



RULEMAKING UPDATE

RULEMAKING UPDATE MEMO

**2020-2021 ANNUAL RULEMAKING CYCLE
PACKAGE B RULES**

**2021-2022 ANNUAL RULEMAKING CYCLE
PACKAGE A RULES**

**2021-2022 ANNUAL RULEMAKING CYCLE
PACKAGE B RULES**



ROY COOPER
Governor

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Secretary

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Director

Aug. 6, 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 rulemaking in support of the Periodic Review and Expiration of Existing Rules per G.S. 150B-21.3A. Request the MFC vote on final approval of readoption of nine rules in the 2020-2021 "Package B" and approval of Notice of Text for Rulemaking to begin the rulemaking process for 109 rules in the 2021-2022 "Package B".

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 RRC approved the readoption schedule of June 30, 2022 for 172 MFC rules.
 - 15A NCAC 18A – Sanitation: On Jan. 16, 2020, the Rules Review Commission (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 Actions for August MFC Meeting
 - Final Approval of Readoption (9 rules): 15A NCAC 03Q .0101-.0109
 - Approval of Notice of Text for Rulemaking (109 rules): "Package B"
 - Highly Efficient Gears, Artificial Reefs, and Research Sanctuaries
 - Shellfish Leasing Regulations
 - 15A NCAC 03 Rules with Conforming Changes
 - 15A NCAC 03I, 03J, 03K, 03O, and 03R for Definitions, Imported Species, Recordkeeping, Gear, Marketing Shellfish, and Licenses
 - Commercial Blue Crab Harvest and Gear Regulations
 - Permit and License Suspensions and Revocations and Pound Net Gears
 - 15A NCAC 03P Rules
 - 15A NCAC 03K and 18A Crustacea and Shellfish Rules

Action Needed

The MFC is scheduled to vote on final approval of readoption of nine rules and approval of Notice of Text for Rulemaking to begin the process for 109 rules.

Recommendation

The Division of Marine Fisheries (DMF) recommends the MFC vote on final approval to readopt nine rules and approval to begin the rulemaking process for 109 rules. For more information, please refer to the rulemaking section of the briefing materials.

2020-2021 Annual Rulemaking Cycle

"Package B" (9 rules)

Periodic Review and Expiration of Existing Rules – Vote on Final Approval of Readoption of 15A NCAC 03Q .0101-.0109

At its August 2020 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for the 50 rules in "Package B," 41 of which were given final approval by the MFC at its February 2021 meeting. The MFC is scheduled to vote on final approval of the nine remaining rules that are in 15A NCAC 03Q .0100 for the subject "General Regulations: Joint" in accordance with G.S. 150B-21.3A at its August 2021 meeting.

On Oct. 1, 2020 the proposed rules were published in the *N.C. Register*. The MFC accepted public comments on the proposed rules from Oct. 1 through Nov. 30, 2020; one written public comment was received about the nine rules in 15A NCAC 03Q .0100. The DMF proposed changes to the rules to address the public comment for the MFC's final approval. Two online public hearings were held via WebEx on Oct. 21 and 27, 2020. One member of the public attended the Oct. 27 hearing and provided general comments about other rules in the package. The MFC received an update on the public comments at its February 2021 business meeting. For more information, please refer to the documents for "Package B" in the rulemaking section of the briefing materials.

2021-2022 Annual Rulemaking Cycle

"Package A" (56 rules)

Periodic Review and Expiration of Existing Rules – Update

At its May 2021 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for 56 rules. A summary of the proposed rules by subject is provided below. On Aug. 2, 2021 a news release was issued and the proposed rules were published in the *N.C. Register*. The MFC is accepting public comments on the proposed rules from Aug. 2 through 5 p.m. Oct. 1, 2021. Public comments on the proposed rules may be submitted by an online form available at <https://deq.nc.gov/documents/marine-fisheries-commission-proposed-rules-2021-2022-package-a> or by U.S. mail to DMF Rules Coordinator Catherine Blum, P.O. Box 769, Morehead City, NC 28557. Comments submitted by email will not be accepted. An online public hearing is scheduled to be held via WebEx on Aug. 18, 2021 at 6 p.m. Details about the hearing and about how to register to speak at the hearing are also available on the website, as are the proposed rules and the corresponding fiscal analyses. The MFC will receive an update on the public comments at its August 2021 business meeting.

For more information, please refer to the documents for "Package A" in the rulemaking section of the briefing materials, including a table showing the timing of the steps in the process and the Aug. 2 news release and *N.C. Register* publication of the proposed rules. 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*)

These 11 rules in 15A NCAC 03 are proposed for readoption 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*)

These eight rules in 15A NCAC 03 are proposed for readoption 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 DMF 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 DMF and would increase the DMF'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)

These 34 rules in 15A NCAC 18A are proposed for readoption 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 DMF staff and licensed seafood processors and dealers. The proposed changes would not affect the operations or material needs of the DMF or outside stakeholders.

PROHIBIT REPACKING OF FOREIGN CRAB MEAT IN NORTH CAROLINA (3 rules)

(15A NCAC 03L .0210*, 18A .0136, .0173)

Two rules in 15A NCAC 18A are proposed for readoption pursuant to the requirements of G.S. 150B-21.3A and one rule in 15A NCAC 03 is proposed for adoption. Following recent developments in North Carolina where foreign crab meat was fraudulently marketed and sold as domestic blue crab, the MFC requested the DMF 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 DMF 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" (109 rules)

Periodic Review and Expiration of Existing Rules – Vote on Approval of Notice of Text for Rulemaking

At its August 2021 business meeting, the MFC is scheduled to vote on approval of Notice of Text for Rulemaking to begin the rule readoption, repeal through readoption, amendment, and adoption process for 109 rules. A summary of the proposed rules by subject is provided below. Please refer to the documents for "Package B" in the rulemaking section of the briefing materials, including a table showing the timing of the steps in the process and the fiscal analysis of each of the eight subjects. The proposed rules are appended to each respective fiscal analysis. The intended effective date of the rule package is May 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.

HIGHLY EFFICIENT GEARS; ARTIFICIAL REEFS; RESEARCH SANCTUARIES (3 rules) (15A NCAC 03I .0109*, 03J .0404*, 03R .0119)

At its August 2021 business meeting, the MFC is scheduled to vote on proposed amendments to adopt and readopt three rules in 15A NCAC 03 pursuant to the requirements of G.S. 150B-21.3A. On Nov. 19, 2020 the MFC voted to initiate the rulemaking process to restrict highly efficient fishing gears on artificial reefs in state ocean waters to protect all species of finfish, as a complement to the restrictions in process for artificial reefs in the Exclusive Economic Zone for snapper grouper species. In support of this action, the DMF prepared two new rules for adoption as well as one rule for readoption to accomplish the following goals: set requirements for research sanctuaries and artificial reefs in state waters, define highly efficient gears, and codify the geographic boundaries of the 13 existing artificial reef sites in state ocean waters. The purpose of the State artificial reef programs is to develop hard bottom habitat that aggregate fishery resources and improve user access to fisheries. By restricting the use of highly efficient fishing gears on artificial reefs, the likelihood of overexploitation is reduced. Gears with this characteristic may be considered all those other than hand line, hook and line, rod and reel, and spearfishing gear. All harvest by spearfishing gear would be restricted to recreational limits.

SHELLFISH LEASING REGULATIONS (9 rules) (15A NCAC 03K .0111, 03O .0203, .0205, .0206, .0207, .0208, .0209, .0210, .0211*)

At its August 2021 business meeting, the MFC is scheduled to vote on proposed amendments to readopt and repeal through readoption nine rules in 15A NCAC 03 pursuant to the requirements of G.S. 150B-21.3A. The rules aim to further address recommendations laid out in Session Law 2019-37 and the subsequent Shellfish Aquaculture User Conflict Study completed by the Department of Environmental Quality, DMF, and MFC. Most rule changes conform to three other recently approved shellfish lease rules. Additional changes are proposed to continue supporting the efficiency of the State's shellfish lease program and production. Specifically, changes seek to streamline and shorten processes for shellfish lease applications, shellfish lease application grievances by the public, production reporting requirements, and shellfish lease transfers and subleases.

15A NCAC 03 RULES WITH CONFORMING CHANGES (40 rules)

(15A NCAC 03I .0113*, .0118*, 03J .0101*, .0110*, .0302*, 03K .0101*, .0102*, .0105, .0106, .0108*, .0201, .0202*, .0204*, .0207*, .0301*, .0302, .0304*, .0305*, .0401*, .0505*, 03L .0101, .0102*, .0103*, .0105*, 03M .0201*, .0202*, .0204*, .0205*, .0503*, 03N .0104*, .0105*, 03O .0301*, .0302*, .0303*, .0401, .0402, .0403, .0404, .0405*, .0406)

At its August 2021 business meeting, the MFC is scheduled to vote on proposed amendments to readopt 40 rules in 15A NCAC 03 pursuant to the requirements of G.S. 150B-21.3A that relate to general rules, gear, shellfish, crustacea, finfish, nursery areas, and licenses. The rules have been reviewed to conform to rulemaking requirements and contain only clarifying and technical changes that result in no meaningful impacts.

15A NCAC 03I, 03J, 03K, 03O, AND 03R FOR DEFINITIONS, IMPORTED SPECIES, RECORDKEEPING, GEAR, MARKETING SHELLFISH, AND LICENSES (18 rules)

(15A NCAC 03I .0101, .0104*, .0114*, 03J .0105*, .0109*, .0305*, 03K .0205*, .0507*, 03O .0101*, .0102*, .0103, .0104*, .0105, .0107, .0109*, .0110, .0113*, 03R .0111)

At its August 2021 business meeting, the MFC is scheduled to vote on proposed amendments to readopt and amend 18 rules in 15A NCAC 03 pursuant to the requirements of G.S. 150B-21.3A. The changes seek to improve clarity and efficiency to rules related to definitions, imported species, recordkeeping, gear, marketing shellfish, and licenses. Overall, most changes are conforming and technical in nature. Small benefits are expected related to removing a time requirement for obtaining a tournament license and by broadening the types of recordkeeping permissible for inspection by Marine Fisheries Inspectors at fish dealer locations by including electronic trip tickets. A proposed change to marking requirements for commercial trotlines would likely incur a small financial cost to select fishermen. The change is expected to make trotlines easier to identify and monitor, as well as result in consistent marking requirements across gear types. A small opportunity cost is expected for a portion of shellfish lease holders to obtain and comply with the reporting requirements of an aquaculture operation permit. The permit consolidates all existing shellfish lease requirements into a single management tool and over half of lease holders already hold the permit. Having all shellfish lease holders subject to the same permit requirement facilitates the tracking and monitoring of shellfish leases overall and the timely handling of potential public health issues, ultimately enhancing the resource.

COMMERCIAL BLUE CRAB HARVEST AND GEAR REGULATIONS (8 rules)

(15A NCAC 03J .0301*, 03L .0201*, .0202*, .0203*, .0204*, .0205*, 03R .0110, .0118)

At its August 2021 business meeting, the MFC is scheduled to vote on proposed amendments to readopt and amend eight rules in 15A NCAC 03 pursuant to the requirements of G.S. 150B-21.3A. These rules contain a variety of technical changes with no meaningful impacts, as well as a number of substantive changes aimed at conforming rule language with new blue crab and gear management measures approved through Amendment 3 to the Blue Crab Fishery Management Plan. However, all of these new measures are already in effect via proclamation following the approval of the plan in February 2020. Therefore, the proposed changes simply codify these existing requirements in permanent rule. A proposed change to marking requirements for pots would likely incur a small financial cost to select fishermen. The change is expected to make pots easier to identify and monitor, as well as result in consistent marking requirements across gear types. DMF estimates at least half of commercial fishermen using this gear already meet the requirements.

PERMIT AND LICENSE SUSPENSIONS/REVOCATIONS; POUND NET GEARS (11 rules)
(15A NCAC 03I .0105*, 03J .0501*, .0502, .0503, .0504, .0505, 03O .0111*, .0114*, .0502*,
.0504*, 03P .0101)

At its August 2021 business meeting, the MFC is scheduled to vote on proposed amendments to readopt 11 rules in 15A NCAC 03 pursuant to the requirements of G.S. 150B-21.3A. Proposed changes seek to conform rules related to permit and license suspensions and revocations to standards of the Administrative Procedure Act (APA; G.S. 150B) and to increase clarity of rules. The majority of changes are conforming and clarifying amendments that incur no impacts. Proposed changes with anticipated impacts provide authority to deal with rare events related to permits and licenses; provide significant context to the differences in license and permit suspensions, revocations, and requirements; and provide administrative alternatives to increase overall DMF efficiency. Changes proposed to 15A NCAC 03J .0501 for Pound Net Set Permits would delegate narrow proclamation authority to the DMF director to waive the 30-day pound net set requirement for the southern flounder fishery that has seasons that are now less than 30 days in length, maintaining compliance with the requirements of Amendment 2 to the Southern Flounder Fishery Management Plan.

In all, these proposed changes provide benefits in terms of increased DMF efficiency and increased protection of marine resources. Revised versions of 15A NCAC 03I .0105 and 03O .0504 with additional, minor conforming changes are included in the rulemaking section of the briefing materials for the MFC's approval to begin the rulemaking process.

15A NCAC 03P RULES (8 rules)
(15A NCAC 03P .0102, .0201, .0202, .0203, .0301, .0302, .0303, .0304)

At its August 2021 business meeting, the MFC is scheduled to vote on proposed amendments to readopt and repeal through readoption eight rules in 15A NCAC 03 pursuant to the requirements of G.S. 150B-21.3A. Proposed changes conform these administrative procedures rules to the requirements of the APA, namely G.S. 150B-4, Declaratory rulings, G.S. 150B-20, Petitioning an agency to adopt a rule, and several articles of G.S. 150B that address administrative hearings and their judicial review. Throughout the rules, elements that merely repeat the content of law are proposed to be struck, per G.S. 150B-19. Additional proposed changes make minor technical and clarifying amendments. Overall, the proposed changes would increase efficiency in contested case hearings, declaratory rulings, and petitions for rulemaking. One proposed change in 15A NCAC 03P .0301 removes the burden for petitioners to submit 15 hard copies of a petition since the majority of petitions are submitted electronically.

15A NCAC 03K AND 18A CRUSTACEA AND SHELLFISH RULES (12 rules)
(15A NCAC 03K .0103*, .0104*, .0107*, .0109*, .0208*, .0209*, 18A .0135*, .0302*, .0303,
.0304, .0425*, .0912)

At its August 2021 business meeting, the MFC is scheduled to vote on proposed amendments to readopt and repeal through readoption 12 rules in 15A NCAC 03 and 18A pursuant to the requirements of G.S. 150B-21.3A. These 12 rules relating to crustacea and shellfish set specific requirements for shellfish management areas, depuration of shellfish, crustacea and shellfish permits, and shellfish tagging. Session Law 2011-145 abolished the Division of Environmental Health (DEH) and transferred the Shellfish Sanitation and Recreational Water Quality Section to the DMF under a Type I transfer. Prior to this change, the DEH advised the DMF on certain matters relating to public health of crustacea and shellfish and the DEH rules bore this out by one division advising the other. Now that the authority for these rules all fall under the MFC, amendments are proposed to rules that have overlapping content, including the repeal through readoption of 15A NCAC 18A .0303, .0304, and .0912.

In addition, amendments are proposed to increase efficiency for the DMF by making rule requirements more clear and consistent and by moving established requirements from proclamations and permit conditions into rules. Additional proposed amendments to shellfish management areas would broaden the DMF director's proclamation authority to address variable conditions. Changes to crustacea and shellfish permits and dealer tags would clearly make it unlawful to engage in the listed activities without first obtaining the required permit and certificate of compliance, or if dealer tags are not being included on shellstock. The amendments would strengthen the ability of Marine Fisheries Inspectors to enforce crustacea and shellfish permit and harvest and dealer requirements in case it is needed if someone was out of compliance, although typically voluntary compliance is achieved.

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 (42)	Rule Readoption (80)	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 2020-2021 Annual Rulemaking Cycle Package B

August 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
Aug. 21, 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
August 2021	MFC votes on approval of nine permanent rules
September 2021	Rules submitted for review by Office of Administrative Hearings/Rules Review Commission
June 30, 2022	Readoption deadline for 15A NCAC 03
2022 or 2023 legislative session	Possible effective date for one of nine rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.

1 15A NCAC 03Q .0101 is readopted with changes as published in 35:07 NCR 764 as follows:

2
3 **SUBCHAPTER 03Q - JURISDICTION OF AGENCIES: CLASSIFICATION OF WATERS**

4
5 **SECTION .0100 - GENERAL REGULATIONS: JOINT**

6
7 **15A NCAC 03Q .0101 SCOPE AND PURPOSE**

8 The rules in this Section pertain to the classification of the waters of North Carolina as coastal fishing waters, inland
9 fishing ~~waters-waters,~~ and joint fishing ~~waters.~~ These rules are waters and shall be adopted jointly in accordance with
10 G.S. 150B-21.2 by both the Marine Fisheries Commission and the Wildlife Resources ~~Commission-Commission~~
11 when concurrent jurisdictions exist, in accordance with G.S. 113-132. These jointly adopted rules shall not affect the
12 jurisdiction of the Marine Fisheries Commission or the Wildlife Resources Commission in any matters other than
13 those specified herein. In addition to the classification of the waters of the state these joint These jointly adopted rules
14 set forth guidelines to may determine which the fishing activities in joint fishing waters that are regulated by the
15 Marine Fisheries ~~Commission~~ and which are regulated ~~Commission,~~ by the Wildlife Resources
16 ~~Commission-Commission,~~ or by both commissions. Finally, the joint These jointly adopted rules set forth special
17 fishing regulations applicable in joint waters that can shall be enforced by officers of the Division of Marine Fisheries
18 and the Wildlife Resources Commission, marine fisheries inspectors and wildlife protectors. These regulations do not
19 affect the jurisdiction of the Marine Fisheries Commission and the Wildlife Resources Commission in any matters
20 other than those specifically set out.

21
22 *History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52;*
23 *Eff. January 1, 1991;*
24 *Readopted Eff. April 1, 2022.*

1 15A NCAC 03Q .0102 is readopted with changes as published in 35:07 NCR 764 as follows:

2
3 **15A NCAC 03Q .0102 INLAND FISHING WATERS**

4 ~~(a) Inland fishing waters are all inland waters except private ponds; and all waters connecting with or tributary to~~
5 ~~coastal sounds or the ocean extending inland from the dividing line between coastal fishing waters and inland fishing~~
6 ~~waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission, defined in G.S.~~
7 ~~113-129. All waters which that~~ are tributary to inland fishing waters ~~and which that~~ are not otherwise designated ~~by~~
8 ~~agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are in rule in~~
9 ~~accordance with G.S. 113-132 shall be~~ inland fishing waters.

10 ~~(b) The regulation and licensing of rules regarding licensing, in accordance with G.S. 113-174.1, and fishing in inland~~
11 ~~fishing waters is shall be~~ under the jurisdiction of the Wildlife Resources Commission.

12 ~~(c) Regulations Rules~~ and laws ~~administered by the Wildlife Resources Commission~~ regarding fishing in inland
13 ~~fishing waters administered by the Wildlife Resources Commission are shall be~~ enforced by wildlife ~~enforcement~~
14 ~~officers, protectors.~~

15
16 *History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52;*

17 *Eff. January 1, 1991;*

18 *Readopted Eff. April 1, 2022.*

1 15A NCAC 03Q .0103 is readopted with changes as published in 35:07 NCR 764 as follows:

2
3 **15A NCAC 03Q .0103 COASTAL FISHING WATERS**

4 (a) Coastal fishing waters are the Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing
5 line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and
6 the Wildlife Resources Commission, defined in G.S. 113-129. All waters which that are tributary to coastal fishing
7 waters and which that are not otherwise designated by agreement between the Marine Fisheries Commission and the
8 Wildlife Resources Commission are in rule in accordance with G.S. 113-132 shall be coastal fishing waters.

9 (b) The regulations and licensing of rules regarding licensing, in accordance with G.S. 113-174.1, and fishing in
10 coastal fishing waters is shall be under the jurisdiction of the Marine Fisheries Commission; Commission, except that
11 including for the following inland game fish as defined in G.S. 113-129(10) and as set forth in 15A NCAC 10C .0301
12 that are of commercial importance:(exclusive of spotted seatrout, weakfish, and striped bass) are subject to regulations
13 by the Wildlife Resources Commission in coastal fishing waters.

- 14 (1) American shad;
- 15 (2) brown bullhead;
- 16 (3) flounder, including Gulf flounder, southern flounder, and summer flounder;
- 17 (4) hickory shad;
- 18 (5) red drum;
- 19 (6) spotted seatrout;
- 20 (7) striped bass, including morone hybrids;
- 21 (8) white catfish;
- 22 (9) white perch;
- 23 (10) yellow bullhead; and
- 24 (11) yellow perch.

25 The Marine Fisheries Commission, pursuant to G.S. 113-129(10), concurs with inland game fish as set forth in 15A
26 NCAC 10C .0301 as of August 1, 2020, excluding the species in this Paragraph of this Rule. Rule 15A NCAC 10C
27 .0301 is hereby incorporated by reference not including subsequent amendments.

28 (c) Regulations Rules and laws administered by the Marine Fisheries Commission regarding fishing in coastal fishing
29 waters are shall be enforced by marine fisheries enforcement officers- inspectors. Regulations Rules regarding inland
30 game fish fish, excluding the species in Paragraph (b) of this Rule, in coastal fishing waters are waters, including joint
31 fishing waters, shall be enforced by wildlife enforcement officers unless otherwise agreed to by the Wildlife Resources
32 Commission-protectors.

33
34 *History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52;*
35 *Eff. January 1, 1991;*
36 *Readopted Eff. April 1, 2022.*

1 15A NCAC 03Q .0104 is readopted with changes as published in 35:07 NCR 764 as follows:

2

3 **15A NCAC 03Q .0104 JOINT FISHING WATERS**

4 **(a)** Joint fishing waters ~~are shall be~~ those coastal fishing ~~waters, hereinafter set out, denominated by agreement of the~~
5 ~~Marine Fisheries Commission and the Wildlife Resources Commission pursuant to G.S. 113-132(e) as joint fishing~~
6 ~~waters.~~ ~~waters adopted by both the Marine Fisheries Commission and the Wildlife Resources Commission as joint~~
7 ~~fishing waters when concurrent jurisdictions exist in accordance with G.S. 113-132.~~ All waters ~~which that~~ are tributary
8 to joint fishing waters ~~and which that~~ are not otherwise designated ~~by agreement between the Marine Fisheries~~
9 ~~Commission and the Wildlife Resources Commission in rule in accordance with G.S. 113-132 shall be are~~ classified
10 as joint fishing waters. ~~The regulation and licensing of fishing in joint waters shall be as stated in 15A NCAC 3Q~~
11 ~~.0106.~~

12 **(b)** ~~In joint fishing waters the Marine Fisheries Commission and the Wildlife Resources Commission shall implement~~
13 ~~their respective management actions for hook and line recreational fishing pursuant to their respective rule-making~~
14 ~~authority in accordance with G.S. 113-132, except as otherwise provided in this Section. Rules in joint fishing waters~~
15 ~~shall be enforced by both marine fisheries inspectors and wildlife protectors.~~

16

17 *History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52;*

18 *Eff. January 1, 1991;*

19 *Readopted Eff. April 1, 2022.*

1 15A NCAC 03Q .0105 is readopted with changes as published in 35:07 NCR 764-765 as follows:

2

3 **15A NCAC 03Q .0105 POSTING DIVIDING LINES**

4 (a) The dividing lines of all major bodies of water and watercourses ~~which are divided by the agreement of~~ agreed
5 upon by the Marine Fisheries Commission and the Wildlife Resources Commission so that portions of the same body
6 of water are constituted inland fishing waters, coastal fishing waters, or joint fishing waters shall be marked with signs
7 in so far insofar as may be practicable. ~~Unmarked and undesignated tributaries shall have the same classification as~~
8 ~~the designated waters to which they connect or into which they flow.~~

9 (b) ~~No unauthorized~~ Unauthorized removal or relocation of ~~any such a~~ marker shall have ~~the no~~ effect ~~of changing~~
10 on the classification of any body of water or portion thereof, nor shall any ~~such~~ unauthorized removal or relocation or
11 the absence of any a marker affect the applicability of any regulation pertaining to any such body of water or portion
12 thereof.

13

14 *History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52;*

15 *Eff. January 1, 1991;*

16 *Readopted Eff. April 1, 2022.*

1 15A NCAC 03Q .0106 was proposed for re adoption without substantive changes as published in 35:07 NCR 765 but
2 is now repealed as follows:

3

4 **15A NCAC 03Q .0106 APPLICABILITY OF RULES: JOINT WATERS**

5 ~~(a) All coastal fishing laws and regulations administered by the Department of Environment and Natural Resources~~
6 ~~and the Marine Fisheries Commission apply to joint waters except as otherwise provided, and shall be enforced by~~
7 ~~fisheries enforcement officers.~~

8 ~~(b) The following inland fishing laws and regulations administered by the Wildlife Resources Commission apply to~~
9 ~~joint waters and shall be enforced by wildlife enforcement officers:~~

- 10 (1) ~~all laws and regulations pertaining to inland game fishes,~~
- 11 (2) ~~all laws and regulations pertaining to inland fishing license requirements for hook and line fishing,~~
- 12 (3) ~~all laws and regulations pertaining to hook and line fishing except as hereinafter provided.~~

13

14 *History Note: Authority G.S. 113-132; 113-134; 143B-289.52;*
15 *Eff. January 1, 1991;*
16 *Amended Eff. July 1, 1999;*
17 *Repealed Eff. April 1, 2022.*

1 15A NCAC 03Q .0107 is readopted with changes as published in 35:07 NCR 765 as follows:

2
3 **15A NCAC 03Q .0107 SPECIAL ~~REGULATIONS:~~ REGULATIONS FOR JOINT FISHING WATERS**

4 ~~In order to~~ To effectively manage all fisheries resources in joint fishing waters and ~~in order~~ to confer enforcement
5 powers on both marine fisheries ~~enforcement officers inspectors~~ and wildlife ~~enforcement officers protectors~~ with
6 respect to certain rules, regulations, the Marine Fisheries Commission and the Wildlife Resources Commission deem
7 it necessary to adopt special rules regulations for joint fishing waters. ~~Such rules supersede~~ This Rule supersedes any
8 inconsistent rules of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise
9 be applicable in joint fishing waters under the ~~provisions of 15A NCAC 03Q .0106:~~ Rules of this Section as follows:

10 (1) Striped ~~Bass~~ Bass:

- 11 (a) ~~It is it shall be~~ It is it shall be unlawful to possess any striped bass or striped bass hybrid that is less than
12 18 inches long (total length).
- 13 (b) ~~It is it shall be~~ It is it shall be unlawful to possess striped bass or striped bass hybrids between the lengths
14 of 22 and 27 inches (total length) in joint fishing waters of the Central Southern
15 Management Area as designated in 15A NCAC 03R .0201.
- 16 (c) ~~It is it shall be~~ It is it shall be unlawful to possess striped bass or striped bass hybrids May through
17 September in the joint fishing waters of the Central Southern Management Area and the
18 Albemarle Sound Management ~~Area~~ Area as designated in 15A NCAC 03R .0201.
- 19 (d) ~~It is it shall be~~ It is it shall be unlawful to possess striped bass or striped bass hybrids taken from the joint
20 fishing waters of the Cape Fear River.
- 21 (e) ~~It is it shall be~~ It is it shall be unlawful to possess more than one daily creel limit of striped bass or striped
22 bass hybrids, in the aggregate, per person per day, regardless of the number of management
23 areas fished.
- 24 (f) ~~Possession possession~~ Possession possession of fish shall be assessed for the creel and size limits of the
25 management area in which the individual is found to be fishing, regardless of the size or
26 creel limits for other management areas visited by that individual in a given day.
- 27 (g) ~~It is it shall be~~ It is it shall be unlawful to engage in net fishing for striped bass or striped bass hybrids in
28 joint fishing waters except as authorized by rules of the Marine Fisheries Commission.

29 (2) Lake Mattamuskeet:

- 30 (a) ~~It is it shall be~~ It is it shall be unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals
31 designated as joint fishing waters.
- 32 (b) ~~It is it shall be~~ It is it shall be unlawful to use or attempt to use any trawl net or seines in Lake
33 Mattamuskeet canals designated as joint fishing waters.

34 (3) Cape Fear ~~River~~ River: ~~It is~~ it shall be unlawful to use or attempt to use any net, net ~~stakes~~ stakes,
35 or electrical fishing device within 800 feet of the dam at Lock No.1 on the Cape Fear River.

36 ~~(4)~~ Shad: ~~It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per~~
37 ~~person per day taken by hook and line.~~

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2
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6
7

*History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. July 1, 1993; November 1, 1991;
Temporary Amendment Eff. May 1, 2000;
Amended Eff. July 1, 2008; September 1, 2005; April 1, 2001; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03Q .0108 is readopted with changes as published in 35:07 NCR 765 as follows:

2

3 **15A NCAC 03Q .0108 MANAGEMENT RESPONSIBILITY FOR ESTUARINE STRIPED BASS IN**
4 **JOINT FISHING WATERS**

5 (a) The management areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC
6 03R .0201.

7 (b) In order to To effectively manage the recreational hook and line harvest in joint fishing waters of the Albemarle
8 Sound-Roanoke River stock of estuarine striped bass, the Marine Fisheries Commission and the Wildlife Resources
9 Commission deem it necessary to establish two management areas; areas: the Albemarle Sound Management Area
10 and the Roanoke River Management Area as designated in 15A NCAC 03R .0201. The Wildlife Resources
11 Commission shall have principal management responsibility for the stock when it is in the joint and inland fishing
12 waters of the Roanoke River Management Area. The Marine Fisheries Commission shall have principal management
13 responsibility for the stock in the coastal, joint-joint, and inland fishing waters of the Albemarle Sound Management
14 Area. The annual quota for recreational harvest of the Albemarle-Roanoke estuarine striped bass stock shall be divided
15 equally between the two management areas. Each commission shall implement management actions for recreational
16 harvest within their respective management areas that will-shall be consistent with the North Carolina Estuarine
17 Striped Bass Fishery Management Plan.

18

19 *History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52;*
20 *Eff. January 1, 1991;*
21 *Amended Eff. October 1, 2004; September 1, 1991;*
22 *Readopted Eff. April 1, 2022.*

1 15A NCAC 03Q .0109 is readopted with changes as published in 35:07 NCR 766 as follows:

2
3 **15A NCAC 03Q .0109 IMPLEMENTATION OF ESTUARINE STRIPED BASS FISHERY**
4 **MANAGEMENT ~~PLANS: PLAN~~; RECREATIONAL FISHING**

5 The Marine Fisheries Commission and ~~the~~ Wildlife Resources ~~Commissions~~ Commission shall implement their
6 respective estuarine striped bass management actions for recreational fishing pursuant to their respective rule-making
7 ~~powers~~ powers and the North Carolina Estuarine Striped Bass Fishery Management Plan. To preserve jurisdictional
8 authority of each Commission, the following means are established through which equivalent management measures
9 ~~can shall~~ be implemented by a single instrument in each of the following management areas:

- 10 (1) ~~In in~~ the Roanoke River Management Area, the exclusive authority to open and close seasons and
11 ~~areas, areas~~ and establish size and creel ~~limits limits~~, whether inland or joint fishing ~~waters waters~~,
12 shall be vested in the Wildlife Resources Commission. The season shall close by proclamation if
13 the quota set by the North Carolina Estuarine Striped Bass Fishery Management Plan is projected
14 to be taken. An instrument closing any management area in joint waters shall operate as and shall be
15 a jointly issued instrument opening or closing seasons or areas to harvest in the Roanoke River
16 management area.
- 17 (2) ~~In in~~ the Albemarle Sound Management Area, the exclusive authority to open and close seasons and
18 areas and establish size and creel limits, whether coastal or joint fishing ~~waters waters~~, shall be
19 vested in the Marine Fisheries Commission. The season shall close by proclamation if the quota set
20 by the North Carolina Estuarine Striped Bass Fishery Management Plan is about projected to be
21 exceeded. taken. In the Albemarle Sound Management Area administered by the Marine Fisheries
22 Commission, a proclamation affecting the harvest in joint and coastal waters, excluding the Roanoke
23 River Management Area, shall automatically be implemented and effective as a Wildlife Resources
24 Commission action in the inland waters and tributaries to the waters affected.

25
26 *History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52;*
27 *Eff. January 1, 1991;*
28 *Amended Eff. October 1, 2004; September 1, 1991;*
29 *Readopted Eff. April 1, 2022.*

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

August 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 20, 2021	MFC approved Notice of Text for Rulemaking
Aug. 2, 2021	Publication of proposed rules in the <i>North Carolina Register</i>
Aug. 2-Oct. 1, 2021	Public comment period held
Aug. 18, 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 13 of 56 rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
April 1, 2022	Proposed effective date of 43 rules not subject to legislative review
April 1, 2022	Rulebook supplement available online
June 30, 2022	Readoption deadline for 15A NCAC 03
June 30, 2024	Readoption deadline for 15A NCAC 18A

Roy Cooper
Governor

Elizabeth S. Biser
Secretary



Kathy B. Rawls
Director

Release: Immediate
Date: Aug. 2, 2021

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

MEDIA ADVISORY: Comment period opens, public hearing scheduled for various marine fisheries rules

MOREHEAD CITY – The N.C. Marine Fisheries Commission is accepting public comment on proposed amendments and re-adoption of 56 rules under a state-mandated periodic review schedule.

Most of the rules pertain to sanitation standards for commercial crustacea processing procedures and contain minor updates. Amendments to three of these rules prohibit the repacking of foreign crab meat in North Carolina.

Following recent developments in North Carolina where foreign crab meat was fraudulently marketed and sold as domestic blue crab, the commission began rulemaking to prohibit the repacking of foreign crab meat in the state to prevent future fraud and improve consumer confidence moving forward.

Other changes to rules pertaining to interjurisdictional species remove harvest requirements that are out of date, relying on proclamations instead to respond to interstate and federal management changes. Several rules about general requirements and fishing gears are proposed for re-adoption with no changes.

A public hearing will be held by web conference on Aug. 18 at 6 p.m. The public may join the meeting online; however, those who wish to comment during the hearing must register to speak by noon on the day of the hearing.

Members of the public also may submit written comments through an online form or through the mail to N.C. Marine Fisheries Commission Rules Comments, P.O. Box 769, Morehead City, N.C. 28557. Comments must be posted online or be received by the N.C. Division of Marine Fisheries by 5 p.m. Oct. 1, 2021.

Links to the public hearing registration form and online comment form, as well as text of the proposed rules and links to join the meeting, can be found on the N.C. Marine Fisheries Commission's [Proposed Rules Page](#).

The proposed rule changes will be presented to the N.C. Marine Fisheries Commission for final approval in February 2022 and have an earliest effective date of April 1, 2022.

For questions about the N.C. Marine Fisheries Commission rulemaking process, email [Catherine Blum](#), rules coordinator for the N.C. Division of Marine Fisheries.

WHO: Marine Fisheries Commission
WHAT: Public Hearing for Proposed Rules
WHEN: Aug. 18 at 6 p.m.
WHERE: Meeting by Web Conference
[Click Here](#) for Information and to Sign Up to Speak

###

Website: <http://www.ncdenr.gov>
Facebook: <http://www.facebook.com/ncdeq>
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NORTH CAROLINA REGISTER

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Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

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Raleigh, North Carolina 27603

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Raleigh, North Carolina 27601

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NORTH CAROLINA REGISTER
Publication Schedule for January 2021 – December 2021

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
35:13	01/04/21	12/08/20	01/19/21	03/05/21	03/22/21	04/15/21	05/01/21	10/01/21
35:14	01/15/21	12/21/20	01/30/21	03/16/21	03/22/21	04/15/21	05/01/21	10/12/21
35:15	02/01/21	01/08/21	02/16/21	04/05/21	04/20/21	05/20/21	06/01/21	10/29/21
35:16	02/15/21	01/25/21	03/02/21	04/16/21	04/20/21	05/20/21	06/01/21	11/12/21
35:17	03/01/21	02/08/21	03/16/21	04/30/21	05/20/21	06/17/21	07/01/21	11/26/21
35:18	03/15/21	02/22/21	03/30/21	05/14/21	05/20/21	06/17/21	07/01/21	12/10/21
35:19	04/01/21	03/11/21	04/16/21	06/01/21	06/21/21	07/15/21	08/01/21	12/27/21
35:20	04/15/21	03/24/21	04/30/21	06/14/21	06/21/21	07/15/21	08/01/21	01/10/22
35:21	05/03/21	04/12/21	05/18/21	07/02/21	07/20/21	08/19/21	09/01/21	01/28/22
35:22	05/17/21	04/26/21	06/01/21	07/16/21	07/20/21	08/19/21	09/01/21	02/11/22
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36:01	07/01/21	06/10/21	07/16/21	08/30/21	09/20/21	10/21/21	11/01/21	03/28/22
36:02	07/15/21	06/23/21	07/30/21	09/13/21	09/20/21	10/21/21	11/01/21	04/11/22
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36:05	09/01/21	08/11/21	09/16/21	11/01/21	11/22/21	12/16/21	01/01/22	05/29/22
36:06	09/15/21	08/24/21	09/30/21	11/15/21	11/22/21	12/16/21	01/01/22	06/12/22
36:07	10/01/21	09/10/21	10/16/21	11/30/21	12/20/21	01/20/22	02/01/22	06/28/22
36:08	10/15/21	09/24/21	10/30/21	12/14/21	12/20/21	01/20/22	02/01/22	07/12/22
36:09	11/01/21	10/11/21	11/16/21	01/03/22	01/20/22	02/17/22	03/01/22	07/29/22
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36:12	12/15/21	11/22/21	12/30/21	02/14/22	02/21/22	03/17/22	04/01/22	09/11/22

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

the certification renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

(c) Any firearms trainer who fails to qualify with the minimum score during the refresher course shall not continue to instruct during the period between the failure to qualify and the expiration of his or her permit.

(d) The holder of a firearms trainer certificate may utilize a dedicated light system or gun mounted light for personal requalification.

(e) During a national or State declared state of emergency that restricts or prohibits a certified firearms trainer from requalifying, the Board may extend the deadline for requalification up to 60 days beyond the effective period of the state of emergency. Any certificate renewed pursuant to this Paragraph shall be issued conditionally and shall automatically expire on the 60th day if requalification requirements have not been met.

Authority G.S. 74C-5; 74C-8.1(a); 74C-13.

SECTION .1200 – CONTINUING EDUCATION

14B NCAC 16 .1202 REQUIRED CONTINUING EDUCATION HOURS

(a) Each licensee shall complete 12 credit hours of continuing education training during each two year renewal period.

(b) Credit shall be given only for classes that have been approved by the Board as set forth in Rule .1203 of this Section.

(c) A licensee who attends a complete meeting of a regularly scheduled meeting of the Board shall receive two credit hours for each meeting that the licensee attends, with credit being given for a maximum of two meetings per year with no more than four credit hours per year and eight credit hours per renewal period.

(d) No more than six hours of CEU credit shall be given during a renewal period for online courses. However, during a national or State declared state of emergency that restricts or prohibits a licensee from attending live continuing education courses or a meeting of the Board, all required hours may be obtained online and credit shall be given upon written request to the Director.

(e) No course offering CEU credits may be taken for credit more than one time during a renewal period.

Authority G.S. 74C-2; 74C-5; 74C-22.

14B NCAC 16 .1203 ACCREDITATION STANDARDS

(a) CE courses may obtain the approval of the Board by submitting the following information to the Board for consideration:

- (1) the nature and purpose of the course;
- (2) the course objectives or goals;
- (3) the outline of the course, including the number of training hours for each segment; and
- (4) the name of the instructor.

(b) To determine if a course will receive approval from the Board, the Board shall complete the following review:

- (1) The matter shall be referred to the Training and Education Committee for the appointment of a

sub-committee that shall review the course under consideration. The sub-committee shall consist of at least two industry members of the Training and Education Committee. Other members of the sub-committee may be appointed at the discretion of the Training and Education Committee Chairman.

(2) The sub-committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives or goals.

(3) When the sub-committee completes its review, it shall report to the Training and Education Committee. The Training and Education Committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives and goals. The Training and Education Committee shall then report the findings with a recommendation of acceptance or denial to the Private Protective Services Board.

(c) Upon receipt of the Training and Education Committee report, the Private Protective Services Board shall determine by majority vote if the course will be approved for continuing education credits. In making its determination, the Board shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives or goals.

(d) Each approved course shall remain an approved course for four years from the date of approval by the Board, unless the course content changes or the course instructor changes.

(e) Trainers and instructors shall receive continuing education credit of five hours for every actual teaching hour with an eight hour cap of continuing education credit every two years.

(f) Colleges, universities, trade schools, and other degree granting institutions shall be granted standing approval when the institutions are accredited, certified, or approved by the Department of Public Instruction or by a similar agency in another state and the course is related to law, criminal justice, security profession, finance, ethics, forensics, crime prevention, and investigation. Approval is one credit hour per contact hour not to exceed eight credit hours.

(g) Online courses shall be approved by the Board based on compliance with the standards set forth in Paragraph (a) of this Rule. ~~No more than six hours of CEU credit shall be given during a renewal period for online courses.~~

~~(h) No course offering CEU credits may be taken for credit more than one time during a renewal period.~~

Authority G.S. 74C-5; 74C-22.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Marine Fisheries Commission intends to adopt the rule cited as 15A NCAC 03L .0210, readopt with substantive changes the rules cited as 15A NCAC 03L .0207, .0301, .0302; 03M .0302, .0519; 18A .0134, .0136-.0139, .0144,

.0145, .0147-.0149, .0151-.0153, .0156-.0158, .0161, .0162, .0164-.0166, .0168, .0173-.0178, .0181-.0187, .0191, readopt without substantive changes the rules cited as 15A NCAC 03I .0108, .0115, .0122; 03J .0103, .0104, .0106, .0111, .0202, .0208, .0401, .0402, and repeal through re Adoption the rules cited as 15A NCAC 03M .0301, .0511, and .0516.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for re Adoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://deq.nc.gov/mfc-proposed-rules>

Proposed Effective Date: April 1, 2022 except: 15A NCAC 03J .0103, .0104, .0106, .0111, .0202, .0208, .0402; 03L .0210, .0301; 03M .0302, .0519 – Pending Legislative Review

Public Hearing:

Date: August 18, 2021

Time: 6:00 p.m.

Location:

WebEx Events meeting link:

<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=eda06363d0c775c9de22e7ff40585bbeb>

Event number: 161 284 4183

Event password: 1234

Event phone number: 1-415-655-0003

Reason for Proposed Action:

15A NCAC 03I .0108 OCEAN FISHING PIERS
 15A NCAC 03I .0115 REPLACEMENT COSTS OF MARINE AND ESTUARINE RESOURCES - FISH
 15A NCAC 03I .0122 USER CONFLICT RESOLUTION
 15A NCAC 03J .0103 GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS
 15A NCAC 03J .0104 TRAWL NETS
 15A NCAC 03J .0106 CHANNEL NETS
 15A NCAC 03J .0111 FYKE OR HOOP NETS
 15A NCAC 03J .0202 ATLANTIC OCEAN
 15A NCAC 03J .0208 NEW RIVER
 15A NCAC 03J .0401 FISHING GEAR
 15A NCAC 03J .0402 FISHING GEAR RESTRICTIONS
 In accordance with G.S. 150B-21.3A, these general rules and gear rules are proposed for re Adoption with no changes.

15A NCAC 03L .0207 HORSESHOE CRABS
 15A NCAC 03L .0301 AMERICAN LOBSTER (NORTHERN LOBSTER)
 15A NCAC 03L .0302 SPINY LOBSTER
 15A NCAC 03M .0301 SPANISH AND KING MACKEREL
 15A NCAC 03M .0302 PURSE GILL NET PROHIBITED
 15A NCAC 03M .0511 BLUEFISH
 15A NCAC 03M .0516 COBIA
 15A NCAC 03M .0519 SHAD

In accordance with G.S. 150B-21.3A, these rules are proposed for re Adoption and repeal through re Adoption. The management and harvest restrictions of North Carolina's interjurisdictional fishery

species are implemented through a state fishery management plan and Marine Fisheries Commission rules that coordinate with relevant interstate and federal regulatory bodies. Over time, regulation of these species in North Carolina has shifted towards ongoing proclamations and rule suspensions by the Fisheries Director in order to keep pace with shifting interstate and federal regulations. The proposed amendments and repeals through re Adoption seek to formalize proclamation authority of several interjurisdictional species in rule and remove existing harvest requirements that are likely to become out of date. The proposed changes would conform with existing management practices by the Division of Marine Fisheries and would increase the division's efficiency in managing these species.

15A NCAC 03L .0210 REPACKING OF FOREIGN CRAB MEAT PROHIBITED
 15A NCAC 18A .0136 APPLICABILITY OF RULES
 15A NCAC 18A .0173 REPACKING

In accordance with G.S. 150B-21.3A and following recent developments in North Carolina where foreign crab meat was fraudulently marketed and sold as domestic blue crab, the Marine Fisheries Commission developed rules to prohibit the repacking of foreign crab meat in the state to prevent future fraud and improve consumer confidence moving forward. One rule is proposed for adoption (15A NCAC 03L .0210) 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 re Adoption (15A NCAC 18A .0136, .0173) are proposed with changes to conform to the new repacking rule.

15A NCAC 18A .0134 DEFINITIONS
 15A NCAC 18A .0137 GENERAL REQUIREMENTS FOR OPERATION
 15A NCAC 18A .0138 SUPERVISION
 15A NCAC 18A .0139 FACILITY FLOODING
 15A NCAC 18A .0144 INSECT CONTROL
 15A NCAC 18A .0145 RODENT AND ANIMAL CONTROL
 15A NCAC 18A .0147 WATER SUPPLY
 15A NCAC 18A .0148 ICE
 15A NCAC 18A .0149 PLUMBING
 15A NCAC 18A .0151 TOILETS
 15A NCAC 18A .0152 SOLID WASTE
 15A NCAC 18A .0153 PERSONAL HYGIENE
 15A NCAC 18A .0156 EQUIPMENT AND UTENSIL CONSTRUCTION
 15A NCAC 18A .0157 FACILITY AND EQUIPMENT SANITATION
 15A NCAC 18A .0158 EQUIPMENT STORAGE
 15A NCAC 18A .0161 CRUSTACEA COOKING
 15A NCAC 18A .0162 COOKED CRUSTACEA AIR-COOL
 15A NCAC 18A .0164 COOKED CRUSTACEA PICKING
 15A NCAC 18A .0165 PACKING
 15A NCAC 18A .0166 PICKED CRUSTACEA MEAT REFRIGERATION
 15A NCAC 18A .0168 SINGLE-SERVICE CONTAINERS
 15A NCAC 18A .0174 PASTEURIZATION PROCESS CONTROLS-THERMOMETERS

PROPOSED RULES

- 15A NCAC 18A .0175 PREPARATION OF CRUSTACEA MEAT FOR PASTEURIZATION
- 15A NCAC 18A .0176 PASTEURIZATION OF CRUSTACEA MEAT
- 15A NCAC 18A .0177 LABELING OF PASTEURIZED CRUSTACEA MEAT
- 15A NCAC 18A .0178 INTERFACILITY PASTEURIZATION PROCEDURES
- 15A NCAC 18A .0181 EMBARGO OR DISPOSAL OF COOKED CRUSTACEA OR CRUSTACEA MEAT
- 15A NCAC 18A .0182 BACTERIOLOGICAL AND CONTAMINATION STANDARDS
- 15A NCAC 18A .0183 ALTERNATIVE LABELING
- 15A NCAC 18A .0184 THERMAL PROCESSING CONTROLS-THERMOMETERS
- 15A NCAC 18A .0185 THERMAL PROCESSING OF CRUSTACEA AND CRUSTACEA MEAT
- 15A NCAC 18A .0186 LABELING OF THERMALLY PROCESSED CRUSTACEA OR CRUSTACEA MEAT
- 15A NCAC 18A .0187 INTERFACILITY THERMAL PROCESSING PROCEDURES
- 15A NCAC 18A .0191 MONITORING RECORDS

In accordance with G.S. 150B-21.3A, these rules that relate to standards for commercial crustacea meat sanitation and processing procedures are proposed for re-adoption. 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 Division of Marine Fisheries staff and licensed seafood processors and dealers. The proposed re-adoptions also contain amendments that are of an administrative nature to update the rules. In all, the rules are proposed for re-adoption with no changes to division procedures.

Comments may be submitted to: Catherine Blum, P.O. Box 769, Morehead City, NC 28557
 Written comments may also be submitted via an online form available at <https://deq.nc.gov/mfc-proposed-rules>

Comment period ends: October 1, 2021

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or email. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Rules automatically subject to legislative review: 15A NCAC 03J .0103, .0104, .0106, .0111, .0202, .0208, .0402; 03L .0210, .0301; 03M .0302, .0519

Statutory reference: S.L. 2019-198

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 03 - MARINE FISHERIES

SUBCHAPTER 03I – GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0108 OCEAN FISHING PIERS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 03I .0115 REPLACEMENT COSTS OF MARINE AND ESTUARINE RESOURCES - FISH (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 03I .0122 USER CONFLICT RESOLUTION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 03J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 - NET RULES, GENERAL

15A NCAC 03J .0103 GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 03J .0104 TRAWL NETS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 03J .0106 CHANNEL NETS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 03J .0111 FYKE OR HOOP NETS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0200 - NET RULES, SPECIFIC AREAS

15A NCAC 03J .0202 ATLANTIC OCEAN (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 03J .0208 NEW RIVER (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 03J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0400 - FISHING GEAR

15A NCAC 03J .0401 FISHING GEAR (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 03J .0402 FISHING GEAR RESTRICTIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 03L – SHRIMPS, CRAB, AND LOBSTER

SECTION .0200 – CRABS

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.

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

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 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.

Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52.

SECTION .0300 – LOBSTER

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

- (a) It is shall be unlawful to possess American lobster:
(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 elaws 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) 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) 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) 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) the door of the trap may serve as the ghost panel, if fastened with a material specified in this Section;
(4) the ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the trap; and
(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.

Authority G.S. 113-134; 113-182; 113-221; 113-221.1; 143B-289.52.

15A NCAC 03L .0302 SPINY LOBSTER

It is unlawful to:

- (1) Possess an 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.

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

SUBCHAPTER 03M - FINFISH

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.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

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.

Authority G.S. 113-134; 113-182; 143B-289.52.

SECTION .0500 – OTHER FINFISH

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.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

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.

Authority G.S. 113-134; 113-182; 143B-289.52.

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.

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

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

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; or
 - (c) ~~Any any~~ cooked crustacea or crustacea meat ~~which that~~ has been deemed to be an imminent ~~hazard; 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 ~~baactericidal 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.

Authority G.S. 106-129; 106-130; ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0136 APPLICABILITY OF RULES

The ~~Rules~~ 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.~~

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

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.

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

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.~~

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

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.

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

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~~ federal laws and rules.

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

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~~ federal laws and rules.

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

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.~~

~~(c)~~ (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.

~~(d)~~ (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.

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

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.

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

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~~ suitable testing method or equipment approved by the Division of Marine Fisheries shall be available and ~~regularly~~ 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~~ 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.

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

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.~~

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

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.

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

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~~nails, fingernails 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.

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

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.

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

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 ~~32° 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_1010, 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.

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

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.

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

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).
(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.
(3) Nothing in this Rule shall prohibit any other cooking process which that has been found equally effective and approved by the Division.

(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 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.
(2) An operating pressure indicator, at least three inches in diameter, with a 0-30 psig range and located adjacent to the indicating thermometer.
(3) A safety valve operational at 18-30 psig, located in the upper portion of the retort, protected from 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, and durable material, and shall be designed to allow for equal steam disbursement, ease of handling, 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.

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

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 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.

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

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, 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 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 the following:

- (1) time-temperature requirements;
(2) shipping destination;
(3) handling;
(4) labeling;
(5) records;
(6) processing;
(7) sanitation; and
(8) HACCP plan.

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

15A NCAC 18A .0165 PACKING

(a) Crustacea meat shall be packed in a container, 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~~ 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.

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

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.

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

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, 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.

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

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 that~~ has been repacked outside of North

Carolina shall be labeled in accordance with ~~Federal~~ 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.

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

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.

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

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.

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

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: following procedures:

(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).

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

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.

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

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) 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.

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

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(c). ~~The Division may embargo, condemn, destroy or otherwise dispose of all cooked crustacea or crustacea meat found to be adulterated or misbranded.~~

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

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.

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

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.

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

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.

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

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).

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

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.

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

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) 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.

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

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.

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

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

August 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
Aug. 27, 2021	MFC votes on approval of Notice of Text for Rulemaking
Oct. 1, 2021	Publication of proposed rules in the <i>North Carolina Register</i>
Oct. 1-Nov. 30, 2021	Public comment period held
October 2021	Public hearing 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 71 of 109 rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
May 1, 2022	Proposed effective date of 38 rules not subject to legislative review
May 1, 2022	Rulebook supplement available online
June 30, 2022	Readoption deadline for 15A NCAC 03
June 30, 2024	Readoption deadline for 15A NCAC 18A

**Fiscal Analysis for Proposed Rules, Readoptions, and Amendments to 15A NCAC 03 Rules
Related to Highly Efficient Gears, Artificial Reefs, and Research Sanctuaries
Pursuant to G.S. 150B-21.3A**

Rule Amendments: 15A NCAC 03I .0109
15A NCAC 03J .0404
15A NCAC 03R .0119

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: Yes
Local government: No
Federal government: No
Substantial impact: No

Authority:

North Carolina General Statutes

G.S. § 113-134.	Rules.
G.S. § 113-181.	Duties and powers of Department.
G.S. § 113-182.	Regulation of fishing and fisheries.
G.S. § 113-221.1.	Proclamations; emergency review.
G.S. § 143B-289.52. [(b)(10)]	Marine Fisheries Commission – powers and duties. [artificial reefs]

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. On Nov.19, 2020 the North Carolina Marine Fisheries Commission (MFC) voted to initiate the rulemaking process to restrict highly efficient fishing gears on artificial reefs in state ocean waters to protect all species of finfish. The following analysis examines two newly proposed rules and one rule proposed for readoption with substantive changes to accomplish this directive.

II. Summary

In August and November of 2020, the North Carolina Division of Marine Fisheries (NCDMF) delivered presentations to the MFC on strategies to help protect all species of finfish within the state's designated ocean artificial reef sites. The MFC voted in August 2020 for NCDMF staff to prepare recommendations towards this goal, and in November 2020 voted to begin the rulemaking process to restrict the use of all highly efficient gears on artificial reefs in state ocean waters. Based on this, NCDMF prepared two new rules for adoption as well as one rule for readoption with substantive changes to accomplish the following goals: set regulations for research sanctuaries and artificial reefs in state waters, define highly efficient gears, and codify the geographic boundary of existing artificial reef sites in state ocean waters. While these proposed changes to gear usage on these sites will ultimately incur costs to the state in terms of increased enforcement and decreased user access and efficiency, there are also corresponding benefits, as proposed changes will increase finfish population health and abundance throughout state ocean waters. However, the total geographic impact of these proposed restrictions is quite small, and therefore the total combination of costs and benefits from proposed rule changes is insignificant.

III. Introduction and Purpose of Rule Changes

Purpose of Rule Changes

The NCDMF manages 43 ocean artificial reefs located between 0.5 – 38 nautical miles (nm) off the coast of North Carolina in the Atlantic Ocean. The majority of these artificial reefs (30) are located in the federally managed Exclusive Economic Zone (EEZ; 3-200 nm) and the remaining artificial reefs sites (13) are located in state ocean waters (0-3 nm), which fall under the authority of the MFC.

A presentation titled “Special Management Zones in State Waters” was delivered during the MFC meeting on Aug. 20, 2020. The presentation included a summary of artificial reefs in North Carolina and the status of the NCDMF gear restriction request to the South Atlantic Fishery Management Council (SAFMC) for the 30 North Carolina reefs in the EEZ. Following the presentation, the MFC passed a motion asking the NCDMF to study making North Carolina's 13 artificial reefs in nearshore ocean waters Special Management Zones (SMZs), possibly limiting the allowable gear, and to bring recommendations back to the MFC at its November 2020 meeting.

Following this decision, an information paper titled “Gear Restrictions as a Management Tool for Artificial Reefs in State Waters” was delivered during the MFC meeting on Nov. 19, 2020. After discussion, the MFC voted to initiate the rulemaking process to restrict highly efficient fishing gears on artificial reefs in state ocean waters to protect all species of finfish as a complement to the restrictions in process for artificial reefs in the EEZ for snapper grouper species.

North Carolina’s artificial reefs, both in state ocean waters and in the EEZ, are home to a myriad of resident and migratory species. The species abundance, biomass and richness of fish assemblages found on artificial reefs vary according to the type of artificial reef construction and water depth of the site (Paxton et al. 2018). Therefore, the composition of species at reefs in state ocean waters is likely different than that of artificial reefs in the EEZ.

The purpose of state artificial reef programs is to develop hard bottom habitat that aggregate fishery resources and improve user access to fisheries. Fish aggregating on artificial reefs may be subject to overexploitation, particularly when highly efficient fishing gears are used for harvest. Highly efficient fishing gears, for the purposes of artificial reef management, are those that offer advantages over other gears through increased catch per effort. Gears with this characteristic may be considered all those other than hand line, hook and line, rod and reel, and spearfishing gear and can lead to overly exploited artificial reefs. “Hook and line” is considered synonymous with “rod and reel”, the latter of which is defined in the Code of Federal Regulations (CFR) for purposes of management by the SAFMC. Spearfishing gear is considered efficient but differs from other gears with this characteristic because its efficiency is derived from visually selective harvest of individual fish; catch per unit effort does not differ much from hand line and rod and reel gear. By restricting the use of highly efficient fishing gears on artificial reefs, the likelihood of overexploitation is reduced.

Currently, the MFC has one rule specifically pertaining to artificial reefs (15A NCAC 03I .0109) that also addresses research sanctuaries and originally provided a mechanism for implementing gear restrictions at designated locations. This rule does not contain specific gear restrictions; instead, it delegates authority to the NCDMF director who may issue a proclamation to prohibit or restrict the taking of fish and the use of equipment in and around artificial reefs and research sanctuaries. Restrictions under this rule are limited to one year and to be applied, artificial reefs must be marked in the center by a readily identifiable buoy; distances for closures or restrictions are measured from the buoy.

The MFC Rule 15A NCAC 03I .0109 is subject to readoption per G.S. 150B-21.3A by June 30, 2022. As part of that process, the rule is proposed to be amended to relocate the components of the rule pertaining to artificial reefs to new rules proposed for adoption, as discussed below. Removing the components about artificial reefs would focus the rule on research sanctuaries. Research sanctuaries are areas that are protected from fishing gears to provide sanctuary for research. Closures in and around a research sanctuary are for one-year periods with renewals allowed at the discretion of the NCDMF director by proclamation. Modified rule language is proposed to retain proclamation authority for the NCDMF director to issue time-limited closures or restrictions for research sanctuaries via 15A NCAC 03I .0109.

To establish gear requirements, area boundaries must first be codified to provide the location of artificial reefs that are subject to the specific gear requirements. A proposed new rule (15A NCAC 03R .0119) would set coordinates delineating boundaries of the artificial reefs in state ocean waters. Then, a second proposed new rule (15A NCAC 03J .0404) would set requirements for those artificial reefs in state ocean waters identified in NCAC 03R .0119. These coordinates would not change the size or shape of identified artificial reefs in state waters, but merely codify their location in rule.

For consistency with SAFMC gear restrictions for artificial reefs in the EEZ, the proposed new gear restrictions rule (15A NCAC 03J .0404) would restrict the harvest of all finfish within the artificial reef boundaries in state ocean waters from all gears other than hand line, hook and line, and spearfishing gear (which includes bang sticks and powerheads). “Hook and line” is considered synonymous with “rod and reel”, the latter of which is defined in the CFR for purposes of management by the SAFMC. Definitions for “hand line”, “hook and line”, and “spearfishing gear” are proposed in the new rule. All harvest by spearfishing gear would be restricted to recreational limits. The proposed new rule does not explicitly name any species to ensure the rule would apply to all finfish species within the artificial reef site boundaries in state ocean waters, as requested by the MFC at its meeting on Nov. 19, 2020.

Management Implications

NCDMF manages 43 ocean artificial reef sites located between 0.5 – 38 nautical miles (nm) off the coast of North Carolina in the Atlantic Ocean (Figure 1). The majority of these artificial reef sites (30) are located in the federally managed Exclusive Economic Zone (EEZ; 3-200 nm) and the remaining artificial reefs sites (13) are located in nearshore state managed ocean waters (0-3nm; Figure 1).

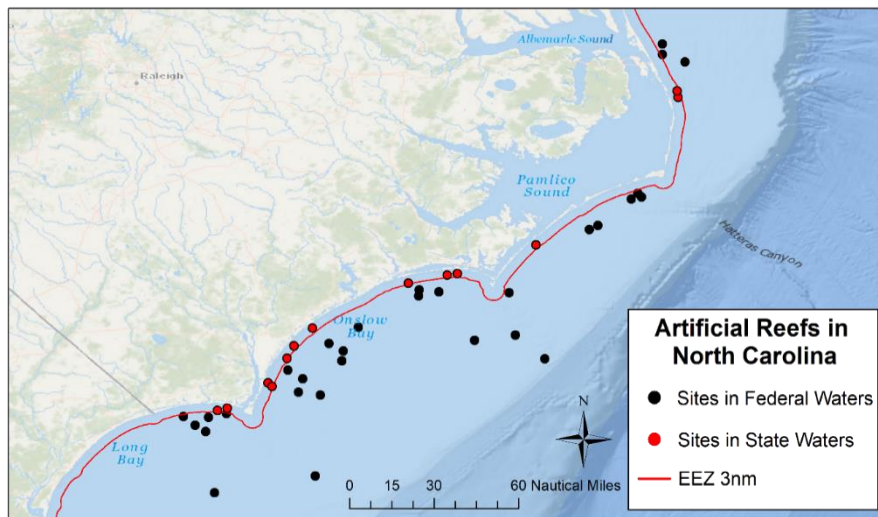


Figure 1: North Carolina ocean artificial reefs separated by state (13 sites; 0-3 nm) and federally (30 sites; 3-200 nm) managed waters.

Federal fisheries executed off the North Carolina coast in the EEZ are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. § 1801 et. seq.). The responsibility for decision making for many of these fisheries is delegated from the United States Secretary of Commerce to the SAFMC, with the final decisions made by the Secretary. Therefore, management changes to these 30 offshore reef sites do not incur state-level impacts caused by MFC rules and do not need to be considered in this analysis.

The 13 artificial reef sites located within North Carolina's nearshore ocean waters are managed under the authority of the MFC, and management changes to these sites should be analyzed for state impacts. As previously stated, the MFC has one rule specifically pertaining to artificial reefs (15A NCAC 03I .0109). This rule does not contain specific gear restrictions. It delegates authority to the NCDMF director who may issue a proclamation to prohibit or restrict the taking of fish and the use of equipment in and around artificial reefs, but such a proclamation is dependent on measurements from buoys that no longer exist due to lack of funding and equipment to maintain them. As a result, no special restrictions are presently in place on artificial reef sites in nearshore ocean waters. The rule is subject to readoption per G.S. 150B-21.3A by June 30, 2022 and will be amended as part of that process.

Like those in the EEZ, artificial reefs in North Carolina's nearshore ocean waters are designed as publicly accessible fish aggregation areas, susceptible to overexploitation and potentially having negative interactions with protected species listed under the Endangered Species Act. The use of gear restrictions as a management tool for artificial reefs in the EEZ could be complemented by MFC implementation of similar gear restrictions for artificial reefs in the nearshore ocean waters through the rulemaking process.

While empirical data on fishing activity at artificial reefs are limited, the Marine Recreational Information Program (MRIP) and observational data suggests the artificial reefs in nearshore ocean waters do experience fishing effort. The MRIP seeks to survey recreational fishing effort and estimate catch on the state's resources, including fishing effort on artificial reefs. The MRIP uses an array of sampling techniques including mail and telephone surveys, vessel logbooks, and the Access Point Angler Intercept Survey (APAIS). Field technicians interview fishermen at fishing access points (e.g. piers, boat ramps) and obtain information from the fisherman such as demographics, where they fished, and what they caught. Notably, one of the questions asks whether the fisherman fished on an artificial reef. The 2016-2019 results from the APAIS show that trips made with private vessels to artificial reefs make up approximately 12-15% of all private vessel ocean trips (Table 1). The MRIP surveys do not gather specific information on which artificial reefs were visited, however on average, a greater proportion of trips were made to artificial reefs in nearshore waters than in the EEZ. This is noteworthy because there are considerably fewer artificial reef options in nearshore ocean waters, suggesting individual nearshore reefs may be visited more frequently and therefore receive more fishing effort than individual artificial reef sites in the EEZ.

Table 1. Access Point Angler Intercept Survey (APAIS) results from ocean artificial reef trips in private vessels only.

Percent (%) of Trips to Artificial Reefs			
Year	<3nm	>3nm	Total
2016	8.78	6.29	15.07
2017	5.86	8.34	14.19
2018*	UNKNOWN	UNKNOWN	UNKNOWN
2019	7.06	5.74	12.80

*Data from 2018 are not known due to a categorization error from the artificial reef survey question.

Currently, there are not enough data to accurately quantify the economic value of artificial reefs (SAFMC 2020). Estimating economic impacts of gear restrictions at these locations is also difficult to quantify due to limited data on artificial reefs including: use, gear use, harvest, and other direct or indirect expenditures. However, restricting allowable gears on artificial reefs is likely to have a direct impact on fisheries which rely on those gears, through loss of revenue. The 13 artificial reefs in nearshore ocean waters have a cumulative area of approximately 3.45 nm² (Table 2). Given the relative size of these sites, maximum revenue losses may be low, as was forecasted for the snapper grouper fishery in Regulatory Amendment 34 (SAFMC 2020). However, gear restriction as an action to maintain abundance of the resource may offer an offsetting positive economic impact through increased user access and subsequent expenditures.

Table 2. Size (nautical miles squared) of all 13 nearshore artificial reefs in North Carolina. *Area of Material* is a representation of two-dimensional area of actual reef materials (vessels, bridge rubble, pipe, etc.) within the reef site boundaries. *Total Reef Area* represents the total permitted area of the reef site.

Site	Area Of Material (nm ²)	Total Reef Area (nm ²)
AR-160	0.00169	0.19146
AR-165*	--	0.19146
AR-275	0.00095	0.19146
AR-315	0.00960	0.76584
AR-320	0.00791	0.19146
AR-342	0.00387	0.19146
AR-360	0.00202	0.19146
AR-364	0.00197	0.19146
AR-370	0.00382	0.76584
AR-378	0.00391	0.19146
AR-378B	0.00022	0.19146
AR-425	0.00235	0.19146
AR-430	0.01987	0.19146
Total	0.05819	3.44630

*Area of material at AR-165 has not been calculated due to how recently material has been deployed.

From an enforcement perspective, similarities among restrictions at the artificial reefs in the EEZ and in the state ocean waters may be viewed positively. However, some compliance and enforcement challenges will likely exist, considering that license holders often visit multiple sites

with different regulations in a single trip. Perhaps most notably for spearfishing, possession limits for finfish harvested with this gear may be different at EEZ artificial reefs than at artificial reefs in state ocean waters because snapper grouper species harvested with spearfishing gear at EEZ artificial reefs is limited to the applicable recreational bag and possession limits (SAFMC 2020).

For enforcement, it is critical for the proposed Rule 15A NCAC 03J .0404 to prohibit possession of any finfish (not just snapper grouper species) taken with spearfishing gear in excess of a recreational limit within the boundaries of an artificial reef in state ocean waters because the regulations are on the gears themselves and applicable to all finfish species, as explained above. In effect, any license holder who harvests a commercial limit of any finfish species by spear may not visit an artificial reef in state ocean waters while in possession of those finfish.

IV. Fiscal Impact Analysis

Despite the breadth of substantive changes proposed regarding artificial reefs and research sanctuaries in the state of North Carolina, many of these changes do not practically impact management, and overall costs and benefits are not expected to be significant. In fact, two of the three rules in consideration are not expected to incur any additional impacts.

In regards to rule 15A NCAC 03I .0109 “Research Sanctuaries”, while all mention of artificial reefs and corresponding regulations have been removed, existing management strategies for fishing in state Research Sanctuaries will remain exactly the same. These areas have been managed by proclamation authority in the past and will continue to be so into the future using the same guidelines and mechanisms. Therefore, no new impacts are anticipated, including impacts to enforcement.

The new rule proposed for adoption, 15A NCAC 03R .0119, also does not incur any additional impacts, as it merely delineates boundaries for state and federal artificial reef sites. While these site coordinates had not formally been codified into rule prior to this proposed adoption, the rule does not actually address any management authority, simply the exact location of these sites. Therefore, there is no tangible impact from this proposed rule adoption, though the management considerations proposed in 15A NCAC 03J .0404 to these sites do contain meaningful changes for management of artificial reefs in the state.

Lastly, the other newly proposed rule, 15A NCAC 03J .0404 “Ocean Artificial Reef Gear Restrictions”, will likely incur a suite of state-level costs and benefits, though ultimately these impacts are considered as nonquantifiable and non-significant in totality. As discussed above, the impacts to consider from the proposed rule are the costs associated with loss of catch efficiency on artificial reefs and potential loss of access for certain fishermen, while the corresponding benefits relate to the increased productivity and health for finfish in state ocean waters.

Lack of access to highly efficient gears on artificial reefs will ultimately reduce angler catch efficiency on the water in these sites. Recreationally, this reduces satisfaction and may lead to increased effort or decreased participation. Commercially, this may reduce overall landings and

revenues in the industry. However, analysis shows that only around 7% of inshore private vessel trips visit artificial reefs (Table 1), which covers fewer than 3.5 square nautical miles of ocean bottom (Table 2). Additionally, while it is also unknown which gears these private vessel users typically employ on artificial reefs sites, it is highly likely that some proportion already rely on hand-line, rod-and-reel, or spearfishing, reducing the overall impact of this proposed change even further. In all, the costs to the state from these gear restrictions from reduced efficiency and participation cannot be quantified accurately, but given the data available these impacts are expected to be insignificant.

Additionally, there are also expected costs to the state in the form of increased enforcement at artificial reef sites. Given that the proposed rules would create a more stringent set of gear regulations on artificial reef sites, there is the likelihood that Marine Patrol staff may need to spend slightly more time during inspections on artificial reef sites to confirm stakeholders are meeting these proposed regulations. However, as artificial reef sites are already inspected by NCDMF Marine Patrol, and the added time on artificial reef sites is not expected to disrupt normal operations in any significant way, the overall costs to enforcement are not expected to be significant.

Lastly, these proposed gear restrictions will likely incur a small stream of benefits to the state, in the form of increased biological outcomes and improved resource access for all stakeholders. By reducing catch efficiency on artificial reef sites, the goal is to increase the overall productivity of finfish populations on reef sites, which would have positive spillover impacts to finfish stocks within North Carolina's state ocean waters. This will likely lead to very small increases in overall fishing efficiency and satisfaction across the state, which provides an unquantifiable stream of benefits. Given the small geographic scope of this proposed change, this benefit is not expected to be significant.

In conclusion, the proposed restrictions on highly-efficient gears in artificial reef sites in the state will generate both costs in terms of reduced efficiency and access across these sites, as well as benefits in terms of improved biological outcomes for finfish stocks that will impact users across the state. While the proposed changes are intended to protect these sites and increase long-term resource health, the total impact of these effects should not be considered significant to North Carolina.

V. References

- Paxton, A. B., Revels, L. W., Rosemond, R. C., Hoeck, R. V., Lemoine, H. R., Taylor, J. C., & Peterson, C. H. (2018). Convergence of fish community structure between a newly deployed and an established artificial reef along a five-month trajectory. *Ecological Engineering*, 123, 185-192, <https://10.1016/j.ecoleng.2018.09.012>
- South Atlantic Fishery Management Council (SAFMC) (2020). Regulatory Amendment 34 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region: Special Management Zone (SMZ) Framework Amendment to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region. South Atlantic Fishery Management Council, 4055 Faber Place, Ste 201, North Charleston, S.C. 29405, from https://safmc.net/download/SG_RegAm34_Aug-10-2020_FINAL.pdf

VI. Appendix

Proposed Rules for Readoption

15A NCAC 03I .0109 is proposed for readoption with substantive changes as follows:

15A NCAC 03I .0109 ~~ARTIFICIAL REEFS AND RESEARCH SANCTUARIES~~

(a) The Fisheries Director may, by proclamation, prohibit or restrict the taking of fish and the use of any equipment in and around any ~~artificial reef or~~ research sanctuary. Any closure or restriction shall be for no more than one year, subject to renewal at the discretion of the Fisheries Director. ~~is subject to the following conditions:~~

- (1) ~~Artificial reefs shall not be closed or restricted beyond 500 yards in the Atlantic Ocean or 250 yards in internal coastal waters. Artificial reefs shall be marked as near center as feasible by one readily identifiable official buoy and distances for closures or restrictions shall be measured from such buoy.~~
- (2) ~~Any closure or restriction shall be for no more than one year, subject to renewal in the discretion of the Fisheries Director.~~
- (3) ~~The economic effect of the closure or restriction on fishing interests with respect to the size and location of the area and the nature of the equipment affected shall be considered before such closure is made and findings shall be made in writing which findings shall be available for public inspection at the office of Division of Marine Fisheries in Morehead City.~~

(b) It ~~is~~ shall be unlawful to engage in any fishing activity, use any equipment, or conduct any other operation ~~which~~ that has been prohibited by proclamation issued under this authority.

History Note: Authority G.S. 113-134; 113-181; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Recodified from 15A NCAC 3I .0009 Eff. December 17, 1996;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03J .0404 is proposed for adoption as follows:

15A NCAC 03J .0404 OCEAN ARTIFICIAL REEF GEAR RESTRICTIONS

(a) For the purpose of this Rule:

- (1) "hand line" shall mean fishing gear that is set and pulled by hand and consists of one vertical line to which may be attached leader lines with hooks.
- (2) "hook and line" shall mean one or more hooks attached to one or more lines and shall include rod and reel, a fishing rod designed to be hand-held with a manually or electrically operated reel attached.
- (3) "spearfishing gear" shall mean spears, Hawaiian slings, or similar devices that propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas, or similar means.

(b) It shall be unlawful to use fishing gear in Ocean Artificial Reefs designated in 15A NCAC 03R .0119 except hand line, hook and line, and spearfishing gear, and except as further limited in accordance with Paragraph (d) of this Rule.

(c) It shall be unlawful to possess finfish taken with spearfishing gear in excess of a recreational limit within the boundaries of a designated Ocean Artificial Reef.

(d) The Fisheries Director may, by proclamation, close the areas designated in 15A NCAC 03R .0119 to the use of specific fishing gear, including the gears otherwise allowed in Paragraph (b) of this Rule, based on biological impacts or user conflicts.

(e) The Fisheries Director may, by proclamation, designate and modify Ocean Artificial Reefs in Coastal Fishing Waters of the Atlantic Ocean, based on biological impacts or variable spatial distribution, including shifted artificial reef material.

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03R .0119 is proposed for adoption as follows:

15A NCAC 03R .0119 OCEAN ARTIFICIAL REEFS

The Ocean Artificial Reefs referenced in 15A NCAC 03J .0404 are delineated in the following Coastal Fishing Waters of the Atlantic Ocean:

- (1) AR-160: within the circular area described by a center point at 35° 43.8880' N - 75° 26.7710' W and radius extending 1,500 feet.
- (2) AR-165: within the circular area described by a center point at 35° 41.6720' N - 75° 26.3130' W and radius extending 1,500 feet.
- (3) AR-275: within the circular area described by a center point at 34° 50.0930' N - 76° 16.8800' W and radius extending 1,500 feet.
- (4) AR-315: within the circular area described by a center point at 34° 40.0850' N - 76° 44.8270' W and radius extending 3,000 feet.
- (5) AR-320: within the circular area described by a center point at 34° 39.5330' N - 76° 48.4170' W and radius extending 1,500 feet.
- (6) AR-342: within the circular area described by a center point at 34° 36.6720' N - 77° 2.1890' W and radius extending 1,500 feet.
- (7) AR-360: within the circular area described by a center point at 34° 20.9830' N - 77° 36.1830' W and radius extending 1,500 feet.
- (8) AR-364: within the circular area described by a center point at 34° 14.8060' N - 77° 42.8550' W and radius extending 1,500 feet.
- (9) AR-370: within the circular area described by a center point at 34° 10.4530' N - 77° 45.2810' W and radius extending 3,000 feet.
- (10) AR-378: within the circular area described by a center point at 34° 1.8070' N - 77° 52.0910' W and radius extending 1,500 feet.
- (11) AR-378b: within the circular area described by a center point at 34° 0.6420' N - 77° 50.6540' W and radius extending 1,500 feet.
- (12) AR-425: within the circular area described by a center point at 33° 53.0480' N - 78° 6.5250' W and radius extending 1,500 feet.
- (13) AR-430: within the circular area described by a center point at 33° 52.2560' N - 78° 09.9680' W and radius extending 1,500 feet.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. (Pending legislative review of 15A NCAC 03J .0404).*

Fiscal Impact Analysis of Proposed Rule Amendments to Shellfish Leasing Regulations

Rule Amendments: 15A NCAC 03K .0111
15A NCAC 03O .0203, .0205-.0211

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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Morehead City, NC 28557
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Impact Summary: State government: Yes
Local government: No
Federal government: No
Substantial impact: No

Authority:

North Carolina General Statutes

§ 76-40. Navigable waters; certain practices regulated.

§ 113-134. Rules.

§ 113-169.1. Permits for gear, equipment, and other specialized activities authorized.

§ 113-182. Regulation of fishing and fisheries.

§ 113-201. Legislative findings and declaration of policy; authority of Marine Fisheries Commission.

§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.

§ 113-202.1. Water column leases for aquaculture.

§ 113-202.2. Water column leases for aquaculture for perpetual franchises.

§ 113-205. Registration of grants in navigable waters; exercise of private fishery rights.

§ 113-206. Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property.

§ 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. Eight rules in 15A NCAC 03O .0200 are proposed for readoption pursuant to this requirement. Rule 15A NCAC 03K .0111 is also proposed for repeal through readoption. Additionally, Session Law 2019-37 was passed with the explicit goal of providing increased support to the state's shellfish aquaculture industry. Following recently approved rules related to this, these rules are proposed with conforming changes as well as additional changes to continue supporting the efficiency of the state's shellfish lease program and production.

I. Summary

Proposed rule amendments to shellfish aquaculture leasing aim to further address recommendations laid out in Session Law 2019-37 and the subsequent Shellfish Aquaculture User Conflict Study (Appendix III). Most proposed changes do not incur additional impact to the state, as they simply are conforming rule language to three shellfish lease rules approved by the Marine Fisheries Commission (MFC) in February and the Rules Review Commission (RRC) in April 2021. Proposed changes with anticipated impacts seek to streamline and shorten processes for shellfish lease applications, shellfish lease application grievances by the public, production reporting requirements, and shellfish lease transfers and subleases. Overall, these proposed changes will incur state-level benefits from time and efficiency improvements, as well as improvements to overall shellfish lease productivity across the state. Conversely, a small cost to the state is incurred by the proposed shellfish production report that will be developed and disseminated to leaseholders by the Division of Marine Fisheries (DMF) annually, as well as the new shellfish lease transfer and sublease criteria. The total combination of costs and benefits to the state cannot be accurately quantified but is not significant. No impacts to enforcement are expected as well.

II. Introduction and Purpose of Rule Changes

The North Carolina General Assembly passed Session Law (S.L.) 2019-37 effective July 1, 2019. The General Assembly noted that the purpose of the bill is “to provide further support to the shellfish aquaculture industry in the State of North Carolina.” Section 9 of the bill requires the North Carolina Department of Environmental Quality (NCDEQ), DMF and MFC to study how to reduce user conflict related to shellfish cultivation leases, and to adopt rules and reform internal operating procedures consistent with the findings of the study.

The increase in coastal populations coupled with the growth of the shellfish aquaculture industry, particularly with respect to utilizing floating gear, has led to user conflicts regarding the use of coastal and estuarine waters. User conflicts are generally described as disagreements that arise between multiple users of areas leased for private shellfish cultivation purposes, commonly referred to as shellfish aquaculture or shellfish leases. DMF and MFC address topics pertinent to user conflicts in the shellfish aquaculture industry in the Shellfish Aquaculture User Conflict Study. The study also discusses the existing regulatory framework governing shellfish leases in North Carolina (Appendix III). Recommendations for amending shellfish lease rules to begin addressing user conflict issues were made in the study. These recommendations were translated into the proposed rule amendments discussed here and cover a broad suite of approaches in order to simultaneously maintain a strong focus on shellfish aquaculture production, while also reducing user conflict between growers and the surrounding community.

Of the eleven rules relating to shellfish lease regulations in 15A NCAC 03O .0200, three of these have already been amended and approved. These rules are 15A NCAC 03O .0201, .0202, and .0204, and relate to increasing setback limits from developed shorelines for new shellfish leases, limiting the allowable number of corners for demarcating shellfish leases to simplify polygon shape, setting new criteria for shellfish lease stakes and signage to alleviate navigation concerns, and initiating a new leaseholder training program that emphasizes user conflict reduction strategies. This leaves eight additional rules in 15A NCAC 03O .0200 relating to shellfish lease regulations that still require amendment and reoption.

Many of the changes proposed for these eight rules will not incur any additional impact to the state, as they are intended to conform rule language with practice and regulations already approved in 15A NCAC 03O .0201, .0202, and .0204. As these three rules approved a suite of changes to shellfish lease management, including applications and production requirements, these additional eight rules require amendments to conform with these ongoing changes. Additionally, a number of technical or clarifying changes are proposed throughout these rules that also incur no impact.

However, additional changes are proposed across these rules to help improve shellfish lease management and reduce user conflict that may incur additional impacts to the state. All of the proposed changes with expected impacts are summarized below, while all changes with no expected impact will not be elaborated on further.

Firstly, 15A NCAC 03O .0203 proposes a new 30-day requirement for shellfish lease applicants to amend insufficient applications. In the past, when applicants received feedback from DMF staff regarding minimum requirements for a lease application and inconsistencies with applicable standards to be addressed, there was no discrete timeline to amend the application. By proposing a 30-day re-application window, the goal is to increase the state's efficiency of the resource by decreasing the time potential lease area remains vacant, either by the applicant or future interested applicants.

Next, 15A NCAC 03O .0206 proposes changes to how grievances over shellfish lease applications can be filed for individuals beyond the applicant, e.g., adjacent riparian owners. This new process implements the newly-formed Shellfish Cultivation Lease Review Committee (SCLRC), which was created through Section 6 of S.L. 2019-37, and is supported by the corresponding DMF standard operating procedures that were then reviewed and approved by NCMFC counsel. Presumably, the law changes assure members of the public still have ample access to protest and provide comment on shellfish lease applications while doing so through a more organized and efficient channel, implemented by the proposed rule amendments and supported by the DMF procedures.

15A NCAC 03O .0207 proposes a requirement for shellfish leaseholders to submit an annual production report to DMF to document the total amount of material purchased, planted, and harvested each year to ensure accordance with the new production requirements that have already been approved by the N.C. General Assembly. DMF will provide the reporting forms annually to each leaseholder. The production requirements have already been evaluated for impact, so the actual report generation is the only additional impact incurred by this proposed change, which is intended to help DMF staff monitor leases more efficiently to meet the demands of the newly-approved production criteria.

The final rule with anticipated impacts is 15A NCAC 03O .0208, which proposes new, more stringent criteria for shellfish lease transfer and subleases. Broadly, the proposed changes ensure that the potential transferee or sublessee has the correct training and meets other requirements for having a shellfish lease, just as each original applicant must meet these requirements at the onset. This new 'pre-screen' approach to transfers and subleases ensures the person is eligible before the assignment happens, instead of after the fact, as is currently the case. Ultimately, this is also

intended to increase efficiency in shellfish lease administration, as well as improve shellfish production outcomes across all leases.

During the shellfish lease rules review process, 15A NCAC 03K .0111 “Permits to use mechanical methods for shellfish on shellfish leases or franchises” was reviewed to determine where to put an exemption for davits used to retrieve aquaculture gear from a shellfish lease or franchise (as allowed by S.L. 2015-241, Section 14.10C(b)). In reviewing, it was determined it would be more appropriate to repeal 03K .0111 and move similar requirements to 03O .0211 because they only apply to shellfish leases. In other words, the only stakeholders that are affected by what is currently in 03K .0111 are shellfish leaseholders. The purpose of the proposed changes is to clearly lay out the gears that you can and cannot use on a shellfish lease, in addition to the requirement to obtain the mechanical methods permit for most circumstances, consolidated in one rule. With this, the proposed changes do not impact regulations of mechanical harvest of shellfish on lease sites, but rather move rule language to a more logical location in the N.C. Administrative Code, and no meaningful impacts will be incurred.

Lastly, as all of the proposed changed with anticipated impacts discussed above do not affect operations for Marine Patrol staff, there is no expected impact to enforcement.

III. Fiscal Analysis

Although the proposed rules for reoption carry a number of substantive changes, the large majority of these changes do not incur any impact to the state, as they either are changes proposed to match shellfish lease rules that have already received MFC and RRC approval, or technical changes with no impact. However, there are a variety of proposed changes that further advance the recommendations of the Shellfish Aquaculture User Conflict Study, with the aim to continue adding efficiency to the state’s shellfish lease program for all stakeholders’ benefit. These proposed changes incur a small flow of costs and benefits that will be examined below. In all, the combined impact of the benefits and costs of these proposed changes cannot be accurately quantified, but overall in combination is not expected to be significant. Again, there are no expected impacts to enforcement from the proposed rule changes.

a. Summary of Potential Economic Benefits

Based on the proposed changed above, the largest impact felt at the state level will be benefits associated with a more efficient administrative process for shellfish leases and leaseholders in the state. In all, benefits can be summarized into two categories: time-cost benefits by reducing administrative burden on the DMF, and benefits associated with more efficient and productive use of potential shellfish lease sites.

In terms of the time-cost benefits, the proposed changes across all four rules with anticipated impacts will likely incur this type of benefit. The new 30-day reapplication period proposed in 15A NCAC 03O .0203 reduces time waiting for applicants to address inconsistencies noted by the DMF, and also eliminates the need for DMF staff to spend time tracking down a reapplication status. The codification of the SCLRC in 15A NCAC 03O .0206 would also make a more organized and efficient process for stakeholder input on shellfish lease applications, reducing DMF time burden. For 15A NCAC 03O .0207, the proposed production report requirements would increase efficiency in DMF staff’s ability to monitor each lease for production without

necessitating site visits or individual requests for information. Lastly, the new ‘pre-screening’ approach to shellfish lease transfers and subleases in 15A NCAC 03O .0208 will decrease the time needed for DMF staff to review transfers and subleases. While upfront time is required to review transfer and sublease applications, this process will assure unsuitable candidates do not inherit a shellfish lease, reducing the time burden staff has to assure that all leases are properly managed upon transfer or sublease. In all, these four proposed rule changes are expected to decrease the time burden on DMF staff working with shellfish leases, creating a benefit to the state. However, this total impact cannot be quantified, but is not expected to be significant.

Additionally, two rules (15A NCAC 03O .0203 and .0208) also incur benefits in relation to more productive outcomes from shellfish lease sites across the state. As 15A NCAC 03O .0203 proposes a requirement for applicants to address inconsistencies noted by the DMF within 30 days of notification, approvals or denials of a shellfish lease site will be more efficient. This will allow suitable lease site spaces to be occupied and exploited more quickly, leading to overall greater production from shellfish leases in the state. In line with this, the new pre-approval process for shellfish lease transfers and subleases in 15A NCAC 03O .0208 should also lead to better production outcomes across shellfish lease sites. By assuring shellfish lease transfer or sublease candidates have the appropriate training and other requirements, the DMF is managing a much more stable flow of productivity out of shellfish lease sites, which should yield a benefit to the state. Again, the productivity benefits from these two proposed rule changes cannot be quantified and are not significant, even when considered in combination with the time-value benefits discussed above.

b. Summary of Potential Economic Costs

These proposed changes are expected to incur very low costs to the state, with only two proposed rules generating potential impacts at this time. Specifically, in the new production reporting requirements for 15A NCAC 03O .0207, the DMF is responsible for preparing and providing reporting forms annually to each leaseholder. Because of this, the state will incur a low annual cost in the form of DMF staff time to prepare and disseminate this form, as well as the hard costs required to generate the form. While this total cost cannot be accurately quantified, DMF reports 381 active shellfish leases in the state¹, and therefore the total cost is not expected to be significant. Additionally, the new reporting requirement may incur an additional time burden on leaseholders, which could impact overall lease production. The added time to report the additional data requested by the Division could result in slightly less effort in producing shellfish from leases, leading to lower overall output and a cost to the state. However, this added time is expected to be low, and this added cost is not significant.

Lastly, while the proposed changes to shellfish lease transfers and subleases in 15A NCAC 03O .0208 should primarily incur benefits to the state, there may also be small costs as well. By putting stricter criteria on transfers and subleases, it may take more time to find appropriate candidates, potentially leaving periods where leases go unused and unproductive. Additionally, potential transfer and sublease candidates may also need to incur personal costs to undertake necessary trainings to meet criteria. This is not only a time cost that affects lease productivity, but also a hard cost that limits additional spending and investment on a shellfish lease. In total,

¹ <http://portal.ncdenr.org/web/mf/shellfish-lease-franchise-programs>

while these combination of costs are not significant, they demonstrate how proposed rules may also impact overall shellfish lease production and affect the state moving forward.

In summary, the proposed rule changes seek to conform the remaining shellfish lease rules with recently approved rules, along with additional proposed changes to increase the efficiency of the state's shellfish lease industry overall. After consideration of the proposed changes, there are likely both costs and benefits incurred at the state level, though the total combination is not significant.

Appendix II Proposed Rule Changes:

15A NCAC 03K .0111 is proposed for repeal through readoption as follows:

15A NCAC 03K .0111 PERMITS TO USE MECHANICAL METHODS FOR SHELLFISH ON SHELLFISH LEASES OR FRANCHISES

~~(a) Permits to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises shall be issued in compliance with the general rules governing all permits in 15A NCAC 03O .0500. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0501.~~

~~(b) It is unlawful to harvest shellfish by the use of mechanical methods from shellfish leases or franchises without first obtaining a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises.~~

*History Note: Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;
Eff. May 1, 2015;
Repealed Eff. (Pending legislative review of 15A NCAC 03O .0211).*

15A NCAC 03O .0203 is proposed for reoption with substantive changes as follows:

15A NCAC 03O .0203 SHELLFISH LEASE APPLICATION PROCESSING

(a) ~~Upon~~ After acceptance of a completed ~~application~~, shellfish lease application as set forth in Rule .0202 of this Section, the proposed shellfish lease area shall be inspected by agents of the ~~Division~~-Division of Marine Fisheries. Proposed shellfish lease areas inconsistent with applicable standards contained or referenced in ~~15A NCAC 3O .0204~~ Rule .0201 of this Section shall result in the return of ~~applications~~-the application for amendment to remove the inconsistencies. If the boundaries of the proposed shellfish lease area are modified, the stakes identifying such areas shall be relocated accordingly by the ~~applicant~~-applicant or applicants. The failure of the applicant or applicants to amend ~~applications~~-the application or modify the shellfish lease area identification, when required, within 30 days of notification shall result in denial of ~~such applications~~- the application.

(b) If the initial or amended shellfish lease application is deemed consistent with all applicable requirements, the Secretary or ~~his~~-their designee shall notify the applicant and publish notices of intention to lease in accordance with the standards in G.S. 113-202(f).

(c) The Secretary shall consider the shellfish lease application, the Division's proposed lease area analysis, and public comments, and may in ~~his~~-their discretion lease or decline to lease the proposed lease area or any part thereof. Special conditions may be imposed so that shellfish leases may be issued ~~which~~-that would otherwise be denied. Should an applicant decide not to accept any special condition imposed on the shellfish lease by the Secretary, the application shall be considered denied.

(d) ~~Upon~~ After approval of ~~leases~~-a shellfish lease by the Secretary, the applicant or applicants shall mark the ~~shellfish bottom~~-lease in accordance with Rule .0204 of this Section within 30 days of approval. ~~15A NCAC 3O .0204(a)(1), water column leases in accordance with 15A NCAC 3O .0204(a)(2), and shall within 90 days submit to the Division acceptable surveys of the areas approved for leasing except that a water column lease which entirely covers a shellfish bottom lease or franchise with an accepted survey on file does not require another survey. Such surveys shall be made at the expense of applicants and must meet the following standards:~~

(1) ~~Surveys and maps shall meet all the requirements of 21 NCAC 56 .1600, Standards of Practice for Land Surveying in North Carolina, which is hereby incorporated by reference including subsequent amendments and editions. This material is available for inspection and copies may be obtained from the Marine Fisheries Division, Marine Fisheries Building, 3441 Arendell St., P.O. Box 769, Morehead City, North Carolina 28557, at no cost.~~

(2) ~~Maps shall bear the certificate:~~

"I _____ certify that this map was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision); that the error of closure as calculated by latitudes and departures is 1: _____, that the area is _____ acres. Witness my hand and seal this _____ day of _____ AD _____."

~~Surveyor or Engineer~~

- ~~(3) — The phrase "other appropriate natural monuments or landmarks" in 21 NCAC 56 .1604(e)(9) shall include bridges, roads, highways, intersections, publicly maintained aids to navigation, houses and other permanent buildings, radio, telephone, TV, and water towers; docks; piers, and bulkheads; but does not include stakes marking the boundaries of adjoining leases, points of marsh, junctions of streams, or other landmarks which are particularly subject to change through natural processes, storms, or the effect of man.~~
- ~~(4) — A written description of the survey suitable for official documents shall be provided with the survey.~~
- ~~(5) — Locations of all corner markers in latitude and longitude shall be provided with the survey and presented in an eight digit format. The relative accuracy of the corner marker locations shall be equal to or less than two meters. Information on the method of measurement, make and model of equipment, and coordinate system used to determine the latitude and longitude shall be included.~~
- (e) Proposed shellfish bottom lease areas remain public bottom until a lease contract has been executed by the Secretary.
- (f) Proposed shellfish water column lease areas superjacent to ~~shellfish~~ bottom leases and ~~recognized perpetual~~ franchises remain public water until a lease contract has been executed by the Secretary.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008; March 1, 1994; September 1, 1991;
Readopted Eff. May 1, 2022.

15A NCAC 03O .0205 is proposed for reoption with substantive changes as follows:

15A NCAC 03O .0205 SHELLFISH LEASE RENEWAL

(a) ~~Lease-Shellfish lease~~ renewal applications shall be provided to ~~lessees-lease holders~~ by the Division of Marine Fisheries as follows:

- (1) ~~For~~ for a shellfish bottom leases, lease, a renewal applications-application shall be provided in January of the year of expiration.
- (2) ~~For~~ for a shellfish water column leases, lease, a renewal applications-application shall be provided at least 90 days prior to ~~the expiration dates. date.~~

(b) ~~Lease-A shellfish lease~~ renewal ~~applications-application~~ shall be accompanied by ~~management plans meeting a Shellfish Lease Management Plan that meets~~ the requirements of ~~15A NCAC 03O .0202(b). Rule .0202 of this Section.~~ The non-refundable filing fee set forth in G.S. 113-202(j) shall accompany each renewal application for a shellfish bottom leases. lease.

~~(c) A survey for renewal leases shall be required at the applicant's expense when the Division determines that the area leased to the renewal applicant is inconsistent with the survey on file.~~

(c) To be eligible to renew a shellfish lease, persons holding any acres under a shellfish lease or franchise shall meet the requirements established in Rules .0201 and .0204 of this Section and 15A NCAC 03O .0503(a).

~~(d) When-If~~ it is determined, after due notice to the ~~lessee, shellfish lease holder~~ and after opportunity for the ~~lessee lease holder~~ to be heard, that the ~~lessee-lease holder~~ has not complied with the requirements of this Section or that the lease as issued is inconsistent with this Section, the Secretary may decline to renew, at the end of the current terms, any ~~shellfish bottom or water column-lease~~. The ~~lessee-shellfish lease holder~~ may appeal the Secretary's decision by ~~initiating filing a petition for a contested case as outlined in 15A NCAC 03P .0102, under G.S. 150B-23.~~

(e) Pursuant to G.S. 113-202(a)(6), the Secretary is not authorized to ~~recommend approval of approve~~ renewal of a shellfish lease in an area ~~closed to shellfishing by reason of pollution-designated as polluted by a proclamation issued by the Fisheries Director. Excluded from this requirement are shellfish leases located in conditionally approved waters that have been temporarily closed when the conditions of the written management plan are not met as described in 15A NCAC 18A .0905. Shellfish leases partially closed due to pollution must shall~~ be amended to exclude the area closed to ~~shellfishing-shellfish harvest~~ prior to renewal. ~~For purposes of lease renewal determinations, an area shall be considered closed to shellfish harvest by reason of pollution when the area has been classified by the State Health Director as prohibited or has been closed for more than 50 percent of the days during the final four years prior to renewal except shellfish leases in areas which have been closed for more than 50 percent of the days during the final four years prior to renewal and continue to meet established production requirements by sale of shellfish through relay periods or other depuration methods shall not be considered closed due to pollution for renewal purposes.~~

(f) If the Secretary declines to renew a shellfish lease that has been determined to be inconsistent with the standards of this Section, the Secretary, with the agreement of the ~~lessee, lease holder~~, may issue a renewal lease for all or part of the area previously leased to the ~~lessee-lease holder~~ that contains conditions necessary to conform the renewal lease to the requirements of this Section for new leases.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. September 1, 2005; May 1, 1997; March 1, 1995; March 1, 1994; October 1, 1992;
September 1, 1991;
Readopted Eff. May 1, 2022.

15A NCAC 03O .0206 is proposed for readoption with substantive changes as follows:

15A NCAC 03O .0206 ~~LEASE PROTEST SHELLFISH LEASE APPLICATION: REQUEST FOR REVIEW~~

~~(a) Should any person object to the granting of any initial or renewal lease, he has the right to protest its issuance prior to the granting of the lease by the Secretary. The protestant may file a sworn statement of protest with the Division stating the grounds for protest. The Secretary shall notify both the prospective lessee and the protestant upon receipt of a protest, and shall conduct such investigation as he deems necessary, and shall notify both parties of the outcome of his investigation. Protestants or applicants receiving an adverse recommendation on the lease application from the Secretary may appeal this decision as outlined in G.S. 113-202(g).~~

~~(b)(a) Any member of the public shall be allowed an opportunity to comment on any shellfish lease application during the public comment period and subsequent public hearing at which the lease application is being considered by the Secretary. Secretary as set forth in G.S. 113-202.~~

~~(b) Procedures for how an applicant or a person other than the applicant who is aggrieved may proceed with a contested case based on dissatisfaction of the Secretary's decision on a shellfish lease application are provided in G.S. 113-202(g). Additionally, a person other than the applicant who is aggrieved may submit a request for a determination of the appropriateness of a contested case hearing. The request and any supporting documentation for the basis of the aggrieved person seeking to commence a contested case shall be submitted within 30 days after the disputed decision is made to the Shellfish Cultivation Lease Review Committee and addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. The request shall be submitted on a form provided by the Division.~~

~~(c) The Shellfish Lease Review Committee shall notify the aggrieved person of the date of the public meeting for the Committee to consider the request no later than seven calendar days before the date of the public meeting.~~

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1994; September 1, 1991;
Readopted Eff. May 1, 2022.*

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

15A NCAC 03O .0207 SHELLFISH LEASE AND FRANCHISE PRODUCTION REPORTS

(a) ~~The owners of shellfish leases and franchises~~ The holder or holders of a shellfish lease or franchise shall provide an annual production reports-report to the Division of Marine Fisheries by March 31 of each year showing the amounts of material planted-planted, purchased, and harvested in connection with management for commercial production. Reporting forms will be provided to owners of shellfish bottom leases and recognized franchises during the period that annual notices of rent due are provided to owners of shellfish bottom leases in accordance with G.S. 113-202(j). Reporting forms will be provided to owners of water column leases prior to each annual anniversary date in accordance with Rules .0201 and .0202 of this Section. The report shall include supporting documentation with evidence of purchased seed in accordance with Rule .0201 of this Section.

(b) The Division shall provide reporting forms annually to each shellfish lease or franchise holder to be used for the annual production report.

~~(b)(c) Failure to furnish~~ by the holder or holders of the shellfish lease or franchise to submit the required annual production report, correct and in detail requested, report with all required fields completed, or filing a report containing false information, can constitute information constitutes grounds for termination-termination as set forth in Rule .0208 of this Section.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. September 1, 1991;
Readopted Eff. May 1, 2022.*

15A NCAC 03O .0208 is proposed for readoption with substantive changes as follows:

15A NCAC 03O .0208 ~~TERMINATION OF PROCEDURES FOR SHELLFISH BOTTOM LEASES AND FRANCHISES AND WATER COLUMN LEASES~~

(a) Procedures for termination of shellfish ~~leaseholds~~ leases and franchises are provided in G.S. 113-202. ~~An appeal of the Secretary's decision to terminate a leasehold is governed by G.S. 150B-23.~~

(b) ~~Substantial breach of compliance with the provisions of rules of the Marine Fisheries Commission governing use of the leasehold includes the following, except as provided in Paragraph (c) of this Rule:~~

- (1) ~~failure to meet shellfish production and marketing requirements for bottom leases or franchises in accordance with Rule .0201 of this Section;~~
- (2) ~~failure to maintain a planting effort of cultch or seed shellfish for bottom leases or franchises in accordance with Rule .0201 of this Section;~~
- (3) ~~failure either to meet shellfish production and marketing requirements or to maintain a planting effort of cultch or seed shellfish for water column leases in accordance with Rule .0201 of this Section;~~
- (4) ~~the Fisheries Director has cause to believe the holder of private shellfish bottom or franchise rights has encroached or usurped the legal rights of the public to access public trust resources in navigable waters, in accordance with G.S. 113-205 and Rule .0204 of this Section; and~~
- (5) ~~the Attorney General initiates action for the purpose of vacating or annulling letters patent granted by the State, in accordance with G.S. 146-63.~~

~~(b)~~ Consistent with G.S. 113-202(11) and G.S. 113-201(b), a leaseholder shellfish lease or franchise holder that failed to meet the requirements in G.S. 113-202, G.S. 113-202.1, G.S. 113-202.2, Rule .0201 or the Rules of this Section or this Rule that govern a determination of failure to utilize the lease on a continuing basis for the commercial production of shellfish may be granted a single extension period of no more than two years per contract period upon a showing of hardship by written notice to the Fisheries Director ~~his or her~~ or their designee received prior to the expiration of the lease term that documents one of the following occurrences caused or will cause the leaseholder-lease or franchise holder to fail to meet lease requirements:

- (1) death, illness, or incapacity of the leaseholder shellfish lease or franchise holder or ~~his~~ their immediate family as defined in G.S. 113-168 that prevented or will prevent the leaseholder-lease or franchise holder from working the lease;
- (2) damage to the shellfish lease or franchise from hurricanes, tropical storms, or other severe weather events recognized by the National Weather Service;
- (3) shellfish mortality caused by disease, natural predators, or parasites; or
- (4) damage to the shellfish lease or franchise from a manmade disaster that triggers a state emergency declaration or federal emergency declaration.

~~(c)~~ In the case of hardship as described in Paragraph (b) of this Rule, the notice shall state the shellfish lease or franchise number. In the case of hardship as described in Subparagraph ~~(1)~~ (b)(1) of this Rule, the notice shall also

state the name of the ~~leaseholder~~ shellfish lease or franchise holder or immediate family member and either the date of death or the date ~~and nature~~ of the illness or incapacity. The Fisheries Director may require a doctor's verification that the illness or incapacity occurred. In the case of hardship as described in Subparagraphs (b)(2) through (b)(4) of this Rule, the notice shall also include documentation of damage to the shellfish lease or franchise. Written notice and supporting documentation shall be addressed to the Director of the Division of Marine Fisheries, 3441 Arendell ~~St.~~, Street, P.O. Box 769, Morehead City, NC 28557.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 113-206; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; October 1, 1992; September 1, 1991;
Temporary Amendment Eff. January 1, 2002; October 1, 2001;
Amended Eff. May 1, 2017; April 1, 2003;
Readopted Eff. May 1, 2022.

15A NCAC 03O .0209 is proposed for reoption with substantive changes as follows:

15A NCAC 03O .0209 ~~TRANSFER OF INTEREST~~ ASSIGNMENT OF SHELLFISH LEASES AND FRANCHISES

(a) For the purpose of effecting assignments of shellfish leases or franchises in accordance with this Rule:

(1) "transfer" shall be defined as any permanent assignment of a shellfish lease or franchise, in whole or in part.

(2) "sublease" shall be defined as any temporary assignment of a shellfish lease or franchise, in whole or in part.

~~(a) Within 30 days after transfer of ownership of all or any portion of interest in a shellfish lease or franchise, the new owner shall notify the Division, and provide the number of the lease or franchise and the county in which it is located. Such notification shall be accompanied by a management plan prepared by the new owner in accordance with 15A NCAC 03O .0202(b).~~

(b) No transfer or sublease of a shellfish lease or franchise, in whole or in part, shall be valid until notice is provided to the Division of Marine Fisheries as provided in Article 16 of Chapter 113 of the North Carolina General Statutes and the Division provides written consent in order to ensure that a transferee or sub-lessee meets the requirements of the North Carolina General Statutes and Marine Fisheries Commission Rules. A transfer may only be made by the use of a form provided and approved by the Division.

(c) Notice to transfer or sublease a shellfish lease or franchise shall include the shellfish lease or franchise number, county in which the lease or franchise is located, and the name of the transferee or sub-lessee. The transferee or sub-lessee of a shellfish lease shall provide to the Division the required Shellfish Lease Management Plan and proof of completion of training requirements in accordance with Rule .0202 of this Section.

~~(b)(d) If the new owner obtains a~~ The smallest portion of an existing shellfish bottom lease or franchise, it shall not contain less than franchise to be transferred or subleased shall be one-half acre acre, and the required notification to the Division shall be accompanied by a survey prepared in accordance with the standards in 15A NCAC 03O .0203(d).

~~(e) Within six months after transfer of ownership, the new owner shall complete shellfish cultivation lease training as specified in 15A NCAC 03O .0202(d).~~

(e) A shellfish lease or franchise shall not be transferred or subleased to a nonresident of North Carolina in accordance with G.S. 113-202, G.S. 113-202.1, G.S. 113-202.2, and G.S. 113-206.

~~(d)(f) Water column leases are not transferrable except when the Secretary approves such transfer~~ A shellfish water column lease shall only be transferred in accordance with G.S. 113-202.1(f) and G.S. 113-202.2(f).

~~(e) In the event the transferee involved in a lease is a nonresident, the Secretary must initiate termination proceedings.~~

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 113-206;
143B-289.52;

Eff. January 1, 1991;

Amended Eff. April 1, 2011; March 1, 1994; September 1, 1991;

Readopted Eff. May 1, 2022.

15A NCAC 03O .0210 is proposed for readoption with substantive changes as follows:

15A NCAC 03O .0210 STANDARDS AND REQUIREMENTS FOR SHELLFISH-FRANCHISES

~~(a) The resolution of claims filed under G.S. 113-205 is governed by standards in Departmental Rules 15A NCAC 1G .0200 and .0300. Following receipt of notification that a claim has a valid chain of title, the owner shall provide to the Division within 90 days a survey prepared in accordance with the standards in 15A NCAC 03O .0203(d). Failure to provide the required survey within the time period specified will result in denial of the claim.~~

~~(b)(a) Acceptable management plans, Shellfish Management Plans, prepared in accordance with the standards in 15A NCAC 03O .0202(b), Rule .0202 of this Section, shall be provided to the Division of Marine Fisheries within 30 days following formal recognition of a valid chain of title and at ten-year intervals thereafter.~~

~~(e)(b) The survey and management plan Shellfish Management Plan requirements in Paragraphs (a) and (b) Paragraph (a) of this ~~Rule~~, Rule and all other requirements and conditions of this Section affecting management of ~~franchises~~, franchises shall apply to all valid ~~shellfish franchises recognized prior to September 1, 1989~~ franchises.~~

~~(d)(c) Commercial production requirements for franchises shall be identical to that required for shellfish bottom leases in 15A NCAC 03O .0201(e) accordance with Rules .0201 and .0207 of this Section averaged over the most recent three-year period after January 1 following the second anniversary of the dates of recognition of claims as valid ~~shellfish~~ franchises and continuing throughout the term of ~~management plans~~ Shellfish Management Plans required in Paragraph (b)-(a) of this Rule. ~~Annual reporting of commercial production shall be submitted upon receipt of forms provided by the Division for that purpose.~~~~

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-205; 113-206; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008; September 1, 1991;
Readopted Eff. May 1, 2022.*

15A NCAC 03O .0211 is proposed for reoption with substantive changes as follows:

15A NCAC 03O .0211 ~~PROTECTION OF PRIVATE SHELLFISH INTEREST~~ FISHING GEAR REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES

(a) ~~It is~~ shall be unlawful to use any trawl net, long haul seine, swipe net, dredge, or mechanical method for ~~clams or oysters shellfish~~ on any shellfish lease or franchise except: unless it has been duly authorized by the Fisheries Director as provided in 15A NCAC 3K .0206 and .0303.

- (1) for a holder of a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises;
 or
- (2) for the purpose of placing and retrieving cages, bags, or other aquaculture gear within any shellfish lease or franchise.

(b) Permits to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises shall be issued by the Division of Marine Fisheries in compliance with 15A NCAC 03O .0500.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-206; 143B-289.52;
 Eff. October 1, 1992;
 Amended Eff. August 1, 1998;
 Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

Appendix III: Shellfish Aquaculture User Conflict Study

Study On How to Reduce User Conflict Related to Shellfish Cultivation Leases



N.C. Department of Environmental Quality, Division of Marine Fisheries
and
N.C. Marine Fisheries Commission

November 8, 2019

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I. Introduction

The North Carolina General Assembly passed Session Law (“S.L.”) 2019-37 effective July 1, 2019. The General Assembly noted that the purpose of the bill is “to provide further support to the shellfish aquaculture industry in the State of North Carolina.”² Section 9 of the bill requires the North Carolina Department of Environmental Quality (“NCDEQ”), Division of Marine Fisheries (“DMF”) and the North Carolina Marine Fisheries Commission (“MFC”) to study how to reduce user conflict related to shellfish cultivation leases, and to adopt rules and reform internal operating procedures consistent with the findings of the study.

² <https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2019-2020/SL2019-37.pdf>

User conflicts are generally described as disagreements that arise between multiple users of areas leased for private shellfish cultivation purposes, commonly referred to as shellfish aquaculture or shellfish leases. Individuals use public trust waters in a variety of ways including navigating, swimming, hunting, fishing, and other recreational activities. The increase in coastal populations coupled with the growth of the shellfish aquaculture industry, particularly with respect to utilizing floating gear, has led to user conflicts regarding the use of coastal and estuarine waters.³

DMF and MFC address topics pertinent to user conflicts in the shellfish aquaculture industry in this study. The study also discusses the existing regulatory framework governing shellfish leases in North Carolina. DMF anticipates future amendments to shellfish lease regulations and internal changes to improve operating procedures with the objective of reducing user conflict issues. Efforts are also made to identify challenges and inefficiencies in the existing Shellfish Lease Program with suggested measures to remedy these deficiencies. The deadline for completing this study is January 1, 2020. The deadline to adopt new rules is March 1, 2021.

Some of the recommendations in this study will likely be included in future studies and directives mandated by S.L. 2019-37. These studies include:

- Shellfish Aquaculture Enterprise Areas (“SEA”) (Section 1.(a) – 1.(c));
- SEAs: Moratorium Areas (Section 1.(d));
- Pamlico Sound Shellfish Aquaculture Pilot Project (Section 2);
- Administrative Remedy for Shellfish Leasing Appeals (Sections 6.(a), 6.(b)).

DMF staff compiled information for this report from its own ongoing work, stakeholder groups, shellfish and aquaculture experts, shellfish growers, non-governmental organizations, and internal DMF shellfish staff with expertise in this area. DMF also drew upon the findings and recommendations from previous legislative studies related to shellfish leases and aquaculture. Cumulatively, the recommendations listed in this study include the provisions mandated in S.L. 2019-37, as well as considerations for enhancing existing procedures for managing the shellfish aquaculture industry and the resulting user conflicts.

The success of shellfish aquaculture operations and the high-demand for new shellfish leases exceeds traditional DMF permitting and site selection capabilities. Achieving and sustaining a successful shellfish aquaculture industry will depend on, among other things, resolution of these user conflicts. DMF envisions approaching and addressing these issues in collaboration with multiple user groups to provide outreach and feedback to ensure shellfish aquaculture operations are consistent with sound science, public trust uses, business planning, marketing, and training. The DMF Shellfish Lease Program may not be sufficiently staffed or funded to accomplish the recommendations made in this study.

³ Overcoming Impediments to Shellfish Aquaculture through Legal Research and Outreach: Case Studies (National Oceanic and Atmospheric Administration, U.S. Department of Commerce), 2019
<http://nsglc.olemiss.edu/projects/shellfishaquaculture/index.html>

II. Background

A. North Carolina's Shellfish Lease Program

DMF administers the Shellfish Lease Program through its Habitat and Enhancement Section. Shellfish leases using public trust bottom areas for shellfish aquaculture (in brackish and higher salinity waters) have existed in North Carolina for over 150 years. Shellfish leases are divided into two types: bottom and water column. You must have a bottom lease to have a water column lease. The water column lease can be granted over the entire footprint of a bottom lease, or on a portion of the lease. A shellfish franchise is similar to a bottom lease except that they are recognized submerged lands claims. Shellfish growers traditionally employed cultch on bottom leases or bed clams under netting. In 1989, the General Assembly expanded traditionally based growing methods by authorizing the leasing of the water column for shellfish aquaculture for areas above a shellfish bottom lease which allow for intensive gear to be used. Extensive shellfish culture means shellfish grown on the bottom without the use of cages, racks, bags, or floats. Intensive shellfish culture means shellfish grown on the bottom or in the water column using cages, racks, bags, or floats. The General Assembly amended the shellfish leasing statutes to allow the use of gear up to 18 inches off the bottom for bottom leases in 2015.⁴

While shellfish water column leases have been authorized since 1989, their use has only recently increased in popularity. The large growth in shellfish water column leases has increased the use of intensive gear leading to a rise in user conflicts. DMF has observed a substantial growth in submission of shellfish lease applications in the past several years with the caveat of a slight decrease in 2018 due to Hurricane Florence and Tropical Storm Michael (Table 1; Figure 1). There are eight coastal counties which have shellfish leases (Figures 2 - 4). As of October 8, 2019, there were 50 shellfish franchises, 224 shellfish bottom leases, and 88 shellfish water column leases in North Carolina covering 1,736 acres (Table 2; Figure 5). Carteret County has 127 shellfish leases, the largest of any North Carolina county (Table 2; Figure 5). Onslow County has the most acres covered by shellfish leases at 527 acres (Table 2; Figure 5). The number of shellfish lease applications in North Carolina has increased exponentially (1,491 percent) from the period of 2005 to 2011 (22 lease applications) compared to the period of 2012 to 2019 (350 lease applications). This is an increase from 2011 (two lease applications) to 2019 (106 lease applications) of 5,200 percent (Table 1; Figure 4).

By way of comparison, the Commonwealth of Virginia has a much larger shellfish lease industry, with 5,400 leases covering 122,000 acres. Currently, Virginia has hundreds of pending applications with a staff capability to process approximately 100 applications per year.

⁴ N.C.G.S. § 113-202(r)

Table 1. Total shellfish lease applications for bottom leases and water column leases from 2005 through 2019.

Year	Applications	
	Bottom Lease	Water Column
2005	3	1
2006	5	1
2007	3	0
2008	5	0
2009	0	0
2010	1	1
2011	1	1
2012	8	6
2013	6	10
2014	8	7
2015	9	2
2016	10	11
2017	52	46
2018	36	33
2019	58	48
Total	205	167

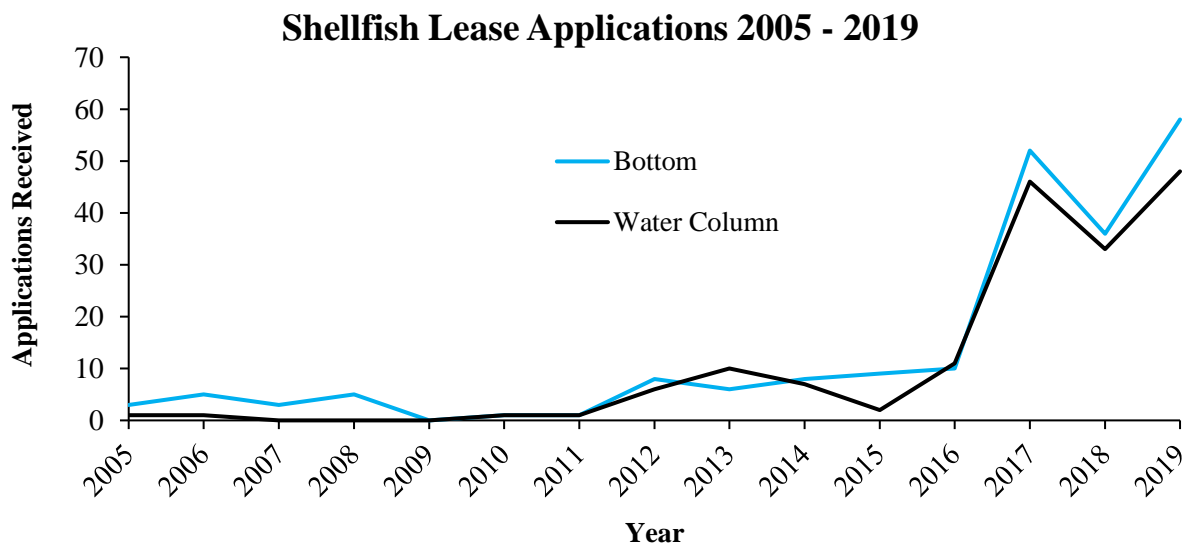


Figure 1. Total shellfish lease applications for bottom leases and water column leases from 2005 through 2019.

Table 2. Total number and acres of shellfish aquaculture leases per county and lease type sorted by total number of leases (highest to lowest).

County ¹	Bottom		Water Column		Franchise		Total	
	Number	Acres	Number	Acres	Number	Acres	Number	Acres ²
Carteret	87	318	38	98	2	2	127	417
Onslow	43	323	11	29	28	204	82	556
Pender	43	225	9	10	0	0	52	236
Hyde	26	255	11	40	9	236	46	531
Pamlico	9	52	8	48	10	71	27	171
N. Hanover	7	17	5	12	1	3	13	33
Dare	7	24	5	18	0	0	12	42
Beaufort	2	6	1	1	0	0	3	6
Total	224	1,219	88	255	50	517	362	1,736

¹ Current as of October 8, 2019

² Total only includes bottom and franchise because water column leases are over bottom lease

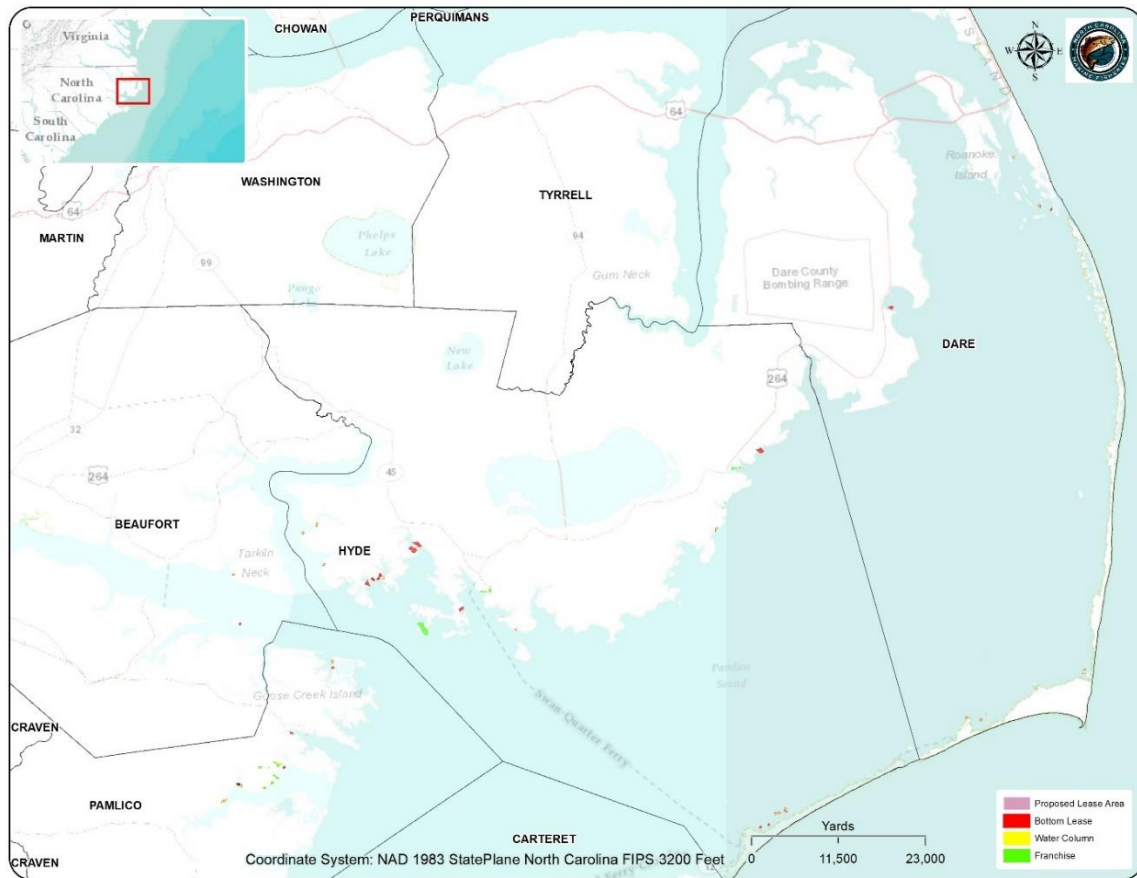


Figure 2. Active and proposed shellfish leases (bottom, water column, and franchise) in the northern region of the state.

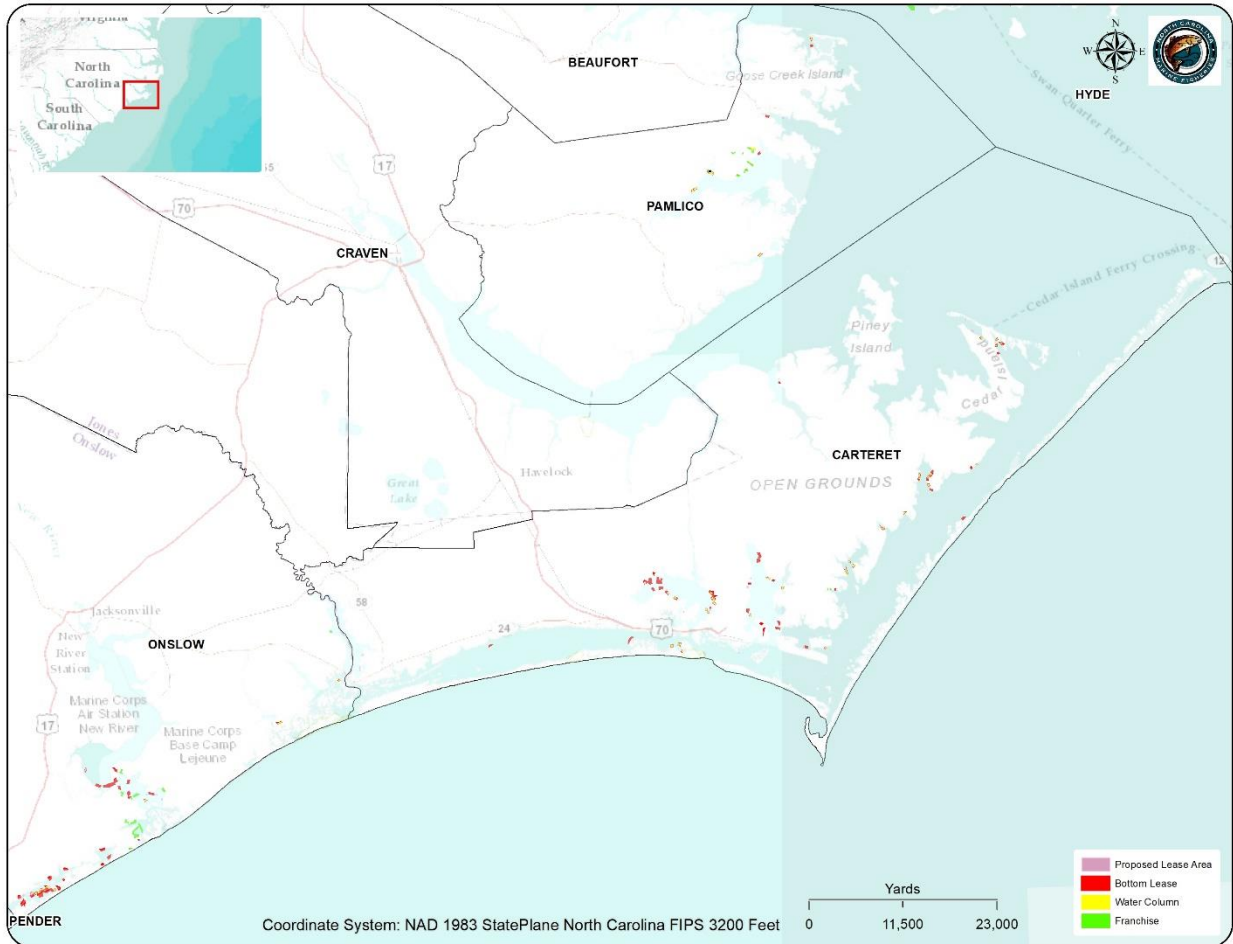


Figure 3. Active and proposed shellfish leases (bottom, water column, and franchise) in the central region of the state.

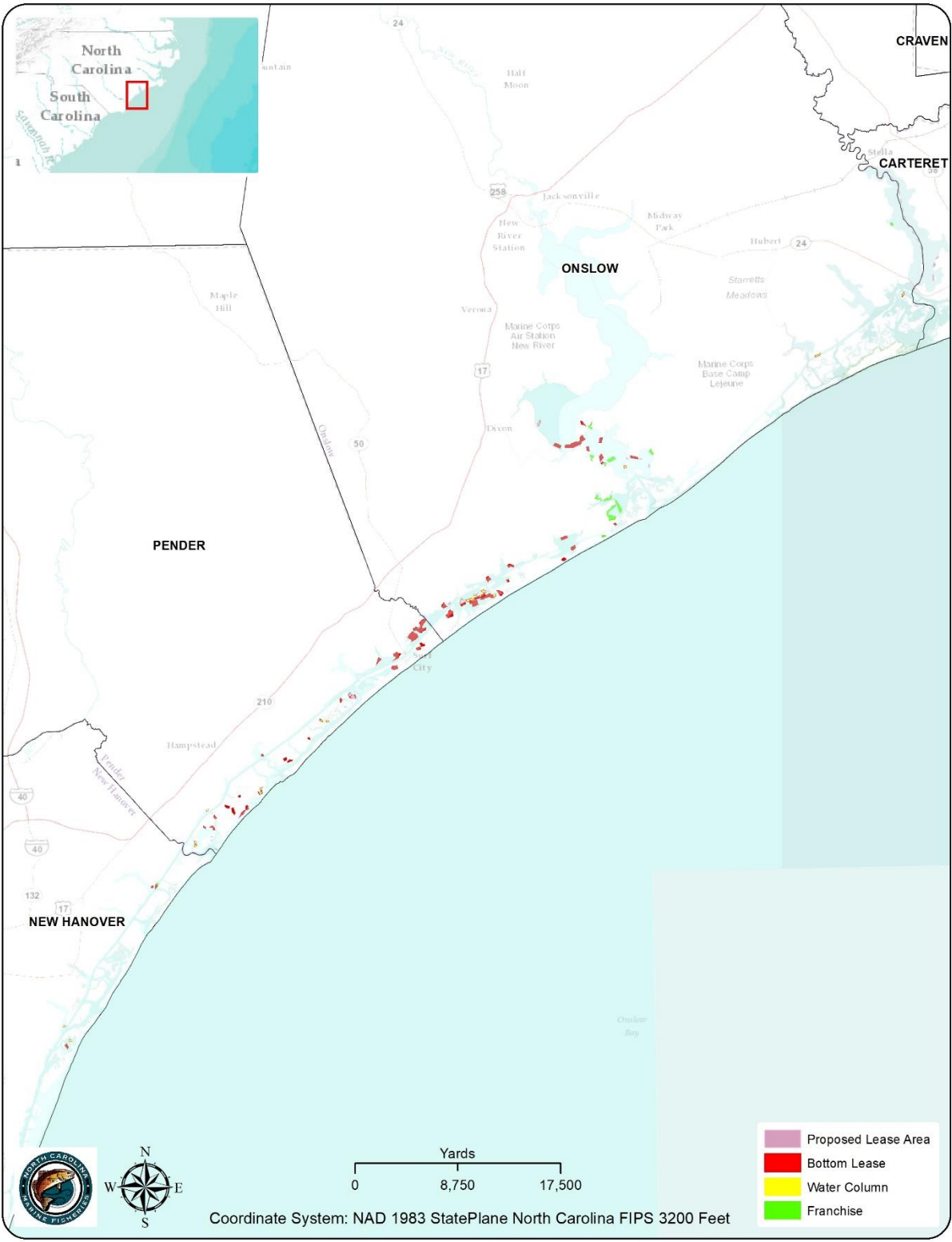


Figure 4. Active and proposed shellfish leases (bottom, water column, and franchise) in the southern region of the state.

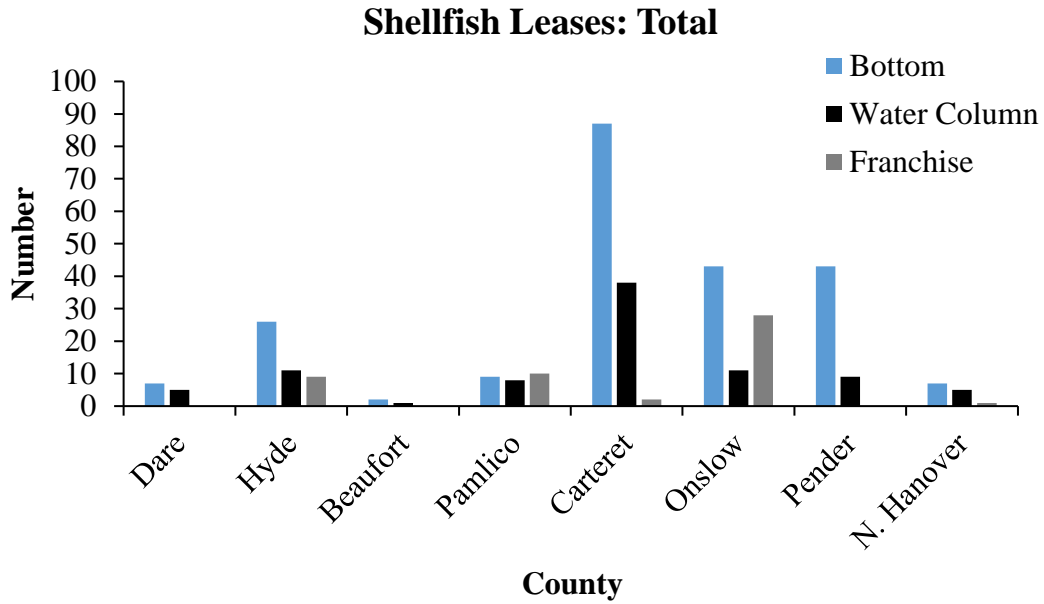


Figure 5. Total shellfish leases (bottom, water column, franchise) in North Carolina by county (north to south) and lease type.

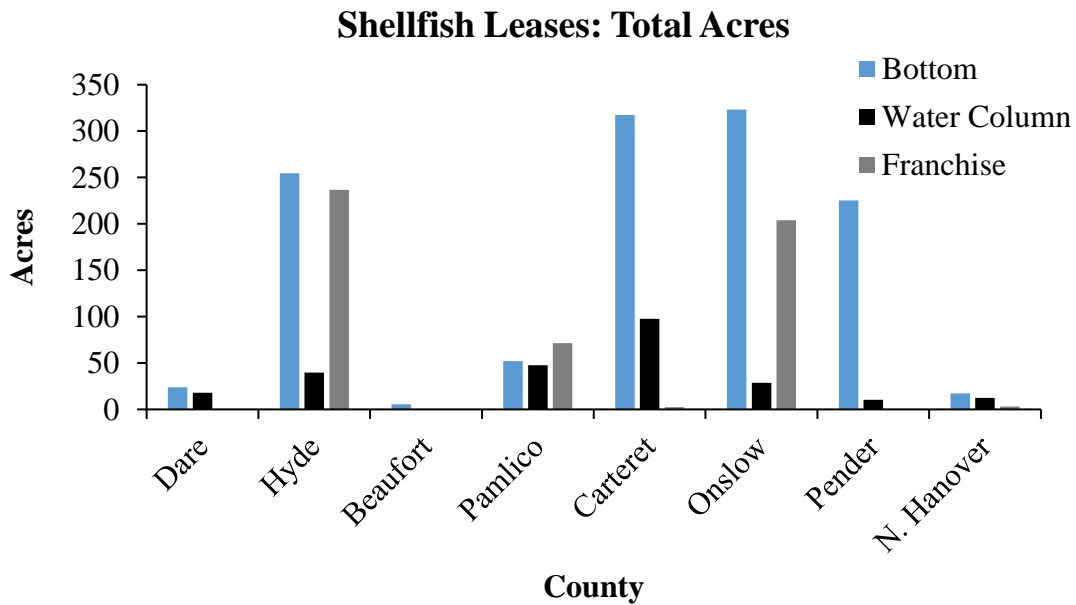


Figure 6. Total shellfish lease acres (bottom, water column, franchise) in North Carolina by county (north to south) and lease type.

DMF grants shellfish aquaculture leases in North Carolina in public trust waters. Public trust resources are land and water areas, whether publicly or privately owned, which are subject to Public Trust Rights as defined under North Carolina law. Public Trust Rights are held in trust by the state for the use and benefit of all citizens of North Carolina in common. Public Trust Rights include, but are not limited to, the right to “navigate, swim, hunt, fish, and enjoy all recreational activities in” North Carolina waters.⁵ Public Trust Rights cannot be conveyed in a manner that adversely affects public trust uses. The General Assembly charged NCDEQ with the stewardship of the public trust marine and estuarine resources of the state. The NCDEQ Secretary may delegate that authority to the DMF Director.⁶

B. Federal Permitting - U.S. Army Corps of Engineers’ Nationwide Permit 48

Permitting for shellfish aquaculture leasing is accomplished both by statute, in part under N.C.G.S. § 113-202, and through the U.S. Army Corps of Engineers’ (“USACE”) Nationwide Permit 48 (“NWP 48”) process - Commercial Shellfish Aquaculture Activities.⁷ The USACE re-issued NWP 48 in 2017. NWP 48 encompasses activities related to commercial shellfish aquaculture in waters of the United States. A recent federal court decision in the State of Washington could have an impact on future use of NWP 48 in North Carolina.⁸ NCDEQ’s Office of the General Counsel will continue to monitor the potential impacts of this decision and any related case law.

C. Increased Review of Shellfish Lease Applications and Resulting User Conflicts

A substantial increase in the number of user conflicts coincides with the recent expansion of the shellfish aquaculture industry and its use of intensive gear in water column leases (Table 2; Figure 1). The General Assembly promulgated several legislative changes affecting the Shellfish Lease Program in recent years in order to help address these conflicts.⁹ The MFC in 2018 also attempted to impose a moratorium for shellfish leases to pause processing of applications long enough to address user conflict issues related to navigation, waterbody carrying capacity, hunting, waterfront development, and applicant experience. Additionally, DMF increased its staff review of shellfish aquaculture lease applications, enlarged notice processes for public hearings on proposed leases, and directed more focus on possible conflicting uses in proposed lease areas. These efforts have resulted in more quality information, both in terms of technical facts and stakeholder opposition, reaching the DMF Director to better inform a decision on whether to grant a shellfish lease application.

The General Assembly’s legislative findings and declaration of policy for cultivation of shellfish in North Carolina states that “shellfish cultivation provides increased seafood production and long-term economic and employment opportunities” and “provides increased ecological benefits to the estuarine environment . . .”¹⁰ Further, to enhance shellfish cultivation, the policy of the State is to encourage the development of private, commercial shellfish cultivation in ways that are compatible with other public

⁵ N.C.G.S. § 1-45.1

⁶ N.C.G.S. § 113-131(b)

⁷ Nationwide Permit 48 - Commercial Shellfish Aquaculture Activities Effective Date: March 19, 2017; Expiration Date: March 18, 2022 (NWP Final Notice, 82 FR 1860)

⁸ *The Coalition to Protect Puget Sound Habitat v. U.S. Army Corps of Engineers et al.*, No. 17-1209RSL, 2019 WL 5103309 (W.D. Wash. Oct. 10, 2019)

⁹ S.L. 2015-263; S.L. 2017-190; S.L. 2019-37

¹⁰ N.C.G.S. § 113-201(a)

uses of marine and estuarine resources such as navigation, fishing, and recreation.¹¹ Enhancing private shellfish cultivation includes granting shellfish cultivation leases that benefit the public interest.¹² Minimum standards for compatibility are provided to discern suitable areas for shellfish cultivation based on numerous factors, including but not limited to water quality, ability to cultivate shellfish, existing shellfish resources on the proposed lease, and other public trust uses in the area.¹³ Shellfish aquaculture leases can often conflict with public trust uses, which makes balancing these issues and determining compatibility challenging and somewhat subjective.

D. Recent Increase in Legal Challenges to DMF's Shellfish Lease Decisions

User conflict issues have resulted in an increase in contested cases filed by potentially aggrieved petitioners in the N.C. Office of Administrative Hearings (“OAH”), as well as other legal challenges. The N.C. Department of Justice represents DMF in defending DMF's shellfish leasing decisions. Many user conflict cases brought by riparian owners adjacent to lease locations seem to be driven by a concern for impairment of view, also known as “viewshed.” Viewshed generally means the natural environment that can be seen from nearby riparian property. Viewshed is not a public trust right traditionally acknowledged under North Carolina common law. Discussion of several recent cases may be helpful in understanding user conflict concerns.

In 2016, a petitioner in Pender County challenged DMF's denial of a bottom lease and associated water column lease based on findings by DMF that public trust user conflicts would result.¹⁴ The Administrative Law Judge's (“ALJ”) decision states:

At issue in this particular contested case is whether or not the proposed shellfish lease is ‘compatible’ with the other uses of the area for navigation, fishing and recreation. Neither the general statutes nor associated Marine Fisheries Commission regulations define or indicate how much use within a proposed lease site must be present in order for the lease to warrant denial as being incompatible with those public uses. There is no definition to define what constitutes the area of the lease, or how it might actually impact navigation, fishing or recreational use. The evidence shows that certain areas close to the proposed site are more heavily used than the exact footprint of the proposed lease site. Fact that there is heavy traffic nearby the proposed lease does NOT necessarily make that area inappropriate for leasing . . . The law does not require an area to be traffic free to be approvable because it would not make any sense and would be an almost impossible requirement to meet. It is the policy of the State of North Carolina to encourage the development of private and commercial shellfish cultivation so long as it is done in a manner compatible with other public uses of the marine and estuarine resources.¹⁵

Ultimately, the ALJ overturned DMF's denial of the lease application. DMF contemplated appealing the decision to Superior Court, but after further consideration simply decided to issue the lease.

¹¹ N.C.G.S. § 1-45.1

¹² N.C.G.S. § 113-202(a)

¹³ *Id.*

¹⁴ *Ronald Sheffield v. NCDEQ/DMF*, 16 EHR 02397 (Pender County)

¹⁵ *Ronald Sheffield v. NCDEQ/DMF*, 16 EHR 02397 (Pender County)

A second contested case was filed in 2018 by a Homeowner’s Association (“HOA”) located along a nearby shoreline. The appeal challenged DMF’s issuance of a shellfish bottom lease and associated water column lease. The HOA alleged public trust user conflicts, though much of the witness testimony indicated that “viewshed” was the significant concern for the HOA’s members. The ALJ noted that “[o]ne minimum statutory criteria of particular relevance to this case is that ‘[c]ultivation of shellfish in the leased area will be compatible with lawful utilization by the public of other marine and estuarine resources.’”¹⁶ The ALJ went on to state that:

[t]he proper interpretation of a law or rule is a question of law, and an agency interpretation of a statute or rule is not binding on the undersigned. Nevertheless: It is a tenet of statutory construction that a reviewing court should defer to the agency’s interpretation of a statute it administers ‘so [] long as the agency’s interpretation is reasonable and based on a permissible construction of the statute. The phrase ‘compatible with’ under N.C.G.S. § 113-202(a)(3) is not further defined by statute or regulation.’ DMF does not interpret this standard to mean there can be no impact to other public uses. Instead, DMF interprets this minimum standard to mean that existing uses must be able to exist along with the shellfish lease within the general area at the same time.

Ultimately, in upholding DMF’s granting of the shellfish lease, the ALJ stated “that DMF’s interpretation of the phrase ‘compatible with’ is reasonable, is consistent with, and supported by the plain language of the statute and statutory framework.” The ALJ then went further, finding that “[e]ven in the absence of deference, the undersigned independently adopts DMF’s interpretation of this minimum standard. The DMF does not consider impacts on viewshed as a basis for denying a shellfish lease, as this is not a criterion in the relevant statutes or rules pertaining to shellfish leases.”¹⁷

A group of riparian owners brought suit in OAH challenging a shellfish bottom lease and water column lease granted in Myrtle Grove Sound in 2018. The owners claimed the action was brought to “protect the right to a view they are entitled to as a result of their riparian property ownership.”¹⁸ The complaint stated, among other things, that “[o]peration of the commercial shellfish cultivation in the area . . . also has caused significant deterioration in Plaintiffs’ water views, resulting in substantial devaluation of Plaintiffs’ properties.”¹⁹ Ultimately, the dispute was resolved based on an unrelated submerged lands claim issue. As part of the case disposition, the grantee of the previously approved shellfish lease moved his operation to a newly approved lease area in Pender County.

Three additional petitions for contested cases were filed challenging the approval of two shellfish bottom leases and associated water column leases located near each other in Myrtle Grove Sound in 2019. The Petitioners claimed “the leases are incompatible with lawful utilization by the public of other marine and estuarine resources” and that “the right of the public to utilize marine and estuarine resources includes

¹⁶ 8.5 Marina Village John F Matthews VP v. NCDEQ and Samuel G. Boyd, 17 EHR 01382 (Carteret County)

¹⁷ Id.

¹⁸ Hormoze Goudarzi and wife, Suzanne Gourdarzi, Oak Forest Properties, LLC, Billy King and Barbara King v. NCDEQ et al., 18 CVS 1470 (New Hanover Superior Court)

¹⁹ Hormoze Goudarzi and wife, Suzanne Gourdarzi, Oak Forest Properties, LLC, Billy King and Barbara King v. NCDEQ et al., 18 CVS 1470 (New Hanover Superior Court)

the right to view and enjoy species . . . whose habitat Petitioners believe may be threatened by operation of the shellfish leases.”²⁰ These cases were resolved by virtue of the New Hanover moratorium area established by S.L. 2019-37, Section 7, that went into effect July 1, 2019.

E. DMF’s Shellfish Lease Program is Under-Resourced

North Carolina’s shellfish aquaculture leasing program is implemented by DMF’s Shellfish Lease Program which is currently staff and resources limited. A significantly increasing volume of work may require additional resources. By comparison, other states shellfish aquaculture programs have significant staff and operation funds for administration.

Virginia’s shellfish lease program is staffed by eight dedicated employees, including two managers, one mapper and draftsman, one clerical position and four surveyors. The State of Maine has substantially fewer shellfish leases and acreage than North Carolina but has over six full time positions dedicated to administering its shellfish lease program. The State of Maryland has eight full time positions dedicated to administering its program. DMF believes the Shellfish Lease Program’s small staff and low budget significantly inhibits the industry by increasing the time needed to evaluate whether to grant a lease or defend lease decision appeals. DMF staff believes this delay will be further exacerbated by the mandated but unfunded future studies and directives from the General Assembly in S.L. 2019-37.

III.Sources of Information Concerning User Conflicts

A. Previous Legislative Studies

There have been previous legislative studies concerning shellfish aquaculture over the past few years in North Carolina. Each study has included recommendations for increased resources and positions, regulatory reform, program evaluations, and collaboration. While previous recommendations have been considered, many have not yet been adopted. Details of each report are outlined below.

1. 2016 - Shellfish Aquaculture Plan Report²¹

The legislatively mandated 2016 Shellfish Aquaculture Plan Report recommended funding four full-time positions and recurring resources to adequately operate the Shellfish Lease Program. The report also included recommendations to form a taskforce comprised of diverse stakeholder and experts from industry, academia, and state agencies in order to develop a comprehensive North Carolina Shellfish Aquaculture Plan. Other recommendations from the report included:

²⁰ Masonboro Island Club and Gary W. Ahlberg v. NCDEQ/DMF, 19 EHR 00991; Sandra A. Fisher v. NCDEQ/DMF, 19 EHR 00983; John A. Marriott v. NCDEQ/DMF, 19 EHR 01057; The Tides Homeowners Association, Inc. v. NCDEQ/DMF, 19 EHR 01055 (New Hanover County)

²¹ https://ncseagrant.ncsu.edu/ncseagrant_docs/oysters/DEQ%202016%20Shellfish%20Aquaculture%20Plan%20Report.pdf

- In partnership with N.C. Sea Grant (“NCSG”), develop a detailed proposal for a Shellfish Propagation and Aquaculture Training Program to be enacted with NCSG;
- Modify the initial shellfish bottom lease application fee from \$200 to \$400, which is non-refundable, to help offset the cost of lease administration, mapping and marking;
- Change statutes to allow rent, renewal and production notices to be mailed to lease holders in mid-April to allow previous year production reporting in the division trip ticket program to be finalized. Allow older leases expiring in April to be extended until June 30 to bring all shellfish leases into the same renewal period;
- To simplify the application process for shellfish growers, develop one application and combine the aquaculture permits and package with a shellfish lease;
- Strengthen statutes to increase the penalties for theft on shellfish leases;
- Policy and statutory changes needed to support the recommendations.

2. 2018 - N.C. Strategic Plan for Shellfish Mariculture: A Vision to 2030²²

The North Carolina Policy Collaboratory (“Collaboratory”) was directed to convene stakeholder meetings in 2016 aimed at advancing efforts to bolster and promote North Carolina’s shellfish industry.²³ Legislation was amended, adding a mandate for the Collaboratory to prepare a Shellfish Aquaculture Plan by December 31, 2018.²⁴ To fulfill the mandates laid out in Senate Bill 257, the Collaboratory formed the Shellfish Mariculture Advisory Committee (“SMAC”) to generate a report of findings and recommendations to the General Assembly. The final report was submitted on December 30, 2018.²⁵

The SMAC’s principal goal was to leverage a broad base of expertise to create a comprehensive plan for the shellfish aquaculture industry while balancing the needs of other citizens of North Carolina who utilize the public trust resources of the coast. The recommendations generated were intended to inform the General Assembly on possible legislative actions that could address many of the current user conflict issues in the industry. The report detailed 21 recommendations including, among others:

- Vision for industry development - Achieve \$100 million annual shellfish mariculture value (\$33 million dockside sales) by 2030;
- Appropriate recurring funding to establish a new section, the Shellfish Leasing Section, at the DMF. Defraying costs of Shellfish Leasing Section: Increase non-refundable shellfish lease application filing fee to \$500 dollars; establish a fee schedule for lease surveys payable to the DMF; shift financial responsibility for advertising for public scoping from agency to the applicant; and increase annual rent;
- Statutory changes - Amend North Carolina General Statute §113-202 to afford the Secretary of the NCDEQ substantial discretion in balancing public trust uses;
- The DMF should designate appropriate tracts as SEAs containing multiple, connected parcels available for shellfish mariculture and managed by the DMF;
- In Pamlico Sound, the Secretary of the NCDEQ should be granted discretion to grant up to three (total) 50-acre (each contiguous) water column or bottom leases, each obtained by a single lease application. These lease tracts must be separated from each other, and from shore, by at least 250 yards. Otherwise, current lease size maximums, including overall acreage possession limits for

²² <https://collaboratory.unc.edu/files/2019/01/NC-Strategic-Plan-for-Shellfish-Mariculture-Final-2018.pdf>

²³ S.L. 2016-94, Section 14.11.(d)

²⁴ Senate Bill 257, Section 13.13.(b)

²⁵ North Carolina Strategic Plan for Shellfish Mariculture: A Vision to 2030 (Drs. Joel Fodrie, Charles Peterson, Christine Voss, and Christopher Baillie on behalf of the North Carolina Shellfish Mariculture Advisory Committee)

any single entity, should be retained throughout the state, and no more than three large water column or bottom leases may be established in Pamlico Sound until 2025;

- Increase utilization requirement and strictly monitor and enforce “use it or lose it” policy for shellfish leases;
- Institute higher minimum fines and mandatory restitution for those convicted of stealing or damaging property on shellfish leases. Elevate charges for theft from any contained culture (e.g. cages, bags) or free-on-bottom operation (including clams under netting) to a felony with a minimum fine of \$2,500 and mandatory restitution to the property owner. For those convicted who hold a commercial license, first offenses will result in a one-year loss of license, and second offenses will result in a permanent loss of license;
- Amend North Carolina General Statute §113-203 to allow nursery of shellfish in waters classified as prohibited.

The report addressed the need for further understanding of the ecological and societal implications of shellfish aquaculture which hinder the ability of government agencies to determine where shellfish aquaculture is most suitable. The report explains the need for regionally specific information on social carrying capacity of shellfish aquaculture and other tools to minimize user conflict. While research into the social effects of the expanding shellfish aquaculture industry cannot ensure there will be no user conflict issues, these inquiries can facilitate a better understanding of user conflicts and stakeholder perceptions which ultimately inform lawmakers on future legislation and policy.

Research efforts can help identify social sustainability and conflict resolution approaches that will be important to developing an overall understanding of the relationship of the shellfish aquaculture industry and the surrounding coastal communities. Social carrying capacity is inherently location specific and the amount of shellfish aquaculture that is socially acceptable within an area will vary among regions of the coast.

Another recommendation from the report included appropriate funding and positions for the Shellfish Lease Program. The report recommended recurring funding for three additional full-time equivalent positions for the Shellfish Lease Program. Additionally, the recommendation included increased recurring appropriations to the DMF for the purposes of administering shellfish leasing. The report concluded that additional positions will provide much needed assistance with field operations (e.g. mapping, sampling, and marking leases), a need that will continue to increase as the industry grows and as DMF develops and manages SEAs.

B. Collaboration and Public Outreach

DMF staff has collaborated closely with local stakeholders to help identify and address user conflicts, most recently through the 2018 SMAC process discussed above. DMF has also been working to address user conflict issues with the National Ocean and Atmospheric Administration - National Centers for Coastal Ocean Science specifically on the Bogue Sound Pilot Study which was completed this year. The result of this partnership was a spatial analysis tool and random sampling grids tool used for shellfish lease siting. The Shellfish Lease Program meets with internal DMF reviewers to ensure the lease review process is thorough and efficient. In 2015, DMF also began coordinating with the North Carolina Division of Coastal Management (“DCM”) as a review and commenting agency for shellfish lease

applications, based on their expertise with user conflicts in coastal development. Finally, DMF collaborated with the USACE on the 2017 update of the NWP 48.²⁶

The University of North Carolina Wilmington (“UNCW”) created a tool in 2014 to assist new or current shellfish growers in siting areas for shellfish leases.²⁷ The online tool maintained by UNCW is designed as an interactive decision-support tool to provide information on site suitability when determining potential areas for shellfish leases. The data provided by the tool include salinity, depth, shellfish growing area classifications, boat access areas, surrounding land cover, and current shellfish aquaculture operations.

Public outreach takes place in a variety of ways including numerous presentations to local municipalities, educational institutions, and professional conferences to better inform stakeholder groups and interested parties about the Shellfish Lease Program. For example, DMF is currently collaborating with NCSG and the North Carolina Shellfish Growers Association on regional shellfish aquaculture workshops scheduled for December 3-5, 2019. These workshops are intended to solicit input from shellfish growers about their experiences including user conflicts issues.

DMF staff have also been working on new web-based solutions to more widely inform the public, shellfish growers, potential shellfish lease applicants, and other stakeholders about pending shellfish lease applications to allow for a more robust notification and comment process. DMF staff implemented new temporary marking requirements for proposed shellfish leases to increase visibility to ensure better notification to other area public trust users. DMF staff found that notification efforts beyond those required by the shellfish lease law were helpful in getting more information regarding objections and concerns to property owners and user groups near a proposed lease. Feedback, in turn, provides additional information for the DMF Director to consider as part of a shellfish lease decision.

C. User Conflict Information from Other States

Although the concept of public trust waters somewhat differs among states, the larger user conflict issues created by shellfish aquaculture seems to remain constant. Like North Carolina, most other states which permit shellfish aquaculture require that those operations not unreasonably interfere with other public trust uses. The National Sea Grant College Program in 2019 produced several case studies concerning impediments to shellfish aquaculture across the country.²⁸ DMF looks forward to examining these recent studies to determine if there are approaches and lessons learned elsewhere that could be applied in North Carolina.

²⁶ Nationwide Permit 48 - Commercial Shellfish Aquaculture Activities. Effective Date: March 19, 2017; Expiration Date: March 18, 2022. (NWP Final Notice, 82 FR 1860)

²⁷ <https://uncw.edu/benthic/sitingtool/>

²⁸ Overcoming Impediments to Shellfish Aquaculture through Legal Research and Outreach: Case Studies (National Oceanic and Atmospheric Administration, U.S. Department of Commerce), 2019

1. Leasing Authorities

The leasing of public waters for aquaculture goes through an established public process in all states.²⁹ This public process ensures that concerned stakeholders receive both sufficient notification of proposed leases and an opportunity to raise and address their concerns publicly, though the specifics of these processes vary among states. There are various governmental frameworks among states created to manage the shellfish aquaculture industry. Some states have treated shellfish aquaculture as a form of agriculture, while other states include shellfish aquaculture in agencies managing natural resources.

Numerous states, including Florida, Maine, Maryland, New Jersey, and the Commonwealth of Virginia, have established aquaculture advisory councils which provide managers expert guidance through the council membership. In most states, shellfish applications are processed and decided by the same state-level agency, though Massachusetts and New York make lease decisions at the local level. For example, oyster aquaculture in New York is only approved on private lands or on submerged lands granted by the state to local municipalities which are then charged with developing and managing leasing programs. Similarly, in Massachusetts the city council or mayor of each municipality has authority to issue shellfish aquaculture licenses (or leases). While the aquaculture lease decisions in New York and Massachusetts are made by local municipalities, state and federal statutory requirements are still a large component in determining the policy affecting the industry participants.³⁰

2. Siting Authorities

Siting authorities review proposed lease sites and are tasked with addressing and balancing potential conflicts during the shellfish aquaculture lease application review process.³¹ Florida, Maryland, New Jersey, and Virginia manage siting bodies that, when reviewing applications, provide notice to applicants if potential issues are identified, and provide recommendations or set conditions on leases if issued. Some states, however, take a more proactive front-end approach, such as Maine and Rhode Island.

In Maine, the Department of Marine Resources mandates that applicants have a pre-application meeting to discuss proposed operations with the Department, harbormaster, and/or the municipal officers of the town in which the applicant wishes to apply. Similarly, in Rhode Island, the Coastal Resources Management Council requires applicants to complete a Preliminary Determination process which involves meeting with regulating agencies, town officials, and the Rhode Island Department of Environmental Management to discuss proposed plans. In both states, meetings allow officials who are familiar with competing uses in the area to advise applicants of potential user conflict issues to give them an opportunity to modify applications before submittal.

²⁹ http://www.ct.gov/deep/cwp/view.asp?a=2705&q=431902&depNav_GID=1622; <https://www.freshfromflorida.com/Divisions-Offices/Aquaculture>; <https://www.maine.gov/dmr/aquaculture>; <http://dnr.maryland.gov/fisheries/pages/aquaculture/index.aspx>; <https://www.capecodextension.org/marine/semac/>; https://www.nj.gov/dep/fgw/pdf/marine/shellfish_leasing_policy_atlantic.pdf; http://assembly.state.ny.us/leg/?default_fld=&bn=A07120&term=2011&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y; <http://www.shellfishri.com/ri-shellfish-initiative/>; http://www.mrc.state.va.us/Shellfish_Aquaculture.shtm

³⁰ http://www.ct.gov/deep/cwp/view.asp?a=2705&q=431902&depNav_GID=1622; <https://www.freshfromflorida.com/Divisions-Offices/Aquaculture>; <https://www.maine.gov/dmr/aquaculture>; <http://dnr.maryland.gov/fisheries/pages/aquaculture/index.aspx>; <https://www.capecodextension.org/marine/semac/>; https://www.nj.gov/dep/fgw/pdf/marine/shellfish_leasing_policy_atlantic.pdf; http://assembly.state.ny.us/leg/?default_fld=&bn=A07120&term=2011&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y; <http://www.shellfishri.com/ri-shellfish-initiative/>; http://www.mrc.state.va.us/Shellfish_Aquaculture.shtm

³¹ *Id.*

3. The Permit Process

The permitting process for shellfish aquaculture leases can be complicated, lengthy and represent a considerable barrier to entry for some potential applicants.³² Many states have been dealing with similar issues much longer than North Carolina. To streamline the process, reduce the cost of permitting, and mitigate user conflict issues, states such as Maryland, Florida, Delaware, Massachusetts, New Jersey, New York, and California have established SEAs where state agencies perform aquaculture lease siting, including environmental and public trust suitability review, as well as acquisition of necessary Federal permits. These states then sub-lease smaller parcels within the SEA to shellfish growers. This makes the process more efficient on the back-end, where states only have to verify the suitability of an applicant and issue a permit to operate within those pre-approved SEAs.

Streamlined permitting encourages industry development by shifting the approval burden to the state, eases the state's lease back-end application burden, and helps mitigate user conflict issues. This process also gives individual states greater authority to regulate the activities conducted within the designated area.

4. Shellfish Lease Size and Acre Caps

A common component in user conflicts with shellfish aquaculture revolves around the fear that shellfish aquaculture will eventually take over the majority of a waterbody.³³ In New York and Rhode Island, acreage caps have been used to curb fears in areas of high residency and water use. Suffolk County (New York) established an acreage cap of 60 acres that can be leased each year for new leases. In Rhode Island, a maximum of five percent of a coastal salt pond can be leased for shellfish aquaculture. In North Carolina, individual leases are restricted to 10 acres with no more than 50 acres held by an individual or corporation. Beyond size caps and residency requirements, leases are subject to a variety of parameters in different states that limit their expansion such as lease terms, physical restrictions, and other parameters.³⁴

5. Education

In North Carolina, Carteret Community College offers the Aquaculture Technology Program which provides courses in shellfish aquaculture along with hands on experience working on shellfish farms.³⁵ Currently, North Carolina requires shellfish lease applicants to complete an examination scoring a minimum of 70 percent based on an educational package provided by the DMF. DMF established the examination to demonstrate the applicant's knowledge of:

- Shellfish lease application process;
- Shellfish lease planting and production requirements;
- Lease marking requirements;

³² Id.

³³ http://www.ct.gov/deep/cwp/view.asp?a=2705&q=431902&depNav_GID=1622; <https://www.freshfromflorida.com/Divisions-Offices/Aquaculture>; <https://www.maine.gov/dmr/aquaculture>; <http://dnr.maryland.gov/fisheries/pages/aquaculture/index.aspx>; <https://www.capecodextension.org/marine/semac/>; https://www.nj.gov/dep/fgw/pdf/marine/shellfish_leasing_policy_atlantic.pdf; http://assembly.state.ny.us/leg/?default_fld=&bn=A07120&term=2011&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y; <http://www.shellfishri.com/ri-shellfish-initiative/>; http://www.mrc.state.va.us/Shellfish_Aquaculture.shtm

³⁴ Id.

³⁵ <https://www.carteret.edu/programs/aquaculture-technology/>

- Lease fees;
- Shellfish harvest area closures due to pollution;
- Safe handling practices;
- Lease contracts and renewals;
- Lease termination criteria;
- Shellfish cultivation techniques.

Many states have cooperative extension programs which provide classes and training that introduce potential applicants to the fundamentals of shellfish aquaculture.³⁶ The University of Florida IFAS Shellfish Aquaculture Extension Program, the University of Maryland Extension's Oyster Aquaculture and Education Program, and Southeastern Massachusetts' Aquaculture Center all offer online classes and/or in person workshops to educate potential applicants. These programs are federally funded through the Cooperative State Research, Education, and Extension Service and other federal agencies. Some states such as Virginia, Rhode Island, and Florida have developed mandatory training requirements. These requirements tend to focus on sanitation issues and harvest procedures as they help states comply with the National Shellfish Sanitation Program.³⁷

D. Future Studies and Directives

Future studies and directives mandated by S.L. 2019-37 include: the development of SEAs, potential SEAs in moratorium areas, and a Pamlico Sound Shellfish Aquaculture Pilot Project for a few larger-size leases. These studies require the development and implementation of new methods and procedures for the shellfish lease process. DMF is currently exploring possible ways to complete large-scale shellfish lease investigations required by both the SEA and Pamlico Sound Pilot studies.

Currently, a large-scale shellfish lease investigation would require the effort of the entire Shellfish Lease Program staff for approximately three months leaving no time to review lease applications or perform other work of the program. DMF is exploring the use of drone technology to aid in the lease investigation process and exploring Habitat Suitability Index modeling as a tool for siting shellfish aquaculture leases. DMF is also evaluating various sampling techniques including dredge sampling and using the spatial analysis from the Bogue Sound Pilot Project.

³⁶ http://www.ct.gov/deep/cwp/view.asp?a=2705&q=431902&depNav_GID=1622; <https://www.freshfromflorida.com/Divisions-Offices/Aquaculture>; <https://www.maine.gov/dmr/aquaculture>; <http://dnr.maryland.gov/fisheries/pages/aquaculture/index.aspx>; <https://www.capecodextension.org/marine/semac/>; https://www.nj.gov/dep/fgw/pdf/marine/shellfish_leasing_policy_atlantic.pdf; http://assembly.state.ny.us/leg/?default_fld=&bn=A07120&term=2011&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y <http://www.shellfishri.com/ri-shellfish-initiative/>; http://www.mrc.state.va.us/Shellfish_Aquaculture.shtm

³⁷ Id.

IV. Recommendations

A multifaceted approach is required to address user conflict issues related to shellfish aquaculture leases in North Carolina. This approach envisions regulatory reform, program evaluation, collaboration, and resource assessment. Previous and current work should be built upon to avoid duplication and expending extra resources.

Existing shellfish lease and franchise statutes³⁸ and rules³⁹ require revisions to effect execution of the recommendations in this study. DMF is drafting suggested revisions to existing shellfish lease statutes and rules to address user conflict issues and incorporate mandated revisions from S.L. 2019-37. The deadline for adoption of rule revisions is March 1, 2021. In discussions with DCM and the North Carolina Coastal Resources Commission (“CRC”) regarding potential user conflict concerns specific to shellfish lease gear and navigation impacts, DMF intends to develop rule language to address these concerns. Recommendations will be made regarding rule revisions based off the findings in this study. Additional recommendations for statute and rule revisions addressing user conflict issues will be developed through the additional studies and directives mandated by S.L. 2019-37.

DMF will evaluate the Shellfish Lease Program and Aquaculture Permitting Program to identify challenges and inefficiencies and recommend ways to improve existing programs. DMF staff believes this focus will result in further modification of internal operating procedures. Areas for further collaboration were identified in this study along with likely participating partners.

Other directives mandated by S.L. 2019-37 include the development and implementation of SEAs similar to those employed by other states. One of the obstacles North Carolina shellfish regulators face is a limited ability to stay informed regarding the aquaculture efforts of other states. DMF recommends collaborating with other states to facilitate a joint interstate discussion. This effort will be of mutual benefit to participating states in compiling and evaluating information relevant to each states’ respective aquaculture regulation and permitting processes.

The Shellfish Lease Program is tasked with implementing the recommendations from this study. It is imperative that DMF have sufficient dedicated staff to manage the program. DMF may not be adequately funded or staffed to implement the recommendations in this study. The lack of funding and dedicated staff significantly inhibits the program’s administrative support for lease holders, drastically increases the

³⁸ N.C.G.S. § 113-201 et seq.

³⁹ 15A NCAC 03O.0201.0211

time to acquire a lease, and impairs the DMF's ability to address user conflict issues efficiently and effectively. The additional legislative mandates put further burden on the already limited amount of staff and resources of the Shellfish Lease Program. DMF will evaluate current staff and funding levels of the Shellfish Lease Program to estimate the resources needed for the program to implement the recommendations of this study.

A. Recommendation #1: Regulatory Reform

- Incorporate riparian area owner notification standards to include certified mail notification (15A NCAC 03O.0201);
- Add language to include MFC's authority to limit total acres leased in a waterbody (15A NCAC 03O.0201);
- Add a 250 feet setback requirement between any shellfish leases (15A NCAC 03O.0201(a));
- Modify the setback requirement of 100 feet from a developed shoreline to 250 feet to help alleviate user conflict with riparian owners (15A NCAC 03O.0201(a)(3));
- Modify marking requirements for shellfish leases and franchises to include a maximum of eight corner lease corner markers and additional requirements to ensure visibility to alleviate navigation concerns. More noticeable shellfish lease markings have been a safety concern (15A NCAC 03O.0202(b); 15A NCAC 03O.0204);
- Modify training requirements for shellfish lease applicants to include information about user conflicts and the public trust (15A NCAC 03O.0202(d));
- Add administrative remedy language from statute (15A NCAC 03O.0206);
- Add clearance requirement of three feet between the top of the cage and the water level at mean low tide to the amended shellfish leasing statute allowing the use of gear up to 18 inches off of the bottom (N.C.G.S. § 113-202(r)).

B. Recommendation #2: Program Evaluation

- Best management practices for the industry should be practiced and publicized, best available science should be incorporated into the permitting process, and stakeholders should work together to collect data and analyze facts to reach shared decisions on the user conflict issues;
- Synchronize all reporting and renewal requirements for shellfish leases and aquaculture permits.

C. Recommendation #3: Collaboration

- Form an interstate aquaculture workgroup and have an in-person meeting;
- Create an inventory with aquaculture information from each state, including site selection, permitting, public trust issues, business planning and economics, seed and nursery options, grow out methods and equipment, consumer safety and marketing;
- Develop a standing interstate aquaculture workgroup in partnership with NCSG with adequate funding and support;
- In partnership with NCSG, continue developing a Shellfish Aquaculture Training Program.

D. Recommendation #4: Resource Assessment

- Evaluate the Shellfish Lease Program's staff and funding levels to determine whether they are adequate to administer the current and increasing volume and complexity to similar levels of other state's aquaculture programs.

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

Rule Amendments: 15A NCAC 03I .0113, .0118, 03J .0101, .0110, .0302, 03K .0101, .0102, .0105, .0106, .0108, .0201, .0202, .0204, .0207, .0301, .0302, .0304, .0305, .0401, .0505, 03L .0101-.0103, .0105, 03M .0201, .0202, .0204, .0205, .0503, 03N .0104, .0105, 03O .0301-.0303, .0401-.0406

Name of Commission: N.C. Marine Fisheries Commission

Agency Contact: Catherine Blum, Rulemaking Coordinator
N.C. Division of Marine Fisheries
3441 Arendell Street
Morehead City, NC 28557
252-726-7021
Catherine.Blum@ncdenr.gov

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

Authority:

North Carolina General Statutes
G.S. 113-132. Jurisdiction of fisheries agencies.
G.S. 113-134. Rules.
G.S. 113-182. Regulation of fishing and fisheries.
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 40 rules in 15A NCAC 03I, 03J, 03K, 03L, 03M, 03N, and 03O are proposed for readoption without substantive change pursuant to this requirement.

II. Summary

The 40 rules in 15A NCAC 03I, 03J, 03K, 03L, 03M, 03N, and 03O have been reviewed to conform to the requirements of G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules. The proposed readoptions contain only conforming and technical changes that bear no meaningful impact to these rules. Due to this, the proposed readoption package does not result in any fiscal impacts to the regulated community, state government, or other parties.

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).

Proposed amendments are to rules 15A NCAC 03I, 03J, 03K, 03L, 03M, 03N, and 03O, which relate to general rules, gear, shellfish, crustacea, finfish, nursery areas, and licenses. Overall, these proposed changes contain a variety of conforming and technical changes to update rule language. However, none of the proposed changes impact the intent or administration of these 40 rules. With this, there is no expected impact overall from these proposed changes.

IV. Fiscal Impact Analysis

As these 40 rules are being proposed for readoption with only a variety of conforming and technical changes, there will be no new impacts to the economic benefits and costs of the rules. As such, no fiscal impact will be observed from this proposed readoption package.

V. Appendix

Proposed Rules for Readoption

15A NCAC 03I .0113 is proposed for readoption with substantive changes as follows:

15A NCAC 03I .0113 BIOLOGICAL SAMPLING

It ~~is~~ shall be unlawful for any licensee under Chapter 113, Subchapter IV, of the General Statutes to refuse to allow the Fisheries Director or ~~his~~ their agents to obtain biological data, harvest information, or other statistical data necessary or useful to the conservation and management of marine and estuarine resources from fish in the licensee's possession. Such data shall include, but is not limited to, species identification, length, weight, age, sex, number, area of catch, harvest method, and quantity of catch.

*History Note: Authority G.S. 113-134; 113-170.3; ~~113-170.4~~; 113-174.1; 113-182; 143B-289.52;
Eff. October 1, 1992;
Recodified from 15A NCAC 3I .0013 Eff. December 17, 1996;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03I .0118 is proposed for reoption with substantive changes as follows:

15A NCAC 03I .0118 DISPOSAL OF EVIDENCE

It ~~is shall be~~ unlawful for any person to dispose of ~~fish or fish, parts thereof, of fish, fishing equipment or gear, or~~ other matter ~~in any manner,~~ preparatory to, during, or subsequent to the taking of fish after any communication or signal from an inspector, or after the approach of an inspector or an enforcement vessel.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. March 1, 1996;
Recodified from 15A NCAC 3I .0018 Eff. December 17, 1996;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03J .0101 is proposed for readoption with substantive changes as follows:

SUBCHAPTER ~~3J~~03J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 - NET RULES, GENERAL

15A NCAC 03J .0101 FIXED OR STATIONARY NETS

It ~~is~~shall be unlawful to use or set fixed or stationary ~~nets~~nets for any of the following:

- (1) ~~In in~~ the channel of the Intracoastal ~~Waterway or in any other location where it may constitute a hazard to navigation~~Waterway;
- (2) ~~So as~~ to block more than two-thirds of ~~any a~~ natural or manmade waterway, sound, river, bay, creek, ~~inlet inlet~~, or any other body of water;
- (3) ~~In in~~ the middle third of ~~any marked a~~ navigation ~~channel~~channel marked by State or federal agencies; or
- (4) ~~In the channel third of the following rivers: Roanoke, Cashie, Middle, Eastmost, Chowan, Little, Perquimans, Pasquotank, North, Alligator, Pungo, Pamlico, and Yeopim.~~
- (4) in a location where it may interfere with navigation.

*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 03J .0110 is proposed for readoption with substantive changes as follows:

15A NCAC 03J .0110 SEINES

It ~~is shall be~~ unlawful to use seines 30 feet or over in length for recreational purposes unless the net is marked by attaching to the corkline ~~one a~~ floating buoy, any shade of hot pink in ~~color, which color~~. Buoys 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~~ gear owner's last name and initials shall ~~always~~ be identified on the attached buoy using an engraved ~~buoys buoy or~~ by attaching engraved metal or plastic tags to the buoy. ~~Such~~ If a vessel is used, the identification shall also include ~~owner's last name and initials and if a vessel is used,~~ one of the following:

- (1) ~~Gear~~ gear owner's current motor boat registration number; or
- (2) ~~Owner's~~ owner's U.S. vessel documentation name.

*History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52;
Temporary Adoption Eff. July 1, 1999;
Eff. August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

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

15A NCAC 03J .0302 RECREATIONAL USE OF POTS

(a) It ~~is shall be~~ unlawful for a Recreational Commercial Gear License holder to use pots authorized by 15A NCAC 03O .0302 unless each pot is marked by attaching ~~one a~~ floating buoy, any shade of hot pink in ~~color, which color.~~ Buoys 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-gear owner's last name and initials~~ shall ~~always~~ be identified on the attached buoy using an engraved buoys-buoy or by attaching engraved metal or plastic tags to the buoy. ~~Such~~ If a vessel is used, the identification shall also include ~~the owner's last name and initials and if a vessel is used,~~ one of the following:

- (1) ~~Gear-gear~~ owner's current motor boat registration ~~number, number;~~ or
- (2) ~~Owner's owner's~~ U.S. vessel documentation name.

(b) It ~~is shall be~~ unlawful for a person to use more than one crab pot attached to the shore along privately owned land or to a privately owned pier without possessing a valid Recreational Commercial Gear License.

*History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52;
Eff. January 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. April 1, 2011; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03K .0101 is proposed for readoption with substantive changes as follows:

SUBCHAPTER 03K - OYSTERS, CLAMS, ~~SCALLOPS~~ SCALLOPS, AND MUSSELS

SECTION .0100 – SHELLFISH, GENERAL

15A NCAC 03K .0101 PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH AREAS/ACTIVITIES AREAS

(a) It ~~is~~ shall be unlawful to possess, sell, or take oysters, ~~clams~~ clams, or mussels from areas ~~which~~ that have been designated as ~~prohibited (polluted)~~ polluted by proclamation by the Fisheries Director except as provided in ~~15A NCAC 03K rules .0103, .0104, .0107, and .0401.~~ 0401 of this Subchapter. The Fisheries Director shall issue such shellfish polluted area proclamations ~~upon notice by the Division of Environmental Health that duly adopted~~ if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have not been met. The Fisheries Director may reopen any such closed area ~~upon notification from the Division of Environmental Health that duly adopted by proclamation if~~ criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of Marine Fisheries, 3441 Arendell ~~St.,~~ Street, P.O. Box 769, Morehead City, NC 28557; 800-682-2632 or 252-(252) 726-7021.

(b) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, ~~scallops~~ scallops, and mussels ~~in order~~ to protect the shellfish populations for management purposes or for public health purposes not specified in Paragraph (a) of this Rule.

(c) It ~~is~~ shall be unlawful to possess or sell oysters, clams, or mussels taken from polluted waters outside North ~~Carolina.~~ Carolina, except as provided in 15A NCAC 03I .0104.

History Note: Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; ~~113-221~~; 113-221.1; 143B-289.52; Eff. January 1, 1991; Amended Eff. July 1, 1993; Temporary Amendment Eff. July 1, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. October 1, 2001; Amended Eff. October 1, 2008; April 1, 2003; Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03K .0102 is proposed for readoption with substantive changes as follows:

15A NCAC 03K .0102 RAKES PROHIBITED RAKES

It ~~is shall be~~ unlawful to use a rake more than 12 inches wide or weighing more than six pounds to take:

- (1) oysters or scallops; or
- (2) clams in any live oyster bed, or in any established bed of submerged aquatic vegetation as ~~described~~ defined in 15A NCAC 03I ~~.0101, .0101~~ .0101 ~~or in any established bed of salt water cordgrass (Spartina alterniflora)-alterniflora)~~ that may exist together or separately.

History Note: *Authority G.S. 113-134; 113-182; 143B-289.52;*
Eff. January 1, 1991;
Amended Eff. October 1, 2008; February 1, 2008;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03K .0105 is proposed for readoption with substantive changes as follows:

15A NCAC 03K .0105 RECREATIONAL HARVEST OF SHELLFISH

(a) It ~~is shall be~~ unlawful to take oysters or clams from public ~~bottoms-bottom~~ on Sundays, and scallops from public ~~bottoms-bottom~~ on Saturdays and Sundays except:

- (1) during open ~~seasons, seasons;~~ and
- (2) for recreational purposes.

(b) It ~~is shall be~~ unlawful to possess, for recreational purposes, more than:

- (1) 10 conchs or whelks per person per day, not to exceed 20 conchs or whelks per vessel per ~~day,~~ and day;
- (2) 100 mussels per person per day, not to exceed 200 mussels per vessel per ~~day, day;~~ and
- (3) 100 clams per person per day, not to exceed 200 clams per vessel per day.

History Note: Authority G.S. 113-134; 113-169.2; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1994; February 1, 1992; September 1, 1991;
Temporary Amendment Eff. October 9, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. May 1, 1997; March 1, 1996;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. October 1, 2008; August 1, 2000;
Readopted Eff. May 1, 2022.

15A NCAC 03K .0106 is proposed for readoption with substantive changes as follows:

15A NCAC 03K .0106 TAKING OR UNLOADING OYSTERS AND CLAMS ON SUNDAY OR AT NIGHT

- (a) It ~~is shall be~~ unlawful to take oysters or clams between the hours of sunset and sunrise on any day.
- (b) It ~~is shall be~~ unlawful to unload oysters or clams from any vessel or remove any vessel containing oysters or clams from the water on ~~Sunday-Sundays~~ or between sunset and sunrise on any day except that in New Hanover, ~~Pender~~ Pender, and Brunswick ~~Counties, counties~~, oysters and clams may be unloaded until two hours after sunset.
- (c) Oysters and clams taken on ~~Sunday-Sundays~~ from public bottom under the provisions of ~~15A NCAC 03K-Rule .0105 of this Section~~ or from shellfish leases and franchises pursuant to G.S. 113-208 ~~are shall be~~ exempt from Paragraph (b) of this Rule.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. October 1, 2008; August 1, 2000;
Readopted Eff. May 1, 2022.*

15A NCAC 03K .0108 is proposed for readoption with substantive changes as follows:

**15A NCAC 03K .0108 ~~DREDGES/MECHANICAL~~ DREDGES AND MECHANICAL METHODS
PROHIBITED**

(a) It shall be unlawful to use mechanical methods, except ~~mechanical methods for oystering and clamming~~ mechanical methods for clamming and mechanical methods for oystering as defined in 15A NCAC 03I .0101, to take shellfish.

(b) It ~~is~~ shall be unlawful to use mechanical methods for oystering or clamming to take shellfish not subject to the restrictions in ~~15A NCAC 03K rules .0201, .0204, .0302, 0304, .0304, .0404, .0501, and .0503~~ .0503 of this Subchapter:

- (1) within any established bed of submerged aquatic vegetation as defined in 15A NCAC 03I .0101 or salt water cordgrass (~~Spartina alterniflora~~; alterniflora) that may exist together or separately;
- (2) in areas designated in 15A NCAC 03R .0108, except on shellfish leases and franchises with a Permit to Use Mechanical Methods for ~~Oysters and Clams~~ Shellfish on Shellfish Leases and Franchises;
- (3) in areas designated in ~~15A NCAC 03K Rule .0204~~ of this Subchapter and 15A NCAC 03R .0103; and
- (4) except following restrictions for the use of mechanical methods specified pursuant to 15A NCAC 03J .0303 and ~~03K rules .0201, .0302, .0404, .0501, and .0503~~ .0503 of this Subchapter.

History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;
Eff. October 1, 2008;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

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

SECTION .0200 – OYSTERS

15A NCAC 03K .0201 OYSTER HARVEST MANAGEMENT

- (a) It ~~is~~ shall be unlawful to take or possess oysters from public bottom except from October 15 through March 31.
- (b) The Fisheries Director may, by proclamation, impose any of the following restrictions on the taking of oysters:
- (1) specify time;
 - (2) specify area;
 - (3) specify means and methods;
 - (4) specify season within the period set forth in Paragraph (a) of this Rule;
 - (5) specify size, but the minimum size limit specified shall not be less than three inches, except the minimum size limit specified shall not be less than two and one-half inches to prevent loss of oysters due to predators, pests, or infectious oyster diseases; and
 - (6) specify quantity, but the quantity shall not exceed possession of more than 20 standard U.S. bushels in a commercial fishing operation per day.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. May 1, 2017; October 1, 2008; March 1, 1996; September 1, 1991;
Readopted Eff. May 1, 2022.

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

15A NCAC 03K .0202 CULLING REQUIREMENTS FOR OYSTERS

(a) It ~~is~~ shall be unlawful to possess oysters ~~which that~~ have accumulated dead shell, accumulated oyster cultch material, a shell length less than that specified by proclamation issued under the authority of Rule .0201 of this Section, or any combination thereof that exceeds a five-percent tolerance limit by volume. Oysters shall be culled where harvested and all oysters of less than legal size, accumulated dead shell, and cultch material shall be immediately returned to the bottom from which it was taken. In determining whether the tolerance limit ~~is~~ has been exceeded, ~~the Fisheries Director or his agents may~~ Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity being ~~graded and,~~ graded, and in cases of violations, may seize and return to public bottom or otherwise dispose of the oysters as authorized by ~~law.~~ law the entire quantity being graded or any portion thereof.

~~(b) All oysters shall be culled where harvested and all oysters of less than legal size, accumulated dead shell, and cultch material shall be immediately returned to the bottom from which it was taken.~~

~~(c)~~ (b) This Rule shall not apply to oysters imported from out-of-state solely for shucking by shucking and packing plants permitted by the Division of Marine Fisheries.

*History Note: Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996; September 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. May 1, 2017; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

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

**15A NCAC 03K .0204 ~~DREDGES / MECHANICAL~~ MECHANICAL METHODS FOR OYSTERING
PROHIBITED**

It ~~is~~ shall be unlawful to use any ~~dredge or other mechanical method~~ mechanical methods for oystering as defined in 15A NCAC 03I .0101 to take oysters:

- (1) in the Mechanical Methods Prohibited areas designated in 15A NCAC 03R .0108, except on shellfish leases and franchises by ~~permit~~ a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises; and
- (2) on any posted ~~bottoms~~ bottom upon which oysters or shells have been planted by the state, unless such ~~bottoms have~~ bottom has been opened to the public and ~~dredging permitted~~ mechanical methods for oystering are allowed.

History Note: Authority G.S. 113-134; 113-182; 113-204; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. August 1, 2004; May 1, 1997;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

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

15A NCAC 03K .0207 OYSTER SIZE AND HARVEST LIMIT ~~EXEMPTION~~EXEMPTIONS

Possession and sale of oysters by a hatchery or ~~oyster~~ aquaculture operation and purchase and possession of oysters from a hatchery or ~~oyster~~ aquaculture operation shall be exempt from bag and size limit restrictions ~~set under authority of 15A NCAC 03K .0201 and 03K .0202,~~ as set forth in rules .0201 and .0202 of this Section. ~~It is shall be unlawful to possess, sell, purchase, or transport such oysters unless they are in compliance with all conditions of the Aquaculture Operations Permit.~~ Operation Permit as set forth in 15A NCAC 03O .0503.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;
Temporary Adoption Eff. October 1, 2001;
Eff. April 1, 2003;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03K .0301 is proposed for reoption with substantive changes as follows:

SECTION .0300 - HARD CLAMS (MERCENARIA)

15A NCAC 03K .0301 SIZE AND HARVEST ~~LIMIT~~LIMITS

(a) It ~~is~~ shall be unlawful to take, land, or possess aboard a vessel more than 6,250 hard clams per commercial fishing operation from public bottom in internal waters. It is shall be unlawful to take, possess, sell, or purchase any clams (except Rangia or freshwater clams) less than one inch thick except in accordance with ~~15A NCAC 3K .0305(b). Rule .0305 of this Section.~~ Clams shall be culled where harvested and all clams of less than legal size with their shell, shall be immediately returned to the bottom from which it was taken. Agents of the Fisheries Director are In determining whether the size and harvest limits have been exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity ~~of clams being graded~~ graded, and in cases of violations, may seize and return to public bottom or ~~other disposition~~ otherwise dispose of the clams as authorized by law ~~of the entire quantity being graded or any portion thereof.~~

(b) Size and harvest limits established in Paragraph (a) of this Rule and the season and area limitations established in ~~15A NCAC 3K .0302~~ Rule .0302 of this Section ~~may or may not apply~~ apply for:

- (1) ~~For harvest limits for temporary openings made upon the recommendation of Division of Environmental Health,~~ consistent with the requirements of 15A NCAC 18A .0900 and the North Carolina Hard Clam Fishery Management Plan;
- (2) ~~For~~ maintenance dredging operations, when clams would otherwise be destroyed, upon approval by the Division of Marine Fisheries and consistent with the North Carolina Hard Clam Fishery Management Plan; or
- (3) ~~For~~ relaying of ~~polluted~~ clams from polluted waters to private shellfish bottoms bottom as permitted by ~~15A NCAC 3K .0104.~~ Rule .0104 of this Subchapter.

History Note: Authority G.S. 113-134; 113-136; 113-137; 113-182; 113-221; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1994;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

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

15A NCAC 03K .0302 MECHANICAL HARVEST OF CLAMS FROM PUBLIC BOTTOM

(a) It ~~is shall be~~ unlawful to take, buy, sell, or possess any clams taken by ~~mechanical methods~~ mechanical methods for clamming as defined in 15A NCAC 03I ~~.0101, "mechanical methods for clamming,"~~ .0101 from public bottom unless the season is open.

(b) The Fisheries Director may, by proclamation, open and close the season for the taking of clams by mechanical methods from public bottom at any time in the Atlantic Ocean and only from December 1 through March 31 in Internal ~~Coastal~~ Waters.

(c) The Fisheries Director may, by proclamation, open to the taking of clams by mechanical methods from public bottom during open seasons only areas that were opened at any time from January 1979 through September 1988 in:

- (1) Newport, North, White Oak, and New rivers;
- (2) Core and Bogue sounds;
- (3) the Intracoastal Waterway north of "BC" Marker at Topsail Beach; and
- (4) the Atlantic Ocean.

Other areas opened for purposes as set out in ~~15A NCAC 03K .0301(b)~~ Subparagraph (b) of Rule .0301 of this Section shall open only for those purposes. A list of areas as described in this Paragraph is available upon request at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557.

(d) The Fisheries Director may, by proclamation, impose any of the following additional restrictions for the taking of clams by mechanical methods from public bottom during open seasons:

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

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. May 1, 2017; April 1, 2003;
Readopted Eff. May 1, 2022.*

15A NCAC 03K .0304 is proposed for readoption with substantive changes as follows:

15A NCAC 03K .0304 PROHIBITED TAKING OF CLAMS

(a) It ~~is shall be~~ unlawful to take clams by ~~any method, other than by hand tongs, hand rakes, or by hand,~~ mechanical methods for clamming as defined in 15A NCAC 03I .0101, except as provided in ~~15A NCAC 03K Rule .0302 and .0303 of this Section.~~ Regardless of the areas ~~which that~~ may be opened, it ~~is shall be~~ unlawful to take clams by hand tongs in any established bed of submerged aquatic vegetation as ~~described defined~~ in 15A NCAC 03I .0101 or salt water cordgrass (~~Spartina alterniflora~~-alterniflora) that may exist together or separately.

(b) It ~~is shall be~~ unlawful to possess clam trawls or cages aboard a vessel at any time, or have ~~kick/deflector~~-kick or deflector plates ~~normally otherwise~~ used in the mechanical harvest of clams affixed to a vessel at any time, except during the time period specified for a mechanical clam harvest season in internal waters in accordance with ~~15A NCAC 03K .0302(a).~~ Subparagraph (a) of Rule .0302 of this Section. A period of 14 days before and after the season as specified by proclamation ~~will shall be~~ allowed for the installation and removal of ~~kick/deflector~~-kick or deflector plates and clam trawls or cages. Vessels with permits for activities provided for in ~~15A NCAC 03K rules .0104, .0107, .0303(a), and .0401~~ of this Subchapter shall be exempt from this Rule during the times such activities are permitted.

History Note: Authority G.S. 113-134; 113-182; ~~113-221;~~ 143B-289.52;

Eff. January 1, 1991;

Amended Eff. October 1, 2008; February 1, 2008; May 1, 1997; July 1, 1993;

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

15A NCAC 03K .0305 is proposed for reoption with substantive changes as follows:

15A NCAC 03K .0305 CLAM SIZE AND HARVEST LIMIT ~~EXEMPTION~~EXEMPTIONS

Possession and sale of clams by a hatchery or ~~clam~~-aquaculture operation and purchase and possession of clams from a hatchery or ~~clam~~-aquaculture operation shall be exempt from bag and size limit restrictions ~~in 15A NCAC 3K .0301(a)~~ as set forth in Rule .0301 of this Section. It ~~is~~ shall be unlawful to possess, sell, purchase, or transport such clams unless they are in compliance with all conditions of the Aquaculture Operation ~~Permit~~Permit as set forth in 15A NCAC 03O .0503.

History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. September 1, 1991;

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

15A NCAC 03K .0401 is proposed for re adoption with substantive changes as follows:

SECTION .0400 - RANGIA CLAMS

**15A NCAC 03K .0401 ~~PROHIBITED~~ ~~(POLLUTED)~~ POLLUTED AREA PERMIT
REQUIREMENTS**

It ~~is shall be~~ unlawful to take Rangia clams or their shells by any method from ~~prohibited (polluted) polluted~~ waters without first ~~securing~~ obtaining a Permit to Harvest Rangia Clams from ~~Prohibited (Polluted) Polluted~~ Areas from the Fisheries Director. The permit application shall include a list of all designees operating under the permit. ~~Such~~ The permit shall designate the area, means and methods, and ~~time(s)~~ times in which Rangia clams may be taken. The permit applicant shall designate the licensed fish dealer where the Rangia clams are to be landed and the method for disposing of Rangia clam meats. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. August 1, 2004;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03K .0505 is proposed for readoption with substantive changes as follows:

15A NCAC 03K .0505 SEA SCALLOPS SIZE LIMIT AND TOLERANCE

It ~~is shall be~~ unlawful to land or possess sea scallops with a shell height (length) of less than three and one-half inches. A tolerance of not more than ~~ten~~ 10 percent by number for undersized sea scallop shell height shall be allowed. In determining whether the ~~proportion of undersized sea scallops exceeds the ten percent tolerance limit, the Fisheries Director and his agents are~~ limit has been exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity being graded, and in cases of violations, may ~~require seizure or other disposition~~ seize and return to public bottom or otherwise dispose of the sea scallops as authorized by ~~law~~ the entire quantity being graded or any portion thereof.

*History Note: Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52;
Eff. January 1, 1991;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03L .0101 is proposed for reoption with substantive changes as follows:

SUBCHAPTER 03L – ~~SHRIMPS,~~SHRIMP, CRAB, AND LOBSTER

SECTION .0100 - SHRIMP

15A NCAC 03L .0101 SHRIMP HARVEST RESTRICTIONS

- (a) It ~~is~~shall be unlawful to take shrimp until the Fisheries Director, by proclamation, opens the season.
- (b) The Fisheries Director may, by proclamation, impose any ~~or all~~ of the following restrictions on the taking of shrimp:
- (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. May 1, 2015;
Readopted Eff. May 1, 2022.*

15A NCAC 03L .0102 is proposed for reoption with substantive changes as follows:

15A NCAC 03L .0102 WEEKEND SHRIMPING PROHIBITED

It ~~is shall be~~ unlawful to take shrimp by any method from 9:00 p.m. on Friday through 5:00 p.m. on Sunday, except:

- (1) in the Atlantic Ocean;
- (2) with the use of fixed ~~and nets,~~ channel nets, hand seines, shrimp pots, or cast nets; or
- (3) for a holder of a Permit for Weekend Trawling for Live Shrimp in accordance with 15A NCAC 03O .0503.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. May 1, 2017; August 1, 2004; March 1, 1994;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03L .0103 is proposed for readoption with substantive changes as follows:

15A NCAC 03L .0103 PROHIBITED NETS, MESH LENGTHS ~~LENGTHS~~, AND AREAS

(a) It ~~is shall be~~ unlawful to take shrimp with nets with mesh lengths less than the following:

- (1) ~~Trawl net~~ trawl nets: one and one-half inches;
- (2) ~~Fixed fixed~~ nets, channel nets, float nets, butterfly nets, and hand ~~seines~~ seines: one and one-fourth inches; and
- (3) ~~Cast net~~ cast nets: no restriction.

(b) It ~~is shall be~~ unlawful to take shrimp with a net constructed in such a manner as to contain an inner or outer liner of any mesh length. Net material used as chafing gear shall be no less than four inches mesh length, except that chafing gear with smaller mesh may be used only on the bottom one-half of the tailbag. Such chafing gear shall not be tied in a manner that forms an additional tailbag.

(c) It ~~is shall be~~ unlawful to take shrimp with trawls that have a combined headrope of greater than 90 feet in Internal ~~Coastal~~ Waters in the following areas:

- (1) ~~North~~ north of the 35° 46.3000' N latitude line;
- (2) Core Sound south of a line beginning at a point 34° 59.7942' N - 76° 14.6514' W on Camp Point; running easterly to a point 34° 58.7853' N - 76° 09.8922' W on Core Banks; to the South Carolina State Line;
- (3) Pamlico River upstream of a line from a point 35° 18.5882' N - 76° 28.9625' W at Pamlico Point; running northerly to a point 35° 22.3741' N - 76° 28.6905' W at Willow Point; and
- (4) Neuse River southwest of a line from a point 34° 58.2000' N - 76° 40.5167' W at Winthrop Point on the eastern shore of the entrance to Adams Creek; running northerly to a point 35° 01.0744' N - 76° 42.1550' W at Windmill Point at the entrance of Greens Creek at Oriental.

(d) ~~Effective January 1, 2017 it is~~ It shall be unlawful to take shrimp with trawls that have a combined headrope of greater than 220 feet in Internal ~~Coastal~~ Waters in the following areas:

- (1) Pamlico Sound south of the 35° 46.3000' N latitude line and north of a line beginning at a point 34° 59.7942' N - 76° 14.6514' W on Camp Point; running easterly to a point 34° 58.7853' N - 76° 09.8922' W on Core Banks;
- (2) Pamlico River downstream of a line from a point 35° 18.5882' N - 76° 28.9625' W at Pamlico Point; running northerly to a point 35° 22.3741' N - 76° 28.6905' W at Willow Point; and
- (3) Neuse River northeast of a line from a point 34° 58.2000' N - 76° 40.5167' W at Winthrop Point on the eastern shore of the entrance to Adams Creek; running northerly to a point 35° 01.0744' N - 76° 42.1550' W at Windmill Point at the entrance of Greens Creek at Oriental.

(e) It ~~is shall be~~ unlawful to use a shrimp trawl in the areas described in 15A NCAC 03R .0114.

(f) It ~~is shall be~~ unlawful to use channel nets except as provided in 15A NCAC 03J .0106.

(g) It ~~is shall be~~ unlawful to use shrimp pots except as provided in 15A NCAC 03J .0301.

(h) It ~~is~~ shall be unlawful to use a shrimp trawl that does not conform with the federal rule requirements for Turtle Excluder Devices (TED) as specified in 50 CFR Part 222.102 Definitions, 50 CFR Part 223.205 (a) and Part 223.206 (d) Gear Requirements for Trawlers, and 50 CFR Part 223.207 Approved TEDs. These federal rules are incorporated by reference including subsequent amendments and editions. Copies of these rules are available via the Code of Federal Regulations posted on the Internet at ~~<http://www.gpoaccess.gov/cfr/index.html>~~ <https://www.ecfr.gov/cgi-bin/ECFR> and at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, North Carolina NC 28557 at no cost.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. May 1, 2015; April 1, 2009; July 1, 2006;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03L .0105 is proposed for readoption with substantive changes as follows:

15A NCAC 03L .0105 RECREATIONAL SHRIMP LIMITS

It ~~is~~ shall be unlawful to:

- (1) ~~Possess~~ possess from areas open to the harvest of shrimp more than 48 quarts, heads on or 30 quarts, heads off, of shrimp per person per day or if a vessel is used, per vessel per day for recreational purposes except as provided in 15A NCAC 03O .0303(e) and (f).
- (2) ~~Take~~ take or possess more than four quarts, heads on or two and one-half quarts, heads off, of shrimp per person per day with a cast net from areas closed to the taking of shrimp.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. April 1, 2009;
Amended Eff. May 1, 2015; June 1, 2013;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

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

SECTION .0200 - STRIPED BASS

15A NCAC 03M .0201 STRIPED BASS REQUIREMENTS; GENERAL

- (a) ~~Striped bass is defined as striped bass~~ For the purpose of this Section, "striped bass" shall mean striped bass (Morone saxatilis) and its hybrids taken in ~~coastal and joint fishing waters~~. Coastal and Joint Fishing Waters.
- (b) It ~~is shall be~~ unlawful to possess striped bass ~~imported from other states that are~~ less than 18 inches long (total ~~length~~)-length) imported from other states.
- (c) It ~~is shall be~~ unlawful to import, buy, sell, transport, offer to buy or sell, or possess striped bass except during any:
- (1) open striped bass season established for ~~internal coastal waters~~; Internal Waters;
 - (2) open striped bass season established for the Atlantic Ocean; or
 - (3) open striped bass season of another state without possession of the following:
 - (A) ~~A~~ a bill of lading as described in 15A NCAC 03I .0114; and
 - (B) ~~A~~ a numbered, state-issued tag from the ~~State~~ state of origin affixed through the mouth and gill cover. This tag must remain affixed until processed for consumption by the consumer.
- (d) The management areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC 03R .0201.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1994; September 1, 1991;
Temporary Amendment Eff. May 1, 2000;
Amended Eff. June 1, 2013; October 1, 2008; October 1, 2004; April 1, 2001;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

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

15A NCAC 03M .0202 STRIPED BASS SEASON, SIZE AND HARVEST LIMIT: INTERNAL COASTAL WATERS

(a) It ~~is shall be~~ unlawful to possess striped bass from the ~~coastal fishing waters~~ Coastal Fishing Waters of the Cape Fear River and its tributaries.

(b) It ~~is shall be~~ unlawful to possess striped bass from the Roanoke River Management ~~Area~~ Area, as designated in 15A NCAC 03R .0201, in a commercial fishing operation.

(c) The Fisheries Director may, by ~~proclamation~~ proclamation, impose any ~~or all of~~ the following restrictions on the taking of striped bass in a commercial fishing operation or for recreational purposes in ~~internal coastal waters~~ Internal Waters during the period from October 1 through April 30:

- (1) ~~Specify~~ specify fishing days and times;
- (2) ~~Specify areas;~~ specify area;
- (3) specify means and methods;
- (4) specify size, but the minimum size specified shall not be less than 18 inches total length; and
- (~~3~~)(5) ~~Specify~~ specify quantity, except possession for recreational purposes shall not exceed:
 - (A) more than three fish in any one day in the Albemarle Sound Management ~~Area~~ Area, as designated in ~~Rule~~ 15A NCAC 03R .0201; and
 - (B) more than two fish in any one day in the ~~joint and coastal fishing waters~~ Joint and Coastal Fishing Waters of the Central Southern Management ~~Area~~ Area, as designated in ~~Rule~~ 15A NCAC 03R .0201; .0201.
- (4) ~~Specify means and methods; and~~
- (5) ~~Specify size, but the minimum size specified shall not be less than 18 inches total length.~~

Fish that do not meet the minimum size limit specified by proclamation shall immediately be returned to the waters from which taken regardless of condition.

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996; November 1, 1991;
Temporary Amendment Eff. September 1, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. June 1, 2013; July 1, 2008; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03M .0204 is proposed for reoption with substantive changes as follows:

15A NCAC 03M .0204 STRIPED BASS SEASON, SIZE-~~SIZE~~, AND HARVEST LIMIT: ATLANTIC OCEAN

It ~~is shall be~~ unlawful to possess striped bass taken from the Atlantic Ocean ~~less other~~ than the size limit as ~~determined~~ established by the Atlantic States Marine Fisheries Commission ~~in their~~ Interstate ~~Fisheries~~ Fishery Management Plan for ~~striped bass~~ Atlantic Striped Bass. The Fisheries Director shall issue proclamations necessary to bring North Carolina's size limit in compliance with the Interstate ~~Fisheries~~ Fishery Management Plan.

*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. October 1, 1996;
Amended Eff. October 1, 2008; July 1, 1998;
Readopted Eff. May 1, 2022.*

15A NCAC 03M .0205 is proposed for re adoption with substantive changes as follows:

15A NCAC 03M .0205 STRIPED BASS; PROHIBITED TRAWLING

(a) It ~~is shall be~~ unlawful to possess striped bass on a vessel with a trawl net on that vessel in ~~internal coastal waters~~ Internal Waters except during transit from ocean fishing grounds to port during any open striped bass trawl season in the Atlantic Ocean established by proclamation. Striped bass so possessed ~~must shall~~ meet the minimum size limit set by proclamation.

(b) It ~~is shall be~~ unlawful to possess striped bass on a vessel in the Atlantic Ocean with a trawl net on that vessel except during any open striped bass trawl season in the Atlantic Ocean established by proclamation.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. December 1, 2007;

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

15A NCAC 03M .0503 is proposed for readoption with substantive changes as follows:

15A NCAC 03M .0503 FLOUNDER

- (a) It ~~is~~ shall be unlawful to possess flounder less than 14 inches total length taken from the Atlantic Ocean in a commercial fishing operation.
- (b) From October 1 through April 30, it shall be unlawful to use a trawl in the Atlantic Ocean within three miles of the ocean beach from the North Carolina/Virginia state line (36° 33.000'N) to Cape Lookout (34° 36.000'N) unless each trawl has a mesh length of ~~5-1/2~~ five and one-half inches or larger diamond mesh (stretched) or ~~6~~ six inches or larger square mesh (stretched) applied throughout the body, ~~extension(s)~~ extensions, and the cod end (tailbag) of the net except as provided in ~~Paragraphs paragraphs~~ (g) and (h) of this Rule.
- (c) License to Land Flounder from the Atlantic Ocean:
- (1) ~~It is it shall be~~ shall be unlawful to land more than 100 pounds per trip of flounder taken from the Atlantic Ocean unless the owner of the ~~vessel-vessel~~, or in the case of Land or Sell Licenses, the responsible party, has been issued a License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.
 - (2) ~~It is it shall be~~ shall be unlawful for a fish dealer to purchase or offload more than 100 pounds of flounder taken from the Atlantic Ocean by a vessel whose owner, or in the case of Land or Sell Licenses, the responsible party, has not first procured a valid North Carolina License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.
 - (3) ~~It is it shall be~~ shall be unlawful for any person to land flounder from the Atlantic Ocean under a License to Land Flounder from the Atlantic Ocean unless that person is the holder of the license or the master designated on the license.
 - (4) ~~It is it shall be~~ shall be unlawful for any individual to land flounder from the Atlantic Ocean without having ready at hand for inspection a valid License to Land Flounder from the Atlantic Ocean, except as specified in Subparagraph (c)(1) of this Rule.
- (d) All fish dealer transactions in flounder landed from the Atlantic Ocean must be conducted in accordance with the Atlantic Ocean Flounder Dealer Permits in 15A NCAC 03O .0503 and related ~~rules~~ requirements in 15A NCAC 03O .0500.
- (e) It ~~is~~ shall be unlawful to transfer flounder taken from the Atlantic Ocean from one vessel to another.
- (f) Tailbag liners of any mesh size, the multiple use of two or more cod ends, or other netting material that in any way could restrict the legal size mesh shall not be used or possessed on the deck of a vessel in the Atlantic Ocean from October 1 through April 30 from the North Carolina/Virginia state line (36° 33.000' N) to Cape Lookout (34° 36.0000'N).
- (g) Trawls with a cod end mesh size smaller than described in Paragraph (b) of this Rule may be used or possessed on the deck of a vessel provided not more than 100 pounds of flounder per trip from May 1 through October 31 or more than 200 pounds from November 1 through April 30 is possessed aboard or landed from that vessel.

(h) Flynets are exempt from the flounder trawl mesh requirements if they meet the following ~~definition~~requirements:

- (1) ~~The the~~ net has large mesh in the wings that measure ~~8-eight~~ inches to 64 inches;
- (2) ~~The the~~ first body section (belly) of the net has 35 or more meshes that are at least ~~8-eight~~ inches; and
- (3) ~~The the~~ mesh decreases in size throughout the body of the net to as small as ~~2-two~~ inches or smaller towards the terminus of the net.

(i) Commercial ~~Season~~Season:

- (1) ~~The the~~ North Carolina season for landing ocean-caught flounder shall open January 1 each year. If 80 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is projected to be taken, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.
- (2) ~~The the~~ season for landing flounder taken in the Atlantic Ocean shall reopen November 1 if any of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder remains. If after reopening, 100 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is projected to be taken prior to the end of the calendar year, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.
- (3) ~~During~~during any closed season prior to November 1, vessels may land up to 100 pounds of flounder per trip taken from the Atlantic Ocean.

(j) The Fisheries Director may, by proclamation, establish trip limits for the taking of flounder from the Atlantic Ocean to assure that the individual state quota allocated to North Carolina in the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is not exceeded.

(k) The Fisheries Director may, by proclamation, based on variability in environmental and local stock conditions, take any ~~or all~~ of the following actions in the flounder fishery:

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

~~(6)~~(7) ~~Require~~ require submission of statistical and biological data.

(l) Possession and sale of flounder by a hatchery or flounder aquaculture operation and purchase and possession of flounder from a hatchery or flounder aquaculture operation shall be exempt from season and size limit restrictions set under Paragraph (k) of this Rule. It ~~is~~ shall be unlawful to possess, sell, purchase, or transport such flounder unless they are in compliance with all conditions of the Aquaculture ~~Operations~~ Operation Permit.

*History Note: Authority G.S. 113-134; 113-169.5; 113-182; ~~113-221~~; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996; February 1, 1992;
Temporary Amendment Eff. November 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Temporary Amendment Eff. December 23, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. June 1, 1998; August 18, 1997;
Amended Eff. April 1, 1999;
Temporary Amendment Eff. May 1, 2000; July 1, 1999;
Amended Eff. April 1, 2001; August 1, 2000;
Temporary Amendment Eff. September 1, 2004;
Temporary Amendment Expired June 12, 2005;
Amended Eff. September 1, 2005;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03N .0104 is proposed for readoption with substantive changes as follows:

15A NCAC 03N .0104 PROHIBITED GEAR, PRIMARY NURSERY AREAS

It ~~is shall be~~ unlawful to use any trawl net, long haul seine, swipe net, dredge, ~~or mechanical method for clams or oysters~~ mechanical methods for clamming, or mechanical methods for oystering for the purpose of taking any marine fishes in any of the primary nursery areas described in 15A NCAC ~~3R-03R~~ .0103.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. September 1, 1991;
Recodified from 15A NCAC 3N .0004 Eff. May 1, 1997;
Amended Eff. May 1, 1997;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03N .0105 is proposed for readoption with substantive changes as follows:

15A NCAC 03N .0105 PROHIBITED GEAR, SECONDARY NURSERY AREAS

(a) It ~~is~~ shall be unlawful to use trawl nets for any purpose in any of the permanent secondary nursery areas designated in 15A NCAC 03R .0104.

(b) It ~~is~~ shall be unlawful to use trawl nets for any purpose in any of the special secondary nursery areas designated in 15A NCAC 03R .0105, except that the Fisheries Director, may, by proclamation, open any ~~or all~~ of the special secondary nursery areas, or any portion thereof, ~~listed~~ designated in 15A NCAC 03R .0105 to shrimp or crab trawling from August 16 through May 14 subject to the provisions of 15A NCAC 03L .0100 and .0200.

*History Note: Authority G.S. 113-134; 113-182; ~~113-221~~; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. September 1, 1991;
Recodified from 15A NCAC 03N .0005 Eff. May 1, 1997;
Amended Eff. August 1, 2004; May 1, 1997;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03O .0301 is proposed for re adoption with substantive changes as follows:

SECTION .0300 – RECREATIONAL COMMERCIAL GEAR LICENSES

15A NCAC 03O .0301 ELIGIBILITY FOR RECREATIONAL COMMERCIAL GEAR LICENSES

- (a) It ~~is~~ shall be unlawful for any individual to hold more than one Recreational Commercial Gear License.
- (b) Recreational Commercial Gear Licenses shall only be issued to individuals.

History Note: Filed as a Temporary Adoption Eff. August 9, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Authority G.S. 113-134; 113-170.4; 113-173; 113-182; ~~113-221~~; 143B-289.52;

Eff. February 1, 1995;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. August 1, 2000;

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

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

15A NCAC 03O .0302 AUTHORIZED GEAR FOR RECREATIONAL COMMERCIAL GEAR LICENSES

(a) The following are the only commercial fishing gear authorized (including restrictions) for use under a valid Recreational Commercial Gear License:

- (1) ~~One~~ one seine 30 feet or over in length but not greater than 100 feet with a mesh length less than ~~2 1/2~~ two and one-half inches when deployed or retrieved without the use of a vessel or any other mechanical methods. A vessel may be used only to transport the seine;
- (2) ~~One~~ one shrimp trawl with a headrope not exceeding 26 feet in length per ~~vessel~~ vessel;
- (3) ~~With~~ with or without a vessel, five eel, fish, shrimp, or crab pots in any combination, except only two pots of the five may be eel pots. Peeler pots are not authorized for recreational purposes;
- (4) ~~One~~ one multiple hook or multiple bait trotline up to 100 feet in length;
- (5) ~~Gill Nets~~ gill nets:
 - (A) ~~Not~~ not more than 100 yards of gill nets with a mesh length equal to or greater than ~~2 1/2~~ two and one-half inches except as provided in Part (C) of this Subparagraph. Attendance ~~is~~ shall be required at all times;
 - (B) ~~Not~~ not more than 100 yards of gill nets with a mesh length equal to or greater than ~~5 1/2~~ five and one-half inches except as provided in Part (C) of this Subparagraph. Attendance ~~is~~ shall be required when used from one hour after sunrise through one hour before sunset in ~~internal coastal fishing waters~~ Internal Waters east and north of the Highway 58 Bridge at Emerald Isle and in the Atlantic Ocean east and north of 77° 04.0000' W. Attendance ~~is~~ shall be required at all times in ~~internal coastal fishing waters~~ Internal Waters west and south of the Highway 58 Bridge at Emerald Isle and in the Atlantic Ocean west and south of 77° 04.0000' W; ~~and~~
 - (C) ~~Not~~ not more than 100 yards of gill net may be used at any one time, except that when two or more Recreational Commercial Gear License holders are on ~~board~~ board a vessel, a maximum of 200 yards may be used from a vessel; and
 - (D) ~~It is~~ it shall be unlawful to possess ~~aboard~~ on board a vessel more than 100 yards of gill nets with a mesh length less than ~~5 1/2~~ five and one-half inches and more than 100 yards of gill nets with a mesh length equal to or greater than ~~5 1/2~~ five and one-half inches identified as recreational commercial fishing equipment when only one Recreational Commercial Gear License holder is on ~~board~~ board a vessel. It ~~is~~ shall be unlawful to possess ~~aboard~~ on board a vessel more than 200 yards of gill nets with a mesh length less than ~~5 1/2~~ five and one-half inches and more than 200 yards of gill nets with a mesh length equal to or greater than ~~5 1/2~~ five and one-half inches identified as recreational commercial

fishing equipment when two or more Recreational Commercial Gear License holders are on ~~board;~~board a vessel;

- (6) A ~~one~~ hand-operated device generating pulsating electrical current for the taking of catfish in the area described in 15A NCAC 03J .0304;
- (7) ~~Skimmer-skimmer~~ trawls not exceeding 26 feet in total combined ~~width;~~width; and
- (8) ~~One~~ one pound net used to take shrimp with each lead 10 feet or less in length and with a minimum lead net mesh of ~~1-1/2~~ one and one-half inches, and enclosures constructed of net mesh of ~~1-1/4~~ one and one-fourth inches or greater and with all dimensions being 36 inches or less. Attendance ~~is~~ shall be required at all times and all gear ~~must~~ shall be removed from the water when not being fished. Gear is to be marked and set as specified in 15A NCAC 03J .0501.

(b) It ~~is~~ shall be unlawful to use more than the quantity of authorized gear specified in ~~Subparagraphs (a)(1) through (a)(8)~~ Paragraph (a) of this Rule, regardless of the number of individuals ~~aboard~~ on board a vessel possessing a valid Recreational Commercial Gear License.

(c) It ~~is~~ shall be unlawful for ~~a person~~ an individual to violate the restrictions of or use gear other than that authorized by Paragraph (a) of this Rule.

(d) Unless otherwise provided, this Rule does not exempt Recreational Commercial Gear License holders from the provisions of other applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.

*History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52;
Temporary Adoption Eff. August 9, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. February 1, 1995;
Temporary Amendment Eff. August 1, 1999; July 1, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. August 1, 2000;
Amended Eff. April 1, 2009; July 1, 2006; November 1, 2005; August 1, 2002;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03O .0303 is proposed for readoption with substantive changes as follows:

**15A NCAC 03O .0303 POSSESSION LIMITS FOR RECREATIONAL COMMERCIAL GEAR LICENSE
POSSESSION LIMITS LICENSES**

- (a) It ~~is~~ shall be unlawful to possess more than a single recreational possession limit when only one ~~person aboard~~ individual on board a vessel possesses a valid Recreational Commercial Gear License and recreational commercial fishing equipment as ~~defined~~ described in 15A NCAC 03O .0302(a) is used, regardless of the number of ~~persons~~ individuals on board ~~board~~ a vessel.
- (b) It ~~is~~ shall be unlawful to possess individual recreational possession limits in excess of the number of individuals ~~aboard~~ on board a vessel holding a valid Recreational Commercial Gear ~~Licenses~~ License except as provided in Paragraph (f) of this Rule.
- (c) It ~~is~~ shall be unlawful for any ~~person~~ individual who holds both a Recreational Commercial Gear License and a Standard or Retired Standard Commercial Fishing License and who is in possession of identified recreational commercial fishing equipment as ~~defined~~ described in 15A NCAC 03O ~~.0302(a),~~ .0302(a) to exceed the single recreational possession limit.
- (d) It ~~is~~ shall be unlawful for ~~persons aboard~~ individuals on board a vessel collectively holding only one Recreational Commercial Gear License and any Standard Commercial Fishing License or Retired Standard Commercial Fishing License and who are in possession of any identified recreational commercial fishing equipment as ~~defined~~ described in 15A NCAC 03O ~~.0302(a),~~ .0302(a) to exceed one recreational possession limit.
- (e) It ~~is~~ shall be unlawful to possess more than 48 quarts, heads on, or 30 quarts, heads off, of shrimp when only one ~~person aboard~~ individual on board a vessel possesses a valid Recreational Commercial Gear License and recreational commercial fishing equipment as ~~defined~~ described in 15A NCAC 03O .0302(a) is used.
- (f) It ~~is~~ shall be unlawful to possess more than 96 quarts, heads ~~on on,~~ or 60 quarts, heads off, of shrimp if more than one ~~person aboard~~ individual on board a vessel possesses a valid Recreational Commercial Gear License and recreational commercial fishing equipment as ~~defined~~ described in 15A NCAC 03O .0302(a) is used.

*History Note: Authority G.S. 113-134; 113-170.4; 113-173; 113-182; 143B-289.52;
Temporary Adoption Eff. August 9, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. February 1, 1995;
Temporary Amendment Eff. June 7, 1998;
Amended Eff. April 1, 1999;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2006; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03O .0401 is proposed for readoption with substantive changes as follows:

SECTION .0400 – STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY

15A NCAC 03O .0401 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD

(a) The ~~Chairman~~ Chair of the Marine Fisheries Commission, the Secretary of the Department of ~~Environment and Natural Resources~~, Environmental Quality, and the Director of the Division of Marine Fisheries may each name a designee and an alternate designee to serve on the Standard Commercial Fishing License Eligibility Board as their representative in their absence.

(b) The Standard Commercial Fishing License Eligibility Board shall not review an application for eligibility without a quorum of the Standard Commercial Fishing License Eligibility Board members or designees being present. Two or more members of the Standard Commercial Fishing License Eligibility Board or their designees constitute a quorum.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24;
Temporary Adoption Eff. April 1, 1999;
Eff. August 1, 2000;
Readopted Eff. May 1, 2022.*

15A NCAC 03O .0402 is proposed for readoption with substantive changes as follows:

15A NCAC 03O .0402 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY APPLICATION PROCESS

- (a) Application forms for determination of eligibility for the Standard Commercial Fishing ~~Licenses~~ License Eligibility Pool ~~shall be~~ are available at all offices of the Division of Marine Fisheries and online at <https://deq.nc.gov/about/divisions/marine-fisheries/licenses-permits-and-leases/commercial-fishing-licenses/eligibility-pool> and ~~must~~ shall be submitted to the Morehead City Office of the ~~Division of Marine Fisheries~~ Division, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557 for processing.
- (b) Only one application per individual for determination of eligibility for the Standard Commercial Fishing ~~Licenses~~ License Eligibility Pool shall be accepted or may be pending at any one time. An applicant may have only one entry in the ~~eligibility pool~~ Standard Commercial Fishing License Eligibility Pool at any one time.
- (c) Individuals who currently hold or are eligible to purchase a Standard or Retired Standard Commercial Fishing License shall not be eligible to apply for additional Standard Commercial Fishing Licenses through the Standard Commercial Fishing ~~Licenses~~ License Eligibility Pool.
- (d) If an applicant has died or becomes ineligible and is subsequently selected from the ~~eligibility pool~~ Standard Commercial Fishing License Eligibility Pool, that license eligibility shall automatically revert to the ~~eligibility pool~~ Standard Commercial Fishing License Eligibility Pool.
- (e) Persons claiming retirement from commercial fishing or transferring their Standard Commercial Fishing License ~~may not apply for pool eligibility~~ shall not be eligible to apply for a Standard Commercial Fishing License through the Standard Commercial Fishing License Eligibility Pool for two years from the date of the last ~~transfer~~ transfer, except as provided in ~~15A NCAC 03O .0404(3)~~ Item (3) of Rule .0404 of this Section.
- (f) Applicants shall notify the ~~Division of Marine Fisheries~~ within 30 days of a change of address.

History Note: *Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4:24;*
Temporary Adoption Eff. April 1, 1999;
Eff. August 1, 2000;
Amended Eff. October 1, 2008; February 1, 2008;
Readopted Eff. May 1, 2022.

15A NCAC 03O .0403 is proposed for reoption with substantive changes as follows:

**15A NCAC 03O .0403 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD
REVIEW**

- (a) After determination of eligibility by the Standard Commercial Fishing License Eligibility Board, applicants will be notified in writing as to the ~~applicant's~~applicant meeting or not meeting required eligibility criteria for the Standard Commercial Fishing License Eligibility Pool.
- (b) The Marine Fisheries Commission shall determine the number of licenses available from the pool at ~~their~~its first regularly scheduled meeting following July 1 of each year.
- (c) The Standard Commercial Fishing License Eligibility Board shall meet to review applications as often as deemed necessary by the ~~Chairman~~Chair of the Standard Commercial Fishing License Eligibility Board.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4:24;
Temporary Adoption Eff. April 1, 1999;
Eff. August 1, 2000;
Amended Eff. February 1, 2008;
Readopted Eff. May 1, 2022.*

15A NCAC 030 .0404 is proposed for reoption with substantive changes as follows:

15A NCAC 030 .0404 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY CRITERIA

In determining eligibility of an ~~application-applicant~~ for the Standard Commercial Fishing License Eligibility Pool, the Standard Commercial Fishing License Eligibility Board shall apply the following criteria:

- (1) ~~Involvement in Commercial Fishing:~~involvement in commercial fishing:
 - (a) ~~Significant-significant~~ involvement in the commercial fishing industry for three of the last five years;~~or~~
 - (b) ~~Significant-significant~~ involvement in commercial fishing or in the commercial fishing industry prior to the last five years;~~or~~
 - (c) ~~In-in~~ the case of an applicant who is under 16 years of age, significant involvement in commercial fishing for two out of the last five years with a parent, legal guardian, ~~grandparent-grandparent~~, or other adult; or
 - (d) ~~Significant-significant~~ involvement of the applicant's family in commercial fishing. For the purpose of this ~~Sub-item, Sub-Item~~, family shall include mother, father, ~~brother, sister, brothers, sisters~~, spouse, children, ~~grandparents-grandparents~~, or legal guardian.

For the purposes of this Rule, ~~significant involvement means-~~"significant involvement" shall mean persons or corporations who are engaged in the actual taking of fish for sale, from the waters of the State, or other states, jurisdictions, or federal waters, or any licensed dealer or the dealer's employees who ~~purchases-purchase~~ fish at the point of landing. Significant involvement does not include activities such as those who transport fish from the point of ~~landing-landing~~, those who sell or make commercial or recreational fishing ~~gear-gear~~, those who operate bait and tackle shops unless they are engaged in the actual taking of bait for ~~sale-sale~~, or those who work in fish markets or crab picking ~~operations-operations~~;

- (2) ~~Compliance with Applicable Laws and Regulations:~~compliance with applicable laws, regulations, and rules:
 - (a) ~~The-the~~ applicant shall not have any licenses, ~~endorsements or commercial fishing vessel registrations-endorsements~~, or Commercial Fishing Vessel Registrations issued by the Division of Marine Fisheries or the right to hold such under suspension or revocation at the time of application or during the eligibility review;~~or~~
 - (b) ~~If-if~~ selected for the Standard Commercial Fishing License Eligibility Pool, the applicant shall become ineligible for the Standard Commercial Fishing License Eligibility Pool if any licenses, ~~endorsements or registrations-endorsements~~, or Commercial Fishing Vessel Registrations or the right to hold such issued by the Division of ~~Marine Fisheries~~ are suspended or revoked;~~or~~
 - (c) ~~Four-four~~ convictions within the last three years or the number of convictions ~~which-that~~ would cause suspension or revocation of ~~license, endorsement, or registration-licenses~~,

endorsements, or Commercial Fishing Vessel Registrations within the last three years shall result in the application being ~~denied; or~~ denied. An applicant for the Standard Commercial Fishing License Eligibility Pool shall provide certification that the applicant does not have four or more marine or estuarine resource convictions during the previous three years; and

- (d) ~~A~~ a record of habitual violations evidenced by eight or more convictions in the last 10 years shall result in the application being denied.

For purposes of eligibility for the Standard Commercial Fishing License Eligibility Pool, the term convictions shall include but not be limited to any conviction for violation of any provision of Chapter 113 of the North Carolina General Statutes and any rule implementing or authorized by such ~~statutes; statutes,~~ any conviction for violation of G.S. 76-40 and any rule implementing or authorized by such ~~statute; statute,~~ any conviction of Chapter 75A of the North Carolina General Statutes and any rule implementing or authorized by such ~~statutes; statutes,~~ any conviction for violation of any provision of Article 7 of Chapter 143B of the North Carolina General Statutes and any rule implementing or authorized by such ~~statutes; statutes,~~ any conviction of resist, obstruct, or delay involving a ~~Marine Patrol Officer or Wildlife Officer~~ Marine Fisheries Inspector or Wildlife Protector under G.S. ~~14-223; 14-223,~~ and any conviction involving assaultive behavior toward a ~~Marine Patrol Officer~~ Marine Fisheries Inspector or other governmental official of the Department of ~~Environment and Natural Resources~~ Environmental Quality or the Wildlife Resources Commission.~~Commission;~~

~~Applicants for the Standard Commercial Fishing License Eligibility Pool must provide certification that the applicant does not have four or more marine or estuarine resource violations during the previous three years.~~

- (3) ~~The~~ the responsible party shall not have transferred a Standard Commercial Fishing License granted by the Standard Commercial Fishing License Eligibility Board.~~Board;~~ and
- (4) ~~All applicants~~ an applicant for the Standard Commercial Fishing License Eligibility Pool ~~must~~ shall meet all other statutory eligibility requirements for ~~the~~ a Standard Commercial Fishing License.

History Note: Authority G.S. 113-134; 113-168.1; 113-168.2; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24; Temporary Adoption Eff. April 1, 1999; Eff. August 1, 2000; Amended Eff. October 1, 2008; February 1, 2008; Readopted Eff. May 1, 2022.

15A NCAC 03O .0405 is proposed for reoption with substantive changes as follows:

15A NCAC 03O .0405 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY APPLICATION DOCUMENTATION

(a) Documentation for applications:applications for determination of eligibility for the Standard Commercial Fishing License Eligibility Pool shall include:

- (1) ~~Statements~~ statements from individuals verifying the ~~applicant's involvement must~~ applicant's involvement in commercial fishing or the commercial fishing industry, which shall contain the individual's individual's name, address address, and telephone number and must shall be notarized-notarized by the individual;
- (2) ~~Proof~~ proof of income derived from commercial fishing or the commercial fishing industry. Proof of this income shall be tax ~~records-records;~~ and
- (3) ~~The~~ the extent to which the applicant has complied with federal and state laws, regulations, and rules relating to coastal fishing and protection of the environment. Federal compliance will be verified by a notarized statement from the applicant that ~~he has~~ they have complied with federal laws.

~~(4)~~(b) All documents required by this Rule ~~must~~ shall be notarized.

~~(5)~~(c) Applications shall be legible and complete or they will be returned.

~~(6)~~(d) It ~~is~~ shall be unlawful to submit false statements on applications or supporting documents. If eligibility is based on false information provided by the applicant, this eligibility ~~is~~ shall be automatically revoked.

History Note: *Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24;*
Temporary Adoption Eff. April 1, 1999;
Eff. August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03O .0406 is proposed for reoption with substantive changes as follows:

**15A NCAC 03O .0406 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY POOL
CERTIFICATION**

Annual certification to maintain an eligible application in the Standard Commercial Fishing License Eligibility Pool shall be as follows:

- (1) ~~The~~ the applicant shall certify that the information on ~~his~~ their original application is correct and that ~~he desires~~ they desire to remain in the Standard Commercial Fishing License Eligibility Pool.
- ~~(2)~~ A certification form shall be provided and mailed to the applicant at the last known address by the ~~Division~~ Division of Marine Fisheries;
- ~~(3)~~ (2) ~~This certification,~~ the certification form with any ~~changes~~ changes, such as address, phone number, or updated fisheries involvement information since the last application or ~~certification~~ must certification, shall be notarized and submitted to the Division within 12 months of the initial application and annually ~~thereafter~~ thereafter; and
- ~~(4)~~ (3) ~~Failure~~ failure to return certification that an application is correct or with changes within 30 days from when the Division mailed the form to the applicant shall result in the application being ~~deleted~~ removed from the Standard Commercial Fishing License Eligibility Pool. ~~(5)~~ An applicant that has been ~~deleted~~ removed from the Standard Commercial Fishing License Eligibility Pool shall receive a notice from the Division.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24;
Temporary Adoption Eff. April 1, 1999;
Eff. August 1, 2000;
Readopted Eff. May 1, 2022.*

**Fiscal Analysis for Proposed Readoption and Amendments to
15A NCAC 03I, 03J, 03K, 03O, and 03R for
Definitions, Imported Species, Recordkeeping, Gear, Marketing Shellfish, and Licenses**

Rule Amendments: 15A NCAC 03I .0101, .0104, .0114, 03J .0105, .0109, .0305, 03K .0205, .0507, 03O .0101-.0105, .0107, .0109, .0110, .0113, 03R .0111

Name of Commission: N.C. Marine Fisheries Commission

Agency Contact: Catherine Blum, Rulemaking Coordinator
N.C. Division of Marine Fisheries
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Impact Summary: State government: Yes
Local government: No
Federal government: No
Substantial impact: No

Authority:

North Carolina General Statutes

G.S. 113-134.	Rules.
G.S. 113-168.	Definitions.
G.S. 113-168.1.	General provisions governing licenses and endorsements.
G.S. 113-168.2.	Standard Commercial Fishing License.
G.S. 113-168.3.	Retired Standard Commercial Fishing License.
G.S. 113-168.4.	Sale of fish.
G.S. 113-168.5.	License endorsements for Standard Commercial Fishing License.
G.S. 113-168.6.	Commercial fishing vessel registration.
G.S. 113-169.2.	Shellfish license for North Carolina residents without a SCFL.
G.S. 113-169.3.	Licenses for fish dealers.
G.S. 113-169.4.	Licensing of ocean fishing piers; fees.
G.S. 113-169.5.	Land or sell license; vessels fishing beyond territorial waters.
G.S. 113-170.	Exportation and importation of fish and equipment.
G.S. 113-170.3.	Record-keeping requirements.
G.S. 113-170.4.	Rules as to possession, transportation, and disposition of fisheries resources.
G.S. 113-171.1.	Use of spotter planes in commercial fishing operations regulated.
G.S. 113-173.	Recreational Commercial Gear License.

G.S. 113-174.	Definitions.
G.S. 113-174.1.	License required; general provisions governing licenses.
G.S. 113-174.2.	Coastal Recreational Fishing License.
G.S. 113-174.3.	For-Hire Licenses.
G.S. 113-182.	Regulation of fishing and fisheries.
G.S. 113-187.	Penalties for violations of Subchapter and rules.
G.S. 113-201.	Legislative findings and declaration of policy; authority of Marine Fisheries Commission.
G.S. 113-202.	New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.
G.S. 113-221.1.	Proclamations; emergency review.
G.S. 147-84.	Refund of excess payments.
G.S. 143B-289.52.	Marine Fisheries Commission – powers and duties.

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. Sixteen rules in 15A NCAC 03I, 03J, 03K, and 03O are proposed for readoption with substantive changes and two rules (15A NCAC 03K .0507, 03R .0111) are proposed for amendment related to definitions, imported species, recordkeeping, gear, marketing shellfish, and licenses.

II. Summary

Proposed rules for readoption seek to improve clarity and efficiency to rules related to definitions, imported species, recordkeeping, gear, marketing shellfish, and licenses. Overall, most changes are technical in nature and contain no anticipated fiscal impacts. However, a small set of proposed changes would incur benefits to the State from increased efficiency across these programs. Most benefits would be time-cost reductions for both the Division of Marine Fisheries (DMF) staff and stakeholders, as well as better protection of the resources, while there are also small benefits related to removing a time requirement for obtaining a license. Nominal costs to commercial trotline fishermen are anticipated for gear marking requirements, as well as small opportunity costs for a portion of shellfish lease holders to obtain and comply with the reporting requirements of an aquaculture permit. No additional costs are anticipated, including no additional impacts to enforcement.

III. Introduction and Purpose of Rule Changes

Sixteen of these 18 rules of the Marine Fisheries Commission are subject to readoption per G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules. The group of rules relate to definitions, imported species, recordkeeping, gear, marketing shellfish, and licenses. Proposed amendments make minor technical and clarifying changes to these 18 rules, which incur no impact. Throughout the rules, elements that merely repeat the content of law are proposed to be struck, per G.S. 150B-19. These proposed deletions bear no impact on the state. However, a small subset of proposed amendments would likely incur a small impact to the State or stakeholders. These proposed amendments are described below, while all proposed changes with no anticipated impacts will not be discussed further.

Definitions

Rule 15A NCAC 03I .0101 contains definitions that apply to Chapter 03, Marine Fisheries. Proposed amendments include minor items such as updating the name of the department and standardizing the style of each term. Several substantive amendments are also proposed. In Sub-Item (1)(e), a new definition for "nongovernmental conservation organization" is proposed to conform to requirements of Session Law 2015-241, Section 14.10A. for the issuance of Scientific and Educational Activity Permits (SEAPs). A SEAP can be issued to an educational institution, scientific institution, or nongovernmental conservation organization to take marine or estuarine resources in support of their respective endeavors that would otherwise not be allowed. It exempts the permit holder from North Carolina license, rule, proclamation, or statutory requirements. The DMF has issued an average of 51 permits per year from 2015-2019 (see Appendix I, Table 1). Since 2015, at least one permit has been issued to a nongovernmental conservation organization, but the permit holders often qualify for a permit based on multiple eligibility criteria (educational institution, scientific institution, nongovernmental conservation organization) and so are not strictly categorized. This conforming rule change has negligible impacts to the State as a result.

In Sub-Item (1)(f), a new definition for "polluted" is proposed to clarify its meaning versus incidences of the term "prohibited" consistent with 15A NCAC 18A .0900. Several rules in 15A NCAC 03 and 18A are proposed for amendment (as addressed in separate analyses) to delete "prohibited (polluted)" and replace it with "polluted". The use of "prohibited" in the current rules is problematic in that it is meant to define an area that is eligible as a relay area, but the DMF Shellfish Sanitation Program and 15A NCAC 18A rules use "prohibited" as a specific shellfish harvest classification from areas where no relay can occur. The National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish (Model Ordinance), which is a minimum set of guidelines that all state shellfish control authorities must meet, also uses "prohibited" as a classification where relay is not eligible, so for these rule amendments, the use of "prohibited" is proposed to be changed to "polluted" for clarity. Effectively, this does not change anything for the DMF or the public as the practice of relay is already limited only to areas classified as "restricted" or "conditionally approved" and not "prohibited" consistent with the Model Ordinance. Sub-Item (2)(j), "shellfish planting effort on leases and franchises" is proposed to be amended similarly.

Existing Sub-Item (1)(i), "Seed Oyster Management Area", is proposed to be deleted in concert with a definition for it proposed to be added to 15A NCAC 03K .0208 (covered in a separate analysis).

Sub-Item (2)(d), "deuration", is proposed for amendment for consistency with the same term in 15A NCAC 18A .0301 by deleting the reference to natural means. Deuration by natural means is redundant with relay activities (covered by other rules) that allow for cleansing potentially contaminated shellfish in waters designated for that purpose. The proposed amendment clarifies deuration is distinct from the natural cleansing that can occur via relay.

A new term is proposed to be added as Sub-Item (5)(d) for "franchise", consistent with G.S. 113-206 and 15A NCAC 03O .0200.

Proposed amendments to these five terms increase clarity for requirements across MFC rules and conform rule language with ongoing management practice by the DMF. As a result, each rule is expected to incur non-quantifiable benefits to the State from increased efficiencies.

Sub-Item (2)(a), "aquaculture operation", is proposed to be amended to include non-native species consistent with proposed amendments to 15A NCAC 03I .0104 covered in the next section of this analysis. Proposed amendments also add private bottom, effectively subjecting all shellfish lease holders to the requirement to hold an Aquaculture Operation Permit (AOP). In 2020, there were an estimated 168 individual shellfish lease holders. Of these, 101 held AOPs, so 60% of all estimated shellfish lease holders had AOPs in 2020. Due to the increase in shellfish water column leases and the use of intensive gear (cages, racks, bags, or floats) for both bottom and water column leases over the last five years, many growers are already required to obtain AOPs. Under the proposed requirement an additional 67 shellfish lease holders would be required to obtain AOPs.

With an increasing trend in the use of intensive gear and in shellfish leases overall, it is important for the DMF to be able to track, monitor, and quantify activities to better manage the resource. These functions are fulfilled efficiently by the AOPs and the associated conditions permit holders must abide by. Requiring AOPs for all shellfish lease holders would also help address potential issues such as public health concerns of product being moved on and off shellfish leases without any documentation or under reporting of this product across all shellfish leases. By requiring all shellfish lease holders to obtain an AOP, the efficiency of the DMF would increase as would the accountability of the shellfish aquaculture industry, creating a non-quantifiable benefit for the State, stakeholders, and ultimately the resource. While shellfish lease holders are already subject to individual requirements (conditions) such as gear, area, times, sampling, and recordkeeping and report submission, the AOP consolidates all requirements into a single management tool. This tool can be applied in a timely manner to situations of non-compliance via the DMF's notice of violation processes for suspension or revocation of permits, including the opportunity for the permit holder to demonstrate compliance before the suspension process proceeds. This is especially important for addressing potential public health issues that can come from the mismanagement of shellfish that need to be immediately addressed. Overall, these changes add flexibility for the State that incurs opportunity cost savings, facilitates timely handling of public health issues, and ultimately enhances the resource.

The workload for shellfish lease holders would increase slightly, but not significantly by requiring AOPs. Each year, the DMF sends a letter to every shellfish lease holder explaining the permits that are required for various activities and how to apply. To apply for an AOP, the shellfish lease holder can submit the application online and be approved without having to travel to a DMF office location. The permit is free and is only a few pages to complete. The AOP is renewed on an annual basis and the specific permit conditions require the permittee to submit an annual report. The information required for the annual report is similar to the information already required annually for shellfish leases, regardless of having an AOP. Therefore, the reporting requirements for the AOP would incur a small opportunity cost, estimated to be less than one hour, even for those shellfish lease holders that hold more than one AOP. Based on 2020 data, 67 shellfish lease holders would incur this cost.

Imported Species

To conform with requirements of Session Law 2017-190, Section 3.1 (as amended by Session Law 2018-114, Section 17), proposed amendments to 15A NCAC 03I .0104 allow the importation of American eels from Virginia and South Carolina, in addition to Maryland, for use in an aquaculture operation without obtaining a Permit to Introduce, Transfer, or Hold Imported Marine and Estuarine Organisms that would otherwise be required. The law change makes it easier to import eels from these states into an aquaculture operation by removing the time and financial burdens associated with sending a pathologist a sample of 60 eels from every proposed shipment to obtain a disease-free certificate, creating a time-cost benefit for an aquaculture operator. This also means the law allows for the importation of these eels without notification to the DMF or having disease-free certification, but since all American eel comprise one panmictic population, meaning they are a single breeding population that exhibits random mating, risk to the State's marine and estuarine resources from disease is extremely low. Only one such permit has ever been issued for American eels, so the impacts are expected to be negligible overall.

Additional proposed amendments consistently state "non-native species that may thrive if introduced into Coastal Fishing Waters". Proposed amendments also state sizes and quantities of species are required to be included in the disease-free certificate, not just the type of species. These changes conform the rule to ongoing practices of the DMF and stakeholders, making the rule clearer and more consistent. This creates a non-quantifiable benefit to the State from increased efficiencies as well as better protection of the resources.

Recordkeeping

Proposed amendments to 15A NCAC 03I .0114 broaden the types of recordkeeping permissible for inspection by Marine Fisheries Inspectors. Currently, fish dealers must make paper copies of trip tickets available at the dealer location. Proposed amendments add electronic copies as an option, so that fish dealers must have either the paper copy or electronic copy. This change would reflect updated technological methods of recordkeeping and provide flexibility to the fish dealers who have made the transition to electronic documentation, creating a time-cost benefit. A second proposed amendment specifies documentation must show not only the quantity, but the species name of the fish (information already obtained by fish dealers) to help better identify the stock of a dealer and prevent any confusion, misidentification, or clerical error that may arise from not keeping accurate track of the type of catch, creating non-quantifiable benefits to the State and fish dealers from increased efficiencies as well as better protection of the resources.

Gear

Amendments are proposed to several rules pertaining to the use of various fishing gears, namely purse seines, long-haul seines, and trotlines. Overall, proposed amendments conform rule language with ongoing management practice by the DMF. Each rule is expected to incur benefits to the State from increased efficiencies by making rule requirements more clear and consistent. The majority of these proposed amendments incur no additional impacts; proposed changes anticipated to incur impacts for each gear type are summarized here.

Purse Seines

Effective Jan. 1, 2013, Session Law 2012-190, Section 3.(a) makes it a Class A1 misdemeanor to take menhaden or Atlantic thread herring by the use of a purse seine net deployed by a mother ship and one or more runner boats in coastal fishing waters. This law change also repealed Session Law 2007-320, which had previously only applied this restriction in the State ocean waters off Brunswick County. Despite these restrictions, the majority of Rule 15A NCAC 03J .0105, as well as 15A NCAC 03R .0111 that sets areas and times where the use of a purse seine is prohibited, are still needed for management of purse seines that are not covered by the requirements of the law changes. For example, the use of a purse seine without the configuration of a mother ship and one or more runner boats, while rare, is still allowed under the law, and so requirements are still needed to manage the affected fisheries should they ever occur.

Proposed amendments to 03J .0105 are needed to conform to the 2012 law and to update the proclamation authority of the Fisheries Director for the management of purse seines to be consistent with similar proclamation authority for other gear rules. Additionally, the rule was reorganized to group all requirements for closed areas in Paragraph (b) and to group the exceptions that allow open areas in paragraphs (c), (d), and (e). The current rule contains a mix of closed and open areas throughout the rule, so the proposed amendments make the rule clearer while still retaining the same requirements of the current rule.

Proposed amendments to 15A NCAC 03R .0111 link to 15A NCAC 03J .0105 and remove redundant "unlawful" language, since the unlawful activities are set forth in 03J .0105, leaving only the coordinates of where it is unlawful to do those activities in 03R .0111, consistent with other rules in Subchapter 03R. The standard format for listing geographic descriptions and coordinate pairs has also been applied to 03R .0111.

Proposed amendments to 15A NCAC 03O .0103 and .0104 conform them to requirements of Session Law 2013-384, Section 2 that deleted menhaden endorsements from G.S. 113-168.5 and repealed G.S. 113-169, the latter of which had authorized the Menhaden License for Nonresidents Without a Standard Commercial Fishing License. Additionally, the law modified G.S. 113-168.2(a1) to remove the authority for MFC rule to provide an exemption from the requirement for the holder of a SCFL to use only one vessel in a commercial fishing operation at any given time in a menhaden operation. Specifically, the exemption for the use of a purse seine is proposed to be deleted from 15A NCAC 03O .0103 and reference to the Menhaden License for Nonresidents Without a Standard Commercial Fishing License is proposed to be deleted from 15A NCAC 03O .0104.

Proposed amendments to these four rules increase clarity for requirements across MFC rules and conform rule language with ongoing management practice by the DMF. As a result, each rule is expected to incur non-quantifiable benefits to the State from increased efficiencies.

Long-Haul Seines

Proposed amendments to 15A NCAC 03J .0109 delete text stating "excluding operations with nets made entirely of monofilament and having a mesh length of three inches or greater". This language was originally added to state that individuals using runaround gill nets are exempt from the swipe net requirements, but the language is confusing and not necessary. Individuals who are

engaged in a swipe net fishing operation using monofilament in their seine would still have to meet all the requirements of this rule. Individuals who are engaged in a swipe net operation using small mesh monofilament would have the bunt net attached to the monofilament seine. These fishermen do not want to gill the fish, they want to be able to bail the fish out of the bunt net. This method of swipe netting is less time consuming for fishermen. Marine Fisheries Inspectors do not need this language in the rule to determine if the individual is strike netting or swipe netting. The fact that a bunt net will be used will determine that the individual will need to meet the buoy and flag requirements and escape panel requirements in 15A NCAC 03J .0109 instead of the buoy and marking requirements for gill nets in 15A NCAC 03J .0103. Proposed amendments are clarifying in nature and would increase efficiencies for the DMF.

Trotlines

The proposed amendments to 15A NCAC 03J .0305 add requirements for marking trotline gear used in a commercial fishing operation. The amendments would establish consistency across other similar rules for the identification of gear that is fished commercially.

These new marking requirements for trotlines would facilitate enforcement by allowing Marine Fisheries Inspectors to be able to easily identify commercial trotlines. Annually, North Carolina averages 14 trotline participants that would be required to mark their gear under the proposed changes.

An online search of Memphis Net and Twine Company, which is a popular supplier of commercial fishing supplies, revealed that they have four different types of buoy style PVC floats available that would be legal for use on commercial trotlines. These buoys range in size from 5" outside diameter by 11" length to 9" outside diameter by 16" length. The prices ranged from \$7.43–\$26.40 per buoy. It is important to note that any of the four different buoys listed can be cut into two even pieces, thereby creating two legal buoys for use on a commercial trotline or the whole buoy may be used.

Some fishermen have their own devices made to aid in the engraving process. Aside from a fisherman fabricating their own tool, a commercial tool can be purchased at a cost between \$300.00 to \$400.00. If a fisherman chooses to use engraved metal or plastic tags, identification tags commonly used are \$.55 per tag with all of the required information. If a fisherman has never purchased these tags, there is generally a \$50.00 set up fee for their specific stamp to be made and it is held for 10 years.

There is no standard length for commercial trotlines. It is up to the fisherman how long they want them to be. Likewise, there is no standard number of trotlines that a fisherman will use. Currently in the Albemarle Sound region, a commercial trotline fisherman will typically use four or five, 100 to 200-yard trotlines.

The proposed changes are not expected to alter the behavior of fishermen. Fishermen are likely to make the required adjustments to their gear when they are preparing for the next season, incurring a small opportunity cost. Anticipated total costs to all affected fishermen range from \$1,178 (four small buoys cut in half with eight tags for four trotlines for 14 participants) to \$9,296 (10 large buoys with a commercial engraver for five trotlines for 14 participants).

Overall, the proposed amendments for trotlines would benefit Marine Fisheries Inspectors by making commercial trotlines easier to identify and monitor, incurring non-quantifiable benefits to the State from increased efficiencies. There may also be a reduction in the potential for user conflicts by making the gear easier to identify for boaters and other fishermen.

Marketing Shellfish

Proposed amendments to 15A NCAC 03K .0205 and .0507 delete requirements for a certification form because the form is obsolete and is redundant with shellfish harvest and dealer tag requirements (15A NCAC 03K .0109 and 18A .0425), clarifying requirements overall. Additional amendments conform to requirements of G.S. 113-202(r) for equipment placed on shellfish leases within 18 inches of the leased bottom and are for clarifying purposes only, without additional meaningful impacts. Proposed amendments increase clarity for requirements across MFC rules and conform rule language with ongoing management practice by the DMF, incurring non-quantifiable benefits to the State from increased efficiencies.

Licenses

Proposed amendments to 15A NCAC 03O .0101 and .0102 consolidate procedures and requirements to obtain licenses in 03O .0101 and requirements for the renewal of licenses in 03O .0102. In so doing, the rules are also reorganized to list residency requirements by license type and to alphabetize licenses, for clarity, increasing efficiencies for the DMF and stakeholders. Proposed amendments also remove the requirement to obtain the Recreational Fishing Tournament License to Sell Fish 30 days in advance of the tournament effective date. This would remove burden from the license holder, especially if the license holder has to reschedule a tournament during hurricane season that may be delayed due to a storm, providing a small benefit for license holders. The DMF processes the permits regardless of the time period in which the applications are submitted, so there are no costs incurred for the State.

IV. Fiscal Impact Analysis

As part of the readoption process, these 18 rules are proposed with amendments intended to increase clarity and efficiency around definitions, imported species, recordkeeping, gear, marketing shellfish, and licenses. Overall, the majority of these proposed amendments offer technical changes and contain no anticipated fiscal impacts; proposed amendments anticipated to incur impacts are summarized above.

Summary of Potential Economic Benefits

Of the rules with impacts, a small set of proposed changes would incur non-quantifiable benefits to the State from increased efficiency across these programs. Most benefits would be time-cost reductions for both the DMF staff and stakeholders, as well as better protection of the resources, while there is a small benefit for license holders related to removing a time requirement for obtaining a tournament license.

Specifically, proposed amendments to 15A NCAC 03I .0101, Sub-Item (2)(a), "aquaculture operation", is proposed to be amended to add private bottom, effectively subjecting all shellfish lease holders to the requirement to hold an AOP. By requiring all shellfish lease holders to obtain

an AOP the DMF would be better equipped to track, monitor, and quantify shellfish lease activities and better manage the resource. The efficiency of the DMF would increase as would the accountability of the shellfish aquaculture industry, creating a non-quantifiable benefit for the State, stakeholders, and ultimately the resource.

Proposed amendments to 15A NCAC 03I .0114 broaden the types of recordkeeping permissible for inspection by Marine Fisheries Inspectors by adding electronic trip tickets as an option. This change would reflect updated technological methods of recordkeeping and provide flexibility to the fish dealers who have made the transition to electronic documentation, creating a time-cost benefit for participating dealers.

Proposed amendments to 15A NCAC 03J .0305 for marking requirements for trotlines would benefit Marine Fisheries Inspectors by making commercial trotlines easier to identify and monitor, incurring non-quantifiable benefits to the State from increased efficiencies. There may also be a reduction in the potential for user conflicts by making the gear easier to identify for boaters and other fishermen.

Proposed amendments to 15A NCAC 03O .0101 remove the requirement to obtain the Recreational Fishing Tournament License to Sell Fish 30 days in advance of the tournament effective date. This would remove burden from the license holder, especially if the license holder has to reschedule a tournament during hurricane season that may be delayed due to a storm, providing a small but non-quantifiable benefit for license holders. The DMF processes the permits regardless of the time period in which the applications are submitted, so there are no costs incurred for the State by the removal of the time requirement.

Summary of Potential Economic Costs

Nominal costs to commercial trotline fishermen are anticipated for compliance with gear marking requirements, as well as small opportunity costs for a portion of shellfish lease holders to obtain and comply with the reporting requirements of an aquaculture permit. No additional costs are anticipated, including no additional impacts to enforcement.

Specifically, the proposed amendments to 15A NCAC 03I .0101(2)(a) that would result in all shellfish lease holders being subject to the requirement to hold an AOP would increase the workload for shellfish lease holders slightly, but not significantly. The permit application is free and can be submitted online, consisting of only a few pages. The subsequent reporting requirements for the AOP would incur a small opportunity cost, estimated to be less than one hour per year even for those shellfish lease holders that hold more than one AOP. Based on 2020 data, 67 shellfish lease holders would incur this cost.

Proposed amendments to 15A NCAC 03J .0305 would subject commercial trotline fishermen to marking requirements. Annually, North Carolina averages 14 trotline participants that would be required to mark their gear under the proposed changes. Anticipated total costs to all affected fishermen range from \$1,178 to \$9,296 in the aggregate. The proposed changes are not expected to alter the behavior of fishermen. Fishermen are likely to make the required adjustments to their gear when they are preparing for the next season, incurring a small opportunity cost.

Appendix I.

Supporting Data

Table 1. Number of Scientific and Educational Activity Permits (SEAP) issued from 2015-2019.

Year	SEAPs (#)
2015	53
2016	53
2017	45
2018	51
2019	55
Average	51

Appendix II.

Proposed Rules for Readoption

15A NCAC 03I .0101 is proposed for readoption with substantive changes as follows:

SUBCHAPTER 03I – GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0101 DEFINITIONS

All definitions set out in G.S. 113, Subchapter IV and the following additional terms shall apply to this Chapter:

- (1) Enforcement and management terms:
 - (a) ~~Commercial Quota. Total~~ "Commercial quota" means total quantity of fish allocated for harvest by commercial fishing operations.
 - (b) ~~Educational Institution. A~~ "Educational institution" means a college, university, or community college accredited by an accrediting agency recognized by the U.S. Department of Education; an Environmental Education Center certified by the N.C. Department of Environment and Natural Resources ~~Environment and Natural Resources~~ Environmental Quality Office of Environmental Education and Public Affairs; or a zoo or aquarium certified by the Association of Zoos and Aquariums.
 - (c) ~~Internal Coastal Waters or Internal Waters. All~~ "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except the Atlantic Ocean.
 - (d) Length of ~~finfish~~ finfish:
 - (i) ~~Curved fork length. A~~ "Curved fork length" means a length determined by measuring along a line tracing the contour of the body from the tip of the upper jaw to the middle of the fork in the caudal (tail) fin.
 - (ii) ~~Fork length. A~~ "Fork length" means a length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin, except that fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.
 - (iii) ~~Pectoral fin curved fork length. A~~ "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

- (iv) ~~Total length.~~ A "Total length" means a length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
- (e) "Nongovernmental conservation organization" means an organization whose primary mission is the conservation of natural resources.
- (f) "Polluted" means any shellfish growing waters:
 - (i) that are contaminated with fecal material, pathogenic microorganisms, poisonous or deleterious substances, or marine biotoxins that render the consumption of shellfish from those growing waters hazardous;
 - (ii) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source outfall with public health significance;
 - (iii) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be in or adjacent to a marina;
 - (iv) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be impacted by other potential sources of pollution that render the consumption of shellfish from those growing waters hazardous; or
 - (v) where the Division of Marine Fisheries is unable to complete the monitoring necessary to determine the presence of contamination or potential pollution sources.
- ~~(e)(g) Recreational Possession Limit.~~ Restrictions "Recreational possession limit" means restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.
- ~~(f)(h) Recreational Quota.~~ Total "Recreational quota" means total quantity of fish allocated for harvest for a recreational purpose.
- ~~(g)(i) Regular Closed Oyster Season.~~ "Regular closed oyster season" means March 31 through October 15, unless amended by the Fisheries Director through proclamation authority.
- ~~(h)(j) Scientific Institution.~~ One "Scientific institution" means one of the following entities:
 - (i) ~~An~~ an educational institution as defined in this Item;
 - (ii) ~~A~~ a state or federal agency charged with the management of marine or estuarine resources; or
 - (iii) ~~A~~ a professional organization or secondary school working under the direction of, or in compliance with mandates from, the entities listed in Subitems (h)(i) and (ii) of this Item.
- (i) ~~Seed Oyster Management Area.~~ An open harvest area that, by reason of poor growth characteristics, predation rates, overcrowding or other factors, experiences poor utilization

~~of oyster populations for direct harvest and sale to licensed dealers and is designated by the Marine Fisheries Commission as a source of seed for public and private oyster culture.~~

(2) Fishing Activities:~~activities:~~

- (a) ~~Aquaculture operation.~~ An "Aquaculture operation" means an operation that produces artificially propagated stocks of marine or estuarine ~~resources~~ resources, or other non-native species that may thrive if introduced into Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of rearing on private bottom (with or without the superadjacent water column) or in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following:
- (i) food;
 - (ii) predator protection;
 - (iii) salinity;
 - (iv) temperature controls; or
 - ~~(v) water circulation,~~
 - (v) water circulation, utilizing technology not found in the natural environment.
- (b) ~~Attended.~~ ~~Being~~ "Attended" means being in a vessel, in the water or on the shore, and immediately available to work the gear and be within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
- (c) ~~Blue Crab Shedding.~~ The "Blue crab shedding" means the process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following:
- (i) food;
 - (ii) predator protection;
 - (iii) salinity;
 - (iv) temperature controls; or
 - (v) water circulation, utilizing technology not found in the natural environment. A shedding operation does not include transporting pink or red-line peeler crabs to a permitted shedding operation.
- (d) ~~Depuration. Purification.~~ "Depuration" means mechanical purification or the removal of adulteration from live oysters, clams, or mussels by any ~~natural or~~ artificially controlled means.
- (e) ~~Long Haul Operations.~~ ~~Fishing~~ "Long haul operation" means fishing a seine towed between two vessels.

- (f) ~~Peeler Crab.~~ A "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
 - (g) ~~Possess.~~ Any "Possess" means any actual or constructive holding whether under claim of ownership or not.
 - (h) ~~Recreational Purpose.~~ A "Recreational purpose" means a fishing activity that is not a commercial fishing operation as defined in G.S. 113-168.
 - (i) ~~Shellfish marketing from leases and franchises.~~ The "Shellfish marketing from leases and franchises" means the harvest of oysters, clams, scallops, or mussels from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.
 - (j) ~~Shellfish planting effort on leases and franchises.~~ The "Shellfish planting effort on leases and franchises" means the process of obtaining authorized cultch materials, seed shellfish, and ~~polluted~~ shellfish stocks from polluted waters and the placement of those materials on privately held shellfish bottoms for increased shellfish production.
 - (k) ~~Shellfish production on leases and franchises.~~ "Shellfish production on leases and franchises" means:
 - (i) ~~The~~ the culture of oysters, clams, scallops, or mussels on shellfish leases and franchises from a sublegal harvest size to a marketable size.
 - (ii) ~~The~~ the transplanting (relay) of oysters, clams, scallops, or mussels from areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.
 - (l) ~~Swipe Net Operations. Fishing.~~ "Swipe net operations" means fishing a seine towed by one vessel.
 - (m) ~~Transport. Ship.~~ "Transport" means to ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
 - (n) ~~Use. Employ.~~ "Use" means to employ, set, operate, or permit to be operated or employed.
- (3) Gear:
- (a) ~~Bunt Net.~~ The "Bunt net" means the last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.
 - (b) ~~Channel Net.~~ A "Channel net" means a net used to take shrimp that is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a vessel.
 - (c) ~~Commercial Fishing Equipment or Gear.~~ All "Commercial fishing equipment or gear" means all fishing equipment used in Coastal Fishing Waters except:
 - (i) ~~Cast~~ cast nets;

- (ii) ~~Collapsible-collapsible~~ crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;
 - (iii) ~~Dip-dip~~ nets or scoops having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
 - (iv) ~~Gigs-gigs~~ or other pointed implements that are propelled by hand, whether or not the implement remains in the hand;
 - (v) ~~Hand-hand~~ operated rakes no more than 12 inches wide and weighing no more than six pounds and hand operated tongs;
 - (vi) ~~Hook and line and bait and line~~ Hook and line, and bait and line equipment other than multiple-hook or multiple-bait trotline;
 - (vii) ~~Landing-landing~~ nets used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;
 - (viii) ~~Minnow-minnow~~ traps when no more than two are in use;
 - (ix) ~~Seines-seines~~ less than 30 feet in length;
 - (x) ~~Spears-spears~~, Hawaiian slings, or similar devices that propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas, or similar means.
- (d) ~~Corkline.~~ The "Corkline" means the support structure a net is attached to that is nearest to the water surface when in use. Corkline length is measured from the outer most mesh knot at one end of the corkline following along the line to the outer most mesh knot at the opposite end of the corkline.
 - (e) ~~Dredge.~~ A "Dredge" means a device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
 - (f) ~~Fixed or stationary net.~~ A "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.
 - (g) ~~Fyke Net.~~ An "Fyke net" means an entrapment net supported by a series of internal or external hoops or frames, with one or more lead or leaders that guide fish to the net mouth. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).

- (h) ~~Gill Net.~~ A "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills in its mesh as a result of net design, construction, mesh length, webbing diameter, or method in which it is used.
- (i) ~~Headrope.~~ The "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest to the water surface when in use. Headrope length is measured from the outer most mesh knot at one end of the headrope following along the line to the outer most mesh knot at the opposite end of the headrope.
- (j) ~~Hoop Net.~~ An "Hoop net" means an entrapment net supported by a series of internal or external hoops or frames. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).
- (k) ~~Lead.~~ A "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic, wire, or similar material set vertically in the water and held in place by stakes or anchors to guide fish into an enclosure. Lead length is measured from the outer most end of the lead along the top or bottom line, whichever is longer, to the opposite end of the lead.
- (l) ~~Mechanical methods for clamming. Dredges.~~ "Mechanical methods for clamming" means dredges, hydraulic clam dredges, stick rakes, and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.
- (m) ~~Mechanical methods for oystering. Dredges.~~ "Mechanical methods for oystering" means dredges, patent tongs, stick rakes, and other rakes when towed by engine power, and any other method that utilizes mechanical means to harvest oysters.
- (n) ~~Mesh Length.~~ The "Mesh length" means the distance from the inside of one knot to the outside of the opposite knot, when the net is stretched hand-tight in a manner that closes the mesh opening.
- (o) ~~Pound Net Set.~~ A "Pound net set" means a fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support the trap. The holding pen, enclosures, and lead(s) are not conical, nor are they supported by hoops or frames.
- (p) ~~Purse Gill Nets.~~ Any "Purse gill net" means any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
- (q) ~~Seine.~~ A "Seine" means a net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh length, webbing diameter, or method in which it is used.

- (4) ~~Fish habitat areas.~~ The "Fish habitat areas" means the estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species utilized in the food chain. Fish habitats as used in this definition, are vital for portions of the entire life cycle, including the early growth and development of fish species. Fish habitats in all Coastal Fishing Waters, as determined through marine and estuarine survey sampling, include:
- (a) ~~Anadromous fish nursery areas.~~ Those "Anadromous fish nursery areas", which means those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
 - (b) ~~Anadromous fish spawning areas.~~ Those "Anadromous fish spawning areas", which means those areas where evidence of spawning of anadromous fish has been documented in Division sampling records through direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
 - (c) ~~Coral:~~ "Coral", which means:
 - (i) ~~Fire fire~~ corals and hydrocorals (Class Hydrozoa);
 - (ii) ~~Stony stony~~ corals and black corals (Class Anthozoa, Subclass Scleractinia); or
 - (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.), and sea pansies (*Renilla* sp.).
 - (d) ~~Intertidal Oyster Bed.~~ A "Intertidal oyster bed", which means a formation, regardless of size or shape, formed of shell and live oysters of varying density.
 - (e) ~~Live rock.~~ Living "Live rock", which means living marine organisms or an assemblage thereof attached to a hard substrate, excluding mollusk shells, but including dead coral or rock. Living marine organisms associated with hard bottoms, banks, reefs, and live rock include:
 - (i) Coralline algae (Division Rhodophyta);
 - (ii) *Acetabularia* sp., mermaid's fan and cups (*Udotea* sp.), watercress (*Halimeda* sp.), green feather, green grape algae (*Caulerpa* sp.) (Division Chlorophyta);
 - (iii) *Sargassum* sp., *Dictyopteris* sp., *Zonaria* sp. (Division Phaeophyta);
 - (iv) ~~Sponges sponges~~ (Phylum Porifera);
 - (v) ~~Hard hard~~ and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, *Solenastrea* (Class Anthozoa);
 - (vi) Bryozoans (Phylum Bryozoa);
 - (vii) ~~Tube tube~~ worms (Phylum Annelida), fan worms (*Sabellidae*), feather duster and Christmas treeworms (*Serpulidae*), and sand castle worms (*Sabellaridae*);
 - (viii) ~~Mussel mussel~~ banks (Phylum Mollusca: Gastropoda); and
 - (ix) ~~Acorn acorn~~ barnacles (Arthropoda: Crustacea: *Semibalanus* sp.).

- (f) ~~Nursery areas. Areas~~ "Nursery areas", which means areas that for reasons such as food, cover, bottom type, salinity, temperature, and other factors, young finfish and crustaceans spend the major portion of their initial growing season. Primary nursery areas are those areas in the estuarine system where initial post-larval development takes place. These are areas where populations are uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system where later juvenile development takes place. Populations are composed of developing sub-adults of similar size that have migrated from an upstream primary nursery area to the secondary nursery area located in the middle portion of the estuarine system.
- (g) ~~Shellfish producing habitats. Historic~~ "Shellfish producing habitats", which means historic or existing areas that shellfish, such as clams, oysters, scallops, mussels, and whelks use to reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.
- (h) ~~Strategic Habitat Areas. Locations~~ "Strategic Habitat Areas", which means locations of individual fish habitats or systems of habitats that provide exceptional habitat functions or that are particularly at risk due to imminent threats, vulnerability, or rarity.
- (i) ~~Submerged aquatic vegetation (SAV) habitat. Submerged~~ "Submerged aquatic vegetation (SAV) habitat", which means submerged lands that:
- (i) are vegetated with one or more species of submerged aquatic vegetation including bushy pondweed or southern naiad (*Najas guadalupensis*), coontail (*Ceratophyllum demersum*), eelgrass (*Zostera marina*), horned pondweed (*Zannichellia palustris*), naiads (*Najas* spp.), redhead grass (*Potamogeton perfoliatus*), sago pondweed (*Stuckenia pectinata*, formerly *Potamogeton pectinatus*), shoalgrass (*Halodule wrightii*), slender pondweed (*Potamogeton pusillus*), water stargrass (*Heteranthera dubia*), water starwort (*Callitriche heterophylla*), waterweeds (*Elodea* spp.), widgeongrass (*Ruppia maritima*), and wild celery (*Vallisneria americana*). These areas may be identified by the presence of above-ground leaves, below-ground rhizomes, or reproductive structures associated with one or more SAV species and include the sediment within these areas; or
 - (ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i) of this Rule within the past 10 annual growing seasons and that meet the average physical requirements of water depth (six feet or less), average light availability (secchi depth of one foot or more), and limited wave exposure that characterize the environment suitable for growth of SAV. The past presence of SAV may be demonstrated by aerial photography, SAV survey, map, or other documentation.

An extension of the past 10 annual growing seasons criteria may be considered when average environmental conditions are altered by drought, rainfall, or storm force winds.

This habitat occurs in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In defining SAV habitat, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition, or this Rule or ~~Rules 03K-0304-15A NCAC 03K .0304~~ and .0404, to apply to or conflict with the non-development control activities authorized by that Act.

- (5) Licenses, permits, leases and franchises, and record keeping:
- (a) ~~Assignment. Temporary~~ "Assignment" means temporary transferal to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, and is still the responsible party for the license.
 - (b) ~~Designee. Any~~ "Designee" means any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
 - (c) ~~For Hire Vessel. As~~ "For hire vessel", as defined by G.S. 113-174, means when the vessel is fishing in ~~state~~ State waters or when the vessel originates from or returns to a North Carolina port.
 - (d) "Franchise" means a franchise recognized pursuant to G.S. 113-206.
 - ~~(d)~~(e) ~~Holder. A~~ "Holder" means a person who has been lawfully issued in his or her name a license, permit, franchise, lease, or assignment.
 - ~~(e)~~(f) ~~Land.~~ "Land" means:
 - (i) ~~For for~~ commercial fishing operations, when fish reach the shore or a structure connected to the shore.
 - (ii) ~~For for~~ purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when fish reach the shore or a structure connected to the shore.
 - (iii) ~~For for~~ recreational fishing operations, when fish are retained in possession by the fisherman.
 - ~~(f)~~(g) ~~Licensee. Any~~ "Licensee" means any person holding a valid license from the Department to take or deal in marine fisheries resources.
 - ~~(g)~~(h) ~~Logbook. Paper~~ "Logbook" means paper forms provided by the Division and electronic data files generated from software provided by the Division for the reporting of fisheries statistics by persons engaged in commercial or recreational fishing or for-hire operators.

- ~~(h)(i)~~ ~~Master-Captain~~ "Master" means captain or operator of a vessel or one who commands and has control, authority, or power over a vessel.
- ~~(i)(j)~~ ~~New fish dealer~~ "New fish dealer" means any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
- ~~(j)(k)~~ ~~Office of the Division~~ "Office of the Division" means physical locations of the Division conducting license and permit transactions in Wilmington, Washington, Morehead City, Roanoke Island, and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses or Coastal Recreational Fishing Licenses are not considered Offices of the Division.
- ~~(k)(l)~~ ~~Responsible party~~ "Responsible party" means the person who coordinates, supervises, or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations, and the person responsible for use of the issued license in compliance with applicable statutes and rules.
- ~~(l)(m)~~ ~~Tournament Organizer~~ "Tournament organizer" means the person who coordinates, supervises, or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.
- ~~(m)(n)~~ ~~Transaction~~ "Transaction" means an act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed, or landed.
- ~~(n)(o)~~ ~~Transfer~~ "Transfer" means permanent transferal to another person of privileges under a license for which transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.
- ~~(o)(p)~~ ~~Trip Ticket~~ "Trip ticket" means paper forms provided by the Division and electronic data files generated from software provided by the Division for the reporting of fisheries statistics by licensed fish dealers.

*History Note: Authority G.S. 113-134; 113-174; 113-182; 143B-289.52;
 Eff. January 1, 1991;
 Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993;
 Recodified from 15A NCAC 03I .0001 Eff. December 17, 1996;
 Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997;
 Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999;
 Amended Eff. August 1, 2000;
 Temporary Amendment Eff. August 1, 2000;
 Amended Eff. May 1, 2015; April 1, 2014; April 1, 2011; April 1, 2009; October 1, 2008; December 1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001;*

Readopted Eff. May 1, 2022.

15A NCAC 03I .0104 is proposed for reoption with substantive changes as follows:

15A NCAC 03I .0104 INTRODUCE, ~~TRANSFER~~-TRANSFER, OR HOLD IMPORTED MARINE AND ESTUARINE ORGANISMS

(a) ~~In order to~~To protect the marine and estuarine resources of North Carolina from unacceptable risks from predators, pests, parasites, and disease, it ~~is~~shall be unlawful, except for American eels imported from Maryland, Virginia, or South Carolina for use in an aquaculture operation, without first obtaining a permitPermit to Introduce, Transfer, or Hold Imported Marine and Estuarine Organisms from the Fisheries Director or without obtaining live marine ~~and or~~ estuarine organisms from a ~~permit holder~~permittee to:

- (1) ~~To~~ place into the coastal fishing waters of the ~~state~~State live marine ~~and or~~ estuarine organisms ~~not native~~non-native to the ~~state~~State. For the purpose of this Rule, this action is an introduction.
- (2) ~~To~~ place into the coastal fishing waters of the ~~state~~State live marine ~~and or~~ estuarine organisms ~~which that~~ are native but ~~which that~~ originated outside the State's boundaries. For the purpose of this Rule, this action is a transfer.
- (3) ~~To~~ hold or maintain any live marine or estuarine ~~organism~~organisms, including non-native species that may thrive if introduced into Coastal Fishing Waters, imported into the ~~state~~State in a quarantine or isolation system for live bait or use in an aquaculture operation as defined in ~~15A NCAC 03I .0101~~Rule .0101 of this Section.
- (4) ~~To~~ sell for bait any live marine or estuarine ~~organism~~organisms, including non-native species that may thrive if introduced into Coastal Fishing Waters, imported into the ~~state~~State.

(b) Any person desiring to obtain a Permit to Introduce, ~~Transfer~~Transfer, or Hold Imported Marine and Estuarine Organisms ~~must make written~~shall submit a complete application to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557-0769, 28557. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500. In order for For the Fisheries Director to determine the level of risk to any native marine or estuarine resource or the environment, the applicant shall ~~provide~~also provide a certification from a:

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

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

(d) The Fisheries Director may hold public meetings prior to granting permits for activities specified in Paragraph (a) of this Rule to gather information concerning risks to native marine or estuarine resources or the environment.

History Note: Authority G.S. 113-134; 113-170; 113-182; 143B-289.52; S.L. 2017-190; S.L. 2018-114;
Eff. January 1, 1991;
Amended Eff. November 1, 1991;
Recodified from 15A NCAC 31 .0004 Eff. December 17, 1996;
Amended Eff. April 1, 2009;
Amended Eff. (Pending legislative review pursuant to S.L. 2017-190 and S.L. 2019-198).

15A NCAC 03I .0114 is proposed for readoption with substantive changes as follows:

15A NCAC 03I .0114 RECORDKEEPING REQUIREMENTS

(a) It ~~is~~ shall be unlawful for a licensed fish dealer:

- (1) ~~To~~ to fail to complete accurately and legibly all mandatory items on the North Carolina trip ticket for each transaction and submit the trip ticket in accordance with G.S. 113-168.2;
- (2) ~~To~~ to fail to provide to the Division of Marine Fisheries a Trip Ticket Submittal/Transaction form indicating the number of transactions that occurred during the previous month;
- (3) ~~To~~ to fail to make paper copies or electronic copies of trip tickets available at the dealer location for inspection by Marine ~~Patrol~~ Fisheries inspectors;
- (4) ~~To~~ to fail to submit trip tickets to the Division via electronic file transfer if that dealer reported an annual average of greater than 50,000 pounds of finfish for the previous three calendar years. Dealers subject to the electronic reporting requirement shall be notified by the Division via certified mail and within 120 days of receipt shall:
 - (A) ~~Initiate~~ initiate electronic file transfer of trip tickets; and
 - (B) ~~Continue~~ continue to report by electronic file transfer until the dealer no longer holds a fish dealer license with finfish or consolidated categories;
- (5) ~~To~~ to fail to use software or web-based utilities authorized by the Division when reporting electronically. Electronic submittals shall meet all other recordkeeping requirements in accordance with G.S. 113-168.2; and
- (6) ~~To~~ to fail to keep all trip tickets and all supporting documentation for each transaction including receipts, checks, bills of lading, records, electronic ~~files~~ files, and accounts for a period of not less than three years.

(b) It ~~is~~ shall be unlawful for a seller licensed under G.S. 113, Article 14A or donor to fail to provide to the fish dealer, at the time of transaction, the following:

- (1) ~~A~~ a current and valid license or permit to sell the type of fish being offered and if a vessel is used, the ~~commercial fishing vessel registration~~; Commercial Fishing Vessel Registration; and
- (2) ~~Complete~~ complete and accurate information on harvest method and area of catch and other information required by the Division, in accordance with G.S. 113-168.2 and G.S. 113-169.3.

(c) It ~~is~~ shall be unlawful to transport fish without having ready at hand for inspection a bill of consignment, bill of lading, or other shipping documentation provided by the shipping dealer showing ~~thereon the name of the consignee, name of the shipper, the date of the shipment, and the quantity of each species of fish shipped.~~ the following items:

- (1) name of the consignee;
- (2) name of the shipper;
- (3) date of the shipment;
- (4) name of fish being shipped; and
- (5) quantity of each fish being shipped.

In the event the fisherman taking the fish is also a licensed fish dealer and ships from the point of landing, all shipping records shall be recorded at the point of landing. Fishermen who transport their fish directly to licensed fish dealers are exempt from this ~~Paragraph of this Rule-Paragraph~~.

(d) It ~~is~~ shall be unlawful to export fish landed in the State in a commercial fishing operation without a North Carolina licensed fish dealer completing all the ~~record keeping~~ recordkeeping requirements in G.S. 113-168.2(i).

(e) It ~~is~~ shall be unlawful to offer for sale fish purchased from a licensed fish dealer without having ready at hand for inspection by Marine ~~Patrol~~ Fisheries inspectors or other ~~agent~~ agents of the Fisheries Director written documentation of purchase showing ~~thereon the name of the licensed dealer, name of the purchaser, date of the purchase, and the quantity of each species purchased.~~ the following items:

(1) name of the licensed fish dealer;

(2) name of the purchaser;

(3) date of the purchase;

(4) name of fish purchased; and

(5) quantity of each fish purchased.

(f) It ~~is~~ shall be unlawful for a holder of a Fish ~~Dealer's~~ Dealer License to have fish in possession at a licensed location without written documentation from a licensed fish dealer or a completed North Carolina ~~Marine Fisheries Trip Ticket~~ trip ticket to show the quantity and origin of all fish.

*History Note: Authority G.S. 113-134; 113-168.2; 113-168.3; 113-169.3; 113-170; 113-170.3; 113-170.4; ~~113-182; 143B-289.52;~~
Eff. March 1, 1994;
Recodified from 15A NCAC 3I .0014 Eff. December 17, 1996;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. June 1, 2013; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03J .0105 is proposed for reoption with substantive changes as follows:

15A NCAC 03J .0105 PURSE SEINES

(a) It ~~is~~ shall be unlawful to use purse seines except for the taking of menhaden, Atlantic thread herring, gizzard ~~shad~~ shad, or ~~pinfish~~, as further restricted by Paragraphs (b) and (c) of this Rule. pinfish.

(b) It ~~is~~ shall be unlawful to ~~take menhaden, Atlantic thread herring, gizzard shad or pinfish with~~ use a purse seine in violation of any of the following ~~limitations:~~ accordance with the following:

- (1) ~~In in~~ the Atlantic Ocean ~~during the periods and within an area as~~ described:
 - (A) ~~by~~ by Session Law 2012-190; and
 - ~~(A)(B) In in~~ 15A NCAC 03R 0444, .0111.
 - ~~(B) By~~ Session Law 2007-320.
- (2) ~~Except except~~ as provided in ~~Subparagraph (5) of this Paragraph,~~ Paragraph (c) of this Rule, between January 16 and May 14 in:
 - (A) ~~Internal waters,~~ internal waters; and
 - (B) the Atlantic Ocean within one mile of shore.
- (3) ~~Between between~~ January 16 and March 31 in Core Sound.
- (4) ~~In internal waters except in:~~
 - (A) ~~— Pamlico Sound,~~
 - (B) ~~— Pamlico River east of a line from Wades Point to Intraoastal Waterway Marker No. 1 at the mouth of Goose Creek,~~
 - (C) ~~— Neuse River east of a line from Wilkinson Point to Cherry Point,~~
 - (D) ~~— Adams Creek,~~
 - (E) ~~— Core Sound and its tributaries,~~
 - (F) ~~— Back Sound, the Straits, and North river,~~
 - (G) ~~— Newport River,~~
 - (H) ~~— North River, and~~
 - (I) ~~— Bogue Sound.~~
- (5) from beyond one mile of shore in the Atlantic Ocean and transported to port between sunset on any Friday and sunrise of the following Monday from the Friday of the Memorial Day weekend through sunset on Labor Day.
- (6) from beyond one mile of shore in the Atlantic Ocean and transported to port between the hours of sunrise and sunset on the following holidays:
 - (A) Memorial Day;
 - (B) Fourth of July, when the Fourth of July falls on any calendar day Friday through Monday;
and
 - (C) Labor Day.

~~(5)(c)~~ The Fisheries Director may, by proclamation, open the Atlantic Ocean within one mile of shore and the internal waters specified in ~~Subparagraph (4) of this Paragraph~~ (d) of this Rule between April 1 and May 14, and may impose any ~~or all~~ of the following restrictions:

- ~~(1) specify time;~~
- ~~(2) specify area;~~
- ~~(A)(3) Specify specify means and methods by area which may be employed in the taking; methods;~~
- ~~(4) specify record keeping requirements;~~
- ~~(5) specify season; and~~
- ~~(B)(6) Limit the quantity; and specify quantity.~~
- ~~(C) Require submission of statistical and biological data.~~

(d) The internal waters specified in Paragraph (c) of this Rule are as follows:

- (1) Pamlico Sound;
- (2) Pamlico River east of a line from Wades Point to Intracoastal Waterway Marker No. 1 at the mouth of Goose Creek;
- (3) Neuse River east of a line from Wilkinson Point to Cherry Point;
- (4) Adams Creek;
- (5) Core Sound and its tributaries;
- (6) Back Sound, the Straits, and North River;
- (7) Newport River;
- (8) North River; and
- (9) Bogue Sound.

~~(e)(e)~~ Menhaden, Atlantic thread herring, gizzard shad ~~shad~~, or pinfish may be taken at any time with a purse seine from beyond one mile of shore in the Atlantic Ocean and transported to port except as specified by Session Law ~~2007-320~~ 2012-190 and Subparagraphs (b)(5) and (b)(6) of this Rule, ~~and except as prohibited below:~~

- ~~(1) It is unlawful to take menhaden, Atlantic thread herring, gizzard shad shad, or pinfish by use of a purse seine between sunset on any Friday and sunrise of the following Monday from the Friday of the Memorial Day weekend through sunset on Labor Day each year.~~
- ~~(2) It is unlawful to take menhaden, Atlantic thread herring, gizzard shad shad, or pinfish by use of a purse seine between the hours of sunrise and sunset on the following holidays:
 - ~~(A) Memorial Day;~~
 - ~~(B) Fourth of July, when the Fourth of July falls on any calendar day Friday through Monday;~~
~~and~~
 - ~~(C) Labor Day.~~~~

~~(f)(f)~~ It ~~is shall be~~ unlawful for the responsible party to fail to carry out the following requirements when a fish spill from a purse seine occurs:

- (1) ~~Immediately within two hours of the spill, notify the office of the Fisheries Director of the North Carolina~~ Division of Marine Fisheries Communications Center of such spill; the spill by phone at 800-682-2632 or 252-726-7021; and
- (2) ~~Report~~ report to the Fisheries Director of the North Carolina Division of Marine Fisheries in writing within 30 days of the completion of spill clean-up on the circumstances associated with each spill and costs of its clean-up.

*History Note: Authority G.S. 113-134; 113-182; 113-187; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03J .0109 is proposed for readoption with substantive changes as follows:

15A NCAC 03J .0109 ~~LONG HAUL FISHING OPERATIONS, IDENTIFICATION~~ LONG HAUL AND SWIPE NET REQUIREMENTS

It ~~is shall be~~ unlawful to ~~tow or pull~~ use a net in a ~~long haul~~ long haul or swipe net fishing ~~excluding operations with nets made entirely of monofilament and having a mesh length of three inches or greater~~ operation:

- (1) ~~Without~~ without a floating buoy that shall be international orange, no less than five inches in diameter, and no less than 11 inches in length attached a minimum of every 100 yards along the cork line. ~~The buoy shall be international orange and shall be no less than five inches in diameter and no less than 11 inches in length; and~~ line;
- (2) ~~Without~~ without a flag, flag that shall be square in shape, international orange in color, and at least 24 inches by 24 inches in size, size flying in the rigging so as to be visible when approaching the vessel from any ~~direction~~ direction; and
- (3) ~~In~~ in the ~~internal coastal waters~~ Internal Coastal Waters south and west of a line beginning on the west shore of Pamlico Sound at Bluff Point at a point 35° 19.5333' N – 76° 09.3333' W; running southeasterly to Ocracoke Island to a point 35° 08.0000' N – 75° 55.0000' ~~W, W~~ W, W; without escape panels as follows:
 - (a) ~~For~~ for long haul operations, two panels four feet deep and six feet long ~~shall be~~ installed with the entire panel within 10 feet of the staff on the end of the bunt net from which the fish are being ~~bailed~~. ~~The~~ bailed, with panels shall be in the water while fish are ~~harvested~~ harvested;
 - (b) ~~For~~ for swipe net operations, two panels three feet deep and five feet long ~~shall be~~ installed with the entire panel within 10 feet of the staff on the end of the bunt net from which the fish are being ~~bailed~~. ~~The~~ bailed, with panels shall be in the water while fish are ~~harvested~~ harvested;
 - (c) ~~The~~ the upper edge of one panel ~~shall be~~ installed within 12 to 24 inches of the float line and the lower edge of the other panel ~~shall be~~ installed within 12 to 24 inches of the lead ~~line~~ line; and
 - (d) ~~The~~ panels shall be constructed of unobstructed trawl rings with ~~an~~ a minimum inside diameter ~~no less than~~ of one and nine-sixteenth inches (1 9/16"). ~~The~~ inches, with the rings shall be fastened together at a maximum of four points per ring.

*History Note: Authority G.S. 113-134; 113-182; ~~143B-289.4~~; 143B-289.52;
Eff. January 1991;
Amended Eff. August 1, 2004; April 1, 1999;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03J .0305 is proposed for readoption with substantive changes as follows:

15A NCAC 03J .0305 TROTLINES (MULTIPLE HOOK OR MULTIPLE BAIT)

(a) It shall be unlawful to use multiple hook or multiple bait trotlines for recreational purposes unless such trotlines are each multiple hook or multiple bait trotline is marked by attaching to them at each end one a floating buoy, any shade of hot pink in color, which color. Buoys 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 gear owner's last name and initials shall always be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. Such If a vessel is used, the identification shall also include owner's last name and initials and if a vessel is used, one of the following:

- (1) Gear gear owner's current motor boat registration number, number; or
- (2) Owner's gear owner's U.S. vessel documentation name.

(b) It shall be unlawful to use multiple hook or multiple bait trotlines in a commercial fishing operation unless each multiple hook or multiple bait trotline is marked by attaching to them at each end a floating buoy of any color except any shade of yellow or any shade of hot pink, or any combination of colors that include any shade of yellow or any shade of hot pink. Buoys 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 gear owner's last name and initials shall be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. If a vessel is used, the identification shall also include one of the following:

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

*History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52;
Temporary Adoption Eff. July 1, 1999;
Eff. August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03K .0205 is proposed for readoption with substantive changes as follows:

15A NCAC 03K .0205 MARKETING OYSTERS TAKEN FROM A PRIVATE SHELLFISH BOTTOMS LEASE OR FRANCHISE

(a) ~~It is shall be~~ unlawful to take, possess, buy, or sell oysters from a shellfish leases-lease or franchises-franchise during the open season unless such oysters have been culled in accordance with Rule ~~15A NCAC 03K .0202.~~0202 of this Section.

~~(b) It is unlawful to sell, purchase or possess oysters during the regular closed season without the lease or franchise holder delivering to the purchaser or other recipient a certification, on a form provided by the Division, that the oysters were taken from a valid shellfish lease or franchise. Certification forms shall be furnished by the Division to lease and franchise holders upon request.~~

(b) All commercial oyster harvesting operations shall operate in accordance with any proclamations issued under the authority of Rule .0110 of this Subchapter.

(c) ~~It is shall be~~ unlawful for a shellfish lease or franchise holders-holder or their designees to take or possess oysters from public bottom while possessing aboard a vessel oysters taken from a shellfish leases-lease or franchises-franchise.

(d) It shall be unlawful for a shellfish lease or franchise holder or their designees to fail to obtain an Aquaculture Operation Permit if the lease or franchise has material extending more than 18 inches above the leased bottom or uses equipment including cages, bags, or predator nets to cultivate shellfish.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. September 1, 1991;
Temporary Amendment Eff October 1, 2001;
Amended Eff. April 1, 2003;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03K .0507 is proposed for reoption with substantive changes as follows:

15A NCAC 03K .0507 MARKETING SCALLOPS TAKEN FROM A SHELLFISH LEASES-LEASE OR FRANCHISES-FRANCHISE

~~(a) It shall be unlawful to sell, purchase, or possess scallops during the closed season without the lease or franchise holder delivering to the purchaser or other recipient a certification, on a form provided by the Division of Marine Fisheries, that the scallops were taken from a valid shellfish lease or franchise. Certification forms shall be furnished by the Division to lease and franchise holders upon request.~~

(a) All commercial scallop harvesting operations shall operate in accordance with any proclamations issued under the authority of Rule .0110 of this Subchapter.

(b) It shall be unlawful for a shellfish lease or franchise ~~holders~~-holder or their designees to take or possess scallops from public bottom while possessing aboard a vessel scallops taken from a shellfish leases-lease or ~~franchises~~-franchise.

(c) It shall be unlawful for a shellfish lease or franchise holder or their designees to fail to obtain an Aquaculture Operation Permit if the lease or franchise has material extending more than 18 inches above the leased bottom or uses equipment including cages, bags, or predator nets to cultivate shellfish.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;
 Eff. May 1, 2015;
 Readopted Eff. April 1, 2019;
 Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03O .0101 is proposed for reoption with substantive changes as follows:

SUBCHAPTER 03O - LICENSES, LEASES, ~~FRANCHISES~~ FRANCHISES, AND PERMITS

SECTION .0100 - LICENSES

15A NCAC 03O .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ~~ENDORSEMENTS~~ ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS

(a) Division of Marine Fisheries licenses are available at offices of the Division or by mail from the Morehead City Office of the Division, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at license agents of the Wildlife Resources Commission in accordance with G.S. 113-270.1.

(b) For the purpose of this Rule, the procedures and requirements for the licensee shall also apply to the responsible party, the person holding power of attorney, the tournament organizer, and the vessel master.

~~(a)(c)~~ To obtain any Division of Marine Fisheries licenses, endorsements, ~~commercial fishing vessel registrations,~~ and Commercial Fishing Vessel Registrations, a licensee shall provide a completed application to an office of the Division by mail or in person. Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted. The following shall be required for the application: ~~except Recreational Fishing Tournament Licenses to Sell Fish and Land or Sell Licenses, the following information is required for the application by the licensee, a responsible party, or person holding a power of attorney:~~

- (1) Full ~~full~~ name, physical address, mailing address, date of birth, and signature of the licensee ~~on the application~~ licensee. If the licensee is not appearing before a license agent or a representative of the Division, the licensee's signature ~~on the application~~ shall be ~~notarized~~ notarized.
- (2) a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.
- ~~(2)~~(3) Current ~~current~~ and valid picture identification of licensee ~~or responsible party~~ the licensee. Acceptable forms of picture identification are state driver's license, state identification ~~card~~, card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy ~~thereof~~ thereof.
- ~~(3)~~(4) Certification ~~certification~~ that the applicant does not have four or more marine or estuarine resource ~~violations~~ convictions during the previous three ~~years~~ years.
- (4) Valid ~~documentation papers~~ or current motor boat registration, ~~or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted;~~
- (5) Current ~~current~~ articles of incorporation and a current list of corporate officers when purchasing a license or ~~commercial fishing vessel registration~~ Commercial Fishing Vessel Registration in a

corporate name. In the case of incorporation of an individual fishing vessel, the name of the vessel master of that vessel shall also be specified. The responsible party licensee shall notify the Morehead City Office of the Division of Marine Fisheries within five days of change of the master specified for that vessel; changing the vessel master.

- (6) a current copy of a written partnership agreement shall be provided when purchasing a license, endorsement, or Commercial Fishing Vessel Registration in a partnership name, if a partnership is established.
- (7) valid documentation papers or current motor boat registration, or copy thereof when purchasing a Commercial Fishing Vessel Registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.
- ~~(6)~~(8) An affirmation of liability insurance and that the operator is knowledgeable of United States Coast Guard (USCG) safety requirements for the vessel(s)-vessels used in the operation in accordance with G.S. 113-168.6 when purchasing a commercial fishing vessel registration-Commercial Fishing Vessel Registration with a for-hire endorsement.
- (7) If a partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when purchasing a license, endorsement, or commercial fishing vessel registration in a partnership name;
- (8) For nonresidents, certification of the state of residency;
- (9) In addition to the information required in G.S. 113-169.4, linear length of pier when purchasing an Ocean Fishing Pier License;
- (10) In addition to the information required in G.S. 113-171.1, current aircraft registration and list of operator(s) when purchasing a Spotter Plane License;
- (11) In addition, for fish dealers licenses, the physical address of the established location where business is conducted and, if different, the address where records are kept;
- (12) When purchasing a Fish Dealer License with clam or oyster categories or a consolidated license, the applicant shall provide valid certification as a North Carolina certified shellfish dealer;
- (13) In addition, for the Blanket For Hire Captain's Coastal Recreational Fishing License (CRFL), the applicant shall provide a valid certification from the USCG that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers; and
- (14) In addition, for the Blanket For Hire Vessel CRFL or the Non Blanket For Hire Vessel License, valid documentation papers or current motor boat registration or copies thereof for the vessel engaged as for hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

(d) In addition to the requirements of Paragraph (c) of this Rule, proof of residency for non-residents shall be documented by the licensee with certification of the state of residency. Proof of residency for residents of North Carolina shall be documented by the licensee as follows:

- (1) Standard or Retired Standard Commercial Fishing Licenses: A notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4) and:
- (A) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident;
 - (B) a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or
 - (C) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty assignment at a military facility in North Carolina.
- (2) All other types of licenses:
- (A) North Carolina voter registration card;
 - (B) current North Carolina Driver's License;
 - (C) current North Carolina Certificate of Domicile;
 - (D) current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or
 - (E) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty assignment at a military facility in North Carolina.
- (e) In addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be required:
- (1) Blanket For-Hire Captain's CRFL: a valid certification from the USCG that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers.
 - (2) Blanket For-Hire Vessel CRFL or Non-Blanket For-Hire Vessel License:
 - (A) valid documentation papers or current motor boat registration, or copies thereof for the vessel engaged as for-hire; or
 - (B) a copy of the pending application and a notarized bill of sale if an application for transfer of documentation is pending.
 - (3) Fish Dealer License:
 - (A) the physical address of the established location where business is conducted and, if different, the address where records are kept; and
 - (B) a valid Permit and Certificate of Compliance from the Division of Marine Fisheries Shellfish Sanitation and Recreational Water Quality Section, if purchasing a Fish Dealer License with clam or oyster categories or a consolidated license.
 - (4) Land or Sell License:
 - (A) valid documentation papers or current motor boat registration, or copy thereof; or
 - (B) a copy of the pending application and a notarized bill of sale if an application for transfer of documentation is pending.

The fees for a Land or Sell License shall be based on the vessel's homeport as it appears on the USCG documentation papers or the state in which the vessel is registered, in accordance with G.S. 113-169.5.

(5) Ocean Fishing Pier License:

(A) the information required in G.S. 113-169.4; and

(B) linear length of the pier. A Marine Fisheries inspector's signature is required to verify the linear length of the pier before the license can be issued.

(6) Recreational Fishing Tournament License to Sell Fish: name and date or dates of the tournament.

(7) Spotter Plane License:

(A) the information required in G.S. 113-171.1;

(B) the current aircraft registration; and

(C) a list of operators.

~~(b)(f)~~ For a License to Land Flounder from the Atlantic Ocean, in addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be applicable:

(1) for the purpose of this Paragraph, "license year" means the period beginning July 1 of a year through June 30 of the following year.

~~(1)(2)~~ To to qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:

(A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina; and

(B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and

(C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.

~~(2)(3)~~ It is lawful it shall be unlawful for a person to hold more Licenses to Land Flounder from the Atlantic Ocean equal to than the number of vessels that he owns they own that individually met the eligibility requirements of Parts ~~(b)(1)(A)-(f)(2)(A)~~ and ~~(b)(1)(B)-(f)(2)(B)~~ of this Rule.

~~(3)(4)~~ The the License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel specified at the time of license issuance.

~~(4)(5)~~ At at the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall specify the name of the vessel master of the vessel for each License to Land Flounder from the Atlantic Ocean issued.

~~(5)(6)~~ The the holder of the License to Land Flounder from the Atlantic Ocean shall notify the Morehead City Office of the Division of Marine Fisheries within five days of change as to the vessel master identified on the license.

~~(6)(7)~~ Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year and expire on June 30 year.

(g) For a Recreational Fishing Tournament License to Sell Fish, in addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be applicable:

- (1) it shall be unlawful for anyone other than the holder of the Recreational Fishing Tournament License to Sell Fish to sell fish taken during a recreational fishing tournament.
- (2) fish to be sold under the Recreational Fishing Tournament License to Sell Fish shall be sold only to licensed fish dealers and shall comply with all applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.
- (3) it shall be unlawful for a licensed recreational fishing tournament organizer to fail to accurately and legibly complete a North Carolina Recreational Fishing Tournament Disposition of Proceeds from the Sale of Fish Form provided by the Division of Marine Fisheries and submit the form to the Division within 30 days after the last day of the tournament.

(h) It shall be unlawful for a license, endorsement, or Commercial Fishing Vessel Registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.

~~(e) To obtain a Recreational Fishing Tournament License to Sell Fish, the tournament organizer shall apply with the Division of Marine Fisheries at least 30 days prior to the starting date of the tournament with the following required information:~~

- ~~(1) Full name, physical address, mailing address, date of birth, signature of the tournament organizer, name of tournament, and dates of tournament on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature shall be notarized on the application.~~
- ~~(2) Current picture identification of tournament organizer. Acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.~~

~~(d) To obtain a Land or Sell License, the following information is required for a proper application:~~

- ~~(1) Full name, physical address, mailing address, date of birth, and signature of the responsible party or master for the vessel on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature on the application shall be notarized on the application;~~
- ~~(2) Current picture identification of responsible party or master. Acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card), or passport; or if applying by mail, a copy thereof;~~
- ~~(3) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.~~

~~Fees shall be based on the vessel's homeport as it appears on the U.S. Coast Guard documentation papers or the State in which the vessel is registered, in accordance with G.S. 113-169.5.~~

~~(e) Proof of residency in North Carolina for:~~

- ~~(1) Standard Commercial Fishing License or Retired Standard Commercial Fishing License shall require a notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4); and~~
 - ~~(A) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident;~~
 - ~~(B) a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or~~
 - ~~(C) military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.~~
- ~~(2) All other types of licenses:~~
 - ~~(A) North Carolina voter registration card; or~~
 - ~~(B) Current North Carolina Driver's License; or~~
 - ~~(C) Current North Carolina Certificate of Domicile; or~~
 - ~~(D) Current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or~~
 - ~~(E) Military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.~~

~~(f) Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.~~

~~(g) It is unlawful for a license or registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.~~

~~(h) Licenses are available at Offices of the Division or by mail from the Morehead City Office, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at Wildlife Service Agents who have been designated as agents of the Department.~~

~~(i) To renew any Marine Fisheries licenses, endorsements, and commercial fishing vessel registration, except Recreational Commercial Gear Licenses, the following is required for the renewal application by the licensee, a responsible party, or person holding a power of attorney;~~

- ~~(1) The information required in Subparagraphs (a)(4), (a)(5), and (a)(6) of this Rule are only required if a change has occurred since the last issuance of license, endorsement, or commercial fishing vessel registration.~~
- ~~(2) Certification that articles of incorporation and list of corporate officers, if incorporated, written partnership agreement, if written partnership, or documentation papers or motor boat registration previously provided for initial license purchase are still valid and current for renewal.~~

- (3) ~~Current and valid state driver's license or state identification picture identification numbers and expiration dates shall be verified on mail license renewal applications or any other electronic license renewal process, otherwise the licensee shall provide a photocopy for renewal by mail or visit a Division License Office and present a current and valid picture identification pursuant to Subparagraph (a)(2) of this Rule.~~
- (4) ~~The licensee's or responsible party's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications shall not be required.~~
- (5) ~~The Division of Marine Fisheries may require current copies of documentation for licenses, endorsements, or commercial fishing vessel registration on renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.~~
- (6) ~~If the linear length of the pier has not changed for the Ocean Fishing Pier License renewal, the responsible party shall certify that the length is accurate; otherwise, a Marine Patrol Officer's signature is required to certify the linear length before the license can be renewed.~~
- (7) ~~Certification that shellfish dealer certification by North Carolina previously provided for issuance of Fish Dealer License with clam or oyster categories or consolidated license is still valid and current for renewal.~~

History Note: Authority *G.S. 113-134; 113-168; 113-168.1-6; ~~113-169~~; 113-169.2-5; 113-171.1; 113-174.3; 113-182; 143B-289.52;*
Eff. January 1, 1991;
Amended Eff. July 1, 1997; March 1, 1994;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. April 1, 2001;
Amended Eff. May 1, 2015; July 1, 2008; December 1, 2006; August 1, 2004; August 1, 2002;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03O .0102 is proposed for readoption with substantive changes as follows:

15A NCAC 03O .0102 ~~RECREATIONAL FISHING TOURNAMENT LICENSE TO SELL FISH PROCEDURES AND REQUIREMENTS TO RENEW LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS~~

~~(a) It is unlawful for anyone other than the holder of the Recreational Fishing Tournament License to Sell Fish to sell fish taken during a recreational fishing tournament.~~

~~(b) Fish to be sold under the Recreational Fishing Tournament License to Sell Fish must be sold only to licensed fish dealers and shall comply with all applicable rules of the Marine Fisheries Commission (MFC) or provisions of proclamations issued by the Fisheries Director as authorized by the MFC.~~

~~(c) It is unlawful for a licensed recreational fishing tournament organizer to fail to accurately and legibly complete and file within 30 days after the last day of the tournament a North Carolina Recreational Fishing Tournament Disposition of Proceeds from the Sale of Fish Form provided by the Division.~~

(a) For the purpose of this Rule, the procedures and requirements for the licensee shall also apply to the responsible party, the person holding power of attorney, the tournament organizer, and the vessel master.

(b) To renew Division of Marine Fisheries licenses, endorsements, and Commercial Fishing Vessel Registrations, except Recreational Commercial Gear Licenses, a renewal application shall be submitted by the licensee. Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the licensee with deficiency in the application so noted. The following is required for the renewal application:

- (1) full name, physical address, mailing address, date of birth, and signature of the licensee.
- (2) a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.
- (3) current and valid picture identification of the licensee. Acceptable forms of picture identification are state driver's license, state identification card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.
- (4) the information required in Rule .0101(c)(4) through (c)(8) of this Section, if changed since last issuance of the license, endorsement, or Commercial Fishing Vessel Registration.
- (5) the information required in Rule .0101(e)(1) of this Section, if the linear length of the Ocean Fishing Pier has changed.
- (6) a valid Permit and Certificate of Compliance from the Division's Shellfish Sanitation and Recreational Water Quality Section, if renewing a Fish Dealer License with clam or oyster categories or a consolidated license.
- (7) certification that all information on the application is true and accurate. Notarization of the signature on renewal applications shall not be required.

The Division may require current copies of documentation for licenses, endorsements, and Commercial Fishing Vessel Registrations upon renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.

*History Note: Authority G.S. 113-134; 113-168; ~~113-168.4~~; 113-168.1-6; 113-169.2-5; 113-171.1; 113-174.3; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1994;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. April 1, 2020; December 1, 2006; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03O .0103 is proposed for readoption with substantive changes as follows:

15A NCAC 03O .0103 AUXILIARY VESSELS

(a) ~~Buy boats, run boats, purse boats or any other vessels used in conjunction with commercial fishing operations, except vessels without motors used in connection with other vessels with commercial fishing vessel registrations, shall have a commercial fishing vessel registration.~~ It shall be unlawful to fail to comply with Commercial Fishing Vessel Registration requirements set forth in G.S. 113-168.6 to operate a buy vessel, run vessel, purse vessel, or any other vessel used in conjunction with a commercial fishing operation, except as specified.

(b) ~~A person~~ An individual in command of a vessel that is auxiliary to a vessel with a ~~commercial fishing vessel registration~~ Commercial Fishing Vessel Registration with a ~~person~~ an individual aboard who holds a Standard Commercial Fishing License or a Retired Standard Commercial Fishing License engaged in a commercial fishing operation using a pound net, ~~long haul, long haul, or beach seine or purse seine~~ is exempt from the provisions of G.S. 113-168.2 (a1).

History Note: Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.5; 113-168.6; ~~113-169; 113-182; 143B-289.52;~~
Eff. January 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. April 1, 2020; August 1, 2000;
Readopted Eff. May 1, 2021.

15A NCAC 03O .0104 is proposed for reoption with substantive changes as follows:

15A NCAC 03O .0104 COMMERCIAL UNLOADING OF FISH

It ~~is~~ shall be unlawful to unload fish from a vessel in North Carolina ~~which~~ that has been engaged in a commercial fishing operation outside ~~state~~ State waters without possessing a valid:

- (1) Standard or Retired Standard Commercial Fishing ~~Licenses; or~~ License with applicable endorsement;
- (2) ~~Menhaden License for Nonresidents Without a Standard Commercial Fishing License; or~~
- (~~3~~)(2) Shellfish License for North Carolina Residents without a Standard Commercial Fishing ~~Licenses;~~ License; or
- (~~4~~)(3) Land or Sell License.

*History Note: Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.4; ~~113-169; 113-169.5; 113-182; 143B-289.52;~~
Eff. January 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03O .0105 is proposed for reoption with substantive changes as follows:

15A NCAC 03O .0105 ~~BAIT AND MUSSEL DEALERS~~

~~(a) Persons dealing in minnows, live shrimp, or both minnows and live shrimp for bait purposes, who are subject to licensing requirements under G.S. 113-169.3 are required to purchase only the license applicable to finfish dealers. A bona fide dealer in shrimp, licensed under the provisions of G.S. 113-169.3, may, however, deal in minnows as well as live shrimp for bait purposes, as an incident of his operations under his shrimp dealer's license.~~

~~(b) Persons dealing in mussels who are subject to licensing requirements under the provisions of G.S. 113-169.3 are shall be required to purchase only the license applicable to clam dealers and ~~meet the shellfish dealer certification requirements in 15A NCAC 03O .0101(a)(11)~~, shall be required to hold a valid Permit and Certificate of Compliance from the Division of Marine Fisheries Shellfish Sanitation and Recreational Water Quality Section, as described in Rule .0101 of this Section.~~

*History Note: Authority G.S. 113-134; 113-169.3; 113-182; 143B-289.52;
Eff. January 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. August 1, 2004; August 1, 2000;
Readopted Eff. May 1, 2022.*

15A NCAC 03O .0107 is proposed for reoption with substantive changes as follows:

15A NCAC 03O .0107 ~~LOST-LICENSE REPLACEMENT~~ AND FEES

~~(a) Lost licenses except Blanket Coastal Recreational Fishing Licenses, endorsements, and commercial fishing vessel registration decals may be replaced upon payment of a fee of ten dollars (\$10.00) or a fee equal to the initial cost of the license, endorsement, or commercial fishing vessel registration, whichever is less. A licensee shall receive a replacement for a commercial license, endorsement, Commercial Fishing Vessel Registration decal, or Recreational Commercial Gear License upon payment to the Division of Marine Fisheries a fee of ten dollars (\$10.00) or a fee equal to the initial cost of the license, endorsement, or Commercial Fishing Vessel Registration, whichever is less.~~

~~(b) The replacement fee for the Blanket Coastal Recreational Fishing Licenses is five dollars (\$5.00). A licensee shall receive a replacement Coastal Recreational Fishing License or a for-hire license as defined in G.S. 113-174.3 upon payment to the Division of Marine Fisheries a fee of five dollars (\$5.00).~~

*History Note: Authority G.S. 113-134; 113-168.1; 113-168.6; 113-169.4; 113-173; 113-174.1; 113-174.2; 113-174.3; 113-182; 143B-289.52;
Eff. January 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. December 1, 2006; August 1, 2000;
Readopted Eff. May 1, 2022.*

15A NCAC 030 .0109 is proposed for readoption with substantive changes as follows:

15A NCAC 030 .0109 ASSIGNMENT OF ~~SCFL~~ STANDARD COMMERCIAL FISHING LICENSE

(a) For the purpose of this Rule, "licensee" shall mean the person issued a Standard Commercial Fishing License and "assignee" shall mean the individual to whom the licensee assigns a Standard Commercial Fishing License in accordance with the requirements of this Rule.

~~(a)~~(b) The Division of Marine Fisheries shall provide assignment forms to the licensee upon issuance of the Standard Commercial Fishing License. request. Assignment must be made on the Only Division assignment forms. forms shall be used to obtain an assignment. On the assignment form, the Standard Commercial Fishing License holder must licensee shall designate what, if any, endorsements are included in the assignment. Endorsements may shall not be assigned independent of the Standard Commercial Fishing License. It is shall be unlawful for the Standard Commercial Fishing License holder licensee or the assignee to fail to submit within five days the completed assignment form to any office of the Division in person or by mail to the Morehead City Division Office. The Morehead City Office is located at 3441 Arendell Street, Morehead City, North Carolina, 28557. If the completed assignment form is not received by the Division within five days from the date it was signed, the assignment shall be null and void. Incomplete forms shall be returned to the licensee with deficiency in the form so noted. An assignment is in effect from the date specified on the assignment form and when:

- (1) the assignment form is properly completed; complete with all required information;
- (2) signatures of the current license holder and the assignee are notarized; and
- (3) the assignee has in their possession the current licensee's original actual Standard Commercial Fishing License with License, including applicable endorsements of the current license holder in accordance with G.S. 113-169.2.

(b) For an extension of time for assignments, a new assignment form shall be completed in accordance with Subparagraphs (a)(1) through (a)(3) of this Rule.

~~(b)~~(c) Assignments terminate when; shall terminate:

- (1) when the date specified on the assignment form is reached; ~~or~~
- (2) if the licensee or assignee are determined ineligible for a license or assignment; ~~or~~
- (3) if the Division receives a notarized statement from the current license holder stating a revised date for an earlier assignment termination; ~~or~~
- (4) upon the licensee or assignee's death; or
- (5) when the Standard Commercial Fishing License expires.

~~If the properly completely assignment form is not received by the Division within five days from the date it was signed, the assignment is null and void. For an extension of time for assignments, a new assignment form must be completed in accordance with Subparagraphs (a)(1) – (3) of this Rule.~~

~~(e)~~(d) It is shall be unlawful for an individual assigned a Standard Commercial Fishing License to fail to have available ready at hand for inspection all required documents as stated under G.S. 113-168.1. The assignee when involved in a commercial fishing operation must to fail to have the original actual Standard Commercial Fishing License and

License, any assigned endorsements~~endorsements~~, and a copy of the assignment form in their possession ready at hand for inspection~~inspection~~ in accordance with G.S. 113-168.1.

~~(d)~~(e) All landings occurring during the time of the assignment shall be credited to the Standard Commercial Fishing License holder, licensee, not the assignee.

~~(e)~~(f) It is shall be unlawful to be assigned more than a single Standard Commercial Fishing License at any one time. It is shall be unlawful to assign a Standard Commercial Fishing License to more than one individual at any one time. Assignments may shall only be made by the person issued the Standard Commercial Fishing License licensee and may shall not be further assigned by assignees. Masters identified on the Standard Commercial Fishing Licenses of corporations consisting of an individual fishing vessel may shall not assign such licenses.

~~(f)~~(g) It is shall be unlawful for a person to accept assignment of a Standard Commercial Fishing License for which they are ineligible.

~~(g)~~ Assignments submitted without complete and required information shall be deemed not in effect and shall not be considered further until resubmitted with all required information.

(h) It is shall be unlawful for any assignee of a Standard Commercial Fishing License not to return the assignment and the Standard Commercial Fishing License with any assigned endorsements to the assignor of that license licensee within five days of notice that the assignment has been terminated or a demand by the assignor licensee to return the license.

History Note: Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.5; 113-169.2; 113-182; 143B-289.52;
Eff. January 1, 1991;
Temporary Amendment Eff. October 2, 1999; July 1, 1999;
Amended Eff. August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03O .0110 is proposed for readoption with substantive changes as follows:

15A NCAC 03O .0110 LICENSE REFUNDS

All license fees are non-refundable except ~~when~~if licenses are issued by the Division of Marine Fisheries in error.

*History Note: Authority G.S. 113-134; ~~113-168.1; 113-173; 113-182;~~ 143B-289.52; 147-84; ~~1993 (Regular Session 1994), c. 576, s. 3;~~
Eff. March 1, 1995;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. August 1, 2000;
Readopted Eff. May 1, 2022.*

15A NCAC 03O .0113 is proposed for reoption with substantive changes as follows:

15A NCAC 03O .0113 OCEAN FISHING PIER REPORTING REQUIREMENTS

It ~~is shall be~~ unlawful for the responsible party of the Ocean Fishing Pier License to fail to provide to the Division of Marine Fisheries by the 10th of each month a daily count of anglers fishing from the licensed pier from the previous month, including a daily count of zero for days when anglers did not fish. The information shall be submitted on a paper form provided by the Division or via electronic mail to the electronic mail address provided at the time of license ~~application-issuance.~~

*History Note: Authority G.S. 113-134; 113-169.4; 113-174.1; 113-182; 143B-289.52;
Eff. April 1, 2011;
Amended Eff. May 1, 2015;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03R .0111 is proposed for amendment as follows:

15A NCAC 03R .0111 PURSE SEINES PROHIBITED

The areas referenced in 15A NCAC 03J .0105(b)(1) are delineated in the following coastal fishing waters of the Atlantic Ocean:

~~(a)(1) It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from in the Atlantic Ocean within an area bounded by a line extending from a point near the Bald Head Lighthouse (~~33° 52.3500' N – 78° 00.3000' W~~) 33° 52.3500' N - 78° 00.3000' W; running southwesterly to a point near the Cape Fear River ship channel buoy "9" (~~33° 51.5500' N – 78° 01.5500' W~~), then 33° 51.5500' N – 78° 01.5500' W; running northwesterly to a point near the foot of the Yaupon Beach Fishing Pier on Oak Island (~~33° 54.2000' N – 78° 04.9333' W~~), then 33° 54.2000' N – 78° 04.9333' W; following the shoreline easterly to a point near Fort Caswell (~~33° 53.2166' N – 78° 01.1833' W~~), then 33° 53.2166' N – 78° 01.1833' W; running southeasterly ~~back~~ to the point of origin; beginning;~~

~~(b)(2) It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from in the Atlantic Ocean from May 1 through September 30:~~

~~(1)(a) In that in the area bounded by a line beginning at a point onshore at the northern boundary of Dare County 36° 13.8536' N - 75° 46.3914' W; running easterly 1.5 nautical miles to a point offshore 36° 13.8536' N - 75° 44.3814' W; running southerly parallel to and 1.5 nautical miles from the ocean beach to a point 1.5 nautical miles offshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 44.2225' W; running westerly to a point onshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 42.2416' W; and~~

~~(2)(b) In that in the area bounded by a line beginning at a point at the southern limits of Kitty Hawk 36° 03.3187' N - 75° 40.9503' W; running easterly 1.5 nautical miles to a point offshore 36° 03.3187' N - 75° 38.8029' W; running southerly parallel to and 1.5 nautical miles from the ocean beach to a point 1.5 nautical miles offshore of the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 29.2379' W; running westerly to a point onshore at the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 31.5369' ~~W~~; and~~

~~(c)(3) It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from the in the Atlantic Ocean from October 1 through December 31:~~

~~(1)(a) In that in the area bounded by a line beginning at a point onshore at the northern boundary of Dare County 36° 13.8536' N - 75° 46.3914' W; running easterly 0.5 nautical miles to a point offshore 36° 13.8536' N - 75° 45.6977' W; running southerly parallel to and 0.5 nautical miles off the ocean beach to a point 0.5 nautical miles offshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 43.5514' W; running westerly 0.5~~

nautical miles to a point onshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 44.2416' W; and

(2)(b) ~~In that in~~ the area bounded by a line beginning at a point at the southern limits of Kitty Hawk 36° 03.3187' N - 75° 40.9503' W; running easterly 0.5 nautical miles to a point offshore 36° 03.3187' N - 75° 40.2033' W; running southerly parallel to and 0.5 nautical ~~mile~~ miles off the ocean beach to a point offshore at the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 30.6134' W; running westerly to a point onshore at the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 31.5369' W.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 1993;
Recodified from 15A NCAC 03R .0011 Eff. December 17, 1996;
Amended Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Readopted Eff. (Pending legislative review of 15A NCAC 03J .0105).

**Fiscal Analysis for Proposed Readoption and Amendments to 15A NCAC 03 Rules Related
to Commercial Blue Crab Harvest and Gear Regulations
Pursuant to G.S. 150B-21.3A**

Rule Amendments: 15A NCAC 03J .0301
15A NCAC 03L .0201-.0205
15A NCAC 03R .0110, .0118

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:

North Carolina General Statutes
G.S. 113-134. Rules.
G.S. 113-173. Recreational Commercial Gear License.
G.S. 113-182. Regulation of fishing and fisheries.
G.S. 113-221.1. Proclamations: emergency review.
G.S. 143B-289.52. Marine Fisheries Commission - powers and duties.

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 six rules in 15A NCAC 03 related to blue crab harvest and gear pursuant to this requirement and two rules for amendment. In addition, the rules for readoption are also proposed with substantive changes that aim to conform rules with existing blue crab management measures approved through Amendment 3 of the Blue Crab Fishery Management Plan (FMP) and Marine Fisheries Director proclamation authority.

II. Summary

These rules contain a variety of technical changes with no meaningful impact to rule intent, as well as a number of substantive changes aimed at conforming rule language with new blue crab and gear management measures approved through Amendment 3 to the Blue Crab FMP. However, all of these new measures are already in effect via proclamation following the approval of the FMP in February 2020. Therefore, the proposed changes simply codify these requirements and would incur no additional fiscal impact. Lastly, a proposed change to marking requirements for pots would likely incur a small financial cost to select fishermen, potentially leading to insignificant state and local-level impacts.

III. Introduction and Purpose of Rule Changes

Upon adoption of Amendment 3 to the North Carolina Blue Crab FMP by the North Carolina Marine Fisheries Commission (NCMFC) in February 2020, a variety of updated management measures for the blue crab fishery were approved and set into effect via Marine Fisheries Director proclamation authority. Reviewed and approved by the NCMFC, these management updates included changes to blue crab harvest limits, crab spawning sanctuaries, cull ring requirements, and other gears used by commercial crab fishermen. Following the approval of the Blue Crab FMP in February 2020, these measures were all initially implemented using proclamation authority. The proposed changes seek to formally codify these new requirements in permanent rule consistent with the FMP and proclamations.

IV. Fiscal Impact Analysis

The intent of the proposed rule changes is to conform rule language with ongoing management practice that is reflective of the recently adopted Amendment 3 to the Blue Crab FMP. Because of this, there is no practicable economic impact to the state or any stakeholders across nearly all of the proposed changes, as all of the measures are already in practice by the Division. Additionally, none of the proposed rules are expected to incur any impact to enforcement.

However, proposed changes to rule 15A NCAC 03J .0301 POTS includes a new economic burden on commercial pot fishermen, which could result in small economic impacts at a state and local level. This proposed change relates to updated marking requirements for pot buoys, which may incur direct costs to some participants, depending on their existing forms of identification.

Currently, 15A NCAC 03J .0301 requires one of three possible forms of identification on each buoy. This is one of nine NCMFC rules that contain similar requirements for gear marking. As part of the readoption process, the agency is proposing changes to make these requirements consistent across rules. As a result, proposed changes to this rule require the gear owner's last name and initials to be identified on each buoy as a baseline. Then, if a vessel is used, the identification shall also include either the gear owner's current motorboat registration number or the gear owner's U.S. vessel documentation name. According to NCDMF Marine Patrol staff, many (at least half) of commercial fishermen using these gears already meet this requirement so it will have no significant impact to these stakeholders.

Commercial fishermen needing to add additional identification information will be faced with additional monetary costs and/or labor costs. Identification tags commonly used are \$.55 per tag, which includes all of the required information. If a fisherman has never purchased these tags, there is generally a \$50.00 set up fee for their specific stamp to be made, and it is held for 10 years. An unknown quantity of fishermen have their own devices made to aid in the engraving process. Aside from a fisherman fabricating their own tool, a commercial tool can be purchased at a cost between \$300.00 to \$400.00. Commercial pot operations vary in the amounts of gear they maintain on average, but operations typically maintain 300 to 1500 pots. The proposed changes are not expected to alter the behavior of fishermen. Fishermen are likely to make the required adjustments to their gear over the winter while their gear is stacked and they are preparing for the next season. According to a recent NCDMF gear survey, in 2021 there were 432,743 crab and peeler pots in use across 995 participants (D. Zapf, Personal Communication, June 18, 2021). Using an upper-bound estimate of 50% of pots and participants affected, in which each affected participant needs to purchase a stamp set-up fee and commercial tool, this could generate a maximum total cost to the stakeholders of approximately \$318,205.

Given these added costs to a select number of stakeholders, there is the likelihood for fiscal impacts felt at both the state and local level. Firstly, the added costs to fishermen represent predominately direct expenditures within the state, which should correspond to an insignificant benefit to state and local economies in the form of consumer spending and increased tax revenue. Conversely, if any fishermen find these added costs overly burdensome, there is the unlikely chance overall participation in North Carolina's pot fishery could decrease, leading to insignificant costs again at the state and local level. Again, behavior is not expected to shift based on these proposed changes, and the combined impact of the expected costs and benefits should not be significant.

V. Appendix

Proposed Rules for Reoption

15A NCAC 03J .0301 is proposed for reoption with substantive changes as follows:

SECTION .0300 - POTS, DREDGES, AND OTHER FISHING DEVICES

15A NCAC 03J .0301 POTS

(a) It ~~is shall be~~ unlawful to use pots except during time periods and in areas specified herein:

- (1) ~~In Coastal Fishing in Internal Waters~~ from December 1 through May 31, except ~~that that~~:
 - (A) in the Northern Region designated in 15A NCAC 03R .0118 (1) all pots shall be removed from Internal Waters from January ~~15-1~~ through ~~February 7~~ January 31. Fish pots upstream of the U.S. 17 Bridge across Chowan River and upstream of a line across the mouth of Roanoke, Cashie, Middle, and Eastmost Rivers to the Highway 258 Bridge are exempt from the ~~January 15 through February 7~~ this removal requirement. ~~The Fisheries Director may, by proclamation, reopen various waters to the use of pots after January 19 if it is determined that such waters are free of pots.~~
 - (B) in the Southern Region designated in 15A NCAC 03R .0118 (2) all pots shall be removed from Internal Waters from March 1 through March 15.
- (2) ~~From in Internal Waters from~~ June 1 through November 30, ~~north and east of the Highway 58 Bridge at Emerald Isle~~; 30 in the Northern Region designated in 15A NCAC 03R .0118 (1):
 - (A) ~~In in~~ areas described in 15A NCAC 03R ~~.0107(a)~~; .0107(a).
 - (B) ~~To to~~ allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director may, by proclamation, specify time periods for ~~or and~~ and designate the areas described in 15A NCAC 03R ~~.0107(b)~~; .0107(b) or any part thereof, for the use of pots.
- (3) ~~From in Internal Waters from~~ May 1 through November 30 in the ~~Atlantic Ocean and west and south of the Highway 58 Bridge at Emerald Isle in areas and during time periods designated by the Fisheries Director by proclamation~~. Southern Region designated in 15A NCAC 03R .0118 (2), the Fisheries Director may, by proclamation, specify time periods and areas for the use of pots.
- (4) in the Atlantic Ocean from May 1 through November 30 the Fisheries Director may, by proclamation, specify time periods and areas for the use of pots.

~~The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of pots to take blue crabs.~~

(b) It ~~is shall be~~ unlawful to use pots:

- (1) in any navigation channel marked by State or Federal agencies; or
- (2) in any turning basin maintained and marked by the North Carolina Ferry Division.

(c) It ~~is~~ shall be unlawful to use pots in a commercial fishing ~~operation, operation~~ unless each pot is marked by attaching a floating buoy of any color except any shade of yellow or any shade of hot pink, or any combination of colors that include any shade of yellow or any shade of hot pink. ~~that~~ 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 may be of any color except yellow or hot pink or any combination of colors that include yellow or hot pink.~~ The ~~owner-gear owner's~~ last name and initials shall ~~always~~ be identified on the attached buoy by using an engraved buoys-buoy or by attaching engraved metal or plastic tags attached to the buoy. ~~The~~ If a vessel is used, the identification shall also include one of the following:

- (1) gear owner's current ~~motorboat~~ motor boat registration number; or
- (2) gear owner's U.S. vessel documentation ~~name; or~~ name.
- (3) ~~gear owner's last name and initials.~~

(d) Pots attached to shore or a pier shall be exempt from Subparagraphs (a)(2) and (a)(3) of this Rule.

(e) It ~~is~~ shall be unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-eighths-inch bar.

(f) It ~~is~~ shall be unlawful to use pots to take eels with mesh lengths smaller than one-half inch by one-half ~~inch, except until January 1, 2017~~ eel pots of any mesh length with an escape panel that is at least four inches square with a mesh length of one inch by one half inch located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots ~~shall be allowed.~~ inch.

(g) ~~It is~~ Except for unbaited pots or pots baited with a male crab, it shall be unlawful to use crab pots in Coastal Fishing Waters unless each pot contains no less than ~~two-three~~ unobstructed escape rings that are at least two and ~~five-sixteenths~~ five-sixteenth inches inside diameter ~~and; and~~ located in the ~~opposite outside panels of the upper chamber of the pot, except the following are exempt from the escape ring requirements:~~

- (1) ~~unbaited pots;~~
- (2) ~~pots baited with a male crab; and~~
- (3) ~~pots set in areas and during time periods described in 15A NCAC 03R .0118.~~
- (1) for pots with a divider:
 - (A) two escape rings shall be located on opposite panels of the upper chamber of the pot; and
 - (B) at least one escape ring shall be located within one full mesh of the corner and one full mesh of the bottom of the divider in the upper chamber of the pot.
- (2) for pots without a divider:
 - (A) two escape rings shall be located on opposite panels of the pot; and
 - (B) at least one escape ring shall be located within one full mesh of the corner and one full mesh of the bottom of the pot.

For the purpose of this Rule, a "divider" shall mean a panel that separates the crab pot into upper and lower sections.

(h) The Fisheries Director may, by proclamation, ~~exempt the escape ring requirements described in Paragraph (g) of this Rule in order to allow the harvest of mature female crabs and may impose any or all of the following restrictions:~~ restrictions for pots:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify requirements for a commercial fishing operation or for recreational purposes;
- (5) specify record keeping and reporting requirements;
- ~~(4)~~(6) specify seasons; and season, including a closed season for removal of all pots from Internal Waters;
- (7) specify species; and
- ~~(5)~~(8) specify quantity.

(i) It ~~is~~ shall be unlawful to use more than 150 crab pots per vessel in Newport River.

(j) It ~~is~~ shall be unlawful to remove crab pots from the water or remove crabs from crab pots between one hour after sunset and one hour before sunrise.

(k) It ~~is~~ shall be unlawful to use pots to take crabs unless the line connecting the pot to the buoy is non-floating.

(l) It ~~is~~ shall be unlawful to use pots with leads or leaders to take shrimp. For the purpose of this Rule, "leads" or "leaders" ~~are defined as~~ shall mean any fixed or stationary net or device used to direct fish into any gear used to capture fish. Any device with leads or leaders used to capture fish shall not be a pot.

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; May 1, 1997; March 1, 1996; March 1, 1994; October 1, 1992; September 1, 1991;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. August 1, 2000;

Temporary Amendment Eff. September 1, 2000;

Amended Eff. May 1, 2015; April 1, 2014; September 1, 2005; August 1, 2004; August 1, 2002;

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

15A NCAC 03L .0201 is proposed for readoption with substantive changes as follows:

SECTION .0200 – CRABS

15A NCAC 03L .0201 CRAB HARVEST RESTRICTIONS

(a) It shall be unlawful to possess blue crabs taken from Crab Harvest Management Areas designated in 15A NCAC 03R .0118(1) from January 1 through January 31, except dealers shall have seven days after the beginning of the closure to sell, offer for sale, or transport blue crabs that were taken from this area prior to the closure.

(b) It shall be unlawful to possess blue crabs taken from Crab Harvest Management Areas designated in 15A NCAC 03R .0118(2) from March 1 through March 15, except dealers shall have seven days after the beginning of the closure to sell, offer for sale, or transport blue crabs that were taken from this area prior to the closure.

~~(a) It is unlawful to possess more than 10 percent by number in any container, male and immature female hard blue crabs less than five inches from tip of spike to tip of spike and to fail to return hard blue crabs not meeting this restriction to the waters from which taken, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs. All blue crabs not sorted into containers as specified in Paragraph (b) of this Rule shall be deemed hard blue crabs for the purpose of establishing the 10 percent culling tolerance.~~

~~(b) It is unlawful to possess blue crabs less than five inches from tip of spike to tip of spike unless individual crabs are sorted to and placed in separate containers for each of the following categories:~~

- ~~(1) — soft crabs;~~
- ~~(2) — pink and red line peeler crabs;~~
- ~~(3) — white line peeler crabs; and~~
- ~~(4) — from March 1 through October 31, male crabs to be used as peeler crab bait.~~

~~The Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.~~

(c) It shall be unlawful to possess more than five percent by number of the following hard blue crabs in any combination in any container:

- (1) male hard blue crabs less than five inches from tip of spike to tip of spike;
- (2) immature female hard blue crabs;
- (3) mature female hard blue crabs less than five inches from tip of spike to tip of spike; and
- (4) mature female hard blue crabs with a dark (brown or black) sponge from April 1 through April 30 statewide. For the purpose of this Rule, a "mature female hard blue crab with a dark sponge" shall mean a mature female hard crab that has extruded her eggs on the abdomen or abdominal flap and the eggs have developed a coloration ranging from any shade of brown through black.

(d) It shall be unlawful to possess blue crabs described in Subparagraphs (c)(1) through (c)(3) of this Rule unless individual crabs are sorted and placed into separate containers for each of the following categories:

- (1) soft crabs;

- (2) pink and red-line peeler crabs;
- (3) white line peeler crabs; and
- (4) from March 1 through October 31, male crabs to be used as peeler crab bait.

All blue crabs not sorted into containers as specified shall be deemed hard blue crabs for the purpose of establishing the five percent tolerance described in Paragraph (c) of this Rule.

~~(e)~~(e) It is shall be unlawful to possess more than five percent by number of white-line peelers-peeler crabs in a container of pink and red-line peeler crabs, peelers, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

~~(d)~~(f) It is shall be unlawful to:

- (1) sell white-line peelers; peeler crabs;
- (2) possess white-line peelers-peeler crabs unless they are to be used in the harvester's permitted blue crab shedding operation; and or
- (3) possess male white-line peelers-peeler crabs from June 1 through September 1.

~~The Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.~~

~~(g)~~(g) It is shall be unlawful to possess more than 50 blue crabs per person per day, not to exceed 100 blue crabs per vessel per day for recreational purposes, purposes, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

~~(h)~~(h) In order to comply with management measures adopted in the N.C. Blue Crab Fishery Management Plan, the Fisheries Director may, by proclamation, close the harvest of blue crabs and take the following actions for may further restrict commercial and recreational blue crab harvest: harvest by imposing any of the following requirements on the taking of blue crabs:

- (1) specify areas;
- (2) specify seasons;
- (3) specify time periods;
- (4) specify means and methods;
- (5) specify culling tolerance; and
- (6) specify limits on harvest based on size, quantity, sex, reproductive stage, or peeler stage.

(i) It shall be unlawful to fail to immediately return hard blue crabs not meeting the requirements of this Rule to the waters from which they were taken.

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
 Eff. January 1, 1991;
 Amended Eff. April 1, 1997; July 1, 1993;
 Temporary Amendment Eff. July 1, 1999;
 Amended Eff. April 1, 2014; September 1, 2005; August 1, 2000;
 Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03L .0202 is proposed for re adoption with substantive changes as follows:

15A NCAC 03L .0202 CRAB TRAWLING

(a) It ~~is~~ shall be unlawful to take or possess aboard a vessel crabs taken by trawl in internal waters except in areas and during such times as the Fisheries Director may specify by proclamation.

(b) It ~~is~~ shall be unlawful to use a trawl to take crabs that does not meet mesh length requirements, except as provided in 15A NCAC 03J .0104. The minimum mesh length to take hard crabs with a trawl ~~is~~ shall be three inches, except:

- (1) ~~The~~ the minimum mesh length ~~is~~ shall be four inches in the area of western Pamlico Sound west of a line beginning at a point 35° 48.3693' N - 75° 43.7232' W on Roanoke Marshes Point; running easterly to a point 35° 48.3000' N - 75° 37.1167' W near Beacon "1" at the southern end of Roanoke Island; running southerly to a point 35° 30.7500' N - 75° 40.5667' W near the "S" Beacon at Long Shoal; running southwesterly to a point 35° 12.6167' N - 76° 04.3833' W near the "BL" Beacon on Bluff Shoal; running westerly to a point 35° 08.1000' N - 76° 17.5000' W near the "BI" Beacon at Brant Island Shoal; running southwesterly to a point 35° 04 .6167' N - 76° 27.8000' W on Point of Marsh; and
- (2) ~~The~~ the Fisheries Director may, by proclamation, specify areas other than the area described in Subparagraph (b)(1) of this Rule for trawl mesh length use and increase the minimum trawl mesh length to no more than four inches to take hard crabs.

(c) It ~~is~~ shall be unlawful to use a trawl with a mesh length less than two inches or with a combined total headrope length exceeding 25 feet to take soft or peeler crabs, except as provided in 15A NCAC 03J .0104.

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. February 1, 1991;
Amended Eff. April 1, 2014; September 1, 2005; August 1, 2004; March 1, 1994; September 1, 1991;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03L .0203 is proposed for readoption with substantive changes as follows:

15A NCAC 03L .0203 CRAB DREDGING

~~(a) It is shall be~~ unlawful to take crabs with dredges ~~except:except~~

(1) ~~from January 1 through March 1 in the area of Pamlico Sound described in 15A NCAC 03R .0109;~~
and

(2) ~~incidental to lawful oyster dredging operations in areas not subject to the exception in Subparagraph~~
~~(a)(1) of this Rule~~ provided the weight of the crabs shall not ~~exceed:exceed~~ the lesser of:

~~(A)(1) 50-10~~ percent of the total weight of the combined oyster and crab catch; or

~~(B)(2) 500 pounds, whichever is less, 100 pounds.~~

The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of dredges to take blue crabs.

~~(b) It is unlawful to take crabs with dredges between sunset and sunrise and between sunset on any Saturday and sunrise on the following Monday, except in the Atlantic Ocean.~~

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. April 1, 2014; May 1, 1997;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

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

15A NCAC 03L .0204 CRAB POTS

(a) It ~~is~~ shall be unlawful to take crabs with pots except as provided in 15A NCAC 03J .0301 and .0302. The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of pots to take blue crabs.

(b) The Fisheries Director may, by proclamation, require the use of terrapin excluder devices in each funnel entrance in crab pots and impose the following restrictions concerning terrapin excluder devices:

- (1) specify areas;
- (2) specify time periods; and
- (3) specify means and methods.

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. April 1, 2014;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03L .0205 is proposed for readoption with substantive changes as follows:

15A NCAC 03L .0205 CRAB SPAWNING SANCTUARIES

(a) It ~~is shall be~~ unlawful to set or use trawls, pots, ~~and or~~ mechanical methods for ~~oysters or clams shellfish~~ or take crabs with the use of commercial fishing equipment ~~from the crab spawning sanctuaries described in 15A NCAC 03R .0110 from March 1 through August 31~~ in crab spawning sanctuaries:

- (1) from March 1 through August 31 for the crab spawning sanctuaries described in 15A NCAC 03R .0110 (1); and
- (2) from March 1 through October 31 for the crab spawning sanctuaries described in 15A NCAC 03R .0110 (2).

(b) The Fisheries Director may, by proclamation, designate additional areas as crab spawning sanctuaries and may impose the following restrictions in any crab spawning sanctuary:

- (1) specify areas;
- (2) specify time periods;
- (3) specify means and methods; and
- (4) specify limits on harvest based on size, quantity, sex, reproductive stage, or peeler stage.

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. May 1, 1997;
Temporary Amendment Eff. October 2, 1999;
Amended Eff. April 1, 2014; April 1, 2001;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03R .0110 is proposed for amendment as follows:

15A NCAC 03R .0110 CRAB SPAWNING SANCTUARIES

The crab spawning sanctuaries ~~within which the taking of crabs may be restricted or prohibited are described as follows:~~ referenced in 15A NCAC 03L .0205 are delineated in the following coastal fishing waters:

(1) in Areas from Barden Inlet and North:

- ~~(1)(a)~~ (1)(a) ~~In in the Oregon Inlet Area. Beginning Area: beginning~~ beginning at a point on the Atlantic Ocean shore of Bodie Island 35° 47.7054' N - 75° 32.3522' W; running northeasterly to a point in the Atlantic Ocean 35° 47.9833' N - 75° 31.8500' W; running southerly to a point in the ocean 35° 46.3500' N - 75° 30.6666' W; running westerly to a point on the Atlantic Ocean shore at 35° 46.1037' N - 75° 31.2785' W; running northerly along the Atlantic shore of Pea Island to and around South Point and continuing southerly along the shore of Pamlico Sound to a point on the south point of Eagle Nest Bay at 35° 43.7085' N - 75° 30.8009' W; running westerly to a point in Pamlico Sound at 35° 43.7100' N - 75° 32.2113' W; running northerly to a point 35° 47.3992' N - 75° 34.1650' W in Pamlico Sound; running northerly to a point on Bodie Island ~~35° 48.5740' N - 75° 33.8722' W;~~ 35° 48.7740' N - 75° 33.8722' W; running southerly along the shore to and around North Point at Oregon Inlet and then northerly on the Atlantic shore to the point of beginning;
- ~~(2)(b)~~ (2)(b) ~~In in the Hatteras Inlet Area. Beginning Area: beginning~~ beginning at a point on the Pamlico Sound shoreline of Hatteras Island 35° 12.0846' N - 75° 43.3514' W; running northwesterly to a point in Pamlico Sound 35° 13.6361' N - 75° 45.4451' W; running southwestly to a point near Outer Green Island 35° 11.0794' N - 75° 48.4440' W; running southeasterly to a point on the Pamlico Sound shore of Ocracoke Island 35° 10.7004' N - 75° 47.9094' W; running northeasterly along the shoreline to a point on the northeastern tip of Ocracoke Island 35° 11.2340' N - 75° 46.3051' W; running southeasterly to a point in the Atlantic Ocean at 35° 10.6644' N - 75° 44.5221' W; running northeasterly to a point on the ocean shoreline of Hatteras Island ~~35° 11.7894' N - 75° 43.5946' W;~~ 35° 11.7895' N - 75° 43.5947' W; running southwestly around the tip of Hatteras Island to the point of beginning;
- ~~(3)(c)~~ (3)(c) ~~In in the Ocracoke Inlet Area. Beginning Area: beginning~~ beginning at a point on Ocracoke Island 35° 06.2555' N - 75° 59.3722' W; running westerly through Shellcastle Island to a point in Pamlico Sound 35° 05.8599' N - 76° 04.3639' W; running southerly to a point on Portsmouth Island ~~35° 03.7378' N - 76° 04.7850' W;~~ 35° 03.7379' N - 76° 04.7850' W; running northeasterly along the shore of Pamlico Sound around the western side of Ocracoke Inlet and southwestly along the shore of the Atlantic Ocean to a point 35° 03.0500' N - 76° 03.0833' W; running southeasterly offshore to a point in the Atlantic Ocean 35° 02.6333' N - 76° 02.7166' W; running northeasterly to a point in the ocean 35° 03.9666' N - 75° 59.3000' W; running northwesterly to a point on the Atlantic shore of

Ocracoke Island 35° 04.7402' N - 75° 59.7124' W; running southwesterly along the shore around the eastern side of Ocracoke Inlet and northeasterly along the shore to the point of beginning;

- (4)(d) ~~In the Drum Inlet Area. Beginning at a point on the Core Sound shore of Core Banks 34° 52.81101' N - 76° 17.1780' W; running northwesterly to a point in Core Sound 34° 53.7347' N - 76° 18.0439' W; running southwesterly to a point in Core Sound 34° 50.8286' N - 76° 21.2515' W; running southeasterly to a point on the Core Sound shore of Core Banks 34° 50.1496' N - 76° 20.3924' W; following the shoreline in a northeasterly direction around the western side of Drum Inlet then along the Atlantic Ocean shoreline to a point on Core Banks 34° 50.0049' N - 76° 20.3741' W; running southeasterly to a point in the Atlantic Ocean 34° 49.4995' N - 76° 19.8407' W; running northeasterly to a point in the Atlantic Ocean 34° 52.2167' N - 76° 16.7476' W; running northwesterly to a point on the ocean shore of Core Banks 34° 52.6147' N - 76° 17.0705' W; running southwesterly toward and around the eastern side of Drum Inlet, then in a northeasterly direction along the Core Sound shore of Core Sound to the point of beginning; Ophelia and Drum Inlet Area: beginning at a point on the Core Sound shore of Core Banks 34° 51.7718' N - 76° 18.5093' W; running northwesterly to a point in Core Sound 34° 52.3431' N - 76° 19.1661' W; running southwesterly to a point near Marker "27" in Core Sound 34° 50.6411' N - 76° 22.0094' W; running southwesterly to a point in Core Sound 34° 49.0120' N - 76° 23.0288' W; running southeasterly to a point on the Core Sound shore of Core Banks 34° 48.6143' N - 76° 22.3033' W; following the shoreline in a northeasterly direction around the western side of Ophelia Inlet then along the Atlantic Ocean shoreline southwesterly to a point on Core Banks 34° 48.9349' N - 76° 21.4582' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Core Banks 34° 51.6790' N - 76° 18.3829' W; running southwesterly along the Atlantic Ocean shoreline toward and around the eastern side of Ophelia Inlet, then northeasterly along the Core Sound shore of Core Banks to the point of beginning; and~~
- (5)(e) ~~In the Bardens Inlet Area. Beginning at a point on Core Banks near the southern side of Hogpen Bay 34° 40.7047' N - 76° 29.6108' W; running westerly to a point near Marker "35" at 34° 40.7071' N - 76° 31.5922' W; running southwesterly to a point on Shackleford Banks 34° 38.9974' N - 76° 32.4858' W; running southeasterly around the eastern end of Shackleford Banks and then northwesterly along the ocean shoreline to a point on shore 34° 38.5608' N - 76° 32.6863' W; running southwesterly through Buoy "4" to Buoy "2" at the end of the Cape Lookout Jetty 34° 37.1272' N - 76° 33.7381' W; running southeasterly to the base of the Cape Lookout Jetty 34° 36.7836' N - 76° 33.1569' W; running northerly to the end of Power Squadron Spit, around Lookout Bight and northerly up Core Banks to~~

~~the point of beginning.~~ Barden Inlet Area: beginning at a point on the Core Sound shore of Core Banks 34° 40.7131' N – 76° 28.9495' W; running northwesterly to a point on Harkers Island 34° 41.0674' N – 76° 31.5834' W; running southwesterly to a point on Shackleford Banks 34° 39.5418' N - 76° 34.0451' W; following the shoreline in southeasterly direction around the northern side of Barden Inlet then along the Atlantic Ocean shoreline northwesterly to a point on Shackleford Banks 34° 38.7748' N - 76° 32.8463' W; running southwesterly to a point in the Atlantic Ocean 34° 38.2938' N - 76° 33.5130' W; running southerly to a point near Buoy "2" at the end of the Cape Lookout Jetty in the Atlantic Ocean 34° 37.1253' N - 76° 33.7446' W; running southeasterly to a point on Cape Lookout 34° 36.7229' N - 76° 33.0514' W; running northerly along the Atlantic Ocean shoreline toward and around the southern side of Barden Inlet to a point on Cape Lookout 34° 36.5492' N - 76° 32.2416' W, then running northeasterly along the Core Sound shore of Core Banks to the point of beginning.

(2) in Areas from Beaufort Inlet and West and South:

(a) Beaufort Inlet Area: beginning at a point on the Back Sound side of Shackleford Banks 34° 41.0017' N - 76° 37.7538' W; running northerly to a point on Carrot Island 34° 42.3553' N - 76° 37.1124' W; running westerly along the shoreline to a point on Carrot Island 34° 42.6291' N - 76° 38.6608' W; running westerly to a point on Town Marsh 34° 42.6394' N - 76° 38.7442' W; running westerly along the shoreline to a point on Town Marsh 34° 42.7915' N - 76° 40.2489' W; running westerly to a point on Bird Shoal 34° 42.7694' N - 76° 40.4764' W; running northerly to a point on Pivers Island 34° 42.9294' N - 76° 40.4301' W; running northerly along the shoreline to a point on Pivers Island 34° 43.1892' N - 76° 40.3873' W; running northerly to a point on Radio Island 34° 43.2344' N - 76° 40.4099' W; running along the shoreline to a point on Radio Island 34° 43.2770' N - 76° 41.2422' W; running along the south side of the Highway 70 Bridge over the Newport River to a point near the Morehead City Port 34° 43.2419' N - 76° 41.7067' W; running southerly along the shore to a point near the Morehead City Port 34° 42.9560' N - 76° 41.6986' W; running southwesterly to a point on Goat Island 34° 42.7185' N - 76° 41.9145' W; running southeasterly along the shoreline to a point on Goat Island 34° 42.2031' N - 76° 41.3923' W; running southwesterly to a point on shore near Fort Macon State Park 34° 42.1709' N - 76° 41.3693' W; following the shoreline in a southwesterly direction around the western shoreline of Beaufort Inlet then along the Atlantic Ocean shoreline to a point on Bogue Banks 34° 41.6480' N - 76° 42.0986' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running easterly then southeasterly and returning to shore parallel to a point on Shackleford Banks 34° 40.6129' N - 76° 38.1521' W; running northwesterly along the

Atlantic Ocean shoreline around the eastern side of Beaufort Inlet, then running easterly along the Back Sound shore of Shackleford Banks to the point of beginning;

(b) Bogue Inlet Area: beginning at a point on Bogue Banks 34° 39.1828' N - 77° 05.8503' W; running northerly to a point 34° 40.1526' N - 77° 05.6346' W; running northerly to a point 34° 40.2531' N - 77° 05.6385' W; running westerly to a point 34° 40.2550' N - 77° 05.9450' W; running southerly to a point 34° 40.1732' N - 77° 05.9616' W; running southerly to a point 34° 39.9629' N - 77° 06.1038' W; running southerly to a point 34° 39.5209' N - 77° 06.4042; running southwestery to a point 34° 39.0599' N - 77° 07.3287' W; running southerly to a point on Bear Island 34° 38.3856' N - 77° 07.2373'; following the shoreline in a northeasterly direction around the western shoreline of Bogue Inlet then along the Atlantic Ocean shoreline to a point on Bear Island 34° 37.5607' N - 77° 09.5752' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Bogue Banks 34° 38.7491' N - 77° 05.2548' W; running southwestery along the Atlantic Ocean shoreline around the eastern side of Bogue Inlet to a point 34° 38.7686' N - 77° 06.0596' W; running northerly to a point 34° 38.9900' N - 77° 06.1269' W, then running northeasterly to the point of beginning;

(c) Bear Inlet Area: beginning at a point on Bear Island 34° 37.7852' N - 77° 09.7128' W; running northerly to a point 34° 37.8817' N - 77° 09.7698' W; running southwestery to a point 34° 37.6695' N - 77° 10.4134' W; running northwesterly to a point 34° 37.8105' N - 77° 10.5849' W; running southwestery to a point on Saunders Island 34° 37.4531' N - 77° 11.0624' W; running southeasterly to a point on Browns Island 34° 37.2216' N - 77° 10.8461' W; following the shoreline in northeasterly direction around the western shoreline of Bear Inlet then along the Atlantic Ocean shoreline to a point on Browns Island 34° 36.1188' N - 77° 13.0193' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Bear Island 34° 37.5607' N - 77° 09.5752' W; running southwestery along the Atlantic Ocean shoreline around the eastern shoreline of Bear Inlet, then northeasterly along the shore to the point of beginning;

(d) Browns Inlet Area: beginning at a point on Browns Island 34° 35.8978' N - 77° 13.8409' W; running northwesterly to a point 34° 36.0015' N - 77° 13.9606' W; running westerly to a point 34° 35.9360' N - 77° 14.1340' W; running southerly to a point 34° 35.6631' N - 77° 14.1270' W; following the shoreline in a northeasterly direction around the western shoreline of Browns Inlet then along the Atlantic Ocean shoreline to a point 34° 33.7692' N - 77° 16.8043' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Browns Island 34° 36.1188' N -

- 77° 13.0193' W; running southwesterly along the Atlantic Ocean shoreline around the eastern shoreline of Browns Inlet, then northerly along the shore to the point of beginning;
- (e) New River Inlet Area: beginning at a point on shore on the south side of Wards Channel 34° 32.2064' N - 77° 19.8404' W; running northwesterly to a point 34° 33.1386' N - 77° 20.8902' W; running westerly to a point 34° 33.1097' N - 77° 21.1013' W; running southeasterly to a point 34° 32.3473' N - 77° 20.6013' W; running southwesterly to a point on Topsail Island 34° 32.1096' N - 77° 20.8447' W; following the shore line in a southerly direction around the western shoreline of New River Inlet then along the Atlantic Ocean shoreline to a point 34° 31.3352' N - 77° 21.1694' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point 34° 33.7692' N - 77° 16.8043' W; running southwesterly along the Atlantic Ocean shoreline around the eastern shoreline of New River Inlet, then northeasterly along the shore to the point of beginning;
- (f) Topsail Inlet Area: beginning at a point on Topsail Island 34° 21.9619' N - 77° 37.8381' W; running northwesterly to a point in Topsail Sound 34° 22.1071' N - 77° 37.9944' W; running southwesterly to a point near Marker "5" 34° 21.7185' N - 77° 38.3499' W; running southwesterly to a point near Marker "3" 34° 21.5798' N - 77° 38.5928' W; running southwesterly to a point near Marker "1" 34° 21.1055' N - 77° 39.1749' W; running northwesterly to a point 34° 21.2065' N - 77° 39.6127' W; running southwesterly to a point 34° 20.7450' N - 77° 40.3682' W; running southerly to a point 34° 20.3011' N - 77° 40.3728' W; following the shoreline in a northeasterly direction around the western shoreline of Topsail Inlet then along the Atlantic Ocean shoreline to a point on Lea-Hutaff Island 34° 20.0228' N - 77° 40.4332' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Topsail Island 34° 20.8762' N - 77° 38.9403' W; running southwesterly along the Atlantic Ocean shoreline around the eastern shore of Topsail Inlet, then northeasterly along the Topsail Sound shore of Topsail Island to the point of beginning;
- (g) Rich Inlet Area: beginning at a point on Lea-Hutaff Island 34° 18.1292' N - 77° 42.6492' W; running northwesterly to a point 34° 18.2851' N - 77° 42.9352' W; running southwesterly to a point 34° 18.0190' N - 77° 43.2798' W; running southerly to a point on Figure Eight Island 34° 17.5649' N - 77° 43.1649' W; following the shoreline in an easterly direction around the southern shoreline of Rich Inlet then along the Atlantic Ocean shoreline to a point on Figure Eight Island 34° 17.2243' N - 77° 43.2491' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Lea-Hutaff Island 34° 18.1251' N - 77° 42.4352' W; running southwesterly along the

Atlantic Ocean shoreline around the northern shoreline of Rich Inlet, then northeasterly along the shore to the point of beginning;

(h) Mason Inlet Area: beginning at a point on Figure Eight Island 34° 14.9536' N - 77° 45.9567' W; running northwesterly to a point 34° 15.0409' N - 77° 46.1766' W; running southwesterly to a point 34° 14.8657' N - 77° 46.4044' W; running southwesterly to a point 34° 14.7256' N - 77° 46.5348' W; running southerly to a point on Shell Island 34° 14.2036' N - 77° 46.5189' W; following the shoreline in a northeasterly direction around the southern shoreline of Mason Inlet then along the Atlantic Ocean shoreline to a point on Shell Island 34° 14.1375' N - 77° 46.4263' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Figure Eight Island 34° 14.8474' N - 77° 45.7857' W; running southwesterly along the Atlantic Ocean shoreline around the northern shoreline of Mason Inlet, then northeasterly along the shore to the point of beginning;

(i) Masonboro Inlet Area: beginning at a point on Wrightsville Beach 34° 11.3446' N - 77° 48.7458' W; running northwesterly to a point 34° 11.4604' N - 77° 49.0510' W; running northwesterly to a point 34° 11.5164' N - 77° 49.2368' W; running northwesterly to a point 34° 11.5255' N - 77° 49.2652' W; running northwesterly to a point 34° 11.5700' N - 77° 49.4425' W; running southwesterly to a point 34° 11.3553' N - 77° 49.5924' W; running easterly to a point 34° 11.3737' N - 77° 49.4628' W; running easterly to a point 34° 11.3737' N - 77° 49.4345' W; following the shoreline southeasterly to a point 34° 11.2551' N - 77° 49.2287' W; running southerly to a point on Masonboro Island 34° 10.8451' N - 77° 49.0242' W; following the shoreline in an easterly direction around the southern shoreline of Masonboro Inlet through a point at the base of the jetty 34° 10.8814' N - 77° 48.7074' W; running southwesterly along the Atlantic Ocean shoreline to a point on Masonboro Island 34° 10.5221' N - 77° 49.1658' W; extending 100 yards seaward from the shoreline and the Atlantic Ocean side of the jetties from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and returning to shore parallel to a point 34° 11.5753' N - 77° 48.3061' W; running southwesterly along the Atlantic Ocean shoreline through a point at the base of the jetty 34° 11.2076' N - 77° 48.5555' W, around the northern shoreline of Masonboro Inlet then northeasterly along the shore to the point of beginning;

(j) Carolina Beach Inlet Area: beginning at a point on Masonboro Island 34° 04.8168' N - 77° 52.8796' W; running southerly to a point 34° 04.4997' N - 77° 53.0080' W; following the shoreline in an easterly direction to a point 34° 04.5022' N - 77° 52.7982' W; running easterly to a point on Pleasure Island 34° 04.5102' N - 77° 52.7340' W; following the shoreline in an easterly direction around the southern shoreline of Carolina Beach Inlet then along the Atlantic Ocean shoreline to a point on Pleasure Island 34° 04.3505' N - 77°

52.5048' W; extending 100 yards seaward from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Masonboro Island 34° 05.2151' N - 77° 52.1472' W; running southeasterly along the Atlantic Ocean shoreline around the northern shoreline of Carolina Beach Inlet, then westerly along the shore to the point of beginning;

(k) Cape Fear River Inlet Area: beginning at a point on Bald Head Island 33° 52.7072' N - 78° 00.0449' W; running northeasterly to a point 33° 53.6135' N - 77° 59.2549' W; running northerly to a point 33° 54.4086' N - 77° 59.0330' W; running northerly to a point 33° 54.8399' N - 77° 58.9115' W; running westerly to a point at Southport 33° 54.9503' N - 78° 01.3581' W; running southerly to a point on Fort Caswell 33° 53.7948' N - 78° 01.0782' W; following the shoreline in a southerly direction around the western shoreline of Cape Fear River Inlet then westerly along the Atlantic Ocean shoreline to a point on Caswell Beach 33° 53.4293' N - 78° 01.7604' W; extending 100 yards seaward from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running southerly to point near Buoy "12" 33° 51.8213' N - 78° 01.0179' W; running southeasterly to a point 33° 51.1999' N - 78° 00.0632' W; running northeasterly to a point on Bald Head Island 33° 51.3488' N - 77° 59.9222' W; running northwesterly along the Atlantic Ocean shoreline around the eastern shore of Cape Fear River Inlet, then northeasterly along the shore to the point of beginning;

(l) Lockwoods Folly Inlet Area: beginning at a point on Oak Island 33° 54.9392' N - 78° 13.6711' W; running northerly to a point on Sheep Island 33° 55.0837' N - 78° 13.6753' W; following the shoreline northwesterly to a point on Sheep Island 33° 55.2263' N - 78° 13.9395' W; running westerly to a point on Holden Beach 33° 55.1794' N - 78° 14.3132' W; following the shoreline in a southwesterly direction around the western shore of Lockwoods Folly Inlet then along the Atlantic Ocean shoreline to a point on Holden Beach 33° 54.8695' N - 78° 14.6180' W; running southerly to a point in the Atlantic Ocean 33° 54.6076' N - 78° 14.6026' W; running easterly to a point in the Atlantic Ocean 33° 54.5564' N - 78 14.0529' W; running northerly to a point on Oak Island 33° 54.8853' N - 78° 14.0041' W; running northwesterly along the Atlantic Ocean shoreline around the eastern shore of Lockwoods Folly Inlet, then easterly along the shore to the point of beginning;

(m) Shallotte Inlet Area: beginning at a point near Monks Island 33° 54.5773' N - 78° 22.8077' W; running southwesterly to a point on Ocean Isle Beach 33° 54.2436' N - 78° 23.2758' W; following the shoreline in a southerly direction around the western shore of Shallotte Inlet then along the Atlantic Ocean shoreline to a point on Ocean Isle Beach 33° 53.8151' N - 78° 23.7753' W; extending 100 yards seaward from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running easterly and returning to shore parallel to a point on Big Beach 33° 54.1103' N - 78° 21.9540' W; running westerly

along the Atlantic Ocean shoreline around the eastern shore of Shallotte Inlet, then northerly along the shore to the point of beginning; and

(n) Tubbs Inlet Area: beginning at a point on the Jinks Creek shore of Ocean Isle Beach 33° 52.5844' N - 78° 28.6583' W; running northerly to a point 33° 52.7734' N - 78° 28.7428' W; running southwesterly to a point 33° 52.6815' N - 78° 29.0080' W; running southwesterly to a point on the Eastern Channel shore of Sunset Beach 33° 52.3878' N - 78° 29.1301' W; following the shoreline in an easterly direction around the western shore of Tubbs Inlet then along the Atlantic Ocean shoreline to a point on Sunset Beach 33° 52.3250' N - 78° 29.1865' W; extending 100 yards seaward of the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Ocean Isle Beach 33° 52.5676' N - 78° 28.4027' W; running southwesterly along the Atlantic Ocean shoreline around the eastern shore of Tubbs Inlet then in a northerly direction along the shore to the point of beginning.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. September 1, 1991;
Recodified from 15A NCAC 03R .0010 Eff. December 17, 1996;
Amended Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. (Pending legislative review of 15A NCAC 03L .0205).*

15A NCAC 03R .0118 is proposed for amendment as follows:

15A NCAC 03R .0118 ~~EXEMPTED CRAB POT ESCAPE RING AREAS~~ CRAB HARVEST MANAGEMENT AREAS

The areas referenced in 15A NCAC ~~03J-0301(g)~~ 03L .0201 (a) and (b) are delineated in the following coastal fishing waters:

- (1) ~~Pamlico Sound within the area described by a line beginning at a point 35° 43.7457' N 75° 30.7014' W on the south shore of Eagles Nest Bay on Pea Island; running westerly to a point 35° 42.9500' N 75° 34.1500' W; running southerly to a point 35° 39.3500' N 75° 34.4000' W; running southeasterly to a point 35° 35.8931' N 75° 31.1514' W in Chicamacomico Channel near Beacon "ICC"; running southerly to a point 35° 28.5610' N 75° 31.5825' W on Gull Island; running southwesterly to a point 35° 22.8671' N 75° 33.5851' W in Avon Channel near Beacon "1AV"; running southwesterly to a point 35° 18.9603' N 75° 36.0817' W in Cape Channel near Beacon "2"; running westerly to a point 35° 16.7588' N 75° 44.2554' W in Rollinson Channel near Beacon "42RC"; running southwesterly to a point 35° 14.0337' N 75° 45.9643' W southwest of Oliver Reef near the quick flashing beacon; running westerly to a point 35° 09.3650' N 76° 00.6377' W in Big Foot Slough Channel near Beacon "14BF"; running southwesterly to a point 35° 08.4523' N 76° 02.6651' W in Nine Foot Shoal Channel near Beacon "9"; running westerly to a point 35° 07.1000' N 76° 06.9000' W; running southwesterly to a point 35° 01.4985' N 76° 11.4353' W near Beacon "HL"; running southwesterly to a point 35° 00.2728' N 76° 12.1903' W near Beacon "1CS"; running southerly to a point 34° 59.5027' N 76° 12.3204' W in Wainwright Channel immediately east of the northern tip of Wainwright Island; running southwesterly to a point 34° 59.3610' N 76° 12.6040' W on Wainwright Island; running easterly to a point at 34° 58.7853' N 76° 09.8922' W on Core Banks; running easterly and northerly along the shoreline across the inlets following the COLREGS Demarcation line up the Outer Banks to the point of beginning.~~ Northern Region: All Coastal Fishing Waters of the state north and east of a line extending southeast from the Highway 58 Bridge to a point offshore at 34° 36.3292' N - 77° 02.5940' W to the North Carolina/Virginia state line.
- (2) ~~Newport River, from April 1 through June 15 within the area described by a line beginning at a point 34° 49.5080' N 76° 41.4440' W; running westerly along the south side of the Highway 101 Bridge over Core Creek to a point on the west shore 34° 49.5260' N 76° 41.5130' W; running along the shoreline of Newport River and its tributaries to a point 34° 49.3050' N 76° 44.2350' W; running westerly along the south side of the Highway 101 Bridge over Harlowe Canal to a point on the west shore 34° 49.2980' N 76° 44.2610' W; running along the shoreline of Newport River and its tributaries to a point 34° 45.2478' N 76° 46.4479' W; running southerly along the Inland Coastal Waters boundary line to a point 34° 45.1840' N 76° 46.4488' W; running along the shoreline of Newport River and its tributaries to a point 34° 43.2520' N 76° 41.6840' W; running easterly along~~

~~the north side of the Highway 70 Bridge over Newport River to a point 34° 43.2840' N - 76° 41.2200' W; running along the shoreline of Newport River and its tributaries to a point 34° 43.3530' N - 76° 40.2080' W; running easterly across Gallant Channel to a point 34° 43.3521' N - 76° 40.0871' W; running along the shoreline of Newport River and its tributaries back to the point of beginning.~~Southern Region: All Coastal Fishing Waters of the state south and west of a line extending southeast from the Highway 58 Bridge to a point offshore at 34° 36.3292' N - 77° 02.5940' W to the North Carolina/South Carolina state line.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. April 1, 2014;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. (Pending legislative review of 15A NCAC 03L .0201).*

Fiscal Analysis for Proposed Readoption and Amendments to 15A NCAC 03 Rules Related to Permit and License Suspensions and Revocations and Pound Net Gears Pursuant to G.S. 150B-21.3A

Rule Amendments: 15A NCAC 03I .0105
15A NCAC 03J .0501-.0505
15A NCAC 03O .0111, .0114, .0502, .0504
15A NCAC 03P .0101

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

Authority:

North Carolina General Statutes

G.S. 113-134.	Rules.
G.S. 113-137.	Search on arrest; seizure and confiscation of property; disposition of confiscated property.
G.S. 113-168.1.	General provisions governing licenses and endorsements.
G.S. 113-169.1.	Permits for gear, equipment, and other specialized activities authorized.
G.S. 113-171.	Suspension, revocation, and reissuance of licenses.
G.S. 113-182.	Regulation of fishing and fisheries.
G.S. 113-202.	New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.
G.S. 113-210.	Under dock oyster culture.
G.S. 113-221.1.	Proclamations: emergency review.
G.S. 143B-289.52.	Marine Fisheries Commission - powers and duties.
G.S. 150B-3.	Special provisions on licensing.
G.S. 150B-23.	Commencement; assignment of administrative law judge; hearing required; notice; intervention.

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. Eleven rules in 15A NCAC 03I, 03J, 03O, and 03P related to license and permit suspension and revocation, as well as Pound Net Set Permits, are proposed for readoption pursuant to this requirement. Additionally, proposed changes conform the rules to the requirements of G.S. 113-171 (Suspension, revocation, and reissuance of licenses) and the Administrative Procedure Act (APA), G.S. 150B, primarily G.S. 150B-2 (Definitions), G.S. 150B-3 (Special provisions on licensing), and G.S. 150B-23 (Commencement; assignment of administrative law judge; hearing required; notice; intervention). Throughout the rules, elements that merely repeat the content of law are proposed to be struck, per G.S. 150B-19. Minor technical and clarifying changes are also proposed to the rules.

II. Summary

Proposed changes seek to conform rules related to permit and license suspensions and revocations, as well as Pound Net Set Permits, to standards of the APA and to increase clarity of rules. Across all rules proposed for readoption, the majority of changes are conforming and clarifying changes that incur no impact to the state. Proposed changes with anticipated impacts provide authority to deal with rare events related to permits and licenses, provide significant context to the differences in license and permit suspensions, revocations, and requirements, provide administrative alternatives to increase overall Division of Marine Fisheries (Division) efficiency, and also propose changes to a flounder Pound Net Set Permit requirement in order to stay in compliance with the requirements of Amendment 2 to the Southern Flounder Fishery Management Plan (FMP). In all, these proposed changes provide benefits in terms of increased Division efficiency and increased protection of marine resources. However, while all of these benefits cannot be accurately quantified, the total impact is not significant to the state. No additional impacts to enforcement are anticipated.

III. Introduction and Purpose of Rule Changes

Proposed rules for readoption all relate to license and permit revocation and suspension or pound net permitting, and have been compiled into a single analysis given the similarity of rule language and context. Overall, the broad goal of proposed changes is to conform rules with the APA, as well as to increase the logic, efficiency, and clarity of rules relating to license and permit revocation and suspension.

The stated purpose of the APA is to establish "a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rulemaking, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process (G.S. 150B-1(a))." Part of the APA provides special provisions on licensing (G.S. 150B-3) and defines "license" to mean any certificate or permit of a right or privilege to engage in any activity, with certain exclusions (G.S. 150B-2(3)).

The Marine Fisheries Commission (MFC) has rules related to license, permit, and certificate suspension and revocation and one rule for requesting a review for license, permit, or certificate denial (15A NCAC 03P .0101). Proposed amendments conform these rules to the APA and other

authorizing statutes. Additionally, proposed changes to 15A NCAC 03O .0504 (Suspension and Revocation of Permits) make it consistent not only with the authorizing statutes but with the similar rule for licenses (15A NCAC 03O .0114). These changes result in consistent procedures for all licensees and permittees, helping to ensure their rights under the laws as well as to protect the resource. Additional minor changes to three other related rules (15A NCAC 03I .0105, 03O .0111, .0502) and five rules for Pound Net Set Permits (15A NCAC 03J .0500) result in a more streamlined and effective process for license and permit suspension and revocation overall.

When convictions occur and lead to license or permit suspension or revocation, these process improvements will result in a consistent and timely mechanism to suspend or revoke someone's rights for protection of the resource, as well as for fairness for law-abiding stakeholders. The management of estuarine and marine resources, including:

- Fishery Management Plans (G.S. 113-182.1);
- Coastal Habitat Protection Plans (G.S. 143B-279.8);
- Cultivation of Shellfish (Chapter 113, Article 16);
- Marine Aquaculture (Chapter 113-Article 16A);
- Recent changes to provide further support to the shellfish aquaculture industry in the state (S.L. 2019-37); and
- Protection of endangered or threatened species under the Endangered Species Act, increasingly rely on the flexibility provided by permits. Proposed rule changes will help to keep pace with this flexibility. The process improvements overall will result in enhanced protection of the resource while upholding the rights of an individual licensee or permittee.

Many of the proposed changes across these rules contain clarifying or technical changes with no anticipated impact. Proposed changes with expected impacts are summarized below.

In 15A NCAC 03O .0111, new paragraph (c) is proposed to address the rare situation if the Division issues a license in error. Proposed changes establish the authority in rule for such a license to be required to be surrendered immediately upon service by an agent of the Division Director to the stakeholder to surrender the license. Existing rule 03O .0110 addresses refund of any license fees in such an instance.

Proposed changes to 15A NCAC 03O .0504 update the rule so it is reflective of all three of the situations that can result in suspension or revocation of a permit:

- New Paragraph (a) clarifies that all permits are subject to suspension and revocation. New Paragraphs (b) and (c) cover the first situation when license suspension or revocation causes permit suspension or revocation. Paragraph (b) of the current rule contains an outdated reference to a six-month waiting period before application for a new permit following license revocation.
- New Paragraph (d) covers the second situation that can result in suspension or revocation of a permit: standard permit suspension or revocation for violation of permit conditions. This Paragraph makes it unlawful to violate any permit conditions. New requirements for service and reinstatement of permits, consistent with similar requirements for licenses in related rules are also proposed.
- New Paragraph (g) covers the third and final situation that can result in suspension or revocation of a permit: summary suspension, which is a rare event. Amendments to

Paragraph (h) and new Paragraph (i) clarify requirements for surrender of a permit that has been suspended, revoked, or issued in error by the Division. New Paragraph (j) states it shall be unlawful to evade the service prescribed in this rule, consistent with the rule for license suspension and revocation. Finally, new Paragraph (k) covers the requirements of the permittee set out in G.S. 113-202 for the removal of all gear upon revocation or denial of a permit, as well as termination of a shellfish lease.

In 15A NCAC 03P .0101, proposed changes conform the rule to the requirements of the APA and G.S. 113-171 for license suspension and revocation. Proposed changes separate license requirements from permit requirements and clarify that a permit includes a certification and a certificate of compliance, again consistent with the APA. Proposed changes to Paragraph (d) add the ability for a statement to be sent to the Division by electronic mail, not just via U.S. mail. Subsequent changes shorten the time period from 15 days to 10 days to reflect the flexibility electronic mail provides and to ensure timely protection of the resources under the authority of the MFC. For the protection of endangered or threatened species or a species managed by a quota, the time period is further shortened to five days, consistent with the severity of a possible violation leading to permit or license suspension or revocation.

Lastly, 15A NCAC 03J .0501 proposes changes to pound net permit uses based on recent developments in the Southern Flounder Fishery Management Plan in terms of shortened seasons and related management measures. Paragraph (b) of this rule currently requires a pound net used in a commercial fishing operation to be operational for a minimum of 30 consecutive days during the Pound Net Set Permit period. Since the adoption of Amendment 2, the commercial flounder seasons have been less than 30 days, creating a situation where it is not possible for a flounder pound net permittee to comply with the 30-day set requirement. Proposed changes delegate specific proclamation authority to the Division Director to waive this requirement when either a quota is met or for compliance with the N.C. Southern Flounder FMP, allowing the Division Director to address a flounder pound net set that cannot be set for the minimum period due to this FMP. The proposed changes would codify what has been handled by a policy exception since the adoption of Amendment 2 and provide a pathway for management in the future under Amendment 3 when quotas are expected to be implemented. This adds clarity to the rule for stakeholders and enforcement.

IV. Fiscal Impact Analysis

As proposed rule changes seek to conform with APA requirements and increase logic and efficiency of license and permit revocation and suspension processes, the overall thrust of impact to the state is a flow of non-quantifiable benefits related to increased efficiency and resource protection.

Proposed protocols to surrender licenses issued in error as part of 15A NCAC 03O .0111 should yield small benefits to the state in the form of increased efficiency and the elimination of risk from stakeholders using an erroneous license. As mentioned, this is a rare instance, and the benefit should not be considered significant.

In 15A NCAC 03O .0504, a series of proposed changes seeks to add clarity and context to the three unique situations that can result in suspension or revocation of a permit. While these proposed changes will not impact requirements or processes for permit revocations and suspensions, they will add significant clarity to Division staff and stakeholders on these conditions. This improved clarity will yield time savings to the state, though the overall benefit should not be significant.

Proposed changes to 15A NCAC 03P .0101 also yields similar time-cost benefits to the state due to clarifications between license and permit requirements, aiding in administration for the Division and its stakeholders. However, other proposed changes in the rule should yield other benefits as well. Firstly, proposed changes to allow stakeholders to email statements demonstrating compliance with license or permit requirements directly to the Division, as opposed to using U.S. mail, both reduces physical costs to stakeholders and the state and also increases overall efficiency, generating additional benefits. Additionally, the time window to submit statements of compliance is proposed to be shortened from 15 days to 10 days, and then to five days for permits or licenses related to protected species or quotas. Not only will these shortened timelines yield a benefit to the state from increased efficiency, they will also generate increased protections for marine resources in the state, especially those with a protected status. As this timeline shift yields just five or 10 additional days, this protection benefit is not expected to be significant. Additionally, the total benefit from proposed changes to 15A NCAC 03P .0101 is not significant as well.

Lastly, the proposed changes to 15A NCAC 03J .0501 yields insignificant benefits to the state. Overall, the proposed rule grants narrow proclamation authority for the Division Director to waive the 30-day pound net set requirements for the southern flounder fishery that has seasons that are less than 30 days in length. In terms of benefits, not only will this improve biological outcomes for the state's southern flounder fishery, but it also helps uphold the requirements of Amendment 2 to the Southern Flounder FMP, leading to administrative benefits for Division staff in the future. While the benefits mentioned from this proposed change cannot be accurately quantified at this time, the total combination of these impacts is not significant. Finally, no additional costs to enforcement are expected across all proposed changes.

V. Appendix

Proposed Rules for Readoption

15A NCAC 03I .0105 is proposed for readoption with substantive changes as follows:

15A NCAC 03I .0105 LEAVING DEVICES UNATTENDED

(a) It ~~is~~ shall be unlawful to leave stakes, anchors, nets, buoys, or floating devices in any ~~coastal fishing waters~~ Coastal Fishing Waters when such devices are not being employed in commercial fishing ~~operations~~ operations, except as otherwise provided by rule or General Statute.

(b) It ~~is~~ shall be unlawful to leave pots in any ~~coastal fishing waters~~ Coastal Fishing Waters for more than five consecutive ~~days~~ days when such pots are not being employed in commercial fishing operations, except upon a timely and sufficient showing of hardship as defined in ~~Subparagraph (b)(2)~~ Paragraph (c) of this Rule or as otherwise provided by General Statute. ~~(4)~~—Agents of the Fisheries Director may tag pots with a device approved by the Fisheries Director to aid and assist in the investigation and identification of unattended pots. Any such device attached to a pot by agents of the Fisheries Director ~~must~~ shall be removed by the individual utilizing the pot within five days of attachment in order to demonstrate that the pot is being employed in commercial fishing operations.

~~(c) (2)~~—For the ~~purposes of Paragraph (b) of this Rule only~~, purpose of this Rule, a timely and sufficient showing of hardship in a commercial fishing operation shall be written notice given to the Fisheries Director that a mechanical breakdown of the pot owner's ~~vessel(s)~~ vessel currently registered with the Division of Marine Fisheries under G.S. 113-168.6, or the death, ~~illness~~ illness, or incapacity of the owner of the pot or ~~his~~ their immediate ~~family~~ family as defined in G.S. 113-168, prevented or will prevent employing such pots in commercial fishing operations more than five consecutive days. The notice, specifying the time needed because of hardship, shall be received by the Fisheries Director before any pot is left in ~~coastal fishing waters~~ Coastal Fishing Waters for five consecutive days without being employed in commercial fishing operations, and shall state, in addition to the following, the number and specific location of the pots, and the date on which the pots will be employed in commercial fishing operations or removed from ~~coastal fishing waters~~ Coastal Fishing Waters:

~~(A)~~ (1) in case of mechanical breakdown, the notice shall state the commercial fishing vessel registration number, owner's N.C. motor boat registration number of the disabled vessel, date disabled, arrangements being made to repair the vessel or a copy of the work order showing the name, ~~address~~ address, and phone number of the repair facility; or

~~(B)~~ (2) in case of the death, ~~illness~~ illness, or incapacity of the owner of the pot or ~~his~~ their immediate family, the notice shall state the name of the owner or immediate family ~~member~~ member and either the date of ~~death~~ death, ~~the date and nature~~ death or the date of the illness or incapacity. The Fisheries Director may require a doctor's verification of ~~that~~ the illness or ~~incapacity~~ incapacity occurred.

~~(d) (3)~~—The Fisheries Director may, by proclamation, modify the ~~five-day~~ five-day requirement, if necessary due to hurricanes, severe ~~weather~~ weather, or other variable conditions. Failure to employ in commercial fishing operations

or remove from ~~coastal fishing waters~~ Coastal Fishing Waters all pots for which notice of hardship is received under this Rule within 14 days of the expiration of the hardship shall be violation of this Rule.

(~~e~~)(e) It is ~~shall be~~ unlawful to set or have any fishing equipment in ~~coastal fishing waters~~ Coastal Fishing Waters in violation of this Section or ~~which~~ that contains edible species of fish unfit for human consumption.

*History Note: Authority G.S. 113-134; 113-137; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996;
Recodified from 15A NCAC 03I .0005 Eff. December 17, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. September 1, 2005; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03J .0501 is proposed for reoption with substantive changes as follows:

SECTION .0500 – POUND NETS

15A NCAC 03J .0501 DEFINITIONS AND STANDARDS FOR POUND NETS AND POUND NET SETS

(a) ~~For the purpose of this Section the following terms are hereby defined:~~The following definitions shall apply to this Section:

- ~~(1) Pound Net Set Permit. A Division authorization to set and fish a pound net set in a commercial fishing operation in a specified location in a specified fishery.~~
- ~~(2) Permit period. One year from the date of issuance of a new or renewal pound net set permit.~~
- ~~(3)(1) Deployed pound net. Setting. "Deployed pound net" shall mean setting of any part of a pound net, net except for a location identification stake or or, for a pound net used in the Atlantic Ocean-Ocean, a location identification buoy placed at each end of a proposed new location.~~
- ~~(2) "Flounder pound net" shall mean a pound net set that produces a catch consisting of 50 percent or more flounder by weight of the entire landed catch, excluding blue crabs or a pound net set with all pounds (holding pen) constructed of four inch stretch mesh or greater.~~
- ~~(4)(3) Operational pound net set. A "Operational pound net set" shall mean a pound net set as defined in 15A NCAC 03I .0101 and deployed according to rules and permit conditions with net attached to stakes or anchors for the lead and pound, including only a single pound in a multi-pound set, and a non-restricted opening leading into the pound such that the set is able to catch and hold fish.~~
- ~~(4) "Permit period" shall mean from the date of issuance of a new or renewal Pound Net Set Permit to the expiration date.~~
- ~~(5) "Pound Net Set Permit" shall mean a Division of Marine Fisheries authorization to set and fish a pound net set in a commercial fishing operation in a specified location in a specified fishery.~~
- ~~(5) Flounder pound net. A pound net set that produces a catch consisting of 50 percent or more flounder by weight of the entire landed catch, excluding blue crabs or a pound net set with all pounds (holding pen) constructed of four inch stretch mesh or greater.~~
- ~~(6) Shrimp pound net. A "Shrimp pound net" shall mean a pound net set with all pounds (holding pen) constructed of stretch mesh equal to or greater than one and one-fourth inches and less than or equal to two inches.~~

(b) ~~It is shall be~~ unlawful for a pound net used in a commercial fishing operation to:

- ~~(1) Be be~~ deployed on a site without first obtaining a Pound Net Set Permit from the Fisheries Director.
- ~~(2) Fail fail~~ to be operational for a minimum of 30 consecutive days during the ~~pound net set permit period unless Pound Net Set Permit period, except the Fisheries Director may, by proclamation, waive this requirement if~~ a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being ~~met, met~~ or for compliance with the N.C. Southern Flounder Fishery Management Plan.

- (c) It ~~is shall be~~ unlawful for a pound net set in a commercial fishing operation in coastal fishing waters to fail to:
- (1) ~~Have have~~ the permittee's identification legibly printed on a sign no less than six inches square, securely attached to a stake at the permitted ends of each set at all times. For pound net sets in the Atlantic Ocean using anchors instead of stakes, the set shall be identified with a yellow ~~buoy, which~~ buoy that shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than 11 inches in length. The permittee's identification shall be legibly printed on the buoy. The identification on signs or buoys shall include the Pound Net Set Permit number and the permittee's last name and initials.
 - (2) ~~Have have~~ yellow light reflective tape or yellow light reflective devices on each pound. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions.
 - (3) ~~Have have~~ a marked navigational opening at least 25 feet wide at the end of every third pound. The opening shall be marked with yellow light reflective tape or yellow light reflective devices on each side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions.

If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

(d) It ~~is shall be~~ unlawful to use a Recreational Commercial Gear License (RCGL) shrimp pound net as defined in 15A NCAC 030 .0302 (a)(8) in coastal fishing waters unless the shrimp pound net is:

- (1) ~~Marked marked~~ by attaching to the offshore lead, ~~one a~~ floating buoy, any shade of hot pink in ~~color, which is color.~~ Buoys 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 gear owner's last name and initials~~ shall be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. ~~The If a vessel is used, the~~ identification shall also include ~~owner's last name and initials and if a vessel is used,~~ one of the following:
 - (A) ~~Gear gear~~ owner's current motor boat registration number; or
 - (B) ~~Owner's gear owner's~~ U.S. vessel documentation name.
- (2) ~~Set set~~ a minimum of 100 yards from a RCGL shrimp pound net set or 300 yards from an operational permitted shrimp pound net set.

(e) Escape Panels:

- (1) The Fisheries Director may, by proclamation, require escape panels in pound net sets and may impose any ~~or all~~ of the following requirements ~~or restrictions~~ on the use of escape panels:
 - (A) ~~Specify specify~~ size, number, and ~~location location~~;
 - (B) ~~Specify specify~~ mesh length, but not more than six ~~inches inches~~;
 - (C) ~~Specify specify~~ time or ~~season season~~; and

(D) ~~Specify~~ specify areas.

(2) It ~~is~~ shall be unlawful to use flounder pound net sets without four unobstructed escape panels in each pound. The escape panels shall be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels shall be a minimum mesh size of five and one-half inches, hung on the diamond, and shall be at least six meshes high and eight meshes long.

(f) ~~During 1 December through 1 February the~~ The Fisheries Director shall by proclamation establish time periods between December 1 through February 1 and areas where it ~~is~~ shall be unlawful to fail to remove all nets from pound net sets in commercial fishing operations in internal coastal waters.

(g) It ~~is~~ shall be unlawful within 30 days of abandonment of a permitted pound net set to fail to remove all stakes and associated gear from coastal fishing waters. The responsible party for abandoned pound net gear may be charged the costs incurred by the Division when the Division undertakes removal of the abandoned pound net gear.

History Note: Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;

Eff. April 1, 2009;

Readopted Eff. May 1, 2022 (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03J .0502 is proposed for readoption with substantive changes as follows:

15A NCAC 03J .0502 POUND NET SET PERMIT APPLICATION AND PROCESSING

(a) All initial, ~~renewal-renewal,~~ or transfer applications for Pound Net Set Permits, and the operation of such pound net sets, shall comply with the ~~rules-requirements~~ governing all permits as provided in 15A NCAC 03O .0502. The procedures and requirements for obtaining permits are set forth in 15A NCAC 03O .0501.

(b) Applicants for Pound Net Set permits shall meet the following eligibility requirements as determined by the Fisheries Director:

- (1) ~~Applicant~~ the applicant is an individual and not a corporation, partnership, organization or other entity;
- (2) ~~Applicant~~ the applicant has in the past complied with fisheries rules and laws and does not have any licenses or privileges under suspension or revocation. In addition, a history of habitual fisheries violations evidenced by eight or more convictions in 10 years shall make an individual ineligible.
- (3) ~~Applicant~~ the applicant has in the past complied with all permit conditions, ~~rules-rules,~~ and laws related to pound nets.
- (4) ~~Applicant~~ the applicant holds proper valid ~~license(s) and permit(s)~~ licenses and permits necessary to fish the type of net indicated in the application.

(c) Applications for Pound Net Set permits shall include the following:

- (1) ~~A~~ a base map provided by the Division of Marine Fisheries indicating the proposed set location including an inset vicinity map showing the location of the proposed set with detail sufficient to permit on-site identification and location.
- (2) ~~Declaration~~ declaration of the type of pound net that will be deployed at the site. One of the following pound net fisheries shall be specified:
 - (A) ~~Flounder~~ flounder pound net set;
 - (B) ~~Bait~~ bait pound net set;
 - (C) ~~Shrimp~~ shrimp pound net set;
 - (D) ~~Blue~~ blue crab pound net set; or
 - (E) ~~Other~~ other finfish pound net set.

(d) For proposed new ~~location(s),~~ locations, the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Set Permit allowing for public comment for 20 days, and after the comment period, may hold public meetings to take comments on the proposed pound net set. If the Director does not approve or deny the application within 90 days of receipt of a complete and verified application, the application ~~is~~ shall be deemed denied. The applicant shall be notified of denial in writing. Approval ~~is~~ shall be conditional based upon the applicant's continuing compliance with eligibility requirements set out in Paragraph (e) of this Rule and specific conditions contained on the Pound Net Set Permit. The applicant may contest final decision to approve or deny the denial of a Pound Net Set Permit application ~~may be appealed by the applicant~~ by filing a petition for a contested case ~~hearing,~~

~~in writing, within 60 days from the date of mailing notice of such final decision to the applicant, with the Office of Administrative Hearings under G.S. 150B-23.~~

(e) In order for a site to be deemed suitable for a pound net set, the proposed set location shall meet the following criteria as determined by the Fisheries Director:

- (1) ~~The the~~ proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not interfere with ~~public~~ navigation or with existing, traditional uses of the area other than navigation, and will not violate 15A NCAC 03J .0101 and .0102;
- (2) ~~The the~~ proposed pound net set will not interfere with the rights of any riparian or littoral landowner, including the construction or use of piers;
- (3) ~~The the~~ proposed pound net set will not, by its proximate location, interfere with existing pound net sets in the area. Flounder or other finfish pound net sets will be a minimum of 1,000 yards, as measured in a perpendicular direction, from any point on a line following the permitted location of existing pound net sets; except
 - (A) in Chowan River as referenced in 15A NCAC 03J .0203; and
 - (B) for renewal of pound net sets permitted prior to January 1, 2003;
- (4) ~~The the~~ proposed shrimp or blue crab pound net set will be a minimum of 300 yards, as measured in a perpendicular direction, from any point on a line following the permitted location of existing pound net sets;
- (5) ~~The the~~ proposed pound net set is not located in Core Sound in areas designated in 15A NCAC 03R .0113 except that only those Pound Net Set ~~Permits~~ permits valid within the specified area as of March 1, 1994, may be renewed or transferred subject to the requirements of this Rule; and
- (6) ~~Issuance~~ issuance of the proposed Pound Net Set Permit is in compliance with management measures adopted in fishery management plans.

*History Note: Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;
Eff. April 1, 2009;
Readopted Eff. May 1, 2022.*

15A NCAC 03J .0503 is proposed for readoption with substantive changes as follows:

15A NCAC 03J .0503 POUND NET SET PERMIT RENEWAL

An application for renewal of an existing Pound Net Set Permit shall be filed not less than 30 days prior to the date of expiration of the existing ~~permit,~~ permit and shall not be processed unless filed by the permittee. The Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Set ~~Permit.~~Permit, as set forth in the Rules of this Section. The Fisheries Director may hold public meetings and may conduct such investigations necessary to determine if the permit should be renewed.

*History Note: Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;
Eff. April 1, 2009;
Readopted Eff. May 1, 2022.*

15A NCAC 03J .0504 is proposed for reoption with substantive changes as follows:

15A NCAC 03J .0504 POUND NET SET PERMIT TRANSFER

It ~~is shall be~~ unlawful to transfer a Pound Net Set Permit without a completed application for transfer being submitted to the Division of Marine Fisheries not less than 45 days before the date of the transfer. The application shall be made by the proposed new permittee in writing and shall be accompanied by a copy of the current permittee's permit and an application for a Pound Net Set Permit in the new permittee's name. The Fisheries Director may hold a public meeting and conduct such investigations necessary to determine if the permit should be transferred. The transferred permit expires on the same date as the initial permit. Upon death of the permittee, the permit may be transferred to the Administrator/Executor of the estate of the permittee if transferred within six months of the Administrator/Executor's qualification in accordance with Chapter 28A of the North Carolina General Statutes. The Administrator/Executor shall provide a copy of the deceased permittee's death certificate, a copy of letters of administration/letters ~~testamentary~~ testamentary, and a list of eligible immediate family members as defined in G.S. 113-168 to the Morehead City Office of the Division. Once transferred to the Administrator/Executor, the Administrator/Executor may transfer the ~~permit(s)~~ permit or permits to eligible immediate family members of the deceased permittee. No transfer is effective until approved and processed by the Division.

*History Note: Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;
Eff. April 1, 2009;
Readopted Eff. May 1, 2022.*

15A NCAC 03J .0505 is proposed for readoption with substantive changes as follows:

15A NCAC 03J .0505 POUND NET SET PERMIT CONDITIONS

(a) It ~~is shall be~~ unlawful for a ~~permittee~~ permittee to:

- (1) ~~To~~ fail to notify the Division of Marine Fisheries Marine Patrol Communications Center by phone at 800-682-2632 or 252-726-7021 within 72 hours ~~by phone~~ of:
 - (A) ~~Of~~ an operational pound net set. Notification shall include the name of permittee, type of net, Pound Net Set Permit number, county where located, a specific location site, and how many pounds are in the set; and
 - (B) ~~Of~~ a change to the type of net being set at the permitted site.
- (2) ~~To~~ make false notifications.
- (3) ~~To~~ fail to render the pound net set inoperable during any closed season for the type of fishery for which the pound net is permitted.

Failure to comply with this Paragraph ~~is shall be~~ grounds for the Fisheries Director to revoke any Pound Net Set Permits held by the permittee and for denial of any future applications for Pound Net Set Permits.

(b) Pound net sets ~~are shall be~~ subject to inspection at all times.

(c) Daily reporting may be a condition of the permit for a pound net set for fisheries under a quota.

(d) It ~~is shall be~~ unlawful to fail to remove all pound net stakes and associated gear within 30 days after expiration of the permit or notice by the Fisheries Director that an existing Pound Net Set Permit has been revoked or denied.

*History Note: Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;
Eff. April 1, 2009;
Readopted Eff. May 1, 2022.*

15A NCAC 03O .0111 is proposed for readoption with substantive changes as follows:

15A NCAC 03O .0111 SURRENDER OF LICENSES

(a) It ~~is~~ shall be unlawful for any licensee to refuse to surrender to an agent of the Secretary all licenses, license receipts, endorsements, commercial fishing vessel registration or decals, and other forms and records relating to the license following service of notice of suspension or revocation of licenses in accordance with G.S. ~~413-171~~, 113-171 and Rule .0114 of this Section.

(b) It ~~is~~ shall be unlawful for any person in custody or possession of any licenses, license receipt, endorsements, commercial fishing vessel registration or decals, and other documentation required to be surrendered to refuse to surrender same to an agent of the Secretary making such demand.

(c) A license issued by the Division in error shall be required to be surrendered immediately upon service of a notice by an agent of the Fisheries Director to surrender the license.

*History Note: Authority G.S. 113-134; 113-171; 113-182; 143B-289.52; S.L. 2010-145;
Temporary Adoption Eff. July 1, 1999;
Eff. August 1, 2000;
Amended Eff. October 1, 2012;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03O .0114 is proposed for readoption with substantive changes as follows:

15A NCAC 03O .0114 SUSPENSION, REVOCATION, AND REISSUANCE OF LICENSES

(a) All commercial and recreational licenses issued under Article 14A, Article 14B, and Article 25A of Chapter 113 shall be subject to suspension and revocation.

(b) A conviction resulting from being charged by an inspector under G.S. 14-32, 14-33, 14-72, or 14-399 shall be deemed a conviction for the purposes of license suspension or revocation.

(c) Upon receipt of notice of a licensee's conviction as specified in G.S. 113-171 or a conviction as specified in Paragraph (b) of this Rule, the Fisheries Director shall determine whether it is a first, second, third, fourth, or subsequent conviction. Where several convictions result from a single transaction or occurrence, the convictions shall be treated as a single conviction for the purposes of license suspension or revocation. For a second conviction, the Fisheries Director shall suspend all licenses issued to the licensee for a period of 30 days; for a third conviction, the Fisheries Director shall suspend all licenses issued to the licensee for a period of 90 days; for a fourth or subsequent conviction, the Fisheries Director shall revoke all licenses issued to the licensee, except:

- (1) for a felony conviction under G.S. 14-399, the Fisheries Director shall suspend all licenses issued to the licensee for a period of one year;
- (2) for a first conviction under G.S. 113-187(d)(1), the Fisheries Director shall suspend all licenses issued to the licensee for a period of one year; for a second or subsequent conviction under G.S. 113-187(d)(1), the Fisheries Director shall revoke all licenses issued to the licensee;
- (3) for a conviction under G.S. 14-72, 113-208, 113-209, 113-268, or 113-269, the Fisheries Director shall revoke all licenses issued to the licensee; and
- (4) for a conviction under G.S. 14-32 or 14-33, if the offense was committed against a marine fisheries inspector, the Fisheries Director shall revoke all licenses issued to the licensee and the former licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional license authorized in Article 14A, Article 14B, or Article 25A of Chapter 113 for a period of two years.

(d) After the Fisheries Director determines that a conviction requires a suspension or revocation of the licenses of a licensee, the Fisheries Director shall cause the licensee to be served with written notice of suspension or revocation. If the licensee is not an individual, the written notice shall be served upon any responsible individual affiliated with the corporation, partnership, or association. The notice of suspension or revocation shall be served by an inspector or other agent of the Department or by certified mail, shall state the ground upon which it is based, and shall take effect immediately upon service. The agent of the Fisheries Director making service shall collect all license certificates and plates and other forms or records relating to the license as directed by the Fisheries Director. Upon service of a notice of suspension or revocation of a license, it shall be unlawful to fail to surrender any license so suspended or revoked.

(e) If a license has been suspended, the former licensee shall not be eligible to apply for reissuance of license or for any additional license authorized in Article 14A, Article 14B, or Article 25A of Chapter 113 during the suspension

period. Licenses shall be returned to the licensee by the Fisheries Director or the Director's agents at the end of a period of suspension.

(f) Where a license has been revoked, the former licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional license authorized in Article 14A, Article 14B and Article 25A of Chapter 113 for a period of one year, except as provided in Subparagraph (c)(4) of this Rule. For a request for reinstatement following revocation, the former licensee shall demonstrate in the request that the licensee will conduct the operations for which the license is sought in ~~accord~~accordance with all applicable laws and rules, shall submit the request in writing, and shall ~~send-mail~~ the request to the Fisheries Director, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. Upon the application of an eligible former licensee after revocation, the Fisheries Director may issue one license sought but not another, as necessary to prevent the hazard of recurring violations of the law.

(g) ~~A licensee shall not willfully~~ It shall be unlawful to evade the service prescribed in this Rule.

*History Note: Authority G.S. 113-134; 113-168.1; 113-171; 113-182; 143B-289.52; S.L. 2010-145;
Eff. October 1, 2012;
Amended Eff. May 1, 2017;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03O .0502 is proposed for readoption with substantive changes as follows:

15A NCAC 03O .0502 PERMIT CONDITIONS; GENERAL PERMIT CONDITIONS

(a) It shall be unlawful to violate any permit condition.

(b) The following conditions shall apply to all permits issued by the Fisheries Director:

- (1) ~~it is unlawful to~~ it shall be unlawful to:
 - (A) ~~operate under the permit except in areas, at times, and under conditions specified on the permit;~~
permit.
 - (2)(B) ~~it is unlawful to~~ operate under a permit without having the permit or copy thereof in possession of the permittee or his or her designees at all times of operation and the permit or copy thereof shall be ready at hand for inspection, except for a Pound Net Permits; Set Permit.
 - (3)(C) ~~it is unlawful to~~ operate under a permit without having a current valid picture identification in possession and ready at hand for inspection; inspection.
 - (4)(D) ~~it is unlawful to~~ refuse to allow inspection and sampling of a permitted activity by an agent of the Division; Division of Marine Fisheries.
 - (5)(E) ~~it is unlawful to~~ fail to provide complete and accurate information requested by the Division in connection with the permitted activity; activity.
 - (F) provide false information in the application for initial issuance, renewal, or transfer of a permit.
 - (6)(G) ~~it is unlawful to~~ hold a permit issued by the Fisheries Director when if not eligible to hold any license required as a condition for that permit as stated in 15A NCAC 03O .0501; Rule .0501 of this Section.
 - (7)(H) ~~it is unlawful to~~ fail to provide reports within the timeframe required by the specific permit conditions; conditions.
 - (8)(I) ~~it is unlawful to~~ fail to keep such records and accounts as required by the rules-Rules in this Chapter for determination of conservation policy, equitable and efficient administration and enforcement, or promotion of commercial or recreational fisheries; fisheries.
 - (9)(J) ~~it is unlawful to~~ assign or transfer permits issued by the Fisheries Director, except for a Pound Net Permits Set Permit as authorized by 15A NCAC 03J .0504; .0504.
- (10)(2) the Fisheries Director, ~~Director or his agent,~~ Director or their agent may, by conditions of the permit, ~~specify~~ impose any ~~or all~~ of the following restrictions for the permitted purposes:
 - (a) species;
 - (b) quantity or size;
 - (c) time period;
 - (e) location; _____
 - (d) means and methods;

~~(f) — disposition of resources;~~

~~(g) — marking requirements; or~~

~~(h) — harvest conditions.~~

(A) specify time;

(B) specify area;

(C) specify means and methods;

(D) specify requirements for a commercial fishing operation or for recreational purposes;

(E) specify record keeping and reporting requirements;

(F) specify season;

(G) specify species;

(H) specify size;

(I) specify quantity;

(J) specify disposition of resources;

(K) specify marking requirements; and

(L) specify harvest conditions.

~~(11)(3) unless specifically stated as a condition on the permit, all statutes, rules-rules, and proclamations shall apply to the permittee and his or her designees; and their designees.~~

~~(12) as a condition of accepting the permit from the Fisheries Director, the permittee agrees to abide by all conditions of the permit and agrees that if specific conditions of the permit, as identified on the permit, are violated or if false information was provided in the application for initial issuance, renewal or transfer, the permit may be suspended or revoked by the Fisheries Director.~~

History Note: Authority G.S. 113-134; 113-169.1; 113-182; 113-210; 143B-289.52;

Temporary Adoption Eff. May 1, 2000;

Eff. April 1, 2001;

Amended Eff. April 1, 2009; September 1, 2005;

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

15A NCAC 03O .0504 is proposed for readoption with substantive changes as follows:

15A NCAC 03O .0504 ~~SUSPENSION/REVOCATION~~ SUSPENSION AND REVOCATION OF PERMITS

(a) All commercial and recreational permits issued under Article 14A, Article 14B, and Article 25A of Chapter 113, and rules of the Marine Fisheries Commission shall be subject to suspension and revocation.

(b) If a license is required to hold a permit:

- (1) all permits shall be suspended or revoked if the permittee's license privilege has been suspended or revoked as set forth in G.S. 113-171 and 15A NCAC 03O .0114. The duration of the permit suspension or revocation shall be the same as the license suspension or revocation.
- (2) in the event a person makes application for a new permit during any period of license or permit suspension, no new permit shall be issued during the suspension period.
- (3) in the case of revocation of license privileges, the former licensee shall not be eligible to apply for reinstatement of a revoked permit.

(c) If a license is not required to hold a permit, in the case of revocation of a permit, the former permittee shall not be eligible to apply for reinstatement of a revoked permit for a period of six months.

~~(a)~~ (d) It shall be unlawful to violate any permit condition. For violation of ~~specific~~ permit conditions (as specified on the permit), permits may be suspended or revoked according to the following schedule:

- (1) violation of one ~~specific permit~~ condition in a ~~three year~~ three-year period, permit shall be suspended for 10 ~~days;~~ days.
- (2) violation of two ~~specific permit~~ conditions in a ~~three year~~ three-year period, permits shall be suspended for 30 ~~days;~~ days.
- (3) violation of three ~~specific permit~~ conditions in a ~~three year~~ three-year period, permits shall be revoked for a period not less than six months.
- (4) violation of any permit conditions as set forth in 15A NCAC 03J .0505(a), permits may be revoked and the former permittee may not be eligible to apply for any future Pound Net Set Permits.

If several permit conditions are violated as a result of a single transaction or occurrence, the permit violations shall be treated as a single violation for the purpose of suspension or revocation. ~~If the permit condition violated is the refusal to provide information upon request by Division staff, either by telephone, in writing or in person, the Fisheries Director may suspend the permit. Such permit may be reinstated 10 days after the requested information is provided.~~

~~(b) All permits will be suspended or revoked when the permittee's license privilege has been suspended or revoked as set out in G.S. 113-171. The duration of the suspension or revocation shall be the same as the license suspension or revocation. In the event the person makes application for a new permit during any period of license suspension, no new permit will be issued during the suspension period. In case of revocation of license privileges, the minimum waiting period before application for a new permit to be considered will be six months.~~

~~(e)~~ (e) Permit designees shall not be permitted to participate in a permit operation during any period they are under license suspension or revocation.

(f) If violation of permit conditions requires suspension or revocation of a permit, the Fisheries Director shall cause the permittee to be served with written notice of the intent to commence suspension or revocation. If the permittee is not an individual, the written notice shall be served upon any responsible individual affiliated with the corporation, partnership, or association. The notice of the intent to commence suspension or revocation shall be served by an inspector or other agent of the Department or by certified mail, and shall state the grounds upon which it is based.

(g) The Fisheries Director shall order summary suspension of a permit if it finds that the public health, safety, or welfare requires emergency action. Upon such determination, the Fisheries Director shall issue an order giving the reasons for the emergency action. The effective date of the order shall be the date specified on the order or the date of service of a certified copy of the order at the last known address of the permittee, whichever is later.

~~(h)~~ Upon service of a notice of suspension or revocation of a permit, it ~~is~~ shall be unlawful to fail to surrender any permit so suspended or revoked.

(i) It shall be unlawful to fail to surrender a permit issued by the Division in error immediately upon service of a notice by an agent of the Fisheries Director to surrender the permit.

(j) It shall be unlawful to evade the service prescribed in this Rule.

(k) It shall be unlawful to fail to remove all gear, markers, and devices associated with an Aquaculture Operation Permit within 30 days after expiration of the Aquaculture Operation Permit, termination of a shellfish lease for which the Aquaculture Operation Permit was issued, or notice by the Fisheries Director that an existing Aquaculture Operation Permit has been revoked or denied. Similar requirements for gear removal for a Pound Net Set Permit are described in 15A NCAC 03J .0505.

History Note: Authority G.S. 113-134; 113-171; 113-182; 113-202; 113-221.2; 143B-289.52; 150B-3; S.L. 2010-145;

Temporary Adoption Eff. May 1, 2000;

Eff. April 1, 2001;

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

15A NCAC 03P .0101 is proposed for readoption with substantive changes as follows:

SUBCHAPTER 03P - ~~HEARING~~ ADMINISTRATIVE PROCEDURES

SECTION .0100 - HEARING PROCEDURES

15A NCAC 03P .0101 LICENSE, PERMIT, OR CERTIFICATE DENIAL: REQUEST FOR REVIEW

(a) Except in cases where summary suspension is applicable, before the Division of Marine Fisheries may commence proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, notice shall be given to the license holder that the license holder may file a petition for a contested case in accordance with G.S. 113-171(e) and may request a final agency decision in accordance with G.S. 113-171 (f).

~~(a)(b)~~ For the purpose of this Rule and in accordance with G.S. 150B-2, "license" "permit" includes "permit" as well as "certification" and "certificate of compliance."

~~(b)(c)~~ Except in cases where G.S. ~~113-171~~ 113-171, 15A NCAC 03O .0114, or summary suspension is applicable, before the Division may commence proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, permit, notice shall be given to the license holder that permittee that the permittee:

- (1) may request an opportunity to show compliance with all requirements for retention of the permit by submitting a statement in writing to the personnel designated in the notice to commence proceedings; and
- ~~(1)(2)~~ the license holder has a the right, through filing a request for a contested case hearing in the Office of Administrative Hearings, to a hearing before an administrative law judge, judge and a final agency decision by the Marine Fisheries Commission; and
- ~~(2)~~ the license holder may request an opportunity to show compliance with all requirements for retention of the license by submitting a statement in writing to the personnel designated in the notice to commence proceedings.

~~(c)(d)~~ Any statements submitted by the license holder permittee to show compliance with all requirements for retention of the license permit shall be postmarked or emailed within 15-10 days of receipt of the notice to commence ~~proceedings~~ proceedings, except for a permit related to endangered or threatened species or a species managed by a quota, any statements to show compliance shall be postmarked or emailed within five days of receipt of the notice to commence proceedings. Statements and any supporting documentation shall be addressed to the personnel designated in the notice and ~~mailed if mailed, sent~~ to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC ~~28557~~ 28557, or if emailed, sent to the email address provided in the notice for the designated personnel.

~~(d)(e)~~ Upon receipt of a statement and any supporting documentation from the license holder, permittee, the Division shall review the statement and, within 15-10 days, shall notify the license holder permittee in writing with the Division's determination whether the license holder permittee demonstrated compliance with all requirements for

retention of the ~~license-permit~~. In making this determination, the Division may consider criteria including material changes made enabling the ~~license holder-permittee~~ to conduct the operations for which the ~~license-permit~~ is held in ~~accordance~~ with all applicable laws and ~~rules-rules~~, and processing errors made by the Division.

~~(e) The Division shall order summary suspension of a license if it finds that the public health, safety, or welfare requires emergency action. Upon such determination, the Fisheries Director shall issue an order giving the reasons for the emergency action. The effective date of the order shall be the date specified on the order or the date of service of a certified copy of the order at the last known address of the license holder, whichever is later.~~

*History Note: Authority G.S. 113-134; 113-171; 113-182; 113-221.2; 143B-289.52; 150B-3; 150B-23;
Eff. January 1, 1991;
Amended Eff. May 1, 2017; August 1, 1999;
Readopted Eff. May 1, 2022.*

1 15A NCAC 03I .0105 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 03I .0105 LEAVING DEVICES UNATTENDED**

4 (a) It ~~is shall be~~ unlawful to leave stakes, anchors, nets, buoys, or floating devices in ~~any coastal fishing waters when~~
5 Coastal Fishing Waters if such devices are not being employed in commercial fishing operations, except
6 as otherwise provided by rule or General Statute.

7 (b) It ~~is shall be~~ unlawful to leave pots in ~~any coastal fishing waters~~ Coastal Fishing Waters for more than five
8 consecutive ~~days, when days~~ if such pots are not being employed in commercial fishing operations, except upon a
9 timely and sufficient showing of hardship as ~~defined set forth in Subparagraph (b)(2)~~ Paragraph (c) of this Rule or as
10 otherwise provided by General Statute. The Fisheries Director may, by proclamation, modify the five-day requirement
11 if necessary due to hurricanes, tropical storms, other severe weather events recognized by the National Weather
12 Service, or other variable conditions pursuant to 15A NCAC 03H .0103. (4)—Agents of the Fisheries Director
13 may tag pots with a device approved by the Fisheries Director to aid and assist in the investigation and identification
14 of unattended pots. Any such device attached to a pot by agents of the Fisheries Director ~~must shall~~ be removed by
15 the individual ~~utilizing using~~ the pot within five days of attachment in order to demonstrate that the pot is being
16 employed in commercial fishing operations.

17 ~~(c) (2)~~—For the ~~purposes of Paragraph (b) of this Rule only, purpose of this Rule~~, a timely and sufficient showing of
18 hardship in a commercial fishing operation shall be ~~written notice given a statement in writing from the owner of the~~
19 pot or the owner's immediate family, as defined in G.S. 113-168, submitted to the Fisheries Director that a mechanical
20 breakdown of the pot owner's vessel(s) vessel currently registered with the Division of Marine Fisheries ~~under~~
21 pursuant to G.S. 113-168.6, or the death, illness illness, or incapacity of the owner of the pot or his their immediate
22 ~~family, as defined in G.S. 113-168, family~~ prevented or will prevent employing such pots in commercial fishing
23 operations for more than five consecutive days. The notice, specifying the time needed because of hardship, shall be
24 ~~received by the Fisheries Director before any pot is left in coastal fishing waters for five consecutive days without~~
25 ~~being employed in fishing operations, and shall state, in addition to the following, Statements and supporting~~
26 documentation shall be mailed to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead
27 City, NC 28557. Mailing a statement does not automatically exempt a fisherman from the requirements of this Rule.
28 The statement shall specify the number and specific location of the pots, and the date on by which the pots will be
29 employed in commercial fishing operations or removed from coastal fishing waters: Coastal Fishing Waters, and:

30 (A)(1) in the case of a mechanical breakdown, the notice shall state the commercial fishing vessel
31 ~~registration~~ Commercial Fishing Vessel Registration number, owner's N.C. motor boat registration
32 number of the disabled vessel, date disabled, and description of the arrangements being made to
33 repair the vessel or a copy of the work order showing the name, ~~address address~~, and phone number
34 of the repair facility; or

35 (B)(2) in the case of the death, illness illness, or incapacity of the owner of the pot or his their immediate
36 ~~family, the notice shall state the name of the owner or immediate family member, member and either~~

1 the date of ~~death, the date and nature~~ death or the date of the illness or incapacity. The Fisheries
2 Director may require a doctor's verification of ~~that~~ the illness or incapacity occurred.
3 ~~(d) (3) —~~The Fisheries Director may, by proclamation, modify the five day requirement, if necessary due to hurricanes,
4 ~~severe weather or other variable conditions.~~ Failure to employ in commercial fishing operations or remove from
5 ~~coastal fishing waters~~ Coastal Fishing Waters all pots for which ~~notice of a~~ hardship request is received ~~granted~~ under
6 this Rule within 14 days of the expiration of the hardship shall be violation of this Rule.
7 ~~(e)(e) It is~~ shall be unlawful to ~~set or have any use or possess~~ fishing equipment in ~~coastal fishing waters~~ Coastal
8 Fishing Waters in violation of this Section or ~~which~~ that contains edible species of fish unfit for human consumption.
9

10 *History Note: Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52;*
11 *Eff. January 1, 1991;*
12 *Amended Eff. March 1, 1996;*
13 *Recodified from 15A NCAC 03I .0005 Eff. December 17, 1996;*
14 *Amended Eff. April 1, 1997;*
15 *Temporary Amendment Eff. July 1, 1999;*
16 *Amended Eff. September 1, 2005; August 1, 2000;*
17 *Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

ADDITIONAL, MINOR CONFORMING CHANGES ARE PROPOSED TO PAGE ONE, LINES 5-6 OF THE RULE SINCE PUBLICATION BY OSBM OF THE ASSOCIATED FISCAL ANALYSIS OF THE PROPOSED RULE.

1 15A NCAC 03O .0504 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 03O .0504 ~~SUSPENSION/REVOCATION~~ SUSPENSION AND REVOCATION OF PERMITS**

4 (a) All commercial and recreational permits issued under Article 14A, Article 14B, and Article 25A of Chapter 113,
5 and rules of the Marine Fisheries Commission shall be subject to suspension and revocation. For the purpose of this
6 Rule and in accordance with G.S. 150B-2, "permit" includes "certification" and "certificate of compliance".

7 (b) If a license is required to hold a permit:

8 (1) all permits shall be suspended or revoked if the permittee's license privilege has been suspended or
9 revoked as set forth in G.S. 113-171 and 15A NCAC 03O .0114. The duration of the permit
10 suspension or revocation shall be the same as the license suspension or revocation.

11 (2) in the event a person makes application for a new permit during any period of license or permit
12 suspension, no new permit shall be issued during the suspension period.

13 (3) in the case of revocation of license privileges, the former licensee shall not be eligible to apply for
14 reinstatement of a revoked permit.

15 (c) If a license is not required to hold a permit, in the case of revocation of a permit, the former permittee shall not be
16 eligible to apply for reinstatement of a revoked permit for a period of six months.

17 ~~(a)~~ (d) It shall be unlawful to violate any permit condition. For violation of ~~specific~~ permit conditions (as specified on
18 the permit), permits may be suspended or revoked according to the following schedule:

19 (1) violation of one ~~specific permit~~ condition in a ~~three year~~ three-year period, permit shall be suspended
20 for 10 ~~days;~~ days.

21 (2) violation of two ~~specific permit~~ conditions in a ~~three year~~ three-year period, permits shall be
22 suspended for 30 ~~days;~~ days.

23 (3) violation of three ~~specific permit~~ conditions in a ~~three year~~ three-year period, permits shall be
24 revoked for a period not less than six months.

25 (4) violation of any permit conditions as set forth in 15A NCAC 03J .0505(a), permits may be revoked
26 and the former permittee may not be eligible to apply for any future Pound Net Set Permits.

27 If several permit conditions are violated as a result of a single transaction or occurrence, the permit violations shall be
28 treated as a single violation for the purpose of suspension or revocation. ~~If the permit condition violated is the refusal~~
29 ~~to provide information upon request by Division staff, either by telephone, in writing or in person, the Fisheries~~
30 ~~Director may suspend the permit. Such permit may be reinstated 10 days after the requested information is provided.~~

31 ~~(b) All permits will be suspended or revoked when the permittee's license privilege has been suspended or revoked~~
32 ~~as set out in G.S. 113-171. The duration of the suspension or revocation shall be the same as the license suspension~~
33 ~~or revocation. In the event the person makes application for a new permit during any period of license suspension, no~~
34 ~~new permit will be issued during the suspension period. In case of revocation of license privileges, the minimum~~
35 ~~waiting period before application for a new permit to be considered will be six months.~~

36 ~~(e)~~ (e) Permit designees shall not be permitted to participate in a permit operation during any period they are under
37 license suspension or revocation.

ADDITIONAL, MINOR CONFORMING CHANGES ARE PROPOSED TO PAGE ONE, LINES 5-6 OF THE RULE SINCE PUBLICATION BY OSBM OF THE ASSOCIATED FISCAL ANALYSIS OF THE PROPOSED RULE.

1 (f) If violation of permit conditions requires suspension or revocation of a permit, the Fisheries Director shall cause
2 the permittee to be served with written notice of the intent to commence suspension or revocation. If the permittee is
3 not an individual, the written notice shall be served upon any responsible individual affiliated with the corporation,
4 partnership, or association. The notice of the intent to commence suspension or revocation shall be served by an
5 inspector or other agent of the Department or by certified mail, and shall state the grounds upon which it is based.

6 (g) The Fisheries Director shall order summary suspension of a permit if it finds that the public health, safety, or
7 welfare requires emergency action. Upon such determination, the Fisheries Director shall issue an order giving the
8 reasons for the emergency action. The effective date of the order shall be the date specified on the order or the date of
9 service of a certified copy of the order at the last known address of the permittee, whichever is later.

10 ~~(d)~~(h) Upon service of a notice of suspension or revocation of a permit, it is shall be unlawful to fail to surrender any
11 permit so suspended or revoked.

12 (i) It shall be unlawful to fail to surrender a permit issued by the Division in error immediately upon service of a
13 notice by an agent of the Fisheries Director to surrender the permit.

14 (j) It shall be unlawful to evade the service prescribed in this Rule.

15 (k) It shall be unlawful to fail to remove all gear, markers, and devices associated with an Aquaculture Operation
16 Permit within 30 days after expiration of the Aquaculture Operation Permit, termination of a shellfish lease for which
17 the Aquaculture Operation Permit was issued, or notice by the Fisheries Director that an existing Aquaculture
18 Operation Permit has been revoked or denied. Similar requirements for gear removal for a Pound Net Set Permit are
19 described in 15A NCAC 03J .0505.

20
21 *History Note: Authority G.S. 113-134; 113-171; 113-182; 113-202; 113-221.2; 143B-289.52; 150B-3; S.L. 2010-*
22 *145;*

23 *Temporary Adoption Eff. May 1, 2000;*

24 *Eff. April 1, 2001;*

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

Fiscal Analysis for Proposed Readoption and Amendments to 15A NCAC 03P Rules

Rule Amendments: 15A NCAC 03P .0102, .0201-.0203, .0301-.0304

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: No
Federal government: No
Substantial impact: No

Authority:

North Carolina General Statutes

G.S. 113-134.	Rules.
G.S. 113-182.	Regulation of fishing and fisheries.
G.S. 113-182.1.	Fishery management plans.
G.S. 113-201.	Legislative findings and declaration of policy; authority of Marine Fisheries Commission.
G.S. 142B-289.51.	Marine Fisheries Commission – creation; purposes.
G.S. 143B-289.52.	Marine Fisheries Commission – powers and duties.
G.S. 150B-4.	Declaratory rulings.
G.S. 150B-20.	Petitioning an agency to adopt a rule.

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. Eight rules in chapter 15A NCAC 03P are proposed for readoption with substantive changes related to contested case hearings, declaratory rulings, and petitions for rulemaking.

II. Summary

Proposed rules for readoption seek to also improve clarity and efficiency to rules related to contested case hearings, declaratory rulings, and petitions for rulemaking. Overall, most changes are technical in nature and contain no anticipated fiscal impacts. However, a small set of proposed changes will incur benefits to the state from increased efficiency across these programs. Most benefits will be time-cost reductions for both Division staff and the public, while there are also benefits related to enhanced resource protection and reduced material costs for stakeholders submitting petitions in rulemaking. In total, this combination of benefits cannot be quantified but is not significant. No costs are anticipated, including no additional impacts to enforcement.

III. Introduction and Purpose of Rule Changes

These eight administrative procedures rules of the Marine Fisheries Commission are subject to readoption per G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules. Proposed changes conform the rules to the requirements of the Administrative Procedure Act, G.S. 150B, namely G.S. 150B-4, Declaratory rulings, G.S. 150B-20, Petitioning an agency to adopt a rule, and several articles of G.S. 150B that address administrative hearings and their judicial review. Throughout the rules, elements that merely repeat the content of law are proposed to be struck, per G.S. 150B-19. These proposed deletions bear no impact on the state. Additionally, proposed changes make minor technical and clarifying changes to these eight rules, which also incur no impact.

However, a small subset of proposed changes will likely incur a small impact to the state. These proposed changes are described below, while all proposed changes with no anticipated impacts will not be discussed further.

Rule 03P .0202, Procedure for Requesting Declaratory Rulings, currently contains many requirements more suitable for 03P .0203, Disposition of Requests for Declaratory Ruling. So, those elements are proposed to be struck from 03P .0202 and proposed to be added to 03P .0203 and in so doing, conforming changes based on the authorizing statutes are included.

Proposed changes to existing Paragraph (a) of 03P .0202 update and clarify to whom and where a request for a declaratory ruling shall be submitted. New Paragraph (b) has proposed text to update the rule with the third possible item on which a declaratory ruling can be requested, in Part (C) of Subparagraph (3), consistent with G.S. 150B-4. New Paragraph (c) clarifies the details that need to be included in a request, consistent with the item on which the ruling is being requested. New Paragraph (d) refers to requirements of G.S. 150B-23 for a contested case when a person similarly wishes to file a motion to intervene for a declaratory ruling. These proposed changes do not significantly alter requirements for submitting declaratory rulings, but rather provide improved detail and clarity on the overall process to improve efficiency and understanding.

Proposed changes to 03P .0203 include many of the elements proposed to be struck from 03P .0202. New Paragraph (e), which includes the elements of 03P .0202 old Paragraph (f), includes new sub-paragraphs (6) and (7). Together, these requirements take into account any effort previously expended by the Commission, Division, and stakeholders for material considered but rejected as not having merit when rulemaking originally occurred. In short, these requirements help to prevent someone from having a second opportunity for the same request that is made via a different tool (i.e., declaratory ruling vs. rulemaking). Being able to take into consideration any past efforts creates efficiencies for the declaratory ruling process and consistently applies the same set of standards in regards to requirements for activities under the Commission's authority.

Section 03P .0300 contains requirements for petitions for rulemaking. Proposed changes to existing Paragraph (a) of 03P .0301, Form and Contents of Petitions for Rulemaking, update and clarify to whom and where a request for a petition for rulemaking shall be submitted. For existing Paragraph (b) and new Paragraph (c), proposed changes separate items that shall be submitted by the petitioner from those that may be submitted, in accordance with the authority

set out in G.S. 150B-20. New Paragraph (d) clarifies the minimum elements the Marine Fisheries Commission shall consider in its review of the petitioned rules. Again, this is consistent with G.S. 150B-20 and simply codifies the current practice of the Commission based on the small number of rulemaking petitions received in the last 15 years. Old Paragraph (c) is proposed to be deleted, removing a small burden from the petitioner by no longer requiring multiple hard copies of a petition to be submitted when the petition exceeds a certain length. Receipt of a rulemaking petition is a rare event and most, if not all, are submitted electronically, so the requirement is obsolete. Again, these proposed changes seek to increase efficiency and clarity to both the state and the public while submitting petitions for rulemaking.

Proposed changes to 03P .0302, Review of Rulemaking Petitions by a Committee of the Commission, are largely technical and clarifying in nature. One additional change is proposed in new Paragraph (e) to require the committee chair to allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The chair retains the ability to determine whether additional interested persons shall make oral presentations before the committee, but this change provides balance to the request for the petitioned rules, in the interest of the public and the resource. This change also increases efficiency in the administration of committee meetings of the Commission. While receipt of a rulemaking petition is a rare event, it draws significant public interest and attendance at related meetings. Ensuring there is a balance to the presentations helps to minimize the number of interested persons who wish to make presentations at committee meetings, which translates to shorter, more efficient meetings for committee members, Division staff, and stakeholders that are involved.

Lastly, proposed changes to 03P .0303, Presentation of Rulemaking Petitions to the Commission, add elements to connect to requirements of the other rules of that Section, again with the intent of increasing logic and efficiency overall. In existing Paragraph (a), proposed changes connect to 03P .0301 for the submission of a complete petition. New paragraphs (b) and (c) compartmentalize requirements for a petition that was or was not referred to a committee of the Commission for review, respectively. These requirements harmonize with related requirements in rules of this Section. Additionally, new Paragraph (c) requires the Commission chair to allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The chair retains the ability to determine whether additional interested persons shall make oral presentations before the Commission, but this change provides balance to the request for the petitioned rules, in the interest of the public and the resource. As for this same change made to 03P .0302, this change increases efficiency in the administration of Commission meetings. Proposed changes to new Paragraph (d) clearly state the statutorily-based requirement for the Commission to either grant or deny the petition and the subsequent requirements.

IV. Fiscal Impact Analysis

As part of the readoption process, these eight rules are proposed with changes intended to increase clarity and efficiency around contested case hearings, declaratory rulings, and petitions for rulemaking. Overall, the majority of these proposed changes offer technical changes that incur no additional impacts; proposed changes anticipated to incur impacts are summarized above.

Across all of the proposed changes described above, each rule is expected to incur benefits to the state from increased efficiency in contested case hearings, declaratory rulings, and petitions for rulemaking. Clarifying changes are proposed to decrease Division staff labor and effort by providing greater detail across each of these processes, as well as reducing unnecessary redundancies. Additionally, stakeholders will have a clearer understanding of each process and its associated requirements. This also reduces the time burden to stakeholders for contested case hearings, declaratory rulings, and petitions for rulemaking, providing another time-cost benefit to the state.

Aside from these time-cost benefits, there is also a small benefit to the state's marine resources through these proposed changes, as the increased efficiency in evaluating contested case hearings, declaratory rulings, and petitions for rulemaking should reduce resource degradation and ultimately improve resource access overall.

Lastly, one proposed change in NCAC 03P .0301 incurs an additional type of benefit, as petitioners are no longer required to submit 15 hard copies of petitions for rulemaking greater than 10 pages. This should incur another small benefit as overall material costs related to the petition for rulemaking process are reduced. While all these anticipated benefits cannot be accurately quantified, the impact of each of these is not expected to be large, and in combination these benefits should not be considered significant.

Finally, it should be noted that across all the proposed changes, no additional costs are anticipated. This includes enforcement, as none of the proposed changes should incur impacts to enforcement as well.

V. Appendix

Proposed Rules for Readoption

15A NCAC 03P .0102 is proposed for readoption with substantive changes as follows:

15A NCAC 03P .0102 CONTESTED CASE HEARING PROCEDURES

~~Administrative~~ Contested case hearings shall be held in accordance with G.S. 150B, ~~and the administrative hearing procedures codified at 15A NCAC 1B .0200.~~ Article 3 of Chapter 150B of the General Statutes.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. August 1, 1999;
Readopted Eff. May 1, 2022.

15A NCAC 03P .0201 is proposed for readoption with substantive changes as follows:

SECTION .0200 - DECLARATORY RULINGS

15A NCAC 03P .0201 DECLARATORY RULINGS: GENERALLY

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Marine Fisheries Commission may issue a declaratory ruling as provided in G.S. ~~150B-4~~150B-4 and rules of this Section.

History Note: *Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4;*
 Eff. April 1, 1999;
 Readopted Eff. May 1, 2022.

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

15A NCAC 03P .0202 PROCEDURE FOR REQUESTING DECLARATORY RULINGS

(a) All requests for a declaratory ruling shall be ~~filed~~ submitted in writing ~~with the Director of the~~ to the Marine Fisheries Commission Chair and addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, Department of Environment and Natural Resources (DENR), 3441 Arendell Street, P.O. Box 769, Morehead City, North Carolina NC 28557.

(b) All requests shall include the following:

- (1) ~~the aggrieved person's~~ petitioner's name and address;
- (2) the rule, ~~statute~~ statute, or order upon which a ruling is desired;
- (3) a ~~concise~~ concise statement as to whether the request is for a ruling ~~on~~ on:
 - (A) the validity of a ~~rule or rule~~ rule;
 - (B) ~~on~~ the applicability of a rule, ~~order~~ order, or statute to a given factual situation; or
 - (C) a conflict or inconsistency within the Commission or the Department of Environmental Quality regarding interpretation of a law or rule adopted by the Commission;
- (4) arguments or data ~~which that~~ that demonstrate ~~that~~ the petitioner is aggrieved by the rule or statute or its potential application to ~~him~~ the petitioner;
- (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner; and
- (6) a draft of the proposed ruling; and
- (7) a statement of whether an oral argument is desired, and, if so, the reasons for requesting such an oral argument.

~~(b)(c)~~ A request for a ruling on the validity of a Commission rule shall state the petitioner's reasons for questioning the validity of the rule and a brief or legal memorandum supporting the petitioner's position. A request for a ruling on the applicability of a rule, order, or statute must shall include a description of the statement of the specific facts to a given factual situation on which the ruling is to be based, and documentation supporting those facts. A request for a ruling on the validity of a Commission rule must state the aggrieved person's reasons for questioning the validity of the rule. A request for a ruling to resolve a conflict or inconsistency within the Commission or the Department regarding interpretation of a law or rule adopted by the Commission shall include a written description identifying the conflict or inconsistency, the interpretation provided by the agency, and the law or rule in question. A person may ask for both multiple types of declaratory rulings in a single request. A request for a ruling must include or be accompanied by:

- (1) ~~a statement of the facts proposed for adoption by the Commission; and~~
- (2) ~~a draft of the proposed ruling.~~

(d) In the manner provided in G.S. 150B-23(d), any other person may request to intervene in the request for declaratory ruling. The request to intervene shall be determined by the Commission Chair.

(e) ~~Before deciding the merits of the request, the Commission may:~~

- (1) ~~request additional written submissions from petitioner(s);~~

- ~~(2) request a written response from the Division staff or any other person; or~~
- ~~(3) hear oral argument from the petitioner(s) and Division staff.~~

~~(d) Unless the Division waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. Upon written request, the requesting party and the Division may each be allowed to present oral arguments to the Commission at a regularly scheduled meeting. Neither party may offer testimony or conduct cross-examination before the Commission. The declaratory ruling shall be determined on the basis of the statement of facts submitted by the parties.~~

~~(e) Whenever the Commission believes "for good cause" that the issuance of a declaratory ruling is undesirable, the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the ruling, stating the reasons for the refusal to issue a ruling on the request.~~

~~(f) For purposes of Paragraph (e) of this Rule, the Commission shall ordinarily refuse to issue a ruling on a request for declaratory ruling on finding that:~~

- ~~(1) the petitioner(s) and the Division cannot agree on a set of facts sufficient to support a meaningful ruling;~~
- ~~(2) there has been a similar determination in a previous contested case or declaratory ruling;~~
- ~~(3) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court; or~~
- ~~(4) no genuine controversy exists as to the application of a statute or rule to the factual situation presented.~~

~~(g) The Commission shall keep a record of each declaratory ruling, which shall include at a minimum the following items:~~

- ~~(1) the request for a ruling;~~
- ~~(2) any written submissions by the parties;~~
- ~~(3) the statement of facts on which the ruling was based;~~
- ~~(4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;~~
- ~~(5) any other matter considered by the Commission in making the decision; and~~
- ~~(6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.~~

~~(h) A declaratory ruling is binding on the Commission and the person requesting it unless it is altered or set aside by the court. The Commission may not retroactively change a declaratory ruling, but nothing in this Section prevents the Commission from prospectively changing a ruling.~~

~~(i) Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits or deny the request within 60 days of receipt of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.~~

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4;
Eff. April 1, 1999;
Readopted Eff. May 1, 2022.*

15A NCAC 03P .0203 is proposed for readoption with substantive changes as follows:

15A NCAC 03P .0203 ~~DEFINITION~~DISPOSITION OF REQUESTS FOR DECLARATORY RULING

(a) The Marine Fisheries Commission Chair shall make a determination on the completeness of a request for declaratory ruling based on the requirements of this Section.

(b) Before the Commission decides the merits of the request, the Commission Chair may:

- (1) request additional written submissions from the petitioner;
- (2) allow the petitioner to file a reply to the response submitted in accordance with Subparagraph (1) of this Paragraph; and
- (3) request oral arguments from the petitioner or their legal counsel.

(c) Unless the Division of Marine Fisheries waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. The Division shall be allowed to present a written response and oral arguments to the Commission at a regularly scheduled meeting.

(d) The Commission shall make a decision to grant or deny the request in accordance with G.S. 150B-4.

(e) The Commission shall deny the request upon making any of the following findings:

- (1) the request is not complete;
- (2) the petitioner is not a person aggrieved;
- (3) there has been a similar determination in a previous contested case or declaratory ruling;
- (4) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
- (5) no genuine controversy exists as to the application of a statute, order, or rule to the factual situation presented;
- (6) the factual context put forward as the subject of the declaratory ruling was considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record;
- (7) the information provided by the petitioner, the Department, or any interveners does not support a determination that a rule is invalid; or
- (8) there is no material conflict or inconsistency within the Commission or Department regarding the law or rule identified by the petitioner.

(f) The Commission shall keep a record of each declaratory ruling, which shall include the following items:

- (1) the request for a ruling;
- (2) any written submission by a party;
- (3) the statement of facts on which the ruling was based;
- (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
- (5) any other matter considered by the Commission in making the decision; and
- (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.

(g) For purposes of ~~Rule .0202~~ of this Section, a declaratory ruling shall be deemed to be ~~"in effect"~~ until in effect until:

- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered;~~amended, altered or repealed;~~
- (2) any court of the Appellate Division of the General Court of Justice construes the statute or rule that is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling;
- (3) ~~until~~ the Commission changes the declaratory ruling ~~prospectively for good reasons;~~prospectively;
or
- (4) ~~until~~ any court sets aside the declaratory ruling in litigation between the Commission or Department of ~~Environment and Natural Resources~~ Environmental Quality and the party requesting the ruling; or until any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4;
Eff. April 1, 1999;
Readopted Eff. May 1, 2022.

15A NCAC 03P .0301 is proposed for re-adoption with substantive changes as follows:

SECTION .0300 - PETITIONS FOR RULEMAKING

15A NCAC 03P .0301 FORM AND CONTENTS OF ~~PETITION~~PETITIONS FOR RULEMAKING

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Marine Fisheries Commission (~~hereinafter referred to as the Commission~~) shall ~~make his~~submit their request in a written petition ~~addressed to the Chairman of the Marine Fisheries Commission~~ Chair and submitted addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. ~~Commission staff at:~~

~~Marine Fisheries Commission~~

~~Division of Marine Fisheries~~

~~PO Box 769~~

~~Morehead City, North Carolina 28557.~~

(b) The petition shall specify it is filed pursuant to G.S. 150B-20 and shall contain the following information:

- ~~(1) the text of the proposed rule(s);~~
- ~~(2) the statutory authority for the agency to promulgate the rule(s);~~
- ~~(3) a statement of the reasons for adoption of the proposed rule(s);~~
- ~~(4) a statement of the effect on existing rules;~~
- ~~(5) copies of any documents and data supporting the proposed rule(s);~~
- ~~(6) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including an estimate of cost factors for persons affected by the proposed rule(s);~~
- ~~(7) a description of those most likely to be affected by the proposed rule(s); and~~
- ~~(8) the name(s) and address(es) of the petitioner(s).~~
- (1) the text of the proposed rules for adoption or amendment;
- (2) a statement of the reasons for adoption or amendment of the proposed rules, or the repeal of existing rules;
- (3) a statement of the effect of the requested rule changes on:
 - (A) existing rules;
 - (B) existing practices in the area involved; and
 - (C) those most likely to be affected by the requested rule changes; and
- (4) the name and address of the petitioner.

(c) The petitioner may include the following information within the request:

- (1) the statutory authority for the agency to promulgate the rules;
- (2) a statement of the cost factors for persons affected by the proposed rules;
- (3) a statement explaining the computation of the cost factors;

(4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rules; and

(5) documents and data supporting the proposed rules.

~~(e) When petitions and supporting documents and data exceed 10 pages in length, 15 copies of the entire petition and any attachments shall be submitted.~~

(d) In its review of the proposed rules, the Commission shall consider:

(1) whether it has the authority to adopt the rules;

(2) the effect of the proposed rules on existing rules, programs, and practices;

(3) probable costs and cost factors of the proposed rules; and

(4) the impact of the rules on the public and regulated entities.

~~(d)(e) Petitions~~ A petition failing to contain the required information shall be returned by the Marine Fisheries Commission Chairman/Chair.

*History Note: Authority G.S. 113-134; 113-182; 113-182.1; 113-201; 143B-289.51; 143B-289.52; 150B-20;
Eff. April 1, 1999;
Readopted Eff. May 1, 2022.*

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

15A NCAC 03P .0302 REVIEW OF RULEMAKING PETITIONS BY A COMMITTEE OF THE COMMISSION

(a) The Marine Fisheries Commission ~~Chairman~~Chair may refer ~~duly submitted petitions~~complete petitions, as set forth in Rule .0301 of this Section, to the appropriate standing advisory ~~committee(s)~~committees or other advisory ~~committee(s)~~committees of the Commission for review and recommended action. Copies of petitions for rulemaking shall be distributed to the Commission members when referred to a committee of the Commission.

(b) ~~The Chairman~~Within 10 days of the assignment of the complete petition, the Chair of the Committee assigned to review a submitted petition for rulemaking shall announce the date of a meeting to consider the ~~petition within 10 days of the assignment of the~~ petition.

(c) At least 15 days before the Committee meeting, the Committee ~~Chairman~~Chair shall send notice of the Committee meeting to the petitioner, members of the Commission, and persons who have requested notice of petitions for rulemaking.

(d) ~~The~~If the petition is referred to a Committee, the petitioner shall be afforded the opportunity to present the petition for rulemaking to the Committee. The Fisheries Director, through Division of Marine Fisheries staff, or their legal counsel may make a presentation to the Committee.

(e) The Committee Chair shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Committee Chair may determine whether additional interested persons shall make oral presentations before the Committee.

~~(e)~~(f) InterestedAt least 10 days before the Committee meeting, interested persons ~~must~~shall request the opportunity to make a presentation to the ~~Committee(s)~~Committees through the ~~Committee(s) chair(s)~~Chairs of the Committees.

The request shall:

- (1) state the interest of the ~~person~~person;
- (2) state the person's position on the petition for rulemaking, rulemaking; and
- (3) be accompanied by supporting materials.

~~The Chairman of the Committee will determine whether additional interested persons make oral presentations before the Committee.~~

(f) ~~The Chairman of the Committee will determine whether a public meeting should be conducted by the Committee before it makes a recommendation on the petition for rulemaking.~~

(g) During the ~~Committee's~~Committee's review, members of the Commission, other than Committee members, who are present may participate as a member of the Committee in discussions of the petition but may not vote on the recommended action on the petition.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52; 150B-20;
Eff. April 1, 1999;
Readopted Eff. May 1, 2022.*

15A NCAC 03P .0303 is proposed for re adoption with substantive changes as follows:

15A NCAC 03P .0303 PRESENTATION OF RULEMAKING PETITIONS TO THE COMMISSION

(a) ~~Petitions~~ A complete petition for rulemaking, when deemed complete by the Marine Fisheries Commission Chairman, as set forth in Rule .0301 of this Section, shall be presented to the Marine Fisheries Commission for its consideration and determination at the next regularly scheduled meeting of the Commission.

(b) If the petition for rulemaking was reviewed by a Committee pursuant to Rule .0302 of this Section, the petition and the Committee's recommended action shall be presented through the Chair of the Committee or other designated member of the Committee during the business session of the Commission. Unless the Commission Chair rules otherwise, discussion on the petition shall be limited to the members of the Commission, legal counsel to the Commission, the Fisheries Director, Division of Marine Fisheries staff, legal counsel to the Division, the petitioner, and the petitioner's legal counsel.

(c) For a petition not referred to a Committee, the Commission Chair shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Commission Chair may determine whether additional interested persons shall make oral presentations before the Commission. At least 10 days before the Commission meeting, interested persons shall request the opportunity to make a presentation to the Commission through the Commission Chair. The request shall:

- (1) state the interest of the person;
- (2) state the person's position on the petition for rulemaking; and
- (3) be accompanied by supporting materials.

~~(b)(d)~~ Within 120 days following submission of the petition requesting rulemaking, the Marine Fisheries Commission shall:

- (1) grant the petition in writing, notify the petitioner in writing, and initiate rulemaking proceedings in accordance with G.S. 150B-20 and notify the person(s) who submitted the petition of the decision in writing; 150B-20; or
- (2) deny the petition in writing, stating the reason or reasons for the denial, and send the written denial to the ~~person(s)~~ person or persons who submitted the petition.

*History Note: Authority G.S. 113-134; 113-182; ~~143B-289.51; 143B-289.52~~; 150B-20;
Eff. April 1, 1999;
Readopted Eff. May 1, 2022.*

15A NCAC 03P .0304 is proposed for repeal through readoption as follows:

15A NCAC 03P .0304 RECOURSE TO DENIAL OF THE PETITION

~~If the Marine Fisheries Commission denies the petition for rulemaking, the petitioner(s) may seek judicial review of the denial under G.S. 150B, Article 4 of Chapter 150B of the General Statutes.~~

*History Note: Authority G.S. 113-134; 113-182; 143B-289.51; 150B-20;
 Eff. April 1, 1999;
 Repealed Eff. May 1, 2022.*

**Fiscal Impact Analysis of Proposed Amendment and Readoption or Repeal of 15A NCAC
03K and 18A Crustacea and Shellfish Rules
Pursuant to G.S. 150B-21.3A**

Rule Amendments: 15A NCAC 03K .0103, .0104, .0107, .0109, .0208, .0209, 18A
.0135, .0302, .0425 (amendment and readoption)
15A NCAC 18A .0303, .0304, .0912 (repeal through readoption)

Name of Commission: N.C. Marine Fisheries Commission

Agency Contact: Catherine Blum, Rulemaking Coordinator
N.C. Division of Marine Fisheries
3441 Arendell Street
Morehead City, NC 28557
252-726-7021
Catherine.Blum@ncdenr.gov

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

Authority:

North Carolina General Statutes

G.S. 113-134.	Rules.
G.S. 113-168.5.	License endorsements for Standard Commercial Fishing License.
G.S. 113-169.2.	Shellfish license for North Carolina residents without a SCFL.
G.S. 113-182.	Regulation of fishing and fisheries.
G.S. 113-201.	Legislative findings and declaration of policy; authority of Marine Fisheries Commission.
G.S. 113-203.	Transplanting of oysters and clams.
G.S. 113-204.	Propagation of shellfish.
G.S. 113-221.1.	Proclamations; emergency review.
G.S. 113-221.2.	Additional rules to establish sanitation requirements for scallops, shellfish, and crustacea; permits and permit fees authorized.
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 nine rules and repeal through readoption three

rules in 15A NCAC 03K and 18A pursuant to this requirement. These rules all relate to crustacea and shellfish, management areas for them, and the sanitary handling of them.

II. Summary

These 12 rules relating to crustacea and shellfish set specific requirements for shellfish management areas (15A NCAC 03K .0103, .0104, .0208, .0209, 18A .0303, .0912), depuration of shellfish (15A NCAC 03K .0107, 18A .0304), crustacea and shellfish permits (15A NCAC 18A .0135, .0302), and shellfish tagging (15A NCAC 03K .0109, 18A .0425). Session Law 2011-145 abolished the Division of Environmental Health (DEH) and transferred the Shellfish Sanitation and Recreational Water Quality Section to the Division of Marine Fisheries (DMF) under a Type I transfer. Prior to this change, the DEH advised the DMF on certain matters relating to public health of crustacea and shellfish and the DEH rules bore this out by one division advising the other. Now that the authority for these rules all fall under the Marine Fisheries Commission (MFC), the agency is proposing amendments to rules that have overlapping content, including the repeal through readoption of 15A NCAC 18A .0303, .0304, and .0912. In addition, amendments are proposed to increase efficiency for the DMF, which will provide a small but unquantifiable benefit to the State and some stakeholders and could result in potential indirect impacts for other stakeholders. No new costs to enforcement are estimated from these proposed rule amendments. These rules have been reviewed to conform to the requirements of G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules. As a result, the proposed readoptions also consist of amendments that conform the rules to current standards.

III. Introduction and Purpose of Rule Changes

Session Law 2011-145 abolished the DEH and transferred the Shellfish Sanitation and Recreational Water Quality section to the DMF 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 MFC, which is now contained in G.S. 113-221.2 and G.S. 113-221.4.

The purpose of the 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).

The agency is proposing 12 rules for readoption or repeal through readoption pursuant to G.S. 150B-21.3A. In so doing, amendments are proposed to simplify requirements where there is overlapping content resulting from the Type I transfer. The most apparent occurrences of this are the proposed repeal of 15A NCAC 18A .0304, Depuration Harvesting Permits, which is redundant with 15A NCAC 03K .0107, Depuration of Clams and Oysters, and the proposed repeal of 15A NCAC 18A .0912, Shellfish Management Areas, which is redundant with 15A NCAC 03K .0103 of the same name. Neither of these 18A rules sets any unique requirements not already set in other MFC rules. Similarly, 15A NCAC 18A .0303, Relaying Permits, and 15A

NCAC 03K .0104, Permits for Relaying Shellfish from Polluted Areas, have overlapping content. In this case, the 18A rule sets a few requirements that are proposed to be added to the 03 rule for clarity and efficiency, so repeal of 18A .0303 is contingent on the reoption of 03K .0104. The proposed repeal of 18A .0303, .0304, and .0912 are not expected to have any impacts and so will not be elaborated on further in this analysis.

The remaining nine rules for reoption contain proposed amendments to accomplish two primary goals. Firstly, amendments are proposed to increase efficiency for the DMF for requirements pertaining to crustacea and shellfish, management areas for them, and the sanitary handling of them, which could result in potential indirect impacts for some stakeholders, but will provide a small but unquantifiable benefit to the State and other stakeholders. These efficiencies are expected to be gained by making rule requirements more clear and consistent and by moving established requirements from proclamations and permit conditions into rules. Secondly, the proposed reoptions consist of amendments that conform the rules to current standards for punctuation, capitalization, word usage, agency name, and other similar technical changes that are not elaborated on further in this analysis.

The proposed amendments to increase efficiency for the DMF for requirements pertaining to crustacea and shellfish can be further segmented into two categories: shellfish management areas generally, and the sanitary handling of crustacea and shellfish. The second category is further organized by requirements for depuration of shellfish, crustacea and shellfish permits, and shellfish tagging.

Shellfish Management Areas

Requirements for shellfish management areas (generally) are set in 15A NCAC 03K .0103, Shellfish Management Areas, 03K .0208, Seed Oyster Management Areas, and 03K .0209, Oyster Sanctuaries. Requirements are also set in 15A NCAC 03K .0104, Permits for Relaying Shellfish from Polluted Areas. This analysis examines these two sub-categories separately.

Shellfish Management Areas, Seed Oyster Management Areas, and Oyster Sanctuaries

Rules 15A NCAC 03K .0103, .0208, and .0209 are proposed for reoption with amendments primarily intended to clarify and conform rule language to existing practices. Each of the three rules describes a different management tool, and therefore proposed amendments include definitions for each tool within the corresponding rule. The purpose is to assist stakeholders and DMF resource managers in differentiating between management tools and understanding the intended management strategies for each. The net effect of these rule amendments is negligible because the intent of the rules has not changed, it is only made more clear and consistent.

Beyond these clarifying changes, proposed amendments delegate proclamation authority to the DMF Director related to delineations of these areas. In 03K .0103 and .0209, the DMF Director may designate or modify boundaries of Shellfish Management Areas (SMAs) and Oyster Sanctuaries, respectively, to address variable conditions of biological impacts or variable spatial distribution, such as shifting reef materials. Seed Oyster Management Areas (SOMAs) boundaries are delineated in MFC rule (15A NCAC 03R .0116), however proposed amendments to 03K .0208 delegate proclamation authority for the DMF Director to modify or close those designated areas for the protection of public health or because the areas are no longer productive.

There are current SOMAs that are no longer in open harvest waters and therefore, cannot be used as a SOMA. Further, there are other current SOMAs that are no longer in productive areas for growing shellfish and therefore, are not being used as SOMAs. Proposed changes are not expected to have impacts to the State or stakeholders beyond benefits from clarifying the current status of a particular SOMA.

Additional proposed amendments in 03K .0103 and .0209 remove marking requirements for SMAs and Oyster Sanctuaries, respectively. In 03K .0103, boundary marking may not be appropriate unilaterally, depending on the size of the area and the management measures within the boundaries, so flexibility is needed. As a result, proposed amendments provide a mechanism for the DMF Director to specify marking requirements in proclamation in conjunction with other management requirements. In 03K .0209, marking requirements are not required in rule for two reasons: 1) marking for navigation is already prescribed by the U.S. Coast Guard and 2) 15A NCAC 03I .0121, Maps and Marking, states boundary descriptions in Chapter 03 and in proclamations prevail over markers and signs. Therefore, the absence of markers and signs does not affect the applicability of rules or proclamations so long as the boundary descriptions are described. Removing the marking requirements from 03K .0103 and .0209 also removes unnecessary burden on DMF staff, who are responsible for marking, which will provide a small but unquantifiable benefit to the State.

Lastly, additional proposed amendments in 03K .0103 standardize the DMF Director's proclamation authority and broaden it to impose requirements for season, size, quantity, and marking, consistent with other similar rules. The use of this authority is expected to benefit the resources overall by protecting value-added shellfish enhancement projects, often undertaken by nongovernmental organizations, while they are being developed. These designations are usually temporary in nature based on the timespan of a project. No direct impacts are expected to fishermen as existing habitat areas would not be restricted under this rule. Proclamation authority is also proposed in 03K .0209 for the DMF Director to restrict the use of fishing gears on oyster sanctuaries, based on variable conditions of biological impacts or user conflicts. Authority provided to the director in this rule is intended as a proactive measure to address issues such as derelict gears, protected species interactions, or over-exploitation of resources, should they arise. This additional authority is not intended to address any ongoing management concerns; however, its use could have potential indirect impacts to stakeholders in the future if restrictions need to be implemented. The impacts could include loss of catch efficiency on oyster sanctuaries for recreational fishermen, but the corresponding benefits could relate to increased productivity of the oyster reefs themselves, protection of endangered or threatened species, and health of the resources overall. Restrictions within the boundaries of SOMAs are prescribed within the existing rule and are not proposed for amendment.

Permits for Relaying Shellfish from Polluted Areas

The second sub-category of proposed amendments to rules for shellfish management areas, generally, pertain to polluted areas and permits for relaying shellfish from them, as set forth in 15A NCAC 03K .0104. Relaying is when shellstock (clams, oysters live in the shell) is transferred from a body of water in the "Restricted" or "Conditionally Approved (closed)" classifications to a body of water classified as "Approved" or "Conditionally Approved (open)" for the purpose of reducing potential pathogens or deleterious substances that may be present in

the shellstock (see 15A NCAC 18A .0900). The ambient environment is used as the treatment process and a relay permit is required from the DMF prior to relay activity.

Proposed amendments to this rule delete "prohibited (polluted)" and replace it with "polluted". The use of "prohibited" in the current rule is problematic in that it is meant to define an area that is eligible as a relay area, but the Shellfish Sanitation Program and 15A NCAC 18A rules use "Prohibited" as a specific shellfish harvest classification from areas where no relay can occur. The National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish (Model Ordinance or MO), which is a minimum set of guidelines that all state shellfish control authorities must meet, also uses "Prohibited" as a classification where relay is not eligible, so for this rule amendment, the use of "prohibited" is proposed to be changed to "polluted" for clarity. Effectively, this does not change anything for the DMF or the public as the practice of relay was already limited only to areas classified as "restricted" or "conditionally approved" and not "prohibited" consistent with the NSSP MO. (The term "polluted" is proposed to be defined in the readoption of 15A NCAC 03I .0101 covered in a separate analysis.) It should be noted that 03K .0103 and .0107 (described above and below, respectively) also have occurrences of "prohibited (polluted)" and are proposed for amendment as well.

Existing Paragraph (c) is proposed to be deleted as there have been no instances where shellfish product that was set to be destroyed via maintenance dredging has been moved to a shellfish lease as part of a relay. Typically, these maintenance dredge areas are closed to shellfish harvest and are not eligible for human consumption. Common practice for shellfish product that would otherwise be destroyed via maintenance dredging is to be moved to another area that is also closed to the harvest of shellfish. The deletion of this rule component is not expected to have any effect on DMF staff or stakeholders.

The proposed new requirement in Paragraph (e) states that leases and franchises used for relayed shellfish shall remain closed until a proclamation reopens the leases, and that this reopening shall not be any sooner than 21 days after the end of the relay season. Contaminant reduction studies performed by the DMF have shown that 21 days is necessary to reduce potential pathogens to acceptable levels. The use of contaminant reduction studies to determine a minimum purge time is a requirement of the NSSP MO for shellfish producing states. This addition has already been common practice for many years and has been a condition of the relaying permits so effectively there is no effective change and the amendment is simply transferring the requirement from the permit conditions to rule.

Sanitary Handling of Crustacea and Shellfish

The second category of proposed amendments to increase efficiency for the DMF for requirements pertaining to crustacea and shellfish, specifically the sanitary handling of crustacea and shellfish, is further organized by requirements for depuration of shellfish, crustacea and shellfish permits, and shellfish tagging. This analysis examines each of these sub-categories separately.

Depuration of Shellfish

Rule 15A NCAC 03K .0107 contains requirements for depuration of clams and oysters. Depuration is the process of reducing potential pathogens that may be present in shellfish taken

from certain polluted areas using a controlled aquatic environment as the treatment process. Depuration facilities are strictly regulated in order to ensure that the final shellfish product is safe for human consumption. As such, the requirements are significant and include validation of disinfection procedures, as well as routine bacteriological end-testing of product in an FDA certified and inspected lab for that method. The operation of these facilities is expensive and they are only in operation in the United States in New Jersey and Massachusetts. North Carolina does not have any depuration facilities and has not ever had any in part due to the cost and complexity of permitting, and the availability of shellfish from non-polluted areas.

The amendments proposed in this rule are primarily non-substantive conforming changes related to the DEH being abolished and the Shellfish Sanitation Program being moved to the DMF in 2011 per Session Law 2011-145. An amendment in Paragraph (a) clarifies that clams or oysters for depuration can only be taken from public polluted waters or shellfish franchises in polluted waters, and not from shellfish leases in polluted waters since shellfish leases are not permitted in areas closed to the harvest of shellfish such as polluted waters. Also, the last sentence of Paragraph (a) is proposed to be deleted as it is not necessary; the definition of "depuration" in 15A NCAC 03I .0101 (covered in a separate analysis) is proposed for amendment to exclude the relay of clams or oysters.

The proposed amendments to this rule are not expected to have any impacts or create an additional burden to DMF staff as there are no substantive changes to current practice. Also, there are no depuration facilities permitted in North Carolina with none expected in the future, although, consistent with the NSSP MO requirements, the State has the current requirements in place should the need ever arise.

Crustacea and Shellfish Permits

The next sub-category for the sanitary handling of crustacea and shellfish is crustacea and shellfish permits (15A NCAC 18A .0135, .0302). Proposed amendments to 18A .0135 seek to ensure there is adequate enforcement authority related to the permitting of crustacea processors. In order to protect the public health, crustacea processors are required to get a Crustacea Permit and Certificate of Compliance from the DMF and operate according to related MFC rules. Typically, crustacea processors cook raw crabs and pick the meat into containers, which are then sold and the meat is consumed by the public. It is important that this process be conducted under permit in a sanitary manner according to the crustacea rules in 18A .0100 to prevent illness.

The proposed amendment in Paragraph (a) of this rule would make it unlawful to operate a crustacea processing facility without first obtaining the required Crustacea Dealer Permit and Certificate of Compliance. The proposed amendment in Paragraph (i) links to the current procedures and requirements for suspension or revocation of the Crustacea Dealer Permit and Certificate of Compliance now that the Shellfish Sanitation and Recreational Water Quality section is covered under the authority of MFC rules. As it stands currently, there is no official recourse if someone operates a crustacea processing facility without having the permit and certificate of compliance, beyond embargo of the product under G.S. 113-221.4 and 15A NCAC 18A .0181.

Under the proposed amendments, additional legal pathways are created consistent with the DMF's notice of violation processes for suspension or revocation of permits that provides middle ground between 100% compliance and embargo of product. One of these pathways is the opportunity for the permit holder to demonstrate compliance before the suspension process proceeds, adding flexibility for stakeholders and the State that incurs opportunity cost savings and ultimately enhancing the protection of public health available under the MFC rules. The proposed amendments strengthen the ability of Marine Fisheries Inspectors to enforce permit requirements in case it is needed if someone was out of compliance, although typically voluntary compliance is achieved. In the rare instances where someone was operating a facility without the required permit, the proposed amendments would allow Marine Fisheries Inspectors to issue a violation that could lead to a conviction, serving as a deterrent to non-compliance in the future and providing an additional management tool to the State. Marine Fisheries Inspectors are already patrolling these fisheries, so the additional ability to enforce existing requirements is not expected to incur additional opportunity costs.

Proposed amendments to 18A .0302 seek to ensure the rules related to shellfish facilities and processing meet the minimum requirements of the NSSP regarding enforcement, as well as ensuring those rules are consistent with other permit rules under the authority of the MFC. North Carolina is part of the NSSP, which is a federal/state cooperative program designed to promote and improve the sanitation of shellfish (oysters, clams, mussels, and scallops) moving in interstate commerce. DMF staff work together with representatives from other states, the federal government, and industry through the Interstate Shellfish Sanitation Conference to develop guidelines for all state shellfish programs that are summarized in the NSSP MO. North Carolina must meet the minimum standards included in the NSSP MO in order for North Carolina shellfish to be able to be sold through interstate commerce.

The NSSP requires that state shellfish authorities have sufficient administrative procedures to enforce and regulate shellfish activities, including enforcement of non-permitted activity, as well as suspension or revocation of permits when necessary. Prior to Session Law 2011-145, the authorizing statute (G.S. 130A-23) for suspension or revocation of permits for violation of rules gave explicit authority to do so. The current authorizing statute (G.S. 113-221.2) provides authority to issue and revoke permits according to MFC rules.

The proposed amendments in Paragraphs (a), (b), and (c) would make it unlawful to engage in the listed activities without first obtaining the required Shellfish Dealer Permit and Certificate of Compliance. The proposed amendment in Paragraph (j) links to the current procedures and requirements for suspension or revocation of the Shellfish Dealer Permit and Certificate of Compliance, now that the Shellfish Sanitation and Recreational Water Quality section is covered under the authority of MFC rules. These two changes would more explicitly link suspension or revocation of a permit for a violation of MFC rules, enhancing the administrative procedures required to be in place under the NSSP. As it stands currently, there is no official recourse if someone operates a shellfish facility without having the permit and certificate of compliance, beyond embargo of the product under G.S. 113-221.4 and 15A NCAC 18A .0429.

There have been rare instances where someone obtained a DMF Fish Dealer License and acted as a shellfish dealer without first obtaining the required Shellfish Dealer Permit and Certificate of

Compliance in accordance with 15A NCAC 03O .0101. Under the proposed amendments, additional legal pathways are created consistent with the DMF's notice of violation processes for suspension or revocation of permits that provides middle ground between 100% compliance and embargo of product. One of these pathways is the opportunity for the permit holder to demonstrate compliance before the suspension process proceeds, adding flexibility for stakeholders and the State that incurs opportunity cost savings and ultimately enhancing the protection of public health available under the MFC rules. The proposed amendments strengthen the ability of Marine Fisheries Inspectors to enforce permit requirements in case it is needed if someone was out of compliance, although typically voluntary compliance is achieved. Marine Fisheries Inspectors are already patrolling these fisheries, so the additional ability to enforce existing requirements is not expected to incur additional opportunity costs.

Shellfish Tagging

The final sub-category for the sanitary handling of crustacea and shellfish is shellfish tagging. The majority of the proposed amendments will increase clarity and efficiency by moving current requirements that have been implemented via proclamation and consolidating them into rule.

Proposed amendments to 15A NCAC 03K .0109, Shellfish Harvest Tags, seek to ensure that the tagging of shellfish after harvest meets the minimum requirements of the NSSP, as well as clearly differentiates the requirements for harvest tags versus shellfish dealer tags, which are covered in 15A NCAC 18A .0425. North Carolina is part of the NSSP, which requires that state shellfish authorities including North Carolina regulate the harvest of shellfish such that harvest tags are used on shellstock after harvest so that the source of the shellfish can be determined in the case of an illness related to consumption of those shellfish (traceback). Proposed amendments in the lead-in of the rule and Item (2) seek to clarify when a harvest tag is required on shellfish versus when a shellfish dealer tag is required. Effectively, the requirements and enforcement have not changed from the current rule in this regard and the proposed amendments are simply clarifying in nature.

Several requirements are proposed to be added to rule that are requirements of the NSSP MO that have been enforced to this point through proclamation authority (see [SS-1-2021](#) and [SS-2-2021](#) as current examples). A new requirement in the lead-in of the rule and in Sub-Item (4)(f) is the requirement for shellfish dealers to keep harvest tags in "chronological order" after the harvest tags are replaced with shellfish dealer tags. Dealers and retailers are already expected to keep harvest tags from depleted shellfish containers on file in chronological order so the proposed amendments are conforming the rule to current practice.

The requirements for the use of a "bulk" harvest tag are now detailed in Item (3). Additional language is required on the tag by the NSSP MO, such as the number of containers. Other additions to required information that must be included on harvest tags include the letters "NC" and the designated growing area where the product was harvested, as well as the shellfish lease or franchise number if applicable (sub-items (4)(c) and (4)(d)). These are intended to further narrow down the source of harvested shellfish in the case of an illness. Finally, the "time of the start of harvest" must also be included on the harvest tag, in Sub-Item (g). These items have also been enforced to this point through proclamation authority and so are conforming the rule to current practice. Current enforcement will not change under these rule amendments.

Overall, the proposed amendments to this rule are not expected to have an effect on current practices in North Carolina regarding harvest tags. The changes have already been incorporated into harvest tags via proclamation. These proposed amendments will increase clarity and efficiency by requirements being consolidated into rule.

Proposed amendments to 15A NCAC 18A .0425 seek to ensure that the tagging of shellfish by shellfish dealers, retailers, and restaurants (after initially being tagged by a certified shellfish dealer) meets the minimum requirements of the NSSP MO and also clearly differentiates the requirements for harvest tags versus shellfish dealer tags. The NSSP requires that state shellfish authorities including North Carolina regulate the tagging of shellstock such that dealer tags are used (after initial tagging by the first receiving shellfish dealer) so that the source of the shellfish can be determined in the case of an illness related to consumption of those shellfish. One requirement of the NSSP MO is that the shellfish control authority have sufficient administrative procedures to enforce requirements such as dealer tags.

One proposed amendment in Paragraph (a) of this rule would clarify that it is unlawful for certified shellfish dealers and retailers to possess shellstock (after the shellstock has been processed or shipped by the initial shellfish dealer) without the required dealer tag and the required information in sub-items (a)(1) through (a)(9). As the rule currently provides, there is little recourse (other than embargo authority) if shellstock does not have the required dealer tag other than the current requirements under 03K .0109. The proposed amendments strengthen the ability of Marine Fisheries Inspectors to enforce requirements if dealer tags are not being included on shellstock by making more distinct the requirements for harvest tags and dealer tags, although typically voluntary compliance is achieved. This includes the enhanced ability for Marine Fisheries Inspectors to issue a violation that could lead to a conviction, serving as a deterrent to non-compliance in the future and providing an additional management tool to the State beyond embargo of product. Marine Fisheries Inspectors are already patrolling these fisheries, so the additional ability to enforce existing requirements is not expected to incur additional opportunity costs.

Similar to proposed amendments to 18A .0135, additional information is required to be on the dealer tag as required by the NSSP MO. This information includes further details if the shellfish has been depurated or wet stored, in sub-items (a)(3) and (a)(4), and clarifications on the source of the shellfish, in Sub-item (a)(5). These are rare and when encountered are from out of state shellfish product. The items are currently required via proclamation and so conforming the rule to current practice.

Proposed amendments in sub-items (a)(7) and (a)(8) and Paragraph (b) add the requirement for dealer tags to be in "chronological order" and have a prescribed statement and blank space for retailers to record the date when that container of shellfish is depleted. These requirements are also designed to aid with traceback to the source of implicated shellfish in the case of an illness. Again, these are requirements of the NSSP MO that have been enforced up to this point through proclamation authority. Dealers and retailers are already expected to keep harvest tags from depleted shellfish containers on file in chronological order, so the proposed amendments are

conforming the rule to current practice. The statement “Keep Refrigerated” is added in Subparagraph (a)(9) and is also currently required via proclamation.

The proposed amendments to this rule are not expected to have an effect on current practices in North Carolina regarding dealer tags. The changes have already been incorporated into dealer tags via proclamations. These proposed amendments will increase clarity and efficiency by requirements being consolidated into rule and provide additional management flexibility to the State to address rare instances of non-compliance.

IV. Fiscal Impact Analysis

As part of the readoption process, these rules are proposed with amendments intended to increase clarity and efficiency around requirements for crustacea and shellfish, management areas for them, and the sanitary handling of them. The overall intent of the proposed amendments is to conform rule language with ongoing management practice by the DMF.

Across all of the proposed changes described above, each rule is expected to incur benefits to the State from increased efficiencies by making rule requirements more clear and consistent and by moving established requirements from proclamations and permit conditions into rules. The proposed readoptions also consist of amendments that conform the rules to current standards for punctuation, capitalization, word usage, and other similar technical changes, making rules more clear and consistent overall. The majority of these proposed changes incur no additional impacts; proposed changes anticipated to incur impacts are summarized here.

The proposed amendments in 15A NCAC 03K .0103, .0208, and .0209 related to the DMF Director's proclamation authority for delineations of shellfish management areas, marking requirements, and gear restrictions provide flexibility to manage variable conditions including environmental conditions, protection of public health, biological impacts, variable spatial distribution, and user conflicts. The amendments make available additional management tools to address changing conditions in a timely fashion, but overall are proactive in nature by being able to address rare events as they may arise. The proposed amendments are expected to provide a small but unquantifiable benefit to the State in the form of time-cost benefits and improved resource protection. Proposed amendments to 03K .0209 could also include loss of catch efficiency on oyster sanctuaries for recreational fishermen if restrictions need to be implemented in the future.

The proposed amendments in 15A NCAC 18A .0135, .0302, and .0425 would clearly make it unlawful to engage in the listed activities without first obtaining the required permit and certificate of compliance, or if dealer tags are not being included on shellstock. The amendments would strengthen the ability of Marine Fisheries Inspectors to enforce crustacea and shellfish permit and harvest and dealer requirements in case it is needed if someone was out of compliance, although typically voluntary compliance is achieved. Under the current rules, some minor violations may not result in embargo of product even when voluntary compliance could not be achieved. It is important that the crustacea and shellfish handling, processing, and transport be conducted in a sanitary manner according to the corresponding rules in 18A in order to prevent illness. Marine Fisheries Inspectors are already patrolling these fisheries, so the additional ability to enforce existing requirements is not expected to incur additional opportunity

costs. Overall, the amendments are expected to provide unquantifiable benefits in the form of flexibility for the State and some stakeholders that incurs opportunity cost savings and ultimately enhances the protection of public health available under the MFC rules.

Clarifying changes are proposed to decrease DMF staff labor and effort by providing greater detail across processes, as well as reducing unnecessary redundancies. Additionally, stakeholders will have a clearer understanding of requirements. This also reduces the time burden to stakeholders for staying current with requirements of fisheries in which they participate. The overall thrust of impact to the State is a flow of non-quantifiable benefits related to increased efficiency and resource protection.

V. Appendix

Proposed Rules for Readoption

15A NCAC 03K .0103 is proposed for readoption with substantive changes as follows:

15A NCAC 03K .0103 SHELLFISH MANAGEMENT AREAS

~~(a) The Fisheries Director may, by proclamation, designate Shellfish Management Areas which meet either of the following criteria. The area has:~~

- ~~(1) conditions of bottom type, salinity, currents, cover or cultch necessary for shellfish growth;~~
- ~~(2) shellfish populations or shellfish enhancement projects that may:
 - ~~(A) produce commercial quantities of shellfish at 10 bushels or more per acre;~~
 - ~~(B) produce shellfish suitable for transplanting as seed or for relaying from prohibited (polluted) areas; or~~
 - ~~(C) serve as sanctuaries to increase spawning and disease resistance or to prevent predation.~~~~

(a) For the purpose of this Rule, "Shellfish Management Area" shall mean an area that has environmental conditions suitable for shellfish growth and survival that is designated to establish a localized regulatory strategy to improve the propagation of shellfish and has at least one of the following:

- (1) planted cultch;
- (2) existing shell; or
- (3) existing live shellfish.

(b) The Fisheries Director may, by proclamation, designate and modify Shellfish Management Areas based on biological impacts or variable spatial distribution, including shifted material.

~~(b)(c) It is shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Shellfish or Seed Management area. Area. These areas shall be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any rule pertaining to any such body of water or portion thereof.~~

~~(c)(d) It is shall be unlawful to take shellfish from any Shellfish Management Area which that has been closed and posted, in accordance with Paragraph (b) of this Rule, except that the Fisheries Director may, by proclamation, open specific areas to allow the taking of shellfish and may designate time, place, character, or dimensions of any method or equipment that may be employed. impose any of the following requirements based on biological impacts or user conflicts:~~

- (1) specify time;
- (2) specify area;
- (3) specify means and methods except as set forth in Paragraph (c) of this Rule;
- (4) specify season;

- (5) specify size;
- (6) specify quantity; and
- (7) specify marking requirements.

*History Note: Authority G.S. 113-134; 113-182; 113-204; ~~113-221~~; 113.221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1994;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. October 1, 2008; February 1, 2008; April 1, 2003;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03K .0104 is proposed for reoption with substantive changes as follows:

15A NCAC 03K .0104 PERMITS FOR PLANTING—RELAYING SHELLFISH FROM PROHIBITED/~~POLLUTED~~-POLLUTED AREAS

(a) It ~~is~~ shall be unlawful to take ~~oysters or clams shellfish~~ from ~~prohibited (polluted) polluted~~ public waters or franchises for planting on shellfish leases and franchises except as authorized by G.S. 113-203. ~~Lease~~ Shellfish lease and franchise holders shall first obtain a relay permit from the Fisheries Director setting forth the time, area, and method by which such shellfish may be taken. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

(b) The application for a relay permit shall be received by the Division of Marine Fisheries at least 15 days prior to the start of relaying activities.

(c) All relaying activities, including removal, transport, and planting, shall be monitored and observed by the Division.

~~(b)(d)~~ The season for relaying elams shall be between April 1 and May 15 and the season for relaying oysters shellfish shall be for may occur within a specified six week period between the date of the statewide closure of oyster season and June 30, as determined by the Fisheries Director based on the following factors:

- (1) the status of ~~oyster~~ shellfish resources available for harvest from public ~~bottom and~~ bottom;
- (2) surface water temperatures that are below 50° F (10° C), when shellfish relay shall not occur;
- (3) market factors affecting sale of ~~oysters shellfish~~ from public ~~bottom~~ ~~which will assist in determining the statewide closure date~~ bottom; and
- (4) ~~manpower available~~ availability of Division of Marine Fisheries staff to monitor and observe the shellfish relaying activity.

~~(e) For areas designated by the Fisheries Director as sites where shellfish would otherwise be destroyed in maintenance dredging operations, the season as set out in Paragraph (b) of this Rule shall not apply.~~

~~(d)~~ (e) The Fisheries Director, acting upon recommendations of the Division of Environmental Health, shall close and reopen by proclamation any private shellfish beds lease or franchise for which the owner has obtained a permit to relay oysters and clams shellfish from prohibited (polluted) polluted public waters, waters or franchises. The leases and franchises shall remain closed until the Fisheries Director issues a proclamation to reopen the leases and franchises to harvest. The reopening of the leases and franchises shall not occur any sooner than 21 days after the end of the relay season described in Paragraph (d) of this Rule.

*History Note: Authority G.S. 113-134; 113-182; 113-203; ~~113-221~~; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996; September 1, 1991;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. April 1, 2003;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03K .0107 is proposed for readoption with substantive changes as follows:

15A NCAC 03K .0107 DEPURATION OF ~~SHELLFISH~~CLAMS AND OYSTERS

(a) It ~~is~~ shall be unlawful to take clams or oysters from ~~the polluted public or private prohibited (polluted) waters or franchises~~ of the state for the purpose of depuration except when the harvest will utilize shellfish-clams or oysters that would otherwise be destroyed in maintenance dredging operations. All harvest and transport activities within the State of North Carolina related to depuration shall be under the supervision of the Division of Marine ~~Fisheries or the Division of Environmental Health.~~ Fisheries. ~~For the purpose of this Rule, the term depuration does not include relaying of clams or oysters from shellfish leases or franchises as authorized by 15A NCAC 03K .0104.~~

(b) The Fisheries Director, may, by proclamation, impose any ~~or all~~ of the following restrictions on the harvest of clams or oysters for depuration:

- (1) ~~Specify~~ specify species;
- (2) ~~Specify areas~~ specify areas, except harvest ~~will~~ shall not be allowed from designated buffer zones adjacent to sewage outfall facilities;
- (3) ~~Specify~~ specify harvest days;
- (4) ~~Specify time period;~~ specify time;
- (5) ~~Specify~~ specify quantity ~~or size~~;
- (6) specify quantity;
- ~~(6)~~(7) ~~Specify~~ specify harvest methods; and
- ~~(7)~~(8) ~~Specify~~ specify record keeping requirements.

(c) Depuration permits:

- (1) ~~It is~~ it shall be unlawful for individuals to harvest clams or oysters from ~~prohibited (polluted) polluted~~ waters for the purpose of depuration unless they have obtained a Depuration Permit or are listed as designees on a Depuration Permit from the Division of Marine ~~Fisheries and Division of Environmental Health~~ Fisheries setting forth the method of harvest to be employed. Permits shall be issued to licensed North Carolina ~~Clam or Oyster Dealers~~ clam or oyster dealers only. Permittees and designees harvesting under Depuration Permits ~~must~~ shall have a current Shellfish License or Shellfish Endorsement on a Standard or Retired Standard Commercial Fishing License. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.
- (2) ~~In~~ in addition to information required in 15A NCAC 03O .0501, the permit application shall provide the name, address, ~~location~~ location, and telephone number of the depuration operation where the shellfish will be depurated.
- (3) ~~Clam or Oyster Dealers~~ clam or oyster dealers desiring to obtain ~~prohibited (polluted)~~ clams or oysters from polluted waters for the purpose of depuration shall apply for a depuration permit at least 15 days prior to initiation of operation.

(d) Transport of clams or oysters for depuration:

- (1) ~~Clams-clams~~ or oysters harvested from ~~prohibited (polluted)-polluted~~ waters for depuration in a depuration operation located within the State of North Carolina shall be transported under the supervision of the ~~Division of Marine Fisheries or the Division of Environmental Health~~Division.
 - (2) ~~Clams-clams~~ or oysters harvested from ~~prohibited (polluted)-polluted~~ waters for depuration in a depuration operation outside the State of North Carolina shall not be transported within the State of North Carolina except under the supervision of the ~~Division of Marine Fisheries or the Division of Environmental Health~~Division.
- (e) It ~~is~~shall be unlawful to ship clams or oysters harvested for depuration to depuration facilities located in a state other than North Carolina unless the facility is in compliance with the applicable rules and laws of the shellfish control agency of that state.
- (f) ~~The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.~~

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. October 1, 2008; April 1, 2003;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03K .0109 is proposed for readoption with substantive changes as follows:

15A NCAC 03K .0109 SHELLFISH HARVESTER ~~HARVEST AND DEALER~~ TAGS

~~It is~~ Consistent with the requirements of this Rule, it shall be unlawful to possess or sell oysters, clams, or mussels taken in a commercial fishing operation without a harvest tag affixed to each container of oysters, ~~clams~~ clams, or mussels. Tags shall be affixed by the harvester ~~or dealer~~ and remain in place while being transported to a certified shellfish dealer. Harvest tags shall remain attached to the container until the certified shellfish dealer breaks open the container for washing, grading, packing, other processing, or the container is shipped. Once the initial container is broken open or is emptied the harvest tag shall be kept on file, in chronological order, by the certified shellfish dealer for 90 days. It shall be unlawful for the tag to fail to ~~and shall~~ meet the following criteria:

- (1) ~~Tags~~ harvest tags shall be identified as harvest tags. They shall be durable for at least 90 days, ~~water resistant, waterproof,~~ and a minimum of two and five-eighths inches by five and one-fourth inches in size.
- (2) ~~Tags~~ harvest tags shall be securely fastened to ~~the outside of~~ each container in which shellstock is transported. A ~~harvester or dealer~~ harvest tag shall ~~be remain~~ securely fastened to the outside of each container at a certified shellfish dealer until replaced by a dealer tag once the container is broken open for processing or is shipped. Requirements for dealer tags are described in 15A NCAC 18A .0425. ~~location except, bulk shipments of shellfish in one container and from the same source may have one tag with all required information attached.~~ Harvesters who are also certified shellfish dealers may use only their dealer tag if it contains the required harvest and dealer information. The required information shall be included on all lots of shellfish subdivided or combined into market grades or market quantities by a harvester or a certified shellfish dealer.
- (3) ~~Tags shall be attached to all shellfish stored at a dealer location.~~ bulk harvest tags may be used when shellfish are harvested from one growing area on a single day by an individual harvester. Multiple containers may be utilized on a wrapped pallet, in a single boat, vehicle, conveyance, or other container, and tagged with a single harvest tag containing the information required in this Rule. The bulk tag shall also include a statement that "All shellstock containers in this lot have the same harvest date and area of harvest.", and include the number of individual containers in the unit or an estimate of the total weight, volume, or count.
- (4) ~~Tags~~ tags shall contain legible information arranged in the specific order as follows:
 - (a) ~~The the~~ harvester's name, address address, and shellfish license or standard or retired standard commercial fishing license Shellfish License or Standard or Retired Standard Commercial Fishing License with shellfish endorsement number number;
 - (b) ~~The the~~ date of harvest harvest;
 - (c) ~~The the~~ most precise description identification of the harvest location as is practicable (e.g., Long Bay, Rose Bay) that can be easily located by maps and charts. Bay), including at a minimum the State's two initials "N.C." and the growing area designation;

- (d) the shellfish lease or franchise number, if applicable;
- ~~(d)~~(e) Type-type and quantity of shellfish-shellfish;
- ~~(e)~~(f) The the following statement in bold, capitalized type;font: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE-FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS"-DAYS."; and
- ~~(f)~~(g) the time of the start of harvest. The time of the start of harvest shall be the time when the first shellfish is initially removed from the water.

History Note: Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; ~~113-221~~; 143B-289.52;
Eff. October 1, 2008;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03K .0208 is proposed for reoption with substantive changes as follows:

15A NCAC 03K .0208 SEED OYSTER MANAGEMENT AREAS

(a) For the purpose of this Rule and 15A NCAC 03R .0116, "Seed Oyster Management Area" shall mean a shellfish producing habitat area located in open harvest waters that has environmental conditions unsuitable for shellfish growth and survival that is designated to establish a localized regulatory strategy to allow the transfer of oysters to shellfish leases or franchises that have more suitable environmental conditions for further grow-out.

(b) The Fisheries Director may, by proclamation, modify or close Seed Oyster Management Areas designated in 15A NCAC 03R .0116 for the protection of public health related to the public health programs under the authority of the Marine Fisheries Commission.

~~(c)~~ (c) It is shall be unlawful to take oysters from Seed Oyster Management Areas designated in 15A NCAC 03R .0116 for planting on shellfish leases or franchises without first obtaining a Permit to Transplant Oysters from Seed Oyster Management Areas from the Fisheries Director. The procedures and requirements for obtaining permits are set forth in 15A NCAC 03O .0501.

~~(d)~~ (d) It is shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Seed Oyster Management Area.

*History Note: Authority G.S. 113-134; 113-182; 113-203; ~~113-221~~; 143B-289.52;
Eff. October 1, 2008;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03K .0209 is proposed for readoption with substantive changes as follows:

15A NCAC 03K .0209 OYSTER SANCTUARIES

~~(a) It is unlawful to use a trawl net, long haul seine, or swipe net in Oyster Sanctuaries designated in 15A NCAC 03R .0117. These areas shall be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any rule pertaining to any such body of water or portion thereof.~~

(a) For the purpose of this Rule and 15A NCAC 03R .0117, "Oyster Sanctuary" shall mean a type of artificial reef and shellfish producing habitat constructed for the purpose of oyster restoration that is managed to sustain populations of oyster broodstock. An Oyster Sanctuary is constructed to maximize habitat complexity and designed to meet its intended function for a minimum of 30 years.

(b) The Fisheries Director may, by proclamation, close Oyster Sanctuary areas designated in 15A NCAC 03R .0117 to the use of specific fishing gears based on biological impacts or user conflicts.

(c) The Fisheries Director may, by proclamation, designate and modify Oyster Sanctuaries based on biological impacts or variable spatial distribution, including shifted material.

~~(b)(d) It is shall be unlawful to use mechanical methods for oystering or clamming in, or to take oysters or clams from shellfish from, Oyster Sanctuaries designated in 15A NCAC 03R .0117, .0117 or in accordance with Paragraph (c) of this Rule.~~

(e) It shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Oyster Sanctuary.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52;

Eff. October 1, 2008;

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

15A NCAC 18A .0135 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0135 PERMITS

- (a) ~~No person shall~~ It shall be unlawful to operate a processing facility without a permit issued by the Division, ~~first~~ obtaining a Crustacea Permit and Certificate of Compliance from the Division of Marine Fisheries.
- (b) ~~No person shall operate a repacker facility without a repacker permit issued by the Division.~~
- (~~e~~)(b) Application for a permit shall be submitted in writing on an application form available from to the Division. Application forms may be obtained from the Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.
- (~~d~~)(c) No permit shall be issued by the Division until an inspection by the Division shows that the facility and equipment comply with applicable rules of this Section. The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.
- (e) ~~A permit issued to one person is not transferrable to another person.~~
- (f) The permit shall be posted in a conspicuous place in the facility. ~~All permits shall expire on March 31 of each year.~~
- (g) All permits shall expire on March 31 of each year and are non-transferrable.
- (~~e~~)(h) Plans and specifications for proposed new construction, expansion of operations, or changes in operating processes shall be submitted to the Division for review and approval prior to beginning construction or making a change.
- (~~h~~)(i) A permit may be revoked or suspended pursuant to G.S. 130A-23 in accordance with 15A NCAC 03O .0504.
- (i) ~~The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.~~

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

15A NCAC 18A .0302 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0302 PERMITS

(a) ~~No person shall~~ It shall be unlawful to operate any of the following facilities without a permit issued by the Division first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division of Marine Fisheries:

- (1) ~~Depuration-depuration~~ facilities;
- (2) repacking plants;
- ~~(2)(3)~~ Shellstock-shellstock plants; and
- ~~(3)(4)~~ Shucking-shucking and packing plants;plants.
- (4) ~~Repacking plants.~~

(b) ~~No person shall~~ It shall be unlawful to operate as a shellstock dealer without a permit issued by the Division first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division.

(c) ~~A permit may be issued to a reshipper when required for out of state shipment.~~ It shall be unlawful to operate as a reshipper without first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division if shellfish are purchased and shipped out of state.

(d) Approval for wet storage of shellstock shall be granted only to persons permitted pursuant to this Rule.

(e) Application for a permit shall be submitted in writing to the ~~Division at the Shellfish Sanitation Office, Fisheries Building, Arendell Street, Morehead City, North Carolina, 28557.~~ Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557. Application forms are available ~~may be~~ obtained from the ~~Division.~~ Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.

(f) No permit shall be issued by the Division until an inspection by the Division shows that the ~~facilities~~ facility and equipment comply with all applicable rules in Sections .0300 through .0800 of this Subchapter. The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.

(g) All permits shall be posted in a conspicuous place in the ~~facilities.~~ facilities. ~~All permits shall expire on April 30 of each year.~~ facility.

(h) All permits shall expire on April 30 of each year and are non-transferrable.

~~(h)(i)~~ (i) Plans and specifications for proposed new construction or remodeling construction, expansion of operations, or changes in operating processes shall be submitted to the Division for review and approval prior to beginning construction or making a change.

~~(j)~~ (j) A permit may be revoked or suspended pursuant to G.S. 130A-23 in accordance with 15A NCAC 030 .0504.

*History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~
Eff. February 1, 1987;
Amended Eff. April 1, 1997;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 18A .0303 is proposed for repeal through readoption as follows:

15A NCAC 18A .0303 RELAYING PERMITS

~~If a person is granted a relaying permit by the Division and the Division of Marine Fisheries, shellfish may be removed from certain designated prohibited areas for conditioning and purification prior to marketing and marketed after relaying in a large body of clean water, but only under the following conditions:~~

- ~~(1) — Application for relaying must be received by the North Carolina Division of Marine Fisheries and the Division 15 days prior to relaying.~~
- ~~(2) — Removal and relaying shall be under the supervision of the Division and the Division of Marine Fisheries.~~
- ~~(3) — Shellfish relayed from a prohibited area to a designated area of approved water shall remain down for a period of not less than fourteen days when the water in which shellfish are relayed has a temperature above 50°F (10°C). When the water temperature is below 50°F (10°C), shellfish shall not be relayed.~~

*History Note: Authority G.S. 130A-230;
Eff. February 1, 1987;
Amended Eff. September 1, 1990;
Repealed Eff. (Pending legislative review of 15A NCAC 03K .0104).*

15A NCAC 18A .0304 is proposed for repeal through readoption as follows:

15A NCAC 18A .0304 DEPURATION HARVESTING PERMITS

~~If a person is granted a depuration harvesting permit by the Division and the Division of Marine Fisheries, shellfish may be removed from certain designated prohibited areas for depuration prior to marketing and marketed after depuration in a permitted facility, but only under the following conditions:~~

- ~~(1) — Application for a depuration harvesting permit must be received by the Division of Marine Fisheries and the Division 15 days prior to harvesting for depuration purposes.~~
- ~~(2) — Harvesting for depuration purposes shall be under the supervision of the Division and the Division of Marine Fisheries.~~

*History Note: Authority G.S. 130A-230;
 Eff. February 1, 1987;
 Amended Eff. September 1, 1990;
 Repealed Eff. May 1, 2022.*

15A NCAC 18A .0425 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0425 TAGGING ~~DEALER TAGS~~

(a) ~~In order that information may be available to the Division with reference to the origin of shellstock, Consistent with the rules of this Section, it shall be unlawful to possess containers holding shellstock shall be identified with~~ without a uniform dealer tag or label affixed after the shellstock is processed or shipped by the initial certified shellfish dealer. The tag shall be durable, waterproof-waterproof, and measure at least 2 5/8 by 5 1/4 inches (6.7 by 13.3 centimeters)-a minimum of two and five-eighths inches by five and one-fourth inches in size. The ~~It shall be unlawful for the tag shall to fail to~~ contain legible information arranged in the specific order as follows:

- (1) the dealer's name, ~~address-address,~~ and certification number assigned by the appropriate shellfish control agency;
- (2) the original shipper's certification number;
- (3) the harvest ~~date;date,~~ or if depurated, the date of depuration processing, or if wet stored, the original harvest date, and the final harvest date, which is the date removed from wet storage;
- (4) if wet stored or depurated, the wet storage or depuration cycle or lot number. The wet storage lot number shall begin with the letter "W";
- ~~(4)~~(5) the harvest location, including the country or state abbreviation;the most precise identification of the harvest location as is practicable, including the initials of the State of harvest, and the state or local shellfish control authority's designation of the growing area by indexing, administrative, or geographic designation. If the authority in another state has not indexed growing areas, then a geographical or administrative designation shall be used (e.g., Long Bay, shellfish lease or franchise number, or lot number);
- (5) ~~when the shellstock has been in wet storage, the statement "THIS PRODUCT WAS IN WET STORAGE AT (FACILITY CERTIFICATION NUMBER) FROM (DATE) TO (DATE)";~~
- (6) the type and quantity of ~~shellfish;shellstock;~~
- (7) the following ~~statement shall appear-statements in bold-bold, capitalized type font:~~
 - (A) "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE-FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS;"-DAYS."; and
 - (B) "RETAILERS; DATE WHEN LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE) _____.";
- (8) the following statement, or ~~equivalent, equivalent:~~

"Consumer Advisory
Eating raw oysters, ~~clams-clams,~~ or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat raw shellfish and become sick, see a doctor ~~immediately."-immediately."; and~~

(9) the following statement, or equivalent:

"Keep Refrigerated".

(b) The ~~uniform-dealer~~ tag or label shall remain attached to the shellstock container until the container is empty and thereafter shall be kept on ~~file-file, in chronological order,~~ for 90 days.

(c) ~~All shellstock from a depuration facility must be identified as having been cleansed by a depuration facility identified by a name and permit number on the tag.~~

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

Eff. February 1, 1987;

Amended Eff. April 1, 1997; January 4, 1994; December 1, 1987;

Temporary Amendment Eff. October 12, 1998; February 1, 1998;

Amended Eff. April 1, 1999;

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

15A NCAC 18A .0912 is proposed for repeal through readoption as follows:

15A NCAC 18A .0912 SHELLFISH MANAGEMENT AREAS

~~When the Division of Marine Fisheries begins operations to relocate shellfish from a restricted or conditionally approved area to an approved area, the Division will recommend to the Division of Marine Fisheries that the area of relocation be closed until cleansing requirements for relayed shellfish have been satisfied.~~

*History Note: Authority G.S. 130A-230;
Eff. June 1, 1989;
Repealed Eff. April 1, 2022.*