduction and Purpose of Rule Changes

The purpose of the Marine Fisheries Commission (MFC) is to manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, including commercial and recreational fisheries resources (Chapter 143B, Article 7, Part 5D). As stated above, no changes are proposed for these rules through readoption.

IV. Fiscal Impact Analysis

As all eleven rules proposed for readoption in this analysis are presented with no substantive changes whatsoever, no economic impacts are expected from these readoptions as well.

V. Appendix

Proposed Rules for Readoption

15A NCAC 03I .0108 is proposed for readoption without substantive changes as follows:

15A NCAC 03I .0108 OCEAN FISHING PIERS

(a) It is unlawful to fish with nets of any kind or from boats within the zone adjacent to any ocean fishing pier meeting the requirements of G.S. 113-185(a), if such zone is marked by one of the following methods or a combination of methods:

- (1) Yellow range poles at least three inches in diameter and extending not less than six feet above the surface of the ground, and which are parallel to the pier and identified by signs with the name of the pier printed in letters at least three inches high; or
- (2) Buoys, which shall be yellow in color and not less than nine inches in diameter and extend no less than three feet above the surface of the water.

(b) It is unlawful to define a zone that extends more than 750 feet from the pier. When a marking system defines a smaller area than authorized, the limitations on fishing activities shall apply within the marked zone. When the marking system does not include buoys placed seaward of the pier's offshore end, the zone protected under G.S. 113-185 shall be limited to the areas parallel to the sides of the pier and shall include no area seaward of the offshore end of the pier.

(c) Owners of qualifying ocean piers shall be responsible for complying with all applicable local, state and federal regulations for marking systems.

*History Note: Authority G.S. 113-134; 113-181; 113-182; 143B-289.52;
Eff. January 1, 1991;
Recodified from 15A NCAC 3I .0008 Eff. December 17, 1996;
Readopted Eff. April 1, 2022.*

15A NCAC 03I .0115 is proposed for readoption without substantive changes as follows:

15A NCAC 03I .0115 REPLACEMENT COSTS OF MARINE AND ESTUARINE RESOURCES - FISH

(a) Fish, as used throughout this Rule, is defined in G.S. 113-129(7).

(b) Replacement Costs Distinguished. As it applies to fishes the term "replacement costs" must be distinguished from the "value" of the fish concerned. Except in cases where fish may lawfully be sold on the open market, as with commercially reared species, the monetary value of the specimens cannot be determined easily. The degree of special interest or concern in a particular species by the public, including not only anglers, but conservationists and those to whom the value of fishes is primarily aesthetic, cannot be measured in dollar amounts. The average cost of fish legally taken by anglers including travel and lodging, fishing equipment and bait, excise taxes on equipment, licenses and other fees, may fairly be estimated. This too, however, is a reflection on the value of existing fishery resources rather than a measure of the cost of their replacement. Thus, the relative value of fish species shall be considered only as they may bear on the necessity or desirability of actual replacement.

(c) Determining replacement costs. The replacement costs of species of fishes that have been taken, injured, removed, harmfully altered, damaged, or destroyed shall be determined as follows. The weight of each undersized fish shall be adjusted to the average weight of a fish on the minimum legal size established by the Marine Fisheries Commission for that species. The replacement cost shall be calculated based on the greater of either:

- (1) the cost of propagating and rearing the species in a hatchery and the cost of transporting them to areas of suitable habitat; or
- (2) the average annual ex-vessel value of fish species per pound.

(d) The cost of propagating, rearing and transporting the fish and the average annual ex-vessel value of fish species per pound shall be taken from the Division of Marine Fisheries annual statistical report for the calendar year next preceding the year in which the offense was committed. When the cost of propagating, rearing or transporting a particular species is not available, replacement costs shall be calculated based upon the average annual ex-vessel value of the species. When neither the cost of propagating, rearing or transporting a particular species, nor the average annual ex-vessel value of the species is available, replacement costs shall be determined according to the following factors:

- (1) whether the species is classified as endangered or threatened;
- (2) the relative frequency of occurrence of the species in the state;
- (3) the extent of existing habitat suitable for the species within the state;
- (4) the dependency of the species on unique habitat requirements;
- (5) the cost of improving and maintaining suitable habitat for the species;
- (6) the cost of capturing the species in areas of adequate populations and transplanting them to areas of suitable habitat with low populations;
- (7) the availability of the species and the cost of acquisition for restocking purposes;
- (8) the cost of those species which, when released, have a probability of survival in the wild;

- (9) the ratio between the natural life expectancy of the species and the period of its probable survival when, having been reared in a hatchery, it is released to the wild.

(e) Replacement costs will be assessed for the following fish:

- (1) Alewife (River Herring);
- (2) Amberjacks;
- (3) Anglerfish (Goosefish);
- (4) Bluefish;
- (5) Bonito;
- (6) Butterfish;
- (7) Carp;
- (8) Catfishes;
- (9) Cobia;
- (10) Croaker, Atlantic;
- (11) Cutlassfish, Atlantic;
- (12) Dolphinfish;
- (13) Drum, Black;
- (14) Drum, Red (Channel Bass);
- (15) Eels;
- (16) Flounders;
- (17) Flounders, Fluke;
- (18) Garfish;
- (19) Gizzard Shad;
- (20) Groupers;
- (21) Grunts;
- (22) Hakes;
- (23) Harvestfish;
- (24) Herring, Thread;
- (25) Hickory Shad;
- (26) Hogfish;
- (27) Jacks;
- (28) Kingfishes (Sea Mullet);
- (29) Mackerel, Atlantic;
- (30) Mackerel, King;
- (31) Mackerel, Spanish;
- (32) Menhaden, Atlantic;
- (33) Mullet;
- (34) Perch, White;

- (35) Perch, Yellow;
- (36) Pigfish;
- (37) Pompano;
- (38) Porgies;
- (39) Scup;
- (40) Sea Basses;
- (41) Seatrout, Spotted;
- (42) Shad (American);
- (43) Sharks;
- (44) Sharks, Dogfish;
- (45) Sheepshead;
- (46) Skippers;
- (47) Snappers;
- (48) Spadefish, Atlantic;
- (49) Spot;
- (50) Striped Bass;
- (51) Swellfishes (Puffers);
- (52) Swordfish;
- (53) Tilefish;
- (54) Triggerfish;
- (55) Tuna;
- (56) Wahoo;
- (57) Weakfish (Grey Trout);
- (58) Whiting;
- (59) Wreckfish;
- (60) Unclassified Fish;
- (61) Brown Shrimp;
- (62) Pink Shrimp;
- (63) Rock Shrimp;
- (64) White Shrimp;
- (65) Unclassified Shrimp;
- (66) Clam, Hard;
- (67) Conchs;
- (68) Crabs, Blue, Hard;
- (69) Crabs, Blue, Soft;
- (70) Octopus;
- (71) Oyster;

- (72) Scallop, Bay;
- (73) Scallop, Calico;
- (74) Scallop, Sea;
- (75) Squid;
- (76) Unclassified Shellfish.

(f) Cost of Investigations:

- (1) Factors to be Considered. Upon any investigation required as provided by G.S. 143-215.3(a)(7) or by court order for the purpose of determining the cost of replacement of marine and estuarine resources which have been killed, taken, injured, removed, harmfully altered, damaged, or destroyed, the factors to be considered in determining the cost of the investigation are as follows:
 - (A) the time expended by the employee or employees making the investigation, including travel time between the place of usual employment and the site of the investigation, and the time required in formulating and rendering the report;
 - (B) the cost of service to the state of each employee concerned, including annual salary, hospitalization insurance, and the state's contribution to social security taxes and to the applicable retirement system;
 - (C) subsistence of the investigating personnel, including meals, reasonable gratuities, and lodging away from home, when required;
 - (D) the cost of all necessary transportation;
 - (E) the use or rental of boats and motors, when required;
 - (F) the cost of cleaning or repairing any uniform or clothing that may be damaged, soiled or contaminated by reason of completing the investigation;
 - (G) the cost of necessary telephonic communications;
 - (H) any other expense directly related to and necessitated by the investigation.
- (2) Computation of Costs. In assessing the cost of time expended in completing the investigation, the time expended by each person required to take part in the investigation shall be recorded in hours, the value of which shall be computed according to the ratio between the annual cost of service of the employee and his total annual working hours (2087 hours reduced by holidays, annual leave entitlement, and earned sick leave). Other costs shall be assessed as follows:
 - (A) subsistence: the per diem amount for meals, reasonable gratuities, and lodging away from home, not to exceed the then current maximum per diem for state employees;
 - (B) transportation: total mileage by motor vehicle multiplied by:
 - (i) the then current rate per mile for travel by state-owned vehicle; or
 - (ii) the then current rate per mile for travel by privately owned vehicle, as applicable;
 - (C) boat and motor: ten dollars (\$10.00) per hour;
 - (D) uniform and clothing cleaning and repair: actual cost;
 - (E) telephonic communications: actual cost;

(F) other expenses: actual cost.

*History Note: Authority G.S. 113-134; 113-267; 143B-289.52;
Eff. March 1, 1995;
Recodified from 15A NCAC 3I .0015 Eff. December 17, 1996;
Readopted Eff. April 1, 2022.*

15A NCAC 03I .0122 is proposed for reoption without substantive changes as follows:

15A NCAC 03I .0122 USER CONFLICT RESOLUTION

(a) In order to address user conflicts, the Fisheries Director may, by proclamation, impose any or all of the following restrictions:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify seasons; and
- (5) specify quantity.

This authority may be used based on the Fisheries Director's own findings or on the basis of a valid request in accordance with Paragraph (b) of this Rule. The Fisheries Director shall hold a public meeting in the area of the user conflict prior to issuance of a proclamation based on his or her own findings.

(b) Request for user conflict resolution:

- (1) Any person(s) desiring user conflict resolution may make such request in writing addressed to the Director of the Division of Marine Fisheries, P.O. Box 769, 3441 Arendell St., Morehead City, NC 28557-0769. A request shall contain the following information:
 - (A) a map of the affected area including an inset vicinity map showing the location of the area with detail sufficient to permit on-site identification and location;
 - (B) identification of the user conflict causing a need for user conflict resolution;
 - (C) recommended solution for resolving user conflict; and
 - (D) name and address of the person(s) requesting user conflict resolution.
- (2) Within 90 days of the receipt of the information required in Subparagraph (b)(1) of this Rule, the Fisheries Director shall review the information and determine if user conflict resolution is necessary. If user conflict resolution is not necessary, the Fisheries Director shall deny the request. If user conflict resolution is necessary, the Fisheries Director or designee shall hold a public meeting in the area of the user conflict. The requestor shall present his or her request at the public meeting.
- (3) Following the public meeting as described in Subparagraph (b)(2) of this Rule, the Fisheries Director shall refer the users in the conflict for mediation or deny the request. If the user conflict cannot be resolved through mediation, the Fisheries Director shall submit for approval a proclamation to the Marine Fisheries Commission that addresses the conflict.
- (4) Proclamations issued under this Rule shall suspend appropriate rules or portions of rules under the authority of the Marine Fisheries Commission as specified in the proclamation. The provisions of Rule .0102 of this Section terminating suspension of a rule pending the next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under this Rule.

*History Note: Authority G.S. 113-134; 113-181; 113-182; 113-221.1; 143B-289.52;
Eff. May 1, 2015;
Readopted Eff. April 1, 2022.*

15A NCAC 03J .0103 is proposed for readoption without substantive changes as follows:

15A NCAC 03J .0103 GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS

(a) It is unlawful to use gill nets:

- (1) with a mesh length less than two and one-half inches; and
- (2) in Internal Coastal Waters from April 15 through December 15, with a mesh length five inches or greater and less than five and one-half inches.

(b) The Fisheries Director may, by proclamation, limit or prohibit the use of gill nets or seines in Coastal Fishing Waters, or any portion thereof, or impose any or all of the following restrictions on gill net or seine fishing operations:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods, including:
 - (A) gill net mesh length, but the maximum length specified shall not exceed six and one-half inches in Internal Coastal Waters; and
 - (B) net number and length, but for gill nets with a mesh length four inches or greater, the maximum length specified shall not exceed 2,000 yards per vessel in Internal Coastal Waters regardless of the number of individuals involved; and
- (4) specify season.

(c) It is unlawful to use fixed or stationary gill nets in the Atlantic Ocean, drift gill nets in the Atlantic Ocean for recreational purposes, or any gill nets in Internal Coastal Waters unless nets are marked by attaching to them at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. Gill nets that are not connected together at the top line are considered as individual nets, requiring two buoys at each end of each individual net. Gill nets connected together at the top line are considered as a continuous net requiring two buoys at each end of the continuous net. Any other marking buoys on gill nets used for recreational purposes shall be yellow except one additional buoy, any shade of hot pink in color, constructed as specified in this Paragraph, shall be added at each end of each individual net. Any other marking buoys on gill nets used in commercial fishing operations shall be yellow except that one additional identification buoy of any color or any combination of colors, except any shade of hot pink, may be used at either or both ends. The owner shall be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include owner's last name and initials and if a vessel is used, one of the following:

- (1) owner's N.C. motor boat registration number; or
- (2) owner's U.S. vessel documentation name.

(d) It is unlawful to use gill nets:

- (1) within 200 yards of any flounder or other finfish pound net set with lead and either pound or heart in use, except from August 15 through December 31 in all Coastal Fishing Waters of the Albemarle Sound, including its tributaries to the boundaries between Coastal and Joint Fishing Waters, west of

a line beginning at a point 36° 04.5184' N - 75° 47.9095' W on Powell Point; running southerly to a point 35° 57.2681' N - 75° 48.3999' W on Caroon Point, it is unlawful to use gill nets within 500 yards of any pound net set with lead and either pound or heart in use; and

- (2) from March 1 through October 31 in the Intracoastal Waterway within 150 yards of any railroad or highway bridge.

(e) It is unlawful to use gill nets within 100 feet either side of the center line of the Intracoastal Waterway Channel south of the entrance to the Alligator-Pungo River Canal near Beacon "54" in Alligator River to the South Carolina line, unless such net is used in accordance with the following conditions:

- (1) no more than two gill nets per vessel may be used at any one time;
- (2) any net used must be attended by the fisherman from a vessel who shall at no time be more than 100 yards from either net; and
- (3) any individual setting such nets shall remove them, when necessary, in sufficient time to permit unrestricted vessel navigation.

(f) It is unlawful to use runaround, drift, or other non-stationary gill nets, except as provided in Paragraph (e) of this Rule:

- (1) to block more than two-thirds of any natural or manmade waterway, sound, bay, creek, inlet, or any other body of water; or
- (2) in a location where it will interfere with navigation.

(g) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation in the gill net attended areas designated in 15A NCAC 03R .0112(a).

(h) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation from May 1 through November 30 in the Internal Coastal Waters and Joint Fishing Waters of the state designated in 15A NCAC 03R .0112(b).

(i) It is unlawful for any portion of a gill net with a mesh length five inches or greater to be within 10 feet of any point on the shoreline while set or deployed, unless the net is attended from June through October in Internal Coastal Waters.

(j) For the purpose of this Rule and 15A NCAC 03R .0112, "shoreline" is defined as the mean high water line or marsh line, whichever is more seaward.

*History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. August 1, 1998; March 1, 1996; March 1, 1994; July 1, 1993; September 1, 1991;
Temporary Amendment Eff. October 2, 1999; July 1, 1999; October 22, 1998;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. May 1, 2001;
Amended Eff. April 1, 2016; April 1, 2009; December 1, 2007; September 1, 2005; August 1, 2004;
August 1, 2002;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03J .0104 is proposed for readoption without substantive changes as follows:

15A NCAC 03J .0104 TRAWL NETS

(a) It is unlawful to possess aboard a vessel while using a trawl net in Internal Coastal Waters more than 500 pounds of finfish from December 1 through March 1, and 1,000 pounds of finfish from March 2 through November 30.

(b) It is unlawful to use trawl nets:

- (1) in Internal Coastal Waters from 9:00 p.m. on Friday through 5:00 p.m. on Sunday, except:
 - (A) from December 1 through March 1 from one hour after sunset on Friday to one hour before sunrise on Monday in the areas listed in Subparagraph (b)(5) of this Rule; or
 - (B) for a holder of a Permit for Weekend Trawling for Live Shrimp in accordance with 15A NCAC 03O .0503;
- (2) for the taking of oysters;
- (3) in Albemarle Sound, Currituck Sound, and their tributaries, west of a line beginning on the south shore of Long Point at a point 36° 02.4910' N – 75° 44.2140' W; running southerly to the north shore on Roanoke Island to a point 35° 56.3302' N – 75° 43.1409' W; running northwesterly to Caroon Point to a point 35° 57.2255' N – 75° 48.3324' W;
- (4) in the areas described in 15A NCAC 03R .0106, except that the Fisheries Director may, by proclamation, open the area designated in Item (1) of 15A NCAC 03R .0106 to peeler crab trawling;
- (5) from December 1 through March 1 from one hour after sunset to one hour before sunrise in the following areas:
 - (A) in Pungo River, north of a line beginning on Currituck Point at a point 35° 24.5833' N – 76° 32.3166' W; running southwesterly to Wades Point to a point 35° 23.3062' N – 76° 34.5135' W;
 - (B) in Pamlico River, west of a line beginning on Wades Point at a point 35° 23.3062' N – 76° 34.5135' W; running southwesterly to Fulford Point to a point 35° 19.8667' N – 76° 35.9333' W;
 - (C) in Bay River, west of a line beginning on Bay Point at a point 35° 11.0858' N – 76° 31.6155' W; running southerly to Maw Point to a point 35° 09.0214' N – 76° 32.2593' W;
 - (D) in Neuse River, west of a line beginning on the Minnesott side of the Neuse River Ferry at a point 34° 57.9116' N – 76° 48.2240' W; running southerly to the Cherry Branch side of the Neuse River Ferry to a point 34° 56.3658' N – 76° 48.7110' W; and
 - (E) in New River, all waters upstream of the N.C. Highway 172 Bridge when opened by proclamation; and
- (6) in designated pot areas opened to the use of pots by 15A NCAC 03J .0301(a)(2) and described in 15A NCAC 03R .0107(a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) within an area bound by the shoreline to the depth of six feet.

(c) Mesh sizes for shrimp and crab trawl nets shall meet the requirements of 15A NCAC 03L .0103 and .0202.

- (d) The Fisheries Director may, with prior consent of the Marine Fisheries Commission, by proclamation, require bycatch reduction devices or codend modifications in trawl nets to reduce the catch of finfish that do not meet size limits or are unmarketable as individual foodfish by reason of size.
- (e) It is unlawful to use shrimp trawl nets for recreational purposes unless the trawl net is marked by attaching to the codend (tailbag) one floating buoy, any shade of hot pink in color, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The owner shall be identified on the buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. Such identification shall include owner's last name and initials and, if a vessel is used, one of the following:
- (1) gear owner's current motor boat registration number; or
 - (2) owner's U.S. vessel documentation name.
- (f) It is unlawful to use shrimp trawl nets for the taking of blue crabs in Internal Coastal Waters, except that it shall be permissible to take or possess blue crabs incidental to shrimp trawling in accordance with the following limitations:
- (1) for individuals using shrimp trawl nets authorized by a Recreational Commercial Gear License, 50 blue crabs per day, not to exceed 100 blue crabs if two or more Recreational Commercial Gear License holders are on board the same vessel; and
 - (2) for commercial operations, crabs may be taken incidental to lawful shrimp trawl net operations provided that the weight of the crabs shall not exceed the greater of:
 - (A) 50 percent of the total weight of the combined crab and shrimp catch; or
 - (B) 300 pounds.
- (g) The Fisheries Director may, by proclamation, close any area to trawling for specific time periods in order to secure compliance with this Rule.

History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52;
Eff. February 1, 1991.
Amended Eff. August 1, 1998; May 1, 1997; March 1, 1994; February 1, 1992;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. May 1, 2017; April 1, 2014; April 1, 2009; September 1, 2005; August 1, 2004; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03J .0106 is proposed for readoption without substantive changes as follows:

15A NCAC 03J .0106 CHANNEL NETS

- (a) It is unlawful to use a channel net:
- (1) Until the Fisheries Director specifies by proclamation, time periods and areas for the use of channel nets and other fixed nets for shrimping.
 - (2) Without yellow light reflective tape on the top portion of each staff or stake and on any buoys located at either end of the net.
 - (3) With any portion of the set including boats, anchors, cables, ropes or nets within 50 feet of the center line of the Intracoastal Waterway Channel.
 - (4) In the middle third of any navigation channel marked by Corps of Engineers or U.S. Coast Guard.
 - (5) Unless attended by the fisherman who shall be no more than 50 yards from the net at all times.
- (b) It is unlawful to use or possess aboard a vessel any channel net with a corkline exceeding 40 yards.
- (c) It is unlawful to leave any channel net, channel net buoy, or channel net stakes in coastal fishing waters from December 1 through March 1.
- (d) It is unlawful to use floats or buoys of metallic material for marking a channel net set.
- (e) From March 2 through November 30, cables used in a channel net operation shall, when not attached to the net, be connected together and any attached buoy shall be connected by non-metal line.
- (f) It is unlawful to leave channel net buoys in coastal fishing waters without yellow light reflective tape on each buoy and without the owner's identification being legibly printed on each buoy. Such identification must include one of the following:
- (1) Owner's N.C. motorboat registration number; or
 - (2) Owner's U.S. vessel documentation name; or
 - (3) Owner's last name and initials.
- (g) It is unlawful to use any channel nets, anchors, lines, or buoys in such a manner as to constitute a hazard to navigation.
- (h) It is unlawful to use channel nets for the taking of blue crabs in internal waters, except that it shall be permissible to take or possess blue crabs incidental to channel net operations in accordance with the following limitations:
- (1) Crabs may be taken incidental to lawful channel net operations provided that the weight of the crabs shall not exceed:
 - (A) 50 percent of the total weight of the combined crab and shrimp catch; or
 - (B) 300 pounds, whichever is greater.
 - (2) The Fisheries Director may, by proclamation, close any area to channel net use for specific time periods in order to secure compliance with this Paragraph.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;

Amended Eff. September 1, 2005;

Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03J .0111 is proposed for re adoption without substantive changes as follows:

15A NCAC 03J .0111 FYKE OR HOOP NETS

- (a) It is unlawful to use fyke or hoop nets in coastal fishing waters without:
- (1) the owner's identification being clearly printed on a sign no less than six inches square, securely attached on an outside corner stake of each such net; or
 - (2) each net being marked by attaching a floating buoy to a single net and a buoy on each end of the line connecting multiple (two or more) nets, when stakes are not used. Buoys shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys shall be of any color except yellow or hot pink. The owner shall always be identified on the attached buoy by using engraved buoys or by engraved metal or plastic tags attached to the buoy. Such identification shall include the gear owner's current motorboat registration number and the gear owner's last name and initials.
- (b) It is unlawful to use a fyke or hoop net within 200 yards of any operational pound net set.
- (c) It is unlawful to use a fyke or hoop net within 150 yards of any railroad or highway bridge.

*History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Temporary Adoption Eff. August 1, 2000;
Amended Eff. April 1, 2003; April 1, 2001;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03J .0202 is proposed for readoption without substantive changes as follows:

15A NCAC 03J .0202 ATLANTIC OCEAN

In the Atlantic Ocean:

- (1) It is unlawful to use nets from June 15 through August 15 in the waters of Masonboro Inlet or in the ocean within 300 yards of the beach between Masonboro Inlet and a line running southeasterly through the water tank 34° 13.1500' N - 77° 47.300' W on the northern end of Wrightsville Beach, a distance of 4400 yards parallel with the beach.
- (2) It is unlawful to use trawls within one-half mile of the beach between the Virginia line and Oregon Inlet.
- (3) It is unlawful to use a trawl with a mesh length less than four inches in the main body, three inches in the extension, and one and three-fourths inches in the cod end or tail bag inshore of a line beginning on the western side of Beaufort Inlet Channel at a point 34° 41.3000' N - 76° 40.1333' W; running westerly parallel to and one-half miles from the shore off Salter Path to a point 34° 40.5333' N - 76° 53.7500' W.
- (4) It is unlawful to use trawl nets, including flynets, southwest of the 9960-Y chain 40250 LORAN C line (running offshore in a southeasterly direction) from Cape Hatteras to the North Carolina/South Carolina line except:
 - (A) Shrimp trawls as defined in 15A NCAC 03L .0103;
 - (B) Crab trawls as defined in 15A NCAC 03L .0202; or
 - (C) Flounder trawls as defined in 15A NCAC 03M .0503.
- (5) It is unlawful to possess finfish (including pursuant to 15A NCAC 03M .0102) incidental to shrimp or crab trawl operations from December 1 through March 31 unless the weight of the combined catch of shrimp and crabs exceeds the weight of finfish, except an additional 300 pounds of kingfish (*Menticirrhus*, spp.) may be taken south of Bogue Inlet.
- (6) It is unlawful to use unattended gill nets or block or stop nets in the Atlantic Ocean within 300 yards of the beach from Beaufort Inlet to the South Carolina line from sunset Friday to sunrise Monday from Memorial Day through Labor Day.
- (7) It is unlawful to use gill nets in the Atlantic Ocean with a mesh length greater than seven inches from April 15 through December 15.
- (8) It is unlawful to use shrimp trawls in all waters west of a line beginning at the southeastern tip of Baldhead Island at a point 33° 50.4833' N - 77° 57.4667' W; running southerly in the Atlantic Ocean to a point 33° 46.2667' N - 77° 56.4000' W; from 9:00 P.M. through 5:00 A.M.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996; September 1, 1991;*

Temporary Amendment Eff. December 1, 1997;

Amended Eff. October 1, 2008; August 1, 2004; August 1, 1998;

Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03J .0208 is proposed for reoption without substantive changes as follows:

15A NCAC 03J .0208 NEW RIVER

- (a) It is unlawful to use trawl nets except skimmer trawls upstream of the Highway 172 Bridge over New River.
- (b) It is unlawful to use skimmer trawls upstream of the Highway 172 Bridge over New River from 9:00 P.M. through 5:00 A.M. from August 16 through November 30.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. August 1, 1998;
Amended Eff. May 1, 2015; August 1, 2004;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03J .0401 is proposed for re adoption without substantive changes as follows:

SECTION .0400 - FISHING GEAR

15A NCAC 03J .0401 FISHING GEAR

(a) The Fisheries Director in order to address issues involving user conflicts may, by proclamation, close the areas described in Paragraph (b) of this Rule to the use of specific fishing gear.

(b) It is unlawful to use fishing gear as specified by proclamation at the time and dates specified in the proclamation between the Friday before Easter through December 31 in the following areas when such areas have been closed by proclamation:

- (1) All or part of the Atlantic Ocean, up to one-half mile from the beach;
- (2) Up to one-half mile in all directions of Oregon Inlet;
- (3) Up to one-half mile in all directions of Hatteras Inlet;
- (4) Up to one-half mile in all directions of Ocracoke Inlet;
- (5) Up to one-half mile of the Cape Lookout Rock Jetty;
- (6) Up to one-half mile in all directions of fishing piers open to the public;
- (7) Up to one-half mile in all directions of State Parks;
- (8) Up to one-half mile of marinas as defined by the Coastal Resources Commission.

(c) The Fisheries Director shall specify in the proclamation the boundaries of the closure through the use of maps, legal descriptions, prominent landmarks or other permanent type markers.

(d) The Fisheries Director shall hold a public meeting in the affected area before issuance of proclamations authorized by this Rule.

History Note: Authority G.S. 113-133; 113-134; 113-182; 113-221; 143B-289.52;
Eff. July 1, 1993;
Amended Eff. June 1, 1996; March 1, 1995; October 1, 1993;
Readopted Eff. April 1, 2022.

15A NCAC 03J .0402 is proposed for readoption without substantive changes as follows:

15A NCAC 03J .0402 FISHING GEAR RESTRICTIONS

(a) It is unlawful to use commercial fishing gear in the following areas during dates and times specified for the identified areas:

- (1) Atlantic Ocean - Dare County:
 - (A) Nags Head:
 - (i) Seines and gill nets may not be used from the North Town Limit of Nags Head at Eight Street southward to Gulf Street:
 - (I) From Wednesday through Saturday of the week of the Nags Head Surf Fishing Tournament held during October of each year the week prior to Columbus Day.
 - (II) From November 1 through December 15.
 - (ii) Commercial fishing gear may not be used within 750 feet of licensed fishing piers when open to the public.
 - (B) Oregon Inlet. Seines and gill nets may not be used from the Friday before Easter through December 31:
 - (i) Within one-quarter mile of the beach from the National Park Service Ramp #4 (35° 48.2500' N - 75° 32.7000' W) on Bodie Island to the northern terminus of the Bonner Bridge (35° 46.5000' N - 75° 32.3666' W) on Hwy. 12 over Oregon Inlet.
 - (ii) Within the area known locally as "The Pond", a body of water generally located to the northeast of the northern terminus of the Bonner Bridge.
 - (C) Cape Hatteras (Cape Point). Seines and gill nets may not be used within one-half mile of Cape Point from the Friday before Easter through December 31. The closed area is defined by a circle with a one-half mile radius having the center near Cape Point at a point 35° 12.9000' N - 75° 31.7166' W.
- (2) Atlantic Ocean - Onslow and Pender Counties. Commercial fishing gear may not be used during the time specified for the following areas:
 - (A) Topsail Beach. From January 1 through December 31, that area around Jolly Roger Fishing Pier bordered on the offshore side by a line 750 feet from the end of the pier and on the northeast and southwest by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary.
 - (B) Surf City:
 - (i) From January 1 to June 30, that area around the Surf City Fishing Pier bordered on the offshore side by a line 750 feet from the end of the pier, on the southwest by a line beginning at a point on the beach one-quarter mile from the pier and on

the northeast by a line beginning at a point on the beach 750 feet from the pier extending seaward to intersect the offshore boundaries.

- (ii) From July 1 to December 31, those areas around the pier bordered on the offshore side by a line 750 feet from the end of the pier, on the southwest by a line beginning at a point on the beach 750 feet from the pier and on the northeast by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundaries.

(3) Atlantic Ocean - New Hanover County. Carolina Beach Inlet through Kure Beach. Commercial fishing gear may not be used during the times specified for the following areas:

- (A) From the Friday before Easter to November 30, within the zones adjacent to the Carolina Beach and Kure Beach Fishing Piers bordered on the offshore side by a line 750 feet from the ends of the piers and on the north and south by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary, except the southern boundary for Kure Beach Pier is a line beginning on the beach one mile south of the pier to the offshore boundary for the pier.

(B) From May 1 to November 30, within 900 feet of the beach, from Carolina Beach Inlet to the southern end of Kure Beach with the following exceptions:

- (i) From one-quarter mile north of Carolina Beach Fishing pier to Carolina Beach Inlet from October 1 to November 30:
 - (I) Strike nets may be used within 900 feet of the beach;
 - (II) Attended nets may be used between 900 feet and one-quarter mile of the beach.
- (ii) Strike nets and attended gill nets may be used within 900 feet of the beach from October 1 to November 30 in other areas except those described in Part (a)(3)(A) and Subpart (a)(3)(B)(i) of this Rule.
- (iii) It is unlawful to use commercial fishing gear within 900 feet of the beach from Carolina Beach Inlet to a point on the beach $33^{\circ}55.0026' N - 77^{\circ}56.6630' W$ near the former location of New Inlet during the October surf fishing tournament in Carolina Beach.

(4) Pamlico River – Beaufort County. Goose Creek State Park. Commercial fishing gear may not be used from the Friday before Easter through December 31 for the following areas:

- (A) Within 150 feet of the shoreline within park boundaries;
- (B) Within the marked channel from Dinah Landing to the mouth of Upper Goose Creek.

(b) It is unlawful to use gill nets or seines in the following areas during dates and times specified for the identified areas:

- (1) Neuse River and South River, Carteret County. No more than 1,200 feet of gill net(s) having a stretched mesh of five inches or larger may be used:

- (A) Within one-half mile of the shore from Winthrop Point at Adams Creek to Channel Marker "2" at the mouth of Turnagain Bay.
 - (B) Within South River.
- (2) Cape Lookout, Carteret County:
- (A) Gill nets or seines may not be used in the Atlantic Ocean within 300 feet of the Rock Jetty (at Cape Lookout between Power Squadron Spit and Cape Point).
 - (B) Seines may not be used within one-half mile of the shore from Power Squadron Spit south to Cape Point and northward to Cape Lookout Lighthouse including the area inside the "hook" south of a line from the COLREGS Demarcation Line across Bardens Inlet to the eastern end of Shackleford Banks and then to the northern tip of Power Squadron Spit from 12:01 a.m. Saturdays until 12:01 a.m. Mondays from May 1 through November 30.
- (3) State Parks/Recreation Areas:
- (A) Gill nets or seines may not be used in the Atlantic Ocean within one-quarter mile of the shore at Fort Macon State Park, Carteret County.
 - (B) Gill nets or seines may not be used in the Atlantic Ocean within one-quarter mile of the shore at Hammocks Beach State Park, Onslow County, from May 1 through October 1, except strike nets and attended gill nets may be used beginning August 15.
 - (C) Gill nets or seines may not be used within the boat basin and marked entrance channel at Carolina Beach State Park, New Hanover County.
- (4) Mooring Facilities/Marinas. Gill nets or seines may not be used from May 1 through November 30 within:
- (A) One-quarter mile of the shore from the east boundary fence to the west boundary fence at U.S. Coast Guard Base Fort Macon at Beaufort Inlet, Carteret County;
 - (B) Canals within Pine Knoll Shores, Carteret County;
 - (C) Spooners Creek entrance channel and marina on Bogue Sound, Carteret County; Harbor Village Marina on Topsail Sound, Pender County; and Marina and entrance canal within Carolina Marlin Club property adjacent to Newport River, Carteret County.
- (5) Masonboro Inlet. Gill nets and seines may not be used:
- (A) Within 300 feet of either rock jetty; and
 - (B) Within the area beginning 300 feet from the offshore end of the jetties to the Intracoastal Waterway including all the waters of the inlet proper and all the waters of Shinn Creek.
- (6) Atlantic Ocean Fishing Piers. At a minimum, gill nets and seines may not be used within 300 feet of ocean fishing piers when open to the public. If a larger closed area has been delineated by the placement of buoys or beach markers as authorized by G.S. 113-185(a), it is unlawful to fish from vessels or with nets within the larger marked zone.
- (7) Topsail Beach, Pender County. It is unlawful to use gill nets and seines from 4:00 p.m. Friday until 6:00 a.m. the following Monday in the three finger canals on the south end of Topsail Beach.

- (8) Mad Inlet to Tubbs Inlet - Atlantic Ocean, Brunswick County. It is unlawful to use gill nets and seines from September 1 through November 15, except that a maximum of four commercial gill nets per vessel not to exceed 200 yards in length individually or 800 yards in combination may be used.
- (9) Spooners Creek, Carteret County. It is unlawful to use gill nets and seines between sunset and sunrise in Spooners Creek entrance channel in Bogue Sound, all of Spooners Creek proper and the adjoining tributary canals and channels.

History Note: Authority G.S. 113-133; 113-134; 113-182; 113-221; 143B-289.52;
Eff. March 1, 1996;
Amended Eff. October 1, 2004; August 1, 2004; April 1, 2001;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

Fiscal Impact Analysis of Proposed Rule Amendments Regarding Interjurisdictional Species Management

Rule Amendments: 15A NCAC 03L .0207, .0301, .0302
15A NCAC 03M .0301, .0302, .0511, .0516, .0519

Name of Commission: N.C. Marine Fisheries Commission

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Impact Summary: State government: Yes
Local government: No
Federal government: No
Substantial impact: No

Authority:

North Carolina General Statutes
§ 113-134. Rules.
§ 113-182. Regulation of fishing and fisheries.
§ 113-221.1. Proclamations: emergency review.
§ 143B-289.52. Marine Fisheries Commission - powers and duties.

Necessity: General Statute 150B-21.3A requires state agencies to review their existing rules every 10 years to determine which rules are still necessary, and to either readopt or repeal each rule as appropriate. The following eight rules regarding the management of harvest of interjurisdictional species have been reviewed and proposed for readoption with amendments that conform with current management and interstate and federal requirements.

I. Summary

The management and harvest restrictions of North Carolina's interjurisdictional fishery species are implemented through a state Fishery Management Plan (FMP) and N.C. Marine Fisheries Commission (MFC) rules that coordinate with relevant interstate and federal regulatory bodies. Since fish aren't contained within political boundaries, state, interstate, federal and even international authorities share fisheries management responsibilities. Over time, regulation of these species in North Carolina has shifted towards ongoing proclamations and rule suspensions by the DMF Director in order to keep pace with shifting interstate and federal regulations. The state is required by the Magnuson-Stevens Fishery Conservation and Management Act (MSA, 1976) and the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA, 1993) to comply with interstate and federal restrictions. The following proposed amendments and repeals through readoption seek to formalize proclamation authority of these interjurisdictional species in rule language and remove existing harvest requirements that are likely to be invalidated. These proposed changes would conform with existing management practices by the Division. Ultimately,

these proposed changes would increase NCDMF's efficiency in managing these species, which could generate a small benefit to the state moving forward. Alternatively, as these proposed changes do not alter the ongoing management practices for these interjurisdictional species, there are no costs expected either to the state or to enforcement.

II. Introduction and Purpose of Rule Changes

The N.C. Fishery Management Plan for Interjurisdictional Fisheries (IJ FMP) was approved by the MFC in September 2002 (NCDMF, 2002). The goal of the IJ FMP is to adopt FMPs, consistent with N.C. law, approved by the federal Councils or the Atlantic States Marine Fisheries Commission (ASMFC) by reference and implement corresponding fishery regulations in North Carolina to provide compliance or compatibility with approved FMPs and amendments, now and in the future. The goal of these plans, established under the Magnuson-Stevens Fishery Conservation and Management Act (MSA; federal Councils FMPs) and the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA; ASMFC FMPs), are similar to the goals of the Fisheries Reform Act of 1997 (FRA) to "ensure long-term viability" of these fisheries.

Amendment 1 to the IJ FMP was adopted by the MFC in June 2008 (NCDMF, 2008). This amendment did not change the goal and objectives of the plan; however, it included a management strategy, with associated rule changes, to streamline and consolidate the use of proclamation authority by the N.C. Division of Marine Fisheries (DMF) Director to implement management measures to comply with or complement ASMFC and federal Council FMPs. In 2015, the IJ FMP was updated with additional information regarding the impetus for the original IJ FMP, changes in N.C. statutes, relevant management authorities, interstate and federal public process, and the link between overlapping state and ASMFC FMPs (NCDMF, 2015).

The primary MFC rule used for the management of species listed in the IJ FMP is 15A NCAC 03M .0512, Compliance with Fishery Management Plans. This rule delegates to the DMF Director the ability to issue proclamations to comply with federal Council and ASMFC FMPs or to implement state management measures for the interjurisdictional finfish species listed in the IJ FMP. The rule provides the necessary flexibility to address the variable condition of compliance with FMPs, as described in 15A NCAC 03H .0103.

Under Amendment 1 to the IJ FMP, several MFC rules for individual finfish species were repealed consistent with one of the main purposes of the plan: to avoid duplication of effort in the development of plans under the FRA for species or species groups where equivalent federal Council or ASMFC FMPs have been developed and adopted with full participation from the state of North Carolina. The rules that were repealed did not contain any static requirements; they only contained requirements subject to change as the federal Council or ASMFC FMPs changed. Prior to repeal of the rules, when a federal Council or ASMFC FMP changed an affected rule had to be suspended in whole or in part, under the authority of 15A NCAC 03I .0102, and a proclamation had to be issued under the authority of 15A NCAC 03M .0512 to maintain compliance with the corresponding FMPs. This could result in certain requirements remaining in the original rule and other requirements being implemented by proclamation, which was confusing for stakeholders. In other words, a stakeholder may have read a requirement in an individual species rule that had been suspended and not be aware that a different requirement was in place that had been issued by proclamation.

Consistent with the IJ FMP, MFC rules 15A NCAC 03M .0301, .0511, and .0516 are proposed for repeal through readoption. These rules relate to the harvest of Spanish and king mackerel, bluefish, and cobia, respectively. These rules currently only contain requirements that are subject to change under the ASMFC FMPs and the Mid-Atlantic Fishery Management Council and South Atlantic Fishery Management Council (federal Councils) FMPs for these species.

The proposed amendments are consistent with the goal and purpose of the IJ FMP. The changes will reduce confusion for stakeholders about the requirements in place for the management of these fisheries. There would be no change in DMF operation under the proposed changes because proclamations for these fisheries are already issued under 15A NCAC 03M .0512. Stakeholders would continue to rely on the issuance of a proclamation to know what changed and what is required to participate in these fisheries.

In some cases under the 2008 IJ FMP management strategy, an individual rule was retained if it contained any static requirements that were not expected to change, and thus would likely not need to be suspended in the future. This is the case for MFC rule 15A NCAC 03M .0519, Shad. Paragraph (c) of the rule states it “is unlawful to take or possess American shad from the Atlantic Ocean.” This is the only element of the current rule not expected to change. The remainder of the rule is proposed to be deleted so the requirements for the fishery can be implemented by proclamation as the requirements of the ASMFC Interstate FMP for Shad and River Herring change, as they have in recent years and are expected to continue doing so.

In addition to these proposed amendments to interjurisdictional finfish species, rules related to three different interjurisdictional crustacea and arthropod species are also proposed for readoption with similar amendments. Firstly, 15A NCAC 03L .0301 and .0302 pertain to the harvest of American lobster and spiny lobster, respectively. As the harvest requirements for these species is managed through the ASMFC and South Atlantic Fishery Management Council, respectively, proposed amendments seek to again apply proclamation authority for management. This allows harvest requirements to continue to align with ASMFC and federal Council regulations with greater flexibility and speed.

Regarding spiny lobster, a final rule for Regulatory Amendment 4 to the FMP for Spiny Lobster in the Gulf of Mexico and the South Atlantic (Regulatory Amendment 4) became effective July 23, 2018. Regulatory Amendment 4 increases the catch limit for spiny lobster based on updated landings information and revised scientific recommendations; and prohibits the use of traps for recreational harvest of spiny lobster in federal waters off North Carolina, South Carolina, and Georgia.

The current Marine Fisheries Commission rule is silent on this new prohibition on the use of traps for recreational harvest and the rule’s language in its current form suggests a vessel limit while the federal regulations do not, which has led to some confusion. Additionally, the current rule prohibits possessing aboard or landing detached spiny lobster tails, which is not in line with the current Gulf of Mexico and South Atlantic Fishery Management Councils’ FMP for Spiny Lobster in the Gulf of Mexico and South Atlantic that allows the tailing of spiny lobster by those who possess a federal spiny lobster tailing permit. The Fisheries Director does not have proclamation authority for spiny lobster via this rule or 15A NCAC 03M .0512, as the latter only applies to species listed in the N.C. IJ FMP. The IJ FMP does not apply to invertebrate species. Amending 15A NCAC 03L

.0302 to add proclamation authority for the Fisheries Director will provide needed flexibility to manage the spiny lobster fishery and stay in compliance with federal regulations.

Additionally, 15A NCAC 03L .0207 is proposed to amend the harvest restrictions of horseshoe crabs. While horseshoe crabs are already primarily managed via proclamation authority in rule, the proposed amendment exempts biomedical harvest from static requirements in the rule. Past stock assessments have demonstrated that biomedical harvest of horseshoe crabs in North Carolina has a negligible effect on the overall stock status (ASMFC, 2020). Thus, placing commercial harvest restrictions on this industry imposes an unnecessary burden on stakeholders. Upon amendment of this rule, the biomedical harvest would be managed by a separate proclamation outlining permit conditions and harvest restrictions. Since the ASMFC FMP covers the commercial quota and biomedical use, the proclamation authority proposed in the rule extends to both fisheries. A separate proclamation would be issued for each fishery under the authority of this rule.

Lastly, 15A NCAC 03M .0302 is proposed for readoption only with changes to capitalization. This rule prohibits the possession of a purse gill net on board a vessel when Spanish and king mackerel are being landed.

III. Fiscal Analysis

As the management of interjurisdictional species in North Carolina has continued by coordinating with interstate and federal regulatory bodies, the need for management via proclamation authority has emerged as a key tool in keeping up with the interstate and federal requirements that increasingly change and are difficult to predict. As a result, the suite of proposed amendments and repeals through readoption seek to conform North Carolina rule language with current practice, which simplifies management by implementing new requirements through proclamation, rather than also requiring rule suspension to meet interstate and federal harvest requirements.

As evidence of this practice, the management of the Spanish mackerel, king mackerel, bluefish, cobia, shad, and horseshoe crab fisheries are all currently augmented via proclamation, in addition to certain static requirements in rule (NCDMF, 2020). In fact, management by proclamation (as opposed to management by static rule requirements alone) has been ongoing sporadically for these species since 2013, with harvest requirements for each of these fisheries being implemented by more than one proclamation during this time to keep pace with interstate and federal requirements (C. Flora, Personal Communication, April 13, 2021). While the American and spiny lobster fisheries are not commercially active fisheries in North Carolina and proclamation authority is not currently in place, the Division is still required to conform to increasingly shifting ASMFC and SAFMC regulations, and therefore will rely on the proposed proclamation authority in each species rule to continue managing these species as they have historically been managed. Due to this, the primary role of this fiscal analysis is to assess potential impacts from simplifying the use of proclamations to conform management of interjurisdictional species with interstate and federal requirements.

a. Summary of Potential Economic Benefits

The primary economic impacts from the proposed amendments and repeals through readoption will occur as a small stream of benefits due to increased administrative efficiency. While the fisheries in question have relied on proclamation authority to align with interstate and federal

regulations dating back to 2013, the existence of management measures in rule required proclamations to contain both rule suspensions and requirements implemented in place of those rules. This requires additional procedures for the Division and the state, while rule suspension updates must also be provided to the MFC on a quarterly basis. By streamlining the management pipeline of these interjurisdictional species between interstate and federal bodies and the NCDMF, the state should expect an insignificant, non-quantifiable flow of benefits due to reduced time cost and administrative burden related to these fisheries.

b. Summary of Potential Economic Costs

Overall, the only expected impacts from the proposed rule amendments and repeals through readoption are the small stream of benefits described above. Given the consistent management of interjurisdictional species through proclamation in the past, the public is already aware of how to access shifting harvest regulation information for these species, and the proposed rules simply codify processes employed by both the Division and the public. Because of this, no costs are expected from the proposed rule amendments and repeals through readoption.

Lastly, as these rules have been continually managed through proclamation and stay current with shifting interstate and federal regulations, Marine Patrol is consistently aware of new harvest regulations or proclamations. Because of this, no additional costs to enforcement are expected.

References:

- “Atlantic Coastal Fisheries Cooperative management Act of 1993.” H.R. 2134, 103rd Congress. (1993). <https://www.congress.gov/bill/103rd-congress/house-bill/2134?s=1&r=5>.
- ASMFC (October 21, 2020). “Review of the Interstate Fishery Management Plan, Horseshoe Crab (*Limulus polyphemus*), 2019 Fishing Year.” Atlantic States Marine Fisheries Commission, Plan Review Team.
- “Magnuson–Stevens Fishery Conservation and Management Act.” H.R. 200, 94th Congress. (1976). <https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg331.pdf>.
- NCDMF (September 30, 2020). “Proclamations Current.” North Carolina Division of Marine Fisheries, Fisheries Management Section. Accessed at <http://portal.ncdenr.org/web/mf/proclamations-current>.
- NCDMF (November, 2015). “Fishery Management Plan for Interjurisdictional Species, Information Update.” *North Carolina Division of Marine Fisheries, Fisheries Management Section*.
- NCDMF (June, 2008). “Interjurisdictional Fisheries Management Plan.” *North Carolina Division of Marine Fisheries, Fisheries Management Section*.
- NCDMF (September, 2002). “Interjurisdictional Fisheries Management Plan.” *North Carolina Division of Marine Fisheries, Fisheries Management Section*.

Appendix I: Proposed Rules

15A NCAC 03L .0207 is proposed for readoption with substantive changes as follows:

15A NCAC 03L .0207 HORSESHOE CRABS

(a) The annual (January through December) commercial quota for North Carolina for horseshoe crabs is established by the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab.

(b) The Fisheries Director may, by proclamation, impose any ~~or all~~ of the following restrictions on the taking of horseshoe crabs to maintain compliance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe ~~Crab~~: Crab or to implement state management measures:

- ~~(1) Specify season;~~
- ~~(2) Specify areas;~~
- ~~(3) Specify quantity;~~
- ~~(4) Specify means and methods; and~~
- ~~(5) Specify size.~~
- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity.

~~(c) Horseshoe crabs taken for biomedical use under a Horseshoe Crab Biomedical Use Permit are subject to this Rule.~~

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
 Temporary Adoption Eff. August 1, 2000;
 Codifier determined that findings did not meet criteria for temporary rule on October 31, 2000;
 Temporary Adoption Eff. December 6, 2000;
 Eff. August 1, 2002;
 Amended Eff. April 1, 2011;
Readopted Eff. April 1, 2022.*

15A NCAC 03L .0301 is proposed for readoption with substantive changes as follows:

SECTION .0300 – LOBSTER

15A NCAC 03L .0301 AMERICAN LOBSTER (NORTHERN LOBSTER)

(a) It ~~is~~ shall be unlawful to possess American lobster:

- ~~(1)~~ (1) with a carapace less than 3 3/8 inches or greater than 5 1/4 inches;
- ~~(2)~~ (1) which ~~that~~ has eggs or from which eggs have been artificially removed by any method;
- ~~(3)~~ (2) meats, detached meats, detached tails or ~~claws~~ claws, or any other part of a lobster that has been separated from the lobster;
- ~~(4)~~ (3) which ~~that~~ has an outer shell which has been speared; or
- ~~(5)~~ (4) that is a V-notched female lobster. A V-notched female lobster is any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as 1/8 inch, with or without setal hairs. A V-notched female lobster is also any female lobster ~~which that~~ is mutilated in a manner ~~which that~~ would hide, ~~obscure~~ obscure, or obliterate such a ~~mark~~; or mark.
- ~~(6)~~ (6) in quantities greater than 100 per day or 500 per trip for trips five days or longer taken by gear or methods other than traps.

(b) ~~American lobster traps not constructed entirely of wood (excluding heading or parlor twine and the escape vent) must contain a ghost panel that meets the following specifications:~~

- ~~(1)~~ (1) the opening to be covered by the ghost panel shall be not less than 3 3/4 inches (9.53 cm) by 3 3/4 inches (9.53 cm);
- ~~(2)~~ (2) the panel must be constructed of, or fastened to the trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter;
- ~~(3)~~ (3) the door of the trap may serve as the ghost panel, if fastened with a material specified in this Section;
- ~~(4)~~ (4) the ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the trap; and
- ~~(5)~~ (5) contains at least one rectangular escape vent per trap, 2 inches by 5 3/4 inches minimum size, or two circular escape vents per trap, with a minimum inside diameter of 2 5/8 inches.

(b) The Fisheries Director may, by proclamation, impose any of the following restrictions on the taking of American lobster to maintain compliance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for American Lobster or to implement state management measures:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity.

History Note: Authority G.S. 113-134; 113-182; ~~113-221~~; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996;
Temporary Amendment Eff. August 1, 2000;
Amended Eff. April 1, 2009; September 1, 2005; April 1, 2001;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03L .0302 is proposed for readoption with substantive changes as follows:

15A NCAC 03L .0302 SPINY LOBSTER

It is unlawful to:

- (1) ~~Possess a egg bearing spiny lobster or a spiny lobster from which eggs have been stripped, scrubbed or removed;~~
- (2) ~~Possess spiny lobster with a carapace length less than 3 inches;~~
- (3) ~~Possess aboard a vessel or land more than two spiny lobsters per person;~~
- (4) ~~Possess aboard a vessel or land detached spiny lobster tails; or~~
- (5) ~~Take spiny lobsters with a gaff hook, spear or similar device. Possession of a speared, pierced, or punctured spiny lobster is prima facie evidence that prohibited gear was used.~~

The Fisheries Director may, by proclamation, impose any of the following restrictions on the taking of spiny lobster to maintain compliance with the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and the South Atlantic or to implement state management measures:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
 Eff. January 1, 1991;
 Amended Eff. March 1, 1996;
Readopted Eff. April 1, 2022.

15A NCAC 03M .0301 is proposed for repeal through readoption as follows:

SECTION .0300 - SPANISH AND KING MACKEREL

15A NCAC 03M .0301 SPANISH AND KING MACKEREL

~~(a) Spanish Mackerel:~~

- ~~(1) It is unlawful to possess Spanish mackerel less than 12 inches fork length.~~
- ~~(2) It is unlawful to possess more than 15 Spanish mackerel per person per day taken for recreational purposes.~~
- ~~(3) It is unlawful to possess more than 15 Spanish mackerel per person per day in the Atlantic Ocean beyond three miles in a commercial fishing operation except for persons holding a valid National Marine Fisheries Service Spanish Mackerel Commercial Vessel Permit.~~

~~(b) King mackerel:~~

- ~~(1) It is unlawful to possess king mackerel less than 24 inches fork length.~~
- ~~(2) It is unlawful to possess more than three king mackerel per person per day taken for recreational purposes.~~
- ~~(3) It is unlawful to possess more than three king mackerel per person per day in the Atlantic Ocean:~~
 - ~~(A) by hook and line except for persons holding a valid National Marine Fisheries Service King Mackerel Commercial Vessel Permit; or~~
 - ~~(B) between three miles and 200 miles from the State's mean low water mark in a commercial fishing operation except for persons holding a valid National Marine Fisheries Service King Mackerel Commercial Vessel Permit.~~
- ~~(4) It is unlawful to use gill nets in the Atlantic Ocean to take more than three king mackerel per person per day south of 34° 37.3000' N (Cape Lookout).~~

~~(c) Charter vessels or head boats that hold a valid National Marine Fisheries Service Coastal Migratory Pelagic (Charter Boat and Head Boat) permit must comply with the Spanish mackerel and king mackerel possession limits established in Subparagraphs (a)(2) and (b)(2) of this Rule when fishing with more than three persons (including the captain and mate) on board.~~

~~(d) It is unlawful to possess aboard or land from a vessel, or combination of vessels that form a single operation, more than 3,500 pounds of Spanish or king mackerel, in the aggregate, in any one day.~~

*History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996;
Temporary Amendment Eff. January 1, 2000; July 1, 1999;
Amended Eff. October 1, 2008; August 1, 2002; April 1, 2001;
Repealed Eff. April 1, 2022.*

15A NCAC 03M .0302 is proposed for reoption with substantive changes as follows:

15A NCAC 03M .0302 PURSE GILL NET PROHIBITED

It ~~is shall be~~ unlawful to have a purse gill net on board a vessel when taking or landing Spanish or ~~King Mackerel.~~
king mackerel.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03M .0511 is proposed for repeal through readoption as follows:

15A NCAC 03M .0511 BLUEFISH

~~It is unlawful to possess more than 15 bluefish per person per day for recreational purposes. Of these 15 bluefish, it is unlawful to possess more than five bluefish that are greater than 24 inches total length.~~

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. March 1, 1994;
Amended Eff. March 1, 1996;
Temporary Amendment Eff. September 9, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. October 1, 2008; April 1, 2003; August 1, 2000;
Repealed Eff. April 1, 2022.

15A NCAC 03M .0516 is proposed for repeal through readoption as follows:

15A NCAC 03M .0516 COBIA

- ~~(a) It is unlawful to possess cobia less than 33 inches fork length.~~
- ~~(b) It is unlawful to possess more than two cobia per person per day.~~

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Temporary Adoption Eff. July 1, 1999;
Eff. August 1, 2000;
Repealed Eff. April 1, 2022.

15A NCAC 03M .0519 is proposed for re adoption with substantive changes as follows:

15A NCAC 03M .0519 SHAD

~~(a) It is unlawful to take American shad and hickory shad by any method except hook and line from April 15 through December 31.~~

~~(b) It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook and line or for recreational purposes.~~

~~(c) It is shall be unlawful to take or possess American shad from the Atlantic Ocean.~~

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. October 1, 2008;
Amended Eff. April 1, 2012;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

**Rule Impact Analysis for Readoption of 15A NCAC 18A Rule Package
Pursuant to G.S. 150B-21.3A**

Rule Amendments: 15A NCAC 18A .0134, .0137-.0139, .0144, .0145, .0147-.0149, .0151-.0153, .0156-.0158, .0161, .0162, .0164-.0166, .0168, .0174-.0178, .0181-.0187, .0191

Name of Commission: N.C. Marine Fisheries Commission

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Impact Summary: State government: No
Local government: No
Federal government: No
Substantial impact: No

Authority:

North Carolina General Statutes

G.S. 106-129.	Foods deemed to be adulterated.
G.S. 106-130.	Foods deemed misbranded.
G.S. 113-134.	Rules.
G.S. 113-182.	Regulation of fishing and fisheries.
G.S. 113-221.2.	Additional rules to establish sanitation requirements for scallops, shellfish, and crustacea; permits and permit fees authorized.
G.S. 113-221.4.	Embargo.
G.S. 143B-289.52.	Marine Fisheries Commission - powers and duties.
G.S. 150B-21.3A.	Periodic review and expiration of existing rules.

I. Necessity:

General Statute 150B-21.3A requires state agencies to review their existing rules every 10 years to determine which rules are still necessary, and to either readopt or repeal each rule as appropriate. The proposed amendments readopt 34 rules in 15A NCAC 18A pursuant to this requirement. These rules all relate to protocols and regulations regarding the proper storage and processing of crustacea meat, as well as the facilities that hold these products.

II. Summary

While all 34 rules proposed for readoption contain substantive changes, upon review none of these changes produce any procedural changes, and therefore no economic costs or benefits to the state are incurred. In short, all proposed changes are either intended to provide heightened clarity to rule language, or to conform rule language around crustacea meat storage, processing, and facility maintenance to that of ongoing practice by North Carolina Division of Marine

Fisheries (NCDMF) staff and licensed seafood processors and dealers. Of particular note, 15A NCAC 18A .0134 defines terms related to shellfish sanitation, and proposes four new definitions in rule. However, it was determined that these new terms simply help clarify ongoing Division practices, and result in no procedural changes as well. As these proposed changes would not affect the operations or material needs of NCDMF or outside stakeholders, there are no incurred economic impacts as well.

These rules have been reviewed to conform to the requirements of G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules. The proposed readoptions consist of amendments that are of an administrative nature to update the rules. Overall, the proposed readoptions do not result in a significant economic impact to the regulated community, state government, or other parties.

III. Introduction and Purpose of Rule Changes

Session Law 2011-145 abolished the Division of Environmental Health and transferred the Shellfish Sanitation and Recreational Water Quality section to the Division of Marine Fisheries under a Type I transfer. As a result, G.S. 130A-230 was repealed and the authority for rulemaking for the sanitation requirements for harvesting, processing and handling of scallops, shellfish and crustacea was transferred to the Marine Fisheries Commission, which is now contained in G.S. 113-221.2 and G.S. 113-221.4.

The purpose of the Marine Fisheries Commission (MFC) is to manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, including commercial and recreational fisheries resources (Chapter 143B, Article 7, Part 5D). For the protection of public health, the MFC is also required to adopt rules establishing sanitation requirements for the harvesting, processing, and handling of scallops, shellfish, and crustacea of in-state origin. The rules of the MFC may also regulate scallops, shellfish, and crustacea shipped into North Carolina (G.S. 113-221.2).

Proposed amendments to these rules seek to accomplish two simple goals. Firstly, some proposed amendments update inconsistencies or typographical issues with rule text to increase clarity. The remaining proposed amendments seek to update rule language to conform with the current practices regarding shellfish sanitation, both by NCDMF staff and affected stakeholders. This also remains true for the four new definitions proposed in 15A NCAC 18A .0134 (“Easily Cleanable”, “Most Probable Number”, “Process Validation Study Report”, and “Retort”), which are proposed amendments that would define in rule ongoing practices by the Division. As such, all of these proposed text changes would not generate any procedural changes or economic impacts to the operations outlined in these 34 rules.

IV. Fiscal Impact Analysis

As these 34 rules are being proposed for reoption with no procedural changes, there will be no changes to the economic benefits and costs of the rules. As such, no fiscal impact will be observed from this proposed reoption package.

V. Appendix

Proposed Rules for Readoption

15A NCAC 18A .0134 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0134 DEFINITIONS

The following definitions shall apply ~~throughout to~~ this Section; however, nothing in this Section shall be construed as expanding or restricting the definitions in G.S. 106-129 and G.S. 106-130:

- (1) "Adulterated" as used in G.S. 106-129 means the following:
 - (a) ~~Any-any~~ cooked crustacea or crustacea meat that does not comply with ~~these Rules; the~~ Rules in this Section;
 - (b) ~~Any-any~~ cooked crustacea or crustacea meat ~~which-that~~ exceeds the bacteriological standards in Rule .0182 of this Section;
 - (c) ~~Any-any~~ cooked crustacea or crustacea meat ~~which-that~~ has been deemed to be an imminent hazard;
- (2) "Code date" means the date conspicuously placed on the container to indicate the date that the product was packed.
- (3) "Cook" means to prepare or treat raw crustacea by heating.
- (4) "Critical control point" means a point, ~~step-step,~~ or procedure in a food process at which a control can be applied, applied and a food safety hazard ~~can-can,~~ as a ~~result-result,~~ be prevented, ~~eliminated~~ eliminated, or reduced to acceptable levels.
- (5) "Critical limit" means the maximum or minimum value to which a physical, ~~biological-biological,~~ or chemical parameter ~~must-shall~~ be controlled at a critical control point to prevent, ~~eliminate~~ eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard.
- (6) "Crustacea meat" means the meat of crabs, lobster, ~~shrimp-shrimp,~~ or crayfish.
- (7) "Division" means the Division of ~~Environmental Health or its authorized agent,~~ Marine Fisheries.
- (8) "Easily cleanable" means a surface that is readily accessible and made of such materials, has a finish, and is so fabricated that residues may be effectively removed by normal cleaning methods.
- ~~(8)~~(9) "Food-contact surface" means the parts of equipment, including auxiliary equipment, ~~which-that~~ may be in contact with the food being processed, or ~~which-that~~ may drain into the portion of equipment with which food is in contact.
- ~~(9)~~(10) "Food safety hazard" means any biological, ~~chemical-chemical,~~ or physical property that may cause a food to be unsafe for human consumption.
- ~~(10)~~(11) "Foreign" means any place or location outside the United States.
- ~~(11)~~(12) "Fresh crustacea" means a live, ~~raw-raw,~~ or frozen raw crab, lobster, ~~shrimp-shrimp,~~ or crayfish ~~which-that~~ shows no decomposition.
- ~~(12)~~(13) "HACCP plan" means a written document that delineates the formal procedures a dealer follows to implement food safety controls.
- ~~(13)~~(14) "Hazard analysis critical control point (HACCP)" means a system of inspection, ~~control-control,~~ and monitoring measures initiated by a dealer to identify microbiological, ~~chemical-chemical,~~ or physical food safety hazards ~~which-that~~ are likely to occur in shellfish products produced by the dealer.

- ~~(14)~~(15) "Imminent hazard" means a situation ~~which that~~ is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious physical adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.
- ~~(15)~~(16) "Internal temperature" means the temperature of the product as opposed to the ambient temperature.
- ~~(16)~~(17) "Misbranded" as used in G.S. 106-130 means any container of cooked crustacea or crustacea meat ~~which that~~ is not labeled in compliance with ~~these Rules. the Rules in this Section.~~
- (18) "Most probable number (MPN)" means a statistical estimate of the number of bacteria per unit volume and is determined from the number of positive results in a series of fermentation tubes.
- ~~(17)~~(19) "Operating season" means the season of the year during which a crustacea product is processed.
- ~~(18)~~(20) "Pasteurization" means the process of heating every particle of crustacea meat in a hermetically-sealed ~~401 by 301 one pound~~ container to a temperature of at least ~~185°F (85°C). 185°~~ F (85° C) and holding it continuously at or above this temperature for at least one minute at the geometric center of a container in properly operated equipment. equipment being operated in compliance with the Process Validation Study Report. The term includes any other process ~~which that~~ has been found equally effective by the Division.
- ~~(19)~~(21) "Pasteurization date" means a code conspicuously placed on the container to indicate the date that the product was pasteurized.
- (20) ~~"Person" means an individual, corporation, company, association, partnership, unit of government or other legal entity.~~
- (22) "Process Validation Study Report" means a report of tests that shows a piece of equipment can produce time-temperature results as required by the Rules of this Section, and the procedures required to achieve such results.
- ~~(21)~~(23) "Processing" means any of the following operations when carried out in conjunction with the cooking of crustacea or crustacea meat: receiving, refrigerating, air-cooling, picking, packing, repacking, thermal processing, or pasteurizing.
- ~~(22)~~(24) "Repacker" means a facility ~~which that~~ repacks cooked crustacea meat into other containers.
- ~~(23)~~(25) "Responsible person" means the individual present in a cooked crustacea facility who is the apparent supervisor of the cooked crustacea facility at the time of the inspection. If no individual is the apparent supervisor, then any employee is the responsible person.
- (26) "Retort" means a pressure vessel used to cook raw crustacea.
- ~~(24)~~(27) "Sanitize" means a ~~bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619. to treat food contact surfaces by a process that is effective in:~~
- ~~(a)~~ destroying vegetative cells of microorganisms of public health significance;
 - ~~(b)~~ substantially reducing the numbers of other undesirable microorganisms; and
 - ~~(c)~~ not adversely affecting the product or its safety for the consumer.
- ~~(25)~~ ~~"Standardization report" means a report of tests which show that a piece of equipment can produce time/temperature results as required by these Rules.~~
- ~~(26)~~(28) "Thermal processing" means the heating of previously cooked crustacea or crustacea meat to a desired temperature for a specified time at the geometric center of a container in properly operated equipment. equipment being operated in compliance with the Process Validation Study Report.

History Note: Authority G.S. 106-129; 106-130; ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~
Eff. October 1, 1992;

Amended Eff. August 1, 2000; August 1, 1998; February 1, 1997;
Readopted Eff. April 1, 2022.

15A NCAC 18A .0137 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0137 GENERAL REQUIREMENTS FOR OPERATION

- (a) During the operating season the processing portion of the facility shall be used for no purpose other than the processing of cooked crustacea or crustacea meat.
- (b) Retail sales of cooked crustacea or crustacea meat shall not be made from any processing portion of the facility.
- (c) Accurate records of all purchases and sales of crustacea and crustacea meat shall be maintained for one year. The records shall be available for inspection by the ~~Division~~ Division of Marine Fisheries.

*History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~
Eff. October 1, 1992;
Amended Eff. April 1, 1997.
Readopted Eff. April 1, 2022.*

15A NCAC 18A .0138 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0138 SUPERVISION

(a) The owner or responsible person shall supervise the processing operation and be responsible for compliance with the rules of this ~~Section.~~ Section, including compliance with personal hygiene requirements as set forth in Rule .0153 of this Section.

(b) No unauthorized persons shall be allowed in the facility during the periods of operation.

~~(c) The owner or responsible person shall observe employees daily to ensure compliance with Rule .0153 of this Section.~~

*History Note: Authority G.S. ~~130A-230;113-134; 113-182; 113-221.2; 143B-289.52;~~
Eff. October 1, 1992.
Readopted Eff. April 1, 2022.*

15A NCAC 18A .0139 is proposed for re adoption with substantive changes as follows:

15A NCAC 18A .0139 FACILITY FLOODING

(a) If the facility floors are flooded, processing shall be discontinued until flood waters have receded and the facility and equipment are cleaned and sanitized.

(b) Any cooked crustacea or crustacea meat ~~which that~~ may have been contaminated by flood waters shall be deemed adulterated and disposed of in accordance with G.S. ~~130A-21(e)~~, 113-221.4 and Rule .0181 of this Section.

History Note: Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 113-221.4; 143B-289.52;

Eff. October 1, 1992;

Readopted Eff. April 1, 2022.

15A NCAC 18A .0144 is proposed for reoption with substantive changes as follows:

15A NCAC 18A .0144 INSECT CONTROL

All outside openings shall be screened, provided with wind ~~curtains~~curtains, or be provided with other methods to eliminate the entrance of insects. All screens shall be kept in good repair. All outside doors shall open outward and shall be self-closing. The use and storage of pesticides shall comply with all applicable State and Federal laws and rules.

History Note: Authority ~~G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~

Eff. October 1, 1992.

Readopted Eff. April 1, 2022.

15A NCAC 18A .0145 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0145 RODENT AND ANIMAL CONTROL

Measures shall be taken by the owner or responsible person to keep animals, fowl, rodents, and other vermin out of the facility. The storage and use of rodenticides shall comply with all applicable State and Federal laws and rules.

History Note: *Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52;*

Eff. October 1, 1992.

Readopted Eff. April 1, 2022.

15A NCAC 18A .0147 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0147 WATER SUPPLY

(a) The water supply used shall be in accordance with ~~15A NCAC 18A .1700-~~15A NCAC 18A .1720 through .1728.

~~(b) A cooked crustacea facility using a non-community water supply shall be listed with the Public Water Supply Section, Division of Environmental Health.~~

~~(b)~~ Water samples for bacteriological analysis shall be collected at least annually by the Division of Marine Fisheries and submitted to ~~the Laboratory Division of the Department or another~~ a laboratory certified by the Department for potable water testing in the State of North Carolina for analysis.

~~(c)~~ Cross-connections with unapproved water supplies are prohibited. Hot and cold running water under pressure shall be provided to food preparation, ~~utensils-utensils,~~ and handwashing areas and any other areas in which water is required for cleaning. Running water under pressure shall be provided in sufficient quantity to carry out all food preparation, utensil washing, hand washing, ~~cleaning-cleaning,~~ and other water-using operations.

History Note: Authority G.S. ~~130A-230;~~113-134; 113-182; 113-221.2; 143B-289.52;

Eff. October 1, 1992;

Amended Eff. April 1, 1997;

Readopted Eff. April 1, 2022.

15A NCAC 18A .0148 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0148 ICE

- (a) Ice shall be obtained from a water supply approved by the Division of Marine Fisheries pursuant to Rule .0147 of this Section and shall be stored and handled in accordance with these Rules in a manner to prevent contamination.
- (b) All equipment used in the handling of ice shall be used for no other purpose and shall be cleaned and sanitized at least once each day the facility is in operation.

*History Note: Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992.
Readopted Eff. April 1, 2022.*

15A NCAC 18A .0149 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0149 PLUMBING

- (a) Plumbing fixtures shall be located to facilitate the flow of processing activities and to prevent the splashing of water on food-contact surfaces or cooked crustacea and crustacea meat.
- (b) Fixtures, ~~ducts~~ ducts, and pipes shall not be suspended over working areas.
- (c) Handwash lavatories shall be located so that the supervisor can readily observe that employees wash and sanitize their hands before beginning work and after each interruption.
- (d) Handwash lavatories shall be provided in the following locations:
 - (1) ~~Packing~~ packing room or ~~area~~ area;
 - (2) ~~Toilet~~ toilet or lounge ~~area~~ area; and
 - (3) ~~Picking~~ picking room.
- (e) At least one handwash lavatory shall be provided for every 20 employees among the first 100 employees and at least one handwash lavatory shall be provided for every 25 employees in excess of the first 100 employees.
- (f) Additional lavatories required by Paragraph (e) of this Rule shall be located in the picking room.
- (g) A container shall be located near each handwash lavatory in the picking room and packing room or area to sanitize hands in a solution containing at least 100 parts per million (ppm) of available chlorine or other equally effective bactericide. A ~~suitable~~ testing method or equipment approved by the Division of Marine Fisheries shall be available and ~~regularly~~ used to test chemical sanitizers to ~~insure~~ ensure minimum prescribed strengths.
- (h) Soap and single service towels in protected dispensers, or other approved hand drying devices, shall be available near the handwash lavatories.
- (i) All pre-cool rooms, picking rooms, packing rooms or areas, and cooking areas shall be provided with ~~hose~~ bibs and wash down hoses. Storage racks shall be provided to keep the hoses elevated off the floor when not in use.
- (j) An automatically regulated hot-water system shall be provided to furnish a sufficient volume of hot water with a temperature of at least 130° F (54.5° C) to carry out all processing operations.
- (k) All handwash lavatories and sinks shall be equipped with mixing faucets.
- (l) A three-compartment sink with drainboards, large enough to wash the largest utensils used in the facility, shall be located in the picking room near the delivery shelf. One three-compartment sink, with drainboards, shall be provided for every 50 employees or fraction thereof.
- (m) The floor drains in coolers shall not be connected directly to a sewer in processing or repacking facilities constructed after October 1, 1992.

History Note: Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. April 1, 2022.

15A NCAC 18A .0151 is proposed for re Adoption with substantive changes as follows:

15A NCAC 18A .0151 TOILETS

- (a) Toilets shall be provided by the owner or responsible person in the facility; ~~however, privies may be substituted for toilets when the conditions in Paragraph (d) of this Rule are met.~~ facility.
- (b) Toilet tissue shall be ~~provided.~~ provided by the owner or responsible person in a holder.
- (c) Toilet room doors shall not open directly into processing areas of the facility and shall be self-closing.
- (d) ~~Only privies that meet the requirements of Section 1900 of this Subchapter and that were in place at a processing or repacking facility prior to October 1, 1992 may be used at the facility after October 1, 1992.~~

History Note: Authority ~~G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~

Eff. October 1, 1992.

Readopted Eff. April 1, 2022.

15A NCAC 18A .0152 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0152 SOLID WASTE

- (a) Cooked crustacea scrap and other putrescible wastes shall be removed from the premises at least daily. Other solid wastes shall be removed from the premises at least weekly.
- (b) Scrap containers shall be removed from the picking room immediately after filling and placed in storage areas approved by the ~~Division~~ Division of Marine Fisheries.
- (c) Scrap containers shall be non-corrosive and cleaned at least daily.
- (d) Scrap containers shall be cleaned in an area approved by the Division.

History Note: Authority ~~G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~
Eff. October 1, 1992.
Readopted Eff. April 1, 2022.

15A NCAC 18A .0153 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0153 PERSONAL HYGIENE

- (a) All employees shall wash their hands with soap and running water before beginning work and again after each interruption. Signs to this effect shall be posted in conspicuous places in the facility by the ~~owner~~ owner or responsible person.
- (b) All persons handling cooked crustacea or crustacea meat shall sanitize their hands before beginning work and again after each interruption.
- (c) All persons employed or engaged in the handling, ~~picking~~ picking, or packing of cooked crustacea or crustacea meat shall wear clean, washable outer clothing.
- (d) Employees shall not eat food, ~~drink nor~~ drink, or use tobacco in any form in the areas where cooked crustacea or crustacea meat are stored, ~~processed~~ processed, or handled.
- (e) Any person known to be a carrier of any disease which can be transmitted through the handling of cooked crustacea or crustacea meat or who has an infected wound or open lesion on any exposed portion of the body shall be prohibited from handling cooked crustacea or crustacea meat.
- (f) Hair restraints shall be worn by all employees who handle cooked crustacea or crustacea meat.
- (g) The arms of personnel who pick or pack cooked crustacea or crustacea meat shall be bare to the elbow or covered with an arm guard approved by the ~~Division~~ Division of Marine Fisheries.
- (h) Personnel who pick and pack cooked crustacea or crustacea meat shall have ~~clean~~ clean, short ~~finger~~ finger ~~nails~~ nails free from nail polish and shall not wear jewelry other than easily cleanable rings. The use of absorbent wraps or absorbent finger cots shall not be permitted.

History Note: Authority ~~G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~
Eff. October 1, 1992.
Readopted Eff. April 1, 2022.

15A NCAC 18A .0156 is proposed for reoption with substantive changes as follows:

15A NCAC 18A .0156 EQUIPMENT AND UTENSIL CONSTRUCTION

All processing equipment and utensils shall be smooth, easily cleanable, ~~durable~~durable, and kept in good repair. The food-contact surfaces of equipment, ~~utensils~~utensils, and processing machinery shall be easily accessible for cleaning, non-toxic, non-corrosive, ~~non-absorbent~~non-absorbent, and free of open seams.

History Note: *Authority G.S. ~~130A-230;113-134; 113-182; 113-221.2; 143B-289.52;~~*
Eff. October 1, 1992.
Readopted Eff. April 1, 2022.

15A NCAC 18A .0157 is proposed for reoption with substantive changes as follows:

15A NCAC 18A .0157 FACILITY AND EQUIPMENT SANITATION

- (a) The walls and floors in the picking and packing areas shall be kept clean while operating and shall be sanitized at least daily and whenever there is evidence of contamination.
- (b) All food-contact surfaces shall be washed, ~~rinsed~~rinsed, and sanitized prior to starting operation each day and whenever there is evidence of contamination.
- (c) Reusable picking containers and knives shall be washed, ~~rinsed~~rinsed, and sanitized each time crustacea meat is delivered to the packing room.
- (d) Sanitizing methods ~~are~~shall be as follows:
- (1) ~~By~~by steam in a steam chamber or box equipped with an indicating thermometer located in the coldest zone, ~~by~~with exposure to a temperature of 170° F (77° C) for at least 15 minutes or to a temperature of 200° F (93° C) for at least five minutes.
 - (2) ~~By~~by immersion for at least one minute in the third compartment in clean hot water at a temperature of at least 170° F (77° C). A thermometer accurate to ~~3° F~~3° F (1.5° C) shall be available to the compartment. Where hot water is used for bactericidal treatment, a booster heater that maintains a water temperature of at least 170° F (77° C) in the third compartment at all times when utensils are being washed shall be provided. The heating device may be integral with the immersion compartment.
 - (3) ~~By~~by immersion for at least one minute in, or exposure for at least one minute to a constant flow of, a solution containing not less than 100 ppm chlorine residual. Utensils and equipment ~~which that~~ have to be washed in place will require washing, ~~rinsing~~rinsing, and sanitizing.
 - (4) ~~By~~by other equivalent products and procedures approved in 21 CFR 178.1010 "Sanitizing solutions" ~~from the "Food Service Sanitation Manual" published by the U.S. Food and Drug Administration, 21 CFR 178.1010 solutions", which~~ is hereby incorporated by reference including any subsequent amendments and editions. ~~This material is available for inspection, and copies may be obtained at no cost, at the Shellfish Sanitation Branch, 3441 Arendell Street, P.O. Box 769, Morehead City, North Carolina 28557. A copy of the reference material can be found at https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=17d119b223f9451322279713caa2e6ab&ty=HTML&h=L&mc=true&n=pt21.3.178&r=PART#se21.3.178_11010, at no cost. A suitable~~ Division of Marine Fisheries approved testing method or equipment shall be available and regularly used to test chemical sanitizers to ~~insure~~ensure minimum prescribed strengths.

*History Note: Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. April 1, 2022.*

15A NCAC 18A .0158 is proposed for reoption with substantive changes as follows:

15A NCAC 18A .0158 EQUIPMENT STORAGE

Equipment and utensils that have been cleaned and sanitized shall be stored in a manner to protect against contamination.

History Note: Authority G.S. ~~130A-230;~~113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992.
Readopted Eff. April 1, 2022.

15A NCAC 18A .0161 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0161 CRUSTACEA COOKING

- (a) The cooking area or room shall be under a roof located between the area for receiving raw crustacea and the air-cool room and shall be vented to assure the removal of steam.
- (b) Crustacea shall be cooked in accordance with the following:
- (1) Crabs shall be cooked under steam pressure until the internal temperature of the center-most crab reaches 235° F (112.8° C). Temperature shall be measured with an accurate, indicating thermometer having a range of 170-270° F (77-132° C).
 - (2) Other crustacea shall be cooked until the internal temperature of the center-most crustacean reaches 180° F (83° C) and is held at this temperature for one minute. Temperature shall be measured with an accurate, indicating thermometer. Crayfish shall be culled and cleaned prior to cooking.
 - (3) Nothing in this Rule shall prohibit any other cooking process ~~which that~~ has been found equally effective and approved by the ~~Division~~ Division of Marine Fisheries.
- (c) The retort shall be constructed to permit a working pressure of at least 20 pounds per square inch (psig). Steam inlet and venting shall provide a uniform and complete distribution of steam. Venting shall be sufficient to permit complete elimination of air from the retort. Drains and vents shall be located at least two feet above mean high tide.
- (d) The retorts shall be equipped with:
- (1) ~~An an~~ an accurate, indicating thermometer with a range that will include 170-270° F (77-132° C) and located with the sensor extending into the heat ~~chamber, chamber;~~
 - (2) ~~An an~~ an operating pressure indicator, at least three inches in diameter, with a 0-30 psig range and located adjacent to the indicating ~~thermometer, thermometer; and~~
 - (3) ~~A a~~ a safety valve operational at 18-30 psig, located in the upper portion of the retort, protected from ~~tampering, tampering,~~ and designed to prevent injury to the operator.
- (e) The boiler shall be of such capacity as to maintain 45 to 100 psig during cooking. The steam line from the boiler to the retort shall be at least one and one-fourth inch inside diameter.
- (f) Overhead hoists shall be equipped with chain bags or other means of preventing foreign material from falling onto the cooked product.
- (g) Retort cooking baskets shall be of stainless steel or equally impervious, ~~non-corrosive non-corrosive,~~ and durable material, and shall be designed to allow for equal steam disbursement, ease of handling, ~~dumping, dumping,~~ and cleaning.
- (h) All construction or replacement of retorts after October 1, 1992 shall be "flow-through" type and ~~opening open~~ directly into the air-cool room or a protected passageway into the air-cool room.
- (i) All construction of new or replacement retorts shall require a Process Validation Study Report approved by the Division prior to use.

*History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~
Eff. October 1, 1992.
Readopted Eff. April 1, 2022.*

15A NCAC 18A .0162 is proposed for reoption with substantive changes as follows:

15A NCAC 18A .0162 COOKED CRUSTACEA AIR-COOL

(a) Cooked crustacea, after removal from the retort, shall be moved immediately to the cooked crustacea ~~air-cool~~air-cool area to be air cooled to ambient temperature without being disturbed. Cooked crustacea shall be stored in the original cooking basket.

(b) The construction and arrangement of the air-cool room shall be designed to provide protection from contamination of the cooked crustacea. The air-cool room shall open directly into the cooked crustacea cooler or other protected area.

History Note: Authority ~~G.S. 130A-230;~~113-134; 113-182; 113-221.2; 143B-289.52;

Eff. October 1, 1992.

Readopted Eff. April 1, 2022.

15A NCAC 18A .0164 is proposed for reoption with substantive changes as follows:

15A NCAC 18A .0164 COOKED CRUSTACEA PICKING

- (a) The picking operation shall be conducted in a manner to prevent contamination.
- (b) All cooked crustacea shall be picked before a new supply is delivered to the picking table.
- (c) Picked crustacea meat shall be delivered to the packing room at least every 90 minutes or upon the accumulation of five pounds per ~~picker~~picker, whichever is sooner.
- (d) Paper towels used at the picking table shall be discarded after initial use.
- (e) If provided, bactericidal solutions at picking tables shall be maintained at 100 ppm chlorine solution or an equivalent bactericidal solution. A testing method or equipment approved by the Division of Marine Fisheries to ~~insure~~ ensure minimum prescribed strengths shall be available and used to test chemical sanitizers.
- (f) Handles of picking knives shall not be covered with any material.
- (g) Crustacea shall be cooked and picked in the same permitted facility unless a written plan for interfacility shipment has been filed with the Division. The plan shall address and be approved based ~~upon~~on the following:
 - (1) ~~time-temperature;~~time-temperature requirements;
 - (2) ~~shipping destination;~~shipping destination;
 - (3) handling;
 - (4) labeling;
 - (5) records;
 - (6) processing;
 - (7) sanitation; and
 - (8) HACCP plan.

*History Note: Authority G.S. ~~130A-230;~~113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Temporary Amendment Eff. July 1, 2000;
Temporary Rule Expired on March 12, 2001;
Amended Eff. August 1, 2002.
Readopted Eff. April 1, 2022.*

15A NCAC 18A .0165 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0165 PACKING

- (a) Crustacea meat shall be packed in a ~~container, container and~~ iced and cooled to an internal temperature of 40° F (4.4° C) or below within two hours of receipt in the packing room.
- (b) The storage of ice in the packing room shall be in an easily cleanable, non-corrosive, non-toxic container.
- (c) Blending or combining of any of the following shall be prohibited:
 - (1) ~~Fresh-fresh~~ crustacea ~~meat-meat~~;
 - (2) ~~Frozen-frozen~~ crustacea ~~meat-meat~~;
 - (3) ~~Pasteurized-pasteurized~~ crustacea ~~meat-meat~~; and
 - (4) ~~Crustacea-crustacea~~ meat packed in another facility.
- (d) Clean shipping containers shall be provided by the owner or responsible person for storing and shipping of packed crustacea meat.
- (e) The return of overage of crustacea meat to a picker shall be prohibited.
- (f) Washing of picked crustacea meat shall be under running potable water. The crustacea meat shall be ~~thoroughly~~ drained prior to packing.
- (g) Any substance added to cooked crustacea or crustacea meat shall be approved and labeled according to Federal and State rules and regulations.
- (h) Only those individuals responsible for packing the crustacea or crustacea meat shall be allowed in the packing room or area.

History Note: Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992.
Readopted Eff. April 1, 2022.

15A NCAC 18A .0166 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0166 PICKED CRUSTACEA MEAT REFRIGERATION

- (a) The refrigeration room or ice box shall be of sufficient size so that a full day's production, with ice, can be ~~properly~~ stored in a sanitary manner and shall be equipped with an accurate, operating thermometer.
- (b) Ice boxes shall be easily cleanable, non-corrosive, and non-toxic with an impervious lining and a drain.
- (c) Picked crustacea meat shall be stored ~~between 33° F (0.5° C) and 40° F (4.4° C).~~ at 40° F (4.4° C) or below.

History Note: Authority ~~G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~

Eff. October 1, 1992.

Readopted Eff. April 1, 2022.

15A NCAC 18A .0168 is proposed for reoption with substantive changes as follows:

15A NCAC 18A .0168 SINGLE-SERVICE CONTAINERS

- (a) Single-service containers used for packing or repacking cooked crustacea and crustacea meat shall be made from ~~food safe~~ food-safe materials approved by the United States Food and Drug Administration.
- (b) Containers shall not be reused for packing or repacking cooked crustacea and crustacea meat.
- (c) No person shall use containers bearing a permit number other than the number assigned to the facility.
- (d) Each container or lid shall be legibly impressed, ~~embossed~~ embossed, or lithographed with the name and address of the original packer, ~~repacker~~ repacker, or distributor. The original packer's or repacker's permit number preceded by the state abbreviation shall be legibly impressed, ~~embossed~~ embossed, or lithographed on each container or lid.
- (e) Each container or lid shall be permanently and legibly identified with a code date.
- (f) All containers and lids shall be stored and handled ~~in accordance with these Rules, in a manner to prevent contamination,~~ in accordance with these Rules, in a manner to prevent contamination, sanitized by a procedure as stated in Rule .0157 of this ~~Section~~ Section, and drained prior to filling.
- (g) All containers shall be sealed so that tampering can be detected. The words "Sealed For Your Protection" or equivalent shall be prominently displayed on the container or lid.

History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~

Eff. October 1, 1992;

Amended Eff. August 1, 1998; February 1, 1997.

Readopted Eff. April 1, 2022.

15A NCAC 18A .0174 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0174 PASTEURIZATION PROCESS CONTROLS - THERMOMETERS

- (a) All pasteurizing equipment shall have a time-temperature recording thermometer with a temperature controller (combined or separately) and an indicating thermometer. The thermometers shall be located to give a true representation of the operating temperature of the water bath. The recording thermometer chart shall be at least a 12-hour chart and at least 10 inches in diameter.
- (b) The recording thermometer shall be installed so that it will be protected from vibration and from striking by loading operations or facility traffic. The thermometer mechanism shall be protected from moisture under prevailing conditions. The thermometer case shall not be opened during the pasteurizing cycle, except for temperature check or for emergency or repair. A record shall be made when the thermometer case has been opened.
- (c) The recording thermometer shall have a range of at least 120-220° F (48.9-104.4° C). It shall be accurate within plus or minus 1° F between 160° F (71° C) and 200° F (93° C). The chart shall be scaled at a maximum of 2° F intervals in the range of 160° F (71° C) and 200° F (93° C).
- (d) The indicating thermometer shall be a thermometer with an accuracy and readability of plus or minus 1° F between 160° F (71° C) and 200° F (93° C). The thermometer shall be protected against damage.
- (e) The recording thermometer shall be equipped with a spring-operated or electrically operated clock. The recorded elapsed time as indicated by the chart rotation shall not exceed the true elapsed time as shown by an accurate watch. The rotating chart support shall be provided with pins upon which the chart shall be affixed by puncturing the chart.
- (f) The pasteurization unit shall not be operated without a recording thermometer chart in place, the pen in contact with the ~~chart~~ chart, and an inked record being made of the operating time-temperature cycle. ~~Any indication of falsification of a thermometer chart shall constitute a violation. Falsification of a thermometer chart shall not occur.~~ A permanent file of the used thermometer charts shall be maintained by the pasteurizer and kept available for inspection by the Division of Marine Fisheries for a period of one year. The following information shall be recorded within the confines of the pen markings after the pasteurization cycle has been completed:
- (1) ~~Date~~ date of pasteurization.
 - (2) ~~Quantity~~ quantity of each batch pasteurized (pounds of crustacea meat or number and size of containers).
 - (3) ~~Processor's~~ processor's code of each pack.
 - (4) ~~If~~ if the pasteurizer processes crustacea meat for someone else, then the packer's name, ~~address~~ address, and permit number ~~must~~ shall be recorded. A copy of the recording chart shall be provided to the owner of the crustacea meat.
 - (5) ~~Notation~~ notation of mechanical or power failure or opening of the recording thermometer case for adjustment or repair during the pasteurizing cycle.
 - (6) ~~After~~ after the optimum temperature in the water bath has been reached and during the holding time, the reading of the indicating thermometer and the time of reading shall be recorded on the chart.
 - (7) ~~Signature~~ signature of the pasteurizer operator.
- (g) A constant flow steam control valve is required, if steam is used as a source of heat.
- (h) The water bath shall be provided with effective agitation to maintain a uniform temperature.
- (i) Other technologies that provide the data, ~~information~~ information, and records as required in this Rule may be used if approved by the Division.

History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~
Eff. October 1, 1992;
Amended Eff. April 1, 1997;
Readopted Eff. April 1, 2022.

15A NCAC 18A .0175 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0175 PREPARATION OF CRUSTACEA MEAT FOR PASTEURIZATION

The preparation of crustacea meat for pasteurization shall be in compliance with the following:

- (1) ~~Crustacea~~ crustacea meat shall be prepared in compliance with Rules .0134 through .0183 of this Section.
- (2) ~~The~~ the containers of crustacea meat shall be sealed as quickly as possible after the crustacea meat is picked.
- (3) ~~The~~ the sealed ~~container~~ containers of crustacea meat shall be placed immediately in ice and refrigerated until pasteurized.

History Note: Authority ~~G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~
Eff. October 1, 1992;
Amended Eff. April 1, 1997;
Readopted Eff. April 1, 2022.

15A NCAC 18A .0176 is proposed for reoption with substantive changes as follows:

15A NCAC 18A .0176 PASTEURIZATION OF CRUSTACEA MEAT

(a) All pasteurization operations shall require a Process Validation Study Report approved by the Division of Marine Fisheries prior to operation.

(b) The pasteurization of crustacea meat shall be conducted in compliance with the following:

- (1) The the minimum pasteurization specifications shall be the raising of the internal temperature of the container heating every particle of crustacea meat in a hermetically-sealed container to a temperature of at least 185° F (85° C) and holding it continuously at that or above this temperature for at least one minute at the geometric center of a container. container in equipment being operated in compliance with the Process Validation Study Report. Each set of pasteurizing equipment shall be standardized so that the minimum pasteurization procedure in this Subparagraph can be obtained. The pasteurization procedure shall be performed in accordance with the standardization report. This process. A copy of the procedures for operating the pasteurizing equipment shall also be posted adjacent to the pasteurization vat. The pasteurizer shall keep on file the standardization report on file and shall provide the Division a copy of such report.
- (2) Alteration alteration of the equipment or loading of containers shall require the procedure be restandardized. a new Process Validation Study Report.
- (3) The the containers of crustacea meat shall be cooled to 50° F (10° C) or below within three hours. hours of the completion of pasteurization.
- (4) Refrigerated refrigerated storage shall be provided for the cooled crustacea meat and shall maintain a storage temperature at or below 36° F (2.2° C). 38° F (3.3° C).

History Note: Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Amended Eff. August 1, 1998;
Readopted Eff. April 1, 2022.

15A NCAC 18A .0177 is proposed for reoption with substantive changes as follows:

15A NCAC 18A .0177 LABELING OF PASTEURIZED CRUSTACEA MEAT

Labeling of pasteurized crustacea meat shall be in compliance with the following:

- (1) ~~The the~~ label used shall clearly identify the contents of the container as pasteurized crustacea meat.
- (2) ~~Each each~~ container shall be permanently and legibly identified with a code indicating the batch and day of processing.
- (3) ~~The the~~ words "Perishable-Keep Under ~~Refrigeration~~", ~~or equivalent~~, Refrigeration" or equivalent shall be prominently displayed on the container.
- (4) ~~The the~~ original packer's or repacker's permit number preceded by the state abbreviation shall be legibly impressed, ~~embossed-embossed~~, or lithographed on each container. Each container shall be legibly impressed, ~~embossed-embossed~~, or lithographed with the name and address of the original packer, ~~repacker-repacker~~, or distributor.

History Note: Authority ~~G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~
~~Eff. October 1, 1992;~~
Readopted Eff. April 1, 2022.

15A NCAC 18A .0178 is proposed for reoption with substantive changes as follows:

15A NCAC 18A .0178 INTERFACILITY PASTEURIZATION PROCEDURES

No person shall initiate interfacility pasteurization of crustacea meat without prior written approval by the ~~Division~~. Division of Marine Fisheries. Interfacility pasteurization of crustacea meat shall be in ~~conjunction-compliance~~ with the following:

- (1) ~~Crustacea~~ crustacea meat shall be packed, ~~labeled~~ labeled, and refrigerated in compliance with Rules .0134 through .0182 of this Section. Records shall be maintained to identify each batch of crustacea meat pasteurized.
- (2) ~~Crustacea~~ crustacea meat shall be shipped in an enclosed, easily cleanable vehicle at a temperature ~~between 33° F (0.5° C) and of 40° F (4.4° C).~~ 40° F (4.4° C) or below.
- (3) ~~Crustacea~~ crustacea meat shall be pasteurized in compliance with Rules .0175 through .0177 of this Section. The pasteurizer shall provide a copy of each pasteurization chart to the original packer.

History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~
Eff. October 1, 1992;
Readopted Eff. April 1, 2022.

15A NCAC 18A .0181 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0181 EMBARGO OR DISPOSAL OF COOKED CRUSTACEA OR CRUSTACEA MEAT

(a) When it has been determined by the Division of Marine Fisheries that cooked crustacea or crustacea meat have not been stored, transported, handled, cooked, picked, ~~packed~~ packed, or offered for sale in compliance with this Section, the cooked crustacea or crustacea meat shall be deemed adulterated.

(b) Cooked crustacea or crustacea meat ~~prepared for sale to the public~~ determined to be adulterated or ~~misbranded~~, misbranded shall be subject to embargo or disposal by the Division in accordance with G.S. 113-221.4. ~~130A-21(e)~~. ~~The Division may embargo, condemn, destroy or otherwise dispose of all cooked crustacea or crustacea meat found to be adulterated or misbranded.~~

History Note: Authority ~~G.S. 130A-230; 113-134; 113-182; 113-221.2; 113-221.4, 143B-289.52;~~

Eff. October 1, 1992;

Amended Eff. April 1, 1997;

Readopted Eff. April 1, 2022.

15A NCAC 18A .0182 is proposed for reoption with substantive changes as follows:

15A NCAC 18A .0182 BACTERIOLOGICAL AND CONTAMINATION STANDARDS

- (a) Cooked crustacea or crustacea meat shall not exceed Escherichia coli Most Probable Number (MPN) of 36 per 100 grams of sample or exceed a standard plate count of 100,000 per gram.
- (b) Pasteurized crustacea meat shall contain no Escherichia coli or fecal coliform. Samples of pasteurized crustacea meat, taken within 24 hours of pasteurizing, shall not have a standard plate count of more than 3,000 per gram.
- (c) Thermally processed crustacea or crustacea meat shall not exceed Escherichia coli MPN of 36 per 100 grams of sample or exceed a standard plate count of 100,000 per gram.
- (d) Cooked crustacea or crustacea meat shall not be handled in a manner to make it an imminent hazard.
- (e) Cooked crustacea or crustacea meat found not complying with the standards as ~~stated~~ set forth in Paragraph (a), (b), ~~(c)~~, or (d) of this Rule may be deemed adulterated by the ~~Division~~ Division of Marine Fisheries.

*History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~
Eff. October 1, 1992;
Amended Eff. August 1, 1998; February 1, 1997;
Readopted Eff. April 1, 2022.*

15A NCAC 18A .0183 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0183 ALTERNATIVE LABELING

A durable label, permanently affixed to the ~~container~~container, may be used to meet any labeling requirement in this Section.

History Note: Authority G.S. ~~130A-230~~113-134; 113-182; 113-221.2; 143B-289.52;

Eff. October 1, 1992.

Readopted Eff. April 1, 2022.

15A NCAC 18A .0184 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0184 THERMAL PROCESSING CONTROLS - THERMOMETERS

- (a) All thermal processing equipment shall have a time-temperature recording thermometer with a temperature controller (combined or separately) and an indicating thermometer. The thermometers shall be located to give a true representation of the operating temperature of the process. The recording thermometer chart shall be at least a 12-hour chart and at least 10 inches in diameter.
- (b) The recording thermometer shall be installed so that it will be protected from vibration and from striking by loading operations or facility traffic. The thermometer mechanism shall be protected from moisture under prevailing conditions. The thermometer case shall not be opened during the thermal processing cycle, except for temperature check or for emergency or repair. A record shall be made when the thermometer case has been opened.
- (c) The recording thermometer shall have a range of at least 120-220° F (48.9-104.4° C). It shall be accurate within plus or minus 1° F between 160° F (71° C) and 200° F (93° C). The chart shall be scaled at a maximum of 2° F intervals in the range of 160° F (71° C) and 200° F (93° C).
- (d) The indicating thermometer shall be a thermometer with an accuracy and readability of plus or minus 1° F between 160° F (71° C) and 200° F (93° C). The thermometer shall be protected against damage.
- (e) The recording thermometer shall be equipped with a spring-operated or electrically operated clock. The recorded elapsed time as indicated by the chart rotation shall not exceed the true elapsed time as shown by an accurate watch. The rotating chart support shall be provided with pins upon which the chart shall be affixed by puncturing the chart.
- (f) The thermal processing unit shall not be operated without a recording thermometer chart in place, the pen in contact with the ~~chart chart~~, and an inked record being made of the operating time-temperature cycle. ~~Any indication of falsification of a thermometer chart shall constitute a violation. Falsification of a thermometer chart shall not occur.~~ A permanent file of the used thermometer charts shall be maintained by the thermal processor and kept available for inspection by the Division of Marine Fisheries for a period of one year. The following information shall be recorded within the confines of the pen markings after the thermal processing cycle has been completed:
- (1) ~~Date~~ date of thermal processing.
 - (2) ~~Quantity~~ quantity of each batch thermally processed (pounds of crustacea meat or number and size of containers).
 - (3) ~~Thermal~~ thermal processor's code of each pack.
 - (4) ~~If~~ if the thermal processor processes crustacea meat for someone else, then the packer's name, ~~address~~ address, and permit number ~~must~~ shall be recorded. A copy of the recording chart shall be provided to the owner of the crustacea meat.
 - (5) ~~Notation~~ notation of mechanical or power failure or opening of the recording thermometer case for adjustment or repair during the thermal processing cycle.
 - (6) ~~After~~ after the optimum temperature in the thermal process has been reached and during the holding time, the reading of the indicating thermometer and the time of reading shall be recorded on the chart.
 - (7) ~~Signature~~ signature of the thermal process operator.
- (g) A constant flow steam control valve is required, if steam is used as a source of heat.
- (h) The thermal processing unit shall be provided with effective and uniform temperature.
- (i) Other technologies that provide the data, ~~information~~ information, and records as required in this Rule may be used if approved by the Division.

History Note: Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. April 1, 1997;
Readopted Eff. April 1, 2022.

15A NCAC 18A .0185 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0185 THERMAL PROCESSING OF CRUSTACEA AND CRUSTACEA MEAT

(a) All thermal processing operations shall require a Process Validation Study Report approved by the Division of Marine Fisheries prior to operation.

(b) The thermal processing of crustacea or crustacea meat shall be conducted in compliance with the following:following procedures:

- (1) ~~The the~~ minimum thermal processing specifications shall be the ~~raising of the internal heating of previously cooked~~ temperature of the container of crustacea or crustacea meat to a desired temperature and for a specified time at the geometric center of a container. container in equipment being operated in compliance with the Process Validation Study Report. Each set of thermal processing equipment shall be standardized so that the minimum procedure can be obtained. The thermal process procedure shall be performed in accordance with the standardization report. This process. ~~A copy of the procedures for operating the thermal processing equipment shall also be posted adjacent to the thermal processing unit. The thermal processor shall keep on file the standardization report on file and shall provide the Division a copy of such report.~~
- (2) ~~Alteration~~ alteration of the equipment or loading of containers shall require ~~the procedure be restandardized.~~ a new Process Validation Study Report.
- (3) ~~The the~~ containers of crustacea or crustacea meat shall be cooled to 50° F (10° C) or below within ~~three hours.~~ hours of the completion of the thermal process.
- (4) ~~Refrigerated~~ refrigerated storage shall be provided for the cooled crustacea or crustacea meat and shall maintain a storage temperature at or below 36° F (2.2° C).

*History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~
Eff. August 1, 1998;
Readopted Eff. April 1, 2022.*

15A NCAC 18A .0186 is proposed for reoption with substantive changes as follows:

15A NCAC 18A .0186 LABELING OF THERMALLY PROCESSED CRUSTACEA OR CRUSTACEA MEAT

Labeling of thermally processed crustacea or crustacea meat shall be in compliance with the following:

- (1) ~~The~~the label used shall clearly identify the contents of the container as thermally processed crustacea or crustacea meat.
- (2) ~~Each~~each container shall be permanently and legibly identified with a code indicating the batch and day of processing.
- (3) ~~The~~the words "Perishable-Keep Under Refrigeration" or equivalent shall be prominently displayed on the container.
- (4) ~~The~~the original packer's or repacker's permit number preceded by the state abbreviation shall be legibly impressed, ~~embossed~~embossed, or lithographed on each container. Each container shall be legibly impressed, ~~embossed~~embossed, or lithographed with the name and address of the original packer, ~~repacker~~repacker, or distributor.

*History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~
Eff. April 1, 1997;
Readopted Eff. April 1, 2022.*

15A NCAC 18A .0187 is proposed for reoption with substantive changes as follows:

15A NCAC 18A .0187 INTERFACILITY THERMAL PROCESSING PROCEDURES

Interfacility thermal processing of crustacea or crustacea meat shall be in ~~conjunction-compliance~~ with the following:

- (1) ~~Crustacea-crustacea~~ or crustacea meat shall be packed, ~~labeled-labeled,~~ and refrigerated in compliance with Rules .0134 through .0187 of this Section. Records shall be maintained to identify each batch of crustacea or crustacea meat thermally processed.
- (2) ~~Crustacea-crustacea~~ or crustacea meat shall be shipped in an enclosed, easily cleanable vehicle at a temperature ~~between 33° F (0.5° C) and of 40° F (4.4° C)-C) or below.~~
- (3) ~~Crustacea-crustacea~~ or crustacea meat shall be thermally processed in compliance with Rules .0184 through .0187 of this Section. The thermal processor shall provide a copy of each thermal processing chart to the original packer.

History Note: Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. August 1, 1998;
Readopted Eff. April 1, 2022.

15A NCAC 18A .0191 is proposed for re adoption with substantive changes as follows:

15A NCAC 18A .0191 MONITORING RECORDS

Monitoring records of critical control points and general sanitation requirements shall be recorded, as specified in ~~plan, the HACCP Plan, and~~ signed and dated when recorded. The records shall be reviewed by the owner or designee within one week of recording.

History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~

Eff. August 1, 2000.

Readopted Eff. April 1, 2022.

Fiscal Impact Analysis of Proposed Rule Adoption and Amendments to Prohibit the Repackaging of Foreign Crab Meat in North Carolina

Rule Amendments: 15A NCAC 03L .0210 (adoption)
15A NCAC 18A .0136, .0173 (amendments and readoptions)

Name of Commission: N.C. Marine Fisheries Commission

Agency Contact: David Dietz, Fisheries Economics Program Manager
N.C. Division of Marine Fisheries
3441 Arendell Street
Morehead City, NC 28557
919-707-8573
David.Dietz@ncdenr.gov

Impact Summary: State government: Yes
Local government: Yes
Federal government: No
Substantial impact: No

Authority:

N.C. General Statutes

§ 113-134. Rules.

§ 113-182. Regulation of fishing and fisheries

§ 113-221.2. Additional rules to establish sanitation requirements for scallops, shellfish, and crustacea; permits and permit fees authorized

§ 143B-289.52. Marine Fisheries Commission – powers and duties.

§ 150B-21.3A. Periodic review and expiration of existing rules.

N.C. Marine Fisheries Commission Rules (As of April 1, 2020)

15A NCAC 18A .0135 Permits

15A NCAC 18A .0136 Applicability of Rules

15A NCAC 18A .0173 Repackaging

Necessity: During the November 2020 meeting of the North Carolina Marine Fisheries Commission (MFC), commissioners voted unanimously to begin the rulemaking process to prohibit the repackaging and resale of foreign crab meat within the state of North Carolina. Based on this motion, the North Carolina Division of Marine Fisheries (NCDMF) developed the proposed rule for adoption, as well as two conforming amendments, which this fiscal note addresses. Additionally, N.C.G.S. § 150B-21.3A requires state agencies to review their existing rules every 10 years to determine which rules are still necessary, and to either readopt or repeal each rule as appropriate. The proposed amendments readopt the two rules in 15A NCAC 18A pursuant to this requirement.

I. Summary

Following recent developments in the state of North Carolina where foreign crab meat was fraudulently marketed and sold as domestic blue crab, the MFC requested NCDMF to explore rulemaking options to prohibit the repackaging of foreign crab meat in the state to prevent future fraud and improve consumer confidence moving forward. After investigating its statutory authority over the issue, NCDMF prepared a new rule for adoption which prohibits the repackaging of foreign crab meat in North Carolina into another container. This does not affect value-added crab products, such as crab cakes. NCDMF has also amended two existing rules for readoption with conforming changes to address the new repackaging rules. Overall, NCDMF has identified just three processors in the state that currently repackage foreign crab meat legally for resale, while only four processors have been identified as participating in this practice over the past five years (S. Nelson, Personal Communication, February 15, 2021). We expect this proposed rule to incur insignificant costs due to a marginal reduction in output from the seafood processing sector, which could generate impacts felt at the state and local level. Alternatively, these changes will also generate small, nonquantifiable benefits to the state from increased consumer confidence, a more stable market for packaged domestic blue crab, and a reduced likelihood of future seafood fraud.

Lastly, the maximum allowable temperature during crustacea repacking is proposed to be reduced from 45°F to 40°F. This conforms with current U.S. Food and Drug Administration (FDA) guidance for the maximum storage temperature of cooked crab meat. This adjustment is not expected to have any significant economic impacts, as crab is repacked in small volumes in the state within cold-storage conditions, thus there is no additional cost to maintain this five-degree difference.

No new costs to enforcement are estimated from these proposed rule changes.

II. Introduction and Purpose of Rule Changes

Crab Picking Industry in North Carolina

Blue crab (*Callinectes sapidus*) supports the largest and most valuable commercial fishery in North Carolina (NCDMF 2019). An important part of this fishery involves the harvest of hard-shell crabs from N.C. waters to be sold to NCDMF certified and permitted crab processors. In North Carolina, the number of crab processors, otherwise known as “crab picking” facilities, has decreased significantly from as many as 43 in 1990 to 14 in 2020. Potential factors in the reduced numbers include the live crab or “basket” market where dealers in other states pay higher prices for live crabs, the lack of a steady supply of live crabs due to reduced overall landings during some years, and competition from lower cost crab meat imported from overseas or other states (NCDMF 2020).

Crab Meat Repacking

Processors that are certified and permitted by NCDMF as a crustacea repacker can also repack crab meat that has been previously cooked and packed initially. Crab processors who repack usually do so in order to market the product in their own branded containers. Repacking involves transferring crustacea product from the original packed container into the repacker’s branded

container using sanitary techniques in accordance with MFC rules (15A NCAC 18A Section .0134-.0191, Handling: Packing: and Shipping of Crustacea Meat). Examples of required sanitary techniques include maintaining a safe temperature during repacking in order to limit bacterial growth, and taking precautions such as sanitizing utensils, tables, etc. to limit possible contamination from the packing process. The repacker is required to label the repacked container with their name, address, certification number followed by the letters “RP”, and a code indicating the repack date.

Repacking of Foreign Crab Meat

In addition to repacking domestically sourced crab product, processors can currently also repack product from foreign sources. Common sources include Asian and South American countries such as Indonesia, Vietnam, China, Mexico, Brazil, and Venezuela. Imports include the meat from two types of “swimming crabs” that are related to blue crab: *Portunidae* (family that includes blue crabs) and *Callinectes* (blue crab genus). Processors who repack meat from foreign sources typically receive pasteurized product in cans and then repack the product directly into their own branded plastic containers. In addition to the labeling requirements for repacked containers described above, containers that are repacked with foreign crab meat are required to be labeled in accordance with Federal labeling requirements as set forth in MFC rules 15A NCAC 18A .0136 (Applicability of Rules) and .0173 (Repacking). This includes a requirement to state the country of origin, date of repacking, and the name of the repacking processor.

During the “Issues from Commissioners” portion of the Feb. 20, 2020 MFC meeting, Commissioner Doug Cross requested that the Director of the NCDMF consider developing an information paper to amend MFC Rule 15A NCAC 18A .0173 regarding the repacking of foreign crab meat. Commissioner Cross requested the NCDMF to examine the possibility of making it unlawful to repack or possess foreign crab meat in North Carolina unless it remains in the original container. This request was prompted by a recent case in which a North Carolina seafood processor was found guilty in January 2020 of illegally repacking foreign crab meat for resale between 2012 and 2015. While it was legal for the processor to repack this foreign product, the individual attempted to label it as domestic blue crab and was subsequently tried and charged with retail fraud. Based on this ruling, the MFC argued that continuing to allow the repackaging of foreign crab meat would only perpetuate the risk of seafood fraud, leading to reduced consumer confidence and a lower overall value for North Carolina’s blue crab fishery.

The information paper titled “Information on Repacking of Foreign Crab Meat in North Carolina” was presented during the next MFC meeting on May 14, 2020. The paper covered several topics. These included the negative publicity regarding fraudulent representation of foreign crab meat as “Product of the USA” by firms including one in North Carolina, and the potential economic impact to N.C. crab processors that currently participate in the repacking of foreign crab meat if the practice was to be prohibited.

After presentation of the information paper, Commissioner Cross reiterated his view that the repacking of foreign crab meat into a container other than the original is designed to defraud the customer. He offered that consumers would be more confident if they know that foreign crab

meat cannot be repacked in North Carolina. After further discussion and by unanimous vote, the MFC passed a motion “to make it illegal to repack any imported crab meat in North Carolina into another container for resale in the State of North Carolina through the rulemaking process.”

Crab Meat Repacking Temperatures

Finally, another proposed change to 15A NCAC 18A .0173 would reduce the maximum temperature for crab meat during the repacking process from 45°F to 40°F. The temperature of 40°F is the recommended maximum storage temperature for cooked crab meat according to the FDA Fish and Fishery Products Hazards and Controls Guidance. This change is proposed to conform to that standard in order to prevent the growth of pathogens and is also needed because there is currently no rule on the maximum time that crab meat can remain at 45°F during the repacking process. It should be noted that the State of Maryland, which has a crab meat industry similar to NC, reduced their maximum temperature for crab meat during the repacking process from 45°F to 40°F in 2017.

The reduction from 45°F to 40°F should have little effect on NC crab processors that repack, as only small volumes of crab meat are typically removed from temperature control at a time in order to repack. This minimizes the amount of time that the temperature could rise. An informal inquiry to one crab processor that repacks meat indicated it could potentially require processors to repack smaller volumes of meat at a time to stay below the new temperature threshold. However, this would not impact overall efficiency, productivity, or output over time.

III. Fiscal Impact Analysis

Overall, this proposed rule creates a simple change to seafood processing in the state that generates market-level impacts to North Carolina’s seafood supply chain. Effectively, this rule would eliminate a small, secondary market in the state’s seafood processing industry, eliminating overall output. Conversely, the intent of this rule is to eliminate future cases of fraud, which could improve consumer confidence and purchasing of North Carolina crab. In the past five years, only four North Carolina seafood processors were identified to be repackaging foreign crab meat for resale. Only three of these processors have been identified as currently engaging in this practice; these three processors are located in three coastal counties all within the northeastern part of the state (S. Nelson, Personal Communication, February 15, 2021).

Lastly, there is also a proposed change to 15A NCAC 18A .0173, in which the maximum allowable temperature for repacking crab meat is lowered from 45°F to 40°F. If this proposed change would require processors in the state to change machinery, repacking practices, or the time it takes to repack crab meat it could incur costs to the state in a variety of ways. However, in discussion with seafood processors in North Carolina, this proposed change would simply conform state repackaging temperature requirements with federal storage temperature requirements that are already being met. While this proposed change may impact the total volume of crab meat that can be set outside of the cooler for repackaging at one time, no substantive changes to processors’ operations are expected from this proposed rule change, and therefore no economic impacts should be expected as well.

Summary of Potential Benefits

The principle economic benefit to the state from this proposed rule is a more stable, and potentially more robust, market for North Carolina blue crab due to increased consumer confidence and a lower likelihood of future fraud cases. By making it unlawful to repack foreign crab meat in any capacity, the pathway to engage in labelling fraud in the future becomes much more difficult, and therefore the likelihood of future cases will decline. With this, fewer issues with seafood fraud moving forward should increase consumer confidence in North Carolina blue crab products, leading to a more stable market and supply chain.

Additionally, dealers and processors in the state are still allowed to sell foreign crab meat, it just cannot be repackaged in the state prior to sale. This still allows the foreign crab meat supply chain to stay open, meaning there can still be sales and tax revenue to the state from foreign crab meat. In other words, this rule change does not eliminate the foreign crab meat market, it simply restricts repackaging in order to maintain consumer confidence and reduce potential legal issues moving forward.

In all, these shifts translate to economic benefits to the state due to lower legal risk moving forward, a more trustworthy blue crab market in the state, and possibly increases in total sales volume in the future. However, these benefits cannot be quantified, as economic data on the foreign crab meat market in North Carolina is extremely limited. Despite this, NCDMF reports that only four licensed processors in the state have engaged in any foreign crab meat repackaging over the past five years, and therefore the total sum of benefits from this rule are not significant.

Summary of Potential Costs

While the expected benefits of this proposed rule are relatively broad and indirect in nature, the potential costs simply reflect the elimination of a small, secondary processing market in the state and the related economic impacts. In essence, the ability to repackage foreign crab meat in the state provides processors an additional market (or industry) to operate in. By buying, repackaging, and reselling foreign crab meat, processors marginally increase their sales, employment, and overall tax contribution to the state.

However, only four processors have been identified as generating revenue from this practice in the previous five years, and just three are currently engaging in any level of foreign crab meat repackaging. These three active processors are located in three different coastal counties in the northeast portion of the state. This low, geographically confined level of participation overall means the expected costs of this proposed rule are not significant. Despite this, there is the likelihood for these costs to be felt at both the state and local level, as these small reductions in output and tax revenue will be more strongly felt in the three coastal counties currently participating in the practice.

Lastly, as the inspection of prepared shellfish products at processors is part of the Division's ongoing monitoring activities by both the Marine Patrol and Shellfish Sanitation sections, there are no additional costs to enforcement expected.

Appendix I Proposed Rule Changes:

15A NCAC 03L .0210 REPACKING OF FOREIGN CRAB MEAT PROHIBITED

It shall be unlawful to repack foreign crab meat in North Carolina into another container. This rule shall apply to all facilities and persons permitted in accordance with Rule 15A NCAC 18A .0135. This rule does not apply to crab meat that has been transformed into another product, such as crab cakes or other value-added products.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. April 1, 2022.*

15A NCAC 18A .0136 APPLICABILITY OF RULES

The Rules in this Section shall apply to the operation of all facilities and persons permitted in Rule .0135 of this Section and all other businesses and persons that buy, sell, ~~transport~~ transport, or ship cooked crustacea or crustacea meat ~~which~~ that has not been transformed into another product. ~~Foreign crustacea meat processed in North Carolina shall comply with all applicable Federal requirements.~~

*History Note: Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Amended Eff. April 1, 1997;
Readopted Eff. April 1, 2022.*

15A NCAC 18A .0173 **REPACKING**

(a) Crustacea meat for repacking ~~which that~~ is processed in North Carolina shall comply with Rules .0134 through .0187 of this Section. Crustacea meat for repacking ~~which that~~ is processed outside of North Carolina shall comply with Rule .0182 of this Section. ~~Quarterly bacteriological reports shall be provided to the Division by the repacker of all foreign crustacea meat for repacking.~~

(b) The repacker shall provide the Division of Marine Fisheries a current written list of all sources of crustacea meat used for repacking.

(c) Repacking of crustacea meat:

- (1) Crustacea meat shall not exceed ~~45° F (7.1° C)~~ 40° F (4.4° C) during the repacking process.
- (2) Repacking shall be conducted separately by time or space from the routine crustacea meat picking and packing process.
- (3) The food contact surfaces and utensils utilized in the repacking process shall be cleaned and sanitized prior to repacking and thereafter on ~~30-minute~~ 30-minute intervals during repacking.
- (4) Repacked crustacea meat shall be maintained at or below 40° F (4.4° C).
- (5) Blending or combining of any of the following shall be prohibited:
 - (A) ~~Fresh~~ fresh crustacea meat.
 - (B) ~~Frozen~~ frozen crustacea meat.
 - (C) ~~Pasteurized~~ pasteurized crustacea meat.
 - (D) ~~Crustacea~~ crustacea meat packed in another facility.
- (6) Crustacea meat shall not be repacked more than one time.
- (7) All empty containers shall be rendered unusable.

(d) Labeling of repacked crustacea meat:

- (1) Each container shall be legibly embossed, ~~impressed~~ impressed, or lithographed with the repacker's or the distributor's name and address.
- (2) Each container shall be legibly embossed, ~~impressed~~ impressed, or lithographed with the repacker's certification number followed by the letters "RP."
- (3) Each container shall be permanently and legibly identified with a code indicating the repack date.
- (4) Each container shall be sealed so that tampering can be detected.
- (5) Each container of foreign crustacea meat which has been repacked outside of North Carolina shall be labeled in accordance with Federal labeling requirements.

(e) Records shall be kept for all purchases of crustacea meat for repacking and sales of repacked meat for one year. The records shall be available for inspection by the Division.

*History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~
 Eff. October 1, 1992;
 Amended Eff. August 1, 2002; April 1, 1997;
 Readopted Eff. April 1, 2022.*

N.C. Marine Fisheries Commission 2021-2022 Annual Rulemaking Cycle Package B

May 2021

Time of Year	Action
February-July 2021	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
August 2021	MFC votes on approval of Notice of Text for Rulemaking
October 2021	Publication of proposed rules in the <i>North Carolina Register</i>
October-November 2021	Public comment period held
October 2021	Public hearing(s) held (details to be determined)
February 2022	MFC votes on approval of permanent rules *
April 2022	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
2023 legislative session	Possible effective date of rules subject to legislative review per S.L. 2019-37, S.L. 2019-198, and G.S. 14-4.1.
May 1, 2022	Proposed effective date of rules not subject to legislative review
May 1, 2022	Rulebook supplement available online

* 15A NCAC 03 readoption deadline of June 30, 2022 for final MFC approval