



RULEMAKING UPDATE

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ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

July 26, 2022

MEMORANDUM

TO: N.C. Marine Fisheries Commission
FROM: Steve Poland, Fisheries Management Section Chief
SUBJECT: Temporary Rule Suspensions

Issue

In accordance with the North Carolina Division of Marine Fisheries Resource Management Policy Number 2014-2, Temporary Rule Suspension, the North Carolina Marine Fisheries Commission will vote on any new rule suspensions that have occurred since the last meeting of the commission.

Findings

No new rule suspensions have occurred since the May 2022 business meeting.

Action Needed

For informational purposes only, no new action is needed at this time.

Overview

In accordance with policy, the division will report current rule suspensions previously approved by the commission as non-action items. The current rule suspensions previously approved by the commission are as follows:

NCMFC Rule 15A NCAC 03J .0103 (h) Gill Nets, Seines, Identification, Restrictions

Suspension of portion of this rule is for an indefinite period. Suspension of this rule allows the division to implement year around small mesh gill net attendance requirements in certain areas of the Tar-Pamlico and Neuse River systems. This action was taken as part of a department initiative to review existing small mesh gill net rules to limit yardage and address attendance requirements in certain areas of the state. This suspension continues in Proclamation M-19-2021.

NCMFC Rule 15A NCAC 03R .0110 (4)(5) Crab Spawning Sanctuaries

Suspension of portions of this rule is for an indefinite period. Suspension of this rule allows the division to revise the boundaries for the Drum Inlet and Barden Inlet crab

spawning sanctuaries in accordance with Amendment 3 to the N.C. Blue Crab Fishery Management Plan. This suspension was implemented in Proclamation M-7-2020 and continues in M-11-2022.

NCMFC Rules 15A NCAC 03L .0201 (a)(b) Crab Harvest Restrictions, 03L .0203 (a) Crab Dredging and 03J .0301 (g)(h) Pots

Suspension of portions of these rules is for an indefinite period. Suspension of these rules allows the division to implement requirements for the blue crab fishery in accordance with Amendment 3 to the N.C. Blue Crab Fishery Management Plan. These suspensions were implemented in Proclamation M-1-2021.

NCMFC Rule 15A NCAC 03L .0103 (a)(1) Prohibited Nets, Mesh Lengths and Areas

Continued suspension of portions of this rule is for an indefinite period. This allows the division to adjust trawl net minimum mesh size requirements in accordance with the May 2018 Revision to Amendment 1 to the North Carolina Shrimp Fishery Management Plan. This suspension was implemented in proclamation SH-3-2019.

NCMFC Rule 15A NCAC 03J .0501 Definitions and Standards for Pound Nets and Pound Net Sets

Continued suspension of portions of this rule is for an indefinite period. This allows the division to increase the minimum mesh size of escape panels for flounder pound nets in accordance with Amendment 2 of the North Carolina Southern Flounder Fishery Management Plan. This suspension was implemented in Proclamation M-34-2015.

NCMFC Rule 15A NCAC 03M .0519 Shad & 03Q .0107 Special Regulations: Joint Waters

Continued suspension of portions of these rules is for an indefinite period. This allows the division to change the season and creel limit for American shad under the management framework of the North Carolina American Shad Sustainable Fishery Plan. These suspensions were continued in Proclamation FF-67-2021(Revised).



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

July 28, 2022

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 N.C.G.S. § 150B-21.3A. Request the MFC vote on approval of Notice of Text for Rulemaking to begin the process for two rules in the 2022-2023 rulemaking cycle.

Findings

- Periodic Review and Readoption of Rules – Requirements
 - North Carolina G.S. 150B-21.3A, enacted in 2013, requires state agencies to review existing rules every 10 years in accordance with a prescribed process that includes rule readoption.
 - 15A NCAC 03 – Marine Fisheries: On June 14, 2018, the Rules Review Commission (RRC) approved the readoption schedule of June 30, 2022, for 172 MFC rules.
 - 15A NCAC 18A – Sanitation: On Jan. 16, 2020, the RRC approved the readoption schedule of June 30, 2024, for 164 MFC rules.
 - The MFC must readopt these rules by these deadlines or the rules will expire and be removed from the N.C. Administrative Code.
- At its August meeting, the MFC is scheduled to receive an update about the four ongoing packages of proposed rules and vote to begin rulemaking for a fifth package of rules.

Action Needed

The MFC is scheduled to vote on approval of Notice of Text for Rulemaking to begin the process to amend 15A NCAC 03M .0101 (Mutilated Finfish) and readopt 15A NCAC 18A .0911 (Marinas, Docking Facilities, and Other Mooring Areas).

Recommendation

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

2020-2021 Annual Rulemaking Cycle Update

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". Three of the proposed rules address user conflicts associated with shellfish leases while supporting a productive shellfish aquaculture industry, as required by NCGA Session Law 2019-37. The proposed changes would increase setback requirements from developed shorelines for new shellfish leases; limit the allowable number of corner markers for demarcating shellfish leases to simplify the polygon shapes; set new criteria for shellfish lease stakes and signage to alleviate navigation concerns; and initiate a new shellfish leaseholder training program that emphasizes user conflict reduction strategies. The MFC gave final approval of the rules at its February 2021 meeting. The rules are automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1 and will be effective Aug. 23, 2022, which will be the 31st legislative day of the 2022 short session.

2021-2022 Annual Rulemaking Cycle Update

"Package A" (56 rules)

At its May 2021 business meeting, the MFC approved Notice of Text for readoption and amendment of the 56 rules in "Package A". These rules cover the following subjects:

- Rules in 15A NCAC 03I, 03J (11 rules);
- Interjurisdictional species (8 rules);
- Rules with minor changes relating to standards for handling, packing, and shipping crustacea meat (34 rules); and
- Prohibit repacking of foreign crab meat in North Carolina (3 rules).

The MFC gave final approval of the rules at its November 2021 business meeting. The rules that were not automatically subject to legislative review became effective April 1, 2022. There were no impactful changes, only technical and conforming ones. A news release and a rulebook supplement were distributed. Thirteen of the 56 rules are automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1, including rules to prohibit the repacking of foreign crab meat in North Carolina into another container. The proposed rules will be effective Aug. 23, 2022, which will be the 31st legislative day of the 2022 short session.

"Package B" (109 rules)

At its August 2021 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for 109 rules. These rules cover the following subjects:

- Highly efficient gears, artificial reefs, and research sanctuaries (3 rules);
- Shellfish leasing regulations (9 rules);
- 15A NCAC 03 rules with conforming changes (40 rules);
- 15A NCAC 03I, 03J, 03K, 03O, and 03R for definitions, imported species, recordkeeping, gear, marketing shellfish, and licenses (18 rules);
- Commercial blue crab harvest and gear regulations (8 rules);
- Permit and license suspensions and revocations and pound net gears (11 rules);
- 15A NCAC 03P administrative procedures (8 rules); and
- 15A NCAC 03K and 18A crustacea and shellfish (12 rules).

The MFC gave final approval of the rules at its February 2022 business meeting. There were 38 rules that were not automatically subject to legislative review that became effective June 1 or July 1, 2022. Most fishermen saw very little change from these rules. A news release and a rulebook supplement were distributed on each of these dates and the corresponding documents are provided in the briefing materials. The remaining 71 rules are automatically subject to legislative review pursuant to Session Law 2019-198 and N.C.G.S. § 14-4.1, and thus are expected to have a delayed effective date. Three rules, covering highly efficient gears, artificial reefs, and research sanctuaries, will be effective Aug. 23, 2022, which will be the 31st legislative day of the 2022 short session. The remaining 68 rules will be available for legislative review during the 2023 long session.

"Package C" (9 rules)

At its March 2022 special meeting, the MFC approved Notice of Text for Rulemaking to begin the process for nine joint rules that pertain to the classification of the waters of North Carolina as coastal fishing waters, inland fishing waters, and joint fishing waters. The rules were proposed for readoption with no changes. The MFC gave final approval of the rules at its June 23, 2022, special meeting and the Wildlife Resources Commission gave its concurrence of the MFC's rules at its June 28, 2022, special meeting. These nine MFC rules and the 11 WRC joint rules (that the WRC approved April 14, 2022, and for which the MFC gave its concurrence May 26, 2022) are awaiting review and approval by the Rules Review Commission and have an earliest effective date of Sept. 1, 2022. A table showing the steps in the process is provided in the briefing materials.

2022-2023 Annual Rulemaking Cycle (2 rules)

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

At its August 2022 business meeting, the MFC is scheduled to vote on approval of Notice of Text for Rulemaking to begin the rule amendment and readoption process for two rules. A summary of the proposed rules by subject is provided below. Please refer to the documents for the 2022-2023 rulemaking cycle 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 subject. The proposed rules are appended to each respective fiscal analysis. The mutilated finfish rule is automatically subject to legislative review pursuant to Session Law 2019-198 and G.S. 14-4.1 and would not be reviewed until the 2024 short session. The intended effective date of the marinas rule is May 1, 2023.

MUTILATED FINFISH (1 rule) (15A NCAC 03M .0101)

At its August 2022 business meeting, the MFC is scheduled to vote on proposed amendments to this rule. The proposed amendments would provide flexibility to manage variable conditions for the use of finfish as cut bait by simplifying the rule such that only species subject to a possession limit are subject to the requirements unless otherwise specified in a Marine Fisheries Commission rule or a proclamation issued under the authority of a Marine Fisheries Commission rule. The original intent of the mutilated finfish rule was to provide added resource protection for finfish species subject to a size or bag limit. Proposed amendments to this rule would provide flexibility to manage current conditions for the use of certain finfish species as cut bait, as well as variable conditions that could occur in the future, all while continuing to protect fisheries resources. Proposed amendments would also clarify requirements, benefitting affected stakeholders and Marine Patrol officers.

Due to current possession limits, use of American eel, spot, Atlantic croaker, and bluefish as cut bait creates conflicts with the current mutilated finfish rule based on communication from stakeholders, feedback from Marine Patrol officers, and implications from stock assessments and fishery management plans. Additionally, changes to the current exception for mullet may be needed based on the outcome of the striped mullet stock assessment and management changes developed through the fishery management plan process. It is likely that species beyond the five outlined could require similar consideration in the future. Therefore, the proposed changes would amend the rule in a way that can resolve current conflicts with species used as cut bait, provide flexibility to manage variable conditions, and allow all requirements for a particular finfish species to be aggregated in a single proclamation (including for bait usage) for more comprehensive management, all while continuing to protect fisheries resources. It is important to note there is no guarantee that species allowed to be cut now would continue or that relief would be granted for the use of species that are prohibited now. The amended rule would only provide the Fisheries Director the authority to use her discretion to determine, in the context of the then-current variable conditions and available data and information, if it would be appropriate to issue a proclamation that would allow a particular species to be cut for use as bait. The issue paper outlining these details for the various species discussed is included in the briefing materials.

MARINAS, DOCKING FACILITIES, AND OTHER MOORING AREAS (1 rule) (15A NCAC 18A .0911)

At its August 2022 business meeting, the MFC is scheduled to vote on proposed amendments to readopt this rule pursuant to the requirements of G.S. 150B-21.3A. The marinas rule, as it is currently written, may not be fully in compliance with national program requirements for shellfish harvesting closures and does not use the best available methodology to do so for the protection of public health. Proposed amendments would help ensure that North Carolina remains in full compliance with national requirements, allow the DMF to determine necessary buffer closures based on a more scientific and public health-based rationale, and make implementation and enforceability clearer.

For the harvest classification of shellfish growing waters in and around marinas, the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish requires that a pollution assessment be used to determine the necessary classification in and around the marina docks, and that a dilution analysis be used to determine the size of any harvest closure that may be necessary because of the pollution assessment. The current rule already requires that a pollution assessment be used to determine the necessary classification in and around the marina docks, but it does not require a dilution analysis to determine closure size, and instead prescribes specific closure measurements based on a limited number of marina characteristics. The proposed rule would maintain the pollution assessment requirement and would also require that a dilution analysis be used to determine closure size. Also, the elimination of an exemption clause from the rule would allow for more clarity among stakeholders and help ensure consistent, clear, and more efficient enforcement across marinas. With the elimination of this portion of the rule, slip owners at these marinas will have additional flexibility with the type and size of boat they are able to dock there. DMF and Division of Coastal Management staffs spend resources repeatedly enforcing marinas' designations over time with changing homeowners' associations. DMF resources could be used in other ways if the exemption is eliminated. Overall, the acreage of water that could potentially change designation is an extremely small amount: approximately 58 acres out of 1.46 million acres that are open to shellfish harvest.

Background Information

Periodic Review and Expiration of Existing Rules per N.C.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 N.C.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	13 Rules Readopted	116 Rules Readopted	6/30/22 deadline		
Subchapter 18A (164 rules)			Report	42 Rules Readopted	42 Rules Readopted	Rule Readoption (1)	Rule Readoption (79)	6/30/24 deadline

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

Roy Cooper
Governor

Elizabeth S. Biser
Secretary DEQ



Kathy B. Rawls
Director

Release: Immediate
Date: June 1, 2022

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

Various readopted marine fisheries rules take effect today

MOREHEAD CITY – Thirty-seven readopted fisheries rules become effective today, but most fishermen will see very little change.

The rules, readopted under a state-mandated periodic review schedule (G.S. 150B-21.3A), include existing fisheries rules 15A NCAC 03I .0101 (Definitions); 15A NCAC 03O .0203, .0205-.0208, and .0210 (Shellfish Leases and Franchises); and 15A NCAC 03P .0101 (Request for Review of License, Permit, or Certificate Denial).

The changes to 15A NCAC 03P .0101 (Request for Review of License, Permit, or Certificate Denial) apply to notices of suspension or revocation of a permit. It shortens the time that a permittee has, after receiving the notice, to submit a statement in writing that he or she is in compliance with the permit requirements before suspension or revocation proceedings begin. The changes shorten the period from 15 days to:

- Five days for permits related to endangered or threatened species or species managed by a quota; or
- 10 days for all other permits.

The changes also shorten the time the N.C. Division of Marine Fisheries has, after receiving the written statement, to review it and notify the permittee of its determination. The changes shorten the period from 15 days to 10 days.

Changes to 15A NCAC 03O .0203, .0205-.0208, and .0210 (Shellfish Leases and Franchises) streamline and shorten processes for shellfish lease applications, application grievances by the public, and lease production reporting requirements.

Other rule changes are conforming in nature, correct grammar or typographical errors, or update agency names.

Text of the rules can be found on the Division of Marine Fisheries website at <https://deq.nc.gov/DMF-Rules>.

The rules were readopted by the N.C. Marine Fisheries Commission at its February 2022 meeting. Other rules readopted at this meeting are still in the final approval process.

For questions about these rules, email [Catherine Blum](#), rules coordinator for the Division of Marine Fisheries.

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Roy Cooper
Governor

Elizabeth S. Biser
Secretary DEQ



Kathy B. Rawls
Director

Release: Immediate
Date: July 1, 2022

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

One amended, readopted fisheries rule takes effect July 1

MOREHEAD CITY – One newly amended marine fisheries rule will go into effect July 1. The change clarifies definitions and formalizes procedures for transferring ownership or subleasing of a shellfish lease.

As amended, 15A NCAC 03O .0209 (Assignment of Shellfish Leases and Franchises) defines a transfer as a permanent assignment of a shellfish lease or franchise, and it defines a sublease as a temporary assignment.

Other changes to the rule clarify the required information that must be submitted to the N.C. Division of Marine Fisheries to provide notice of a change in assignment.

The remaining changes to the rule are minor in nature to make word usage consistent across all rules.

The rule was amended and readopted in accordance with a state-mandated periodic review schedule.

Complete text of the rule can be found in the July 1, 2022 Supplement to North Carolina Marine Fisheries Commission Rules at <https://deq.nc.gov/dmf-rules>.

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NORTH CAROLINA
MARINE FISHERIES COMMISSION
RULES

APRIL 1, 2020



SUPPLEMENT – JULY 1, 2022

MARINE FISHERIES COMMISSION
Rob Bizzell, Chair

DEPARTMENT OF ENVIRONMENTAL QUALITY
Elizabeth S. Biser, Secretary

DIVISION OF MARINE FISHERIES
Kathy B. Rawls, Director
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**NORTH CAROLINA ADMINISTRATIVE CODE
TITLE 15A – ENVIRONMENTAL QUALITY
CHAPTER 03 – MARINE FISHERIES**

THE FOLLOWING RULES ARE READOPTED, AMENDED, OR REPEALED
EFFECTIVE MARCH 17, 2021; MAY 1, 2021; APRIL 1, 2022; JUNE 1, 2022; OR JULY 1, 2022.

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

THE FOLLOWING RULES ARE READOPTED OR REPEALED
EFFECTIVE APRIL 1, 2021; MAY 1, 2021; APRIL 1, 2022; OR JUNE 1, 2022.

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

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" means total quantity of fish allocated for harvest by commercial fishing operations.
 - (b) "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 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" means all Coastal Fishing Waters except the Atlantic Ocean.
 - (d) length of finfish:
 - (i) "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" 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" 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" 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 as defined in 15A NCAC 18A .0901:
 - (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.
 - (g) "Recreational possession limit" means restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.
 - (h) "Recreational quota" means total quantity of fish allocated for harvest for a recreational purpose.
 - (i) "Regular closed oyster season" means March 31 through October 15, unless amended by the Fisheries Director through proclamation authority.
 - (j) "Scientific institution" means one of the following entities:
 - (i) an educational institution as defined in this Item;
 - (ii) a state or federal agency charged with the management of marine or estuarine resources; or
 - (iii) a professional organization or secondary school working under the direction of, or in compliance with mandates from, the entities listed in Sub-items (j)(i) and (ii) of this Item.
- (2) fishing activities:

- (a) "Aquaculture operation" means an operation that produces artificially propagated stocks of marine or estuarine 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, utilizing technology not found in the natural environment.
 - (b) "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" 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" means mechanical purification or the removal of adulteration from live oysters, clams, or mussels by any artificially controlled means.
 - (e) "Long haul operation" means fishing a seine towed between two vessels.
 - (f) "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" means any actual or constructive holding whether under claim of ownership or not.
 - (h) "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" 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" means the process of obtaining authorized cultch materials, seed shellfish, and 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" means:
 - (i) the culture of oysters, clams, scallops, or mussels on shellfish leases and franchises from a sublegal harvest size to a marketable size.
 - (ii) 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" means fishing a seine towed by one vessel.
 - (m) "Transport" means to ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
 - (n) "Use" means to employ, set, operate, or permit to be operated or employed.
- (3) gear:
- (a) "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" 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" means all fishing equipment used in Coastal Fishing Waters except:
 - (i) cast nets;
 - (ii) 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 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 or other pointed implements that are propelled by hand, whether or not the implement remains in the hand;
 - (v) 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 equipment other than multiple-hook or multiple-bait trotline;
 - (vii) 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 traps when no more than two are in use;
 - (ix) seines less than 30 feet in length;
 - (x) 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" 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" 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" 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" 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" 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" 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" 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" 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" 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" 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" 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" 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 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" 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" 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". means those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
- (b) "Anadromous fish spawning areas" 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" means:
 - (i) fire corals and hydrocorals (Class Hydrozoa);
 - (ii) 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" means a formation, regardless of size or shape, formed of shell and live oysters of varying density.
- (e) "Live rock" 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 (Phylum Porifera);
 - (v) 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 worms (Phylum Annelida), fan worms (*Sabellidae*), feather duster and Christmas treeworms (*Serpulidae*), and sand castle worms (*Sabellaridae*);
 - (viii) mussel banks (Phylum Mollusca: Gastropoda); and
 - (ix) acorn barnacles (Arthropoda: Crustacea: *Semibalanus* sp.).
- (f) "Nursery areas" 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" 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" 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" 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 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" 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" 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 defined by G.S. 113-174, means when the vessel is fishing in 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.
 - (e) "Holder" means a person who has been lawfully issued in the person's name a license, permit, franchise, lease, or assignment.
 - (f) "Land" means:
 - (i) for commercial fishing operations, when fish reach the shore or a structure connected to the shore.
 - (ii) 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 recreational fishing operations, when fish are retained in possession by the fisherman.
 - (g) "Licensee" means any person holding a valid license from the Department to take or deal in marine fisheries resources.
 - (h) "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.
 - (i) "Master" means captain or operator of a vessel or one who commands and has control, authority, or power over a vessel.
 - (j) "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.
 - (k) "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.
 - (l) "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.
 - (m) "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.
 - (n) "Transaction" means an act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed, or landed.
 - (o) "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.
 - (p) "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. June 1, 2022.

15A NCAC 03I .0108 OCEAN FISHING PIERS

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

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

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

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

History Note: Authority G.S. 113-134; 113-181; 113-182; 113-185; 143B-289.52;
Eff. January 1, 1991;
Recodified from 15A NCAC 3I .0008 Eff. December 17, 1996;
Readopted Eff. April 1, 2022.

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

(a) In accordance with G.S. 113-267, this Rule shall apply to replacement costs of fish that have been taken, injured, removed, harmfully altered, damaged, or destroyed. Fish, as used throughout this Rule, is defined in G.S. 113-129(7).

(b) The relative value of fish species shall be considered only as they may bear on the necessity or desirability of actual replacement.

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

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

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

- (1) whether the species is classified as endangered or threatened;
- (2) the relative frequency of occurrence of the species in the State;
- (3) the extent of existing habitat suitable for the species within the State;
- (4) the dependency of the species on unique habitat requirements;
- (5) the cost of improving and maintaining suitable habitat for the species;
- (6) the cost of capturing the species in areas of adequate populations and transplanting them to areas of suitable habitat with low populations;
- (7) the availability of the species and the cost of acquisition for restocking purposes;
- (8) the cost of those species that when released, have a probability of survival in the wild; and
- (9) the ratio between the natural life expectancy of the species and the period of its probable survival when, having been reared in a hatchery, it is released to the wild.

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

- (1) Alewife (River Herring);
- (2) Amberjacks;
- (3) Anglerfish (Goosefish);
- (4) Bluefish;
- (5) Bonito;
- (6) Butterfish;
- (7) Carp;
- (8) Catfishes;
- (9) Cobia;
- (10) Croaker, Atlantic;
- (11) Cutlassfish, Atlantic;
- (12) Dolphinfish;
- (13) Drum, Black;
- (14) Drum, Red (Channel Bass);
- (15) Eels;
- (16) Flounders;
- (17) Flounders, Fluke;
- (18) Garfish;
- (19) Gizzard Shad;
- (20) Groupers;
- (21) Grunts;
- (22) Hakes;
- (23) Harvestfish;
- (24) Herring, Thread;
- (25) Hickory Shad;
- (26) Hogfish;
- (27) Jacks;
- (28) Kingfishes (Sea Mullet);
- (29) Mackerel, Atlantic;
- (30) Mackerel, King;
- (31) Mackerel, Spanish;
- (32) Menhaden, Atlantic;
- (33) Mullets;
- (34) Perch, White;
- (35) Perch, Yellow;
- (36) Pigfish;
- (37) Pompano;
- (38) Porgies;
- (39) Scup;
- (40) Sea Basses;
- (41) Seatrout, Spotted;
- (42) Shad (American);
- (43) Sharks;
- (44) Sharks, Dogfish;
- (45) Sheepshead;
- (46) Skippers;
- (47) Snappers;
- (48) Spadefish, Atlantic;
- (49) Spot;
- (50) Striped Bass;
- (51) Swellfishes (Puffers);
- (52) Swordfish;
- (53) Tilefish;
- (54) Triggerfish;
- (55) Tuna;

- (56) Wahoo;
- (57) Weakfish (Grey Trout);
- (58) Whiting;
- (59) Wreckfish;
- (60) Unclassified Fish;
- (61) Brown Shrimp;
- (62) Pink Shrimp;
- (63) Rock Shrimp;
- (64) White Shrimp;
- (65) Unclassified Shrimp;
- (66) Clam, Hard;
- (67) Conchs;
- (68) Crabs, Blue, Hard;
- (69) Crabs, Blue, Soft;
- (70) Octopus;
- (71) Oyster;
- (72) Scallop, Bay;
- (73) Scallop, Calico;
- (74) Scallop, Sea;
- (75) Squid; and
- (76) Unclassified Shellfish.

(f) Cost of investigations:

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

History Note: Authority G.S. 113-134; 113-182; 113-267; 143B-289.52; Eff. March 1, 1995;

*Recodified from 15A NCAC 31 .0015 Eff. December 17, 1996;
Readopted Eff. April 1, 2022.*

15A NCAC 03I .0122 USER CONFLICT RESOLUTION

(a) To address user conflicts, the Fisheries Director may, by proclamation, impose any of the following restrictions:

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

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

(b) Request for user conflict resolution:

- (1) any person desiring user conflict resolution may make such request in writing addressed to the Director of the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. A request shall contain the following information:
 - (A) a map of the affected area including an inset vicinity map showing the location of the area with detail sufficient to permit on-site identification and location;
 - (B) identification of the user conflict causing a need for user conflict resolution;
 - (C) recommended solution for resolving user conflict; and
 - (D) name and address of the person requesting user conflict resolution.

(2) within 90 days of the receipt of the information required in Subparagraph (b)(1) of this Paragraph, the Fisheries Director shall review the information and determine if user conflict resolution is necessary. If user conflict resolution is not necessary, the Fisheries Director shall deny the request. If user conflict resolution is necessary, the Fisheries Director or his or her designee shall hold a public meeting in the area of the user conflict. The requestor shall present his or her request at the public meeting.

(3) following the public meeting as described in Subparagraph (b)(2) of this Paragraph, the Fisheries Director shall refer the users in the conflict for mediation or deny the request. If the user conflict cannot be resolved through mediation, the Fisheries Director shall submit for approval a proclamation to the Marine Fisheries Commission that addresses the conflict.

(4) proclamations issued under this Rule shall suspend appropriate rules or portions of rules under the authority of the Marine Fisheries Commission as specified in the proclamation. The provisions of Rule .0102 of this Section terminating suspension of a rule pending the next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under this Rule.

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

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

SECTION .0400 – FISHING GEAR

15A NCAC 03J .0401 FISHING GEAR

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

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

- (1) all or part of the Atlantic Ocean, up to one-half mile from the beach;
- (2) up to one-half mile in all directions of Oregon Inlet;
- (3) up to one-half mile in all directions of Hatteras Inlet;
- (4) up to one-half mile in all directions of Ocracoke Inlet;
- (5) up to one-half mile of the Cape Lookout Rock Jetty;
- (6) up to one-half mile in all directions of fishing piers open to the public;
- (7) up to one-half mile in all directions of State Parks; and

- (8) up to one-half mile of marinas as defined by the Coastal Resources Commission.
- (c) The Fisheries Director shall specify in the proclamation the boundaries of the closure through the use of maps, legal descriptions, prominent landmarks, or other permanent type markers.
- (d) The Fisheries Director shall hold a public meeting in the affected area before issuance of proclamations authorized by this Rule.

History Note: Authority G.S. 113-133; 113-134; 113-182; 113-221.1; 143B-289.52; Eff. July 1, 1993; Amended Eff. June 1, 1996; March 1, 1995; October 1, 1993; Readopted Eff. April 1, 2022.

SECTION .0500 – POUND NETS

15A NCAC 03J .0502 POUND NET SET PERMIT APPLICATION AND PROCESSING

- (a) All initial, renewal, or transfer applications for Pound Net Set Permits, and the operation of such pound net sets, shall comply with the 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) the applicant is an individual and not a corporation, partnership, organization, or other entity;
 - (2) the applicant has in the past complied with fisheries rules and laws and does not have any licenses under suspension or revocation as set forth in 15A NCAC 03O .0114 or any pound net set permits under suspension or revocation as set forth in 15A NCAC 03O .0504. In addition, a history of habitual fisheries violations evidenced by eight or more convictions as specified in 15A NCAC 03O .0114, G.S. 14-223, Chapter 75A, or G.S. 76-40 in 10 years shall make an individual ineligible.
 - (3) the applicant has in the past complied with all permit conditions, rules, and laws related to pound nets.
 - (4) the applicant holds proper valid 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 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 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 pound net set;
 - (B) bait pound net set;
 - (C) shrimp pound net set;
 - (D) blue crab pound net set; or
 - (E) other finfish pound net set.
- (d) For proposed new 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 shall be deemed denied. The applicant shall be notified of denial in writing. Approval 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 the denial of a Pound Net Set Permit application by filing a petition for a contested case 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 proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not interfere with navigation or with existing, traditional uses of the area other than navigation, and will not violate 15A NCAC 03J .0101 and .0102;
 - (2) 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 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 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 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 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 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; 113-181; 113-182; 113-182.1; 143B-289.52;
Eff. April 1, 2009;
Readopted Eff. June 1, 2022.*

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 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, 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; 113-181; 113-182; 143B-289.52;
Eff. April 1, 2009;
Readopted Eff. June 1, 2022.*

15A NCAC 03J .0504 POUND NET SET PERMIT TRANSFER

(a) It 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 verify the location of the pound net set and that it is in compliance with all laws and rules to determine if the permit should be transferred. The transferred permit expires on the same date as the initial permit.

(b) 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, 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 or permits to eligible immediate family members of the deceased permittee.

(c) No transfer is effective until approved and processed by the Division in accordance with 15A NCAC 03O .0501.

*History Note: Authority G.S. 113-134; 113-169.1; 113-181; 113-182; 143B-289.52;
Eff. April 1, 2009;
Readopted Eff. June 1, 2022.*

15A NCAC 03J .0505 POUND NET SET PERMIT CONDITIONS

(a) It shall be unlawful for a permittee to:

- (1) fail to notify the Division of Marine Fisheries Communications Center by phone at 800-682-2632 or 252-726-7021 within 72 hours of:
 - (A) 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) a change to the type of net being set at the permitted site.
- (2) make false notifications.
- (3) 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 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 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 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; 113-181; 113-182; 143B-289.52;
Eff. April 1, 2009;
Readopted Eff. June 1, 2022.*

SUBCHAPTER 03K – OYSTERS, CLAMS, SCALLOPS AND MUSSELS

SECTION .0100 – SHELLFISH, GENERAL

15A NCAC 03K .0105 RECREATIONAL HARVEST OF SHELLFISH

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

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

(b) It 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;
- (2) 100 mussels per person per day, not to exceed 200 mussels per vessel per 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. June 1, 2022.*

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

(a) It shall be unlawful to take oysters or clams between the hours of sunset and sunrise on any day.

(b) It shall be unlawful to unload oysters or clams from any vessel or remove any vessel containing oysters or clams from the water on Sundays or between sunset and sunrise on any day except that in New Hanover, Pender, and Brunswick counties, oysters and clams may be unloaded until two hours after sunset.

(c) Oysters and clams taken on Sundays from public bottom under the provisions of Rule .0105 of this Section or from shellfish leases and franchises pursuant to G.S. 113-208 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. June 1, 2022.*

SECTION .0200 – OYSTERS

15A NCAC 03K .0201 OYSTER HARVEST MANAGEMENT

(a) It 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, unless a smaller minimum size limit is necessary to prevent loss of oysters due to predators, pests, or infectious oyster diseases. In no case shall the minimum size limit be less than two and one-half inches; 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. June 1, 2022.*

SECTION .0300 – HARD CLAMS (MERCENARIA)

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

- (a) It shall be unlawful to take, buy, sell, or possess any clams taken by mechanical methods for clamming as defined in 15A NCAC 03I .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 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 Rule .0301(b) 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. June 1, 2022.*

SUBCHAPTER 03L – SHRIMP, CRAB, AND LOBSTER

SECTION .0100 - SHRIMP

15A NCAC 03L .0101 SHRIMP HARVEST RESTRICTIONS

- (a) It shall be unlawful to take shrimp until the Fisheries Director, by proclamation, opens the season.
- (b) The Fisheries Director may, by proclamation, impose any 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. June 1, 2022.*

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 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 or to implement State management measures:

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

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

SECTION .0300 – LOBSTER

15A NCAC 03L .0302 SPINY LOBSTER

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

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

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

SUBCHAPTER 03M – FINFISH

SECTION .0200 – STRIPED BASS

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

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

History Note: Authority G.S. 113-134; 113-182; 113-182.1; 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. June 1, 2022.

SECTION .0300 – SPANISH AND KING MACKEREL

15A NCAC 03M .0301 SPANISH AND KING MACKEREL

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

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0509 TARPON

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

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

15A NCAC 03M .0511 BLUEFISH

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

15A NCAC 03M .0516 COBIA

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

SUBCHAPTER 030 – LICENSES, LEASES, FRANCHISES AND PERMITS

SECTION .0100 – LICENSES

15A NCAC 030 .0103 AUXILIARY VESSELS

- (a) 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 vessel used in conjunction with a commercial fishing operation.
- (b) An individual in command of a vessel that is auxiliary to a vessel with a Commercial Fishing Vessel Registration with 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, or beach 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; 113-182; 143B-289.52;
Eff. January 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. August 1, 2000;
Readopted Eff. June 1, 2022.*

15A NCAC 030 .0105 REQUIREMENTS FOR MUSSEL DEALERS

Persons dealing in mussels who are subject to licensing requirements under the provisions of G.S. 113-169.3 shall be required to purchase only the license applicable to clam dealers and 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. June 1, 2022.*

15A NCAC 030 .0107 LICENSE REPLACEMENT AND FEES

(a) 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) 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. June 1, 2022.*

15A NCAC 030 .0108 LICENSE AND COMMERCIAL FISHING VESSEL REGISTRATION TRANSFERS

(a) To transfer a license or Commercial Fishing Vessel Registration, the license or registration shall not be expired prior to transfer.

(b) Upon transfer of a license or Commercial Fishing Vessel Registration, the transferee becomes the licensee and assumes the privileges of holding the license or Commercial Fishing Vessel Registration.

(c) A transfer application including a certification statement form shall be provided by the Division of Marine Fisheries. A transfer application shall be completed for each transfer including, but not limited to:

- (1) the information required as set forth in Rule .0101(a) of this Section;
- (2) a notarized statement from the transferee listing any violations involving marine or estuarine resources in the State of North Carolina during the previous three years; and
- (3) a notarized statement from the transferee that the information and supporting documentation submitted with the transfer application is true and correct, and that the transferee acknowledges that it is unlawful for a person to accept transfer of a license for which they are ineligible.

(d) A completed transfer application shall be returned to an office of the Division by mail or in person, except as set forth in Paragraph (e) of this Rule.

(e) A transfer application submitted to the Division without complete and required information shall be deemed incomplete and shall not be considered further until resubmitted with all required information. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.

(f) A License to Land Flounder from the Atlantic Ocean shall only be transferred:

- (1) with the transfer of the ownership of a vessel that the licensee owns that individually met the eligibility requirements of Rule .0101 (b)(1)(A) and (b)(1)(B) of this Section to the new owner of that vessel; or
- (2) by the owner of a vessel to another vessel under the same ownership.

Transfer of a License to Land Flounder from the Atlantic Ocean transfers with it all flounder landings from the Atlantic Ocean associated with that vessel. Any transfer of license under this Paragraph shall only be processed through the Division of Marine Fisheries Morehead City Headquarters Office and no transfer is effective until approved and processed by the Division.

(g) Transfer of a Commercial Fishing Vessel Registration: If transferring ownership of a vessel bearing a current Commercial Fishing Vessel Registration, the new owner:

- (1) shall follow the requirements in Rule .0101 of this Section and pay a replacement fee as set forth in Rule .0107 of this Section for a replacement Commercial Fishing Vessel Registration; and
- (2) shall submit a transfer application with the signatures of the former owner and the new owner notarized.

(h) Transfer of a Standard or Retired Standard Commercial Fishing License:

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

transfer the license to a third party purchaser of the deceased licensee's fishing vessel. Transfers shall be made according to the provisions of Subparagraphs (2) through (4) of this Paragraph.

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

15A NCAC 030 .0110 LICENSE REFUNDS

All license fees are non-refundable except if licenses are issued by the Division of Marine Fisheries in error.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; 147-84; Eff. March 1, 1995; Temporary Amendment Eff. July 1, 1999; Amended Eff. August 1, 2000; Readopted Eff. June 1, 2022.

SECTION .0200 – SHELLFISH LEASES AND FRANCHISES

15A NCAC 030 .0203 SHELLFISH LEASE APPLICATION PROCESSING

- (a) After acceptance of a completed 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 of Marine Fisheries. Proposed shellfish lease areas inconsistent with applicable standards contained or referenced in Rule .0201 of this Section shall result in the return of 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 or applicants. The failure of the applicant or applicants to amend the application or modify the shellfish lease area identification, when required, within 30 days of notification shall result in denial of the application.
- (b) If the initial or amended shellfish lease application is deemed consistent with all applicable requirements, the Secretary or the Secretary's 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 the Secretary's 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 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) After approval of a shellfish lease by the Secretary, the applicant or applicants shall mark the lease in accordance with Rule .0204 of this Section within 30 days of approval.
- (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 bottom leases and 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. June 1, 2022.

15A NCAC 030 .0205 SHELLFISH LEASE RENEWAL

- (a) Shellfish lease renewal applications shall be provided to lease holders by the Division of Marine Fisheries as follows:
- (1) for a shellfish bottom lease, a renewal application shall be provided in January of the year of expiration.
 - (2) for a shellfish water column lease, a renewal application shall be provided at least 90 days prior to the expiration date.
- (b) A shellfish lease renewal application shall be accompanied by a Shellfish Lease Management Plan that meets the requirements of 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 lease.
- (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 030 .0503(a).

(d) If it is determined, after due notice to the shellfish lease holder and after opportunity for the lease holder to be heard, that the 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 lease. The shellfish lease holder may appeal the Secretary's decision by filing a petition for a contested case under G.S. 150B-23.

(e) Pursuant to G.S. 113-202(a)(6), the Secretary is not authorized to approve renewal of a shellfish lease in an area 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 shall be amended to exclude the area closed to shellfish harvest prior to renewal.

(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 lease holder, may issue a renewal lease for all or part of the area previously leased to the 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. June 1, 2022.

15A NCAC 030 .0206 SHELLFISH LEASE APPLICATION: REQUEST FOR REVIEW

(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 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 Cultivation 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; 143B-289.57;
Eff. January 1, 1991;
Amended Eff. March 1, 1994; September 1, 1991;
Readopted Eff. June 1, 2022.

15A NCAC 030 .0207 SHELLFISH LEASE AND FRANCHISE PRODUCTION REPORTS

(a) The holder or holders of a shellfish lease or franchise shall provide an annual production report to the Division of Marine Fisheries by March 31 of each year showing the amounts of material planted, purchased, and harvested; where and when the material was obtained; and when the material was planted in accordance with Rules .0201 and .0202 of this Section. The report shall include documentation 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.

(c) Failure by the holder or holders of the shellfish lease or franchise to submit the required annual production report or filing an incomplete report or a report containing false information constitutes grounds for 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. June 1, 2022.

15A NCAC 030 .0208 TERMINATION PROCEDURES FOR SHELLFISH LEASES AND FRANCHISES

(a) Procedures for termination of shellfish leases and franchises are provided in G.S. 113-202.

(b) Consistent with G.S. 113-202(11) and G.S. 113-201(b), a 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, or the rules of this Section 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 or the Fisheries Director's designee received prior to the expiration of the lease term that documents one of the following occurrences caused or will cause the lease or franchise holder to fail to meet lease requirements:

- (1) death, illness, or incapacity of the shellfish lease or franchise holder or the holder's immediate family as defined in G.S. 113-168 that prevented or will prevent the 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 (b)(1) of this Rule, the notice shall also state the name of the shellfish lease or franchise holder or immediate family member and either the date of death or the date 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 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. June 1, 2022.

15A NCAC 030 .0209 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.

(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.

(c) Notice to transfer or sublease a shellfish lease or franchise shall include:

- (1) shellfish lease or franchise number;
- (2) date of transfer or sublease;
- (3) name and city of shellfish lease or franchise holder;
- (4) name and address of transferee or sub-lessee;
- (5) waterbody and county of shellfish lease or franchise being transferred or subleased;
- (6) area description and total acres of shellfish lease or franchise or portion of shellfish lease or franchise being transferred or subleased; and
- (7) end date for a sublease.

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.

(d) 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.

(e) 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).

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. July 1, 2022.

15A NCAC 030 .0210 STANDARDS AND REQUIREMENTS FOR FRANCHISES

(a) Shellfish Management Plans, prepared in accordance with the standards in 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.

(b) The Shellfish Management Plan requirements in Paragraph (a) of this Rule and all other requirements and conditions of this Section affecting management of franchises shall apply to all valid franchises.

(c) Commercial production requirements for franchises shall be identical to that required for shellfish bottom leases in 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 franchises and continuing throughout the term of Shellfish Management Plans required in Paragraph (a) of this Rule.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.2; 113-205; 113-206; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008; September 1, 1991;
Readopted Eff. June 1, 2022.

SECTION .0400 – STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY

15A NCAC 030 .0401 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD

(a) The Chair of the Marine Fisheries Commission, the Secretary of the Department of Environmental Quality, and the Fisheries Director 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 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. June 1, 2022.

15A NCAC 030 .0402 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY APPLICATION PROCESS

(a) Application forms for determination of eligibility for the Standard Commercial Fishing License Eligibility Pool 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 shall be submitted to any Office of the Division for processing.

(b) Only one application per individual for determination of eligibility for the Standard Commercial Fishing License Eligibility Pool shall be accepted or may be pending at any one time. An applicant may have only one entry in the 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 License Eligibility Pool.

(d) If an applicant has died or becomes ineligible and is subsequently selected from the Standard Commercial Fishing License Eligibility Pool, that license eligibility shall automatically revert to the Eligibility Pool.

(e) Persons claiming retirement from commercial fishing or transferring their Standard Commercial Fishing License 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, except as provided in Rule .0404(3) of this Section.

(f) Applicants shall notify the Division 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. June 1, 2022.

15A NCAC 030 .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 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 Standard Commercial Fishing License Eligibility Pool at 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 Chair of the 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. June 1, 2022.

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

In determining eligibility of an 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:
 - (a) significant involvement in the commercial fishing industry for three of the last five years;
 - (b) significant involvement in commercial fishing or in the commercial fishing industry prior to the last five years;
 - (c) 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, or other adult; or
 - (d) significant involvement of the applicant's family in commercial fishing. For the purpose of this Sub-Item, family shall include mother, father, brothers, sisters, spouse, children, grandparents, or legal guardian.

For the purposes of this Rule, "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 purchase fish at the point of landing. Significant involvement does not include activities such as those who transport fish from the point of landing, those who sell or make commercial or recreational fishing gear, those who operate bait and tackle shops unless they are engaged in the actual taking of bait for sale, or those who work in fish markets or crab picking operations;

- (2) compliance with applicable laws, regulations, and rules:
 - (a) the applicant shall not have any licenses, endorsements, or Commercial Fishing Vessel Registrations issued by the Division of Marine Fisheries or the right to hold them under suspension or revocation at the time of application or during the eligibility review;
 - (b) 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 Commercial Fishing Vessel Registrations or the right to hold them issued by the Division are suspended or revoked;
 - (c) four convictions within the last three years or the number of convictions that would cause suspension or revocation of licenses, endorsements, or Commercial Fishing Vessel Registrations as set forth in Rule .0114 of this Subchapter within the last three years shall result in the application being 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, as set forth in Rule .0101 of this Subchapter; and
 - (d) 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 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, any conviction for violation of G.S. 76-40 and any rule implementing or authorized by such statute, any conviction of Chapter 75A of the North Carolina General Statutes and any rule implementing or authorized by such 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, any conviction of resist, obstruct, or delay involving a Marine Fisheries Inspector or Wildlife Protector under G.S. 14-223, and any conviction involving assaultive behavior toward a Marine Fisheries Inspector or other governmental official of the Department of Environmental Quality or the Wildlife Resources Commission;

- (3) the applicant shall not have transferred a Standard Commercial Fishing License granted by the Standard Commercial Fishing License Eligibility Board; and
- (4) an applicant for the Standard Commercial Fishing License Eligibility Pool shall meet all other statutory eligibility requirements for 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. June 1, 2022.

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 applicant shall certify that the information on the applicant's original application is correct and that the applicant desires to remain in the Standard Commercial Fishing License Eligibility Pool. A certification form shall be provided and mailed to the applicant at the last known address by the Division of Marine Fisheries;
- (2) the certification form with any changes, such as address, phone number, or updated fisheries involvement information since the last application or certification, shall be notarized and submitted to the Division within 12 months of the initial application and annually thereafter; and
- (3) 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 removed from the Standard Commercial Fishing License Eligibility Pool. An applicant that has been 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. June 1, 2022.

SUBCHAPTER 03P - 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).

(b) For the purpose of this Rule and in accordance with G.S. 150B-2, "permit" includes "certification" and "certificate of compliance."

(c) Except in cases where G.S. 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 permit, notice shall be given to the 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
- (2) has 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.

(d) For a permit related to endangered or threatened species or a species managed by a quota, any statements submitted by the permittee to show compliance with all requirements for retention of the permit shall be postmarked or emailed within five days of receipt of the notice to commence proceedings. For all other permits, any statements submitted by the permittee to show compliance with all requirements for retention of the permit shall be postmarked or emailed within 10 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 if mailed, sent to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557, or if emailed, sent to the email address provided in the notice for the designated personnel.

(e) Upon receipt of a statement and any supporting documentation from the permittee, the Division shall review the statement and, within 10 days, shall notify the permittee in writing with the Division's determination whether the permittee demonstrated compliance with all requirements for retention of the permit. In making this determination, the Division may consider changes the permittee made enabling the permittee to conduct the operations for which the permit is held in accordance with all applicable laws and rules, and processing errors made by the Division.

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. June 1, 2022.

15A NCAC 03P .0102 CONTESTED CASE HEARING PROCEDURES

Contested case hearings shall be held in accordance with Article 3 of Chapter 150B of the General Statutes.

*History Note: Authority G.S. 113-131; 113-134; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. August 1, 1999;
Readopted Eff. June 1, 2022.*

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 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. June 1, 2022.*

15A NCAC 03P .0202 PROCEDURE FOR REQUESTING DECLARATORY RULINGS

(a) All requests for a declaratory ruling shall be submitted in writing to the Marine Fisheries Commission Chair and addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557.

(b) All requests shall include the following:

- (1) the petitioner's name and address;
- (2) the rule, statute, or order upon which a ruling is desired;
- (3) a statement as to whether the request is for a ruling on:
 - (A) the validity of a rule;
 - (B) the applicability of a rule, 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 that demonstrate the petitioner is aggrieved by the rule or statute or its potential application to the petitioner;
- (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner;
- (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.

(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 shall include a statement of the specific facts to a given factual situation and documentation supporting those facts. 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 multiple types of declaratory rulings in a single request.

(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.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4;
Eff. April 1, 1999;
Readopted Eff. June 1, 2022.*

15A NCAC 03P .0203 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 the petitioner's 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 this Section, a declaratory ruling shall be deemed to be 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;
 - (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) the Commission changes the declaratory ruling prospectively; or
 - (4) any court sets aside the declaratory ruling in litigation between the Commission or Department of Environmental Quality and the party requesting the ruling.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4; Eff. April 1, 1999; Readopted Eff. June 1, 2022.

SECTION .0300 - PETITIONS FOR RULEMAKING

15A NCAC 03P .0301 FORM AND CONTENTS OF PETITIONS FOR RULEMAKING

- (a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Marine Fisheries Commission shall submit the person's request in a written petition to the Marine Fisheries Commission Chair addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 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 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.

- (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.
- (e) A petition failing to contain the required information shall be returned by the Marine Fisheries Commission Chair.

History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.51; 143B-289.52; 150B-20; Eff. April 1, 1999; Readopted Eff. June 1, 2022.

15A NCAC 03P .0302 REVIEW OF RULEMAKING PETITIONS BY A COMMITTEE OF THE COMMISSION

- (a) The Marine Fisheries Commission Chair may refer complete petitions, as set forth in Rule .0301 of this Section, to the appropriate standing advisory committees or other advisory 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) 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.
- (c) At least 15 days before the Committee meeting, the Committee 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) 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, 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.
- (f) At least 10 days before the Committee meeting, interested persons shall request the opportunity to make a presentation to the Committees through the Chairs of the Committees. 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.
- (g) During the 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. June 1, 2022.

15A NCAC 03P .0303 PRESENTATION OF RULEMAKING PETITIONS TO THE COMMISSION

- (a) A complete petition for rulemaking, 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 Department of Environmental Quality, 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.
- (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; or
 - (2) deny the petition in writing, stating the reason or reasons for the denial, and send the written denial to the person or persons who submitted the petition.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52; 150B-20;
Eff. April 1, 1999;
Readopted Eff. June 1, 2022.*

15A NCAC 03P .0304 RECOURSE TO DENIAL OF THE PETITION

*History Note: Authority G.S. 113-134; 113-182; 143B-289.51; 150B-20;
Eff. April 1, 1999;
Repealed Eff. June 1, 2022.*

SUBCHAPTER 03R – DESCRIPTIVE BOUNDARIES

SECTION .0100 – DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0104 PERMANENT SECONDARY NURSERY AREAS

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

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

- (ii) Gales Creek-Bear Creek - north and west of a line beginning on Sanders Point at a point 35° 11.2833' N – 76° 35.9000' W; running northeasterly to the east shore to a point 35° 11.9000' N – 76° 34.2833' W;
- (3) in the Pamlico and Pungo Rivers Area:
- (a) Pungo River - north of a line beginning on the west shore at a point 35° 32.2000' N – 76° 29.2500' W; running east near Beacon "21" to the east shore to a point 35° 32.0833' N – 76° 28.1500' W;
 - (b) Pungo Creek - west of a line beginning on Persimmon Tree Point at a point 35° 30.7633' N – 76° 38.2831' W; running southwesterly to Windmill Point to a point 35° 31.1546' N – 76° 37.7590' W;
 - (c) Scranton Creek - south and east of a line beginning on the west shore at a point 35° 30.6810' N – 76° 28.3435' W; running easterly to the east shore to a point 35° 30.7075' N – 76° 28.6766' W;
 - (d) Slade Creek - east of a line beginning on the west shore at a point 35° 27.8879' N – 76° 32.9906' W; running southeasterly to the east shore to a point 35° 27.6510' N – 76° 32.7361' W;
 - (e) Fortescue Creek - east of a line beginning on Pasture Point at a point 35° 25.9213' N – 76° 31.9135' W; running southerly to the Lupton Point shore to a point 35° 25.6012' N – 76° 31.9641' W;
 - (f) Pamlico River - west of a line beginning on Ragged Point at a point 35° 27.5768' N – 76° 54.3612' W; running southwesterly to Mauls Point to a point 35° 26.9176' N – 76° 55.5253' W;
 - (g) North Creek - north of a line beginning on the west shore at a point 35° 25.3988' N – 76° 40.0455' W; running southeasterly to the east shore to a point 35° 25.1384' N – 76° 39.6712' W;
 - (h) South Creek - west of a line beginning on Hickory Point at a point 35° 21.7385' N – 76° 41.5907' W; running southerly to Fork Point to a point 35° 20.7534' N – 76° 41.7870' W;
 - (i) Bond Creek/Muddy Creek - south of a line beginning on Fork Point at a point 35° 20.7534' N – 76° 41.7870' W; running southeasterly to Gum Point to a point 35° 20.5632' N – 76° 41.4645' W;
 - (j) in the Goose Creek Area, Campbell Creek - west of a line beginning on the north shore at a point 35° 17.3600' N – 76° 37.1096' W; running southerly to the south shore to a point 35° 16.9876' N – 76° 37.0965' W; and
 - (k) Oyster Creek-Middle Prong - southwest of a line beginning on Pine Hammock at a point 35° 19.5586' N – 76° 32.8830' W; running easterly to Cedar Island to a point 35° 19.5490' N – 76° 32.7365' W; and southwest of a line beginning on Cedar Island at a point 35° 19.4921' N – 76° 32.2590' W; running southeasterly to Beard Island Point to a point 35° 19.1265' N – 76° 31.7226' W;
- (4) in the Neuse River Area:
- (a) Lower Broad Creek - west of a line beginning on the north shore at a point 35° 05.8314' N – 76° 35.3845' W; running southwesterly to the south shore to a point 35° 05.5505' N – 76° 35.7249' W;
 - (b) Greens Creek - north of a line beginning on the west shore of Greens Creek at a point 35° 01.3476' N – 76° 42.1740' W; running northeasterly to the east shore to a point 35° 01.4899' N – 76° 41.9961' W;
 - (c) Dawson Creek - north of a line beginning on the west shore at a point 34° 59.5920' N – 76° 45.4620' W; running southeasterly to the east shore to a point 34° 59.5800' N – 76° 45.4140' W;
 - (d) Goose Creek - north and east of a line beginning at a point on the west shore at a point 35° 02.6642' N – 76° 56.4710' W; running southeasterly to a point on Cooper Point 35° 02.0908' N – 76° 56.0092' W;
 - (e) Upper Broad Creek - northeast of a line beginning at a point on Rowland Point on the north shore at a point 35° 02.6166' N – 76° 56.4500' W; running southeasterly to the south shore to a point 35° 02.8960' N – 76° 56.7865' W;
 - (f) Clubfoot Creek - south of a line beginning on the west shore at a point 34° 54.5424' N – 76° 45.7252' W; running easterly to the east shore to a point 34° 54.4853' N – 76° 45.4022' W; and
 - (g) in the Adams Creek Area, Cedar Creek - east of a line beginning on the north shore at a point 34° 56.1203' N – 76° 38.7988' W; running southerly to the south shore to a point 34° 55.8745' N – 76° 38.8153' W;
- (5) Newport River - west of a line beginning near Penn Point on the south shore at a point 34° 45.6960' N – 76° 43.5180' W; running northeasterly to the north shore to a point 34° 46.8490' N – 76° 43.3296' W;
 - (6) Virginia Creek - all waters of the natural channel northwest of the primary nursery area line;
 - (7) Old Topsail Creek - all waters of the dredged channel northwest of the primary nursery area line;
 - (8) Mill Creek - all waters west of a line beginning on the north shore at a point 34° 20.6420' N – 77° 42.1220' W; running southwesterly to the south shore to a point 34° 20.3360' N – 77° 42.2400' W;
 - (9) Pages Creek - all waters west of a line beginning on the north shore at a point 34° 16.1610' N – 77° 45.9930' W; running southwesterly to the south shore to a point 34° 15.9430' N – 77° 46.1670' W;
 - (10) Bradley Creek - all waters west of a line beginning on the north shore at a point 34° 12.7030' N – 77° 49.1230' W; running southerly near the dredged channel to a point 34° 12.4130' N – 77° 49.2110' W;
 - (11) Cape Fear River - all waters bounded by a line beginning on the south side of the Spoil Island at the intersection of the Intracoastal Waterway and the Cape Fear River ship channel at a point 34° 01.5780' N – 77° 56.0010' W; running

- easterly to the east shore of the Cape Fear River to a point 34° 01.7230' N – 77° 55.1010' W; running southerly and bounded by the shoreline to the Ferry Slip at Federal Point at a point 33° 57.8080' N – 77° 56.4120' W; running northerly to Bird Island to a point 33° 58.3870' N – 77° 56.5780' W; running northerly along the west shoreline of Bird Island and the Cape Fear River spoil islands back to the point of origin;
- (12) Lockwood Folly River - all waters north of a line beginning on Howells Point at a point 33° 55.3680' N – 78° 12.7930' W and running in a westerly direction along the Intracoastal Waterway near Intracoastal Waterway Marker "46" to a point 33° 55.3650' N – 78° 13.8500' W;
- (13) Saucepan Creek - all waters north of a line beginning on the west shore at a point 33° 54.6290' N – 78° 22.9170' W; running northeasterly to the east shore to a point 33° 54.6550' N – 78° 22.8670' W; and
- (14) Davis Creek - all waters east of a line beginning on Horse Island at a point 33° 55.0160' N – 78° 12.7380' W; running southerly to Oak Island to a point 33° 54.9190' N – 78° 12.7170' W; continuing upstream to the primary nursery line and Davis Canal, all waters southeast of a line beginning on Pinner Point at a point 33° 55.2930' N – 78° 11.6390' W; running southwesterly across the mouth of Davis Canal to the spoil island at the southwest intersection of the Intracoastal Waterway and Davis Canal to a point 33° 55.2690' N – 78° 11.6550' W.

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

15A NCAC 03R .0105 SPECIAL SECONDARY NURSERY AREAS

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

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

- (d) Brett Bay - north of a line beginning on the west shore at a point 34° 49.4019' N – 76° 26.0227' W; running easterly to Piney Point to a point 34° 49.5799' N – 76° 25.0534' W; and
- (e) Jarrett Bay - north of a line beginning on the west shore near Old Chimney at a point 34° 45.5743' N – 76° 30.0076' W; running easterly to a point east of Davis Island 34° 45.8325' N – 76° 28.7955' W;
- (4) in the North River Area:
 - (a) North River - north of a line beginning on the west shore at a point 34° 46.0383' N – 76° 37.0633' W; running easterly to a point on the east shore 34° 46.2667' N – 76° 35.4933' W; and
 - (b) Ward Creek - east of a line beginning on the north shore at a point 34° 46.2667' N – 76° 35.4933' W; running southerly to the south shore to a point 34° 45.4517' N – 76° 35.1767' W;
- (5) New River - all waters upstream of a line beginning on the north side of the N.C. Highway 172 Bridge at a point 34° 34.7680' N – 77° 23.9940' W; running southerly to the south side of the bridge at a point 34° 34.6000' N – 77° 23.9710' W;
- (6) Chadwick Bay - all waters west of a line beginning on the northeast side of Chadwick Bay at a point 34° 32.5630' N – 77° 21.6280' W; running southeasterly to a point near Marker "6" at 34° 32.4180' N – 77° 21.6080' W; running westerly to Roses Point at a point 34° 32.2240' N – 77° 22.2880' W; following the shoreline in Fullard Creek to a point 34° 32.0340' N – 77° 22.7160' W; running northwesterly to a point 34° 32.2210' N – 77° 22.8080' W; following the shoreline to the west point of Bump's Creek at a point 34° 32.3430' N – 77° 22.4570' W; running northeasterly to the east shore to a point 34° 32.4400' N – 77° 22.3830' W; following the shoreline of Chadwick Bay back to the point of origin; and
- (7) Intracoastal Waterway - all waters in the Intracoastal Waterway maintained channel from a point near Marker "17" north of Alligator Bay 34° 30.7930' N – 77° 23.1290' W; to a point near Marker "49" at Morris Landing at a point 34° 28.0820' N – 77° 30.4710' W; and all waters in the Intracoastal Waterway maintained channel and 100 feet on either side from Marker "49" to the N.C. Highway 50-210 Bridge at Surf City.

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

15A NCAC 03R .0117 OYSTER SANCTUARIES

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

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

- (f) Deep Bay: within the area described by a line beginning at a point 35° 22.9126' N - 76° 22.1612' W; running southerly to a point 35° 22.7717' N - 76° 22.1612' W; running westerly to a point 35° 22.7717' N - 76° 22.3377' W; running northerly to a point 35° 22.9126' N - 76° 22.3377' W; running easterly to the point of beginning.
 - (g) West Bluff: within the area described by a line beginning at a point 35° 18.3160' N - 76° 10.2960' W; running southerly to a point 35° 18.3160' N - 76° 10.0690' W; running westerly to a point 35° 18.1290' N - 76° 10.0690' W; running northerly to a point 35° 18.1290' N - 76° 10.2960' W; running easterly to the point of beginning.
 - (h) Middle Bay: within the area described by a line beginning at a point 35° 14.1580' N - 76° 30.1780' W; running southerly to a point 35° 14.1150' N - 76° 30.1780' W; running westerly to a point 35° 14.1150' N - 76° 30.3320' W; running northerly to a point 35° 14.1580' N - 76° 30.3320' W; running easterly to the point of beginning.
 - (i) Swan Island: within the area described by a line beginning at a point 35° 05.6170' N - 76° 27.5040' W; running southerly to a point 35° 05.6020' N - 76° 26.7650' W; running westerly to a point 35° 05.4850' N - 76° 26.7640' W; running northerly to a point 35° 05.4990' N - 76° 27.5030' W; running easterly to the point of beginning.
 - (j) Raccoon Island: within the area described by a line beginning at a point 35° 05.4760' N - 76° 23.5370' W; running southerly to a point 35° 05.4760' N - 76° 23.4040' W; running westerly to a point 35° 05.3860' N - 76° 23.4040' W; running northerly to a point 35° 05.3680' N - 76° 23.5370' W; running easterly to the point of beginning.
 - (k) West Bay: within the area described by a line beginning at a point 34° 58.8517' N - 76° 21.3632' W; running southerly to a point 34° 58.7661' N - 76° 21.3632' W; running westerly to a point 34° 58.7661' N - 76° 21.4735' W; running northerly to a point 34° 58.8517' N - 76° 21.4735' W; running easterly to the point of beginning.
- (2) Neuse River area:
- (a) Little Creek: within the area described by a line beginning at a point 35° 02.6940' N - 76° 30.9840' W; running southerly to a point 35° 02.6940' N - 76° 30.7940' W; running westerly to a point 35° 02.5380' N - 76° 30.7940' W; running northerly to a point 35° 02.5380' N - 76° 30.9840' W; running easterly to the point of beginning.
 - (b) Neuse River: within the area described by a line beginning at a point 35° 00.4910' N - 76° 31.9350' W; running southerly to a point 35° 00.3750' N - 76° 31.9350' W; running westerly to a point 35° 00.3750' N - 76° 32.0750' W; running northerly to a point 35° 00.4910' N - 76° 32.0750' W; running easterly to the point of beginning.

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

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

SUBCHAPTER 18A – SANITATION

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

15A NCAC 18A .0134 DEFINITIONS

The following definitions shall apply 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 defined in G.S. 106-129 shall include the following:
 - (a) any cooked crustacea or crustacea meat that does not comply with the rules in this Section;
 - (b) any cooked crustacea or crustacea meat that exceeds the bacteriological standards in Rule .0182 of this Section; or
 - (c) any cooked crustacea or crustacea meat that has been deemed to be an imminent hazard.
- (2) "Clean" means free from dirt, debris, dust, marks, stains, waste materials, litter, or foreign material.
- (3) "Code date" means the date legibly placed on the container to indicate the date that the product was packed.
- (4) "Cook" means to prepare or treat raw crustacea by heating.
- (5) "Critical control point" means a point, step, or procedure in a food process at which a control can be applied and a food safety hazard can, as a result, be prevented, eliminated, or reduced to acceptable levels.
- (6) "Critical limit" means the maximum or minimum value to which a biological, chemical, or physical parameter shall be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard.
- (7) "Crustacea meat" means the meat of crabs, lobster, shrimp, or crayfish.
- (8) "Division" means the Division of Marine Fisheries.
- (9) "Easily cleanable" has the same meaning as defined in the 2017 U.S. Food Code. This definition is incorporated by reference not including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/fda-food-code/food-code-2017>, at no cost.
- (10) "Food-contact surface" means the parts of equipment, including auxiliary equipment, that may be in contact with the food being processed, or that may drain into the portion of equipment with which food is in contact.
- (11) "Food safety hazard" means any biological, chemical, or physical property that may cause a food to be unsafe for human consumption.
- (12) "Foreign" means any place or location outside the United States.
- (13) "Fresh crustacea" means a live, raw, or frozen raw crab, lobster, shrimp, or crayfish that shows no decomposition.
- (14) "Good repair" means maintained in order to function as designed and without defect.
- (15) "HACCP plan" means a written document that delineates the procedures a dealer follows to implement food safety controls.
- (16) "Hazard analysis critical control point (HACCP)" means a system of inspection, control, and monitoring measures initiated by a dealer to identify microbiological, chemical, or physical food safety hazards that are likely to occur in shellfish products produced by the dealer.
- (17) "Imminent hazard" has the same meaning as defined in G.S. 130A-2.
- (18) "Internal temperature" means the temperature of the product as opposed to the ambient temperature.
- (19) "Misbranded" as defined in G.S. 106-130 shall include any container of cooked crustacea or crustacea meat that is not labeled in compliance with the rules in this Section.
- (20) "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.
- (21) "Operating season" means the season of the year during which a crustacea product is processed.
- (22) "Pasteurization" means the process of 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 or above this temperature for at least one minute at the geometric center of a container in equipment being operated in compliance with the Process Validation Study Report. The term includes any other process that has been found equally effective by the Division.
- (23) "Pasteurization date" means a code legibly placed on the container to indicate the date that the product was pasteurized.
- (24) "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.

- (25) "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.
- (26) "Repacker" means a facility that repacks cooked crustacea meat into other containers.
- (27) "Responsible individual" 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 individual.
- (28) "Retort" means a pressure vessel used to cook raw crustacea.
- (29) "Sanitize" has the same meaning as defined in 21 CFR 110.3, which is incorporated by reference including subsequent amendments and editions. A copy of the reference material can be found at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-110/subpart-A/section-110.3>, at no cost.
- (30) "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 equipment being operated in compliance with the Process Validation Study Report.

History Note: Authority G.S. 106-129; 106-130; 113-134; 113-182; 113-221.2; 143B-289.52;
 Eff. October 1, 1992;
 Amended Eff. August 1, 2000; August 1, 1998; February 1, 1997;
 Readopted Eff. April 1, 2022.

15A NCAC 18A .0137 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 of Marine Fisheries.

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

15A NCAC 18A .0138 SUPERVISION

- (a) The owner or responsible individual shall supervise the processing operation and be responsible for compliance with the rules of this Section, including compliance with personal hygiene requirements as set forth in Rule .0153 of this Section.
- (b) No unauthorized individuals shall be allowed in the facility during the periods of operation. For the purpose of this Rule, "unauthorized individual" shall mean an individual that is not designated and trained by the owner or responsible individual to perform specific processing tasks in the facility.

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

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 that may have been contaminated by flood waters shall be deemed adulterated and disposed of in accordance with G.S. 113-221.4 and Rule .0181 of this Section.

History Note: Authority G.S. 113-134; 113-182; 113-221.2; 113-221.4; 143B-289.52;
 Eff. October 1, 1992;
 Readopted Eff. April 1, 2022.

15A NCAC 18A .0140 FLOORS

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

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

15A NCAC 18A .0141 WALLS AND CEILINGS

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

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

15A NCAC 18A .0142 LIGHTING

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

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

15A NCAC 18A .0143 VENTILATION

All rooms and areas shall be ventilated.

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

15A NCAC 18A .0144 INSECT CONTROL

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

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

15A NCAC 18A .0145 RODENT AND ANIMAL CONTROL

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

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

15A NCAC 18A .0146 PREMISES

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

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

Eff. October 1, 1992;
Readopted Eff. May 1, 2021.

15A NCAC 18A .0147 WATER SUPPLY

- (a) The water supply used shall be in accordance with 15A NCAC 18A .1720 through .1728.
- (b) Water samples for bacteriological analysis shall be collected at least annually by the Division of Marine Fisheries and submitted for analysis to the State Laboratory of Public Health or other laboratory that is certified in accordance with 10A NCAC 42C .0102, which is incorporated by reference including subsequent amendments.
- (c) Cross-connections with unapproved water supplies are prohibited. Hot and cold running water under pressure shall be provided to food preparation, 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, and other water-using operations.

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

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 a manner to prevent contamination and keep the ice clean.
- (b) All equipment used in the handling of ice shall be used for no other purpose and shall be cleaned and sanitized at least once each day the facility is in operation.

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

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, and pipes shall not be suspended over working areas.
- (c) Handwash lavatories shall be located so that the supervisor can 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 room or area;
 - (2) toilet or lounge area; and
 - (3) 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 testing method or equipment shall be available and used to test chemical sanitizers to ensure minimum prescribed strengths.
- (h) Soap and single service towels in protected dispensers shall be available near the handwash lavatories. Other hand drying devices that are found equally effective by the Division of Marine Fisheries may be used.
- (i) All pre-cool rooms, picking rooms, packing rooms or areas, and cooking areas shall be provided with hose bibs and wash down hoses. Storage racks shall be provided to keep the hoses elevated off the floor when not in use.
- (j) An automatically regulated hot-water system shall be provided to furnish a sufficient volume of hot water with a temperature of at least 130° F (54.5° C) to carry out all processing operations.
- (k) All handwash lavatories and sinks shall be equipped with mixing faucets.
- (l) A three-compartment sink with drainboards, large enough to wash the largest utensils used in the facility, shall be located in the picking room near the delivery shelf. One three-compartment sink, with drainboards, shall be provided for every 50 employees or fraction thereof.
- (m) The floor drains in coolers shall not be connected directly to a sewer in processing or repacking facilities constructed after October 1, 1992.

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

15A NCAC 18A .0150 SEWAGE DISPOSAL

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

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

15A NCAC 18A .0151 TOILETS

- (a) Toilets shall be provided by the owner or responsible person in the facility.
- (b) Toilet tissue shall be 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.

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

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 of Marine Fisheries.
- (c) Scrap containers shall be non-corrosive and cleaned at least daily.
- (d) Scrap containers shall be cleaned in an area approved by the Division.

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

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 visible places in the facility by the owner or responsible individual, such that the signs can be seen by employees.
- (b) All individuals handling cooked crustacea or crustacea meat shall sanitize their hands before beginning work and again after each interruption.
- (c) All individuals employed or engaged in the handling, picking, or packing of cooked crustacea or crustacea meat shall wear clean, washable outer clothing.
- (d) Employees shall not eat food, drink, or use tobacco in any form in the areas where cooked crustacea or crustacea meat are stored, processed, or handled.
- (e) Any individual known to be a carrier of any disease that 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 employees who pick or pack cooked crustacea or crustacea meat shall be bare to the elbow or covered with an arm guard that is easily cleanable and capable of being sanitized.
- (h) Employees who pick and pack cooked crustacea or crustacea meat shall have clean fingernails free from nail polish and that are short enough to not extend past the fingertips. Employees shall not wear jewelry other than easily cleanable rings. The use of absorbent wraps or absorbent finger cots shall not be permitted.

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

15A NCAC 18A .0154 EMPLOYEES' PERSONAL ARTICLES

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

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

15A NCAC 18A .0155 SUPPLY STORAGE

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

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

15A NCAC 18A .0156 EQUIPMENT AND UTENSIL CONSTRUCTION

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

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

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, such as splatter of crustacea meat or juices.

(b) All food-contact surfaces shall be washed, rinsed, and sanitized prior to starting operation each day and whenever there is evidence of contamination, such as splatter of crustacea meat or juices.

(c) Reusable picking containers and knives shall be washed, rinsed, and sanitized each time crustacea meat is delivered to the packing room.

(d) Sanitizing methods shall be as follows:

- (1) by steam in a steam chamber or box equipped with an indicating thermometer located in the coldest zone, 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 immersion for at least one minute in the third compartment in clean hot water at a temperature of at least 170° F (77° C). A thermometer accurate to 3° F (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 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 that have to be washed in place shall be washed, rinsed, and sanitized.
- (4) by other equivalent products and procedures approved in 21 CFR 178.1010 "Sanitizing solutions", which is hereby incorporated by reference including any subsequent amendments and editions. A copy of the reference material can be found at https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=17d119b223f9451322279713caa2e6ab&ty=HTML&h=L&mc=true&n=pt21.3.178&r=PART#se21.3.178_11010, at no cost. A testing method or equipment shall be available and used to test chemical sanitizers to ensure minimum prescribed strengths.

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

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 and keep the equipment and utensils clean.

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

15A NCAC 18A .0159 SEPARATION OF OPERATIONS

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

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

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

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

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

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

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

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

15A NCAC 18A .0161 CRUSTACEA COOKING

(a) The cooking area or room shall be under a roof located between the area for receiving raw crustacea and the air-cool room and shall be vented to assure the removal of steam.

(b) Crustacea shall be cooked in accordance with the following:

- (1) Crabs shall be cooked under steam pressure until the internal temperature of the center-most crab reaches 235° F (112.8° C). Temperature shall be measured with an accurate, indicating thermometer having a range of 170-270° F (77-132° C).
- (2) Other crustacea shall be cooked until the internal temperature of the center-most crustacean reaches 180° F (83° C) and is held at this temperature for one minute. Temperature shall be measured with an accurate, indicating thermometer. Crayfish shall be culled and cleaned prior to cooking.
- (3) Nothing in this Rule shall prohibit any other cooking process that has been found equally effective and approved by the Division of Marine Fisheries.

(c) The retort shall be constructed to permit a working pressure of at least 20 pounds per square inch (psig). Steam inlet and venting shall provide a uniform and complete distribution of steam. Venting shall be sufficient to permit complete elimination of air from the retort. Drains and vents shall be located at least two feet above mean high tide.

(d) The retorts shall be equipped with:

- (1) an 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; and
 - (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 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 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 based upon documentation of the ability to produce time-temperature results as required by the rules of this Section.

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

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.

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

15A NCAC 18A .0163 COOKED CRUSTACEA REFRIGERATION

- (a) The cooked crustacea cooler shall be large enough to store all cooked crustacea and maintain a minimum temperature of 40° F (4.4° C). The cooler shall open directly into the picking room or into a clean, enclosed area leading into the picking room.
- (b) Cooked crustacea shall be stored at a temperature between 33° F (0.5° C) and 40° F (4.4° C) ambient air temperature if not immediately processed. The cooler shall be equipped with an accurate, operating thermometer.

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

15A NCAC 18A .0164 COOKED CRUSTACEA PICKING

- (a) The picking operation shall be conducted in accordance with the rules of this Section such that crustacea meat does not become adulterated.
- (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 shall be available and used to ensure minimum prescribed strengths of the chlorine solution or equivalent bactericidal solution.
- (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 on the following:
 - (1) time-temperature requirements;
 - (2) shipping destination;
 - (3) handling;
 - (4) labeling;

- (5) records;
- (6) processing;
- (7) sanitation; and
- (8) HACCP plan.

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

15A NCAC 18A .0165 PACKING

- (a) Crustacea meat shall be packed in a container and iced and cooled to an internal temperature of 40° F (4.4° C) or below within two hours of receipt in the packing room.
- (b) The storage of ice in the packing room shall be in an easily cleanable, non-corrosive, non-toxic container.
- (c) Blending or combining of any of the following shall be prohibited:
 - (1) fresh crustacea meat;
 - (2) frozen crustacea meat;
 - (3) pasteurized crustacea meat; and
 - (4) crustacea meat packed in another facility.
- (d) Clean shipping containers shall be provided by the owner or responsible individual 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 drained prior to packing.
- (g) Any substance added to cooked crustacea or crustacea meat shall be approved for use by the U.S. Food and Drug Administration and labeled according to federal and State rules and regulations.
- (h) Only those individuals responsible for packing the crustacea or crustacea meat shall be allowed in the packing room or area.

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

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 stored such that the crustacea meat does not become adulterated. The refrigeration room or ice box 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 at 40° F (4.4° C) or below.

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

15A NCAC 18A .0167 DELIVERY WINDOW OR SHELF

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

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

15A NCAC 18A .0168 SINGLE-SERVICE CONTAINERS

- (a) Single-service containers used for packing or repacking cooked crustacea and crustacea meat shall be made from 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, or lithographed with the name and address of the original packer, repacker, or distributor. The original packer's or repacker's permit number preceded by the state abbreviation shall be legibly impressed, 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 a manner to prevent contamination and keep them clean, sanitized by a procedure as stated in Rule .0157 of this 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 legibly displayed on the container or lid.

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

15A NCAC 18A .0169 FREEZING

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

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

15A NCAC 18A .0170 SHIPPING

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

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

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

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

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

15A NCAC 18A .0172 COOKED CLAW SHIPPING CONDITIONS

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

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

15A NCAC 18A .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, and an inked record being made of the operating time-temperature cycle. Falsification of a thermometer chart by an individual with access to or that is an operator of a pasteurization unit shall constitute failure to comply with the requirements of this Paragraph. 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 of pasteurization;
- (2) quantity of each batch pasteurized (pounds of crustacea meat or number and size of containers);
- (3) processor's code of each pack;
- (4) if the pasteurizer processes crustacea meat for someone else, then the packer's name, address, and permit number shall be recorded. A copy of the recording chart shall be provided to the owner of the crustacea meat;
- (5) notation of mechanical or power failure or opening of the recording thermometer case for adjustment or repair during the pasteurizing cycle;
- (6) after the temperature in the water bath has been reached and during the holding time, as set forth in Rule .0176 of this Section, the reading of the indicating thermometer and the time of reading shall be recorded on the chart; and
- (7) 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 shall be approved by the Division if they are shown to provide equivalent data, information, and records as required in this Rule.

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

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

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

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 based upon documentation of the ability to produce time-temperature results as required by the rules of this Section.

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

- (1) the minimum pasteurization specifications shall be 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 or above this temperature for at least one minute at the geometric center of a container in equipment being operated in compliance with the Process Validation Study Report. A copy of the procedures for operating the pasteurizing equipment shall be posted adjacent to the pasteurization vat. The pasteurizer shall keep the report on file and shall provide the Division a copy of such report;
- (2) alteration of the equipment or loading of containers shall require a new Process Validation Study Report;
- (3) the containers of crustacea meat shall be cooled to 50° F (10° C) or below within three hours of the completion of pasteurization; and
- (4) refrigerated storage shall be provided for the cooled crustacea meat and shall maintain a storage temperature at or below 38° F (3.3° C).

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

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

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

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

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

15A NCAC 18A .0178 INTERFACILITY PASTEURIZATION PROCEDURES

No person shall initiate interfacility pasteurization of crustacea meat without prior written approval by the Division of Marine Fisheries.

Interfacility pasteurization of crustacea meat shall be in compliance with the following:

- (1) crustacea meat shall be packed, labeled, and refrigerated in compliance with Rules .0134 and .0136 through .0182 of this Section and shall originate only from a facility permitted in accordance with Rule .0135 of this Section. Records shall be maintained to identify each batch of crustacea meat pasteurized;
- (2) crustacea meat shall be shipped in an enclosed, easily cleanable vehicle at a temperature of 40° F (4.4° C) or below; and
- (3) crustacea meat shall be pasteurized in compliance with Rules .0175 through .0177 of this Section. The pasteurizer shall provide a copy of each pasteurization chart to the original packer.

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

15A NCAC 18A .0179 RECALL PROCEDURE

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

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

15A NCAC 18A .0180 SAMPLING AND TESTING

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

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

15A NCAC 18A .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, 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 determined to be adulterated or misbranded shall be subject to embargo or disposal by the Division in accordance with G.S. 113-221.4.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 113-221.4, 143B-289.52;
Eff. October 1, 1992;
Readopted Eff. April 1, 2022.*

15A NCAC 18A .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 be handled in accordance with the rules of this Section.

(e) Cooked crustacea or crustacea meat not complying with the standards set forth in this Rule may be deemed adulterated by the Division of Marine Fisheries according to the severity of exceedance and the expected threat to public health.

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

15A NCAC 18A .0183 ALTERNATIVE LABELING

A durable label, such that it will not fade or deteriorate, that is permanently affixed to the container may be used to meet any labeling requirement in this Section.

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

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, and an inked record being made of the operating time-temperature cycle. Falsification of a thermometer chart by an individual with access to or that is an operator of a thermal processing unit shall constitute failure to comply with the requirements of this Paragraph. 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 of thermal processing;
 - (2) quantity of each batch thermally processed (pounds of crustacea meat or number and size of containers);
 - (3) thermal processor's code of each pack;
 - (4) if the thermal processor processes crustacea meat for someone else, then the packer's name, address, and permit number shall be recorded. A copy of the recording chart shall be provided to the owner of the crustacea meat;
 - (5) notation of mechanical or power failure or opening of the recording thermometer case for adjustment or repair during the thermal processing cycle;
 - (6) after the temperature in the thermal process has been reached and during the holding time, as set forth in Rule .0185 of this Section, the reading of the indicating thermometer and the time of reading shall be recorded on the chart; and
 - (7) 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 shall be approved by the Division if they are shown to provide equivalent data, information, and records as required in this Rule.

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

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 based upon documentation of the ability to produce time-temperature results as required by the rules of this Section.
- (b) The thermal processing of crustacea or crustacea meat shall be conducted in compliance with the following procedures:
- (1) the minimum thermal processing specifications shall be 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 equipment being operated in compliance with the Process Validation Study Report. A copy of the procedures for operating the thermal processing equipment shall be posted adjacent to the thermal processing unit. The thermal processor shall keep the report on file and shall provide the Division a copy of such report;
 - (2) alteration of the equipment or loading of containers shall require a new Process Validation Study Report;
 - (3) the containers of crustacea or crustacea meat shall be cooled to 50° F (10° C) or below within three hours of the completion of the thermal process; and
 - (4) refrigerated storage shall be provided for the cooled crustacea or crustacea meat and shall maintain a storage temperature at or below 36° F (2.2° C).

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

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 label used shall legibly identify the contents of the container as thermally processed crustacea or crustacea meat;
- (2) each container shall be permanently and legibly identified with a code indicating the batch and day of processing;
- (3) the words "Perishable-Keep Under Refrigeration" or equivalent shall be legibly displayed on the container; and

- (4) the original packer's or repacker's permit number preceded by the state abbreviation shall be legibly impressed, embossed, or lithographed on each container. Each container shall be legibly impressed, embossed, or lithographed with the name and address of the original packer, repacker, or distributor.

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

15A NCAC 18A .0187 INTERFACILITY THERMAL PROCESSING PROCEDURES

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

- (1) crustacea or crustacea meat shall be packed, 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 or crustacea meat shall be shipped in an enclosed, easily cleanable vehicle at a temperature of 40° F (4.4° C) or below; and
- (3) crustacea or crustacea meat shall be thermally processed in compliance with Rules .0184 through .0187 of this Section. The thermal processor shall provide a copy of each thermal processing chart to the original packer.

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

15A NCAC 18A .0188 HAZARD ANALYSIS

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

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

15A NCAC 18A .0189 HACCP PLAN

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

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

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

15A NCAC 18A .0190 SANITATION MONITORING REQUIREMENTS

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

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

- (8) exclusion of pests from the facility.

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

15A NCAC 18A .0191 MONITORING RECORDS

Monitoring records of critical control points and the eight key sanitation items shall be recorded, as specified in the HACCP Plan, and signed and dated when recorded. The eight key sanitation items are set forth in 21 CFR 123.11 "Sanitation Control Procedures", which is incorporated by reference including any subsequent amendments and editions. A copy of the reference material can be found at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123/subpart-A/section-123.11>, at no cost. The records shall be reviewed by the owner or designee within one week of recording.

History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. August 1, 2000;
Readopted Eff. April 1, 2022.

SECTION .0300 – SANITATION OF SHELLFISH - GENERAL

15A NCAC 18A .0304 DEPURATION HARVESTING PERMITS

History Note: Authority G.S. 130A-230;
Eff. February 1, 1987;
Amended Eff. September 1, 1990;
Repealed Eff. June 1, 2022.

SECTION .0400 – SANITATION OF SHELLFISH - GENERAL OPERATION STANDARDS

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

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

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

15A NCAC 18A .0704 LABORATORY PROCEDURES

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

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

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

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

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

SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS

15A NCAC 18A .0901 DEFINITIONS

The following definitions shall apply to this Section.

- (1) "Approved" means shellfish growing waters determined suitable by the Division for the harvesting of shellfish for direct market purposes.
- (2) "Closed-system marina" means a marina constructed in canals, basins, tributaries, or any other area with restricted tidal flow.
- (3) "Colony forming unit" means an estimate of the number of viable bacteria cells in a sample as determined by a plate count.
- (4) "Commercial marina" means a marina that offers one or more of the following services: fuel, transient dockage, haul-out facilities, or repair services.
- (5) "Conditionally approved" means shellfish growing waters that are subject to predictable intermittent pollution but that may be used for harvesting shellfish for direct market purposes when management plan criteria are met.
- (6) "Division" means the Division of Marine Fisheries or its authorized agent.
- (7) "Estimated 90th percentile" means a statistic that measures the variability in a sample set that shall be calculated by:
 - (a) calculating the arithmetic mean and standard deviation of the sample result logarithms (base 10);
 - (b) multiplying the standard deviation in Sub-Item (a) of this Item by 1.28;
 - (c) adding the product from Sub-Item (b) of this Item to the arithmetic mean; and
 - (d) taking the antilog (base 10) of the results from Sub-Item (c) of this Item to determine the estimated 90th percentile.
- (8) "Fecal coliform" means bacteria of the coliform group that will produce gas from lactose in a multiple tube procedure liquid medium (EC or A-1) within 24 plus or minus two hours at 44.5° C plus or minus 0.2° C in a water bath.
- (9) "Geometric mean" means the antilog (base 10) of the arithmetic mean of the sample result logarithm.
- (10) "Marina" means any water area with a structure (such as a dock, basin, floating dock) that is utilized for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than 10 boats.
- (11) "Marine biotoxins" means any poisonous compound produced by marine microorganisms and accumulated by shellstock.
- (12) "Median" means the middle number in a given sequence of numbers, taken as the average of the two middle numbers when the sequence has an even number of numbers.
- (13) "Most probable number (MPN)" means a statistical estimate of the number of bacteria per unit volume and is determined from the number of positive results in a series of fermentation tubes.
- (14) "National Shellfish Sanitation Program (NSSP)" means the cooperative federal-state-industry program for the sanitary control of shellfish that is adequate to ensure that the shellfish produced in accordance with the NSSP Guide For The Control Of Molluscan Shellfish will be safe and sanitary.
- (15) "Open-system marina" means a marina constructed in an area where tidal currents have not been impeded by natural or man-made barriers.
- (16) "Private marina" means any marina that is not a commercial marina as defined in this Rule.
- (17) "Prohibited" means shellfish growing waters unsuitable for the harvesting of shellfish for direct market purposes.
- (18) "Public health emergency" means any condition that may immediately cause shellfish waters to be unsafe for the harvest of shellfish for human consumption.
- (19) "Restricted" means shellfish growing waters from which shellfish may be harvested only by permit and are subjected to a treatment process through relaying or depuration that renders the shellfish safe for human consumption.
- (20) "Sanitary survey" means the written evaluation of factors that affect the sanitary quality of a shellfish growing area including sources of pollution, the effects of wind, tides, and currents in the distribution and dilution of polluting materials, and the bacteriological quality of water.
- (21) "Shellfish" means the term as defined in G.S. 113-129, except the term shall not include scallops when the final product is the shucked adductor muscle only.
- (22) "Shellfish growing area" means a management unit that defines the boundaries of a sanitary survey and that is used to track the location where shellfish are harvested.
- (23) "Shellfish growing waters" means marine or estuarine waters that support or could support shellfish life.

- (24) "Shellstock" means live molluscan shellfish in the shell.
- (25) "Shoreline survey" means an in-field inspection by the Division to identify and evaluate any potential or actual pollution sources or other environmental factors that may impact the sanitary quality of a shellfish growing area.
- (26) "Systematic random sampling strategy" means a sampling strategy designed to assess the bacteriological water quality of shellfish growing waters impacted by non-point sources of pollution and scheduled sufficiently far in advance to support random collection with respect to environmental conditions.

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

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

- (a) All shellfish growing waters shall be classified by the Division of Marine Fisheries as to their suitability for shellfish harvesting. Shellfish growing waters shall be designated with one of the following classifications:
- (1) approved;
 - (2) conditionally approved;
 - (3) restricted; or
 - (4) prohibited.
- (b) Maps showing the classification of shellfish growing waters shall be maintained by the Division.

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

15A NCAC 18A .0903 SANITARY SURVEY

- (a) Shellfish growing waters shall be divided into shellfish growing areas by the Division of Marine Fisheries. Maps showing the boundaries of these shellfish growing areas shall be maintained by the Division and can be found at: <https://deq.nc.gov/polluted-area-proclamations>.
- (b) Except in shellfish growing areas where all shellfish growing waters are classified as prohibited, the Division shall complete a sanitary survey report for each shellfish growing area at least once every three years.
- (c) A sanitary survey report shall include the following:
- (1) a shoreline survey.
 - (2) an evaluation of meteorological, hydrodynamic, and geographic factors that may affect distribution of pollutants.
 - (3) a microbiological survey to assess water quality. A microbiological survey shall include the collection of water samples and their analysis for fecal coliforms. The number and location of sampling stations shall be selected to produce the data necessary to effectively evaluate all point and non-point pollution sources identified during the shoreline survey. A minimum of six samples shall be collected annually from each designated sampling station.
 - (4) a determination of the appropriate classification for all shellfish growing waters within the shellfish growing area in accordance with Rule .0902 of this Section.
- (d) A sanitary survey report shall be required to designate any portion of a shellfish growing area with a classification other than prohibited, or for a reclassification from:
- (1) prohibited to any other classification;
 - (2) restricted to conditionally approved or approved; or
 - (3) conditionally approved to approved.

All other reclassifications may be made without a sanitary survey.

- (e) In each calendar year that a shellfish growing area is not evaluated with a sanitary survey, a written annual evaluation report shall be completed by the Division and shall include the following:
- (1) a microbiological survey to assess water quality as set forth in Subparagraph (c)(3) of this Rule.
 - (2) an evaluation of changes in pollution source impacts that may affect the classifications of the shellfish growing area.
- If the annual evaluation determines conditions have changed and a classification for shellfish growing waters is incorrect, the Division shall initiate action to reclassify the shellfish growing waters in accordance with Rule .0902 of this Section.
- (f) Sanitary survey reports and annual evaluation reports shall be maintained by the Division.

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

Readopted Eff. May 1, 2021.

15A NCAC 18A .0904 APPROVED WATERS

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

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

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

15A NCAC 18A .0905 CONDITIONALLY APPROVED WATERS

- (a) Shellfish growing waters may be classified as conditionally approved if the Division of Marine Fisheries determines the following:
 - (1) the sanitary survey indicates the shellfish growing waters will not meet the approved waters classification criteria as set forth in Rule .0904 of this Section under all conditions, but will meet those criteria under certain conditions;
 - (2) the conditions when the shellfish growing waters will meet the approved waters classification criteria are known and predictable;
 - (3) the public bottom within those shellfish growing waters support a population of harvestable shellfish; and
 - (4) staff are available to carry out the requirements defined in the management plan, as set forth in Paragraph (b) of this Rule.
- (b) A written management plan shall be developed by the Division for conditionally approved areas. This plan shall define the conditions under which the shellfish growing waters may be open to the harvest of shellfish. If the conditions defined in the management plan are not met, the Division shall immediately close the shellfish growing waters to shellfish harvesting.
- (c) All conditionally approved growing waters shall be re-evaluated on an annual basis. A written report summarizing this re-evaluation shall be produced and shall include the following:
 - (1) an evaluation of compliance with management plan criteria;
 - (2) a review of the cooperation of all persons involved;
 - (3) an evaluation of bacteriological water quality in the growing waters with respect to the standards for the classification; and
 - (4) an evaluation of critical pollution sources.

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

15A NCAC 18A .0906 RESTRICTED AREAS

- (a) Shellfish growing waters may be classified as restricted if:
 - (1) a sanitary survey indicates there are no significant point sources of pollution; and
 - (2) levels of fecal pollution, human pathogens, or poisonous or deleterious substances are at such levels that shellstock can be made safe for human consumption by either relaying or depuration.
- (b) Relaying of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and 15A NCAC 18A .0300.
- (c) Depuration of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and 15A NCAC 18A .0300 and .0700.
- (d) For shellfish growing waters classified as restricted and used as a source of shellstock for depuration, the microbiological survey, as set forth in Rule .0903(c)(3) of this Section, shall indicate the bacteriological water quality does not exceed the following standards based on results generated using the systematic random sampling strategy:

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

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

15A NCAC 18A .0907 PROHIBITED WATERS

Shellfish growing waters shall be classified as prohibited if:

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

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

15A NCAC 18A .0908 UNSURVEYED AREAS

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

15A NCAC 18A .0909 BUFFER ZONES

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

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

(b) Buffer zones shall be classified as prohibited.

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

15A NCAC 18A .0910 RECLASSIFICATION

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

15A NCAC 18A .0912 SHELLFISH MANAGEMENT AREAS

*History Note: Authority G.S. 130A-230;
Eff. June 1, 1989;
Repealed Eff. June 1, 2022.*

15A NCAC 18A .0913 PUBLIC HEALTH EMERGENCY

- (a) The Division of Marine Fisheries shall immediately close any potentially impacted shellfish growing waters to the harvesting of shellfish in the event of a public health emergency.
- (b) The Division may re-open shellfish growing waters if the condition causing the public health emergency no longer exists and shellfish have had time to purify naturally from possible contamination.

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

15A NCAC 18A .0914 LABORATORY PROCEDURES

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

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

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. June 1, 1989;
Amended Eff. September 1, 1991; September 1, 1990;
Readopted Eff. May 1, 2021.*

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

15A NCAC 18A .3401 DEFINITIONS

The following definitions shall apply to this Section:

- (1) "Division" means the Division of Marine Fisheries or its authorized agent.
- (2) "Enterococcus" means a gram positive coccoid-shaped bacteria that is found in the intestinal tracts of warm-blooded animals that include *Enterococcus faecalis*, *Enterococcus faecium*, *Enterococcus avium*, and *Enterococcus gallinarum*.
- (3) "Geometric mean" means the mean of "n" positive numbers obtained by taking the "nth" root of the product of the numbers with at least five samples collected within a 30-day period.
- (4) "Pending swimming advisory" means a notification to the public that recommends no primary contact with the water in a designated swimming area when bacteriological limits are exceeded, but does not close a swimming area to the public. A pending swimming advisory shall include a public notification via social media release to notify the public of the risks of swimming in the area. A pending swimming advisory shall be followed by a resample that will determine if a swimming advisory will be issued.
- (5) "Point source discharge" means the discharge of liquids through a pipe, drain, ditch, or other conveyance into a swimming area.
- (6) "Primary contact" means an activity in water in which a person's head is partially or completely submerged.
- (7) "Resample" means a water sample that is collected by the Division of Marine Fisheries or its authorized agent after the results of the initial water sample collected are processed by the Division and the results are analyzed by the Division.
- (8) "Storm water discharge" means any natural or manmade conveyance of rainwater or the resultant runoff into coastal recreational waters.

- (9) "Swimming advisory" means a notification to the public that recommends no primary contact with the water in a designated swimming area when bacteriological limits are exceeded, but does not close a swimming area to the public. A swimming advisory shall include a sign posted at the site of the advisory and a public notification via social media and news release to notify the public of the risks of swimming in the area.
- (10) "Swimming area" means a coastal recreation area that is used for primary contact located within waters classified by the Division of Water Resources as SC, SA, or SB as set forth in 15A NCAC 02B .0220 through .0222, and is hereby incorporated by reference including subsequent amendments.
- (11) "Swimming season" means from April 1 through October 31 of each year.
- (12) "Tier I swimming area" means a swimming area used daily during the swimming season, including all oceanfront beaches that are monitored by the Division.
- (13) "Tier II swimming area" means a swimming area that is not used daily during the swimming season.

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

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

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

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

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

- (a) Tier I Swimming areas:
 - (1) A pending swimming advisory shall be issued by the Division of Marine Fisheries if a water sample from a swimming area is equal to or exceeds the bacteriological limit set forth in Rule .3402(a)(2) of this Section during the swimming season.
 - (2) A swimming advisory shall be issued by the Division if either of the following standards are exceeded during the swimming season:
 - (A) Both the initial water sample and resample collected from a swimming area are equal to or exceed the bacteriological limit set forth in Rule .3402(a)(2) of this Section; or
 - (B) The most recent five water samples collected within a 30-day period from a swimming area are equal to or exceed the bacteriological limit set forth in Rule .3402(a)(1) of this Section.
- (b) Tier II swimming areas:
 - (1) A pending swimming advisory shall be issued by the Division if a water sample from a swimming area is equal to or exceeds the bacteriological limit set forth in Rule .3402(a)(2) of this Section during the swimming season.
 - (2) A swimming advisory shall be issued by the Division if both the initial water sample and resample collected from a swimming area are equal to or exceed the bacteriological limit set forth in Rule .3402(a)(2) of this Section during the swimming season.
- (c) Signs posted pursuant to this Section shall be placed or erected in open view where the public may see the sign prior to entering the water.
- (d) Signs shall state the following:
ATTENTION: SWIMMING IN THIS AREA IS NOT RECOMMENDED. BACTERIA TESTING INDICATES LEVELS OF CONTAMINATION THAT MAY BE HAZARDOUS TO YOUR HEALTH. THIS ADVISORY AFFECTS WATERS WITHIN 200' OF THIS SIGN. OFFICE OF THE STATE HEALTH DIRECTOR.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A pending swimming advisory shall be rescinded by the Division of Marine Fisheries via social media release when the resample collected meets the bacteriological limit set forth in Rule .3402(a)(2) of this Section.

(b) A Tier I swimming area advisory shall be rescinded by the Division via social media and news release, including the removal of signs, when both of the following conditions are met:

- (1) the geometric mean has met the bacteriological limit set forth in Rule .3402(a)(1) of this Section; and
- (2) two consecutive weekly water samples meet the bacteriological limit set forth in Rule .3402(a)(2) of this Section.

(c) A Tier II swimming area advisory shall be rescinded by the Division via social media and news release, including the removal of signs, after water samples meet the bacteriological limit set forth in Rule .3402(b) of this Section.

(d) A swimming advisory resulting from a flood water discharge or the discharge of dredge material shall be rescinded by the Division via social media and news release, including the removal of signs, 24 hours after the discharge has ceased, to allow for tidal dispersion.

(e) A swimming advisory resulting from a wastewater system failure shall be rescinded by the Division via social media and news release, including the removal of signs, when failure has been corrected and water samples collected meet the bacteriological limit set forth in Rule .3402(a)(2) of this Section.

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

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

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

INDEX

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

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

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

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◆ = go to <https://deq.nc.gov/fisheries-management-proclamations> to check for proclamations

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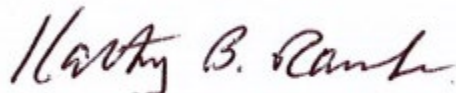
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THE ORIGINAL AND OFFICIAL COPY OF TITLE 15A,
CHAPTER 03 AND SUBCHAPTER 18A OF THE N.C.
ADMINISTRATIVE CODE ARE ON FILE IN THE OFFICE OF
ADMINISTRATIVE HEARINGS AND ARE AVAILABLE FOR
PUBLIC INSPECTION DURING NORMAL WORKING HOURS.

THIS DOCUMENT IS AVAILABLE FROM:
N.C. DIVISION OF MARINE FISHERIES
P.O. BOX 769
3441 ARENDELL STREET
MOREHEAD CITY, NC 28557
1-800-682-2632 or 252-726-7021
<https://deq.nc.gov/marine-fisheries>

CERTIFICATION

PURSUANT TO G.S. 113-221 (B) AND G.S. 113-221 (G), THIS IS TO
CERTIFY THAT THE PRECEDING "NORTH CAROLINA MARINE
FISHERIES COMMISSION RULES APRIL 1, 2020, SUPPLEMENT - JULY
1, 2022" IS THE OFFICIAL CODIFICATION OF THE RULES OF THE N.C.
MARINE FISHERIES COMMISSION EFFECTIVE AS OF JULY 1, 2022.



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

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

August 2022

Time of Year	Action
March 8, 2022	MFC approved Notice of Text for Rulemaking
April 18, 2022	Publication of proposed rules in the <i>North Carolina Register</i>
April 18-June 17, 2022	Public comment period held
May 4, 2022	Public hearing held via WebEx
June 23, 2022	MFC gave final approval of 9 permanent rules
June 28, 2022	Wildlife Resources Commission gave concurrence with 9 MFC permanent rules
June 30, 2022	Readoption deadline for 15A NCAC 03
Aug. 18, 2022	Rules scheduled to be reviewed by Office of Administrative Hearings/Rules Review Commission
Sept. 1, 2022	Earliest effective date of 8 of 9 rules not subject to legislative review; rulebook supplement available online
2023 legislative session	Possible effective date of 1 of 9 rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.

N.C. Marine Fisheries Commission 2022-2023 Annual Rulemaking Cycle

August 2022

Time of Year	Action
February-July 2022	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
Aug. 18-19, 2022	MFC votes on approval of Notice of Text for Rulemaking
Oct. 3, 2022	Publication of proposed rules in the <i>North Carolina Register</i>
Oct. 3-Dec. 2, 2022	Public comment period held
Nov. 1, 2022	Public hearing held via WebEx at 6 p.m.
February 2023	MFC votes on approval of permanent rules
April 20, 2023	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
May 1, 2023	Proposed effective date of 1 rule not subject to legislative review
May 1, 2023	Rulebook supplement available online
2024 legislative session	Possible effective date of 1 rule subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
June 30, 2024	Readoption deadline for 15A NCAC 18A

Fiscal Impact Analysis of Proposed Rule Amendment to the Mutilated Finfish Rule

Rule Amendments: 15A NCAC 03M .0101 (amendment)

Name of Commission: N.C. Marine Fisheries Commission

Agency Contact: Jason Walsh, Fisheries Economics Program Manager
N.C. Division of Marine Fisheries
3441 Arendell Street
Morehead City, NC 28557
Jason.walsh@ncdenr.gov
252-269-9299

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

AUTHORITY

N.C. General Statutes

G.S. 113-134 Rules.
G.S. 113-182 Regulation of fishing and fisheries.
G.S. 113-221.1 Proclamations; emergency review.
G.S. 113-252 Atlantic States Marine Fisheries Compact and Commission.
G.S. 143B-289.52 Marine Fisheries Commission – powers and duties.

N.C. Marine Fisheries Commission Rules (See Appendix II)

15A NCAC 03H .0103 Proclamations, General
15A NCAC 03I .0102 Temporary Suspension of Rules
15A NCAC 03M .0502 Mullet
15A NCAC 03M .0510 American Eel
15A NCAC 03M .0512 Compliance with Fishery Management Plans
15A NCAC 03M .0519 Shad*
15A NCAC 03M .0520 Tuna

* Rule is undergoing reoption. All requirements except paragraph (c) are suspended in accordance with the Atlantic States Marine Fisheries Commission (ASMFC) fishery management plan (FMP).

Necessity: The original intent of the mutilated finfish rule was to provide added resource protection for finfish species subject to a size or bag limit. Proposed amendments to this rule would provide flexibility to manage current conditions for the use of certain finfish species as cut bait, as well as variable conditions that could occur in the future, all while continuing to protect fisheries resources. Proposed amendments would also clarify requirements, benefitting affected stakeholders and Marine Patrol officers.

I. Summary

The N.C. Marine Fisheries Commission (MFC) adopted the mutilated finfish rule, 15A NCAC 03M .0101, in 1991. The original intent of the rule was to provide added resource protection for finfish species subject to a size or bag limit. Fewer finfish species had possession limits in place in 1991 than today. The current version of the mutilated finfish rule includes species-specific exceptions to the requirements; the exceptions pertain to mullet, hickory shad, and tuna. Requirements in the rule can only be amended via the permanent rulemaking process since proclamation authority has never been delegated to the Fisheries Director in this rule. The rule, as written, does not provide flexibility to manage variable conditions for species commonly used as cut bait, particularly when new regulations implemented to meet sustainability objectives (i.e., size or bag limits or other possession limits) make species automatically subject to this rule.

Small, but unquantifiable potential State benefits could result from the proposed changes, as all finfish species with a possession limit would be subject to the mutilated finfish requirements unless the Fisheries Director issued a proclamation under separate authority excepting a species from these requirements to allow it to be used as cut bait. The proclamations could preserve acceptable practices for cutting species that are occurring now and specify practices for cutting species that are prevented by the current rule but would be acceptable to occur after the rule is amended. This allowance could provide private benefits resulting from additional species being available to be used as cut bait, potentially providing more effective and more cost-effective bait for finfish harvest. The decision to issue such proclamations would be under the authority of the Fisheries Director at the time the amended rule would be effective, consistent with the variable conditions provided in 15A NCAC 03H .0103. The described changes would help close potential loopholes, resulting in increased resource protection and ease of enforcement.

There could be small private costs to fishers through species potentially having variable use as cut bait in response to variable conditions. In other words, the Fisheries Director could use their discretion to prevent cutting species that are occurring now based on then-variable conditions. The flexibility to respond to such variable conditions and fluctuating stocks could allow for more effective management and quicker responses to struggling species. Impacts are not expected to be substantial as there are only two species that could be impacted (striped mullet and hickory shad).

II. Introduction and Purpose of Rule Change

During the August 2021 MFC quarterly business meeting, a motion was passed requesting the N.C. Division of Marine Fisheries (DMF) to develop an issue paper for rulemaking examining the mutilated finfish rule. Discussions during the meeting identified potential issues with the rule, current limitations of the rule, and potential changes needed. Specifically, it was noted there have been recent issues with the public unknowingly failing to abide by requirements of the rule by using species that are not allowed as cut bait. The rule was not originally promulgated to manage cut bait per se, but rather to protect finfish species regulated by a size limit, bag limit, or other possession limit, and discourage fishers from intentionally deceiving Marine Patrol officers and evading regulations. Due to stock changes in many species, there were fewer finfish species

subject to the rule in 1991 than there are today. As more species were managed by possession limits the mutilated finfish rule started to apply to species that had historically been used as cut bait. For example, spot and Atlantic croaker have historically been used as cut bait in many fisheries and were not subject to bag limits until April 2021. Upon implementation of bag limits, the mutilated finfish rule did not allow for either of these species to be used as cut bait. To allow for alignment with existing management and the mutilated finfish rule the MFC identified the need for flexibility with the mutilated finfish rule. Several species have been identified for possible rule exceptions or changes to current exceptions based on communications from stakeholders, feedback from Marine Patrol officers, and implications from stock assessments and FMPs.

One explicit example of public confusion regarding the mutilated finfish rule was an interaction between commercial trotline fishers and Marine Patrol officers in 2021. The commercial trotline fishers contacted the Fisheries Director in June 2021, after an interaction with Marine Patrol officers where violations of the mutilated finfish rule were identified. The issue stemmed from the fishers switching bait from gizzard shad, which is not subject to the mutilated finfish rule, to American eel. Using American eel for cut bait is prohibited under the mutilated finfish rule, as eel is subject to a minimum size limit and bag limit. This scenario applied to about a dozen fishers in the Albemarle Sound region who participated in the blue catfish trotline fishery that year. Since the current mutilated finfish rule specifies cut bait requirements and exceptions within the rule itself and not within the finfish species rules, there was confusion by fishers about whether American eel could be used as cut bait. At its February 2022 quarterly meeting, the MFC determined the mutilated finfish rule needs to be amended to better adapt to species level changes in stock needs and in response to fishers' behavior.

Due to current possession and size limits, use of American eel, spot, Atlantic croaker, and bluefish as cut bait creates conflicts with the current mutilated finfish rule based on communication from stakeholders, feedback from Marine Patrol officers, and implications from stock assessments and FMPs. Though the division does not collect data on how impactful cut bait allowance is on species, there is information on the size of each commercial fishery and their ex-vessel values. From 2010 to 2020 the average pounds and ex-vessel value of the species discussed are: American eel (18,833lb. and \$35,866), spot (352,687lb. and \$488,327), Atlantic croaker (1,318,548lb. and \$1,444,154), and bluefish (1,164,834lb and \$700,694). DMF collects extensive data on recreational fisheries including the pounds harvested and number of trips targeting each species. The average pounds harvested, and number of trips targeted of each species listed above between 2016 and 2020 is as follows: spot (643,183lb. and 1,007,051 trips), Atlantic croaker (258,711lb. and 1,292,747 trips), and bluefish (2,951,388lb. and 2,823,652 trips). Recreational pounds and trips for American eel are minimally, if ever, encountered.

American eel has become a popular bait in the commercial trotline fishery for catfish and as bait in the recreational catfish fishery replacing other baits like gizzard shad. In the commercial trotline fishery, fishers were unknowingly harvesting American eel without complying with regulations requiring all commercial fishers harvesting American eels by eel pots to participate in a monthly logbook program designed to monitor the fishery. Because American eel are subject to a nine-inch minimum size limit, commercial and recreational fishers using American eel as cut bait were unknowingly violating the mutilated finfish rule.

Another example (referenced above) is spot and Atlantic croaker, which both became subject to bag limits in April 2021 to address stock concerns that indicated harvest and abundance triggers were above monitoring thresholds indicating moderate concern and requiring management action. As required by Addendum III to the FMPs for spot and Atlantic croaker, a 50 fish bag limit was implemented by proclamation, automatically subjecting spot and Atlantic croaker to the mutilated finfish rule and prohibiting their use as cut bait.

In the case of bluefish, from June 2003 until January 2020 the bag limit was set at 15 fish. In 2019 the bluefish stock assessment determined bluefish was overfished but not experiencing overfishing. In response to the overfished status, a rebuilding plan designed to rebuild the stock in seven years was approved. Management measures used to help rebuild the stock include lower bag limits for the recreational fishery and commercial trip limits for the commercial fishery. Bluefish are managed as a coastwide stock from Maine through Florida, under the joint ASMFC and Mid-Atlantic Fishery Management Council Bluefish FMP, and management measures in North Carolina are implemented by proclamation to comply with and meet the FMP goals.

Striped mullet and hickory shad are the only species that could potentially lose their exception status in response to the proposed amendment to the mutilated finfish rule. The exception for tuna in the current mutilated finfish rule was only put in place to maintain consistency with NOAA Fisheries regulations. For tuna and the State requirements in 15A NCAC 03M .0520. The tuna-specific exception has been replaced by the language "unless otherwise specified in a rule of the Marine Fisheries Commission" in the proposed rule. Requirements for tuna under the current rule and the proposed rule are identical and are therefore not discussed further in this analysis.

Changes to the current exception for mullet may be needed based on the outcome of the striped mullet stock assessment, which is currently underway. Through the FMP process, management changes may be needed. Mullet is popular as a cut bait in many recreational fisheries and despite being subject to a 200 mullet per person per day bag limit, is excepted from the requirements of the current mutilated finfish rule. A striped mullet stock assessment completed by NCDMF in 2022 indicates the stock is overfished and overfishing is occurring. This represents a variable condition where the exception provided by the current mutilated finfish rule for mullet may need to be reconsidered based on any management changes that may occur through the FMP to end overfishing and rebuild the stock. Having flexibility based on this proposed rule modification would allow these potential changes to be implemented to meet these changing conditions for the protection of the stock in a timely fashion.

In North Carolina, hickory shad are included in the North Carolina FMP for Interjurisdictional Fisheries, which defers to the ASMFC for FMP compliance requirements. The exception for hickory shad in the mutilated finfish rule allows hickory shad to be used as cut bait while still allowing enforcement of current regulations. In the proposed amendment hickory shad would require a proclamation at the discretion of the Fisheries Director to respond to then-variable conditions to continue to be used as cut bait. There is no information available at this time that indicates a change will be needed.

The factors that have led to this proposed rule change come from the need for clarity in the mutilated finfish rule, adaptation to variable environmental and stock needs, responses to changes in angler preferences, and the need to continue to protect the finfish resource. In response to changes in prices and bait availability there have been cases, like American eel for use in the catfish fishery, where fishers switched their bait preferences to more economic and effective options. Fishers are adaptive participants in the fisheries they participate in and have historically responded efficiently to changes in available species. Though their access to species can be variable, they are equally variable in their preferences and are historically able to substitute between species in response to management changes based on the best available science and data. When anglers are adapting to the variable environmental conditions and switching their preferences there is a need for clear regulation to ensure maximized compliance and ensure management is being implemented in the best way possible to balance resource needs and user preferences. To allow for anglers to better understand regulations, this rule could consolidate species-specific regulations to a single rule or proclamation for each species.

It is likely that species beyond the six outlined could require similar consideration in the future. Therefore, the proposed changes amend the rule in a way that could resolve current conflicts with species used as cut bait, provide flexibility to manage variable conditions, and allow all requirements for a particular finfish species to be aggregated in a single proclamation (including for bait usage) for more comprehensive management, all while continuing to protect fisheries resources.

III. Fiscal Analysis

This rule amendment is expected to produce small, but unquantifiable benefits to the State and to fishers. Each finfish species with a possession limit will be subject to the mutilated finfish rule unless otherwise stated in a rule of the MFC or a proclamation issued pursuant to a rule of the MFC. The change will allow fishers to better understand and follow regulations and ease enforcement. Species that could be used for cut bait may vary in response to variable conditions and updated data per the authority already granted to and at the discretion of the Fisheries Director. The mutilated finfish rule will defer to proclamation or other MFC rule that dictates whether a species is subject to the mutilated finfish rule, allowing for more consolidated species management regulations. Implementation of the amended rule will follow current operational procedures and is not expected to produce costs to the State. Due to the lack of counterfactual and breadth of the small stream of benefits to the State and fishers, the benefits are not quantifiable.

a) Summary of Potential Economic Benefit

The primary economic impacts from the proposed rule amendments will occur as a small stream of benefits due to increased efficiency and clarity in enforcement for fishers and Marine Patrol officers with the end goal of greater compliance and species protection for species that are already subject to the limitation. Through the proposed amendments to the mutilated finfish rule, the Fisheries Director could remove and implement species-specific exceptions to the rule, through proclamation, to achieve resource management goals. Proclamation use can allow for a more responsive way to implement management measures based on updated stock assessments

and FMPs and may accommodate changes to species being used for cut bait as new data is made available to DMF. Stock assessments and FMPs are updated at various times, and the need to protect a stock from fishing pressure or allow expansion of fishing effort is necessary to meet stock management goals while balancing use of the marine and estuarine resources for all users. Managing cut bait at the species level will allow DMF to meet its goals of effectively managing the State's marine and estuarine fisheries resources more efficiently.

The amended rule will harmonize existing species-specific management measures with any needed cut bait exceptions that could be implemented via existing proclamation authority to comprehensively manage various finfish fisheries of the State, at the discretion of the Fisheries Director. Providing the public with more clarity surrounding the proper legal use of cut bait will allow for small private benefits in the form of fishers being able to make more informed decisions when using cut bait and complying more efficiently with requirements. The lack of counterfactual and the unknown scope of proclamations potentially needed under future variable conditions make the benefits unquantifiable. Though the benefits from this rule change are not explicitly quantifiable, they are real and will enable better management of the State's marine and estuarine finfish stocks.

b) Summary of Potential Costs

The scope of potential costs to the State is negligible. There could be variable conditions that could lead to species being precluded from being used as cut bait. The limitation to no longer allow species as cut bait could be in response to variable environmental and stock conditions. Allowing cut bait management to be managed within a single rule or proclamation by species and any exceptions to be made on a species-specific basis will bring clarity and help eliminate loopholes. The DMF issues news releases and proclamations and updates the recreational size and bag limit information routinely for stakeholders. Additionally, Marine Patrol officers, port agents, and other DMF staff conduct ongoing outreach about new requirements. Five of the six finfish species examined here (American eel, spot, Atlantic croaker, bluefish, and hickory shad) already have proclamations in place, so if management changes are needed in the future or if a mullet proclamation is needed, there are established processes that are part of existing job duties the DMF utilizes for reissuing and issuing proclamations with which the public is familiar. Any changes in proclamations in the future regarding mutilated finfish could occur as part of normal job duties and are not expected to incur additional costs to the State.

1 **Appendix I: Proposed Rule**

2

3 **15A NCAC 03M .0101 MUTILATED FINFISH**

4 It shall be unlawful to possess aboard a vessel or while engaged in fishing any species of finfish that is subject to a
5 ~~size or harvest restriction~~ possession limit, including size limit, recreational bag limit, commercial trip limit, or
6 ~~season~~, without having head and tail attached, ~~except~~ unless otherwise specified in a rule of the Marine Fisheries
7 Commission or a proclamation issued pursuant to a rule of the Marine Fisheries Commission.

8 (1) ~~mullet when used for bait;~~

9 (2) ~~hickory shad when used for bait, provided that not more than two hickory shad per vessel or~~
10 ~~fishing operation may be cut for bait at any one time; and~~

11 (3) ~~tuna possessed in a commercial fishing operation as provided in Rule .0520 of this Subchapter.~~

12

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

14 *Eff. January 1, 1991;*

15 *Amended Eff. January 1, 1991;*

16 *Temporary Amendment Eff. May 1, 2001;*

17 *Amended Eff. May 1, 2015; April 1, 2011; July 1, 2006; August 1, 2002;*

18 *Readopted Eff. April 1, 2019.*

19 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

Appendix II: Related Current Rules

15A NCAC 03H .0103 PROCLAMATIONS, GENERAL

(a) It is unlawful to violate the provisions of a proclamation issued pursuant to a rule of the Marine Fisheries Commission, as provided in G.S. 113-221.1.

(b) If specific variable conditions are not set forth in a rule of the Marine Fisheries Commission that grants proclamation authority to the Fisheries Director, the Fisheries Director shall consider the following variable conditions in exercising proclamation authority:

- (1) compliance with changes mandated by the Fisheries Reform Act and its amendments;
- (2) biological impacts;
- (3) environmental conditions;
- (4) compliance with Fishery Management Plans;
- (5) user conflicts;
- (6) bycatch issues;
- (7) variable spatial distributions; and
- (8) protection of public health related to the public health programs that fall under the authority of the Marine Fisheries Commission.

History Note: Authority G.S. 113-134; 113-135; 113-182; 113-221.1; 113-221.2; 113-221.3; 143B-289.52; Eff. January 1, 1991;
Amended Eff. March 1, 1994; September 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. May 1, 2017; April 1, 2011; August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

15A NCAC 03I .0102 TEMPORARY SUSPENSION OF RULES

The Fisheries Director is authorized to suspend, in whole or in part, until the next meeting of the Marine Fisheries Commission, or for a lesser period, the operation of any rule of the Marine Fisheries Commission regarding coastal fisheries which may be affected by variable conditions.

History Note: Authority G.S. 113-134; 143B-289.52;
Eff. January 1, 1991;
Recodified from 15A NCAC 3I .0002 Eff. December 17, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

15A NCAC 03M .0502 MULLET

(a) It shall be unlawful to possess more than 200 mullet per person per day for recreational purposes.

(b) The Fisheries Director may, by proclamation and pursuant to 15A NCAC 03H .0103, impose any of the following restrictions on the taking of mullet:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity, except as provided in Paragraph (a) of this Rule.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. July 1, 2006;
Readopted Eff. April 1, 2019.

15A NCAC 03M .0510 AMERICAN EEL

- (a) It shall be unlawful to possess, sell, or take American eels less than nine inches in length.
- (b) It shall be unlawful to possess more than 25 American eels per person per day for recreational purposes, except the master and each mate of for-hire vessels that hold a valid for-hire license may possess 50 eels each per day.
- (c) It shall be unlawful to possess American eels from September 1 through December 31, except when taken by baited pots.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. July 1, 1993;
Temporary Amendment Eff. August 1, 2000;
Amended Eff. May 1, 2015; April 1, 2001;
Readopted Eff. April 1, 2019.*

15A NCAC 03M .0512 COMPLIANCE WITH FISHERY MANAGEMENT PLANS

(a) In order to comply with management requirements incorporated in Federal Fishery Management Council Management Plans or Atlantic States Marine Fisheries Commission Management Plans or to implement state management measures, the Fisheries Director may, by proclamation, take any or all of the following actions for species listed in the Interjurisdictional Fisheries Management Plan:

- (1) Specify size;
- (2) Specify seasons;
- (3) Specify areas;
- (4) Specify quantity;
- (5) Specify means and methods; and
- (6) Require submission of statistical and biological data.

(b) Proclamations issued under this Rule shall be subject to approval, cancellation, or modification by the Marine Fisheries Commission at its next regularly scheduled meeting or an emergency meeting held pursuant to G.S. 113-221.1.

*History Note: Authority G.S. 113-134; 113-182; 113-221; 113-221.1; 143B-289.52;
Eff. March 1, 1996;
Amended Eff. October 1, 2008;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

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 unlawful to take or possess American shad from the Atlantic Ocean.

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. October 1, 2008;
Amended Eff. April 1, 2012.*

15A NCAC 03M .0520 TUNA

- (a) It shall be unlawful to possess for recreational purposes any of the following:
 - (1) yellowfin tuna less than 27 inches curved fork length;
 - (2) bigeye tuna less than 27 inches curved fork length; and
 - (3) more than three yellowfin tuna per person per day.
- (b) It shall be unlawful to possess in a commercial fishing operation any of the following:
 - (1) yellowfin tuna less than 27 inches curved fork length or 27 inches from the fork of the tail to the forward edge of the cut of beheaded tuna;

- (2) bigeye tuna less than 27 inches curved fork length or 27 inches from the fork of the tail to the forward edge of the cut of beheaded tuna;
- (3) Atlantic bluefin tuna less than 73 inches curved fork length or 54 inches pectoral fin curved fork length; and
- (4) tuna subject to a size or harvest restriction without having the tail attached.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. October 1, 2008;
Amended Eff. April 1, 2011;
Readopted Eff. April 1, 2019.*

**Proposed Amendment to the Mutilated Finfish Rule
Issue Paper**

Feb. 3, 2022

I. ISSUE

Examine the mutilated finfish rule, 15A NCAC 03M .0101, including the current species exceptions and species-specific conflicts to the rule. Explore options that provide flexibility to manage current conditions and variable conditions that could occur in the future.

II. ORIGINATION

North Carolina Marine Fisheries Commission (MFC) and the North Carolina Division of Marine Fisheries (DMF)

III. BACKGROUND

The MFC originally adopted the mutilated finfish rule 15A NCAC 03M .0101 in 1991. The original intent of the rule was to provide added resource protection for finfish species subject to a size or bag limit. The current version of the rule includes species-specific exceptions to the requirements; the exceptions pertain to mullet, hickory shad, and tuna. Requirements in the rule can only be amended via the permanent rulemaking process since proclamation authority has never been delegated to the Fisheries Director in this rule. The rule, as written, does not provide flexibility to manage variable conditions for species commonly used as cut bait, particularly when new regulations implemented to meet sustainability objectives (i.e., size or bag limits) make species subject to this rule.

During the August 2021 MFC quarterly business meeting, a motion was passed requesting the DMF to develop an issue paper for rulemaking examining the mutilated finfish rule. Discussions during the meeting identified potential issues with the rule, current limitations of the rule, and potential changes needed. In particular, it was noted there have been recent issues with the public unknowingly failing to abide by requirements of the rule by using species that are not allowed as cut bait. The rule was not originally promulgated to manage cut bait per se, but rather to protect finfish species regulated by a size or bag limit. The MFC identified the need for flexibility with the mutilated finfish rule and suggested the potential need to delegate proclamation authority to the Fisheries Director. Several species have been identified for possible rule exceptions or changes to current exceptions based on communications from stakeholders, feedback from Marine Patrol officers, and implications from stock assessments and FMPs.

Commercial trotline fishers contacted the Fisheries Director in June 2021, after an interaction with Marine Patrol officers where violations of the mutilated finfish rule were identified. The issue stemmed from the fishers switching bait from gizzard shad to American eel. Using eel for cut bait is prohibited under the mutilated finfish rule as eel is subject to a minimum size limit and bag limit. This scenario applies to about a dozen fishers in the Albemarle Sound region who participate in the blue catfish trotline fishery. The recreational sector, especially those targeting trophy catfish, has also voiced concern to the DMF over the ability to use American eel as cut bait. In addition, Marine Patrol has communicated concerns from anglers regarding their desire to continue using spot, Atlantic croaker, and bluefish as cut bait. All three species currently have bag limits in effect and are therefore subject to the requirements of the mutilated finfish rule. These species have commonly been used as cut bait by anglers fishing from piers, shore, as well as aboard charter and private boats. Bluefish are used as cut bait in recreational fisheries including shark, red drum, and summer flounder, and as bait in commercial longline and crab pot fisheries. Both spot and Atlantic croaker are very popular as live and cut bait to target a variety of species including flounder, tarpon, and red drum. Regulations for spot and Atlantic croaker are relatively new; the bag limit was enacted in April 2021, along with a commercial season closure in December 2021. The popularity of these species as cut bait is a major consideration driving the need to amend the mutilated finfish rule. Lastly, stock assessments for American eel and striped mullet are underway, bluefish are under a rebuilding plan, and the management measures for spot and Atlantic croaker will be reevaluated in two to three years using results from future traffic light analysis. Management measures for these species are likely to be impacted by stock assessment and traffic light analysis results, further emphasizing the need for flexibility in the mutilated finfish rule to accommodate the inclusion or exclusion of species from the rule.

American eel, spot, Atlantic croaker, and bluefish are managed as multi-state coastwide stocks. To ensure compliance with interstate requirements, North Carolina manages American eel, spot, Atlantic croaker, and bluefish under the North Carolina Fishery Management Plan (FMP) for Interjurisdictional Fisheries. The goal of the North Carolina FMP for Interjurisdictional Fisheries is to adopt FMPs, consistent with North Carolina Law, approved by the Mid-Atlantic Fishery Management Council (MAFMC), South Atlantic Fishery Management Council (SAFMC), or the Atlantic States Marine Fisheries Commission (ASMFC) by reference and implement corresponding fishery regulations in North Carolina to provide compliance or compatibility with approved FMPs and amendments, now and in the future. The goal of the councils and ASMFC plans, established under the Magnuson-Stevens Fishery Conservation Management Act (federal councils) and the Atlantic Coastal Fisheries Cooperative Management Act (ASMFC) are similar to the goals of the N.C Fisheries Reform Act of 1997 to “ensure long-term viability” of the fisheries. American eel, spot, and Atlantic croaker fall under the jurisdiction of the ASMFC, and bluefish fall under the jurisdiction of ASMFC and the MAFMC. Therefore, any proposed rule changes in this process must be vetted by ASMFC and MAFMC to ensure compliance with existing FMPs.

AMERICAN EEL

American eel are managed as a coastwide stock, from Maine through Florida, under Addendum V to the ASMFC Interstate FMP for American Eel. The original FMP was approved in 1999 and implemented a minimum recreational size limit and possession limit. Addendum III was approved in 2013 and implemented new size and possession limits as well as a seasonal gear closure. As a result, rule 15A NCAC 03M .0510, American Eel, was amended effective May 1, 2015. The coastwide quota was added under Addendum IV, approved in 2014. Under Addendum V, adopted in 2019, management action is initiated if the coastwide quota of 916,473 pounds is exceeded by 10% or more in two consecutive years. Management action has never been triggered. The 2017 stock assessment update indicated the American eel population remains depleted. A benchmark stock assessment is scheduled to be completed in 2022.

Under MFC Rule 15A NCAC 03M .0510, American eel are subject to a nine-inch total length minimum size limit for both the commercial and recreational fisheries and there is a bag limit of 25 eels per person per day for the recreational fishery, except the master and each mate of for-hire vessels that hold a valid for-hire license may possess 50 eels each per day. The rule also makes possession of American eel illegal from September 1 through December 31 except when taken by baited pots. Commercial eel pots are subject to MFC Rule 15A NCAC 03J .0301 establishing a ½-by-½ inch minimum mesh size requirement. The ½-by-½ inch minimum mesh size requirement in eel pots is designed to allow eels less than nine inches to escape. Commercial fishers harvesting American eels by eel pots are required to participate in a monthly logbook program designed to monitor the fishery.

The North Carolina Wildlife Resource Commission (WRC) experienced push back from catfish anglers when they established the nine inch minimum size limit for eel. American eel became subject to the WRC rule prohibiting cutting any fish with a size limit such that it could not be measured. In response, WRC proposed a rule change for American eel in inland fishing waters (part of rule 15A NCAC 10C .0401) that went into effect in 2021 and included “eels greater than 9 inches in length and with a minimum body depth greater than ½ inch may be cut for use as bait.” The ½ inch requirement is consistent with the ½-by-½-inch mesh restriction in place for eel pots and decreases the likelihood that smaller eels would be cut. Prior to approval, DMF reached out to ASMFC on behalf of WRC. ASMFC did not voice concern with cutting eels for bait as long as the nine inch minimum size limit did not change. While the ASMFC Interstate FMP does not directly prohibit the use of eel as cut bait, the depleted stock status and difficulty measuring ½ inch bait pieces limiting enforceability of the nine inch minimum size limit should be primary considerations in future discussions.

SPOT AND ATLANTIC CROAKER

For both spot and Atlantic croaker, a traffic light analysis is used as a precautionary management framework to annually evaluate fishery trends. The name of the analysis comes from assigning a color (red, yellow, or green) to categorize indicators that reflect the condition of the fish population (abundance characteristic) or the fishery (harvest characteristic) relating to a set reference level. Management action is triggered if harvest and abundance thresholds within a regional or coastwide traffic light analysis are met or exceeded for any two of the three terminal years for spot and any three of the four terminal years for Atlantic croaker. If management action is triggered, management measures remain in place for at least two years for spot and three years for Atlantic croaker. Future TLA determines if management measures are still required or if alternative management measures are needed.

There is an exception to the bag limit for spot and Atlantic croaker used as bait by recreational for-hire vessels and private vessels. Recreational for-hire vessels may possess live spot or Atlantic croaker for use as bait. The maximum number of spot or Atlantic croaker allowed to be held onboard for use as bait is the bag limit in effect multiplied by the number of customers allowed on the vessel. Private recreational vessels that possess live spot or Atlantic croaker for use as bait will be subject to personal bag limits of anglers on the vessel, with live fish possessed counting towards the bag limits.

Spot

Spot are managed as a coastwide stock, from Delaware through the east coast of Florida, under Addendum III to the Omnibus Amendment to the ASMFC Interstate FMP for Spanish Mackerel, Spot, and Spotted Seatrout. The original interstate FMP for spot was adopted in 1987 followed by the Omnibus Amendment in 2012. The 2017 benchmark stock assessment did not pass peer review due to conflicting trends in abundance and harvest. The 2020 TLA indicated harvest and abundance exceeded the 30% threshold, indicating moderate concern and requiring management action. Management included a 50-fish recreational bag limit and a 1% reduction of commercial harvest from the average state commercial harvest from the previous 10 years. In North Carolina, a recreational bag limit was implemented in April 2021 by proclamation FF-23-2021 and proclamation FF-66-2021 established a commercial season closure from December 10, 2021 to April 4, 2022. Prior to 2021, no direct recreational or commercial regulations existed for spot.

Atlantic Croaker

Atlantic croaker are managed as a coastwide stock, from New Jersey through the east coast of Florida, under Addendum III to Amendment 1 to the ASMFC Interstate FMP for Atlantic Croaker. The original FMP for Atlantic croaker was adopted in 1987 followed by Amendment 1 in 2015. The 2017 benchmark stock assessment did not pass peer review due to conflicting trends in abundance and harvest. The 2020 TLA indicated harvest and abundance exceeded the 30% threshold, indicating moderate concern and requiring management action. Management included a 50-fish recreational bag limit and a 1% reduction of commercial harvest from the average state commercial harvest from the previous 10 years. In North Carolina, the recreational bag limit was implemented in April 2021 by proclamation FF-24-2021 and proclamation FF-65-2021 established a commercial season closure from December 16 to December 31, 2021. Prior to 2021, no direct recreational or commercial regulations existed for Atlantic croaker.

BLUEFISH

Bluefish are managed as a coastwide stock, from Maine through Florida, under Amendment 7 to the joint ASMFC and MAFMC Interstate FMP for Bluefish. The original FMP for bluefish was adopted in 1990 and implemented a 10-fish bag limit. The daily bag limit was increased to 15 fish in June 2001. Amendment 1 established coastwide commercial and recreational quota allocations, and the commercial allocation was further divided by state-specific commercial allocations. The FMP allows a state-by-state commercial quota system and a coastwide recreational harvest limit to manage the commercial and recreational fisheries. Reporting and permit requirements are implemented for both commercial and recreational fishing sectors as well as fish dealers. The 2019 operational stock assessment determined bluefish are overfished but are not experiencing overfishing. The stock is currently under a rebuilding plan designed to rebuild the stock in seven years. Stock assessment updates are conducted to track the rebuilding process and adjust management if needed. A research track assessment is scheduled for 2022.

The bluefish fishery is managed under annual catch limits. The recreational fishery uses bag limits to constrain the harvest within the recreational harvest limit, while the commercial fishery is managed with a coastwide quota allocated to individual states. Due to the overfished stock status, the coastwide recreational harvest was reduced in 2020 (28.6% below the 2019 recreational harvest limit). As a result, the recreational bag limit was reduced. Starting on February 1, 2020, the private recreational (all persons not fishing on a for-hire vessel) bag limit was set at three bluefish per person per day and the recreational for-hire (persons fishing on a for-hire vessel) bag limit was set at five bluefish per person per day. Prior to this reduction, from June 2001 to January 2020 under 15A NCAC 03M .0511, North Carolina had a 15-fish recreational bag limit, and starting in April 2003 only five of the 15 fish could be greater than 24 inches total length. There are currently no size restrictions for bluefish.

EXCEPTIONS FOR MULLET, HICKORY SHAD, AND TUNA

The mutilated finfish requirement first appeared as paragraph (h) in Rule 15A NCAC 03B. 0105 in the late 1980s stating “It is unlawful to land or possess aboard a vessel any striped bass, red drum, spotted seatrout, or flounder mutilated to the extent that accurate length measurements cannot be made.” This appears to be the origin of what became the stand-alone mutilated finfish rule. The mutilated finfish rule, 15A NCAC 03M .0101, was adopted as a

new rule in 1991 when the MFC reorganized and re-codified its rules. The rule did not provide any species-specific exceptions stating only: "It is unlawful to possess aboard a vessel or while engaged in fishing from the shore or a pier any species of finfish which is subject to a size or harvest restriction without having head and tail attached."

The rule was amended in 2002 to include: "Blueback herring, hickory shad and alewife shall be exempt from this Rule when used for bait provided that not more than two fish per boat or fishing operation may be cut for bait at any one time." At the time of this amendment, these species were subject to regulations established under Amendment 1 to the Interstate FMP for Shad and River Herring, including a recreational bag limit.

In July 2006, a rule amendment added mullet as an exception to the mutilated finfish rule with no further specifications. The striped mullet FMP was adopted in April 2006 and established a daily possession limit of 200 mullets (white and striped in the aggregate) per person per day in the recreational fishery, therefore subjecting mullet to the requirements of the mutilated finfish rule. The mutilated finfish rule was amended in 2006 because otherwise mullet could not be used as cut bait.

In 2011, the rule was restructured so each exception to the rule requirement was numbered and tuna was added as "tuna possessed in a commercial fishing operation as provided in 15A NCAC 03M .0520". The addition of this exception for tuna resolved discrepancies between state and federal rules. When 15A NCAC 03M .0520 was originally adopted in 2008, it subjected tuna to the requirements of the mutilated finfish rule but the National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) allows the head to be removed from commercially caught tuna. The addition of the exception accommodates the federal regulations for beheaded tunas to maintain consistency for enforcement with MFC and NOAA Fisheries rules.

In 2015, the rule was amended to no longer specify "engaged in fishing from the shore or a pier", but rather "engaged in fishing". In addition, blueback herring and alewife were dropped from the list of species exceptions. The MFC adoption of Amendment 1 to the North Carolina River Herring FMP in February 2007 implemented a commercial and recreational no-harvest provision but DMF allowed possession of river herring purchased from bait/tackle dealers. The allowance of possession for bait created enforcement loopholes. In response, Amendment 2 to the River Herring FMP changed the possession requirement for river herring from only allowing river herring from sources outside of North Carolina coastal fishing waters to allowing only fish less than or equal to six inches total length aboard a vessel or while engaged in fishing, regardless of source. Amendment 2 also removed alewife and blueback herring as exceptions in the mutilated finfish rule so the length of the fish could be determined.

The current version of the rule readopted in 2019 excepts mullet without specifications, hickory shad provided no more than two are cut at a time, and tuna possessed in a commercial fishing operation.

In North Carolina, hickory shad are included in the North Carolina FMP for Interjurisdictional Fisheries, which defers to the ASMFC for FMP compliance requirements. The exception for hickory shad in the mutilated finfish rule allows hickory shad to be used as cut bait while still allowing enforcement of current regulations. The exception for tuna in the mutilated finfish rule maintains consistency with NOAA Fisheries rules. No changes to the rule are needed for hickory shad or tuna at this time.

Striped mullet are managed under Amendment 1 to the North Carolina Striped Mullet FMP as a coastal stock including coastal and joint fishing waters of North Carolina. The FMP was originally adopted in 2006 and amended in 2015. The 2018 update to the 2013 stock assessment concluded the stock was not undergoing overfishing and the overfished status could not be determined. A stock assessment is currently underway. If stock assessment results indicate overfishing is occurring or the stock is overfished, management measures more restrictive than the current 200 mullet recreational bag limit currently in place may be necessary. Therefore, continuing to allow an exception for mullet from the mutilated finfish rule without further specifications could jeopardize sustainability objectives.

PROCLAMATION AUTHORITY

North Carolina General Statute 113-221.1 states the "Marine Fisheries Commission may delegate to the Fisheries Director the authority to issue proclamations suspending or implementing, in whole or in part, particular rules of the Commission that may be affected by variable conditions." There are three required elements involved in delegation of proclamation authority to the Fisheries Director by the MFC. The MFC must specifically authorize the Fisheries

Director the ability to issue a proclamation, there must be a particular rule in place, and the rule must be affected by a variable condition. These three elements must apply when there is the potential for the Fisheries Director to issue a proclamation suspending a rule or when there is the potential for the Fisheries Director to issue a proclamation implementing a management measure.

In some cases, a specific variable condition is listed in the rule. An example is in rule 15A NCAC 03J .0301(a)(2) which delegates authority to the Fisheries Director to manage the use of pots via proclamation to allow for the variable spatial distribution of crustacea and finfish. If a variable condition is not provided in the rule, a list of variable conditions is provided in 15A NCAC 03H .0103. Examples include compliance with FMPs, user conflicts, and protection of public health. Regardless of whether the variable condition is provided in a particular rule or in 15A NCAC 03H .0103, there must be an identified variable condition that needs to be addressed. Over time, if a condition of a fishery ceases being variable in nature, the requirements for the fishery are placed in permanent rule. There is a balance to be achieved between having the flexibility to manage variable conditions of a fishery and having requirements that are not expected to change set in permanent rule for clarity and ease of access to the regulations by stakeholders.

IV. AUTHORITY

N.C. General Statutes

G.S. 113-134	Rules.
G.S. 113-182	Regulation of fishing and fisheries.
G.S. 113-221.1	Proclamations; emergency review.
G.S. 113-252	Atlantic States Marine Fisheries Compact and Commission.
G.S. 143B-289.52	Marine Fisheries Commission – powers and duties.

N.C. Marine Fisheries Commission Rules

15A NCAC 03H .0103	Proclamations, General
15A NCAC 03I .0102	Temporary Suspension of Rules
15A NCAC 03J .0301	Pots
15A NCAC 03M .0101	Mutilated Finfish
15A NCAC 03M .0502	Mullet
15A NCAC 03M .0510	American Eel
15A NCAC 03M .0511	Bluefish*
15A NCAC 03M .0512	Compliance with Fishery Management Plans
15A NCAC 03M .0519	Shad**
15A NCAC 03M .0520	Tuna

* Rule is anticipated to be repealed effective April 1, 2022, so management can continue via 15A NCAC 03M .0512 to address ongoing variable conditions in the bluefish fisheries.

** Rule is undergoing re-adoption. All requirements except paragraph (c) are suspended in accordance with the ASMFC FMP.

V. DISCUSSION

The mutilated finfish rule was originally adopted in 1991 to provide added resource protection for any finfish species subject to a size or bag limit by prohibiting possession of these species without head and tail attached. Over time, species-specific exceptions with varying levels of constraints have been added to and removed from the rule but the fundamental requirements of the rule have remained the same. Amendments to the rule have served to add or remove species-specific exceptions and these changes have allowed for the continued use of popular bait fish as cut bait while still protecting the resource.

Use of American eel, spot, Atlantic croaker, bluefish, and striped mullet as bait creates conflicts with the rule based on communication from stakeholders, feedback from Marine Patrol officers, and potential implications from stock assessments and FMPs in development. It is likely that species beyond the five outlined in the background could require similar consideration in the future. Therefore, the intent of this issue paper is to propose changes to amend the rule in a way that both resolves current conflicts with species used as cut bait and provides flexibility to manage

variable conditions. Ultimately, this issue paper presents a single option for consideration because, compared to other approaches, this option fully achieves all objectives of the rule change. The three other approaches considered but ultimately not recommended are outlined below.

As a management approach, status quo for the mutilated finfish rule is not viable. The rule is not written to accommodate the use of common bait species as cut bait. Adding or removing species exceptions can only occur via a rule amendment through the permanent rulemaking process. This does not provide flexibility to quickly address issues that occur due to changing management measures and changing bait fish preference. Furthermore, any species subject to a ‘size or harvest restriction’ is subject to the requirements of the rule. The term ‘harvest restriction’ is ambiguous and makes it difficult to distinguish what regulations subject a species to the rule. The MFC identified the need to explore approaches that provide flexibility to the rule to manage variable conditions for species commonly used as cut bait. The rule needs to better balance stakeholder needs with FMP requirements and implement management measures aimed to protect the resource.

One approach is to amend the rule in a similar manner as done in the past, in which species-specific exceptions are added or revised. Conflicts with use of American eel, spot, Atlantic croaker, and bluefish as cut bait could be resolved under this approach by specifically amending the requirements of the rule with respect to these species. However, the rule would be amended based on the management measures currently in place for these species and these management measures are subject to change based on stock assessment results and FMP requirements. Furthermore, bait use is a complex issue and it is likely that species beyond these five are used for cut bait. Fish that have been depredated, which is a fish that has been subject to some predation, may also be subject to the rule. The rule as written does not allow possession of a depredated fish with a size or bag limit. The SAFMC is considering a change to the FMP for the Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region that would allow the possession of king and Spanish mackerel depredated by sharks or other toothy species as long as they meet minimum size limits. This approach would require some level of proclamation authority to achieve the objective of providing the flexibility needed to manage potential variable conditions. The changing conditions of species stock status, management measures, and angler preferences may necessitate the need to issue proclamations. While the level of proclamation authority could be narrowed to address specific instances, the preferred option would avoid adding proclamation authority to this rule.

The ‘inverse’ approach to the mutilated finfish rule was also discussed. Prior to adoption of the rule in 1991, the mutilated finfish requirements were written such that only species specifically noted within the rule were subject to the requirements. When adopted in 1991, the structure of the rule was changed such that all species are subject to the requirements given they are also subject to a size or harvest restriction. Amending the rule similar to the original version would result in only species specifically noted within the rule being subject to the requirements. A similar approach is used by the WRC in rule 15A NCAC 10C .0401(q). Approaching the amendment of the rule this way allows any species to be cut for bait except those specifically identified in the rule as not being able to be cut. Revising the rule in this manner may limit the frequency that proclamations would need to be issued but does not eliminate the need to add proclamation authority to this rule.

The most practical solution as presented in the proposed rule text, simplifies the rule by removing exceptions, instead relying on proclamation authority set out in other existing rules to manage the use of cut bait through species-specific proclamations. This change eliminates the need to add proclamation authority to the mutilated finfish rule, instead utilizing proclamation authority already in place. The simplified rule is easier to explain to the regulated public and in court when violations have occurred. Any species-specific conflicts with the rule can be managed on a case-by-case basis via species-specific proclamations. This further simplifies regulations for the public by including all requirements for a species within the same rule or proclamation.

The proposed rule text removes the ambiguous ‘harvest restriction’ language and instead specifies ‘any species of finfish that is subject to a possession limit, including size limit, recreational bag limit, commercial trip limit, or season’. The use of only ‘size limit’ instead of ‘possession limit’ was considered, meaning only species subject to a size limit would be subject to the requirements of having head and tail attached. The use of ‘size limit’ over ‘possession limit’ would limit the number of species subject to the requirements of the rule, automatically eliminating all species conflicts identified in the background with the exception of eel. While the use of ‘size limit’ simplified the rule, marine patrol indicated it decreased the enforceability of other regulations. Wahoo is a prime example of this point. Wahoo has a 500-pound commercial trip limit and if allowed to be cut into steaks prior to landing, the commercial poundage

limit would be difficult (if not impossible) to enforce. The use of ‘possession limit’ preserves the enforceability and decreases the opportunity for loop holes. Although species-specific conflicts are not automatically eliminated by the use of ‘possession limit’ in the rule, they can be resolved by species-specific proclamations (see ancillary tasks).

The proposed option would amend the rule such that species with a possession limit would be subject to the requirements of the mutilated finfish rule unless otherwise specified in a rule or proclamation. MFC Rule 15A NCAC 03I .0101 (2)(g) defines ‘possess’ as ‘any actual or constructive holding whether under claim of ownership or not’. Possession limit includes size limit, recreational bag limit, commercial trip limit, season, or any other requirement that affects possession being allowed. The clarified language ensures the expectations of the rule are clear and helps to prevent confusion and loop holes when interpreting the rule. Overall, the proposed amendments to the rule simplify the rule and continue to serve the original intent of the rule to protect the resource, not to manage the use of cut bait.

The following text outlines how the proposed rule amendment applies to the specific issues and species outlined in the background as well as ancillary tasks that would result from the rule change. This includes species for which the Fisheries Director would need to consider if, at their discretion, a proclamation should be issued if the proposed rule change becomes effective. Managing the use of cut bait via species-specific proclamations would preserve acceptable practices for cutting species that are occurring now and would specify practices for cutting species that are prevented by the current rule but would be acceptable to occur after the rule is amended, consistent with the variable conditions provided in 15A NCAC 03H .0103.

AMERICAN EEL

American eel have been subject to the mutilated finfish rule since 1999 when the FMP was adopted requiring a minimum recreational size and possession limit. Under rule 15A NCAC 03M .0510, American eel are subject to a nine-inch minimum size limit for both the commercial and recreational fisheries along with a bag limit of 25 eels per person per day for the recreational fishery. American eel would continue to be subject to the requirements of the amended mutilated finfish rule because of this size and possession limit.

The use of eel as cut bait has been increasing in popularity in both the recreational and commercial sector. Eel are used to target striped bass and catfish and are used by commercial fishers in the trotline fishery. Marine Patrol has one documented violation of the rule in reference to eel, but increasing popularity of the species for cut bait would likely result in future violations if the requirements remain unchanged. Eel could be excepted from the requirements of the amended mutilated finfish rule via proclamation. The decision to issue a proclamation would be at the discretion of the Fisheries Director, consistent with the variable conditions provided in 15A NCAC 03H .0103 including compliance with FMPs. A stock assessment is underway and results of this assessment could impact future management of American eel, thus the Fisheries Director’s decision to issue a proclamation would be best informed closer to the date that the rule would be effective.

SPOT AND ATLANTIC CROAKER

The recreational bag limits implemented in April 2021 for spot and Atlantic croaker were the first direct harvest restrictions for these species. Prior to 2021, spot and Atlantic croaker were never subject to the requirements of the mutilated finfish rule. Both species are commonly used as live and cut bait by a variety of anglers including shore-based anglers, those fishing from private vessels, and for-hire vessels. Because of their popularity as cut bait, there is a state-level need to exclude spot and Atlantic croaker from the mutilated finfish requirements.

While spot and Atlantic croaker would still be subject to the requirements of the amended mutilated finfish rule, the amended rule would give the Fisheries Director the option to issue a proclamation to allow these species to be cut. Results of future TLA could impact management of spot and Atlantic croaker and there is the possibility that the bag limit could be removed or replaced around the time the amended rule would be effective and thus a proclamation would not be needed. The use of spot and Atlantic croaker for cut bait is not a sustainability concern because these species are a long-standing bait fish and they can be used for cut bait while still adhering to existing bag limits. Under the proposed rule amendment, the Fisheries Director would have the authority to determine if a proclamation is required and appropriate.

BLUEFISH

Bluefish have been subject to the mutilated finfish rule since adoption of the original FMP, which established a possession limit. The current three-fish bag limit is less than what was historically allowed (10-fish from 1999-2001

and 15-fish from 2000-2019) and no longer specifies any kind of size limit (only five of the 15 fish could be greater than 24 inches total length from 2003-2019). Bluefish would still be subject to the requirements of the amended mutilated finfish rule.

Bluefish are used as bait in recreational and commercial fisheries and are commonly used as cut bait by anglers on piers and in the surf. The amended rule allows for the option to except bluefish from the requirements of the rule via proclamation. Management measures may change as the stock is in a rebuilding plan, thus under the proposed rule amendment, the decision to except bluefish would be under the authority of the Fisheries Director.

EXCEPTIONS FOR MULLET, HICKORY SHAD, AND TUNA

The rule amendment removes the exceptions for mullet, hickory shad, and tuna from the rule. The exception for tuna only served to reference the existing rule 15A NCAC 03M .0520 and the amended rule continues to do so in stating 'unless otherwise specified in a rule of the Marine Fisheries Commission or a proclamation issued pursuant to a rule of the Marine Fisheries Commission'. Exceptions for mullet and hickory shad could be restored by issuing proclamations. Mullet are currently regulated by a recreational bag limit of 200 mullet per person per day. If stock assessment results indicate more stringent management measures are needed for mullet or excepting mullet from the mutilated finfish rule could cause enforcement issues which may undermine sustainability objectives, then a proclamation may not be needed. The decision to continue excepting mullet and hickory shad would be under the authority of the Fisheries Director at the time the amended rule would be effective.

Ancillary Tasks

The proposed option would amend the rule such that species with a possession limit would be subject to the requirements of the mutilated finfish rule unless otherwise specified in a rule or proclamation. This option simplifies the rule by including all requirements for a specific species within the same rule or proclamation. This approach mimics how species are managed at the federal level and ensures that compliance is maintained with ASMFC, SAFMC, and MAFMC FMPs. The species that may be in conflict with the amended rule are outlined below as ancillary tasks that may need to be addressed by proclamation upon the effective date for the proposed rule change. The proclamations could preserve acceptable practices for cutting species that are occurring now and specify practices for cutting species that are prevented by the current rule but would be acceptable to occur after the rule is amended. The decision to issue such proclamations would be under the authority of the Fisheries Director at the time the amended rule would be effective, consistent with the variable conditions provided in 15A NCAC 03H .0103. It is important to distinguish that while there are six potential proclamations identified below, mullet are the only species that do not have a preexisting proclamation. Existing proclamations could be reissued with cut bait requirements upon the effective date of the rule and in conjunction with the Fisheries Director's decision. Thus, the ancillary tasks include only one 'new' proclamation that may need to be issued for mullet (see item 5 below). The rest of the ancillary tasks could be resolved by reissuing existing proclamations, which is already done on an annual basis for many species.

1. American Eel would continue to be subject to the requirements of the amended mutilated finfish rule. A proclamation would need to be issued via 15A NCAC 03M .0512 if the Fisheries Director decides it is appropriate to allow American eel to be used as cut bait.
2. Spot would continue to be subject to the requirements of the amended mutilated finfish rule as long as the bag limit remains effect. A proclamation would need to be issued via 15A NCAC 03M .0512 if the Fisheries Director decides it is appropriate to allow spot to be used as cut bait.
3. Atlantic croaker would continue to be subject to the requirements of the amended mutilated finfish rule as long as the bag limit remains effect. A proclamation would need to be issued via 15A NCAC 03M .0512 if the Fisheries Director decides it is appropriate to allow Atlantic croaker to be used as cut bait.
4. Bluefish would continue to be subject to the requirements of the amended mutilated finfish rule. A proclamation would need to be issued via 15A NCAC 03M .0512 if the Fisheries Director decides it is appropriate to allow bluefish to be used as cut bait.
5. Mullet would no longer be exempt from the requirements of the amended mutilated finfish rule. A proclamation would need to be issued via 15A NCAC 03M .0502 if the Fisheries Director decides it is appropriate to continue to allow mullet to be used as cut bait.
6. Hickory shad would no longer be exempt from the requirements of the amended mutilated finfish rule. A proclamation would need to be issued via 15A NCAC 03M .0512 if the Fisheries Director decides it is appropriate to continue to allow hickory shad to be used as cut bait.

VI. PROPOSED RULE(S)

15A NCAC 03M .0101 MUTILATED FINFISH

It shall be unlawful to possess aboard a vessel or while engaged in fishing any species of finfish that is subject to a ~~size or harvest restriction~~ possession limit, including size limit, recreational bag limit, commercial trip limit, or season, without having head and tail attached, ~~except:~~ unless otherwise specified in a rule of the Marine Fisheries Commission or a proclamation issued pursuant to a rule of the Marine Fisheries Commission.

- (1) ~~mullet when used for bait;~~
- (2) ~~hickory shad when used for bait, provided that not more than two hickory shad per vessel or fishing operation may be cut for bait at any one time; and~~
- (3) ~~tuna possessed in a commercial fishing operation as provided in Rule .0520 of this Subchapter.~~

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. January 1, 1991;
Temporary Amendment Eff. May 1, 2001;
Amended Eff. May 1, 2015; April 1, 2011; July 1, 2006; August 1, 2002;
Readopted Eff. April 1, 2019.
Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).

VII. PROPOSED MANAGEMENT OPTION

Use of American eel, spot, Atlantic croaker, bluefish, and striped mullet as bait creates conflicts with the mutilated finfish rule based on communication from stakeholders, feedback from Marine Patrol officers, and implications from stock assessments and FMPs. It is likely that species beyond the five outlined could require similar consideration in the future. Therefore, the intent of this issue paper is to propose changes to amend the rule in a way that both resolves current conflicts with species used as cut bait and provides flexibility to manage variable conditions. Ultimately, this issue paper presents a single option for consideration. This option is the only option that fully achieves all objectives of the rule change.

- Amended rule 15A NCAC 03M .0101 to provide flexibility to manage variable conditions for the use of finfish as cut bait by simplifying the rule such that species subject to a possession limit are subject to the requirements unless otherwise specified in a rule or proclamation.
- + Allows access to a bait resource
 - + Simplifies the rule and continues to serve the original intent of the rule to protect the resource, not to manage the use of cut bait.
 - + Provides the flexibility to manage both current conditions and variable conditions
 - + Preserves enforceability of existing regulations
 - +/- Requires additional proclamations to be issued but provides a more holistic approach to species level management
 - Requires lengthy rule making process

VIII. RECOMMENDATION

The DMF recommends supporting the single option presented in this paper. The proposed rule is automatically subject to legislative review pursuant to Session Law 2019-198; therefore, the earliest possible effective date would be the 30th legislative day of the 2024 short session, estimated to be approximately mid-June 2024.

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Fiscal Impact Analysis of Proposed Amendment to the Marinas, Docking Facilities, and Other Mooring Areas Rule

Rule Amendments: 15A NCAC 18A .0911 (amendment and readoption)

Name of Commission: N.C. Marine Fisheries Commission

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

AUTHORITY

N.C. General Statutes

G.S. 113-134. Rules.
G.S. 113-182. Regulation of fishing and fisheries.
G.S. 113-221.2. Additional rules to establish sanitation requirements for scallops, shellfish, and crustacea; permits and permit fees authorized.
G.S. 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. This rule, 15A NCAC 18A .0911 (see Appendix I), is proposed for readoption with amendments pursuant to this requirement. The marina rule, as it is currently written, may not be fully in compliance with national program requirements for shellfish harvesting closures and does not use the best available methodology to do so for the protection of public health. Proposed amendments would help ensure that North Carolina remains in full compliance with national requirements, allow Division of Marine Fisheries (DMF) to determine necessary buffer closures based on a more scientific and public health-based rationale, and make implementation and enforceability more clear.

I. Summary

North Carolina is part of the National Shellfish Sanitation Program (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” as stated in Section I page 2 of the NSSP Guide for the Control of Molluscan Shellfish ([Guide](#)). 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 Guide. North Carolina must meet the minimum standards included in the Guide for N.C. shellfish to be able to be sold through interstate commerce.

With reference to the harvest classification of shellfish growing waters in and around marinas, the Guide requires that a pollution assessment be used to determine the necessary classification in and around the marina docks, and that a dilution analysis be used to determine the size of any harvest closure that may be necessary as a result of the pollution assessment. The current N.C. rule necessitates that a pollution assessment be used to determine the necessary classification in and around the marina docks but does not require a dilution analysis to determine closure size, and instead prescribes specific closure measurements based on a limited number of marina characteristics. The proposed rule would maintain the pollution assessment requirement but would also require that a dilution analysis be used to determine closure size, which would help ensure that North Carolina remains in full compliance with national program requirements and would provide a more scientific and public-health based rationale for these buffer closures.

Small but unquantifiable potential private and State benefits could result from the proposed rule amendments. The proposed changes would allow North Carolina to base necessary buffer sizes around marinas on the best available science and data. The introduction of the dilution analysis requirement would help ensure that North Carolina remains in full compliance with the Guide for safe harvest of shellfish, which could increase consumer confidence in the N.C. shellfish industry and would help ensure that N.C. shellfish can continue to be sold through interstate markets. Also, the elimination of an exemption clause (explained later in this analysis) would allow for more clarity amongst stakeholders and help ensure consistent, clear, and more efficient enforcement across marinas.

There could be small but unquantifiable potential private and State costs from the proposed rule amendments. There would be some allocation of State resources once this rule goes into effect to calculate the necessary buffer associated with each marina using the new dilution equation. However, the aim is to develop a spreadsheet “calculator” that utilizes the most recent shoreline survey data to update these calculations automatically, so after initial development and implementation, the added time is expected to be minimal. Additionally, because the current rule makes use of ranges of slip numbers for determining the necessary buffer size, there is some flexibility to absorb minor changes in slip counts without an associated change in the buffer size. The amended rule makes use of specific slip counts when determining the buffer size, which could reduce or eliminate the flexibility for minor changes in slip count and may lead to more frequent, but clear, classification changes. The implementation of these classification changes will be integrated into routine, pre-existing processes, and will not necessitate any notable additional effort on the part of DMF staff.

In response to changes in buffer sizes the designation of a region of water may be changed to or from being open to the harvest of shellfish. These potential changes in designation could allow areas that were formerly used for shellfish harvest to be closed or areas that were previously closed to be open to harvest. There could be different impacts to the diverse stakeholders through the changes in allocation. This rule could primarily impact two stakeholder groups. The first is

the individuals that keep their boats at the marina and the marina owners. They could benefit from reallocation of the water ways that are near them away from shellfish harvest and for navigation. The second group of individuals is the wild shellfish harvesters who would like to maximize harvest areas. Having said that, any allocation change would be based on the best available science and data to protect public health. If waters which were allocated as “best use” (introduced in Section II) for shellfish harvesting are changed to prohibited from shellfish harvesting, that change would be in response to the waters being unsafe for shellfish harvest. As discussed in more detail later in this analysis, the acreage of water that could potentially change designation is minimal.

II. Introduction and Purpose of Rule Change

As part of its work with the NSSP and in compliance with the Guide, the responsibilities of the DMF include classifying coastal waters as to their suitability for shellfish harvesting. Shellfish growing waters can be classified as “Approved”, “Conditionally Approved”, “Restricted”, or “Prohibited”. Approved areas are consistently open to harvest, while prohibited areas are off limits for shellfish harvest. Conditionally approved areas can be open to harvest under certain conditions, such as dry weather when stormwater runoff is not having an impact on surrounding water quality, and restricted waters can be used for harvest at certain times as long as the shellfish are subjected to further cleansing before they are made available for consumption.

The entire North Carolina coast is divided into a series of management units that are referred to as growing areas. Each of these growing areas is individually managed to determine which portions of the area are suitable for shellfish harvest, and which need to be closed to harvest. A variety of data are collected for each area, including:

- A shoreline survey of actual and potential pollution sources impacting the area.
- Bacteriological water quality sampling data from stations located throughout the area.
- Data summarizing the impacts of rainfall and associated stormwater runoff on growing area water quality.
- A summary of tides, water circulation patterns, and other physical factors that influence the movement of potential contaminants within the growing area.

These data are summarized and analyzed in a Sanitary Survey Report, which is then used to determine the appropriate harvest classifications.

A shoreline survey is an in-field evaluation of any potential or actual pollution sources within a growing area watershed to determine their potential impact on shellfish growing waters and public health. These detailed surveys are completed every three years and involve visits to properties throughout each growing area watershed, where potential sources of pollution such as marinas, on-site wastewater systems, agricultural areas, wastewater treatment plants, and stormwater drainage systems are all evaluated for their potential impacts on surrounding water quality. In intervening years, these surveys are updated to reflect any major changes in pollution source impacts that may have occurred. Pollution source data collected using GPS, as well as a written summary of shoreline survey findings, are each incorporated into the Sanitary Survey Report, and are used to help assess which portions of the growing area are suitable for shellfish harvest.

Separately, the Division of Water Resources (DWR) classifies all surface waters in the State to define the “best use” of those waters, and to define the water quality standards that apply to those waters in order to protect that best use. For example, in the coastal area, surface waters can be classified as SA, SB, or SC. As defined in 15A NCAC 02B .0221, “the best usage of waters classified as SA shall be shellfishing for market purposes...”, and the water quality standards applied to those waters are designed to keep those waters available for shellfish harvest. DWR considers any proposed project that will directly cause a loss of the best use for a given water body to be a potential violation of the Clean Water Act, and thus DWR will object to the permit for a project being issued.

Marinas, defined in 15A NCAC 18A .0901 as “any water area with a structure (such as a dock, basin, floating dock) that is utilized for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than 10 boats”, can serve as potentially significant sources of contamination within shellfish growing waters. Because this risk of contamination is often highly variable, short-lived, and difficult to predict, typical water quality evaluations through sampling are not sufficient to determine the threat to shellfish consumers, and instead states are required to maintain some type of buffer closures around these facilities.

Section II, Chapter IV .05-Marinas of the Guide classifies two subcategories when it comes to closures around marinas. The first is a marina proper and the second is the adjacent waters to a marina. The marina proper classification includes the area within any marina that is in or adjacent to a shellstock growing area, which shall be classified as...prohibited (as defined in 15A NCAC 18A .0901 as shellfish growing waters unsuitable for the harvesting of shellfish for direct market purposes.)

The same section of the Guide also states that “waters adjacent to marina waters...may be impacted by pollution associated with the marina. A dilution analysis shall be used to determine if there is any impact to adjacent waters.”

The current version of 15A NCAC 18A .0911 defines how to classify shellfishing waters in and around marinas but does not mandate use of a dilution analysis and instead lays out specific footage requirements for buffer closures based on the number of slips present and other physical characteristics of a marina. The overarching goals of the proposed amendments to this rule are a) use a dilution analysis to replace the current process for determining the size of the necessary buffer closure, as required by the NSSP, b) provide a more scientific and public health-based rationale for these buffer closures, and c) make implementation of the rule easier, reduce gray areas, and eliminate portions of the rule that were unenforceable. Implementation of these proposed rule amendments and the dilution analysis will be set out in Division policy and will rely on broad U.S. Food and Drug Administration (FDA) guidance as well as some N.C. specific data that is acquired through yearly marina surveys.

The current version of this rule lays out exemptions to the requirement that the waters in and around a marina be classified as prohibited to the harvest of shellfish. The rationale behind including these exemptions was that marinas maintaining a limited number of boats that are small in size, do not support live-aboards or overnight stays, and do not contain onboard wastewater systems do not have the potential to pollute surrounding shellfishing waters in a way

that would pose a threat to public health. There are currently 20 marinas along the coast of North Carolina that fall under the exemption clause and only 10 of those are located in areas where the surrounding waters are still open to shellfish harvest.

This exemption portion of the rule has provided coastal property owners with some limited extra flexibility if they want to develop a marina within open shellfishing waters. Currently, if a marina that does not meet these “exemption criteria” is proposed in an area that is classified as restricted, conditionally approved, or approved for shellfish harvest, the potential resulting prohibited buffer is considered by the DWR to be a violation of the Clean Water Act because it causes a departure from the best use designation in that region of water (shellfish harvest), which results in an automatic denial of the permit application for the marina by the N.C. Division of Coastal Management (DCM). It is important to note that as DMF adjusts buffer sizes the designation of waters from DWR remains the same. If a region that was formerly outside of a buffer is now included in a buffer the best use designation would not change but the region of water would be designated as impaired if it has a best use for the harvest of shellfish. There are ways that best use designations could be changed but not explicitly in response to a change in a buffer size that DMF has calculated. In other words, the triggering event for a potential request by a stakeholder to DWR to change a best use designation would occur independent of the proposed rule change and independent of a change in buffer size. Though there is data sharing between DMF and DWR to harmonize across agency goals, DWR is not formally involved in the determination of particular buffer closures and through the proposed rule change that is not expected to change.

This exemption section of the existing rule is proposed to be deleted. Because of differences in rule and policy between the DMF and DCM, as well as regular, frequent turnover between developers and Home Owners Associations (HOA), the latter of which are charged with maintaining these permits for marinas, this provision of the rule has been very difficult to implement and enforce, and there have been several instances in recent years where exempted marinas have been found out of compliance by DMF staff.

III. Fiscal Analysis

The proposed rule is expected to produce small, but unquantifiable benefits to the State in the form of increased consumer confidence in the wild shellfish harvest sector and continued compliance with NSSP closure regulations, clarity across institutions and private stakeholders, and less State resources used on exempt marinas. The amended rule will incorporate a dilution analysis which will bring increased scientific validity to marina buffer closures and better protect public health through that scientific rigor. Though there have not been any illnesses linked to buffer closure sizes, through the dilution analysis, the State could have more confidence in the size of shellfish water closures, the location of shellfish water closures, and safety of harvestable shellfish waters around marinas. The incorporation of this dilution analysis will further protect public health and help ensure that North Carolina remains in full compliance with all national program requirements, which is necessary for N.C. shellfish to be sold through interstate markets.

To assess how the dilution analysis could impact existing classifications, test calculations were done on a representative cross section of 80 of the potential 120 marinas between the South Carolina State Line and Roanoke Island; the remaining 40 marinas have similar characteristics. Using the dilution analysis, 61 of these marinas were found to have adequate buffers already in place, while 19 would need expanded closure areas if this amended rule was implemented. The average necessary increase in closure for each of these 19 marinas was 1.48 acres or an average increase in buffer size of 53%. Extrapolating from the representative sample, this would indicate that a total of around 42 additional acres out of the approximately 1,460,000 approved or conditionally approved waters available would need to be closed to shellfish harvest. It is unlikely that these additional closures will have much impact on harvestable acreage as summarized in Table 1. The 42 acres of potential waters that could be closed are often either routinely dredged to ensure accessibility to the docking facilities or are located in shallow protected canals which are not productive shellfish habitat. The DMF does not expect any productive wild shellfish harvest areas nor any shellfish leases to be closed due to the increase in buffer sizes associated with the introduction of the dilution analysis.

Table 1: Summary of approximated changes to acreage of waters open to shellfish harvest.

<i>Estimated Changes If Rule Adopted</i>	
North Carolina - Total Acreage Approved/Conditionally Approved	1,460,000
Estimated Acreage To Be Closed Due To Modified Dilution Analysis	42.2
Estimated Acreage To Be Closed Due To Removal of Exemption	15.5
Estimated Acreage to be Classified as Approved/ Conditionally Approved	0

Amendments will also eliminate an exemption clause that allows waters in and around a marina to not be classified as prohibited if the boats in the marina are small, both in size and abundance, do not support live-aboards, and do not have onboard wastewater systems. With the elimination of this exemption there will be a cohesion of rule and policy between the DMF and DCM and clarity amongst managers of the marina who may not have been involved with the marina when it received its exemption status. The exemption clause has been difficult to implement and enforce and has taken relatively more DMF and DCM effort than all other marina designations.

It should also be noted that in the 33 years that this rule has been in place, only 20 marinas have been permitted under the above-described exemption, so while it is an option that is currently available to coastal landowners and developers, it is not a popular or frequently used option. Although there are 20 marinas that meet or should meet the criteria for this exemption, only 10 of those are in areas where the surrounding waters are still open to shellfish harvest. The elimination of this provision will result in the additional closure of approximately 15 water acres surrounding these 10 marinas, in total (Table 1). The elimination of the exemption provision

will not require these 10 existing marinas to change their current operations, even after the additional closure of the approximately 15 water acres.

Docking facilities that have ten docking spaces or less will still be exempt from needing a buffer closure under the new proposed amendments to rule, because by definition a docking facility with ten or fewer slips does not qualify as a marina (15A NCAC 18A .0901). In many cases, the elimination of an “exemption” generally is seen only as a cost or loss, but in this case this particular exemption carries a burden to the State and current marina operators and users that will be alleviated under the proposed rule change.

The rule could produce small opportunity costs to the State through the time it will take to modify the buffers for each marina. However, the aim is to develop a spreadsheet “calculator” that utilizes the most recent shoreline survey data to update these calculations automatically, so after initial development, the added time is expected to be minimal. Implementation of these modified buffer closures will be integrated into routine, pre-existing processes for growing area reclassifications, and will not necessitate any additional staff time.

The elimination of a rarely used designation through the exemption clause could reduce the potential options for locating future marinas. Applicants for a new marina will have one less option under the amended rule. They would need to seek a new marina location in water that is not designated approved or conditionally approved or a docking facility with ten docking spaces or less. Based on the limited use of this exemption in the past, we expect this change will impact very few, if any, coastal landowners and developers in the future.

a. Summary of Potential Economic Benefit

The proposed amendments could provide potential small State and private benefits. The benefits stem from clarity and compliance with the rule. Bringing the State’s shellfish water closures into fuller compliance with NSSP standards could also allow for increased consumer confidence in shellfish harvested in the State and further protect public health through the incorporation of a more rigorous buffer analysis. The benefits of ensuring that polluted waters are correctly designated and that the State remains in full compliance with all national program requirements far overshadows the small amount of DMF staff time the calculations for the dilution analysis could take.

Marinas that would have qualified for the exemption would create continued confusion and discrepancies between DMF and DCM. Elimination of the exemption could allow cohesion and clarity both at the institutional level and the private level. Many marinas that fit the former exemption criteria were designated as such by a developer and then taken over by a HOA. When homes are bought and sold, the personnel involved in the HOA changes and there is often confusion about the exemption designation. Specifically, there have been instances where homeowners have already owned or have inadvertently purchased a boat that does not meet the criteria for the exemption. To bring the marina back into compliance with its permit, the homeowner has sometimes been required to either sell the boat or to find an alternate storage location. With the elimination of this portion of the rule, slip owners at these marinas will have

additional flexibility with the type and size of boat they are able to dock there. Eliminating the exemption also ensures public health is the priority when it comes to dictating shellfish harvest closures. DMF spends resources repeatedly enforcing marinas' designations over time with changing HOA personnel. DMF resources could be used in other ways if the exemption is eliminated.

b. Summary of Potential Costs

The most likely potential cost associated with this rule change is that, moving forward, it will eliminate one potential option that coastal landowners or developers have when trying to get permitted to construct a marina in waters that are or may be open to shellfish harvest. The exemption has historically been used as a tool by developers to maximize slips. An unintended consequence of this exemption has been that it has reduced the flexibility future vessel owners have when it comes to vessel size and number of slips in the marina if the marina would like to expand. The exemption language in the current rule allows for construction of a marina, with specific limitations, in SA waters without causing a reclassification of those waters to prohibited, thus maintaining the "best use" for those waters. However, once this clause is eliminated, the only potential classification within and around marinas will be a classification of prohibited. In effect, this change in the rule will preclude any further development of marinas with more than 10 docking spaces in areas classified as approved or conditionally approved, although there is an available option for a permit applicant to request or conduct a "Use Attainability Study" to demonstrate to DWR that an area already does not support its best intended use (i.e., shellfish harvest), and that the project will not directly cause the loss of use.

Elimination of the exemption through the amended rule will necessitate that buffer closures be added around marinas that had historically been permitted under this clause. It is unlikely that these additional closures will have any appreciable impact on harvestable acreage, as the waters surrounding many of these facilities are routinely dredged to maintain depth around the docks, and several others are in shallow protected canals without suitable shellfish habitat. In recent years, as boat design has evolved and as small cabins and onboard toilets have been introduced into even smaller boats, it has become very difficult to meet these exemption criteria, and developers have often chosen alternate development plans. It should be noted that, under this amended rule, the permitting and construction of docking facilities with 10 slips or less will still be possible without necessitating a reclassification to prohibited based on the definition of "marina" in 15A NCAC 18A .0901.

In the proposed amended rule, the dilution analysis will take into consideration the exact number of slips available and will not use a range of slips. Therefore, the size of the buffer may be more directly affected by a small change in the number of slips.

The revisions to existing buffers that may result from the dilution analysis will require DMF staff to construct a tool that will calculate the buffer sizes. The information that will go into the tool is already collected; as such, the only additional time required for the dilution analysis tool will be in the construction of the tool itself. Development of the buffer tool is expected to be completed by a current staff member within about 50 hours of working time. According to the current job classification salary grade ([web1](#)) and the total compensation calculator ([web2](#)) provided by the

North Carolina office of human resources, the salary range for an employee to complete the development of the buffer tool is \$46.62 to \$68.47 dollars per hour totaling between \$2,331.00 and \$3,423.50. This time will be built into their duties and will not be above and beyond their normal hours nor pay. This time and associated cost, though real, is not expected to be significant nor require additional staff. DMF administers the shoreline survey which, among other things, assesses the number of slips in each marina. As new slips are identified, new calculations could need to be made and harvestable water designations could change. DMF staff already perform comprehensive shoreline surveys, including the regular assessment of harvestable water designations. The use of dilution analysis will replace the analysis currently done using ranges of slips. The use of dilution analysis is not expected to add to staff workload beyond the one-time initial analyses of all marinas.

This transition away from ranges of slips to particular numbers of slips will help ensure shellfish harvested in the State are in safe waters in regards to marina pollution. Although there is the potential that a change in designation could allow areas that were previously closed to be open to harvest, in most cases the State would leave the existing closed designation in place to provide a cushion for future changes in slip count (Table 1).

1 Appendix I: Proposed Rule

2 15A NCAC 18A .0911 is proposed for readoption with substantive changes as follows:

3

4 **15A NCAC 18A .0911 ~~MARINAS; MARINAS, DOCKING FACILITIES; FACILITIES, AND OTHER~~**
5 **~~MOORING AREAS~~**

6 ~~Classification of shellfish~~ Shellfish growing waters with respect to marinas, docking facilities, and other mooring
7 areas shall be ~~done~~ classified in accordance with the following:

8 (1) All all waters within ~~the immediate vicinity of~~ a marina shall be classified as prohibited to the
9 harvesting of shellfish for human consumption.

10 ~~Excluded from this classification are marinas with less than 30 slips, having no boats over 24 feet~~
11 ~~in length, no boats with heads and no boats with cabins. Marinas permitted prior to the effective~~
12 ~~date of this Rule may continue to have boats up to 21 feet in length with cabins and not be subject~~
13 ~~to the mandatory water classification of prohibited in the immediate vicinity of the marina.~~

14 ~~(2) Owners of marinas conforming to the exclusion provisions in Item (1) of this Rule shall make~~
15 ~~quarterly reports to the Division. These reports shall include the following information:~~

- 16 (a) ~~number of slips;~~
- 17 (b) ~~number and length of boats;~~
- 18 (c) ~~number and length of boats with cabins;~~
- 19 (d) ~~number of boats with heads; and~~
- 20 (e) ~~number of boats with "porta-potties."~~

21 ~~Reports to the Division shall cover the occupancy of the marina on the fifth day of the first month of each quarter of~~
22 ~~the calendar year and shall be post marked on or before the fifteenth day of the reporting month.~~

23 (3) ~~The minimum requirement for the prohibited area beyond the marina shall be based on the number~~
24 ~~of slips and the type of marina (open or closed system). The prohibited area shall extend beyond~~
25 ~~the marina from all boat slips, docks, and docking facilities, according to the following:~~

26

27 Number of Slips in Marina	28 Size of Prohibited Area (Feet)	
	29 Open System	30 Closed System
31 11—25	100	200
32 26—50	150	275
33 51—75	175	325
34 76—100	200	400

35 ~~Open system marinas exceeding 100 slips shall require an additional 25 feet for each 25 slips or portion thereof over~~
36 ~~100. A closed system marina shall require 50 feet for each 25 slips or portion thereof over 100. Closed system~~
37 ~~private or residential marinas with more than 75 slips shall require a prohibited area of the number of feet~~

1 ~~determined above, or 100 feet outside the entrance canal, whichever is greater. Closed system commercial marinas~~
2 ~~with more than 50 slips shall require a prohibited area of the number of feet determined above, or 100 feet outside~~
3 ~~the entrance canal, whichever is greater.~~

4 (2) the Division of Marine Fisheries shall conduct a dilution analysis to determine the minimum
5 extent of the area adjacent to a marina that shall be classified as prohibited to the harvesting of
6 shellfish for human consumption. The prohibited area shall be sized to dilute the concentration of
7 fecal coliform bacteria to less than 14 MPN, as determined by the dilution analysis. The dilution
8 analysis shall be conducted yearly and shall incorporate the following:

9 (a) the findings of the shoreline survey, including the presence of a sewage pumpout system
10 or dump station; and

11 (b) the physical factors influencing the dilution and dispersion of human wastes; and

12 (4)(3) ~~After a marina is put in use water quality impacts of marina facilities may require a change in~~
13 ~~classification. In determining if a change in classification is necessary, marina design, marina~~
14 ~~usage, dilution, dispersion, bacteriological, hydrographic, meteorological, and chemical factors~~
15 ~~will be considered. slip counts and services for marinas, docking facilities, and mooring areas in~~
16 ~~close proximity to one another shall be combined for the purposes of determining the necessary~~
17 ~~prohibited area as required in Items (1) and (2) of this Rule. Docking facilities and mooring areas~~
18 ~~each with three slips or more and marinas shall be considered to be in close proximity to one~~
19 ~~another if the dilution analysis indicates that the necessary dilution areas meet or overlap.~~

20 (5) ~~Areas, other than marinas, where boats are moored or docked may be considered on a~~
21 ~~case by case basis with respect to sanitary significance relative to actual or potential~~
22 ~~contamination and classification shall be made as necessary.~~

23 (6) ~~The cumulative impacts of multiple marinas, entrance canals, or other mooring areas, in close~~
24 ~~proximity to each other are expected to adversely affect public trust waters. When these situations~~
25 ~~occur the Division will recommend closures exceeding those outlined in Item (3)(2) of this Rule.~~
26 ~~The following guides will be used in determining close proximity:~~

27 (a) ~~marina entrance canals within 225 feet of each other;~~

28 (b) ~~open system marinas within 450 feet of each other (Mooring areas shall be considered~~
29 ~~open system marinas);~~

30 (c) ~~where closure areas meet or overlap; and~~

31 (d) ~~open system marinas within 300 feet of a marina entrance canal.~~

32
33 *History Note: Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;*

34 *Eff. June 1, 1989;*

35 *Amended Eff. July 1, 1993;*

36 *Readopted Eff. May 1, 2023.*

