

# **AUGUST 2023**

## **MARINE FISHERIES COMMISSION BUSINESS MEETING**



Briefing Materials  
August 23 - 25, 2023  
Raleigh, NC

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## **Preliminary Matters**

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# Marine Fisheries Commission Business Meeting

## AGENDA

Hilton North Hills Raleigh, NC  
August 23 - 25, 2023

*N.C.G.S. 138A-15(e) mandates at the beginning of any meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest under Chapter 138. The chair also shall inquire as to whether there is any known conflict of interest with respect to any matters coming before the board at that time.*

*N.C.G.S. 143B-289.54.(g)(2) states a member of the Marine Fisheries Commission shall not vote on any issue before the Commission that would have a "significant and predictable effect" on the member's financial interest. For purposes of this subdivision, "significant and predictable effect" means there is or may be a close causal link between the decision of the Commission and an expected disproportionate financial benefit to the member that is shared only by a minority of persons within the same industry sector or gear group. A member of the Commission shall also abstain from voting on any petition submitted by an advocacy group of which the member is an officer or sits as a member of the advocacy group's board of directors. A member of the Commission shall not use the member's official position as a member of the Commission to secure any special privilege or exemption of substantial value for any person. No member of the Commission shall, by the member's conduct, create an appearance that any person could improperly influence the member in the performance of the member's official duties.*

*Commissioners having questions about a conflict of interest or appearance of conflict should consult with counsel to the Marine Fisheries Commission or the secretary's ethics liaison. Upon discovering a conflict, the commissioner should inform the chair of the commission in accordance with N.C.G.S. 138A-15(e).*

### Wednesday, August 23<sup>rd</sup>

4:00 p.m. Commissioner Orientation – Lara Klibansky

6:00 p.m. Public Comment Period

### Thursday, August 24<sup>th</sup>

9:00 a.m. Public Comment Period

9:30 a.m. Preliminary Matters

- Swearing in of New Commissioners
- Commission Call to Order\* – Rob Bizzell, Chairman
- Moment of Silence and Pledge of Allegiance
- Review Ethics Evaluations of New Commissioners
- Conflict of Interest Reminder
- Roll Call
- Remarks by Department of Environmental Quality Secretary Biser
- **Approval of Agenda \*\***
- **Approval of Meeting Minutes\*\***

9:50 a.m. Chairman's Report

- Letters and Online Comments
- Ethics Training and Statement of Economic Interest Reminder
- 2023 Meeting Schedule
- 2024 Proposed Meeting Schedule
- **Elect Vice Chair\*\***
- Advisory Committee Workshop Update – Lara Klibansky

*\* Times indicated are merely for guidance. The commission will proceed through the agenda until completed.*

*\*\*Probable Action Items*

## Marine Fisheries Commission Business Meeting Agenda

- 10:30 a.m. Director's Report – Director Kathy Rawls  
*Reports and updates on recent Division of Marine Fisheries activities*
- Division of Marine Fisheries Quarterly Update
    - Atlantic States Marine Fisheries Commission Update – Chris Batsavage
    - Mid-Atlantic Fishery Management Council Update – Chris Batsavage
    - South Atlantic Fishery Management Council Update – Trish Murphey
    - License and Statistics Section Update – Brandi Salmon
    - Shellfish Sanitation and Recreational Water Quality Update – Shannon Jenkins
    - Habitat and Enhancement Section Update – Jacob Boyd
      - Shellfish Lease Program Update – Owen Mulvey-McFerron
      - Coastal Habitat Protection Plan Updates – Anne Deaton
    - OTSS Progress Report & ITP Update – Barbie Byrd
    - Marine Patrol Update – Carter Witten
  - Informational Materials:
    - Protected Resources Memo & Reports
    - Rule Suspensions
- 11: 30 a.m. Standard Commercial Fishing License Eligibility Report– Capt. Garland Yopp, Chearin Lewis
- **Vote on setting temporary cap on the number of licenses in the Eligibility Pool\*\***
- 12:00 p.m. Lunch Break**
- 1:30 p.m. Shellfish Rehabilitation Program Overview – Jason Peters
- 2:00 p.m. Annual Fisheries Management Plan Review – Brandi Salmon, Lee Paramore, Steve Poland
- 2:30 p.m. Fishery Management Plans
- Status of ongoing plans – Corrin Flora
  - Striped Mullet FMP Update – Jeff Dobbs, Willow Patten, Dan Zapf
  - Amendment 1 to the Spotted Seatrout FMP – Lucas Pensinger, Jason Rock, Laura Lee
    - Update on FMP Development
- 4:00 p.m. Recess
- Friday, August 25<sup>th</sup>**
- 9:00 a.m. Fishery Management Plans Continued
- Amendment 2 to the Estuarine Striped Bass FMP Update – Nathaniel Hancock, Charlton Godwin
- 10:00 a.m. Rulemaking Issues - Phillip Reynolds
- **CRC Floating Structure Rule\*\***
  - **Mutilated Finfish Rule\*\***
  - **Joint Rules\*\***
- 11:00 a.m. Rulemaking Update – Catherine Blum
- 2023-2024 Annual Rulemaking Cycle Update
  - 2024-2025 Annual Rulemaking Cycle Preview
- 11:30 a.m. Issues from Commissioners
- 12:15 p.m. Meeting Assignments and Preview of Agenda Items for Next Meeting – Lara Klibansky
- 12:30 p.m. Adjourn**

*\* Times indicated are merely for guidance. The commission will proceed through the agenda until completed.*

*\*\*Probable Action Items*

**Marine Fisheries Commission Business Meeting Minutes**  
**DRAFT**  
**The Beaufort Hotel**  
**Beaufort, North Carolina**  
**May 24-26, 2023**

The commission held a business meeting May 24-26 at the Beaufort Hotel in Beaufort, North Carolina. In addition to the public comment session, members of the public submitted public comment online or via U.S. mail. To view the public comment, go to: <https://www.deq.nc.gov/marine-fisheries/marine-fisheries-commission/may-2023/online-public-comments/open>

The briefing materials, presentations, and full audio from this meeting are available at: <https://www.deq.nc.gov/about/divisions/marine-fisheries/marine-fisheries-commission/mfc-meetings/past-marine-fisheries-commission-meetings#QuarterlyBusinessMeeting-May24-262023-13047>

Actions and motions from the meeting are listed in **bolded** type.

**BUSINESS MEETING - MOTIONS AND ACTIONS**

On May 24, a public comment session was held beginning at 6 p.m. and ended at 6:28 p.m. and the following comments were received:

**Public Comment Period**

**Donald Willis**, owner of Custom Marine Fabrication since the 1980s, said for striped mullet we really need to step it up and make sure this fish is taken care of. He said striped mullet is a very important forage fish for all our game fish. Spotted seatrout, red drum, bluefish, striped bass, tarpon, and king mackerel all feed on these fish. He said we need these fish in a big way. A lot of our juvenile finfish that these fish fed on in years past are gone due to mismanagement, like spot, croaker, and weakfish. He said we need to step it up and have a great management plan to keep these fish here for all our gamefish. In the bay in Virginia, you can see what Omega Protein did by taking all the menhaden out; it has destroyed striped bass. He said we will do the same thing here if we do not protect our mullet. It is important to all of us, because without these predator fish, none of us are making money. He said inaction is an action, but it is not the right action at any time. We need to step it up and come up with a plan for mullet and everything that feeds on mullet and not let it be the next southern flounder. He said let's make this happen and do it right.

**Stuart Creighton** said the meeting agenda is light, but there are numerous important issues, some emerging recently, that require the commission's full attention and we need to get ahead of these right now. The issue of greatest concern is the condition of the striped bass population in the Albemarle Sound Management Area and the Roanoke River Management Area. He said from the 2021 update, spawning stock biomass is down to about 10 percent of the target level. Juvenile

abundance indices for 2021 and 2022 are near zero. This means there have been two more years of failed spawns despite good flow levels. He reminded the commission we are managing these fish from a year behind. He said work is being done on a 2021 update in 2023. He asked what the preliminary numbers of spawning stock biomass indicate for 2022. He said the DMF is going to recommend further reduction of the total allowable level to just over 8,000 pounds. He said we cannot do that; regrettably, it is time to close this fishery and aggressively attack the factors that are contributing to the demise of our last native spawning population of striped bass. If flow is the problem, reverse the rule change that happened several years ago and make sure the flows are correct during spawning season. If blue catfish are the problem, aggressively remove them with trotlines and hoop nets, not gill nets. He said he watched frequent spawning aggregates in the Roanoke this year and noticed the spawning fish were all small. We have so drastically removed large mature females that effective spawning will be impossible. He said we have to allow the fishery the time it needs to grow these large fish. Net-free areas similar to those established on the Neuse and Tar-Pamlico rivers will be an effective tool in allowing that to happen. He said the commission cannot delay any longer and must act now to save these important fish. Due to time constraints, he said he will email his concerns on proposed studies for spotted seatrout and striped mullet to the commission.

**Sam Romano**, commercial fisherman and co-owner of Seaview Crabbing Company in Wilmington, N.C., said it seems with each fishery management plan the public hears "overfished" and "overfishing" and it makes the public feel like we may have caught our last fish in the ocean. He said this has never been more deceiving than with striped mullet. Our fishermen know that natural cycles dictate stock levels rather than fishing pressure. Stock assessments focus solely on fishing pressure as the ultimate indicator of whether a stock is viable or not. He said stock assessments cannot accurately incorporate predation or environmental factors, so they are left out. Mullet grow to maturity in a year, mix genetically with mullet from other states, and spawn miles offshore with four million larvae per spawn. Mullet populations are built robustly to support our ecosystems, and fishing regulations will have very little measurable effects on these stocks. He said our experienced mullet fishermen in our state are perplexed because as this stock assessment was coming out, they were having one of the best years they can remember. When you have this sort of disagreement between stakeholders and fisheries managers, it is time to pause and reflect; it is time to lean on the most experienced commercial mullet fishermen and seek to understand rather than regulate. He said the pursuit of science involves asking questions, self-scrutiny, and out-of-the-box thinking. We are continuing our breakneck pace of drafting rules and politically cutting up the pie and ignoring stakeholders. He said this amendment seeks to close mullet fishing during the end of the year, which means the southern area will bear the regulatory burden for the rest of the state. Anyone in favor of this rule should have the guts to go to the fishermen in the southern area and explain to them why their livelihoods are being targeted for this closure. He said this arbitrary judgment is unfair and follows a pile of regulations that is cutting the seafood industry apart more every year. So many rules are passed that our state does not even have enough resources to go back and see if we have accomplished anything with these rules. He said his main concern as a stakeholder and a citizen is that we are losing seafood security with every new rule that is drafted. We should be encouraging eating healthy local seafood and encouraging young people to become fishing stewards of the environment, but instead we are making seafood jobs more risky and local seafood more expensive and less available. He said the commission has the opportunity to say no to these regulations because they do not have enough information. This is not a "sky is falling"

event, this is something the commission can do something about now. He urged the commission to ask the state to give the commission more information so the commissioners can do their job as fisheries managers.

**Joe Romano**, commercial fisherman, co-owner of Seaview Crabbing Company in Wilmington, N.C., and part of N.C. seafood as a commercial fisherman, fish monger, fisheries adviser, and local seafood advocate for over 15 years, said he has grown hardened towards the politics and unchecked bureaucracy that determines fisheries management in our state. He spoke to domestic food security and the gentrification of our seafood. With increasing frequency, the DMF has a new emergency that needs a new set of rules to combat that emergency. He said in most cases, this new perceived scarcity has scientific data gaps, and rarely takes into consideration how predation, ecosystem cycles, weather events, and warming waters affect the annual abundance of most high fecundity species, such as mullet, spot, croaker, flounder, and spotted seatrout. In the end, the DMF offers more rules and the MFC determines if those rules pass. He said what rarely happens is those rules lead back to more harvest or more commercial participation in the fishery. These rules discourage young commercial fishermen from investing in gear, boats, and the time it takes to learn a fishery. He said this means less and significantly more expensive N.C. seafood, which is slowly gentrifying our public trust resource. He asked if this affects the wealthy sport fisherman who has the time and money to boat, and fish and answered, no. He said it affects all those families with limited fixed budgets that do not have access to seafood. This becomes particularly troublesome when one considers how much money is spent by sportfishing and conservation groups to lobby for more Draconian regulations and less public access to seafood. He said the silent majority of working-class seafood consumers are rarely considered in these fisheries meetings and are in the dark about the reality of the ugly fishery politics. The gentrification of seafood is also leading to less domestic food security. He said one would think that after two years of severe supply chain shortages, labor issues with large meat processing plants, and increasingly poor quality of manufactured food that our state would be doing all it could to encourage the N.C. seafood industry to produce more seafood. Instead, from behind computer screens and working from home we continue to make it harder for fishers to bring seafood to the dock. He said he found it incredibly ironic and absurd that our fish mongers and fishermen are working to fill food gaps in the supply chain throughout the pandemic while bureaucrats and unelected officials were making it more difficult to do so from behind computer screens and Zoom meetings. Scientific bureaucracies tend to consolidate power and become echo chambers over time. He said if all the DMF is there to do is chop up the pile of perceived scarcity by creating new rules that gentrify access to seafood and create more stakeholder conflict then we are failing as a state. We must find a better way to minimize conflicts and optimize seafood yield by supporting the communities and fishermen that feed us and provide unpaid scientific data collection to the state. He said our fragmented but strong coastal fishing communities have fed us for over 150 years and we should get behind them now more than ever.

**Taylor Barefoot**, a full-time commercial fisherman from Wilmington, said if there is concern about striped mullet, get rid of cast nets or doing something about them. They are the number one enemy of mullet. He said the commission needs to look at the size of the mullet and adopt a plan; if the gill net fishermen can only use one and a half-inch mesh as the smallest size, then the cast nets should have to go to that too. If you do not have juvenile fish, they cannot grow up to be big ones. He said the fish they catch have already spawned two or three times. Little fish have to grow into large fish to spawn. He said he is from the south and he pays the same dues as fishermen from the



north, and he deserves as much fishing time as northern area fishermen. He said he thinks what the commission has done and what it is trying to do is wrong. He said he based his life off what he does now; he has a wife and kids and asked how he is supposed to grow his income when the flip of a pen can take the fishery away from him. The commissioners are the ones that have to think about this at night with their decision to cut out fishermen. He said they are not just affecting the fishermen, but also their families.

**Rocky Carter**, Coastal Conservation Association of North Carolina Chairman, said we have always heard how time flies: 25 years ago, when Bill Clinton was president, you could keep 10 flounder per day with a minimum size of 14 ½ inches, 365 days per year. For both spotted seatrout and weakfish, you could keep 10 fish per day with a minimum size of 12 inches. For red drum, you could keep five fish over 18 inches. He said in the mid-1990s there was growing concern about the future of our fisheries. The N.C. legislature stepped up and passed a bill that was designed to protect our fisheries for future generations. He said over 25 years ago, in 1997, the Fisheries Reform Act was passed, giving North Carolina hope our fisheries would be managed for sustainability as outlined in the Act. Over the past 25 years, our once abundant fisheries have continued to decline. He asked why that was allowed and said ignoring the facts has never changed the facts. He said one of the most accepted means of evaluating fisheries is trending; if a particular species is trending up or trending down. Looking over the past 25 years he said we would all agree many species are trending downward. He said with that in mind, we look to the MFC to make tough decisions to protect our fisheries and not simply say "status quo." He suggested we pretend it is 25 years from now in 2048 and asked what the stock assessments will show then and if we will have abundant and robust spotted seatrout, weakfish, red drum, and spot. If not, then the commission should decide today to protect these fish for future generations, and not ask how to feed everyone in North Carolina fresh seafood, but instead ask how we can see that our grandchildren eat fresh seafood. He said we must take care of these fisheries.

**Tim Hergenrader** said for striped mullet, we are taking pregnant females out of the population before they can spawn. He said the fish are on their way to the ocean to spawn and we are taking them out of the fishery. He asked what could go wrong and answered, when we take females out of the population when they are trying to spawn, the commission is asking for trouble and it is coming home to roost. He said striped mullet is very important for our fishery, it is a prey species for almost everything and without it, we have more trouble. He said there are a couple of studies that the commission and the division are remiss in not doing, like trawling in the sounds. He said a lot of money has been spent on bycatch reduction devices to stem the tide, but to no avail. We have not studied the bottom and we do not really know what is happening out there. He said some people say you have to plow the bottom to make it right and others say you cannot do it. He said he knows trawling destroys oyster rocks and seagrasses, but there has been no comprehensive study. We have had the moratorium in the Tar-Pamlico and Neuse rivers for four years now, but no studies have been conducted on the impact of those closures. He asked what we are waiting for. He said nothing has been done. We have hollered and screamed at each other, and commissioners have debated it, but there has been no comprehensive study since the moratorium to see what is happening in those three river systems. He asked if we are afraid to find out and said it is about time somebody does something.

**John McQuaid**, of Raleigh, said he has fished in Morehead City, Beaufort, and Atlantic Beach since 1998. He said he has experienced firsthand the decline in our fisheries, our stocks, and fishing opportunities. He said he used to find abundant weakfish, red drum, striped bass, and croaker, but today we have witnessed declines in most of these and with every species that diminishes, there is increased pressure on the remaining species. Today the inshore fishermen are left with red drum, spotted seatrout, and Spanish mackerel. He said the commission needs to address the destructive fishing practices that affect all these species and protect the forage species. He urged the commission to err on the side of conservation, not maximum sustainable yield, but on conserving fish for the future. He said he is willing to have restrictions on size limits, bag limits, and gears for the spotted seatrout fishery and he favors gamefish status for it. He is strongly opposed to relaxing restrictions on trawling above the ferry lines. For striped bass, he recommends closing harvest. He said he would like to follow the common-sense practices that other southern states have implemented to restore their fisheries, banning inshore gill nets and stopping inshore trawling.

**Jim Thompson** said he is a lawyer that has practiced in Carteret County for almost 50 years. He spoke on behalf of many recreational fishermen and various fishing clubs he spoke to about recreational fishing at Cape Lookout. He said the data related to the striped mullet recreational fishery does not appear to be based on science. As a lawyer, he is mindful that rules and regulations cannot be arbitrary or capricious; they have to be based on science. He said he extracted material that was posted online and then read it to the commission. From a paragraph about the decision to select the preferred management strategy, he cited a question about what the estimated recreational harvest reduction is, which was answered that we cannot calculate a reduction for recreational harvest because the data available for the recreational harvest are not captured with enough precision to accurately calculate daily landings, and the recreational harvest for both white and striped mullet is for bait. He said the next cited question was about why the recreational harvest is being closed, which was answered, to be equitable across all fisheries and to reduce management complexity to improve enforceability. He said the three-to-five-inch finger mullet need to be kept out of this restriction because there is no data to support that they should be restricted. He said his email speaks for itself.

**Brent Fulcher**, N.C. Fisheries Association chairman, said the supplement should not be used in situation like this for striped mullet where last year's harvest was the fifth largest harvest in North Carolina. A supplement is for emergency management when the fishery is collapsing, so this is way out of bounds. He said the harvest was within five percent of the year with the largest harvest when there were five times the number of participants. There are a lot of things you can get out of the staff if you ask. He said there were a lot of fish sampled at his facility and they saw large fish early in the season and a big percent of male fish, which we do not usually see. Things have changed and this is different than what the stock assessment shows. He said he understands the division has to use what they have, but he thinks the division can add in some things. The supplement is the wrong action to take, and the commission should do an amendment, which is already on the schedule. He said another speaker said to exclude the three-to-five-inch finger mullet, but on the other side you do not typically catch juvenile fish because you try to protect them. Everybody always wants something a little different. He said the briefing materials show there would be a reduction of \$3,000 per fisherman from a season reduction under the supplement. He questioned this figure because he paid fishermen \$10,000-\$15,000 per fisherman just in that two-week period last year. He said for the MRIP program, recreational discards of southern flounder show 241,000 fish released in 2022,

with an average weight of 50,000 pounds, which is 0.21 pound per fish. He said this is not reality, just like the loss of income estimated by the division is not reality. He said every southern fisherman is very frustrated because they took the brunt of the closures for croaker and spot. He urged the commission if they do something, to do it equitably. He said it is not fair for southern fishermen to bear the brunt.

End 6:28 p.m.

### May 25

Chairman Rob Bizzell convened the Marine Fisheries Commission business meeting at 9 a.m. on May 25 with the Public comment Period. The Public comment session was held beginning at 9:00 a.m. until 9:29 a.m. and the following comments were received:

#### Public Comment Period

**Hugh Barwick** said he cannot stay home and be silent when a commissioner suggests a management proposal prior to the scoping process like happened for the Spotted Seatrout FMP. Then a local senator introduced Senate Bill 686, which was similar to the commissioner's proposal. And then, when he thought things could not get worse, he saw the DMF director in a television commercial extolling the resource sustainability by commercial fishermen. He said he is shocked and amazed by these events because it all seems somewhat crazy to him. It is as if fisheries management's common sense has vanished from Arendell Street. He said he agrees that spotted seatrout are experiencing overfishing, and maybe more so in 2022 and 2023 than is indicated by the 2022 stock assessment report. He can say this because the previous inaction to successfully manage other species have basically left both recreational and commercial fishermen with only spotted seatrout to harvest. So, he came to voice his objections to Commissioner Cross's proposal, Senator Sanderson's bill, and Ms. Rawls doing television commercials, and hopefully to offer a suggestion on how to move forward because the time has come to stop allowing emotion, money, and politics to drive the commission's decisions. He said he attended one of the earlier scoping meetings and it appeared to him recreational fishermen, who were the majority at these meetings, were very willing to offer a number of suggestions that were beneficial to managing spotted seatrout. In closing, he said he hopes the commission can see that if they fail again regarding the future management of spotted seatrout and allow this species to become overfished as they have for other species, then both recreational and commercial fishermen lose. He asked the commission to be open-minded, forget their differences, and listen to their technical staff and let them develop the management strategies to successfully manage this resource. That is their job.

**Thomas Coltrain** said he would like to be speaking and supporting the commission on a job well done about fisheries management in North Carolina, but he has seen the results first hand. The commission has managed to have a closed or limited season with limits of one or less for weakfish, striped bass, red drum, flounder, and now they are working on mullet and spotted seatrout. He said the people that fish for money and pleasure have followed the rules, limits, and proclamations, but he asked where that has gotten us. More people are fishing with larger and modern equipment. He said managers must use every tool that is available to them to make the correct decision to protect the resource before total collapse. He has listened to the commission and their comments as to why

the commission votes like it does: kicking the can down the road, "I will never vote for anything that has a negative effect on my livelihood," "I cannot stand to see my friends and neighbors mad at me," "I have seen big schools of mullet; the shrimp bycatch is cleaner than ever with almost no bycatch," and "we are not doing our job." He asked the commissioners if they had ever seen two hydraulic reel nets surround a school of mullet or trout and seen what is left. He said the shrimp bycatch will be cleaner than ever when all the bycatch has been depleted. He said he cannot imagine how the marine biologists and the data analysts feel when they present their data, and all the commission does is point out what was not included and then vote down their recommendations every time. After attending a spotted seatrout scoping meeting, he said he came away with several observations. He said recreational fishermen were willing to do what it takes to save these fish, including a closed season to let the fish spawn, barbless hooks, single hooks, slot limits, and a bag limit reduction if needed. The fishermen who fish for money, like the trout tournament fishermen, guides, and commercial fishermen were willing to give up nothing to save these fish. He told the commission they cannot manage with their emotions; they cannot manage the resource for a dollar when the dollar is more important than the resource. All this may be for nothing if the Senate and House bills pass in Raleigh because of the dollar and politics. He said time has run out for many fish in North Carolina; the commission cannot stop time, but they can stop the depletion of what fish are left.

**Willard Rouse**, manager in the fishing department of a retail store, said from September through April every year, 60-70 percent of their business is due to spotted seatrout fishing. That is a lot of dollars every year. He said from talking to customers, a lot of recreational fishermen are concerned about what is going on and a lot of them are willing to take cuts in the limits, but not too much. In a retail business, my boss has said, if spotted seatrout harvest is cut back to only one or two fish, we will do away with our store's fishing department. He said they are not the only retail store that feels that way. He urged the commission to think about the fact that there are several businesses in eastern North Carolina that are affected by spotted seatrout fishing.

**Chris Elkins** spoke about forage fish. He said next week, there will be a presentation of the new Coastal Habitat Protection Plan (CHHP), a plan that the Marine Fisheries Commission approved. In it is a conspicuous absence of any discussion of "forage fish." He said forage fish are a critical component of habitat that the state of North Carolina continues to ignore by approval of this CHPP by the secretary of DEQ, and the Coastal Resources Commission, Environmental Management Commission, and the Marine Fisheries Commission. In contrast, the Atlantic States Marine Fisheries Commission (ASMFC) and the South Atlantic Fishery Management Council and their habitat advisory committees and panels, not only embrace the important ecosystem function of forage fish, but act to protect forage species. He said for example, the ASMFC recently began work on the Atlantic menhaden ecological reference point benchmark stock assessment, in addition to their usual single-species assessment for menhaden. He asked if North Carolina has done any ecological studies or if North Carolina knows the absolute number of these juvenile species killed each year as bycatch. He asked how North Carolina prepares a single-species management plan if it does not know how many of these forage fish are killed. He asked how North Carolina prepares an ecological plan, such as the CHPP, ignoring the role of forage species as an important component of habitat. It is past time for North Carolina to get up to speed on forage fish.

**Glen Skinner**, commercial fisherman and Executive Director of the N.C. Fisheries Association (NCFA), spoke regarding the striped mullet supplement. He said the NCFA prefers the amendment process, which provides more stakeholder input and the chance to consider multiple options rather than the one option in the supplement. The NCFA does not believe this is an emergency situation demanding emergency action. Next, he spoke on comments given at the public comment session the day before. He said commenters talked about having problems anytime fishermen target female fish on the spawning grounds, in reference to striped mullet. He reminded the commission that in the large red drum fishery, recreational fishermen target those fish on their spawning run, specifically on the spawning grounds. This is the same thing for the striped bass fishery that occurs in the spring, hickory shad and white shad in the spring, weakfish in the spring, and southern flounder in the fall. He said every one of those recreational fisheries is targeting a fish on its spawning run, most of them on the spawning grounds. He asked how the commenters do not see those recreational fisheries as a problem if they see gill netting for striped mullet as a problem. He reminded the commission they are tasked with considering not only food production and harvest, but also recreational opportunity. Dead discards are becoming the major source of removals in every one of these fisheries. He said every one of these fisheries has been managed for years and the commission has adopted multiple harvest reductions, but never once has the commission adopted a management measure that controls recreational effort, total recreational catch, or recreational dead discards; not once. The commission has never achieved a reduction in any of those. He said if there is still a problem with those fisheries, the commission is tasked with managing both sectors fairly and they need to start looking at recreational dead discards and total recreational effort and start controlling it. He said the commission needs to start right now with striped bass. Everyone talks doom and gloom and says this population has gone to hell in a hand basket; recreational fishermen are fishing in the Roanoke River on the spawning grounds every spring with catch and release, killing who knows how many fish, and all they can say is reduce harvest, but harvest is only one source of mortality. He said if the commission does not deal with both sources of mortality, the other source recoups what is given up in harvest. He said this is the commission's job; they not only have the power to do this through statute, the commission is mandated by statute to address this. There is no question about that, he said the only question is if the commission has the nerve to do it. He said it is the commission's job and now they must make the hard decisions. The commission must control recreational discards in these fisheries to rebuild them and recover them for everyone.

**Thomas Newman** commercial fisherman and part-time employee for the N.C. Fisheries Association, thanked the commissioners for voting down the striped mullet supplement in February and said he hopes the commission does the same thing at this meeting. He also spoke about false albacore, otherwise known as little tunny. He said he hopes the commission votes that down as well. No management action was taken for this species by the South Atlantic Fishery Management Council or the Atlantic States Marine Fisheries Commission, and the Mid-Atlantic Fishery Management Council took this species off its forage species list. This species occurs all over the world, is short-lived, and is sexually mature at 15 inches. He said the landings have been consistent for decades and there is no reason to put any limitations or restrictions on this fishery. The fishery is healthy, and the division has lots of other things on its plate and there is no reason to waste time to try and manage false albacore within zero to three miles in the ocean waters of our state.

**David Sneed**, Executive Director of the Coastal Conservation Association (CCA) of North Carolina. He said he comes to the meetings every three months to be part of a process that never changes. We have been following this process for the last 26 years, yet our fish stocks continue to dwindle more and more as the years pass, and still, no one on this commission is advocating for a better process. He said there have been some good comments by the public on the specific issues the commission is dealing with, but he also hears a lot of frustration with the process. For this meeting, the process is about management of striped mullet. The division has based its recommendations on a stock assessment with 2019 as the terminal year. The commission is being asked to make management decisions based on that stock assessment even though it is not required by the N.C. Fisheries Reform Act, and that data is now four years old. He said the commercial industry is here once again questioning that process. While the public angler may not feel as much of the burden of this process on managing striped mullet, we are all bracing for the coming spotted seatrout process. He said the next Spotted Seatrout FMP will also be based on a 2019 stock assessment with final adoption scheduled for August of 2024. We will be almost five years from the terminal year of the stock assessment. He said he thinks we can all agree that a lot can happen in five years when a plan is finally adopted and then we are locked into management measures for another five years. He said we also know the management measures have a high degree of uncertainty, as admitted by division staff, and as evidenced by the 26 years of southern flounder management plans. So, people come to the meetings every quarter, year after year, doing the same things and hoping for different results. He asked where the plan is for a better management process or are we content to come to the meetings year after year and listen to the same rhetoric. He said the only voice for change right now is coming from the CCA. There is no leadership from this commission for a better process and we only get periodic attempts from the N.C. General Assembly to put a band-aid on the problem like the current legislation proposed in Senate Bill 686. He said it is time to admit that the current process is not adequately serving the fishing public of North Carolina. He said the commission should endeavor to do better in their duty to manage our coastal fisheries under the public trust doctrine and our state constitution, that being an affirmative duty to keep our fisheries safe from injury, harm, and destruction for all time.

**Bert Owens** provided a document to the commission showing outstanding resource waters in North Carolina up and down our coast. He said water quality is a real issue that is referred to in passing at the commission meetings occasionally, in fact, at almost every meeting. He said he thought it would be good to have some actual information on it. It is good to see we still have some good quality waters for our fish to grow and thrive in, if given the chance. He said the commission's duty here is serious in managing the people's fish and should be treated as such. Commissioner Cross's recent proposal on spotted seatrout was anything but serious: quadruple the commercial catch, take that from recreational anglers, then shut down all hook and line fishing for anything when recreational anglers reach their decreased quota. He said the proposal is too ridiculous even for a starting point for any real management and at best, it is an insult to the intelligence of the other eight commissioners. He said regarding flounder, the commission continues the rhetoric of managing fisheries equitably, and yet recreational anglers have been shut out of the Gulf and summer flounder fishery for years. Identification is easy: if the fish has three or more spots with a white circle around it, it is not a southern flounder. He said if that is not good enough, the commission could have someone develop an app to take a picture of the fish for it to tell the angler what it is. He said he has a "picture this" app on his phone that identifies a fish in a matter of seconds. Surely someone could identify between three fish. He said the N.C. Fisheries Reform Act

says the commission must manage fisheries for both groups, but shutting recreational anglers out of viable fisheries while continuing to allow commercial access is a knowing violation of the Act and it should stop. He said the excuse that opening up these fish to recreational anglers may result in southern flounder bycatch is bogus, as long as bycatch in the trawl and crab pot fisheries are ignored. He suggested giving back to the citizens of North Carolina, the working men and women and their families, a legitimate fishery they never should have been shut out of in the first place. He urged the commission to be as equitable as it claims to be. He said spotted seatrout is getting a lot of pressure because fishermen can catch so little of everything else. Let people take their small boats on a nice day and go on our near-shore artificial reefs and catch some ocellated flounder; then the commission will be doing something for both groups, which would be novel.

**Matthew Wallin**, a recreational fisherman, said regarding the Fisheries Reform Act of 1997, he was four years old the year this groundbreaking legislation was passed. He did not know then he would speak now about the shortcomings of this outdated legislation and the need for updated fisheries reform. Overfished, depleted, and declining fish stocks were as much of a concern 26 years ago as they are now. He said unfortunately, since 1997 the majority of our finfish stocks have steadily declined, in some cases as high as 80 percent. He asked how we got to this point and who is really to blame other than the management process and the guidelines set forth within the Act. He said most college football coaches do not make it three years on a losing record, but here we are 26 years later managing our fisheries under guidelines with a failed track record. The blueprint within the Act makes sense, but it must be followed. He said time and time again, the division proposes management measures to meet the statutory deadlines set forth within the Act, only for the commission to vote against those recommendations, kicking the can down the road while also putting the resource at risk of further declines. He said enforcement and accountability measures are a major issue. The rules that are in place today need to be strictly enforced and those who break them need to be held accountable. He said he knows the commission cannot change the process today, but they can vote with the resource in mind. If the commission takes care of the resource as a whole, it will support its stakeholders. He urged the commission to base its decisions on what is needed to improve our fisheries for the future. It is time we enact an ecosystem-wide approach, including adaptive conservation measures that help us manage for abundance rather than maximum exploitation. He said after all, we all want the same thing: more fish in the water.

**Woody Joyner**, of Hatteras Village, represented the N.C. Watermen United board of directors. He spoke about the Striped Mullet FMP supplement to Amendment 1. Although a large percentage of their membership are from the charter and headboat sector they have a significant number of members who are commercial fishermen who are apprehensive about the specifics of the proposed supplement. He said the stock assessment does not include data from 2020, 2021, or 2022, and these last few years reflected very good harvest, with 2022 being one of the largest years on record. The stock assessment with a terminal year of 2019 followed two devastating October hurricanes in 2016 and 2018. He said any supplement should be viewed as an emergency action after the season is in progress, not in May to anticipate a possible stock status in November. He spoke about Table 8 of the supplement that shows a 35.4% harvest reduction in the northern region would equate to a loss, based on 2019 data, valued at only \$1278 per fisherman for being off the water from a proposed November and December closure. He said from talking to striped mullet fishermen, this figure is woefully low. The financial impact would be much greater for not only the watermen, but also the regional fishing community surrounding the striped mullet fishery. He said his experience

with commercial fishermen has proven that they are conservationists, contrary to what seems to be pushed to the general public. They fully understand the need for sustainability; they fish for many species throughout the calendar year, to provide for their families and supply our residents with fresh, North Carolina seafood. He asked why commercial fishermen would intentionally deplete striped mullet that serves as a food fish for the other species they fish throughout the calendar year. He said the striped mullet decision document in the briefing materials states there are no current management measures directly limiting harvest on striped mullet commercially. Now is the time to ensure that any action taken that would so adversely affect our hardworking watermen should be tabled. He said Watermen United continue to stand behind the gathering of data throughout the 2023 season with no supplement closing and proceed with the management measures to address the stock status through Amendment 2. He thanked the commission for any consideration that promotes continuing efforts to protect their right to fish.

End 9:29 a.m.

### Preliminary Matters

Following the public comment period the Chairman called the meeting to order.

The following commission members were in attendance: Rob Bizzell-Chairman, Doug Cross – Vice Chair, Mike Blanton, Sarah Gardner, Donald Huggins, Tom Roller, Ana Shellem, Doug Rader, and Robert McNeill.

Chairman Bizzell reminded fellow Commissioners of North Carolina general Statute 138A-15E, which mandates at the beginning of any meeting of a board, the Chair shall remind all members of their duties to avoid conflicts of interest under Chapter 138 and the Chair shall also inquire as to whether there is any known conflict of interest with respect to any matters coming before the board at that time.

Chairman Bizzell asked for any corrections or anything that needs to be commented on regarding the meeting agenda and then requested a motion to approve the agenda.

**Motion by Commissioner Roller to approve the agenda.**

**Second by Commissioner Shellem.**

**Motion passes unanimously.**

Chairman Bizzell asked for there any corrections, additions or deletions that need to be made to the February 2023 MFC Quarterly Business Meeting minutes. Hearing none, he called for a motion to approve the minutes.

**Motion by Commissioner Roller to approve the minutes of the February 2023 meeting.**

**Second by Commissioner Cross**



**Motion passes unanimously.**

Chairman's Report

Ethics Training and Statement of Economic Interest Reminder

The MFC Liaison, Lara Klibansky, provided an update on Commissioner compliance with state ethics training and SEI reminders. She reported that everyone is up to date or is actively working on it.

Director's Report

Marine Patrol Colonel Carter Witten presented a Lifesaving Award to Marine Patrol Sgt. Brian Long.

Director Kathy Rawls gave an update regarding recent work by the Division including updates about the current legislative session including updates on House Bill 655 Coastal Fishing License Reform, House Bill 617 River Herring Limited Harvest, House Bill 544 Limited Shark Fishing Moratorium and Senate Bill 686 Regulatory Reform Act of 2023. Director Rawls then provided an update on comments recently submitted by the Division to Monterey Bay Aquarium Seafood Watch regarding their assessment on the Eastern Oyster fishery. She described the recent For-Hire meetings that were held at various locations along the coast to speak with for-hire stakeholders and provided information about the recreational data collection and programs. Updates on the Observer Trip Scheduling System (OTSS) were provided with additional information about the continuing renewal process for the Incidental Take Permit. Director Rawls also provided updates on upcoming outreach events celebrating 200 years of fisheries management in North Carolina, and various staff accomplishments.

Chris Batsavage gave updates from the recent meetings of the Mid-Atlantic Fishery Management Council, the Atlantic States Marine Fisheries Commission, and the South-Atlantic Fishery Management Council.

Colonel Carter Witten gave an update regarding Marine Patrol activities and accomplishments since the previous commission meeting.

Owen Mulvey-McFerron gave an update on the shellfish lease and aquaculture program.

Anne Deaton provided an update on the Coastal Habitat Protection Plan, specifically regarding implementation of the recently approved plan.

False Albacore Data Update

McLean Seward gave a presentation about the False Albacore fishery, specifically data in response to the February 2023 motion regarding False Albacore management. The presentation included data regarding current fishery information and potential percentage points that could

trigger management. Following extensive discussion among the Commission members a consensus was reached that the status quo as defined by staff and growth of up to 200% of that status quo should be used by Division staff to continue developing the issue paper.

To view the presentation go to: <https://www.deq.nc.gov/marine-fisheries/marine-fisheries-commission/may-2023/fa-memo/open>

#### Salt Marsh Action Plan Presentation

Claire Rapp, Salt Marsh Campaign Coordinator with the North Carolina Coastal Federation, gave a presentation regarding NC and regional salt marsh action plan development. (also link to video if possible)?

To view the presentation, go to: <https://www.deq.nc.gov/marine-fisheries/marine-fisheries-commission/may-2023/regional-and-state-salt-marsh-conservation/open>

#### Allocation as a Management Tool

Chris Batsavage gave a presentation on allocation in fisheries management.

To view the presentation, go to: <https://www.deq.nc.gov/marine-fisheries/marine-fisheries-commission/may-2023/allocation-presentation/open>

#### Fishery Management Plans

Corrin Flora gave a presentation on the status of current FMPs.

To view the presentation, go to: <https://www.deq.nc.gov/marine-fisheries/marine-fisheries-commission/may-2023/fmp-memo/open>

#### Blue Crab FMP Amendment 3 Adaptive Management Revision Update

Joe Facendola and Robert Corbett gave a presentation on the latest adaptive management revisions in Amendment 3 of the Blue Crab FMP. The revision relates to Diamondback Terrapin Excluder Devices for crab pots.

To view the presentation, go to: <https://www.deq.nc.gov/marine-fisheries/marine-fisheries-commission/may-2023/blue-crab-amendment-3-adaptive-managment-revision/open>

#### Estuarine Striped Bass Stock Assessment Update Overview

Laura Lee and Charlton Godwin gave a presentation on the Estuarine Striped Bass Stock Assessment update relating to the Albemarle-Roanoke Striped Bass stock.

To view the presentation, go to: <https://www.deq.nc.gov/marine-fisheries/marine-fisheries-commission/may-2023/and-rr-striped-bass-stock-assessment/open>

#### Spotted Seatrout FMP Amendment 1

Lucas Pensinger and Jason Rock gave a presentation about the development of Amendment 1 for the Spotted Seatrout FMP. The presentation focused on an overview of the recent scoping period as well as the goal and objectives for the FMP.

To view the presentation, go to: <https://www.deq.nc.gov/marine-fisheries/marine-fisheries-commission/may-2023/sst-goal-and-objectives/open>

VOTE ON GOAL AND OBJECTIVES

**Motion by Commissioner Roller to approve Amendment 1 Goal and Objectives of the Spotted Seatrout FMP.**

**Second by Commissioner Huggins.**

**Motion passes unanimously.**

Meeting recessed until 9:00 a.m. on May 26.

May 26

Chairman reconvened the meeting at 9:00 a.m.

Fishery Management Plans cont'd

Striped Mullet FMP

Dan Zapf, Jeff Dobbs, and Willow Patten gave a presentation regarding potential regional management strategies for Supplement A to Amendment 1 of the Striped Mullet FMP.

To view the presentation go to: <https://www.deq.nc.gov/marine-fisheries/marine-fisheries-commission/may-2023/stmsupplementa/open>

VOTE ON SUPPLEMENT A

**Motion by Commissioner Roller to approve Option 4 of Supplement A to Amendment 1 of the Striped Mullet FMP**

**Second by Commissioner McNeill**

**Substitute motion by Commissioner Cross to approve option 6 of Supplement A to Amendment 1 of the Striped Mullet FMP for one year.**

**Second by Commissioner Huggins**

**Amendment to substitute motion by Commissioner McNeill to approve option 5 of Supplement A to Amendment 1 of the Striped Mullet FMP and strike one year limitation.**

**Second by Commissioner Gardner  
Vote on Amendment to Substitute Motion**

<b>ROLL CALL VOTE</b>				
<b>Member</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Cross	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blanton	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gardner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Huggins	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McNeill	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rader	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shellem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bizzell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Motion passes 6 to 3**

**Vote on Substitute Motion as Amended**

<b>ROLL CALL VOTE</b>				
<b>Member</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Cross	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blanton	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gardner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Huggins	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McNeill	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rader	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shellem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bizzell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Motion passes 6 to 3**

**Vote on Motion as Substituted.**

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blanton	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gardner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Huggins	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McNeill	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rader	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shellem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bizzell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Motion passes 6 to 3**

Rulemaking Update

Fisheries Management Section Chief, Steve Poland, gave a brief verbal update regarding recent rule suspensions and requested the Commission approve additional suspensions.

**Motion by Commissioner Rader to suspend Subparagraph (e)(4) of NCMFC Rule 15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS for an indefinite period.**

**Second by Commissioner Roller**

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Blanton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gardner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Huggins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McNeill	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rader	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shellem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bizzell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Motion passes without dissension**

The Division's Rulemaking Coordinator, Catherine Blum, provided updates on three rulemaking cycles, including an update of ongoing rulemaking for the 2022 – 2023 rulemaking cycles. She also provided a preview on upcoming items for the 2023-2024 rulemaking cycle.

**Motion by Commissioner Roller to approve Notice of Text for Rulemaking to:**

- **Readopt per G.S. 150B-21.3A, amend, adopt, and repeal 15A NCAC 03K .0110, 18A .0301, .0302, .0305, .0401-.0424, .0426-.0430, .0432-.0439, .0501-.0504, .0601-.0621, .0701-.0713, .0801-.0806 and approve the associated fiscal analysis;**
- **Amend 15A NCAC 03I .0113, 03O .0101, .0109, .0112, .0301 for Data Collection and Harassment Prevention for the Conservation of Marine and Estuarine Resources and associated fiscal analysis and approve the associated fiscal analysis;**
- **Amend 15A NCAC 03R .0117 for Oyster Sanctuary Changes and approve the associated fiscal analysis; and**
- **Amend and repeal 15A NCAC 03I .0101, 03K .0101, .0104, .0301, .0401, .0403, .0405, 03O .0201, .0501, .0503, 18A .0901, .0906 for Conforming Changes for Shellfish Relay Program and Shellfish Leases and Franchises and approve the associated fiscal analysis.**

**Second by Commissioner Huggins.**

**Motion passes unanimously.**

Issues from Commissioners

Commissioner Shellem – oyster farmers, wetland protection and water quality

Commissioner Roller – Enforcement of federal permits in State waters; captain and crew limits – SST, but also others, more broad authority.

Commissioner Blanton – identifying marks on buoys – crab pots etc. Fishermen didn't realize the change until March 15<sup>th</sup> news release. Trying to align marking rules so pots aligned with other gears...industry reached out to him and other leaders regarding discrepancies in the rule change. Commissioner Blanton made a motion for the Division to reassess these changes and to proceed with rulemaking to remove the requirement to include vessel id on crab pot buoys.

**Motion by Commissioner Blanton to authorize staff to proceed with the necessary rulemaking steps related to 15A NCAC 03J.0301(c) to remove or otherwise address the overlapping pot identification requirements unintentionally created by the most recent rule amendment as soon as possible.**

**Second by Commissioner Shellem**

**Motion passes unanimously.**

Commissioner Cross – Requested the Director to consider increasing harvest limits of Red Drum to address blue crab predation; Consider a proclamation to implement a harvest moratorium on the spawning grounds in the Roanoke River and in the Tar-Pam and Neuse Rivers.

Review of MFC Workplan, Meeting Assignments and Preview of Agenda Items for Next Meeting  
Lara Klibansky reviewed meeting assignments and provided an overview of the February meeting items.

Having no further business to conduct, the meeting adjourned at 11:02 a.m.

DRAFT

NC Marine Fisheries Commission  
**Chairman's Report**  
August 2023 Business Meeting

Document	Page
State Ethics Education Reminder	02
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Committee Assignments	05
MFC Work Plan	07





## EDUCATION REQUIREMENTS FOR PUBLIC SERVANTS

Public Servants must complete the Ethics and Lobbying Education program provided by the N.C. State Ethics Commission within **six months** of their election, appointment, or employment. We recommend that this be completed as soon as possible, but the training must be repeated every two years after the initial session.

Since Adobe Flash was terminated on December 31, 2020, our online program is not available. A new and shorter online program will be available in the near future. The new program will be compatible with portable devices such as phones and tablets.

Live webinar presentations are being offered monthly and registration information for the live presentations can be found [here](#). These presentations are about 90 minutes long and give you the opportunity to ask questions of the speaker.

For questions or additional information concerning the Ethics Education requirements, please contact Dottie Benz at (919) 389-1383.

# Marine Fisheries Commission 2023 Annual Calendar

*\*Dates are subject to change.\**

January						
Su	Mo	Tu	We	Th	Fr	Sa
1		3	4	5	6	7
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February						
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30						

May						
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28		30	31			

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August						
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September						
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October						
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29	30	31				

November						
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26	27	28	29	30		

December						
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					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24				28	29	30
31						

## 2023 MFC Meeting Dates

### MFC Business Meetings

February 22-24  
 May 24-26  
 August 23-25  
 November 15-17

### Northern Regional AC

January 10  
 April 11  
 July 10

### Southern Regional AC

January 11  
 April 12  
 July 10

### Finfish Standing AC

January 12  
 April 13  
 July 10









### Shellfish/Crustacean Standing AC

January 17  
 April 18  
 July 10

### Habitat and Water Quality Standing AC

January 18  
 April 19  
 July 10

## Calendar Key

	MFC		Northern Regional AC
	ASMFC		Southern Regional AC
	SAFMC		Finfish Standing AC
	MAFMC		Habitat and Water Quality Standing AC
	State Holiday		Shellfish/Crustacean Standing AC
			Joint AC Workshop

# Marine Fisheries Commission 2024 Annual Calendar

*\*Dates are subject to change.\**

January						
Su	Mo	Tu	We	Th	Fr	Sa
		2	3	4	5	6
7	8	9	10	11	12	13
14		16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

February						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29		

March						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		30
31						

April						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

May						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26		28	29	30	31	

June						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

July						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3		5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

August						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

September						
Su	Mo	Tu	We	Th	Fr	Sa
1		3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

October						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

November						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10		12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27			30

December						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23				27	28
29	30	31				

## 2024 MFC Meeting Dates

### MFC Business Meetings

February 21-23  
 May 22-24  
 August 21-23  
 November 20-22

### Northern Regional AC

January 9  
 April 9  
 July 9  
 October 8

### Southern Regional AC

January 10  
 April 11  
 July 10  
 October 9

### Finfish Standing AC

January 11  
 April 11  
 July 11  
 October 10












### Shellfish/Crustacean Standing AC

January 16  
 April 16  
 July 16  
 October 15

### Habitat and Water Quality Standing AC

January 17  
 April 17  
 July 17  
 October 16

## Calendar Key

 MFC	 Northern Regional AC
 ASMFC	 Southern Regional AC
 SAFMC	 Finfish Standing AC
 MAFMC	 Habitat and Water Quality Standing AC
 State Holiday	 Shellfish/Crustacean Standing AC
	 Joint AC Workshop

# 2023 Committee Assignments for Marine Fisheries Commissioners

08/4/2023

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## **FINFISH ADVISORY COMMITTEE**

*Statutorily required standing committee comprised of commissioners and advisers that considers matters related to finfish.*

**Commissioners:** Tom Roller – co-chair, Sarah Gardner – co-chair, Mike Blanton – vice chair

**DMF Staff Lead:** Lee Paramore - [lee.paramore@ncdenr.gov](mailto:lee.paramore@ncdenr.gov)

**Meeting Frequency:** Can meet quarterly, depending on assignments from MFC

## **HABITAT AND WATER QUALITY ADVISORY COMMITTEE & COASTAL HABITAT PROTECTION PLAN STEERING COMMITTEE**

*Statutorily required standing committee comprised of commissioners and advisers that considers matters concerning habitat and water quality that may affect coastal fisheries resources.*

**Commissioners:** Doug Rader – chair, Vacant– vice chair

**DMF Staff Lead:** Anne Deaton - [anne.deaton@ncdenr.gov](mailto:anne.deaton@ncdenr.gov)

**Meeting Frequency:** Committee can meet quarterly, depending on assignments from MFC. CHPP Steering Committee can meet a couple of times a year.

## **SHELLFISH/CRUSTACEAN ADVISORY COMMITTEE**

*Statutorily required standing committee comprised of commissioners and advisers that considers matters concerning oysters, clams, scallops and other molluscan shellfish, shrimp and crabs.*

**Commissioners:** Vacant – co-chair, Mike Blanton – co-chair, Doug Cross – vice chair

**DMF Staff Lead:** Tina Moore - [tina.moore@ncdenr.gov](mailto:tina.moore@ncdenr.gov)

**Meeting Frequency:** Can meet quarterly, depending on assignments from MFC

## **CONSERVATION FUND COMMITTEE**

*Committee comprised of commissioners that makes recommendations to the MFC for administering funds to be used for marine and estuarine resources management, including education about the importance of conservation.*

**Commissioners:** Doug Rader - chair, and Robert McNeill

**DMF Staff Lead:** Steve Poland – [steve.poland@ncdenr.gov](mailto:steve.poland@ncdenr.gov)

**Meeting Frequency:** Meets as needed

## **LAW ENFORCEMENT AND CIVIL PENALTY COMMITTEE**

*Statutorily required committee comprised of commissioners that makes final agency decisions on civil penalty remission requests.*

**Commissioners:** Rob Bizzell - chair, Doug Cross

**DMF Staff Lead:** Col. Carter Witten – [carter.witten@ncdenr.gov](mailto:carter.witten@ncdenr.gov)

**Meeting Frequency:** Meets as needed

## **COASTAL RECREATIONAL FISHING LICENSE TRUST COMMITTEE**

*Committee consisting of the three recreational seats and the science seat to provide the DMF advice on the projects and grants issued using Coastal Recreational Fishing License trust funds.*

**Commissioners:** Robert McNeill– chair, Rob Bizzell, Tom Roller, and Doug Rader

**DMF Staff Lead:** Jamie Botinovch - [jamie.botinovch@ncdenr.gov](mailto:jamie.botinovch@ncdenr.gov)

**Meeting Frequency:** Meets as needed

## **NOMINATING COMMITTEE**

*Committee comprised of commissioners that makes recommendations to the MFC on at-large and obligatory nominees for the Mid- and South Atlantic Fishery Management Councils.*

**Commissioners:** Robert McNeill – chair, Vacant, Tom Roller and Mike Blanton

**DMF Staff Lead:** Chris Batsavage - [chris.batsavage@ncdenr.gov](mailto:chris.batsavage@ncdenr.gov)

**Meeting Frequency:** Typically meets once a year

## **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD**

*Statutorily required three-person board consisting of DEQ, DMF and MFC designees who apply eligibility criteria to determine whether an applicant is eligible for a SCFL.*

**Commission Designee:** Mike Blanton

**DMF Staff Lead:** Marine Patrol Capt. Garland Yopp – [garland.yopp@ncdenr.gov](mailto:garland.yopp@ncdenr.gov)

**Meeting Frequency:** Meets two to three times a year, could need to meet more often depending on volume of applications

## **N.C. COMMERCIAL FISHING RESOURCE FUND COMMITTEE**

*Committee comprised of commissioners that the commission has given authority to make funding decisions on projects to develop and support sustainable commercial fishing in the state.*

**Commissioners:** Doug Cross – chair, Mike Blanton, Vacant

**DMF Staff Lead:** William Brantley – [william.brantley@ncdenr.gov](mailto:william.brantley@ncdenr.gov)

**Meeting Frequency:** Meets two to three times a year

## **WRC/MFC JOINT COMMITTEE ON DELINEATION OF FISHING WATERS**

*Committee formed to help integrate the work of the two commissions as they fulfill their statutory responsibilities to jointly determine the boundaries that define North Carolina's Inland, Coastal and Joint Fishing Waters as the agencies go through a statutorily defined periodic review of existing rules.*

**MFC Commissioners:** Rob Bizzell, Donald Huggins, Sarah Gardner

**DMF Staff Lead:** Anne Deaton - [anne.deaton@ncdenr.gov](mailto:anne.deaton@ncdenr.gov)

**Meeting Frequency:** Meets as needed

## **SHELLFISH CULTIVATION LEASE REVIEW COMMITTEE**

*Three-member committee formed to hear appeals of decisions of the Secretary regarding shellfish cultivation leases issued under G.S. 113-202.*

**MFC Commissioners:** Rob Bizzell

**DMF Staff Lead:** Jacob Boyd – [jacob.boyd@ncdenr.gov](mailto:jacob.boyd@ncdenr.gov)

**Meeting Frequency:** Meets as needed

## **COASTAL HABITAT PROTECTION PLAN STEERING COMMITTEE**

*The CHPP Steering Committee, which consists of two commissioners from the Marine Fisheries, Coastal Management and Environmental Management commissions reviews and approves the plan, recommendations, and implementation actions.*

**MFC Commissioners:** Doug Rader, Donald Huggins

**DMF Staff Lead:** Anne Deaton – [anne.deaton@ncdenr.gov](mailto:anne.deaton@ncdenr.gov)

**Meeting Frequency:** Meets as needed

# Marine Fisheries Commission 2023-2025 WORKPLAN

## INCORPORATING ACTIVITY UNDERWAY AND UPCOMING ASSESSMENTS

General Timelines and Abbreviations							(See
"General Timelines" worksheet for details, Colored blocks below indicate MFC Action Point)							
Fishery Management Plans	(SA)	SAR	GO	(PD)	AC/Pub	PMO	A
	Stock Assessment In Progress	Stock Assessment Report Presented to MFC	Vote to Approve Goal and Objectives	Initial Plan Development by DMF/FMP AC	Advisory Committee and Public Review	Select Preferred Management Options	Vote on Final Approval
<b>Non-FMP Rule Development</b>	R	IP	PR	RLO	PRL		
	Request Issue Development FA	Information Paper NOT	Decision to pursue rulemaking NCR/PH/PC	Issue paper with rule language options A	Select Preferred Rule Language		
	Fiscal Analysis	Approve Notice of Text	Publish in NC Register/Hold Public Hearing&Comment Period	MFC Review Public Comment & Vote on Approval			
<b>MFC Committee Activity</b>	APR	JUL					
	Meeting confirmed and scheduled	Meeting anticipated					

### Quarterly Business Meeting

Topic	DMF Staff Lead(s)	Aug - 23	Nov - 23	Feb - 24	May - 24	Aug - 24	Nov - 24	Feb - 25	May - 25	Aug - 25	Nov - 25
<b>Stock Assessments</b>											
Southern Flounder Stock Assessment Update	Lee/Schlick		(SA)	SAR							
Blue Crab Stock Assessment Update	Lee/Schlick	(SA)	SAR								
<b>Active Management Plans</b>											
Striped Mullet FMP Amendment 2	Zapf/Dobbs		AC/Pub	PMO	A						
Spotted Seatrout FMP Amendment 1	Behringer/Pensingier		(PD)		AC/Pub		PMO	A			
Hard Clam/Oyster	Dobbs/Facendola		G/O	(PD)		AC/Pub	PMO	A			
<b>Status of Commission Requests</b>											
Delineation of Fishing Waters Issue	Rawls/Klibansky										
Update False Albacore Information Paper	Seward/Markwith										
Federal Permits - Review Feasibility of State Requirements	Murphey/Batsavage/Witten/Poland/Klibansky		RLO	PRL							
<b>Rulemaking</b>											
18A Rule Readopton - Shellfish Sanitation (85 rules)	Blum/Walsh/Subject Matter Experts	NCR/PH/PC	A								
Data Collection and Harassment Prevention for the Conservation of Marine and Estuarine Resources (5 rules)	Blum/Walsh/Subject Matter Experts	NCR/PH/PC	A								
Oyster Sanctuary Rule Changes (1 rule)	Blum/Walsh/Subject Matter Experts	NCR/PH/PC	A								
Conforming Rule Changes for Shellfish Relay Program and Shellfish Leases and Franchises (12 rules)	Blum/Walsh/Subject Matter Experts	NCR/PH/PC	A								
<b>MFC Committees Meetings</b>											
<b>(Meeting date(s) in cell)</b>											
Nominating Committee	Batsavage/Blum		11-Oct				11-Oct				11-Oct
Shellfish Cultivation Lease Review Committee	Reynolds	18-Jul									
CHPP Steering Committee	Rader/Blanton/Huggins										
<b>Advisory Committees Activity Overview</b>											
<b>(Meeting date(s) in cell)</b>											
Northern Regional Advisory	Behringer/Paramore	In-Person	Virtual	In-Person	Virtual	In-person	Virtual	In-Person	Virtual	In-person	Virtual
Southern Regional Advisory	Moore/Stewart	10-Jul		JAN	APR	JUL	OCT	JAN	APR	JUL	OCT
Finfish Standing Advisory	Paramore/Rock	(Workshop)	No meetings	JAN	APR	JUL	OCT	JAN	APR	JUL	OCT
Shellfish/Crustacean Standing Advisory	Moore/Deaton			JAN	APR	JUL	OCT	JAN	APR	JUL	OCT
Habitat and Water Quality Standing Advisory	Deaton/Harrison			JAN	APR	JUL	OCT	JAN	APR	JUL	OCT

NC Marine Fisheries Commission  
**Director's Report**  
August 2023 Business Meeting

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# Atlantic States Marine Fisheries Commission

## 2023 Summer Meeting Summary

*Sustainable and Cooperative Management of Atlantic Coastal Fisheries*

2023 Summer Meeting  
August 1 – 3, 2023

For more information, please  
contact Toni Kerns, ISFMP,  
Tina Berger, Communications  
or the identified individual at  
703.842.0740

### Meeting Summaries, Press Releases and Motions

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    *Meeting Summary* ..... 17  
    *Motions* ..... 19

## **SHAD & RIVER HERRING MANAGEMENT BOARD (AUGUST 1, 2023)**

### ***Meeting Summary***

The Shad and River Herring Management Board met to consider an update to the Potomac River Fisheries Commission (PRFC) American Shad Sustainable Fishery Management Plan (SFMP), receive an update on expanding collection efforts for the U.S. Geological Survey (USGS) alosine genetic repository, and receive a progress update on the River Herring Benchmark Stock Assessment.

The Board considered an update to the PRFC SFMP for American shad. SFMPs are required for all states and jurisdictions with a commercial fishery and are reviewed by the Technical Committee every five years. The plan update proposed continuing their limited commercial bycatch allowance under the same sustainability metrics, which is based on the geometric mean of pound net catch per unit effort (CPUE) and has been above its restoration target since 2011. PRFC will also explore including additional sustainability metrics in future updates. The Board approved the presented SFMP.

The Board received an update from the Technical Committee and USGS staff on expanding collection efforts for the alosine genetic repository. As anadromous fishes, alosines spend much of their life in estuarine and marine environments, where they may form mixed stock aggregations and where they are sometimes captured as bycatch in other fisheries. There is a critical need to be able to distinguish among populations or management units when individuals are encountered away from natal areas. An enhanced understanding of stock composition will provide critical information on the status and trends of specific populations and offer much needed insight into how fisheries bycatch may be impacting recovery efforts. The alosine genetic repository is intended to address this issue.

In response to a Board request, USGS staff presented to the Technical Committee to assist in identifying data gaps and improving future sample collections. After reviewing the spatial and temporal data needs, several states offered to help fill the data gaps by providing biological samples with collection kits provided by USGS.

The Board received an update on the river herring benchmark stock assessment. The Assessment Workshop is scheduled for August 21-25, 2023, with the peer review anticipated for the fall, and final presentation of the assessment and peer review report to the Board planned for the 2024 Winter Meeting in February.

For more information contact James Boyle, Fishery Management Plan Coordinator at [jboyle@asmfc.org](mailto:jboyle@asmfc.org).

### ***Motions***

**Move to approve the Shad Sustainable Fishery Management Plan from Potomac River Fisheries Commission, as presented today.**

Motion made by Dr. Davis and seconded by Dr. Rhodes. Motion carries without opposition.

***Press Release***

**ASMFC American Eel Board Accepts Benchmark Assessment & Peer Review Report for Management Use**

***Two Addenda Initiated for Yellow Eel and Maine Glass Eel Fisheries***

Arlington, VA – The Commission’s American Eel Management Board has accepted the American Eel Benchmark Stock Assessment and Peer Review Report for management use. The Report indicates the stock is at or near historically low levels due to a combination of historical overfishing, habitat loss, food web alterations, predation, turbine mortality, environmental changes, and toxins, contaminants, and disease. Since completion of the first Commission American eel stock assessment in 2005, available data have not allowed overfishing or overfished determinations to be made. Based on several trend analyses, the stock is considered depleted, consistent with the findings of the 2012 and 2017 assessments.

In response to the assessment findings, the Board initiated an addendum to consider changes to the coastwide yellow eel harvest cap. Historically, the coastwide cap of 916,473 pounds was set based on the average landings from 1998 to 2010. The benchmark assessment proposes a new tool for setting the coastwide cap based on abundance indices and catch. The addendum will consider using this tool to recommend a range of coastwide caps and management options.

The Board also initiated an addendum to address the quota for Maine’s glass eel fishery. Maine’s glass eel quota has been set at 9,688 pounds since 2015. However, a new addendum is needed to establish a quota for the 2025 fishing year and beyond.

The Plan Development Team will begin work on both documents, with a progress update provided to the Board in October and Draft Addenda presented for Board consideration in February 2024. The Benchmark Stock Assessment and Peer Review Report will be available on the Commission website at <https://asmfc.org/species/american-eel> (under stock assessment reports) by mid-August. An overview of the assessment will be can be found at [https://asmfc.org/uploads/file/64caa25eAmericanEelStockAssessmentOverview\\_August2023.pdf](https://asmfc.org/uploads/file/64caa25eAmericanEelStockAssessmentOverview_August2023.pdf). For more information, please contact Caitlin Starks, Senior Fishery Management Plan Coordinator, at [cstarks@asmfc.org](mailto:cstarks@asmfc.org).

###

PR23-19

***Meeting Summary***

In addition to accepting the 2023 Benchmark Stock Assessment and Peer Review Reports and initiating two addenda, the American Eel Management Board (Board) also considered an update on Maine’s life cycle survey, and Maine’s 2024 aquaculture plan. Maine has been conducting fishery-independent surveys for all three American eel life stages since 2018. The Board approved Maine’s 2024 aquaculture plan, which requests 200 pounds of glass eel harvest for domestic aquaculture.

For more information on the stock assessment, please contact Dr. Kristen Anstead, Stock Assessment Scientist, at [kanstead@asmfc.org](mailto:kanstead@asmfc.org); and for more information on management, please contact Caitlin Starks, Senior FMP Coordinator, at [cstarks@asmfc.org](mailto:cstarks@asmfc.org).

### ***Motions***

**Move to accept the 2023 Benchmark Stock Assessment and Peer Review Report for management use.**

Motion made by Ms. Madsen and seconded by Dr. Jacobson. Motion approved by Board consent.

### **Main Motion**

**Move to form a Plan Development Team to draft an addendum to consider using *I<sub>TARGET</sub>* to recommend various catch caps, using the supplemental report as presented today as a starting point.**

Motion made by Ms. Madsen and seconded by Mr. Maniscalco.

### **Motion to Amend**

**Move to amend to add “but not use *I<sub>TARGET</sub>* to set biological reference points or stock status” after catch caps.**

Motion made by Ms. Fegley and seconded by Mr. Clark. Motion passes (16 in favor, 2 opposed).

### **Main Motion as Amended**

**Move to form a Plan Development Team to draft an addendum to consider using *I<sub>TARGET</sub>* to recommend various catch caps, but not use *I<sub>TARGET</sub>* to set biological reference points or stock status, using the supplemental report as presented today as a starting point.**

Motion approved by Board consent.

**Move to initiate an addendum to address the Maine glass eel quota.**

Motion made by Ms. Ware and seconded by Mr. McKiernan. Motion approved by Board consent.

**Move to approve the Maine Aquaculture Plan for 2024.**

Motion made by Ms. Ware and seconded by Mr. Clark. Motion is approved by Board consent.

## **COASTAL SHARKS MANAGEMENT BOARD (AUGUST 1, 2023)**

### ***Meeting Summary***

The Coastal Sharks Management Board met to consider an update from NOAA Fisheries on Amendment 16 to the Highly Migratory Species (HMS) Fishery Management Plan (FMP), and the FMP Review for the 2021 Fishing Year.

NOAA Fisheries is currently scoping for Amendment 16 to the HMS FMP. The scoping document considers a broad range of issues and potential options. Amendment 16 could implement substantial changes to the commercial and recreational shark fishery, including commercial and recreational shark quotas, shark management groups, shark retention or bag limits, and shark minimum size limits. NOAA Fisheries will accept public comment on this proposed rule through August 18, 2023.

NOAA Fisheries Staff also informed the Board of the recent publication of a proposed rule for the 2024 and future fishing years of the Atlantic shark commercial fishery. The proposed rule considers options to 1) modify the regulations to allow the Atlantic shark commercial fishery to automatically open on January 1 each year under base quotas and default retention limits, 2) increase the default commercial retention limit for shark-directed permit holders from 45 to 55 large coastal sharks, and 3) adjust the 2024 quota levels for the various shark stocks and management groups based on underharvests from the 2023 fishing year.

The Board approved the FMP Review for the 2021 Fishing Year, state compliance reports, and *de minimis* status for the Commonwealth of Massachusetts.

For more information, please contact Caitlin Starks, Senior Fishery Management Plan Coordinator, at [cstarks@asmfc.org](mailto:cstarks@asmfc.org).

### **Motions**

**Move to approve *de minimis* request from Massachusetts, state compliance reports, and the Coastal Sharks FMP Review for the 2021 fishing year.**

Motion made by Dr. Davis and seconded by Mr. Miller. Motion approved by unanimous consent.

### **ATLANTIC STRIPED BASS MANAGEMENT BOARD (AUGUST 1, 2023)**

#### ***Press Release***

## **ASMFC Atlantic Striped Bass Board Extends Emergency Action through October 28, 2024 & Continues Development of Additional Measures to Aid Rebuilding**

Arlington, VA – The Commission’s Atlantic Striped Bass Management Board extended the current emergency action through October 28, 2024 or until the implementation of Addendum II to Amendment 7 of the Interstate Fishery Management Plan. In May, the Board approved a 31-inch maximum size limit for the 2023 recreational fishery to reduce harvest of the strong 2015-year class. The 31-inch maximum size limit applies to all existing recreational fishery regulations where a higher (or no) maximum size applies, excluding the May Chesapeake Bay trophy fisheries which already prohibit harvest of fish less than 35 inches. All bag limits, seasons, and gear restrictions remain the same. All states and jurisdictions implemented the required measure by July 2, 2023.

The emergency action responds to the unprecedented magnitude of 2022 recreational harvest, which is nearly double that of 2021, and new stock rebuilding projections, which estimate the probability of the spawning stock rebuilding to its biomass target by 2029 drops from 97% under the lower 2021 fishing mortality rate to 15% if the higher 2022 fishing mortality rate continues each year.

The extension of the emergency action provides the Board time to develop and finalize Draft Addendum II, which will consider 2024 management measures designed to reduce fishing mortality to the target. Specifically, the Draft Addendum will propose options for the ocean recreational fishery, including modifications to the slot limit with harvest season closures as a secondary non-preferred option. It will also propose options for the Chesapeake Bay recreational fisheries, as well as all commercial fisheries, including maximum size limits.

The Board made changes to the Draft Addendum’s options and sought additional analyses on the impacts of those revised options to the rebuilding of the resource. The Board will review a revised Draft Addendum and consider its approval for public comment in October at the Commission’s Annual Meeting. If approved, the document will be made available for public comment and the states/jurisdictions will conduct public hearings to solicit public comment throughout the fall/early

winter. It's anticipated that the Board will consider public comment and take final action in January at the Commission's Winter Meeting. For more information, please contact Toni Kerns, Fisheries Policy Director, at [tkerns@asmfc.org](mailto:tkerns@asmfc.org).

###

PR23-20

### **Motions**

#### **Move to approve the 2022 Fishing Year FMP Review and state compliance report.**

Motion made by Mr. Hasbrouck and seconded by Mr. Clark. Motion passes by unanimous consent.

#### **Move to extend the Board's May 2, 2023 emergency action of 31" maximum recreational size limit for one year or until the implementation of Addendum II, whichever comes first, effective October 28, 2023.**

Motion made by Dr. Armstrong and seconded by Mr. Sikorski. Motion passes (14 in favor, 2 opposed).

#### **Move to add under 3.1.1 and under 3.1.2, an option that states that any recreational season closure implemented through this addendum would be a no harvest closure and an option that states any recreational season closure implemented through this addendum would be a no targeting closure**

Motion made by Mr. Hasbrouck and seconded by Mr. Luisi. Motion passes (10 in favor, 4 opposed, 2 abstentions).

### **Main Motion**

#### **Move to amend Chesapeake Bay Recreational Options B and D to include maximum size limit options ranging from 23" to 26" in 1" increments and remove all other options.**

Motion made by Dr. Armstrong and seconded by Dr. Davis. Motion amended.

### **Motion to Amend**

#### **Move to amend to add "H" after "D."**

Motion made by Mr. Sikorski and seconded by Mr. Clark. Motion passes unanimously.

### **Main Motion as Amended**

#### **Move to amend Chesapeake Bay Recreational Options B, D and H to include maximum size limit options ranging from 23" to 26" in 1" increments and remove all other options.**

Motion passes by unanimous consent.

#### **Move to add new options to section 3.1.1 and 3.1.2 to Draft Addendum II that allow for mode splitting. These are options B, C, and D as defined in the PDT memo to the board dated July 17, 2023 for section 3.1.1 and options H as defined in the PDT memo to the board dated July 17, 2023 for section 3.1.2.**

Motion made by Dr. McNamee and seconded by Mr. Hasbrouk. Motion passes (11 in favor, 3 opposed, 2 abstentions).

#### **Move to replace Ocean Recreational Option B with the slot limit of 28" to 31" with no seasonal harvest closures and remove Option C and D.**

Motions made by Dr. Armstrong and seconded by Ms. Patterson. Motion passes (8 in favor, 6 opposed, 1 abstention, 1 null).

**Main Motion**

**Move to remove Options sets B and C from Section 3.2.1 (Options for Implementing a Commercial Maximum Size Limit) from Draft Addendum II. Task the PDT with conducting spawning potential analysis to determine quota reductions, using 2022 as the starting point, associated with each Option in Option sets D (Ocean Commercial Maximum Size Limits) and E (Chesapeake Bay Commercial Maximum Size Limits). Add a new Option Set to Section 3.2.1 containing the following options for reductions to commercial quotas:**

**Option A. Status Quo. All commercial fisheries maintain 2017 size limits and (or Addendum VI approved CE plans) and Amendment 7 quotas (and Addendum VI approved CE-adjusted quotas).**

**Option B. Commercial Quota Reductions. Quotas for all commercial fisheries will be reduced by 14.5% from 2022 commercial quotas (including quotas adjusted through approved Addendum VI CE plans).**

Motion made by Dr. Davis and seconded by Dr. Armstrong.

**Motion to Substitute**

**Move to substitute to remove Option B2 from Section 3.2.1.**

Motion made by Mr. Hasbrouk and seconded by Mr. Pugh. Motion fails (3 in favor, 12 opposed, 1 abstention).

**Main Motion**

**Move to remove Options sets B and C from Section 3.2.1 (Options for Implementing a Commercial Maximum Size Limit) from Draft Addendum II. Task the PDT with conducting spawning potential analysis to determine quota reductions, using 2022 as the starting point, associated with each Option in Option sets D (Ocean Commercial Maximum Size Limits) and E (Chesapeake Bay Commercial Maximum Size Limits). Add a new Option Set to Section 3.2.1 containing the following options for reductions to commercial quotas:**

**Option A. Status Quo. All commercial fisheries maintain 2017 size limits and (or Addendum VI approved CE plans) and Amendment 7 quotas (and Addendum VI approved CE-adjusted quotas).**

**Option B. Commercial Quota Reductions. Quotas for all commercial fisheries will be reduced by 14.5% from 2022 commercial quotas (including quotas adjusted through approved Addendum VI CE plans).**

Motion made by Dr. Davis and seconded by Dr. Armstrong.

**Motion to Amend**

**Move to amend to add an option to require maximum mesh sizes for gillnets and exempt them from maximum size limits.**

Motion made by Mr. Clark and seconded by Mr. Abbott. Motion passes (12 in favor, 3 opposed, 1 abstention).

**Main Motion as Amended**

**Move to remove Options sets B and C from Section 3.2.1 (Options for Implementing a Commercial Maximum Size Limit) from Draft Addendum II. Task the PDT with conducting spawning potential analysis to determine quota reductions, using 2022 as the starting point, associated with each Option in Option sets D (Ocean Commercial Maximum Size Limits) and E (Chesapeake Bay Commercial Maximum Size Limits). Add an option to require maximum mesh sizes for gillnets and exempt them from maximum size limits. Add a new Option Set to Section 3.2.1 containing the following options for reductions to commercial quotas:**

**Option A. Status Quo. All commercial fisheries maintain 2017 size limits and (or Addendum VI approved CE plans) and Amendment 7 quotas (and Addendum VI approved CE-adjusted quotas).**

**Option B. Commercial Quota Reductions. Quotas for all commercial fisheries will be reduced up to 14.5% from 2022 commercial quotas (including quotas adjusted through approved Addendum VI CE plans).**

**Motion to Amend**

**Move to amend to replace “by” with “up to” in Option B.**

Motion made by Mr. Geer and seconded by Mr. Kane. Motion passes (15 in favor, 1 abstention).

**Main Motion as Amended**

**Move to remove Options sets B and C from Section 3.2.1 (Options for Implementing a Commercial Maximum Size Limit) from Draft Addendum II. Task the PDT with conducting spawning potential analysis to determine quota reductions, using 2022 as the starting point, associated with each Option in Option sets D (Ocean Commercial Maximum Size Limits) and E (Chesapeake Bay Commercial Maximum Size Limits). Add an option to require maximum mesh sizes for gillnets and exempt them from maximum size limits. Add a new Option Set to Section 3.2.1 containing the following options for reductions to commercial quotas:**

**Option A. Status Quo. All commercial fisheries maintain 2017 size limits and (or Addendum VI approved CE plans) and Amendment 7 quotas (and Addendum VI approved CE-adjusted quotas).**

**Option B. Commercial Quota Reductions. Quotas for all commercial fisheries will be reduced up to 14.5% from 2022 commercial quotas (including quotas adjusted through approved Addendum VI CE plans).**

**Motion to Amend**

**Move to amend to add Option C that would reduce commercial landings up to 14.5% from 2022 commercial landings.**

Motion made by Mr. Sikorski and seconded by Dr. Armstrong. Motion fails (3 in favor, 10 opposed, 3 abstentions).



### **Main Motion as Amended**

**Move to remove Options sets B and C from Section 3.2.1 (Options for Implementing a Commercial Maximum Size Limit) from Draft Addendum II. Task the PDT with conducting spawning potential analysis to determine quota reductions, using 2022 as the starting point, associated with each Option in Option sets D (Ocean Commercial Maximum Size Limits) and E (Chesapeake Bay Commercial Maximum Size Limits). Add an option to require maximum mesh sizes for gillnets and exempt them from maximum size limits. Add a new Option Set to Section 3.2.1 containing the following options for reductions to commercial quotas:**

**Option A. Status Quo. All commercial fisheries maintain 2017 size limits and (or Addendum VI approved CE plans) and Amendment 7 quotas (and Addendum VI approved CE-adjusted quotas).**

**Option B. Commercial Quota Reductions. Quotas for all commercial fisheries will be reduced up to 14.5% from 2022 commercial quotas (including quotas adjusted through approved Addendum VI CE plans).**

Motion passes (14 in favor, 1 opposed, 1 abstention).

**Move to add the at-sea filleting options from the PDT memo.**

Motion made by Dr. Davis and seconded by Dr. Armstrong. Motion passes by consent.

**Move to add an option to the addendum that prevents the alteration of the length of a striped bass prior to landing at the dock.**

Motion made by Mr. Miller and second by Mr. Abbott. Motion fails (3 in favor, 13 opposed, 3 abstentions).

### **EXECUTIVE COMMITTEE (AUGUST 2, 2023)**

#### ***Meeting Summary***

The Executive Committee (EC) met to discuss several issues, including CARES and Consolidated Appropriations Act (CAA) Updates; the Legislative and Governors' Appointees (LGA) members stipend survey results; the potential for an increase in per diem rates; and a Legislative Committee update. The following action items resulted from the Committee's discussions:

- Staff gave an update on the CARES and CAA activities. The CARES program is complete and there is the possibility for the need to return \$159.93 to the U.S. Treasury. CAA has a projected completion of July 31, 2024, and currently \$91,041,387 has been disbursed to the states, with \$13,418,965 remaining to be disbursed.
- Staff presented the results of the LGA members stipend potential survey. Fourteen Commissioners responded; 10 said they were eligible to receive a stipend and six said they would be amenable to receiving one. No action was taken based on these results.
- Staff presented on three bills that the Executive Committee should be aware of per the recommendation of the Legislative Committee. These included: the [National Oceanic and Atmospheric Administration Act of 2023](#) (H.R. 3980), the [Supporting the Health of Aquatic](#)

[systems through Research Knowledge and Enhanced Dialogue Act](#) (or SHARKED Act, H.R. 4051), and the [Fishery Improvement to Streamline untimely regulatory Hurdles post Emergency Situation Act](#) (or FISHER Act). Further discussion of these issue will occur at the ISFMP Policy Board later this week.

- Staff presented a report on the potential for an increase in per diem rates for Commission meetings. The increase would be from Commission, not federal funds. The Committee requested a detailed analysis to determine the projected cost to the Commission of roughly a 30% increase in meal per diem.

For more information, please contact Laura Leach, Director of Finance & Administration, at [lleach@asmfc.org](mailto:lleach@asmfc.org) or 703.842.0740.

### ***Motions***

No motions were made.

## **COASTAL PELAGICS MANAGEMENT BOARD (AUGUST 3, 2023)**

### ***Press Release***

## **ASMFC Coastal Pelagics Board Sets Atlantic Cobia Total Harvest Quota for 2024-2026 Fishing Seasons**

Arlington, VA – The Commission’s Coastal Pelagics Management Board approved a total harvest quota for the Atlantic migratory group of cobia of 80,112 fish for the 2024-2026 fishing seasons. This total quota results in a coastwide recreational quota of 76,908 fish and commercial quota of 73,116 pounds.

The total quota level was first approved in February 2020 for the 2020-2022 fishing seasons. In 2021, the Board changed the cobia quota timeframe from 2020-2022 to 2021-2023. Based on the recommendation from the Technical Committee and in the absence of a new stock assessment, the Board has set the 2024-2026 total harvest quota equal to the 2023 total harvest quota of 80,112 fish.

A new stock assessment for Atlantic migratory group of cobia is scheduled for 2025, with the potential to inform 2026 or later total harvest quotas. The Board will meet in October 2023 to consider new recreational management measures for some states. For more information, please contact Chelsea Tuohy, Fishery Management Plan Coordinator, at [ctuohy@asmfc.org](mailto:ctuohy@asmfc.org).

###

PR23-21

### ***Meeting Summary***

The Coastal Pelagics Board met to set the 2024-2026 total harvest quota for Atlantic cobia (see above press release), consider the Atlantic Cobia Fishery Management Plan (FMP) Review for the 2022 fishing year, consider timelines for reviewing the state recreational allocation of cobia, and received an update from the South Atlantic Fishery Management Council (SAFMC) on the 2022 stock

assessment for Spanish mackerel (SEDAR 78) and upcoming Spanish and king mackerel port meetings.

The Board reviewed state compliance and the Atlantic Cobia FMP Review for the 2022 fishing year. All states' regulations were consistent with the FMP, and the Board approved *de minimis* requests from Rhode Island, New Jersey, Delaware, Maryland, Georgia, and Florida. The Cobia Plan Review Team (PRT) noted that multiple states could exceed *de minimis* thresholds in upcoming years, which would trigger management changes including in-season monitoring for the commercial fishery and revising state recreational harvest targets for the recreational fishery. Reallocation of recreational harvest targets will require a change in the FMP. The current recreational allocation is calculated using landings data through 2015. In addition, the PRT recommended New York declare an interest in the cobia fishery due to recent trends in New York's commercial landings. New York has indicated their commercial regulations for Atlantic Cobia are consistent with FMP requirements. New York is in the process of updating the state's recreational regulations to be consistent with the FMP requirements and is preparing regulations to establish closure authority in the commercial cobia fishery.

After the FMP Review, the Board received a presentation on current state recreational allocations for cobia and potential timelines for reviewing these allocations. Recreational harvest targets are assigned on a state-by-state basis to non-*de minimis* states, with a 1% set aside for *de minimis* states. Commission staff recommended two timelines for reviewing and revising these allocations through the addendum process. Both timelines align with the upcoming 2025 cobia stock assessment and include implementation dates of 2025 or 2026. The Board identified 2025 as the preferred implementation timeline and directed the Atlantic Cobia Technical Committee (TC) to characterize state and regional harvest trends to inform future allocation options for review at the Commission's Annual Meeting or Winter Meeting. The Board noted that future allocation of recreational harvest targets should consider the dynamic nature of the fishery and be flexible as the stock shifts and/or range expansion continues to be examined.

The final cobia discussion considered the need for ongoing changes to state cobia recreational regulations, given the timing of the potential new addendum and the upcoming 2025 stock assessment. Due to a total harvest quota being set for cobia this year, the TC will need to review state landings against soft harvest targets and recommend changes to state measures for the Board's consideration at the Commission's Annual Meeting in October. To inform the October discussion, the Board tasked the TC with reviewing the impact status quo measures would have on the fishery in addition to recommending changes to recreational management measures.

Lastly, the Board received updates on the 2022 stock assessment for Spanish mackerel (SEDAR 78) and the SAFMC's plans for upcoming Spanish and king mackerel port meetings. The Spanish mackerel stock assessment found the stock to be not overfished and not experiencing overfishing. Following the completion of the assessment, the SAFMC initiated a Framework Addendum to adopt the new ABC recommendation of 8,024,000 pounds. The SAFMC to delayed the initiation of a Plan Amendment until the port meetings are completed in 2024. Port meetings are intended to gather stakeholder input to help improve management efforts and update the goals of the Coastal Migratory Pelagics (CMP) FMP. The Board discussed the importance of the port meetings in

informing changes to the Federal and Interstate FMPs and agreed that state staff should attend local port meetings if schedules allow.

The Board also discussed the differences between the Interstate and Federal FMPs and supported their previous decision to hold off on potential management action for state waters until the Council initiates a Plan Amendment for Federal waters. Differences between the Interstate and Federal FMPs exist in terms of commercial management zones, commercial trip limits and closures, allowable gears, recreational season, and recreational accountability measures. While the Board decided to hold off on taking management action to address FMP differences, the Board tasked the newly formed Spanish Mackerel TC to develop a paper that characterizes the recreational and commercial fisheries along the Atlantic Coast. This paper may be informed by the fishery profile questionnaire that will accompany state compliance reports due in October. Outcomes of the port meetings and TC paper will inform Board action in the future.

For more information, please contact Chelsea Tuohy, Fishery Management Plan Coordinator, at [CTuohy@asmfc.org](mailto:CTuohy@asmfc.org).

### **Motions**

**Move to approve the Atlantic Cobia FMP Review for the 2022 fishing year, state compliance reports, and *de minimis* requests for Rhode Island, New Jersey, Delaware, Maryland, Georgia, and Florida.**

Motion made by Dr. Rhodes and seconded by Ms. Fegley. Motion carries by unanimous consent.

**Move to set the 2024-2026 total harvest quota at the status quo level of 80,112 fish. This results in a recreational quota of 76,908 fish and a commercial quota of 73,116 lbs.**

Motion made by Mr. Haymans and seconded by Ms. Fegley. Motion passes by unanimous consent.

**Move to task the Cobia Technical Committee to develop a fishery review that characterizes recent trends in state and regional landings compared to their harvest targets, including *de minimis* landings. The results of this review will inform a future addendum to be implemented for 2025 that considers recreational allocations, *de minimis*, and any other issues the Board identifies. It is the intent to initiate this addendum either at the Commission's Annual Meeting or the 2024 Winter Meeting.**

Motion made by Ms. Madsen and seconded by Mr. Bell. Motion passes by unanimous consent.

**Move to task the Cobia Technical Committee with determining the impacts of status quo coastwide recreational management measures for the 2024 fishing year.**

Motion made by Ms. Madsen and seconded by Ms. Fegley. Motion carries by unanimous consent.

### **Main Motion**

**Move to direct the Spanish Mackerel Technical Committee to develop a paper that characterizes the recreational and commercial Spanish mackerel fisheries along the Atlantic Coast. The timing and content of the paper are intended to help the Coastal Pelagics Management Board address state waters management issues.**

Motion made by Mr. Batsavage and seconded by Ms. Madsen.

### **Motion to Amend**

**Move to amend to strike “address state water management issues” and replace “help” with “inform.”**

Motion made by Ms. Burgess and seconded by Mr. Haymans. Motion fails (5 in favor, 5 opposed, 2 abstentions).

**Move to direct the Spanish Mackerel Technical Committee to develop a paper that characterizes the recreational and commercial Spanish mackerel fisheries along the Atlantic Coast. The timing and content of the paper are intended to help the Coastal Pelagics Management Board address state waters management issues.**

Motion made by Mr. Batsavage and seconded by Ms. Madsen. Motion carries (9 in favor, 1 opposed, 2 abstentions).

## **EAST COAST CLIMATE CHANGE SCENARIO PLANNING INITIATIVE (AUGUST 2, 2023)**

### ***Meeting Summary***

Over the past two years, marine fishery management organizations along the U.S. East Coast have been exploring governance and management issues related to climate change and fishery stock distributions. This effort recognizes the profound impact that climate change is having on our ocean ecosystems and coastlines and the need to plan for how fishery management organizations and coastal communities can best adapt to these changes in a thoughtful and deliberate way. The last phase of the initiative with the Commission includes the Scenario Planning Summit, held in February 2023, which brought together representatives from the three East Coast Regional Fishery Management Councils, the Atlantic States Marine Fisheries Commission, and NOAA Fisheries. During the Summit, participants used the scenarios as a platform from which to develop a set of potential governance and management actions that could help prepare fishery management organizations for future challenges related to climate change.

The main themes and potential actions that emerged during the initiative are summarized in two documents which: the [Summit Report](#) and a [Potential Action Menu](#). The Summit Report summarizes the discussions that occurred at the Summit, while the Potential Action Menu builds upon the Summit Report by suggesting possible next steps for the management organizations to consider as they plan for the future. Staff presented the Potential Action Menu to the Commission. The menu is organized around three overarching themes and prioritized, with high priority given to those that could be quickly or easily implemented or that the fishery management organizations viewed as important issues to address in the near-term. The table below provides a summary of high priority potential actions under each theme. The Potential Action Menu is intended to be an evolving document, used as a planning tool to guide development of priorities and a place to capture future issues and ideas. Over the next several months, fishery management organizations will meet individually and collectively to discuss how best to integrate the high priority items into actions. The Commissioners agreed the issues identified in the Potential Action Menu are important to consider when planning for the future. While it may seem like an overwhelming list of tasks they are essential for successful fisheries management in the face of a changing climate and will strive to incorporate at least two to four actions into the Commission’s Action Plan each year. The Commission also suggested to hold a similar meeting to the Summit every couple of years.

## Overarching Themes and High Priority Potential Actions

Theme	High Priority Potential Actions
<p><b>Cross-Jurisdictional Governance</b> Refers to ways in which governance structures and processes may need to be modified to address changes in species distribution.</p>	<ul style="list-style-type: none"> <li>● Evaluate Council committee structure, use, and decision-making</li> <li>● Evaluate Advisory Panel representation</li> <li>● Develop joint management agreements to clarify roles and increase efficiency</li> <li>● Improve coordination across NOAA offices and regions</li> </ul>
<p><b>Managing Under Increased Uncertainty</b> Environmental changes may mean that historical conditions can no longer be used to predict the future, increasing uncertainty in management.</p>	<ul style="list-style-type: none"> <li>● Identify ecosystem-level contextual information that can be considered in management to incorporate climate information into decisions</li> <li>● Streamline fishery management plan documentation and rulemaking</li> </ul>
<p><b>Data Sources and Partnerships</b> Coordination of accurate and timely data between all stakeholders and partners will play a large role as we adapt to changing conditions.</p>	<ul style="list-style-type: none"> <li>● Expand study fleet, include recreational fisheries, and ensure data are used</li> <li>● Use survey mitigation around offshore wind to transition to industry-based surveys or other survey platforms</li> <li>● Improve the use of existing data</li> </ul>

Additional information about the East Coast Climate Change Scenario Planning Initiative, including contact information for current core team members, is available at <https://www.mafmc.org/climate-change-scenario-planning>.

### **TAUTOG MANAGEMENT BOARD (AUGUST 2, 2023)**

#### ***Meeting Summary***

The Tautog Management Board met to consider the Fishery Management Plan (FMP) Review for the 2022 fishing year, consider reports from the Technical and Law Enforcement Committees about the commercial tagging program and potential changes to the program, receive a progress report on the next stock assessment update, consider approval of an Advisory Panel (AP) nomination, and elect a Vice-Chair.

The Board was presented with the FMP Review for the 2022 fishing season. Coastwide harvest declined from 2021 to 2022 due to a 33% decrease in recreational harvest, while commercial landings increased by 28%. Massachusetts and Rhode Island exceeded their state quotas and have adjusted their 2023 state quotas to account for those overages. The Plan Review Team noted a considerable decrease in commercial tags that were unaccounted for in 2022 compared to 2021, but continued to recommend that states work to reduce this value. The Board approved the FMP Review, state compliance, and de minimis requests from Delaware and Maryland.

The Board was presented reports from the Technical Committee (TC) and the Law Enforcement Committee (LEC) on reported issues with the commercial tagging program. The TC distributed a survey to harvesters and dealers in each state within the management unit to study live market fish quality and mortality that is presumed to be associated with the commercial tagging program. The TC noted the results showed that these reported issues were occurring in every state and that New York continues to receive the most complaints. Additionally, the TC presented the findings of a study conducted by New York to evaluate potential new tags and tag locations to reduce damage to the fish. Based on the negative results of that study, the TC recommended the Board task the TC to evaluate other alternative tag types. The LEC met in July 2023 to discuss the impact of the commercial tagging program on illegal harvest and evaluating compliance. The LEC indicated that the program has reduced illegal harvest and that there is generally good compliance due to the reduced number of fish in the market that is associated with a reduction in illegal fish from the recreational sector. To address the concerns about the health of the fish, the Board tasked the TC with evaluating the smaller version of the current tag, as well as tags that have not previously been tested.

The Board reviewed a TC recommendation to schedule the next stock assessment update for 2025 and the next benchmark assessment for 2028 to accommodate staffing needs and allow for certain surveys to acquire the necessary amount of data to evaluate potential new models. The Board approved the revised schedule.

The Board considered and approved the nomination of Nicholas Marchetti of New York to the Tautog AP. Additionally, the Board elected Justin Davis of Connecticut to the role of Vice-Chair of the Management Board.

For more information, please contact James Boyle, Fishery Management Plan Coordinator, [jboyle@asmfc.org](mailto:jboyle@asmfc.org).

### ***Motions***

**Move to approve the Fishery Management Plan Review, state compliance reports, and *de minimis* requests for DE and MD for the 2022 fishing year.**

Motion made by Mr. Hasbrouck and seconded by Mr. Clark. Motion carries by unanimous consent.

**Move to task the Technical Committee with evaluating the feasibility of using the smaller tag and any tag that has not been previously tested that may meet the goals and objectives of the tagging program.**

Motion made by Mr. Hornstein and seconded by Mr. Clark. Motion carries by unanimous consent.

**Move to approve Nicholas Marchetti of NY to the Tautog Advisory Panel.**

Motion made by Mr. Hornstein and seconded by Dr. McNamee. Motion passes by unanimous consent.

## **SPINY DOGFISH MANAGEMENT BOARD (AUGUST 3, 2023)**

### ***Meeting Summary***

The Spiny Dogfish Management Board met to receive an update on the joint action of the Mid-Atlantic and New England Fishery Management Councils (Councils) to reduce sturgeon bycatch in the monkfish and spiny dogfish fisheries and to consider the Fishery Management Plan (FMP) Review for the 2021-2022 fishing year.

The Board reviewed an update on the joint action of the Councils to develop a range of alternatives to reduce sturgeon bycatch in the monkfish and spiny dogfish fisheries. Due to the exceedance of the Incidental take allowance delineated in the 2021 Biological Opinion, which formed the basis for the joint action, a new Biological Opinion is likely to be initiated. To include updated information from the new Biological Opinion, final action on the alternatives is planned for the Council meetings in April 2024. Accordingly, the Board will plan to review the final action and consider complementary action for state waters at the Spring Meeting in May 2024.

The Board was presented the FMP Review for the 2021-2022 fishing year. Commercial landings decreased by 23% from 2020-2021 and was approximately 33% of the coastwide quota. Recreational harvest and dead discards increased by 79% and 52%, respectively, from calendar year 2020 to 2021. The Board approved the FMP Review, state compliance, and *de minimis* requests from New York and Delaware.

For more information, please contact James Boyle, Fishery Management Plan Coordinator, [jboyle@asmfc.org](mailto:jboyle@asmfc.org).

### ***Motions***

**Move to approve the Fishery Management Plan Review, state compliance reports, and *de minimis* requests for DE and NY for the 2021-2022 fishing year.**

Motion made by Mr. Clark and seconded by Mr. Kane. Motion carries by unanimous consent.

## **INTERSTATE FISHERY MANAGEMENT PROGRAM (ISFMP) POLICY BOARD (AUGUST 3, 2023)**

### ***Meeting Summary***

The ISFMP Policy Board met to receive an update from Executive Committee; consider changes to the Conservation Equivalency Policy and Technical Guidance Document; receive an update on the Risk and Uncertainty Policy Development; receive updates from the Atlantic Coastal Fish Habitat Partnership (ACFHP) and Legislative Committee; discuss an update on the timeline for the Recreational Sector Separation and Catch Accounting Amendment; and receive a request from the Spot and Atlantic Croaker Stock Assessment Committee.

The Commission Chair, Spud Woodard, presented the Executive Committee Report to the Policy Board (see Executive Committee meeting summary earlier in this document).



### **Conservation Equivalency**

The Commission has been working to update the Conservation Equivalency (CE) Policy and Technical Guidance Document to reflect current use of CE and have the policy include more requirements versus suggestions. Some of the proposed changes include requiring CE programs to be described and evaluated in the annual compliance review, setting a timeframe for CE programs to be in place, considering stock status to determine if CE is allowed, and not allowing measures that cannot be quantified in CE programs if their sole purpose is credit for a reduction. The Policy Board reviewed the proposed changes and, after some discussion, decided to postpone making changes to the document until the next meeting.

### **Risk and Uncertainty**

Jason McNamee presented an updated on the risk and uncertainty tool. After a review of the tool and the last use of the tool on tautog, red drum was proposed as the next species to test this tool. The Policy Board had no objections on this approach.

### **ACFHP**

The ACFHP Steering Committee met in July 2023 where it finalized the next 5-year strategic plan (2022 – 2026) and 2-year action plan (2023 – 2024). A recipient for the 2023 Melissa Laser Habitat Conservation Award was selected. Alex Atkinson from NOAA Fisheries Office of Habitat Conservation provided an update on Beyond the Pond fundraising and the process for seeking Congressional Designation (ACE Act requirement – Sec 204(g)). ACFHP must work with the National Fish Habitat Partnership (NFHP) to develop an application and apply for Congressional Designation by June 2024 to continue to receive funds through the U.S. Fish and Wildlife Service after 2025. The Partnership also agreed to pursue a NOAA Climate Resilience Regional Challenge Grant and is currently working with its partners to develop a Letter of Interest. Staff reviewed two ACFHP projects for FY24 that were approved by NFHP; a dam removal project on the Pequest River, NJ that will reconnect 3 miles of fish spawning and foraging habitat; and a multi-phase Maryland Coastal Bays salt marsh Restoration project where 39 acres of saltmarsh will be restored on the Delmarva Peninsula, MD. As such, ACFHP estimates \$300,000 in NFHP funding for FY24. The annual RFP for FY25 is currently being developed and will be released this Fall.

### **Legislative Committee**

Alexander Law reviewed the Legislative Committee's draft letter in opposition to Rep. Lucas's National Oceanic and Atmospheric Administration Act of 2023 (H.R. 3980). The Act would establish NOAA as an independent agency, removing it from under the Department of Commerce. The Policy Board agreed with the Legislative Committee's concerns about the focus of the bill, fisheries funding instability and regulatory issues that would arise should the bill pass. The Policy Board agreed to send the letter to the relevant House committees and coastal district offices. In addition, the Policy Board received an overview of the FISHERIES Act, which address the Office of Management and Budget's delays in the Fisheries Disaster Assistance approval process. The Policy Board agreed to send a letter to the House Natural Resources Committee and coastal district offices in support of the Act.

### **Recreational Sector Separation and Catch Accounting Amendment**

The Mid-Atlantic Fishery Management Council is proposing a change in the timeline of the Recreational Sector Separation and Catch Accounting Amendment due to staff workload. The

approval of a scoping document would move from December 2023 to Spring 2024 and shifting scoping hearings from January/February 2024 to Spring/Summer 2024. This would shift the timeline back by a few months for each subsequent step. The Policy Board did not have any concerns with the timeline change.

### **Other Business**

One of the lead modelers from the Spot and Atlantic Croaker Stock Assessment Committee has taken a new position and can no longer work on the assessment. The committee asked the Policy Board if any state has an assessment scientist with experience in stock synthesis that could join the committee. If a new lead modeler cannot be added there will be delays in the completion of the assessments.

Lastly, the Policy Board approved a motion that directs Commission leadership to work with the three Atlantic Coast Councils to discuss diminished data collection and stock assessment capacity. The discussion will explore options for developing an inventory of data collection deficiencies and impacts to the effective fisheries management.

For more information, please contact Toni Kerns, Fisheries Policy Director, at [tkerns@asmfc.org](mailto:tkerns@asmfc.org).

### **Motions**

#### **Main Motion**

##### **Move to approve Option 4 board discretion for allowing Conservation Equivalency.**

Motion made by Mr. Clark and seconded by Ms. Burgess. Motion postponed until next meeting of the ISFMP Policy Board.

#### **Motion to Substitute**

##### **Motion to substitute to adopt Option 1 with an allowance for 2/3 majority to override.**

Motion made by Mr. McKiernan and seconded by Ms. Patterson.

#### **Motion to Postpone**

##### **Move to postpone decision on Conservation Equivalency until the next meeting of the Policy Board.**

Motion made by Ms. Fegley and seconded by Mr. Gary. Motion passes with one null vote.

##### **Move that the Commission leadership reach out to the three Atlantic Coast Councils and schedule a meeting to discuss diminished data collection and stock assessment capacity. The discussion will explore options for developing an inventory of data collection deficiencies and impacts to the effective fisheries management.**

Motion made by Mr. McKiernan and seconded by Mr. Bell. Motion carries with one abstention.



## June 2023 Council Meeting Summary

The Mid-Atlantic Fishery Management Council met June 6-8, 2023, in Virginia Beach, VA. Presentations, briefing materials, motions, and webinar recordings are available at <http://www.mafmc.org/briefing/june-2023>.

### **HIGHLIGHTS**

During this meeting, the Council:

- Reviewed and recommended no changes to the 2024 specifications for blueline and golden tilefish but recommended modifying the recreational blueline tilefish season to align with the recreational black sea bass season.
- Reviewed and recommended no changes to the 2024 Atlantic surfclam and ocean quahog specifications.
- Reviewed a number of concerns raised by surfclam and ocean quahog AP members and agreed that (1) the SCOQ Committee will discuss the issue of surfclam fishing in the Great South Channel Habitat Management Area later this year, and (2) the Council will send a letter to the Food and Drug Administration regarding the shellfish biotoxin closures in the Georges Bank area.
- Reviewed and recommended no changes to the 2024 butterfish specifications
- Reviewed and recommended no changes to the 2024 chub mackerel specifications
- Discussed the range of alternatives for the Monkfish and Dogfish Joint Framework to Reduce Atlantic Sturgeon Bycatch and recommended that (1) dogfish should remain in the framework action, and (2) the dogfish and monkfish committee should discuss alternatives based on new information provided by enforcement.
- Received an update on commercial landings of unmanaged species.
- Adopted two new harassment prevention policies and approved several changes to the Council's Statement of Organization Practices and Procedures.
- Received several updates on offshore wind energy development.
- Discussed an Advance Notice of Proposed Rulemaking to potentially update the guidelines for National Standard 4, 8, and 9 and directed staff to develop a draft letter for review at the August meeting.
- Reviewed the Draft New England and Mid-Atlantic Geographic Strategic Plan for 2024-2028.
- Received a briefing on recent and ongoing highly migratory species (HMS) management initiatives.
- Discussed recent Ecosystem and Planning Committee activities, including ongoing work on the EAFM Risk Assessment and development of an exempted fishing permit review process.
- Reviewed a 2025 meeting schedule and endorsed a proposal to hold the February 2025 meeting virtually.
- Discussed NMFS's draft "Fisheries Climate Governance Policy" and endorsed a draft timeline and a proposed process for development of Council comments.

### 2024 Golden and Blueline Tilefish Specifications

In 2024, golden and blueline tilefish will be in year 3 of multi-year specifications previously adopted for the 2022-2024 fishing years. These specifications are described in detail in the final rules published [November 10, 2022](#) for golden tilefish and [November 3, 2022](#) for blueline tilefish. After reviewing updated fishery information and considering recommendations from its Scientific and Statistical Committee (SSC), Tilefish Monitoring Committee,

Advisory Panel, and staff, the Council recommended no changes to the 2024 specifications for either species. However, based on recommendations from the Monitoring Committee and input from the Advisory Panel and other stakeholders, the Council recommended modifying the recreational blueline tilefish season from May 1-October 31 to May 15-November 14 to better align the blueline tilefish season with the recreational black sea bass season in most states. Given the overlap of the fisheries, and co-occurrence of the two species in some areas, aligning the two recreational seasons will help reduce regulatory discards of black sea bass as well as help control temporal effort on both species. In 2024, the Council will use the results of the 2024 Research Track Assessment to develop specifications for the next golden tilefish specifications cycle.

The Council also received an update on the continuing efforts to encourage compliance with private recreational tilefish permitting and reporting requirements. More information about these requirements can be found at <https://www.mafmc.org/rec-tilefish-evtr>.

### 2024 Atlantic Surfclam and Ocean Quahog Specifications

The surfclam and ocean quahog (SCOQ) fisheries are approaching the fourth year of multi-year specifications previously set for the 2021-2026 fishing years. The Council reviewed updated catch and landings information for both stocks, as well as recommendations from staff, the SSC, and SCOQ Advisory Panel (AP), and determined that no changes to 2024 measures are warranted. To maintain the current measures, the Council also voted to recommend the Regional Administrator suspend the minimum shell length for surfclam in 2024. These specifications are described in detail in the [final rule](#) published May 13, 2021.

### Atlantic Surfclam and Ocean Quahog Advisory Panel Presentation

Three members of the SCOQ AP presented to the Council several critical issues they identified in their 2023 Fishery Performance Report. Overall, these topics focused on issues related to fishing access. The first was related to surfclam fishing access in the Great South Channel Habitat Management Area, a gear restricted area developed by the New England Council for habitat protection and to protect areas seasonally when cod are spawning. The Council agreed the SCOQ Committee should discuss this issue later in the year and could consider developing an action item for consideration for inclusion in the Council's 2024 Implementation Plan. Another issue discussed was fishing access related to closures on Georges Bank caused by shellfish biotoxins (i.e., Paralytic Shellfish Poisoning Closed Areas). The Council agreed to send a letter to the Food and Drug Administration requesting feedback on both the status of this area and the process involved in returning the area to an "Open, Controlled Status/Access Area" for the SCOQ fisheries. Lastly, the Council was briefed on several research projects related to climate change, wind energy development, and SCOQ cooccurrence in catches issue, all of which are related to fishing access.

### 2024 Butterfish Specifications

The Council reviewed the previously-set 2024 butterfish specifications, which would reduce the butterfish commercial quota by 12.7% next year based on projections from the last assessment. After reviewing recent biological data, fishery performance, and recommendations from staff, an Advisory Panel, and the Scientific and Statistical Committee, the Council decided to maintain the previously-set 2024 specifications. Landings in recent years have been well below the planned 2024 quota, so fishery participants could still increase landings despite the somewhat lower quota.

### 2024 Chub Mackerel Specifications

After considering the recommendations of the SSC, Monitoring Committee, and Advisory Panel, the Council agreed that no changes are needed to the previously implemented 2024 specifications for chub mackerel. These specifications have remained unchanged since they were first implemented in 2020. The total allowable landings limit for 2024 will remain at 4.50 million pounds, which is well above recent landings.

## Monkfish and Dogfish Joint Framework to Reduce the Bycatch of Atlantic Sturgeon

The Council reviewed FMAT/PDT, Advisory Panel, and Committee feedback and recommendations on the range of alternatives to be considered for the Joint Framework to reduce the bycatch of Atlantic Sturgeon. This joint action with the New England Fishery Management Council (NEFMC) was initiated in response to recommendations made by the Atlantic Sturgeon Bycatch Working Group, as described in the Action Plan to Reduce Atlantic Sturgeon Bycatch in Federal Large Mesh Gillnet Fisheries.

The NMFS Regional Administrator shared a previously unknown finding that the amount of sturgeon caught in the gillnet fishery in the most recent 5-year period had exceeded the allowed levels under the Endangered Species Act (ESA). This overage triggers a new Biological Opinion (BiOp) that will address sturgeon bycatch in gillnet fisheries. The new BiOp will be developed alongside this action; however, the outcomes and timeline are unknown, and the Council will still be held to the timeline of the previous BiOp (2024).

The Council discussed the range of alternatives and recommended that (1) dogfish remain in the framework action, and (2) the dogfish and monkfish committee should further discuss alternatives related to soak time restrictions and 10-minute square areas with new information provided by enforcement. The NEFMC will discuss the range of alternatives at their June 27-29 Council Meeting.

## Unmanaged Commercial Landings Report

The Council reviewed a report on commercial landings from Maine through North Carolina of species that are not managed at the state or federal level, as well as commercial landings of the species designated as Ecosystem Components through the Council's Unmanaged Forage Omnibus Amendment. The goal of this report is to look for signs of developing fisheries for unmanaged species or Forage Amendment species. Striped mullet were highlighted as a species with increasing landings in recent years. Most of these landings occur in North Carolina. It was noted that North Carolina is in the process of implementing season restrictions for this species. Atlantic silversides were discussed as an example of a species with very low but increasing landings. The Council did not express concern about the levels of landings shown in the report for any species; however, they noted that they have not determined threshold levels of landings which would trigger further evaluation and potential consideration for management. They agreed that the Ecosystem and Ocean Planning Committee should further discuss this topic.

## Council Statement of Organization Practices and Procedures and Harassment Prevention Policies

The Council adopted two new harassment prevention policies developed by NMFS. The Council staff policy addresses situations where the employee is the alleged victim, and the Council process participant policy provides guidance on addressing allegations of harassment experienced by participants in the Council process other than staff (e.g., Council members, AP members, SSC members, consultants, etc.). Both policies will be added as attachments to the Council's Statement of Organization Practices and Procedures (SOPP). The Council also approved several other revisions to the SOPP. In Section 2.4.2 (Nominations), the Council agreed to remove the requirement for the Nominating Committee to nominate at least two candidates for each office. In Section 2.4.3 (Elections), the Council approved new language which defines the procedure for addressing stalemates during Council elections of Chair and Vice-Chair. In Section 4.4.4 (Incentive/Special Act and Service Awards), the Council approved a proposal to change the limit on cash awards to 10 percent of the employee's base salary. The revised SOPP will be available on the Council's website in late June.

## Offshore Wind Updates

The Council received updates on offshore wind energy development from the Bureau of Ocean Energy Management, NOAA Fisheries, and a state working group which is seeking to establish a regional third-party

administrator for fisheries compensation funds. The Council also received updates on the South Fork and Vineyard Wind projects, which are currently in construction, as well as the Coastal Virginia Offshore Wind Project, which is in the planning stages. Lastly, the Council received an update on coordination among six developers with projects off New Jersey and New York, which are in the early planning stages.

### Advanced Notice of Proposed Rulemaking: National Standard 4, 8, and 9 Guidelines

Dr. Tara Scott (NOAA Office of Sustainable Fisheries) briefed the Council on an Advance Notice of Proposed Rulemaking (ANPR) to potentially update the guidelines for National Standard 4 (allocations), National Standard 8 (communities), and National Standard 9 (bycatch). NOAA Fisheries is considering whether revisions to these guidelines are needed in light of ongoing fishery management challenges, with a focus on changing environmental conditions and equity and environmental justice concerns. Dr. Scott reviewed these issues and highlighted specific questions and concerns that NOAA Fisheries is requesting input on relative to each National Standard. The Council provided some initial comments and directed staff to begin development of a draft comment letter for discussion at the August Council meeting. Executive Director Moore expressed concern about the September 12 comment deadline, noting that the Council Coordination Committee (CCC) had recently passed a motion requesting that the deadline be extended to allow for adequate deliberation and development of comments. Additional information and instructions for submitting comments are available in the [Federal Register notice](#).

### 2024-2028 Regional Strategic Plan

The Council received a presentation from Mike Pentony (Greater Atlantic Regional Administrator) on the Draft New England and Mid-Atlantic Geographic Strategic Plan for 2024-2028. The plan was developed by the Greater Atlantic Regional Fisheries Office (GARFO) and the Northeast Fisheries Science Center (NEFSC) and is based on the NMFS national strategic plan's vision, mission, and strategic goals. Council input on the plan is being sought by the end of July. The Council agreed to review the plan in detail and submit comments if appropriate. Mr. Pentony noted that they intend to publish the final strategic plan by October 1, 2023.

### Highly Migratory Species (HMS) Update

Karyl Brewster-Geisz (NOAA Fisheries Atlantic HMS Management Division) presented an update on recent and ongoing HMS management initiatives including the proposed rule for Amendment 15 (spatial management and electronic monitoring), and Advance Notice of Proposed Rulemaking: Electronic Reporting Requirements for HMS, and scoping for Amendment 16 (shark management issues). Following the presentation, the Council agreed to schedule an HMS Committee meeting to develop comments on these recent management initiatives as they will likely impact the Mid-Atlantic region and Council stakeholders.

### Ecosystem and Ocean Planning Committee

The Council received an update on recent activities of the Ecosystem and Ocean Planning (EOP) Committee and Advisory Panel (AP):

EAFM Risk Assessment: The first update covered the EOP Committee and AP's comprehensive review of the Ecosystem Approach to Fisheries Management (EAFM) risk assessment. The Committee and AP met in April to review existing and potentially new risk elements. The Committee and AP provided feedback on nearly 50 different risk elements that are intended to track risks to meet the Council's management objectives. The EOP Committee and AP are scheduled to meet in July to continue the review with a focus on indicators and risk ranking criteria.

EFP Review Process for Forage Amendment Species: The second update described the EOP Committee and AP's recent progress on development of a policy/process for reviewing exempted fishing permit (EFP) applications for species designated as "ecosystem components" under the Council's Unmanaged Forage Omnibus Amendment.

Based on the recommendations and guidance provided, staff will develop a draft policy/process for the EOP AP and Committee to review in September. The Council will then consider adopting a policy/process in October.

## Other Business

### **2025 Meetings**

The Council reviewed a proposed meeting schedule for 2025, which includes a one-day virtual meeting in February instead of the usual in-person meeting. The Executive Director noted that the February meeting often has a lighter agenda due to the timing of specification-setting and other activities that occur later in the year. Council members endorsed the proposal and offered a number of comments and recommendations. Several members noted that the use of virtual Council meetings should be limited and that important Council decisions should only be made during in-person meetings.

### **NMFS Climate Governance Policy**

The Council briefly discussed the draft “[Fisheries Climate Governance Policy](#)” recently released by NOAA Fisheries. This draft policy is intended to provide guidance on Council authority for stocks that may extend across the geographic area of more than one Council, pursuant to §304(f) of the Magnuson Stevens Act. As it is currently written, the policy could result in reassignment of management authority for a number of Council-managed fisheries. Council members and members of the public expressed serious concerns about the potential implications of the policy for Mid-Atlantic fisheries and stakeholders. The Executive Director reviewed a draft timeline and a proposed process for development of Council comments. The Council’s SSC will meet via webinar in July to discuss and provide feedback on the draft policy. A more in-depth discussion on this topic is planned for the August Council Meeting.

### **Black Sea Bass Commercial State Allocation Amendment**

The Council discussed a [letter](#) submitted by the Council Chair to the Greater Atlantic Regional Fisheries Office regarding the agency’s potential partial disapproval of Amendment 23 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). The [Notice of Availability \(NOA\)](#) and [Proposed Rule](#) for the amendment indicate the agency is considering disapproving the part of the amendment which would add the commercial black sea bass state allocations to the Council’s FMP. The Executive Director noted a number of concerns related to the possible disapproval and several Council members reiterated their support for the statements made in the letter. Comments on the Notice of Availability are due July 3, 2023.

### **SHIFT Act**

The Executive Director noted that he had received a request for Council input on a draft bill, titled “Supporting Healthy Interstate Fisheries in Transition (SHIFT) Act,” which is being developed by Senator Richard Blumenthal’s office. This bill proposes a process for designating Council jurisdiction for cross-jurisdictional stocks and revises the procedures for authorization of a new fishery or gear type.

## Next Meeting

The next Council meeting will be held **August 8-11, in Annapolis, Maryland**. A complete list of upcoming meetings can be found at <https://www.mafmc.org/council-events>.



# South Atlantic Fishery Management Council

## News Release

FOR IMMEDIATE RELEASE  
June 16, 2023

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### **Federal Fishery Managers Move Forward with Measures for Atlantic Spanish Mackerel**

*Port meetings planned to get input from mackerel fisheries along the Atlantic coast*

The South Atlantic Fishery Management Council is considering action to modify catch levels for Atlantic Spanish Mackerel following the latest stock assessment indicating the stock is neither overfished nor undergoing overfishing. The decision was made as Council members convened this week in St. Augustine, Florida to address a wide variety of federal fishery management issues.

Atlantic Spanish Mackerel are managed from the east coast of Florida northward through New York. These widespread coastal pelagics are popular with both recreational and commercial fishermen, targeted for their pleasant, mild flavor and sometimes used as bait for larger pelagic species. Based on recommendations from its Scientific and Statistical Committee, the Council agreed to develop a Framework Amendment to the Coastal Migratory Pelagics Fishery Management Plan for the Gulf of Mexico and Atlantic Regions to adjust the Acceptable Biological Catch (ABC) for Atlantic Spanish Mackerel. The Framework Amendment will adopt the recent ABC recommendation of 8,024,000 pounds whole weight. The stock is allocated 55% commercially and 45% recreationally, with the commercial fishery divided into two management zones – the Northern Zone extending from the NC/SC state line to the NY/CT/RI state line, and the Southern Zone from the NC/SC state line south to the Miami-Dade/Monroe County line in Florida. Each zone has its own quota and set of regulations. Landings primarily come from North Carolina in the Northern Zone and from Florida in the Southern Zone.

#### **Mackerel Port Meetings**

Both Spanish Mackerel and King Mackerel are managed through the Coastal Migratory Pelagics Fishery Management Plan for the Gulf of Mexico and Atlantic Regions and constitute the most economically valuable commercial fishery in the South Atlantic. Based on recommendations from its Mackerel Cobia Advisory Panel, the Council plans to conduct port meetings for the King and Spanish Mackerel fisheries in 2024 to gain a comprehensive understanding to improve management efforts. The Council reviewed a planning document for the port meetings with the intent they be held in key fishing communities along the coast. The Council will coordinate with other councils, the Atlantic States Marine Fisheries Commission, and state partners to plan the meetings. The meetings will be open to members of the public and publicized as details become available.

#### **King Mackerel Tournament Landings**

At the request of the Council, NOAA Fisheries provided information on King Mackerel tournament landings over the past ten years and how those landings were accounted for against the annual catch limit. The information included each state's process for permitting King and Spanish Mackerel tournaments and the

*(Continued)*



tracking of tournament fish that may be donated to a state or federal dealer who then donates the monetary value from the sale to a charitable organization. Concerns have been expressed that tournament landings may be subtracted from commercial sector allocations. Council members also received public comment during this week's meeting from commercial fishermen concerned that the sale of tournament-caught fish impacts the market price for King Mackerel. The Council's Mackerel Cobia Advisory Panel will discuss the topic during its Fall 2023 meeting.

### **Other Business**

The Council received the results of the latest stock assessment for Black Sea Bass, indicating the South Atlantic stock is both overfished and undergoing overfishing. The stock has rapidly declined since 2014 and fishing mortality has increased since 2000, with recreational landings and releases estimated to account for 90% of the mortality. The Council's SSC will review stock projections during its July 2023 meeting and catch level recommendations may be available later this year. Reductions in harvest are expected.

To help improve recreational data collection, the Council continued to discuss options to establish a private recreational permit for the snapper grouper fishery. Recommendations from the Council's technical advisory panel were considered and will be incorporated into Snapper Grouper Amendment 46 addressing the permit requirements. Options for an educational component are also included in the draft amendment. Work will continue during the Council's September meeting and public hearings are tentatively planned for early 2024.

The Council received an update on the ongoing management strategy evaluation (MSE) for the Dolphin fishery being conducted by NOAA Fisheries Southeast Fisheries Science Center, as well as proposed changes to Dolphin management measures proposed by the Caribbean Fishery Management Council. After discussing the timing for the Dolphin MSE, expected to be completed in 2024, the Council agreed to delay further development of Dolphin Wahoo Regulatory Amendment 3 addressing changes to bag limits, vessel limits and expansion of minimum size limits until the MSE is completed. The Council will receive updates on the MSE during upcoming meetings.

Information about the June 2023 Council meeting, including committee reports and other meeting materials, is available from the Council's website at: <https://safmc.net/events/june-2023-council-meeting/>. Online versions of news releases from the Council office are available at: <https://safmc.net/news/>.

The next meeting of the South Atlantic Fishery Management Council is scheduled for September 11–15, 2023 at the Town and Country Inn in Charleston, South Carolina.

**The South Atlantic Fishery Management Council, one of eight regional councils, conserves and manages fish stocks from three to 200 miles offshore of North Carolina, South Carolina, Georgia and east Florida.**

**South Atlantic Fishery Management Council**  
**Full Council and Committee**  
**SUMMARY MOTIONS**  
**June 12-16, 2023**

This is a summary of the motions approved by the Council. Motions addressing actions and alternatives for FMP amendments are followed by text showing the result of the approved motion. Complete details on motions and other committee recommendations are provided in the Committee Reports available on the SAFMC website.

**Full Council Session I (Closed)**

**MOTION 1:** MOVE TO DISCONTINUE RECORDING OF CLOSED SESSION DISCUSSIONS.

**MOTION 2:** APPOINT THE FOLLOWING INDIVIDUALS TO THE SMP WORKGROUP AND ADVISORY PANELS.

**SMP Workgroup**

APPOINT JOT OWENS TO THE NC RECREATIONAL SEAT ON THE SMP WORKGROUP.

**Habitat Protection and Ecosystem-Based Management AP**

APPOINT DR. BRENDAN RUNDE (NC CONSERVATION/NGO) TO THE HABITAT AP.

REAPPOINT JEFF SOSS (SC CHARTER) TO THE HABITAT AP AND REAPPOINT THOMAS JONES (GA RECREATIONAL) FOR A ONE-YEAR TERM ON THE AP.

**Law Enforcement AP**

APPOINT TRACY DUNN (NEW OPEN SEAT) AND JOSHUA BURTON (SC RECREATIONAL) TO THE LAW ENFORCEMENT AP.

**Mackerel Cobia AP**

APPOINT KEVIN AMAN (NC REC/RESEARCH) AND EDWARD OLSEN (FL COMMERCIAL) TO THE MACKEREL COBIA AP.

**Shrimp AP**

APPOINT NANCY JONES (FL COMMERCIAL), JODY SHIRLEY (FL COMMERCIAL), TIM WILLIS (NC SCIENTIST), AND STEPHEN MORRISON (GA COMMERCIAL) TO THE SHRIMP AP.

**Snapper Grouper AP**

REAPPOINT VINCENT BONURA (FL COMMERCIAL), ANDREW FISH (FL COMMERCIAL), CHRIS MILLITELLO (FL RECREATIONAL), JACK COX (NC COMMERCIAL), ROBERT FREEMAN (NC CHARTER), CHRIS KIMREY (NC CHARTER), TONY CONSTANT (SC CHARTER), AND HARRY MORALES (SC RECREATIONAL) TO THE SNAPPER GROUPE AP.

APPOINT CHRIS CONKLIN (SC COMMERCIAL), JOE MATHEWS (GA RECREATIONAL), ROBERT HALLETT (FL RECREATIONAL) AND JOHN POLSTON (FL COMMERCIAL) TO THE SNAPPER GROUPE AP.

**MOTION 3:** APPOINT KATHY KNOWLTON TO THE RECREATIONAL PERMITTING ADVISORY PANEL.

**MOTION 4:** APPROVE THE STRUCTURE OF THE WRECKFISH AP AS FOLLOWS WITH THE ADDITION OF A SEAT REPRESENTING A DEALER. APPROVE THE GOLDEN CRAB AP AS PRESENTED:

Wreckfish Advisory Panel:

- All current ITQ members (8 seats now but could expand with new entrants into the fishery)
- 1 commercial snapper grouper fisherman (non-ITQ, possible SG AP member)
- 1 recreational snapper grouper fisherman (with deepwater fishing experience)
- 1 law enforcement representative (possible LE AP member)
- Total Seats = 11

Golden Crab Advisory Panel:

- All current permit holders (11 permits currently held by 6 individuals, permit is limited access)
- 2 historical seats for past permit holders (as requested by the Golden Crab AP at their last meeting)
- 1 scientist seat (historically represented – possibly a deepwater coral scientist from Coral AP)
- Total Seats = 9 (max of 14 if permits were spread out)

**MOTION 5:** APPOINT KERRY MARHEFKA AS THE SAFMC REPRESENTATIVE TO THE BOTTLENOSE DOLPHIN TAKE REDUCTION TEAM.

**MOTION 6:** REAPPOINT WALTER BUBLEY (SCDNR), AMY SCHUELLER (NOAA FISHERIES), JIE CAO (NCSU), AND FRED SCHARF (UNC-W) TO THE SSC. APPOINT JASON WALSH TO THE SOCIO-ECONOMIC DESIGNATED SEAT OF THE SSC AND TO THE SEP. APPOINT STEVE TURNER AND CHRISTINA PACKAGE-WARD TO THE SSC.

**MOTION 7:** PRESENT THE LAW ENFORCEMENT OFFICER OF THE YEAR 2022 AWARD TO BOTH NOMINEES (OFFICER JASON DOZIER, SCDNR, AND OFFICER MATT TSIKLISTAS, GA DNR LAW ENFORCEMENT DIVISION).

**MOTION 8:** APPOINT BRENT WINNER TO REPLACE KEVIN THOMPSON AS THE FWC REPRESENTATIVE FOR SEDAR 89.

**MOTION 9:** ACCEPT TIMING AND TASKS:

- Send notification letters to appointees and email notifications to those not selected by June 30, 2023.
- Conduct an orientation of new AP members by the September 2023 SAFMC meeting.
- Advertise for open seats on advisory panels, SSC, and SEP as needed following the September 2023 Council meeting.

**Full Council Session I (Open)**

**MOTION 10:** REQUEST SEFSC STAFF PARTICIPATE IN PUBLIC HEARINGS FOR THE COMMERCIAL ELECTRONIC LOGBOOK AMENDMENT.

**MOTION 11:** APPROVE THE 2023-2027 SAFMC RESEARCH AND MONITORING PLAN, AS MODIFIED.

**Citizen Science Committee**

**MOTION 12:** ADOPT THE CITIZEN SCIENCE PROJECT IDEA PORTAL ONLINE TOOL FOR USE WITH MODIFICATIONS AS SUGGESTED.

**Mackerel Cobia Committee**

**MOTION 13:** DIRECT STAFF TO BEGIN A FRAMEWORK AMENDMENT TO UPDATE ATLANTIC SPANISH MACKEREL CATCH LEVELS BASED ON SEDAR 78 AND SSC RECOMMENDATIONS.

**MOTION 14:** ADOPT THE FOLLOWING TIMING AND TASKS:

1. Begin work on a framework amendment to update Atlantic Spanish mackerel catch levels based on SEDAR 78 and SSC recommendations.
2. Continue development of port meetings including organizing a planning team to facilitate collaboration with other councils and commissions.
3. Convene an in-person meeting of the Mackerel Cobia AP this fall to discuss the topics listed above and note the importance of attendance.

**Dolphin Wahoo Committee**

**MOTION 15:** DELAY DEVELOPMENT OF REGULATORY AMENDMENT 3 UNTIL THE DOLPHIN MSE REPORT IS AVAILABLE OR TO THE DECEMBER 2024 COUNCIL MEETING, WHICHEVER IS EARLIER. REQUEST AN UPDATE ON THE MSE AT THE DECEMBER 2023 AND JUNE 2024 COUNCIL MEETINGS.

**MOTION 16:** ADOPT THE FOLLOWING TIMING AND TASKS:

1. Request that the SEFSC provide an update on the progress of the Dolphin MSE at the December 2023 and June 2024 meetings.
2. Prepare Regulatory Amendment 3 for review at the December 2024 meeting, or an earlier meeting if the Dolphin MSE report is available.
3. Report back to the Council on findings of efforts to collectively manage the dolphin fishery in the western Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico, as well as potential sources of declines in the availability of dolphin.

**Snapper Grouper Committee**

**MOTION 17:** CREATE AN AD HOC WRECKFISH ADVISORY GROUP CONSISTING OF THE CURRENT SHAREHOLDERS FOR THE PURPOSE OF DISCUSSING SNAPPER GROUPE AMENDMENT 48. A WRECKFISH ADVISORY PANEL WILL BE CREATED AS DIRECTED BY THE COUNCIL IN JUNE 2023 THROUGH THE EXISTING AP PROCESS. APPOINTMENTS FOR THIS AP WILL BE MADE IN DECEMBER 2023.

**MOTION 18:** ESTABLISH AN AD HOC COUNCIL WRECKFISH SUB-COMMITTEE TO CONTINUE DEVELOPMENT OF AMENDMENT 48. THE WRECKFISH SUB-COMMITTEE WILL REPORT TO THE SNAPPER GROUPER COMMITTEE DURING REGULARLY SCHEDULED MEETINGS.

**MOTION 19:** APPROVE AMENDMENT 55 (SCAMP/YELLOWMOUTH) FOR SCOPING.

**MOTION 20:** INITIATE AN AMENDMENT PROCESS FOR THE BLACK SEA BASS FISHERY TO RESPOND TO THE SEDAR 76 STOCK ASSESSMENT.

**MOTION 21:** APPROVE THE PURPOSE AND NEED STATEMENTS, AS MODIFIED, FOR INCLUSION IN AMENDMENT 46 (PRIVATE RECREATIONAL PERMITTING).

The *purpose* is to develop a recreational permitting system that ~~would~~ **WILL** better identify the universe of private anglers or vessels targeting South Atlantic snapper grouper species and ~~would~~ **WILL** enhance the ability to collect recreational effort and catch data. Also work to promote best recreational fishing practices through education.

The *need* for the amendment is to improve ~~education on best fishing practices and~~ the quality of effort and catch data for the private component of the recreational sector that targets South Atlantic snapper grouper species, while minimizing, to the extent practicable, adverse social and economic effects. **ALSO IMPROVE EDUCATION ON BEST FISHING PRACTICES.**

**MOTION 22:** APPROVE THE ACTIONS AND ALTERNATIVES, AS MODIFIED, FOR INCLUSION IN AMENDMENT 46 (PRIVATE RECREATIONAL PERMITTING).

**MOTION 23:** EVALUATE CHANGING THE WAY THE COUNCIL APPLIES ALLOCATION PERCENTAGES TO THE ABC IN CALCULATING SECTOR ACLS. ALLOCATE TOTAL REMOVALS AND SUBTRACT SECTOR-SPECIFIC DEAD DISCARDS TO PROVIDE SECTOR ACLS.

**MOTION 24:** DIRECT STAFF TO DO THE FOLLOWING:

- Begin development of an amendment responding to SEDAR 76 (black sea bass).
- Create an Ad-Hoc Wreckfish Advisory Group comprised of current wreckfish ITQ shareholders and create an Ad-Hoc Wreckfish Committee to discuss SG Amendment 48. Convene a meeting of both groups prior to the September 2023 Council meeting.
- Conduct scoping hearings for Amendment 55 (Scamp/Yellowmouth).
- Continue developing Amendment 46 (Private Recreational Permitting) for review at the September 2023 meeting.
- Convene the next meeting of the Snapper Grouper Recreational Permitting and Reporting Technical Advisory Panel.
- Prepare a SG Amendment 44/RF Amendment 55 (Yellowtail Snapper) document in preparation for the Council to select preferred alternatives and approve for public hearings in September 2023.
- Ask staff to send letter to USCG to obtain cumulative information on the launch security zones related to space activities.



ROY COOPER  
*Governor*

ELIZABETH S. BISER  
*Secretary*

KATHY B. RAWLS  
*Director*

August 1, 2023

## MEMORANDUM

**TO:** N.C. Marine Fisheries Commission  
**FROM:** Col. Carter Witten  
**SUBJECT:** Law Enforcement Report

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### Issue

Quarterly update on Marine Patrol law enforcement activities.

### Action Needed

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

### Overview

Marine Patrol officers have had a busy summer fishing season this year. In addition, we've hired new officers, continued our mandated and specialized officer training, and had a number of education and outreach opportunities both on the water and off. Increasing workload and staffing challenges continues to emphasize the need for additional officers and support staff.

We are also proud to announce that Officer Zac Nelson has been named Marine Patrol's 2023 Officer of the Year. Officer Nelson earned this recognition because of his exemplary work ethic along with his academic achievements. He earned his Advanced Law Enforcement Certificate earlier this year and is also a recent Emergency Medical Technician (EMT) graduate. In addition to Officer Nelson, Officer Kyle Purvis also recently graduated as an EMT. Other training achievements include Officer Neil Kendrick, Sgt. Nick Mobley and Sgt. Jason Parker, who all completed a 120-hour Leadership in Police Organizations course in July.

The Marine Patrol hired six new officers in July. Three of these new hires are already certified law enforcement officers and have begun their field training this month. The remaining three new hires have begun attending Basic Law Enforcement Training (BLET) programs this month. These students will complete their training over an approximately four month period and are expected to begin their field training around January 2024. Based on this timeline, they are expected to complete all training and be patrolling on their own around June 2024.

These hours of education and training are earned above and beyond the mandated training required of every officer annually. Our officers' commitment to attaining excellence through education and training is highly commendable and we are very proud of their efforts.

While the men and women who serve as North Carolina Marine Patrol officers continue to impress and excel, it is important to acknowledge that as an agency we are facing significant enforcement challenges because of increasing workload without a reciprocal increase in the number of officers available to undertake that workload. For example, the number of officers has not increased despite the implementation of the Coastal Recreational Fishing License, significant increases in aquacultural activities, and taking on responsibility for enforcement of Shellfish Sanitation rules. To continue to successfully protect the marine and estuarine resources of North Carolina it is essential that consideration be given to increasing the number of officers as law enforcement responsibilities continue to grow.



ROY COOPER  
*Governor*

ELIZABETH S. BISER  
*Secretary*

KATHY B. RAWLS  
*Director*

July 28, 2023

## MEMORANDUM

**TO:** N.C. Marine Fisheries Commission

**FROM:** Barbie Byrd, Biologist Supervisor  
Protected Resources Program, Fisheries Management Section

**SUBJECT:** Protected Resources Program Update

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### Issues

Summary information is provided from the Division of Marine Fisheries (hereafter the Division) Protected Resources Program for observer program activities during spring (March–May). Seasonal reports to National Marine Fisheries Service (NMFS) are required for the Sea Turtle Incidental Take Permit (ITP) and monthly reports, if there is an observed take, are required for the Atlantic Sturgeon ITP.

The Division continues to provide additional information to NMFS as they complete the draft Environmental Assessment for the ITP renewal application. The revised ITP application and NMFS' response to public comments should be made publicly available when the draft Environmental Assessment is published later this year. Separately, NMFS will initiate an Endangered Species Act (ESA) Section 7 consultation, which is an interagency process "...designed to assist federal agencies in fulfilling their duty to ensure any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat" (<https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-consultations-greater-atlantic-region>). If NMFS renews the ITP, they will publish the final Environmental Assessment and Section 7 Biological Opinion upon issuance of the ITP (<https://www.ecfr.gov/current/title-50/chapter-II/subchapter-C/part-222/subpart-C/section-222.307>). The current sea turtle ITP expires at the end of August 2023. If the renewed ITP is not received by September 1, 2023, indications thus far are that the Division would be able to continue operating under the expired sea turtle ITP while the renewal ITP application is under review.

The Division continues to coordinate with NC Department of Information Technology to develop the Observer Trip Scheduling System (OTSS) whereby fishermen would call an automated system to report upcoming fishing activities and some portion of the fishermen will be randomly selected to take an observer. All fishermen that call in for a given week will be alerted to whether or not they have been selected through an automated system (i.e., phone call, text message, and/or email). The target date to begin testing the system is late fall 2023. Public information meetings and trainings will occur before the OTSS is fully implemented. The OTSS should ensure that ITP



observer coverage requirements are met and that the observer coverage is distributed evenly among participants and representative of the fishery.

### **Action Needed**

For informational purposes only; **no action is needed at this time.**

### **Overview of the ITP reports**

During spring 2023, estimated observer coverage of anchored large-mesh gill nets met the required 7% threshold in Management Unit A, but not for Management Unit C (Table 1). No other management units were open to anchored large-mesh gill nets. After numerous phone calls and No-Contact trips, observers and Marine Patrol were unable to schedule trips or locate large-mesh gill-net fishing effort on the water in Management Unit C. Therefore, the management unit was closed to large-mesh gill nets on March 31 to ensure ITP compliance (Proc. M-7-2023).

Estimated observer coverage of the small-mesh gill-net fishery met or exceeded 1% in all management units except D1 and E (Table 2). While effort was found and observed in MUs A, B, and C, staff were unable to locate small-mesh gill-net effort in Management Units D1, D2, and E. To ensure compliance with the ITP, several management actions were enacted. On April 28, 2023, Management Units D1 and D2 were closed to anchored gill nets (Proc. M-9-2023). Three fishermen contacted staff about the MU D2 closure and agreed to arrange observed trips if the management unit was reopened. Therefore, on May 8 (Proc. M-12-2023), MU D2 was reopened. No fishermen reached out to the Division about Management Unit D1; thus, it was not considered for reopening. Finally, Management Unit E was closed on May 26 (Proc. M-13-2023) and remains closed.

Observers and Marine Patrol officers logged 317 unsuccessful attempts to find and observe anchored gill-net effort (i.e., No-Contact trips) during spring 2023 (Table 3). The No-Contact trips in MUs C, D1, D2, and E highlight the efforts to find fishing activity before the decision was made to close these areas to anchored large-mesh or small-mesh gill nets.

During spring 2023, 780 phone calls or in-person contacts were made with 41% (n=327) representing occasions where observers and fishers spoke to each other (Table 4). Of the 327 conversations, 47 of them (14%) were a result of fishers returning or initiating phone calls. Nevertheless, only 4% (n=31) of the 780 contacts resulted in a booked trip.

During spring, there were no observed sea turtle interactions. However, observers documented incidental takes of three Atlantic sturgeon and one sturgeon that could not be identified to species (Table 4). All three Atlantic sturgeon takes occurred in small-mesh gill nets set in Management Unit B. The unidentified sturgeon fell out of a large-mesh gill net in Management Unit A before species identification could occur. Incidental takes of sturgeon occurred in March and April; therefore, no monthly report for NMFS was needed for May.

The final documents can be found at the following links:

Spring 2023 Seasonal Sea Turtle ITP Report

March 2023 Monthly Atlantic Sturgeon ITP Report

April 2023 Monthly Atlantic Sturgeon ITP Report

**Table 1.** For estuarine anchored large-mesh gill nets, estimated percent observer coverage calculated from observed trips (>4 inch) and estimated fishing trips using Trip Ticket Program data (>5 inch) by management unit during March–May 2023 (spring) of ITP Year 2023. Management Units B, D1, D2, and E were closed in all spring months. Management Unit A was open March 2–17 and Management Unit C was open March 1–31.

Management Unit	Estimated Fishing Trips	Observed Trips	Percent Observer Coverage
A	695	58	8.3
B	closed	closed	closed
C	8	0	0
D1	closed	closed	closed
D2	closed	closed	closed
E	closed	closed	closed
Total	703	58	8.3

**Table 2.** For estuarine anchored small-mesh gill nets, estimated percent observer coverage calculated from observed trips (<4 inch) and estimated fishing trips using Trip Ticket Program data (<5 inch) by management unit during March–May 2023 (spring) of ITP Year 2023. Management Units D1 and D2 were closed on April 28; Management Unit D2 was reopened on May 8 and management Unit E was closed on May 26.

Management Unit	Estimated Fishing Trips	Observed Trips	Percent Observer Coverage
A	622	20	3.2
B	1,503	22	1.5
C	172	5	2.9
D1	28	0	0.0
D2	12	3	25.0
E	108	1	0.9
Total	2,445	51	2.1

**Table 3.** Number of “No-Contact” trips by management unit completed by Marine Patrol and observers during spring (March–May) 2023 for Incidental Take Permit Year 2023. “No Contact” refers to unsuccessful attempts to find and observe anchored gill-net effort.

Management Unit	Marine Patrol No-Contact Trips	Observer No-Contact Trips	Total No-Contact Trips
A	62	9	71
B	7	3	10
C	63	4	67
D1	8	5	13
D2	19	7	26
E	130	0	130
Total	289	28	317

**Table 4.** Summary of observed Atlantic Sturgeon (AS, n=3) and unidentified sturgeon (US, n=1) interactions in estuarine anchored gill nets during spring 2023 for ITP Year 2023. Mesh-size categories are large ( $\geq 5$  inches stretched mesh) and small ( $< 5$  inches stretched mesh). MU=Management Unit. NR=not recorded

Date	MU	Latitude (N)	Longitude (W)	Mesh- size Category	Species	Disposition	Total Length (mm)	Fork Length (mm)
3/16/2023	A	36.17990	-76.74974	Large	US	Alive	NR	NR
3/28/2023	B	35.50172	-75.51722	Small	AS	Dead	NR	402
4/11/2023	B	35.52866	-75.51001	Small	AS	Alive	NR	688
4/12/2023	B	35.53209	-75.50763	Small	AS	Alive	NR	NR

2023 Spring Seasonal Progress Report  
for Activities under Endangered Species Act  
Section 10 Incidental Take Permit No. 16230  
March 1–May 31, 2023  
ITP Year 2023



Dave Ushakow and Barbie L. Byrd  
North Carolina Department of Environmental Quality  
North Carolina Division of Marine Fisheries  
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June 2023

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## SUMMARY

This report summarizes activities of the North Carolina Division of Marine Fisheries (NCDMF) Observer Program during March–May 2023 (i.e., spring) of the Incidental Take Permit (ITP) Year 2023 (September 1, 2022–August 31, 2023) for ITP No. 16230. Throughout this document, all references to gill nets are for estuarine anchored gill nets only unless stated otherwise. Mesh-size categories for gill nets are large-mesh, defined as  $\geq 4$  inches stretched mesh (ISM), and small-mesh, defined as  $< 4$  ISM. Finally, data used in this seasonal report are preliminary and subject to change.

During spring 2023, the ITP Management Units (MU) were subject to a variety of restrictions on gill-net fishing activity (Table 1). The only large-mesh gill-net fishery open during spring was the American Shad (*Alosa sapidissima*) fishery in MUs A and C. Most of MU A was opened to large-mesh gill nets on March 2; the lower Chowan River and western Albemarle Sound portions remained closed to all gill nets (Proclamation [Proc.] M-5-2023).

With the exception of an area within far-western Albemarle Sound, Management Unit A opened March 2 (Proclamation [Proc.] M-5-2023; Figure 1); however, On March 17 (Proc. M-6-2023), the remainder of MU A was closed to large-mesh gill nets to prevent the quota of Striped Bass (*Morone saxatilis*), a desirable bycatch species, from being exceeded. All gill nets were prohibited in the lower Chowan River and western Albemarle Sound. The lower portions of Management Unit C opened February 15 (Proc. M-6-2019 & M-4-2023). However, after numerous phone calls and No-Contact trips, observers and Marine Patrol were unable to schedule trips or locate large-mesh gill-net fishing effort on the water. Therefore, MU C was closed to large-mesh gill nets on March 31 to ensure ITP compliance (Proc. M-7-2023). No other MU was open to large-mesh gill nets during spring.

The small-mesh gill-net fishery was open statewide at the beginning of spring. However, while effort was found and observed in MUs A, B, and C, staff were unable to locate small-mesh gill-net effort in MUs D1, D2, and E. To ensure compliance with the ITP, several management actions were enacted. On April 28, 2023, MUs D1 and D2 were closed to anchored gill nets (Proc. M-9-2023). While MU D1 remains closed, three fishermen contacted staff about the MU D2 closure and agreed to arrange observed trips if the MU was reopened. Therefore, on May 8 (Proc. M-12-2023), MU D2 was reopened. Finally, MU E was closed on May 26 (Proc. M-13-2023) and remains closed.

Prior to the start of the spring season, the Observer Program projected the number of observed trips by mesh-size category, month, and MU needed to meet the coverage levels required by the ITP. For the small-mesh gill-net fishery, this projection was accomplished by calculating 2% of the average number of fishing trips reported to the Trip Ticket Program by month and MU from the previous five years, 2017–2022. Large-mesh effort projection methodology, however, differed due to the previously mentioned regulatory changes within the fishery. For MU A, estimated observed trip coverage was calculated as 10% of mean daily reported trips that occurred during the spring large-mesh gill-net seasons since the reduction of the Striped Bass TAL, 2021 and 2022. Coverage goals for MU C were estimated similarly, using data from 2020–2022.



During spring, DMF staff conducted 58 large-mesh and 51 small-mesh gill-net observations (Table 2 Table 3; Figure 2). Estimated observer coverage of the large-mesh gill-net fishery exceeded the 7% target in MU A. As previously mentioned, no effort was located in MU C, which led to the closure on March 31. Estimated observer coverage of the small-mesh gill-net fishery exceeded 1% in all MUs except D1, where no small-mesh gill-net trips were found, and MU E, where only one small-mesh gill-net trip was found. The lack of observed gill-net effort in both MUs prompted the previously mentioned closures.

Observers and Marine Patrol officers logged 317 unsuccessful attempts to find and observe anchored gill-net effort (i.e., No-Contact trips) during spring 2023 (Table 4. Summary of “No-Contact” trips by management unit completed by Marine Patrol and observers during March–May 2023 (spring) of ITP Year 2023. “No Contact” refers to unsuccessful attempts to find and observe anchored gill-net effort.). The No-Contact trips in MUs C, D1, D2, and E highlight the efforts to find fishing activity before the decision was made to close these areas to anchored large-mesh or small-mesh gill nets.

There were no observed sea turtle interactions during spring 2023 (Table 5).

In addition to alternative platform trips, observers attempt to locate trips through other methods. Initially, observers attempt to contact fishermen via phone using a contact list of current Estuarine Gill Net Permit (EGNP) holders, prioritizing those who have reported gill-net landings over the previous three years. If observers fail to schedule a trip in advance through phone calls, observers scout for fishermen at boat ramps and attempt to organize impromptu on-board observations. Fishermen contacts and contact attempts are then logged in a database. For each contact or contact attempt, responses are categorized and recorded as one of 15 response categories (Table 6; Figure 3. Contact attempts ( $n=780$ ) during March–May 2023 (spring) to schedule trips. Contact response categories include the following: 1) Left message with someone else; 2) Not fishing general; 3) Fishing other gear; 4) Not fishing because of weather; 5) Not fishing because of boat issues; 6) Not fishing because of medical issues; 7) Booked trip; 8) Hung up, got angry, trip refused; 9) Call back later time/date; 10) Saw in person; 11) Disconnected; 12) Wrong number; 13) No answer; 14) No answer, left voicemail; 15) Not fishing because of natural disaster (e.g., hurricane). Contact responses are stratified by occasions when observers initiated a successful contact (light green), when the observer initiated an unsuccessful contact (dark green), when the fisherman returned an observer’s call (light blue), and when the fisherman initiated contact (dark blue).). During spring 2023, 780 phone calls or in-person contacts were made with 41% ( $n=327$ ) representing occasions where observers and fishers spoke to each other. Of the 327 conversations, 47 of them (14%) were a result of fishers returning or initiating phone calls. Nevertheless, only 4% ( $n=31$ ) of the 780 contacts resulted in a booked trip. For three contacts, the callee was angry at being contacted, but did not outright refuse a trip.

As a condition of the EGNP, fishermen are required to provide current contact information so that observers can schedule trips. Additionally, fishermen are required to update their contact information within 14 days if there is a change. During spring, observers began to closely track contact attempts that ended in a disconnected number and they made a second contact attempt after 14 days. If the number was still disconnected on the second attempt, a Notice of Violation (NOV) was initiated. A NOV is the NCDMF’s administrative process to suspend a permit and is initiated

by an officer or other division employee when a permit holder is found to be in violation of general or specific permit conditions.

As part of their regular duties, Marine Patrol officers monitor fishing activity to ensure regulatory compliance. When Marine Patrol officers find gear or fishing practices to be out of compliance, they can issue either Citations, NOVs, or both. A citation is an enforcement action taken by a Marine Patrol officer for person(s) found to be in violation of general statutes, rules, or proclamations under the authority of the North Carolina Marine Fisheries Commission and is considered a proceeding for district court. A citation and an NOV may both be initiated by the same permit condition violation; however, they are two separate actions. For this report, NOVs or citations associated with gill-net activities or the ENGP (database codes “NETG” and “EGNP”) were compiled. The NCDMF issued four citations (Table 7) and 11 NOVs for anchored gill nets during spring 2023 (Table 8). Some of the suspensions were stopped, due to the fact that after the fisherman was served a Notice of Intent, they complied with all permit conditions, and it was their first violation of these permit conditions.

## TABLES

**Table 1.** Proclamations (Proc.) issued affecting anchored gill-net fisheries during March–May 2023 (spring).

Effective Date	Proc. Number	Regulation change
1/1/2023	<a href="#">FF-8-2023</a>	This proclamation sets the 2023 commercial and recreational seasons and harvest restrictions for the taking of American shad and hickory shad in Coastal and Joint Fishing waters.
1/1/2023	<a href="#">M-2-2023</a>	This proclamation supersedes proclamation M-26-2022 dated November 29, 2022. In Management Unit A, it is unlawful to use fixed or stationary gill nets with a stretched mesh length other than 3 ¼ inches. It maintains the exempted portion of Management Unit A that allows the use of run-around, strike, and drop gill nets with a stretched mesh length of 5 ½ inches through 6 ½ inches to harvest blue catfish.
1/13/2023	<a href="#">M-3-2023</a>	This proclamation supersedes proclamation M-25-2022 dated November 4, 2022. It opens Management Unit B to the use of fixed or stationary gill nets with a stretched mesh length less than 4 inches and increases the yardage limits for the small mesh gill net fishery in portions of Management Unit B.
2/15/2023	<a href="#">M-4-2023</a>	This proclamation supersedes proclamation M-20-2022, dated September 21, 2022. This proclamation opens Management Unit C to the use of gill nets with a stretched mesh length of 4 inches through 6 ½ inches and implements gear exemptions for the shad fishery in all areas south of Management Unit A in accordance with Amendment 3 to the N.C. Southern Flounder Fishery Management Plan.
3/2/2023	<a href="#">M-5-2023</a>	This proclamation supersedes proclamation M-2-2023 dated December 21, 2022. It opens a portion of Management Unit A to the use of floating gill nets configured for harvesting American shad by removing vertical height and setting restrictions for all gill nets with stretched mesh lengths of 5 ¼ through 6 ½ inches.
3/17/2023	<a href="#">M-6-2023</a>	This proclamation supersedes proclamation M-5-2023 dated February 28, 2023. In Management Unit A, it removes gill nets configured for harvesting American shad and it remains unlawful to use fixed or stationary gill nets with a stretched mesh length other than 3 ¼ inches. It opens an exempted portion of Management Unit A that allows the use of run-around, strike, and drop gill nets with a stretched mesh length of 5 ½ inches through 6 ½ inches to harvest blue catfish.
3/31/2023	<a href="#">M-7-2023</a>	This proclamation supersedes proclamation M-4-2023, dated February 13, 2023. This proclamation closes Management Unit C to the use of set gill nets with a stretched mesh length of 4 inches through 6 ½ inches and maintains gear exemptions for the shad fishery in all areas south of Management Unit A in accordance with Amendment 3 to the N.C. Southern Flounder Fishery Management Plan and the Incidental Take Permits for endangered and threatened Sea Turtles and endangered Atlantic sturgeon.
4/15/2023	<a href="#">M-8-2023</a>	This proclamation supersedes proclamation M-7-2023, dated March 29, 2023. This proclamation maintains the closure on the use of set gill nets with a stretched mesh length of 4 inches through 6 ½ inches and removes large mesh gear exemptions for all areas south of Management Unit A (coincides with the commercial shad fishery closure) in accordance with Amendment 3 to the N.C. Southern Flounder Fishery Management Plan.

**Table 1** continued

<b>Effective Date</b>	<b>Proc. Number</b>	<b>Regulation change</b>
4/28/2023	<a href="#">M-9-2023</a>	This proclamation supersedes proclamation M-3-2023 dated January 11, 2023. It reduces the yardage limits for gill nets less than 4 inches stretched mesh used in Management Unit B, establishes a drift gill net yardage limit for the Spanish Mackerel fishery that occurs in Management Unit B and closes Management Units D1 and D2 to the use of fixed or stationary gill nets less than 4 inches stretch mesh while allowing an exemption for actively fished nets.
4/30/2023	<a href="#">M-10-2023</a>	This proclamation supersedes proclamation M-6-2023 dated March 15, 2023. In Management Unit A, it implements small mesh gill net attendance requirements and keeps open a portion of Management Unit A to the use of run-around, strike, and drop gill nets with a stretched mesh length of 5 ½ inches through 6 ½ inches for harvesting blue catfish.
5/8/2023	<a href="#">M-12-2023</a>	This proclamation supersedes proclamation M-9-2023 dated April 26, 2023. It opens Management Unit D2 to the use of fixed or stationary gill nets less than 4 inches stretch mesh.
5/26/2023	<a href="#">M-13-2023</a>	This proclamation supersedes proclamation M-12-2023 dated May 5, 2023. It closes Management Unit E to the use of fixed or stationary gill nets less than 4 inches stretch mesh.

**Table 2.** For large-mesh gill nets, estimated percent observer coverage calculated from observed trips ( $\geq 4$  inch) and estimated fishing trips using Trip Ticket Program data ( $\geq 5$  inch) by Management Unit during March–May 2023 (spring) of ITP Year 2023. Management Units B, D1, D2, and E were closed to anchored large-mesh gill nets in all spring months. Management Unit A was open March 2–17 and Management Unit C was open March 1–31. See text for further information.

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A	695	58	8.3
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Total	703	58	8.3

**Table 3.** For small-mesh gill nets, estimated percent observer coverage calculated from observed trips ( $< 4$  inch) and estimated fishing trips using Trip Ticket Program data ( $< 5$  inch) by Management Unit during March–May 2023 (spring) of ITP Year 2023. Management Units D1 and D2 were closed on April 28 to anchored small-mesh gillnets; Management Unit D2 was reopened on May 8. Management Unit E was closed on May 26. See text for further information.

Management Unit	Estimated Fishing Trips	Observed Trips	Percent Observer Coverage
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E	108	1	0.9
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E	130	0	130
Total	285	28	317

**Table 5.** Total annual authorized and actual takes (observed and estimated) of sea turtles by species and, for estimated takes, by condition for the 2023 ITP Year to date (September 2022–May 2023). Estimated takes denoted as not applicable (n/a) are for species whose authorized takes in the ITP are expressed only as counts. Because there were no takes during spring, this table is unchanged since the fall report.

Species	Observed (live/dead)		Estimated			
	Authorized	Actual	Authorized		Actual	
			Alive	Dead	Alive	Dead
Green	18	5	330	165	67.2	17.0
Hawksbill	8	0	n/a	n/a	n/a	n/a
Kemp's ridley	12	0	98	49	17.7	0.0
Leatherback	8	0	n/a	n/a	n/a	n/a
Loggerhead	24	1	n/a	n/a	n/a	n/a
Any Species	8	1	n/a	n/a	n/a	n/a
Total	78	7	428	214	84.9	17.0

**Table 6.** Fisherman contact code and associated descriptions for fisherman contact attempts during March – May 2023 (spring) of ITP Year 2023.

Code	Description	Total
1	Left message with someone else	12
2	Not fishing general	120
3	Fishing other gear	60
4	Not fishing - weather	7
5	Not fishing - boat issues	3
6	Not fishing - medical issues	9
7	Booked trip	31
8	Hung up, got angry, trip refused	3
9	Call back later time/date	90
10	Saw in person	4
11	Disconnected	66
12	Wrong number	4
13	No answer	157
14	No answer, left voicemail	214
15	Not fishing - natural disaster	0
Response Total		780

**Table 7.** Citations written by Marine Patrol officers for anchored gill nets by date and violation code during March–May 2023 (spring) of ITP Year 2023.

Date	Code	Description
4/26/2023	NETG02	Using gill net without buoys or identification
4/26/2023	EGNP01	Fishing gill net without a valid Estuarine Gill Net Permit
5/3/2023	NETG27	Gill Net set within 50 yards from shore 3H.0103 M-9-2008
5/31/2023	EGNP99	Failure to comply with statutes(s), rules(s), and/or proclamation(s)

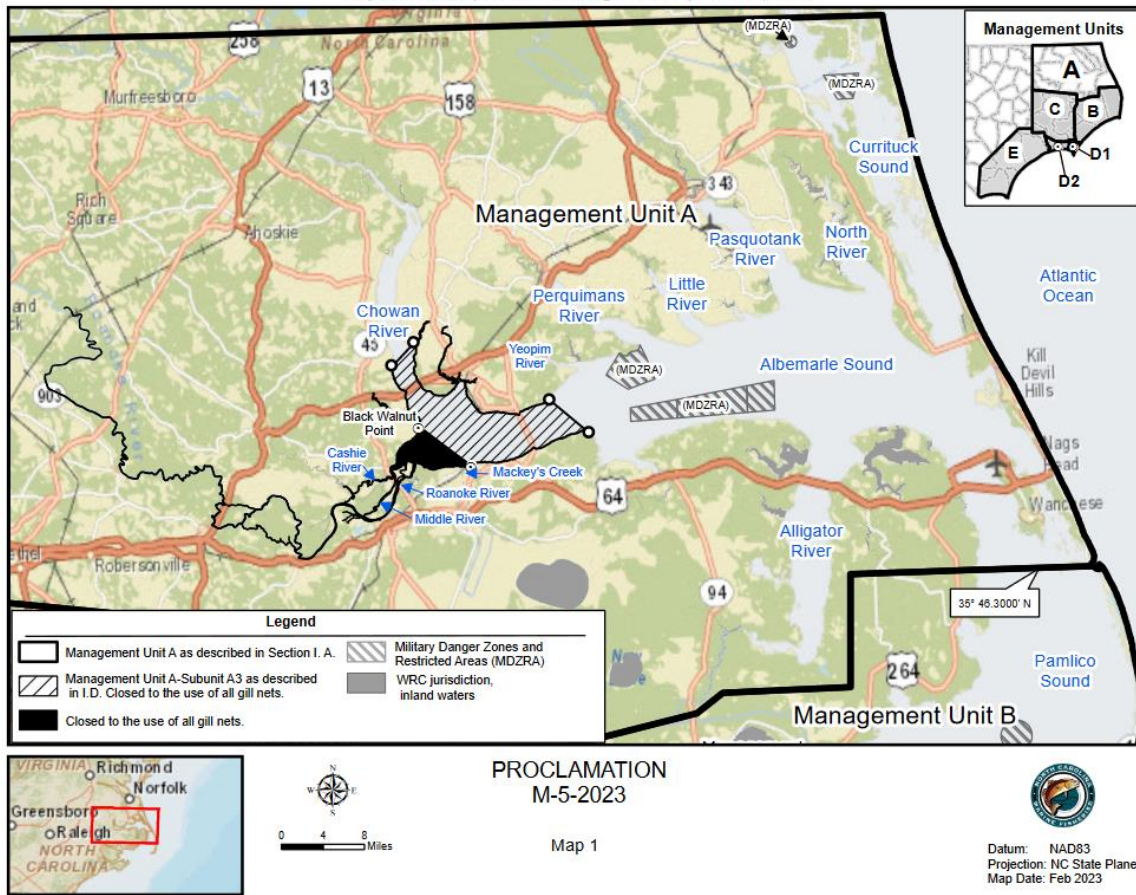
**Table 8.** Notice of Violations (NOVs) for Estuarine Gill Net Permit (EGNP) holders using anchored gill nets by date and violation code issued during March–May 2023 (spring) of ITP Year 2023.

Date	Code	Description
3/6/2023	EGNP11	Failure to attend nets
3/14/2023	EGNP08	Failure to notify DMF of a change in phone number within 14 days
3/14/2023	EGNP08	Failure to notify DMF of a change in phone number within 14 days
3/14/2023	EGNP08	Failure to notify DMF of a change in phone number within 14 days
4/13/2023	EGNP08	Failure to notify DMF of a change in phone number within 14 days
4/13/2023	EGNP08	Failure to notify DMF of a change in phone number within 14 days
4/13/2023	EGNP08	Failure to notify DMF of a change in phone number within 14 days
4/13/2023	EGNP08	Failure to notify DMF of a change in phone number within 14 days
4/13/2023	EGNP08	Failure to notify DMF of a change in phone number within 14 days
4/13/2023	EGNP99	Failure to comply with statutes(s), rules(s), and/or proclamation(s)
5/30/2023	EGNP01	Fishing gill net without a valid Estuarine Gill Net Permit

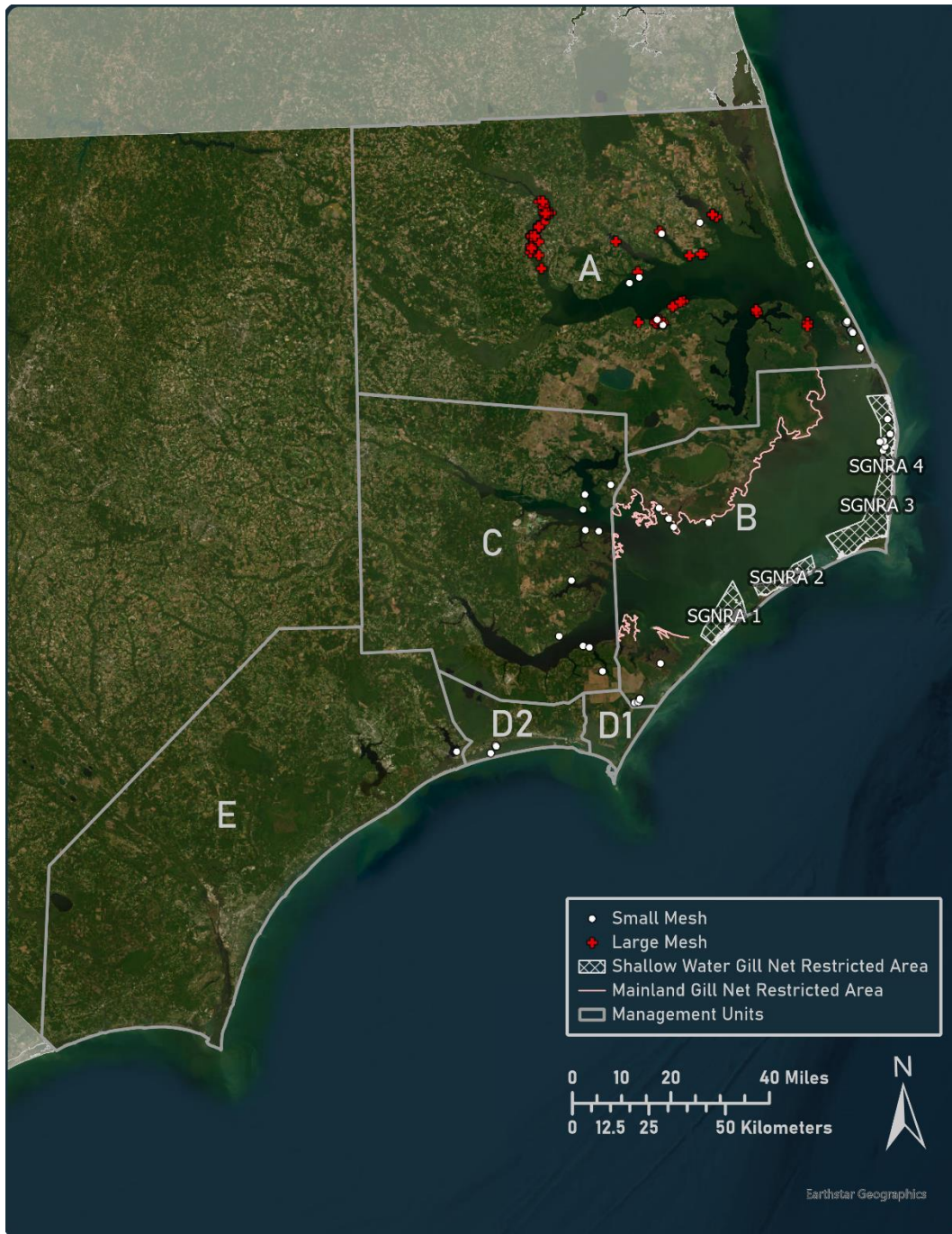


# FIGURES

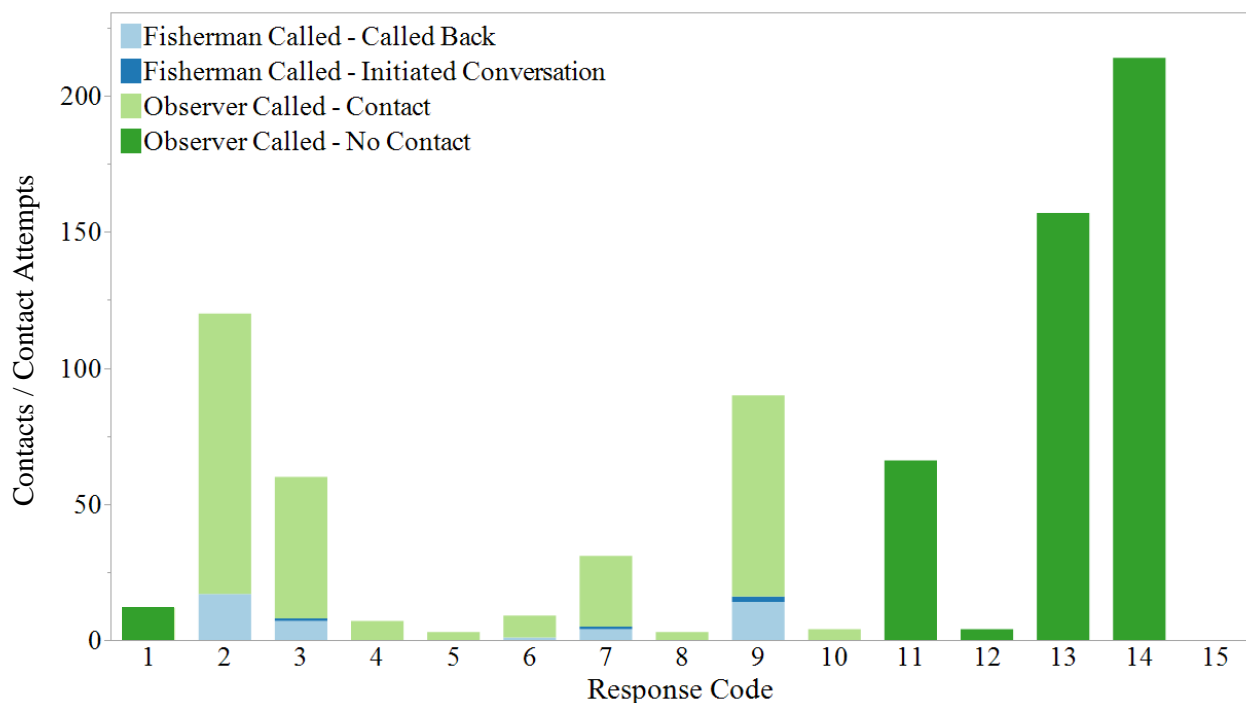
Maps are provided for illustrative purposes to assist the public.  
 Maps do not supersede existing rules or proclamations.



**Figure 1.** Map depicting fishable waters to large-mesh estuarine gill nets in Management Unit A as allowed by Proclamation M-5-2023, effective March 2, 2023 through March 17, 2023 (Proclamation M-6-2023).



**Figure 2.** Map of observed large-mesh ( $\geq 4''$  ISM) and small-mesh ( $< 4''$  ISM) gill-net trips, March–May 2023 (spring) of ITP Year 2023. Note that in some areas, multiple observations may be depicted as fewer observations due to the point layering and map scale. For example, a single point may be visible; however, multiple points may exist at that location. For observed trip totals within each management unit, please see Table 2Table 3.



**Figure 3.** Contact attempts ( $n=780$ ) during March–May 2023 (spring) to schedule trips. Contact response categories include the following: 1) Left message with someone else; 2) Not fishing general; 3) Fishing other gear; 4) Not fishing because of weather; 5) Not fishing because of boat issues; 6) Not fishing because of medical issues; 7) Booked trip; 8) Hung up, got angry, trip refused; 9) Call back later time/date; 10) Saw in person; 11) Disconnected; 12) Wrong number; 13) No answer; 14) No answer, left voicemail; 15) Not fishing because of natural disaster (e.g., hurricane). Contact responses are stratified by occasions when observers initiated a successful contact (light green), when the observer initiated an unsuccessful contact (dark green), when the fisherman returned an observer’s call (light blue), and when the fisherman initiated contact (dark blue).



ROY COOPER  
*Governor*

ELIZABETH S. BISER  
*Secretary*

KATHY B. RAWLS  
*Director*

Monthly Progress Report  
Incidental Take Permit No. 18102  
May 5, 2023

Celeste Stout  
Office of Protected Resources (F/PR)  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

Dear Celeste:

This memo serves as a report on observer program activities during April 2023 of the 2023 ITP Year (September 1, 2022 – August 31, 2023) for Permit #18102.

Management Units A, B, C, and E were open to estuarine anchored small-mesh gill nets (i.e., < 5 inches stretched mesh) throughout April 2023. Management Units D1 and D2 were open for most of April 2023. However, after many unsuccessful attempts to contact fishers via phone ( $n = 70$ ) and locate anchored gill-net effort on the water ( $n = 12$ ), these Management Units were closed on April 28 (Proclamation M-9-2023). Meanwhile, the estuarine anchored large-mesh gill net fishery ( $\geq 5$  inches stretched mesh) remained closed.

During April 2023, there were observations of 17 anchored small-mesh trips (Table 1). All observed small-mesh trips occurred in Management Units A ( $n = 5$ ), B ( $n = 10$ ), and C ( $n = 2$ ; Table 1). In addition to observed trips, there were 84 unsuccessful attempts to locate anchored gill-net fishing activity during April (i.e., No-Contact Trips; Table 1).

Observers documented two incidental takes of live Atlantic Sturgeon in Management Unit B (Table 2). No sea turtle interactions were observed.

Cumulative estimated and observed interactions during the 2023 ITP Year to date are included in Tables 3 and 4 for anchored large-mesh gill nets and small-mesh gillnets, respectively. As a reminder, estimated take numbers are preliminary.

**Table 1.** Numbers of observed small-mesh (< 5 inches stretched mesh) estuarine anchored gill-net trips ( $n = 17$ ) by Management Unit and mesh-size category during April 2023 for ITP Year 2023. Numbers of No-Contact trips ( $n = 84$ ) by Management Unit are also provided. No-Contact refers to unsuccessful attempts to find and observe anchored gill-net effort. The large-mesh ( $\geq 5$  inches stretched mesh) estuarine anchored gill-net fishery was closed during April 2023; consequently, there were no observed large-mesh gill net trips.

Month	Management Unit	Small-Mesh Observed Trips	No-Contact Trips
April	A	5	14
	B	10	6
	C	2	18
	D1	0	7
	D2	0	8
	E	0	31
Overall		17	84

**Table 2.** Summary of observed Atlantic Sturgeon ( $n = 2$ ) interactions in estuarine anchored small-mesh (< 5 inches stretched mesh) gill nets during April 2023 of ITP Year 2023.

Date	Condition	Management Unit	Soak Time	Length of Net	Number of Nets
4/11/2023	Alive	B	720	200	6
4/12/2023	Alive	B	720	100	8

**Table 3.** For estuarine anchored large-mesh ( $\geq 5$  inch) gill nets, a current comparison of observed (live,  $n = 14$ ; dead,  $n = 0$ ) incidental takes of Atlantic Sturgeon by management unit during 2023 ITP Year through April 2023 to authorized thresholds expressed as either estimated total takes based on observed takes for Management Unit A or counts of observed takes (i.e., not estimated) for Management Units B–E. Estimated takes in Management Unit A are based on projected fishing effort; therefore, 95% confidence intervals are not provided. Genetic results were not available to determine the Distinct Population Segment (DPS) of observed interactions.

Management Unit	Season	Authorized				Actual	
		Carolina DPS		Other DPS		All DPS	
		Alive	Dead	Alive	Dead	Alive	Dead
A	Annual	1,604	65	535	21	60.4	0
B	Annual	24	6	9	0	0	0
C	Annual	11	5	4	0	0	0
D	Annual	8	2	n/a	n/a	0	0
E	Annual	8	2	n/a	n/a	0	0
Total	Annual	1,655	80	548	21	60.4	0

**Table 4.** For estuarine small-mesh ( $< 5$  inch) gill nets, a comparison of observed (alive,  $n = 2$ ; dead,  $n = 1$ ) incidental takes of Atlantic Sturgeon by management unit during the 2023 ITP Year through April 2023 to authorized thresholds expressed as either estimated total takes based on observed takes (Management Unit A) or counts of actual observed takes (Management Units B–E). Estimated takes in Management Unit A are based on projected fishing effort; therefore, 95% confidence intervals are not provided. Authorized takes in Management Units C, D, and E were for the Carolina Distinct Population Segment (DPS) only and listed as not applicable (n/a) for Other DPS. Genetic results were not available to determine DPS of observed interactions.

Management Unit	Season	Authorized				Actual	
		Carolina DPS		Other DPS		All DPS	
		Alive	Dead	Alive	Dead	Alive	Dead
A	Annual	569	45	114	10	0	0
B	Annual	14	5	3	0	2	1
C	Annual	8	4	n/a	n/a	0	0
D	Annual	8	2	n/a	n/a	0	0
E	Annual	8	2	n/a	n/a	0	0
Total	Annual	607	58	117	10	2	1

Best regards,

A handwritten signature in black ink, appearing to read 'D. Ushakow', with a long horizontal flourish extending to the right.

David Ushakow  
Protected Resources Program, Biologist

cc: Angela Somma (NMFS); Barbie Byrd, Matthew Doster, Casey Knight, Mike Loeffler,  
Jonathon McFall, Steve Poland, and Kathy Rawls (NCDMF)



ROY COOPER  
*Governor*

ELIZABETH S. BISER  
*Secretary*

KATHY B. RAWLS  
*Director*

Monthly Progress Report  
Incidental Take Permit No. 18102  
Apr 4, 2023

Celeste Stout  
Office of Protected Resources (F/PR)  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

Dear Celeste:

This memo serves as a report on observer program activities during March 2023 of the 2023 ITP Year (September 1, 2022 – August 31, 2023) for Permit #18102.

All Management Units were open to estuarine anchored small-mesh gill nets (i.e., < 5 inches stretched mesh) throughout March 2023. Beginning February 15, 2023, the estuarine anchored large-mesh gill-net fishery ( $\geq 5$  inches stretched mesh) opened in Management Unit C ([Proclamation M-4-2023](#)). Due to lack of observed effort, Management Unit C was subsequently closed March 31 ([Proclamation M-7-2023](#)) to help ensure compliance. Additionally, this fishery was open in Management Unit A from March 2 – 17 (Proclamations [M-5-2023](#) & [M-6-2023](#), respectively). All other Management Units remained closed to the estuarine anchored large-mesh gill-net fishery.

During March 2023, there were observations of 70 anchored large-mesh trips and 19 anchored small-mesh trips (Table 1). All observed large-mesh trips occurred in Management Unit A while none were located in Management Unit C. Of the large-mesh trips, only one live unidentified sturgeon was observed, and of the small-mesh trips, only one dead Atlantic Sturgeon was observed (Table 2). In addition to observed trips, there were 122 unsuccessful attempts to locate anchored gill-net fishing activity during March (i.e., No-Contact Trips; Table 1).

Cumulative estimated and observed interactions during the 2023 ITP Year to date are included in Tables 3 and 4 for anchored large-mesh gill nets and small-mesh gillnets, respectively. As a reminder, estimated take numbers are preliminary.



**Table 1.** Numbers of observed estuarine anchored gill-net trips ( $n = 89$ ) by Management Unit and mesh-size category during March 2023 for ITP Year 2023. Mesh-size categories are large ( $\geq 5$  inches stretched mesh) and small ( $< 5$  inches stretched mesh). Numbers of No-Contact trips ( $n = 122$ ) by Management Unit are also provided. No-Contact refers to unsuccessful attempts to find and observe anchored gill-net effort.

Month	Management Unit	Large-Mesh Observed Trips	Small-Mesh Observed Trips	No-Contact Trips
March	A	70	13	29
	B	closed	6	0
	C	0	0	24
	D1	closed	0	1
	D2	closed	0	11
	E	closed	0	57
Overall		70	19	122

**Table 2.** Summary of observed Sturgeon ( $n = 2$ ) interactions in estuarine anchored gill nets during March 2023 for ITP Year 2023. Mesh-size categories are large ( $\geq 5$  inches stretched mesh) and small ( $< 5$  inches stretched mesh).

Date	Species	Condition	Management Unit	Mesh-Size Category	Soak Time	Length of Net	Number of Nets
3/16/2023	Unknown	Alive	A	Large	1440	100	5
3/28/2023	Atlantic	Dead	B	Small	1440	200	5

**Table 3.** For anchored large-mesh ( $\geq 5$  inch) gill nets, a current comparison of observed (live,  $n = 14$ ; dead,  $n = 0$ ) incidental takes of Atlantic Sturgeon by management unit during 2023 ITP Year through March 2023 to authorized thresholds expressed as either estimated total takes based on observed takes for Management Unit A or counts of observed takes (i.e., not estimated) for Management Units B–E. Estimated takes in Management Unit A are based on projected fishing effort; therefore, 95% confidence intervals are not provided. Genetic results were not available to determine the Distinct Population Segment (DPS) of observed interactions.

Management Unit	Season	Authorized				Actual	
		Carolina DPS		Other DPS		All DPS	
		Alive	Dead	Alive	Dead	Alive	Dead
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C	Annual	11	5	4	0	0	0
D	Annual	8	2	n/a	n/a	0	0
E	Annual	8	2	n/a	n/a	0	0
Total	Annual	1,655	80	548	21	60.4	0

**Table 4.** For small-mesh ( $< 5$  inch) gill nets, a comparison of observed (dead,  $n = 1$ ) incidental takes of Atlantic Sturgeon by management unit during the 2023 ITP Year through March 2023 to authorized thresholds expressed as either estimated total takes based on observed takes (Management Unit A) or counts of actual observed takes (Management Units B–E). Estimated takes in Management Unit A are based on projected fishing effort; therefore, 95% confidence intervals are not provided. Authorized takes in Management Units C, D, and E were for the Carolina Distinct Population Segment (DPS) only and listed as not applicable (n/a) for Other DPS. Genetic results were not available to determine DPS of observed interactions.

Management Unit	Season	Authorized				Actual	
		Carolina DPS		Other DPS		All DPS	
		Alive	Dead	Alive	Dead	Alive	Dead
A	Annual	569	45	114	10	0	0
B	Annual	14	5	3	0	0	1
C	Annual	8	4	n/a	n/a	0	0
D	Annual	8	2	n/a	n/a	0	0
E	Annual	8	2	n/a	n/a	0	0
Total	Annual	607	58	117	10	0	1

Best regards,

A handwritten signature in black ink, appearing to read 'DU' followed by a long horizontal stroke.

David Ushakow  
Protected Resources Program, Biologist

cc: Angela Somma (NMFS); Barbie Byrd, Matthew Doster, Casey Knight, Jonathon McFall,  
Steve Poland, and Kathy Rawls (NCDMF)



ROY COOPER  
*Governor*

ELIZABETH S. BISER  
*Secretary*

KATHY B. RAWLS  
*Director*

July 31, 2023

## MEMORANDUM

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

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### 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 (hereafter the 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. They include:

#### **NCMFC Rule 15A NCAC 03O .0501 (e)(4) PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS**

Suspension of portion of this rule for an indefinite period. Suspension of this rule allows the division to issue the Shellfish Relocation Permit to permittees already issued a Division of Coastal management permit for development activity. This suspension was implemented in Proclamation [M-11-2023](#).

#### **NCMFC 15A NCAC 03R .0117 (c), (i), and (j) of section (1) OYSTER SANCTUARIES**

Suspension of portion of this rule for an indefinite period. Suspension of this rule allows the division to publish correct coordinates for the Pea Island, Raccoon Island, and Swan Island Oyster Sanctuaries to ensure that the sanctuaries continue to be protected according to the FMP restrictions while the rule is modified to reflect the correct boundary coordinates. This suspension was implemented in Proclamation [SF-6-2022](#).

### **NCMFC Rule 15A NCAC 03M .0515 (a)(2) Dolphin**

Suspension of portion of this rule for an indefinite period. Suspension of this rule allows the division to adjust the recreational vessel limit to complement management of dolphin under the South Atlantic Fishery Management Council's Amendment 10 to the Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic. This suspension was implemented in Proclamation [FF-30-2022](#).

### **NCMFC Rule 15A NCAC 03L .0105 (2) Recreational Shrimp Limits**

Suspension of portion of this rule for an indefinite period. Suspension of this rule allows the division to modify the recreational possession limit of shrimp by removing the four quarts heads on and two and a half quarts heads off prohibition from waters closed to shrimping in accordance with Amendment 2 to the North Carolina Shrimp Fishery Management Plan. This suspension was implemented in Proclamation [SH-4-2022](#).

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

Continued suspension a portion of this rule for an indefinite period. Suspension of this rule allows the division to implement year-round small mesh gill net attendance requirements in certain areas of the Tar-Pamlico and Neuse rivers 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-3-2023](#).

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

Continued suspension of portions of this rule for an indefinite period. This allows the division to adjust trawl net minimum mesh size requirements in accordance with the Amendment 2 to the North Carolina Shrimp Fishery Management Plan. This suspension was implemented in proclamation SH-3-2019 and continues in [SH-1-2022](#).

### **NCMFC Rule 15A NCAC 03J .0501 (e)(2) Definitions and Standards for Pound Nets and Pound Net Sets**

Continued suspension portions of this rule 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 (a) and (b) Shad & 03Q .0107 (4) Special Regulations: Joint Waters**

Continued suspension portions of these rules 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\(Revised\)](#)

# Standard Commercial Fishing License

## Eligibility Report

August 2023 Business Meeting

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Standard Commercial Fishing License Eligibility Report Memo	02
Standard Commercial Fishing License Eligibility Report	04



ROY COOPER  
*Governor*

ELIZABETH S. BISER  
*Secretary*

KATHY B. RAWLS  
*Director*

August 24, 2023

## MEMORANDUM

**TO:** N.C. Marine Fisheries Commission  
**FROM:** Captain Garland Yopp, Marine Patrol, Eligibility Board Chair  
**SUBJECT:** Standard Commercial Fishing License Eligibility Pool Determination

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### Issue

Determine number of licenses available to the Standard Commercial Fishing License (SCFL) Eligibility Pool.

### Action Needed

A vote by the commission is needed to set the number of available licenses in the Eligibility Pool.

### Overview

An individual who does not hold a Standard Commercial Fishing License but wants to purchase a license through the Division of Marine Fisheries can apply to receive the license through the Eligibility Pool process. The application goes before a board which determines if the applicant is qualified based on criteria set out in rule. The number of licenses available in this pool is set annually by the commission.

Session Law 1998-225, Section 4.24(f) states that “the number of SCFLs in the pool of available SCFLs in license years beginning with the 2000-2001 license year is the temporary cap less the number of SCFLs that were issued and renewed during the previous license year.” The temporary cap was set at the number of valid Endorsements to Sell as of June 30, 1999 (8,396 licenses), plus an extra 500 licenses to be included in the Eligibility Pool (8,896 total licenses).

For the 2023-2024 license year, the number of licenses available through the Eligibility Board is 3,483. This number accounts for licenses issued in the 2022-2023 license year and the number of approvals from the Eligibility Board from 2022-2023 that still have the option to purchase a license before June 30, 2024. Individuals approved in the fall (September/October) must purchase their license by June 30 of the same license year, but

those approved in the spring (April) have until June 30 of the following license year to purchase their license.

Session Law 1998-225, Section 4.24(f) also states “the Commission may increase or decrease the number of SCFLs that are issued from the pool of available SCFLs. The Commission may increase the number of SCFLs that are issued from the pool of available SCFLs up to the temporary cap. The Commission may decrease the number of SCFLs that are issued from the pool of available SCFLs but may not refuse to renew a SCFL that is issued during the previous license year and that has not been suspended or revoked. The Commission shall increase or decrease the number of SCFLs that are issued to reflect its determination as to the effort that the fishery can support, based on the best available scientific evidence.”

From July 1, 2022, to June 30, 2023, the Board received 33 applications and approved 23 of them. This was a 30% decrease in approved applications from the 2021-2022 license year. So far, there are 10 pending applications for review at the fall Eligibility Board meeting.

Over the past several years, the commission has voted to make the number of available licenses in the Eligibility Pool different from the total number of licenses left in the cap. Below is a summary of the licenses made available to the pool by the commission since the 2013-2014 license year (Table 1).

**Table 1. Number of licenses available and number of licenses approved by the commission in the SCFL Eligibility Pool, 2013-2014 license year through 2023-2024 license year.**

<b>License Year (fiscal year)</b>	<b>Number of Licenses Available</b>	<b>Number of Licenses Approved by MFC</b>
2013–2014	1,368	1,368
2014–2015	1,257	1,257
2015–2016	1,238	1,238
2016–2017*	2,417	100
2017–2018	2,592	1,500
2018–2019	2,723	500
2019–2020	2,973	500
2020–2021	3,064	500
2021-2022	3,198	500
2022-2023	3,340	500
2023-2024	3,483	TBD

\*Calculation to determine number of available licenses changed

In summary, there are 3,483 licenses available to the Eligibility Pool for the 2023–2024 license year. The commission needs to determine the number of licenses it wants to place in the pool for the upcoming year.



# **Eligibility Pool Commission Report for 2023–2024 August 24, 2023**

## **How the Pool Number is Determined:**

Session Law 1998-225, Section 4.24(f).

(f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of available SCFLs in license years beginning with the 2000–01 license year is the temporary cap less the number of SCFLs that were issued and renewed during the previous license year.

## **Role of the Marine Fisheries Commission:**

Session Law 1998-225, Section 4.24(f).

(f) . . . The Commission may increase or decrease the number of SCFLs that are issued from the pool of available SCFLs. The Commission may increase the number of SCFLs that are issued from the pool of available SCFLs up to the temporary cap. The Commission may decrease the number of SCFLs that are issued from the pool of available SCFLs but may not refuse to renew a SCFL that is issued during the previous license year and that has not been suspended or revoked. The Commission shall increase or decrease the number of SCFLs that are issued to reflect its determination as to the effort that the fishery can support, based on the best available scientific evidence.

## **Temporary Cap:**

The maximum number of SCFLs that can be issued is the number of valid Endorsements to Sell as of June 30, 1999 plus 500 for the first Eligibility Pool, for a total of 8,896.

## **Eligibility Board Pool Determination 2023–2024:**

There are 3483 SCFLs available through the Eligibility Board for the 2023–2024 license year.

## **Attachments:**

2023–2024 Eligibility Pool Determination Calculations

FY2023 License Sales Report

Summary of Licenses Available and Temporary Cap as Approved by the Commission

Eligibility Board Meeting Summaries

Eligibility Board Open Files

## Eligibility Pool Determination Calculations For 2023–2024 License Year

Below is the current calculation used to determine the number of licenses available in the Eligibility Pool. Corrections were made to this calculation in August 2016 to prevent licenses already existing in the cap from being double counted and removed from the number of licenses remaining.

Licenses removed from the cap in this calculation include the number of SCFLs and RSCFLs issued and renewed in the 2022–2023 license year as well as any Eligibility Board approvals from the spring meeting. Those approved by the Eligibility Board in the spring have until the following license year to purchase their SCFL. These licenses are subtracted from the pool because they represent potential licenses available for purchase.

**Current calculation:**

Total Number of SCFLs Available in 2023–2024 License Year (Data run date: 7/11/2023)

1) Total original SCFLs available (Cap).....	8,896	
2) Less total number of SCFLs issued and renewed in 2022–2023.....	- 5412	
<hr/>		
3) Total number of SCFLs available in the pool for 2023–2024.....	3484	
4) Less total number of 2022–2023 approvals through Eligibility Pool not yet issued <sup>1</sup> .....	- 1	
<hr/>		
5) <b>Total SCFLs available for the 2023–2024 license year</b> .....	<b>3483</b>	

<sup>1</sup> Individuals approved in the spring (April 2023) have until June 30 of the following license year (2024) to purchase their SCFL.

**North Carolina Division of Marine Fisheries  
Commercial Licenses Sold by License Type  
FY2023 License Year**

Data Run Date: 7/11/2023

Blanket For-Hire Captain's Coastal Recreational Fishing License:	166
Blanket For-Hire Vessel Coastal Recreational Fishing License:	802
Commercial Fishing Vessel Registration:	6,355
Fish Dealer License:	655
Land or Sell License:	133
License to Land Flounder from Atlantic Ocean:	151
NC Resident Shellfish License without SCFL:	600
Non-Blanket For-Hire Vessel License:	136
Ocean Pier License:	18
Recreational Fishing Tournament License:	25
Retired Standard Commercial Fishing License:	1,394
Standard Commercial Fishing License:	4,018
<hr/>	
<b>TOTAL LICENSES FOR ALL LICENSE TYPES:</b>	<b>14,453</b>

4,018	SCFL	
<u>+ 1,394</u>	RSCFL	
5,412	<b>Total Number of SCFLs issued for FY2023</b>	

## Licenses Available from the Eligibility Pool – Annual Summary

License Year	Number of Licenses Available	Number of Licenses Approved by MFC
1999 - 2000	500	N/A
2000 - 2001	1,314	1,314
2001 - 2002	1,423	1,423
2002 - 2003	1,458	1,458
2003 - 2004	1,421	1,421
2004 - 2005	1,423	1,423
2005 - 2006	1,536	1,536
2006 - 2007	1,596	1,596
2007 - 2008	1,562	1,562
2008 - 2009	1,557	1,557
2009 - 2010	1,507	1,507
2010 - 2011	1,420	1,420
2011 - 2012	1,375	1,375
2012 - 2013	1,358	1,358
2013 - 2014	1,368	1,368
2014 - 2015	1,257	1,257
2015 - 2016	1,238	1,238
2016 - 2017*	2,417	100
2017 - 2018	2,592	1,500
2018 - 2019	2,723	500
2019 - 2020	2,973	500
2020 - 2021	3,064	500
2021 - 2022	3,198	500
2022 - 2023	3,340	500
2023 - 2024	3,483	TBD

\*Calculation to determine number of available licenses changed

## Licenses Approved and Denied by the Eligibility Pool Board – Annual Summary

License Year	Approved	Denied
1999 - 2000	166	133
2000 - 2001	110	75
2001 - 2002	46	37
2002 - 2003	38	23
2003 - 2004	56	11
2004 - 2005	35	13
2005 - 2006	31	9
2006 - 2007	32	4
2007 - 2008	49	7
2008 - 2009	83	5
2009 - 2010	109	11
2010 - 2011	63	2
2011 - 2012	68	17
2012 - 2013	99	9
2013 - 2014	96	14
2014 - 2015	61	13
2015 - 2016	45	6
2016 - 2017	32	6
2017 - 2018	84	13
2018 - 2019	28	6
2019 - 2020	41	10
2020 - 2021	45	9
2021 - 2022	33	9
2022 - 2023	23	10
<b>Totals</b>	<b>1473</b>	<b>452</b>

## Eligibility Pool Board Meeting Summary

HEARING DATE	RESIDENTS				NON-RESIDENTS			
	APPROVE	DENY	TABLE*	TOTAL	APPROVE	DENY	TABLE*	TOTAL
5/5/1999	2	0	2	4	0	0	0	0
5/19/1999	5	0	1	6	1	0	0	1
6/17/1999	2	5	3	10	0	0	0	0
<b>7/1/1998 - 6/30/1999</b>	<b>9</b>	<b>5</b>	<b>6</b>	<b>20</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>
7/7/1999	12	10	0	22	3	0	0	3
7/8/1999	23	25	0	48	7	0	0	7
07/15/1999 MFC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
8/11/1999	18	20	4	42	3	0	0	3
8/27/1999	17	33	0	50	0	1	0	1
09/09/1999 MFC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9/29/1999	18	11	1	30	0	0	0	0
11/3/1999	13	12	4	29	2	0	1	3
11/08/1999 MFC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1/26/2000	9	5	5	19	1	0	1	2

02/18/2000 MFC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4/19/2000	19	6	8	33	1	0	2	3
5/18/2000	18	3	9	30	0	1	2	3
6/7/2000	10	3	2	15	0	0	1	1
HEARING DATE	RESIDENTS				NON-RESIDENTS			
	APPROVE	DENY	TABLE*	TOTAL	APPROVE	DENY	TABLE*	TOTAL
<b>7/1/1999 – 6/30/2000</b>	<b>157</b>	<b>128</b>	<b>33</b>	<b>318</b>	<b>17</b>	<b>2</b>	<b>7</b>	<b>26</b>
7/12/2000	11	1	4	16	2	0	0	2
7/21/2000 MFC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9/20/2000	24	15	7	46	1	0	0	1
10/27/2000	16	8	3	27	1	0	0	1
12/1/2000	5	16	2	23	0	0	0	0
1/24/2001	10	14	3	27	0	2	0	2
3/9/2001	12	12	8	32	0	0	0	0
4/4/2001	32	9	1	42	0	1	0	1
<b>7/1/2000 – 6/30/2001</b>	<b>110</b>	<b>75</b>	<b>28</b>	<b>213</b>	<b>4</b>	<b>3</b>	<b>0</b>	<b>7</b>
7/26/2001	18	10	2	30	3	0	1	4
08/21/2002 MFC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
11/14/2002	12	15	3	30	2	1	0	3
2/21/2002	16	12	2	30	1	0	0	1
<b>7/1/2001 – 6/30/2002</b>	<b>46</b>	<b>37</b>	<b>7</b>	<b>90</b>	<b>6</b>	<b>1</b>	<b>1</b>	<b>8</b>
9/11/2002	28	14	6	48	2	0	1	3
08/19/2003 MFC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
3/5/2003	10	9	1	20	2	0	0	2
<b>7/1/2002 – 6/30/2003</b>	<b>38</b>	<b>23</b>	<b>7</b>	<b>68</b>	<b>4</b>	<b>0</b>	<b>1</b>	<b>5</b>
08/19/2003 MFC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7/9/2003	16	3	1	20	2	0	0	2
11/4/2003	17	2	0	19	3	0	0	3
3/19/2004	22	6	0	28	2	0	0	2
6/22/2004	1	0	0	1	0	0	0	0
<b>7/1/2003 – 6/30/2004</b>	<b>56</b>	<b>11</b>	<b>1</b>	<b>68</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>7</b>
11/1/2004	22	4	1	27	0	0	0	0
2/28/2005	11	2	0	13	0	1	0	1
4/18/2005	2	7	0	9	0	0	0	0
<b>7/1/2004 – 6/30/2005</b>	<b>35</b>	<b>13</b>	<b>1</b>	<b>49</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>
9/27/2005	17	7	1	25	1	0	0	1
3/15/2006	14	2	2	18	1	0	0	1
<b>7/1/2005 – 6/30/2006</b>	<b>31</b>	<b>9</b>	<b>3</b>	<b>43</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>2</b>
10/4/2006	16	3	2	21	1	0	0	1
3/14/2007	16	1	2	19	1	0	0	1
<b>7/1/2006 – 6/30/2007</b>	<b>32</b>	<b>4</b>	<b>4</b>	<b>40</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>2</b>
9/10/2007	26	2	4	32	0	0	0	0
3/19/2008	23	5	3	31	0	0	0	0
<b>7/1/2007 – 6/30/2008</b>	<b>49</b>	<b>7</b>	<b>7</b>	<b>63</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
9/30/2008	39	0	3	42	4	0	0	4
3/24/2009	44	5	1	50	3	0	0	3
<b>7/1/2008 – 6/30/2009</b>	<b>83</b>	<b>5</b>	<b>4</b>	<b>92</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>7</b>
10/6/2009	52	6	1	59	2	1	0	3
3/10/2010	36	2	1	39	1	0	0	1
6/2/2010	21	3	0	24	0	0	0	0
<b>7/1/2009 – 6/30/2010</b>	<b>109</b>	<b>11</b>	<b>2</b>	<b>122</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>4</b>
9/21/2010	40	2	1	43	2	0	0	2
3/24/2011	23	0	0	23	4	0	0	4
<b>7/1/2010 – 6/30/2011</b>	<b>63</b>	<b>2</b>	<b>1</b>	<b>66</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>6</b>
10/4/2011	39	7	0	46	2	0	0	2
3/15/2012	28	10	0	38	2	0	0	2

1/13/2012	1	0	0	1	0	0	0	0
<b>7/1/2011 – 6/30/2012</b>	<b>68</b>	<b>17</b>	<b>0</b>	<b>85</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>4</b>
9/12/2012	53	7	3	63	1	1	0	2
3/19/2013	46	2	4	52	2	0	0	2
HEARING DATE	RESIDENTS				NON-RESIDENTS			
	APPROVE	DENY	TABLE*	TOTAL	APPROVE	DENY	TABLE*	TOTAL
<b>7/1/2012 – 6/30/2013</b>	<b>99</b>	<b>9</b>	<b>7</b>	<b>115</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>4</b>
9/18/2013	56	7	0	63	2	0	0	2
3/19/2014	40	7	1	48	0	0	0	0
<b>7/1/2013 – 6/30/2014</b>	<b>96</b>	<b>14</b>	<b>1</b>	<b>111</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>2</b>
9/17/2014	32	9	0	41	1	0	0	1
3/18/2015	25	3	5	33	0	0	1	1
5/12/2015	4	1	0	5	1	0	0	1
<b>7/1/2014 – 6/30/2015</b>	<b>61</b>	<b>13</b>	<b>5</b>	<b>79</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>3</b>
10/21/2015	16	4	1	21	3	0	0	3
3/23/2016	29	2	2	33	0	0	0	0
<b>7/1/2015 – 6/30/2016</b>	<b>45</b>	<b>6</b>	<b>3</b>	<b>54</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>3</b>
9/28/2016	17	3	2	22	0	0	0	0
3/16/2017	15	3	0	18	0	0	0	0
<b>7/1/2016 – 6/30/2017</b>	<b>32</b>	<b>6</b>	<b>2</b>	<b>40</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
9/28/2017	44	9	0	53	1	0	0	1
11/1/2017	11	3	0	14	1	0	0	1
3/28/2018	29	1	0	30	3	0	0	3
<b>7/1/2017 – 6/30/2018</b>	<b>84</b>	<b>13</b>	<b>0</b>	<b>97</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>5</b>
10/30/2018	15	5	0	22**	1	1	0	2
4/11/2019	13	1	0	14	1	0	0	1
<b>7/1/2018 – 6/30/2019</b>	<b>28</b>	<b>6</b>	<b>0</b>	<b>36</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>3</b>
9/24/2019	25	6	1	32	1	1	0	2
3/26/2020	16	4	0	20	2	0	0	2
<b>7/1/2019 – 6/30/2020</b>	<b>41</b>	<b>10</b>	<b>1</b>	<b>52</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>4</b>
10/20/2020	25	7	0	32	1	0	0	1
4/9/2021	20	2	0	22	0	0	0	0
<b>7/1/2020 - 6/30/2021</b>	<b>45</b>	<b>9</b>	<b>0</b>	<b>54</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>
10/14/2021	16	4	0	20	1	1	0	1
4/7/2022	17	5	1	23	3	0	0	3
<b>7/1/2021 - 6/30/2022</b>	<b>33</b>	<b>9</b>	<b>1</b>	<b>43</b>	<b>4</b>	<b>1</b>	<b>0</b>	<b>4</b>
<b>10/18/2022</b>	<b>16</b>	<b>4</b>	<b>0</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>04/05/2023</b>	<b>7</b>	<b>6</b>	<b>0</b>	<b>13</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>7/1/2022 – 6/30/2023</b>	<b>23</b>	<b>10</b>	<b>0</b>	<b>33</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>GRAND TOTALS</b>	<b>1473</b>	<b>452</b>	<b>124</b>	<b>2051</b>	<b>88</b>	<b>13</b>	<b>10</b>	<b>110</b>

\* TABLE files are presented again at the next Board meeting for a final decision of approval or denial and are then accounted for in the APPROVE or DENY categories. GRAND TOTALS do not equal total approved or denied because some files are reviewed in multiple meetings (tabled, etc.).

\*\* Two applications were withdrawn.

**Standard Commercial Fishing License Eligibility Pool Office  
Summary of Open Files beginning July 1, 2023**

<b>File Description</b>	<b>Total Number of Files</b>
To be researched/ready for the next board meeting	0
New/being processed	10
Pending responses to letters mailed requesting more information	0
Incomplete – no response to letters	0
<b>Total Open/Pending Applications</b>	<b>10</b>



# Fishery Management Plans

August 2023 Business Meeting

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**Annual Fishery Management Plan Update**  
**Division of Marine Fisheries and Marine Fisheries Commission**  
**July 30, 2023**

### Authority and Process

The Fisheries Reform Act of 1997 and its amendments established the requirement to create fishery management plans (FMPs) for all of North Carolina's commercially and recreationally significant species or fisheries. Plan contents are specified, advisory committees are required, and oversight by the Department of Environmental Quality (DEQ) secretary, Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources (AgNER), and legislative Fiscal Research Division are mandated.

Annually, the Division of Marine Fisheries (hereafter the Division) reviews all State FMP's as well as all federally-managed FMPs where North Carolina is represented at the regional Fisheries Management Councils and Atlantic States Marine Fisheries Commission. Depending on the outcome of the annual FMP reviews, a schedule change may be recommended. All FMP schedule changes are subject to DEQ Secretarial approval.

### Status of State FMPs

Review is underway for four of the 13 State FMPs: Spotted Seatrout, Striped Mullet, Eastern Oyster, and Hard Clam.

The 2022 Stock Assessment for the **Striped Mullet FMP** was completed with data through 2019. The Division and a peer review team deemed the assessment suitable for management use. The stock assessment indicated the stock is overfished and overfishing was occurring. The Division plans to begin an update of the stock assessment once data through at least 2024 are available. Based on the current stock assessment results, the Division held a public scoping period in 2022 to inform Amendment 2. The Marine Fisheries Commission (MFC) gave scoping input at its November 2022 business meeting and approved Amendment 2 Goal and Objectives. The Division, with consideration of the public and completed a first draft of the Striped Mullet FMP Amendment 2. Development of Amendment 2 continued in collaboration with the Striped Mullet FMP Advisory Committee in July 2023. Amendment 2 will be presented to the MFC in November 2023 for its approval for public and advisory committee review.

The 2022 Stock Assessment for the **Spotted Seatrout FMP** was completed with data through February 2020. The Division and a peer review team deemed the assessment suitable for management use. The stock assessment indicated the stock was not overfished; however, overfishing was occurring. The Division plans to update the stock assessment which will be addressed in Amendment 1. Public scoping was held in March 2023 and the public input from scoping was presented to the MFC at its May 2023 business meeting. At that time the MFC also reviewed and approved Amendment 1 Goal and Objectives. With scoping comments in mind, the Division is drafting the Spotted Seatrout FMP Amendment 1.

The **Hard Clam FMP** Amendment 2 and the **Eastern Oyster FMP** Amendment 4 were approved in February 2017. A traditional stock assessment are not available for these species due to data limitations. While the Division continues to work towards improving data collection efforts towards the goal of performing stock assessments, currently the population size and the rate of removals are unknown. For the Hard Clam FMP, harvest fluctuates, often in response to changes in demand, improved harvesting methods, and polluted shellfish area closures. For the Oyster FMP, commercial landings from public bottom have been variable, and landings from private bottom have increased due to increased participation in aquaculture. Review of both FMPs began in 2022. A public scoping period will be held September 11-22, 2023 to inform development of the FMP amendments.

The **Red Drum FMP** management continues to meet targets. The next review of the Red Drum FMP is planned to begin in 2024 following completion of the ASMFC red drum stock assessment, which will inform management. Stock conditions and management are monitored and reported through annual FMP updates.

The **Blue Crab FMP** Amendment 3 was approved in February 2020 to address the overfished status and end overfishing, indicated by the 2018 stock assessment. The Division is currently working on updating the stock assessment with data through 2022. Amendment 3 provides adaptive management measures to address changes in stock status based on the stock assessment update. The next scheduled review of the FMP will begin in 2025.

The **Bay Scallop FMP** 2020 annual FMP update fulfilled the scheduled review of the plan. Management continues to be maintained as outlined in the State FMP. Stock conditions are monitored and reported through the annual FMP update. After many years of low abundance, the season was opened in specific regions in 2021 and 2022 at the lowest allowed harvest levels. The next scheduled review of the plan will begin in 2025.

The **Kingfishes FMP** monitors the stock using management evaluation triggers. Annual trends indicate continued monitoring is appropriate without management changes. Therefore, the MFC approved the 2020 annual FMP update to fulfill the scheduled review of the Kingfishes FMP. Management strategies continue to be maintained as outlined in the State FMP. Stock conditions are monitored and reported through the annual FMP update. The next scheduled review of the plan will begin in 2025.

The **Shrimp FMP** Amendment 2 was adopted by the MFC at its February 2022 business meeting. Amendment 2 management has been implemented through proclamations. The Division is continuing work on habitat conservation and gear improvements as defined in Amendment 2. The 2019–2020 submerged aquatic vegetation (SAV) imaging has been completed. The shrimp biologists and Coastal Habitat Protection Plan staff are reviewing the data for collaboration with the Habitat and Water Quality Advisory Committee to develop recommendations on addressing SAV impacts. Additionally, the Division is working on an information paper investigating the feasibility of a long-term shrimp trawl observer program. The Division continues to identify and test gear modifications to reduce bycatch in the shrimp trawl fishery. The Division will be seeking shrimpers to participate in an industry workgroup to collaborate on continued gear efforts. The next scheduled review of the plan will begin in 2027.

The **Southern Flounder FMP** Amendment 3 was adopted by the MFC at its May 2022 business meeting. Amendment 3 addresses long-term, comprehensive management for the flounder fishery, and is implemented by proclamation. The Division is working in partnership with the other states to update the regional stock assessment with data through 2022. Amendment 3 adaptive management allows flexibility in adjusting management based on results of the stock assessment update. The next scheduled review of the plan will begin in 2027.

The 2022 information update for the **North Carolina FMP for Interjurisdictional Fisheries** was adopted by the MFC at its May 2022 business meeting. The goal of the FMP for Interjurisdictional Fisheries is to adopt FMPs, consistent with state law, approved by the federal Councils or the 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 next scheduled review of the plan will begin in 2027.

The **River Herring FMP** 2022 Annual FMP Review fulfilled the scheduled five-year review of the plan. The 2017 Atlantic coast-wide stock assessment update indicated river herring remain depleted and at near historic lows on a coast-wide basis. The Atlantic States Marine Fisheries Commission is currently working on a river herring stock assessment which is expected to be completed in 2024. All river herring management strategies have been maintained as outlined in the State and ASMFC FMPs. The next scheduled review of the plan will begin in 2027.

The **Estuarine Striped Bass FMP** Amendment 2 jointly developed with the Wildlife Resources Commission, was adopted by the MFC at its November 2022 business meeting. The 2022 Albemarle-Roanoke (A-R) stock assessment update indicated the stock has continued to decline since the previous assessment and remains overfished with overfishing occurring. Amendment 2 adaptive management allows flexibility in management based on results of the stock assessment update. No stock status is available for the Central Southern Management Area; however, a population model indicates the stock is depressed to a level where sustainability is unlikely. A data review of the Tar-Pamlico and Neuse rivers will begin in 2025 to assess natural reproduction and if harvest is appropriate. The next scheduled review of the plan will begin in 2027.

# **N.C. Division of Marine Fisheries**

## **2022 Fishery Management Plan Review**

**August 2023**

**Follow the link below to review the full document:**

**[https://www.deq.nc.gov/marine-fisheries/  
fisheries-management/annual-fmp-review/2022/  
annual-fmp-book/open](https://www.deq.nc.gov/marine-fisheries/fisheries-management/annual-fmp-review/2022/annual-fmp-book/open)**

## STATE MANAGED SPECIES – SPOTTED SEATROUT

### FISHERY MANAGEMENT PLAN UPDATE SPOTTED SEATROUT AUGUST 2022

#### STATUS OF THE FISHERY MANAGEMENT PLAN

##### Fishery Management Plan History

Original FMP Adoption:	February 2012
Amendments:	None
Revisions:	None
Supplements:	Supplement A to the FMP      February 2014
Information Updates:	None
Schedule Changes:	None
Comprehensive Review:	2019 — Ongoing

Spotted seatrout (*Cynoscion nebulosus*) is managed under the authority of two state and one interstate fishery management plans (FMP). The North Carolina Marine Fisheries Commission (NCMFC) currently manages spotted seatrout under the North Carolina Spotted Seatrout FMP (NCDMF 2012) and the North Carolina FMP for Interjurisdictional Fisheries (NCDMF 2022). Supplement A to the 2012 North Carolina Spotted Seatrout FMP (NCDMF 2014) maintains short-term measures in the spotted seatrout fishery (40% reduction at 14-inch total length minimum size) to address several sources of uncertainty in the 2009 stock assessment through acquisition and assessment of additional data. The supplement examined sources of uncertainty in the assessment, the rationale for not implementing on schedule the North Carolina Spotted Seatrout FMP February 2014 management measures and presented possible interim management measures. At the February 2014 NCMFC meeting the commission voted to maintain short-term management measures in the spotted seatrout fishery (Proclamation FF-38-2014: 14-inch minimum size, 75-fish commercial trip limit with weekend closures in joint waters except in Albemarle and Currituck sounds; Proclamation FF-39-2014: 14-inch minimum size, four-fish recreational bag limit). These measures will remain in effect until a new amendment is completed.

As required in the approved 2012 FMP, a stock assessment (NCDMF 2015a) was completed on schedule (2014-2015), peer reviewed, approved for management, and was presented to the NCMFC at its May 2015 business meeting. A new benchmark stock assessment began in late 2020. The North Carolina Division of Marine Fisheries (NCDMF) will review the state FMP for spotted seatrout to determine if changes to management are needed through the FMP amendment process, after the stock assessment is complete and accepted for management use.

The Atlantic States Marine Fisheries Commission (ASMFC) manages spotted seatrout in all Atlantic States who have a declared interest in the species. In addition to the state FMP, the

ASMFC manages spotted seatrout under the Omnibus Amendment to the Interstate Fishery Management Plans for Spanish Mackerel, Spot, and Spotted Seatrout (ASMFC 2011). The goals for the Omnibus Amendment are to bring the FMPs for the three species under the authority of the ASMFC Interstate Fishery Management Program Charter and bringing compliance requirements to each state. Because the intent of the Omnibus amendment was to bring the ASMFC spotted seatrout FMP into compliance with the new ASMFC charter, management measures were not adjusted and the identified objectives and compliance requirements to the states of the Omnibus Amendment are the same as Amendment 1 to the ASMFC spotted seatrout FMP (ASMFC 1990) and are as follows:

- Manage the spotted seatrout fishery restricting catch to mature individuals (12-inch minimum size limit).
- Manage the spotted seatrout stock to maintain appropriate spawning stock biomass (20% SPR).
- Develop research priorities that will further refine the spotted seatrout management program to maximize the biological, social, and economic benefits derived from the spotted seatrout population.

To ensure compliance with interstate requirements, North Carolina also manages this species under the North Carolina Fishery Management Plan for Interjurisdictional Fisheries (IJ FMP; NCDMF 2022). The goal of the IJ FMP is to adopt fishery management plans, consistent with N.C. law, approved by the Mid-Atlantic Fishery Management Council, South Atlantic Fishery Management Council, or the ASMFC by reference and implement corresponding fishery regulations in North Carolina to provide compliance or compatibility with approved fishery management plans and amendments, now and in the future. The goal of these plans, established under the Magnuson-Stevens Fishery Conservation and Management Act (federal council plans) and the Atlantic Coastal Fisheries Cooperative Management Act (ASMFC plans) are like the goals of the Fisheries Reform Act of 1997 to “ensure long-term viability” of these fisheries.

## **Management Unit**

The management unit for the North Carolina Spotted Seatrout FMP (NCDMF 2012) includes all spotted seatrout within the coastal and joint waters of North Carolina. The unit stock, or population unit, for North Carolina’s assessment of spotted seatrout include all spotted seatrout caught in North Carolina and Virginia. Virginia landings were included in the stock assessment of spotted seatrout because of the high rate of mixing observed between North Carolina and Virginia.

## **Goal and Objectives**

The goal of the North Carolina Spotted Seatrout FMP (NCDMF 2012) is to determine the status of the stock and ensure long-term sustainability for the spotted seatrout stock in North Carolina. To achieve this goal, it is recommended that the following objectives be met:

- Develop an objective management program that provides conservation of the resource and sustainable harvest in the fishery.
- Ensure the spawning stock is of sufficient capacity to prevent recruitment-overfishing.
- Address socio-economic concerns of all user groups.

- Restore, improve, and protect important habitats that affect growth, survival, and reproduction of the North Carolina spotted seatrout stock.
- Evaluate, enhance, and initiate studies to increase understanding of spotted seatrout biology and population dynamics in North Carolina.
- Promote public awareness regarding the status and management of the North Carolina spotted seatrout stock.

## **DESCRIPTION OF THE STOCK**

### **Biological Profile**

Spotted seatrout range from Massachusetts to southern Florida and the Bahamas on the U.S. Atlantic Coast and continue through the Gulf of Mexico to the Yucatan Peninsula, Mexico (Murphy et al. 2006). Genetic data supports a single unit stock in Virginia and North Carolina (Ellis et al. 2019). In addition, based on genetic data, New River, North Carolina is an area of complex, seasonal mixing between two genetically distinct populations (Ellis et al. 2019): Georgia through Cape Fear River, North Carolina, and Bogue Sound, North Carolina and north (O'Donnell et al. 2014; Ellis et al. 2019). They inhabit shallow coastal and estuarine waters throughout their range and are considered a euryhaline species (Deaton et al. 2010). In North Carolina, the current state record was recorded at 12.3 pounds in 1961. The maximum reported age of spotted seatrout is 9 years in North Carolina for both male and female fish (NCDMF 2012). Most spotted seatrout in North Carolina are mature by age 1 and 7.9 inches for males and 9.9 inches for females. All males are mature at 12 inches and females at 15 inches. Spawning in North Carolina occurs from April to October with peak spawn around May (Burns 1996). Spawning occurs within the first few hours after sunset (Luczkovich et al. 1999) and a single fish is capable of spawning multiple times (batch spawners) throughout the season. In Florida, it has been observed that during peak spawning, spotted seatrout older than 3 years old may spawn every two days while younger fish may spawn as frequently as every four days (Roumillat and Brouwer 2004). Estimates of the number of eggs a female can produce in a year from the Southeast and Gulf Coasts vary, based on size and age and range, from 3 million to 20 million per year (Nieland et al. 2002; Roumillat and Brouwer 2004; Murphy et al. 2011).

### **Stock Status**

The 2014 North Carolina spotted seatrout stock assessment (NCDMF 2015b) indicated the spotted seatrout stock in North Carolina and Virginia is not overfished and overfishing is not occurring (Figures 1 and 2).

### **Stock Assessment**

The 2014 assessment of spotted seatrout in North Carolina and Virginia was conducted using a Stock Synthesis model that incorporated data collected from commercial and recreational fisheries, two fishery-independent surveys, and a tagging study (NCDMF 2015b). Data included 1991 through 2012 and relied on expanded fishery-independent data sources, including Virginia age, a juvenile abundance index, and North Carolina State University tag-return data (Ellis 2014). The

fishing year was defined as the biological year, March 1 through February 28 or 29, to incorporate cold stun mortalities within a single model year.

The results of this assessment suggest the age structure of the spotted seatrout stock has been expanding during the last decade. However, an abrupt decline is evident in the model's estimate of recruitment after 2010, although this is not mirrored in the empirical survey data. Spawning stock biomass (SSB) has declined since 2007. In 2012, estimated SSB was 2,513,270 pounds (1,140 metric tons), which is greater than the threshold ( $SSB_{30\%}=868,621$  pounds or 395 metric tons; Figure 1), indicating the stock is not overfished. There is no trend in fishing mortality ( $F$ ), but periods of high  $F$  seem to coincide with spawning stock biomass declines and may be attributed to cold stun events. The 2012 estimate of fishing mortality was 0.40, which is less than the threshold ( $F_{20\%}=0.66$ ), indicating the stock is not experiencing overfishing; however, the 2012 estimate of fishing mortality (0.40) is very near the target fishing mortality of  $F_{30\%}=0.42$  (Figure 2).

A benchmark stock assessment for spotted seatrout began in 2020 coinciding with the scheduled FMP review and is scheduled to be completed in late 2022.

## **DESCRIPTION OF THE FISHERY**

### **Current Regulations**

The NCDMF currently allows the recreational harvest of spotted seatrout seven days per week with a minimum size limit of 14-inches total length (TL) and a daily bag limit of four fish. The commercial harvest is limited to a daily limit of 75 fish with a minimum size limit of 14-inches TL). It is unlawful for a commercial fishing operation to possess or sell spotted seatrout for commercial purposes taken from Joint Fishing Waters of the state from midnight on Friday to midnight on Sunday each week; the Albemarle and Currituck sounds are exempt from this weekend closure. In the event of a catastrophic cold stun, the NCDMF has the authority to close the fishery until the following spawning period. In 2018, the spotted seatrout commercial and recreational fishery was closed from January 5 through June 15 by proclamation due to a state-wide cold stun event.

### **Commercial Fishery**

Annual landings have been variable throughout the time series (Table 1; Figure 3). Commercial landings in 2021 (694,784 pounds) increased by 22% compared to the previous year (568,574 pounds; Table 1; Figure 3). Commercial landings in 2021 were the highest since 1991. This sharp increase in commercial landings is most likely due to several strong year classes of fish and mild winters in 2019, 2020 and 2021, resulting in high numbers of available fish. During the early to mid-1990s, landings in the ocean and estuarine areas were more similar than in the remainder of the time series (1995-2021) in which estuarine landings have dominated. The primary gear of harvest are estuarine gill nets (set, drift, and run around).



## **Recreational Fishery**

Recreational landings of spotted seatrout are estimated from the Marine Recreational Information Program (MRIP). Recreational estimates across all years have been updated and are now based on the MRIP's new Fishing Effort Survey-based calibrated estimates. For more information on MRIP see <https://www.fisheries.noaa.gov/topic/recreational-fishing-data>.

Recreational harvest of spotted seatrout estimated by MRIP (Type A + B1) in 2020 was 2,241,421 pounds, or 1,223,508 fish, much higher than the time series average of 1,535,506 pounds, or 976,689 but lower than the previous year (Table 1; Figure 3). Estimated recreational releases in 1(6,332,064 fish) were well above the time series average of 3,484,026 fish, and slightly higher than the previous year's releases of 6,215,778 fish (Table 1).

The North Carolina Saltwater Fishing Tournament recognizes anglers for landing and/or releasing fish of exceptional size or rarity by issuing citations that document the capture for the angler. Citations awarded through the North Carolina Saltwater Fishing Tournament for spotted seatrout have varied by year throughout the time series, averaging 338 citations (Table 2; Figure 4). The number of awarded citations in 2021 (655 citations) increased from the previous year (579 citations) and was the highest number of citations since 2007 (1,000 citations). The number of release citations (fish over 24 inches that are released) awarded (283 release citations) was the highest since release citations began in 2008. The percent of spotted seatrout release citations (43%) was the highest since 2018 and 2019 (both at 37%; Table 2).

## **MONITORING PROGRAM DATA**

### **Fishery-Dependent Monitoring**

Commercial fish houses are sampled monthly to provide length, weight, and age data. This information is used to characterize the commercial fishery for stock assessments and to monitor trends in the size and age of fish being removed from the stock. The average sizes of fish landed by the commercial fishery are typically larger than the recreational fishery and is primarily driven by the larger maximum size observed in the commercial landings; in addition, modal length for the commercial fishery was slightly higher (17 inches fork length) than the recreational fishery (15 inches fork length; Table 3; Figure 5). Undersized fish represent a small portion of the harvest in both sectors; 4.5% of commercial harvest and 1.3% of the recreational harvest was below the 14-inch size limit in 2021 (Figure 5).

The number of fish sampled by division staff at commercial fish houses has varied over time due to annual variability in landings of the fishery. The mean length of spotted seatrout in 2021 (17.5 inches fork length) was similar to the time series (1991-2020) average (16.6 inches fork length) and the mean and minimum lengths in 2021 (17.5 and 10.9-inches fork length, respectively) were all approximately equal to the previous two years (Table 3; Figure 6). In addition, for the past three years (2019-2021), minimum length has been consistently greater than the time series average (9.3 inches fork length). Maximum length in 2021 decreased to 29.9 inches fork length and was just above the time series average (29.3 inches fork length). The bulk of spotted seatrout landings by the commercial fishery in 2021 came from the ocean and estuarine gill net fishery (95%) with

pound nets (2%), gigs (1%), and all other gears (mainly beach seines, swipe nets, and haul seines) accounting for the rest (2%).

Recreational catch is almost exclusively hook-and-line with few fish being landed by gigs. The mean (17.0 inches fork length), minimum (11.1 inches fork length), and maximum (26.5 inches fork length) lengths of fish measured in 2021 from the recreational fishery were similar to the previous year (17.0, 12.1, 26.8 inches fork length, respectively) and greater than the time series (1991-2020) average of each (16.0, 10.4, 25.8 inches fork length, respectively; Table 3; Figure 7). Ninety-two percent of the spotted seatrout sampled from the recreational fishery in 2021 were between 14 and 19 inches (Figure 5).

### **Fishery-Independent Monitoring**

The NCDMF utilizes numerous independent monitoring programs to provide indices of juvenile (Program 120) and adult (Program 915) abundance to include in stock assessments. Program 120, the North Carolina Estuarine Trawl Survey, is a fishery independent multispecies monitoring program that has been ongoing since 1971 in the months of May and June. One of the key objectives of this program is to provide a long-term database of annual juvenile recruitment for economically important species. This survey samples a fixed set of 104 core stations with additional stations as needed. The core stations are sampled from western Albemarle Sound south to the South Carolina border each year without deviation two times in the months of May and June. An additional set of 27 spotted seatrout juvenile stations in Pamlico Sound and its major tributaries were added in 2004 and are sampled during the months of June and July. Data from the spotted seatrout specific stations are used to generate an index of relative abundance of age zero spotted seatrout, calculated as the average number of fish per tow. The resulting relative abundance index for the time series is variable with no significant trend overall, and peaks in 2006, 2008, 2012, 2013, and 2018 suggesting relatively higher recruitment in those years (Figure 8). The Program 120 relative abundance index in 2021 was 0.20, which was a 70% decrease from the previous year, and the lowest value since the beginning in 2004 (0.67 spotted seatrout per tow). The 2021 relative abundance index was a 90% decrease from the time series average (2004-2020; 2.08 spotted seatrout per tow).

The NCDMF started a fishery independent gill net survey (Program 915) in 2001 to generate a long-term database of age composition and to develop indices of abundance for numerous commercial and recreationally important finfish species, including spotted seatrout. The survey utilizes a stratified random sampling scheme of multi-mesh gill nets designed to characterize the size and age distribution for key estuarine species in Pamlico Sound and help managers assess the spotted seatrout stocks without relying solely on commercial and recreational fishery dependent data. Three regions encompassing most of the estuarine waters in North Carolina are sampled monthly from February to December. Pamlico Sound stations include waters on the backside of the barrier islands and the bays of Hyde and Dare counties. Relative abundance from Pamlico Sound has remained relatively steady from 2001 to 2015 (averaged 0.51 fish per set), increased to a time series high in 2019 (1.81 fish per set) and remained high in 2021 (1.46 fish per set; Figure 9). For the central river stations that include Pamlico, Pungo and Neuse rivers, abundance rose sharply in 2021 to the highest value in the time series (1.38 fish per set). Spotted seatrout abundance in the Cape Fear and New rivers has fluctuated without trend throughout the time series (Figure 11). Relative abundance in 2021 in the Cape Fear and New rivers was 0.91 fish per set,

the second highest value in the time series. During 2020 no indices of abundance are available for spotted seatrout from the fishery-independent assessment (Program 915). Sampling in this program was suspended in February 2020 due to COVID-19 restrictions and protected species interactions but resumed July 2021.

Spotted seatrout age samples are collected from numerous NCDMF fishery independent and dependent sources. To date, a total of 20,668 otoliths from spotted seatrout have been aged since 1991 (Table 4). With the exception of 2003, the minimum age of sampled spotted seatrout has been age zero for every year the NCDMF has recorded this information. Maximum ages have varied every year, ranging from age five to age nine. Modal ages, which give an indication of the age of the largest cohort in the fishery, averages age one. Spotted seatrout length-at-age was summarized based on all available age data (1991-2020; Figure 12). Average growth of spotted seatrout slows down around age-4, but fish as large as 24.7 inches have the potential to be young of the year (age-0), demonstrating the species' fast growth. In 2021, the number of fish aged (1,006 fish) increased from the previous year (634 fish), which is to be expected with delays in sampling due to COVID-19 in 2020. Spotted seatrout sampled in 2021 had a modal age of 1 and maximum age of 6, an increase from the previous year (5).

## RESEARCH NEEDS

The following research needs were compiled from those listed in the 2012 North Carolina Spotted Seatrout FMP. Improved management of spotted seatrout is dependent upon research needs being met. Research needs are not listed in order of priority.

- Develop a juvenile abundance index to gain a better understanding of a stock recruitment relationship. — Ongoing, using program 120 since 2004; CRFL grant 2F40 is investigating an optimal sampling design for P120
- Research the feasibility of including measures of temperature or salinity into the stock recruitment relationship. — Not Completed
- Determine batch fecundity estimates for North Carolina spotted seatrout. — Not Conducted
- Size specific fecundity estimates for North Carolina spotted seatrout. — Not Conducted
- Area specific spawning surveys could help in the delineation of area specific closures to protect females in spawning condition. — Not Conducted
- Investigation of the relationship of temperature with both adult and juvenile mortality. — Ongoing: Ellis et al. 2017a, 2017b; CRFL project 2F40-F024 started in 2015, monitoring temperatures in overwintering habitat of spotted seatrout
- Incorporate cold stun event information into the modeling of the population. — Unsuccessfully attempted using stock synthesis model from the 2012 stock assessment, is being investigated in the 2019 benchmark stock assessment
- Estimate or develop a model to predict the impact of cold stun events on local and statewide spotted seatrout abundance. — Unsuccessfully attempted using stock synthesis model from the 2012 stock assessment, is being investigated further during 2019 benchmark stock assessment

- Obtain samples (length, age, weight, quantification) of the cold stun events as they occur. — Ongoing: obtained samples in 2001, 2010, 2014, 2015, 2018; length, weight, sex, age; unable to quantify extent of kills
- Define overwintering habitat requirements of spotted seatrout. — Preliminary work completed in Ellis et. al (2017a, 2017b)
- Determine factors that are most likely to influence the severity of cold stun events in North Carolina and separate into low and high salinity areas. — Preliminary work completed in Ellis et. al (2017a)
- Investigate the distribution of spotted seatrout in nursery and non-nursery areas. — Not Completed
- Further research on the possible influences of salinity on release mortality of spotted seatrout. — Not Completed
- Survey of fishing effort in creeks with conflict complaints. — Not Completed
- Determine targeted species in nursery areas and creeks with conflict complaints. — Not Completed
- Microchemistry, genetic, or tagging studies are needed to verify migration patterns, mixing rates, or origins of spotted seatrout between North Carolina and Virginia. — Genetic study completed: NCSU study CRFL grant 2F40-F022; tagging studies ongoing: Tim Ellis data (2008-2013); CRFL project 2F40-F017, NC Multi Species Tagging Study 2014 — Present
- Tagging studies to verify estimates of natural and fishing mortality. — Ongoing: Tim Ellis data (2008-2013); CRFL project 2F40-F017, NC Multi Species Tagging Study 2014 — Present
- Tagging studies to determine if there are localized populations within the state of North Carolina (e.g., a southern and northern stock). — Ongoing: Tim Ellis data (2008-2013); CRFL project 2F40-F017, NC Multi Species Tagging Study 2014 — Present
- A longer time series and additional sources of fishery-independent information. — Longer time series available for P915 as well as P915 surveys for rivers and southern portion of state
- Increased observer coverage in a variety of commercial fisheries over a wider area. — Ongoing
- Expand nursery sampling to include SAV bed sampling in high and low salinity areas during the months of July through September. — Not Completed
- Evaluate the role of shell hash and shell bottom in spotted seatrout recruitment and survival, particularly where SAV is absent. — Not Completed
- Evaluate the role of SAV in the spawning success of spotted seatrout. — Not Completed

## **MANAGEMENT STRATEGY**

Maintain a spawning potential ratio of 20% to increase the likelihood of sustainability through an expanded age structure and an increase in the spawning stock biomass. This strategy should provide a greater cushion for the population and likely lead to faster recovery of the population after cold stun events, which can lead to mass mortalities in the winter months potentially affecting

the number of mature fish available to spawn the following spring. The Director maintains authority to intervene in the event of a catastrophic cold stun event and close the fishery in specific areas or statewide until June 15. This reduces fishing mortality on spotted seatrout until after the peak in their spawning season.

## **FISHERY MANAGEMENT PLAN SCHEDULE RECOMMENDATIONS**

The review of the plan is underway. A benchmark stock assessment is being conducted, incorporating data through February 2020.

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## TABLES

Table 1: Recreational harvest (number of fish landed and weight in pounds) and releases (number of fish) and commercial harvest (weight in pounds) of spotted seatrout from North Carolina for the period 1991–2021.

Year	Recreational			Commercial	Total Weight (lb)
	Numbers Landed	Numbers Released	Weight Landed (lb)	Weight Landed (lb)	
1991	988,049	719,372	1,360,530	660,662	2,021,192
1992	908,233	476,405	1,390,746	526,271	1,917,017
1993	569,327	542,137	857,720	449,886	1,307,606
1994	798,937	601,148	1,207,520	412,358	1,619,878
1995	863,057	764,503	1,221,065	574,296	1,795,361
1996	575,357	1,028,974	699,078	226,580	925,658
1997	779,611	480,093	1,025,110	232,497	1,257,607
1998	702,274	351,114	1,125,898	307,671	1,433,569
1999	1,080,411	1,168,909	1,878,913	546,675	2,425,588
2000	728,906	645,107	1,095,729	376,574	1,472,303
2001	499,556	1,210,336	659,893	105,714	765,607
2002	746,908	1,829,880	957,824	175,555	1,133,379
2003	388,715	903,292	515,678	181,462	697,140
2004	560,834	934,206	728,027	130,961	858,988
2005	1,517,647	3,744,921	1,695,036	129,855	1,824,891
2006	1,444,778	2,722,351	2,034,469	312,624	2,347,093
2007	1,241,296	3,558,110	1,998,275	374,722	2,372,997
2008	1,372,973	4,509,440	2,114,130	304,430	2,418,560
2009	1,857,890	5,369,092	2,878,160	320,247	3,198,407
2010	630,748	8,034,670	1,277,174	202,647	1,479,821
2011	723,502	7,486,377	1,353,388	75,239	1,428,627
2012	1,602,836	4,967,987	2,720,028	265,016	2,985,044
2013	1,107,957	4,312,436	1,881,881	367,648	2,249,529
2014	725,086	3,950,447	1,451,592	242,245	1,693,837
2015	249,260	4,883,109	430,579	128,762	559,341
2016	978,624	6,533,887	1,724,492	254,590	1,979,082
2017	1,217,834	5,151,510	2,157,198	299,911	2,457,109
2018	449,473	15,245,249	658,555	128,922	787,477
2019	1,937,250	7,185,562	3,334,163	378,491	3,712,654
2020	2,053,354	6,215,778	3,632,315	568,764	4,201,079
2021	1,223,508	6,332,064	2,241,421	694,784	2,936,205
Mean	976,689	3,484,026	1,535,506	308,709	1,844,215

Table 2: Total number of awarded citations for spotted seatrout (>24 inches total length for release or > five pounds landed) from the North Carolina Saltwater Fishing Tournament for the time period 1991–2021.

Year	Total Citations	Release Citations <sup>+</sup>	% Release
1991	185		0
1992	203		0
1993	12		0
1994	237		0
1995	483		0
1996	132		0
1997	125		0
1998	332		0
1999	695		0
2000	511		0
2001	518		0
2002	353		0
2003	328		0
2004	378		0
2005	290		0
2006	686		0
2007	1,000		0
2008	428	5	1
2009	434	14	3
2010	168	16	10
2011	37	3	8
2012	143	5	3
2013	162	21	13
2014	197	18	9
2015	176	16	9
2016	214	44	21
2017	464	81	17
2018	198	73	37
2019	468	172	37
2020	579	193	33
2021	655	283	43

<sup>+</sup> Spotted seatrout release citations (fish released greater than 24 inches total length) began in 2008.



Table 3: Mean, minimum, and maximum lengths (fork length, inches) of spotted seatrout measured from the commercial and recreational fisheries, 1991–2021.

Year	Commercial				Recreational			
	Mean Length	Minimum Length	Maximum Length	Total Number Measured	Mean Length	Minimum Length	Maximum Length	Total Number Measured
1991	14.4	7.7	28.7	1,207	15.1	4.9	31.9	745
1992	16.0	8.4	27.9	1,791	15.6	5.1	24.2	543
1993	16.3	8.5	29.7	1,898	15.7	9.3	25.0	485
1994	15.6	7.0	29.1	1,224	16.0	10.6	24.0	1,076
1995	17.1	8.5	29.1	2,728	15.6	8.5	31.6	853
1996	16.0	7.0	27.6	748	14.6	8.9	24.3	307
1997	14.9	8.1	29.9	4,155	15.3	8.9	23.1	622
1998	14.5	8.0	29.9	4,698	16.4	11.0	36.5	551
1999	15.6	7.6	30.2	6,167	16.4	11.6	26.8	699
2000	17.5	6.0	30.7	2,901	15.6	11.3	25.2	330
2001	16.3	7.6	30.7	1,595	14.8	11.5	26.0	326
2002	16.1	8.0	28.9	3,897	14.9	11.8	24.8	283
2003	17.2	9.5	29.6	2,305	14.6	9.9	25.0	130
2004	16.6	9.0	27.9	2,676	15.3	8.9	22.5	294
2005	16.8	8.5	27.5	2,429	14.2	8.7	25.2	664
2006	16.3	8.9	29.3	6,493	15.5	10.1	25.9	706
2007	17.3	9.6	31.0	8,455	15.9	10.8	27.7	521
2008	17.0	7.3	30.3	5,877	15.6	11.5	26.5	790
2009	16.7	5.4	29.5	6,631	16.0	9.1	26.0	779
2010	17.5	11.4	30.9	4,060	17.5	12.4	24.8	336
2011	16.6	8.8	27.8	1,274	17.0	12.3	24.2	638
2012	16.5	7.4	31.1	4,822	16.5	13.0	24.1	939
2013	16.7	8.7	28.5	6,144	16.8	10.1	23.5	865
2014	17.3	5.5	28.3	3,321	17.6	13.1	26.0	381
2015	18.3	8.9	30.9	2,676	16.9	12.8	25.0	154
2016	17.3	9.4	31.7	3,025	16.8	13.0	25.2	647
2017	17.6	7.6	32.9	3,066	17.0	11.6	25.8	864
2018	17.2	10.5	28.0	1,180	15.7	9.3	23.3	274
2019	17.3	10.1	28.9	2,622	16.7	10.7	24.6	1,574
2020	17.5	10.9	33.4	2,851	17.0	12.1	26.8	1,119
2021	17.5	10.9	29.9	3,432	17.0	11.1	26.5	1,019

Table 4: Modal age, minimum age, maximum age, and number aged for spotted seatrout collected through NCDMF sampling programs, 1991–2021

Year	Modal Age	Minimum Age	Maximum Age	Total Number Aged
1991	1	0	7	679
1992	1	0	6	572
1993	1	0	6	645
1994	1	0	9	688
1995	1	0	5	623
1996	1	0	6	734
1997	1	0	6	710
1998	1	0	9	765
1999	1	0	6	869
2000	1	0	7	566
2001	1	0	5	425
2002	1	0	7	713
2003	1	1	7	405
2004	1	0	6	598
2005	1	0	5	727
2006	1	0	8	970
2007	2	0	8	702
2008	1	0	7	616
2009	2	0	6	660
2010	1	0	6	623
2011	1	0	6	421
2012	1	0	5	593
2013	2	0	5	635
2014	1	0	7	530
2015	2	0	5	448
2016	1	0	5	456
2017	1	0	7	881
2018	1	0	5	516
2019	1	0	8	1,167
2020	2	0	5	634
2021	1	0	6	1,006

Table 5: Summary of the NCMFC management strategies and their implementation status for the 2012 N.C. Spotted Seatrout FMP.

Management Strategy	Implementation Status
50% reduction in harvest needed, six fish bag limit, 14-inch minimum size limit, and weekend closure for commercial gears year-round (no possession on weekends).	Accomplished; Proclamation authority
A maximum of two fish over 24 inches for recreational fishermen	Proclamation authority
The small mesh gill net attendance requirement is extended to include weekends, December through February	Accomplished
Development of a mutual aid agreement between NCDMF Marine Patrol and WRC Wildlife Enforcement Officers for Inland fishing waters	Accomplished
Move forward with the mediation policy process to resolve conflict between spotted seatrout fishermen	Conflict resolution process established under Rule 15A NCAC 03I .0122.
Remain status quo with the assumption that the Director will intervene in the event of a catastrophic event and do what is necessary in terms of temporary closures by water body	Repealed Rule 15A NCAC 03M .0504 and used proclamation authority in 15A NCAC 03M .0512; Beginning in May 2017 re-established spotted seatrout Rule 15A NCAC 03M .0522 due to ASMFC considering retiring Interstate Spotted Seatrout FMP
More extensive research on cold stun events by NCDMF, Universities, etc.	Preliminary research accomplished (Ellis et al. 2017a, 2017b), additional work ongoing.

Table 6: Summary of the NCMFC management strategies and their implementation status for Supplement A to the 2012 N.C. Spotted Seatrout FMP adopted in 2014.

Management Strategy	Implementation Status
2014: 14-inch minimum size limit, four recreational bag limit, 75 fish commercial trip limit, no gill nets in joint waters on weekends, unlawful for a commercial operation to possess or sell spotted seatrout taken from joint waters on weekends.	Proclamation authority
2014: 14-inch minimum size limit, three fish recreational bag limit with a December 15- January 31 closure, 25 fish commercial trip limit (no closure)	Delay in management strategy
If a cold stun occurs close spotted seatrout harvest through June 1 and retain four fish recreational bag limit and 75 fish commercial trip limit	Proclamation authority
Revisit the Spotted Seatrout FMP in three years to determine if sustainable harvest measures are working	On schedule to begin July 2017*

\* The NCMFC approved the 2017 FMP schedule in August 2017, which included a schedule change for spotted seatrout to begin in 2019, two years later than originally planned.

## FIGURES

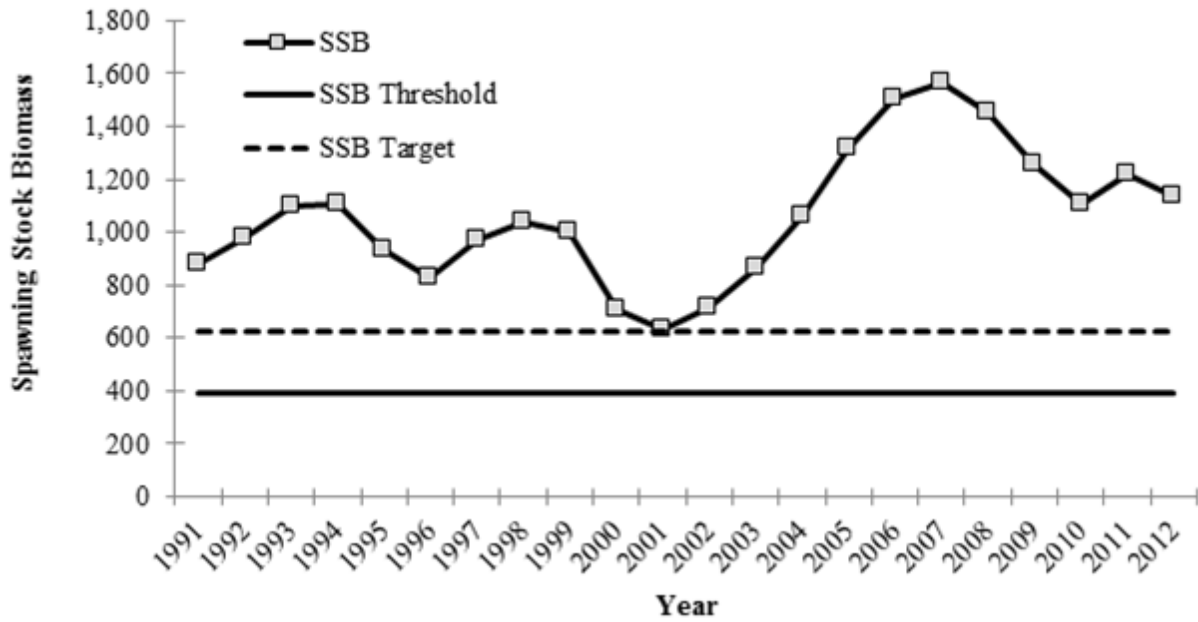


Figure 1. Annual predicted spawning stock biomass in metric tons, compared to estimated  $SSB_{Threshold}$  ( $SSB_{20\%}$ ) and  $SSB_{Target}$  ( $SSB_{30\%}$ ), 1991–2012. 2012 is the terminal year for the last spotted seatrout stock assessment (NCDMF 2015b).

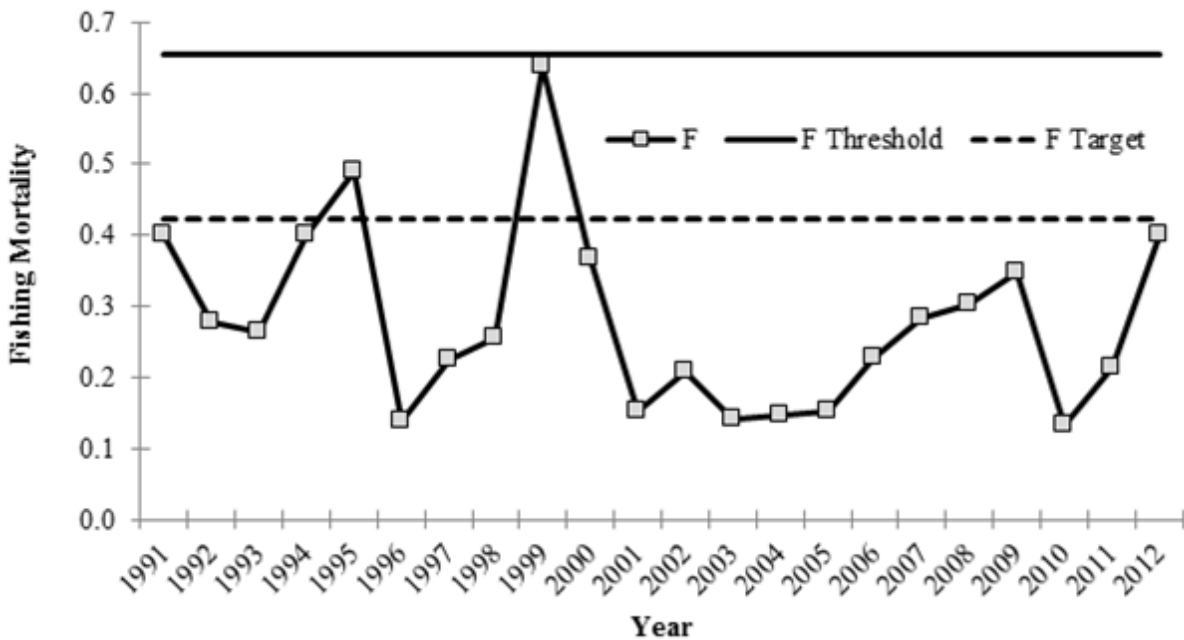


Figure 2. Annual predicted fishing mortality rates (numbers-weighted, ages 1–4) compared to estimated  $F_{Threshold}$  ( $F_{20\%}$ ) and  $F_{Target}$  ( $F_{30\%}$ ), 1991–2012. 2012 is the terminal year for the last spotted seatrout stock assessment (NCDMF 2015b).

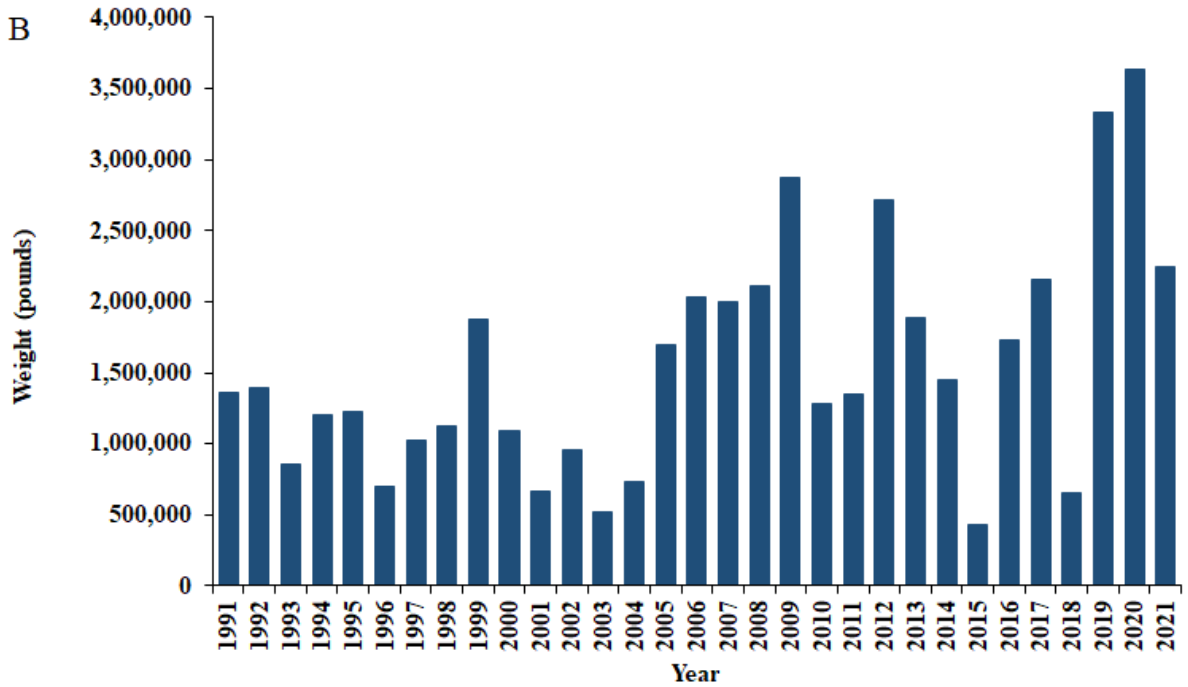
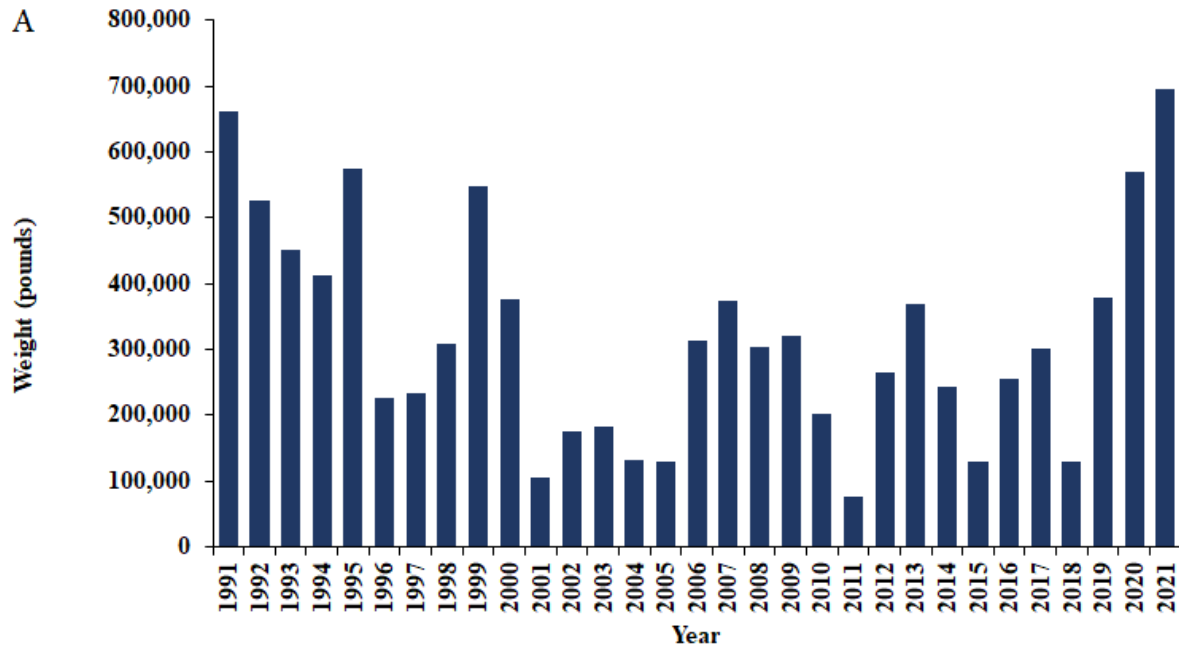


Figure 3. Commercial landings (pounds) reported through the North Carolina Trip Ticket Program (A) and recreational landings (Type A + B1; pounds) estimated from the Marine Recreational Information Program survey (B) for North Carolina, 1991–2021.

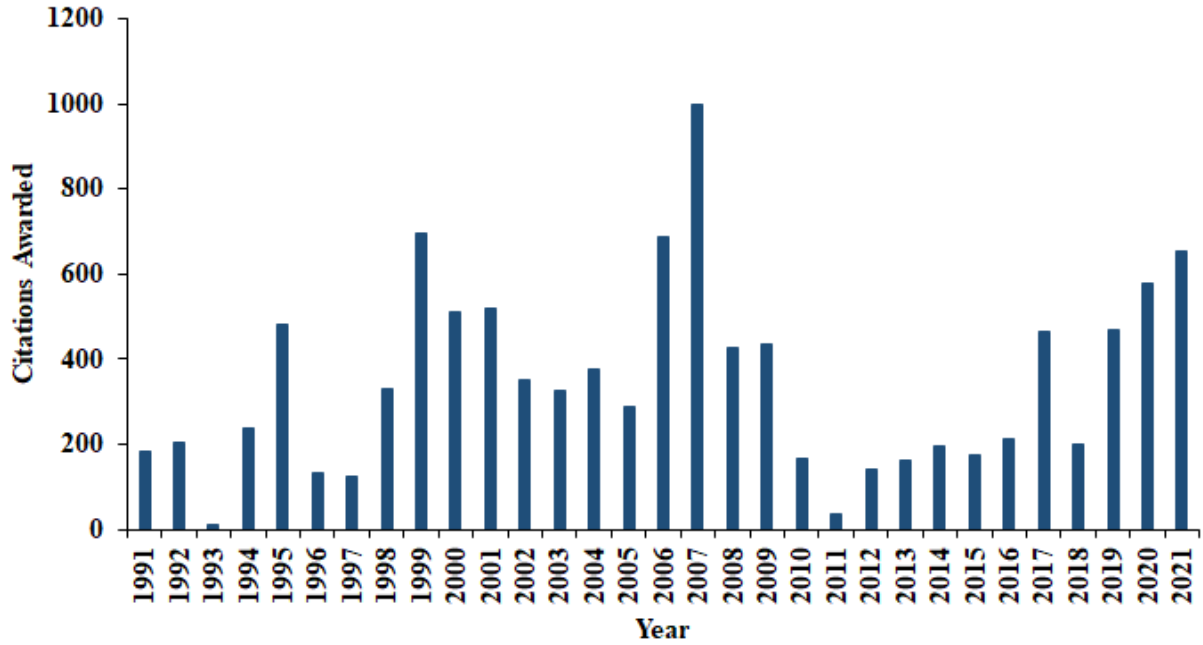


Figure 4. North Carolina Saltwater Fishing Tournament citations awarded for spotted seatrout, 1991–2021. Citations are awarded for spotted seatrout >24 inches total length for release or > five pounds landed.

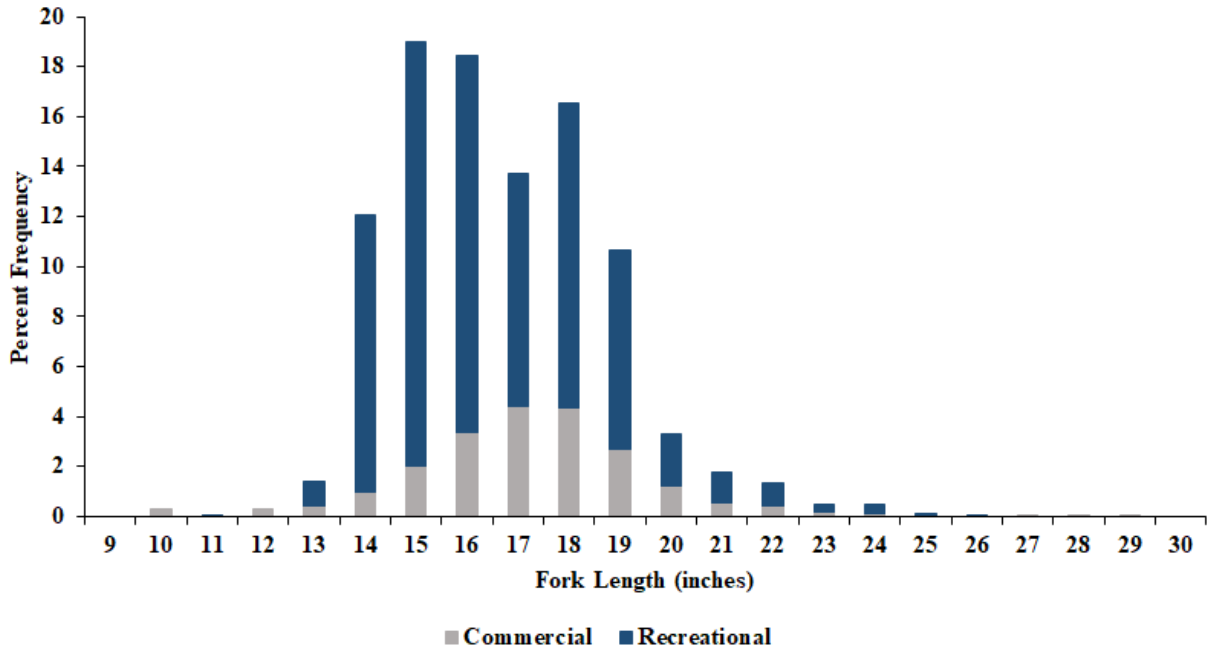


Figure 5. Commercial and recreational length frequency distribution from spotted seatrout harvested in 2021.

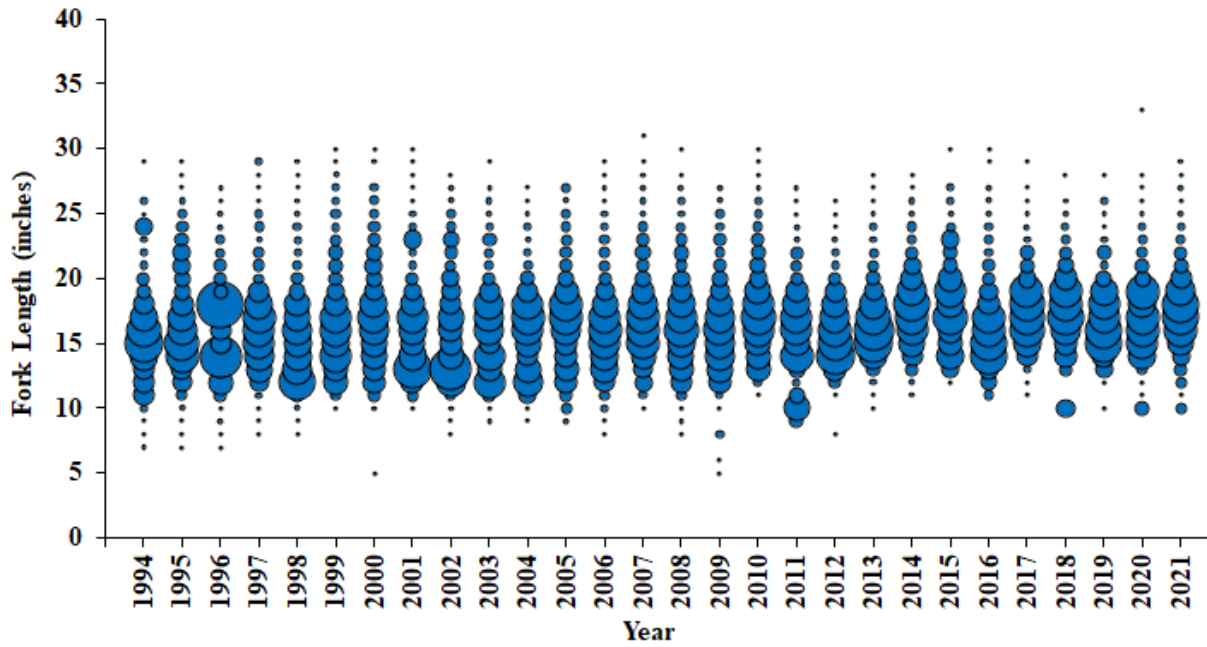


Figure 6. Commercial length frequency (fork length, inches) of spotted seatrout harvested, 1994–2021. Bubbles represent fish harvested at length and the size of the bubble is equal to the proportion of fish at that length.

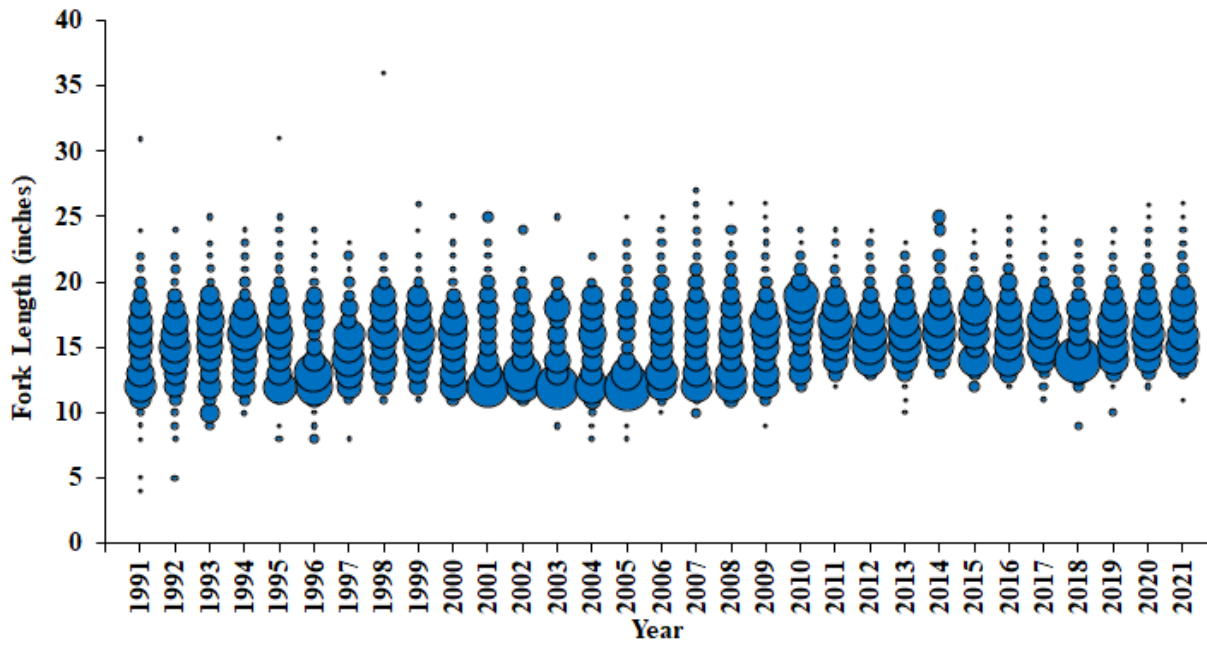


Figure 7. Recreational length frequency (fork length, inches) of spotted seatrout harvested, 1991–2021. Bubbles represent fish harvested at length and the size of the bubble is equal to the proportion of fish at that length.

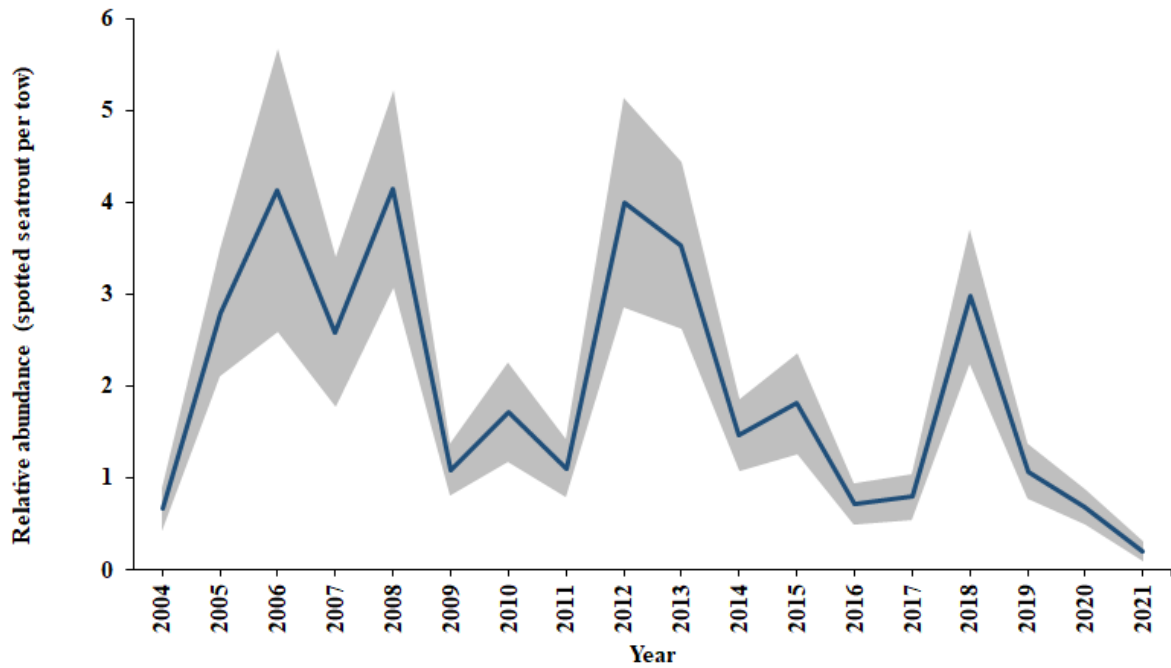


Figure 8. Relative abundance index (fish per tow) from the North Carolina Estuarine Trawl Survey (Program 120) during June and July, 2004–2021. Error bars represent  $\pm 1$  standard error.

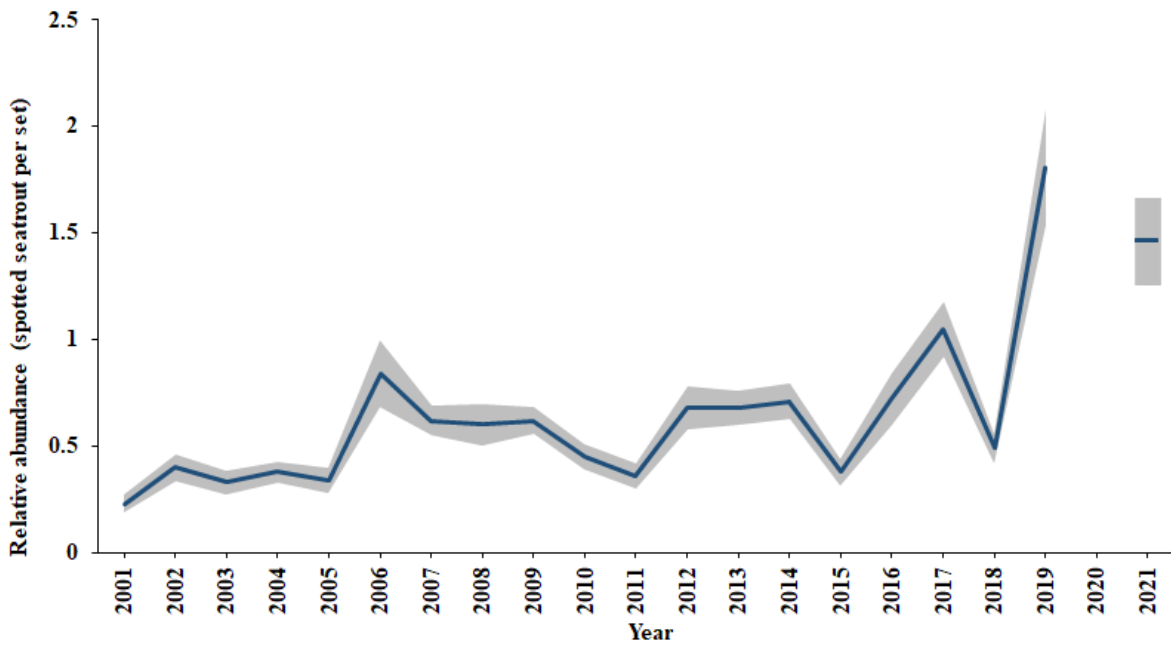


Figure 9. Relative abundance index (fish per set) of spotted seatrout collected from Program 915 in Pamlico Sound, 2001–2021. Error bars represent  $\pm 1$  standard error. Sampling not conducted in 2020.



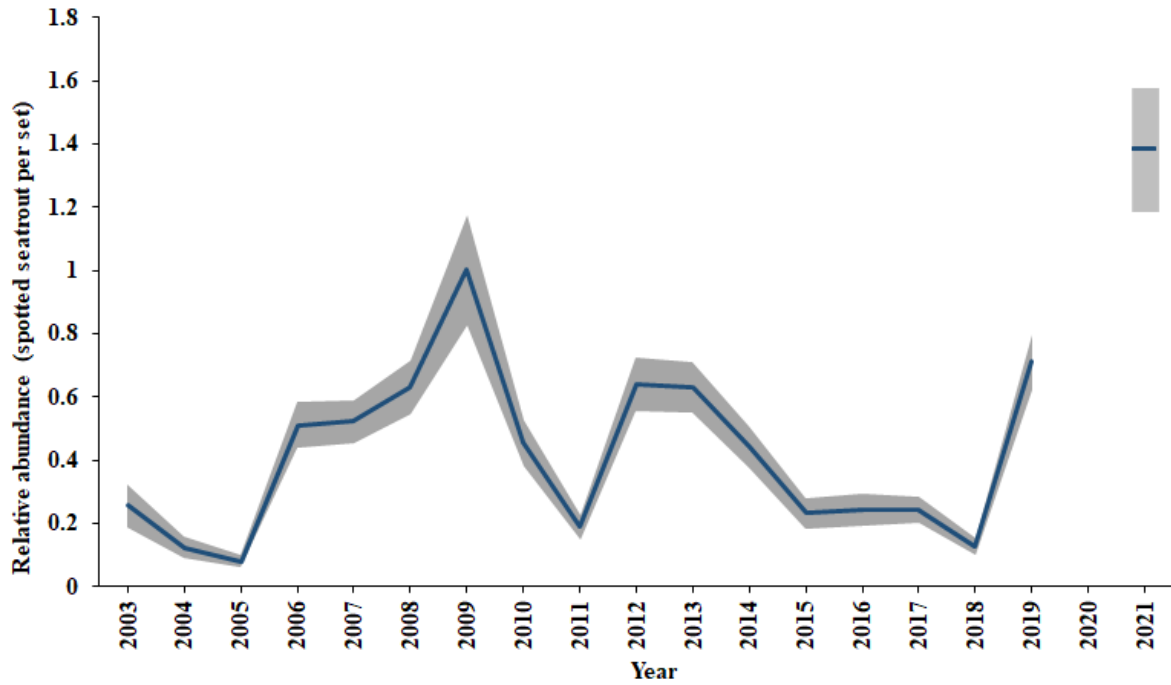


Figure 10. Relative abundance index (fish per set) of spotted seatrout collected from Program 915 in Pungo, Pamlico, and Neuse rivers, 2004–2021. Error bars represent  $\pm 1$  standard error. Sampling not conducted in 2020.

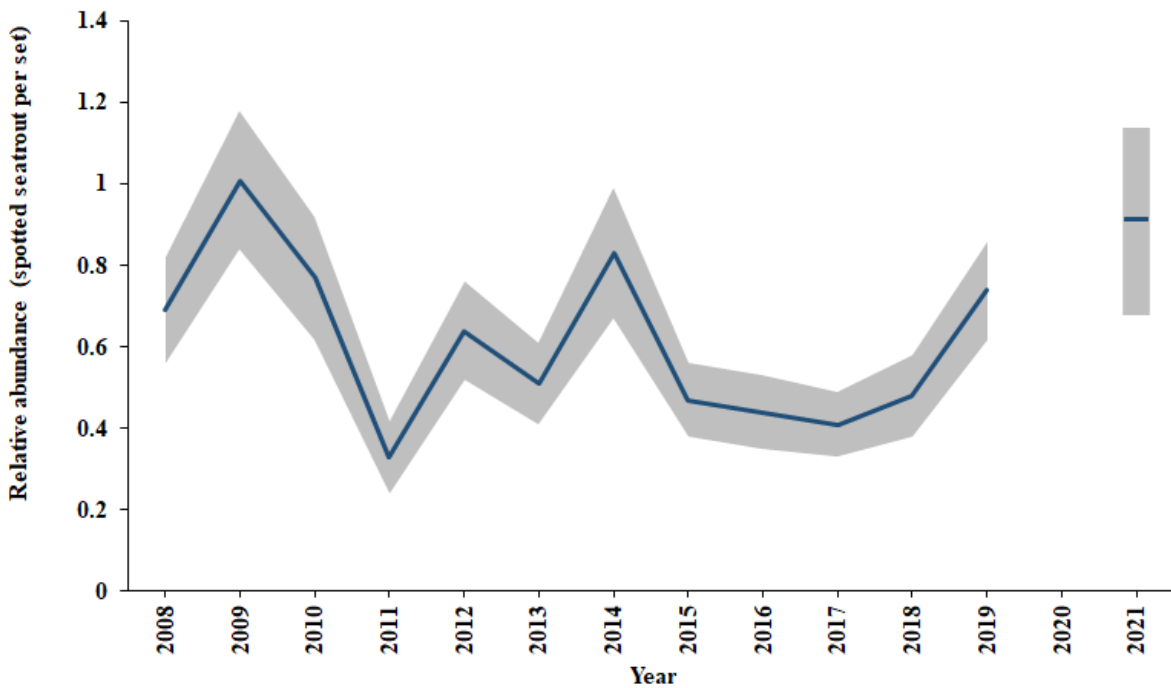


Figure 11. Relative abundance index (fish per set) of spotted seatrout collected from Program 915 in New and Cape Fear rivers, 2008–2021. Error bars represent  $\pm 1$  standard error. Sampling not conducted in 2020.

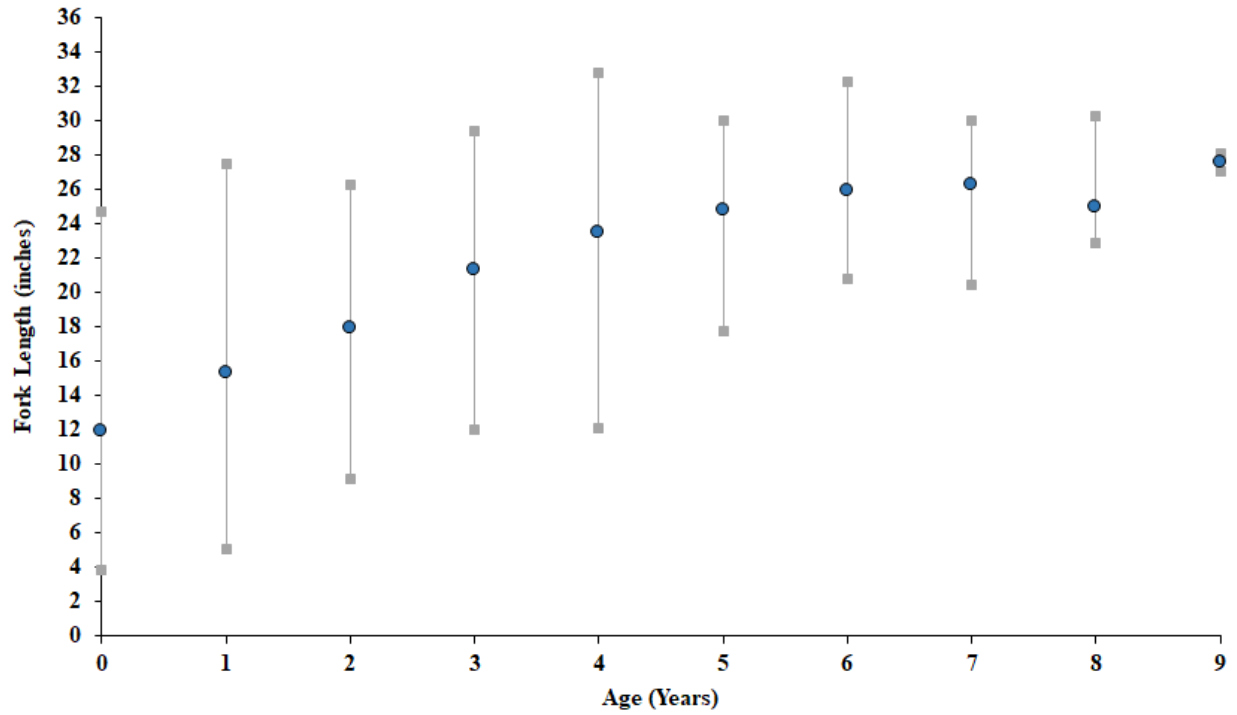


Figure 12. Spotted seatrout length at age based on all age samples collected from 1991 to 2020. Blue circles represent the mean size at a given age while the grey squares represent the minimum and maximum observed size for each age.

# DRAFT FOR DEQ SECRETARIAL REVIEW

<b>DRAFT N.C. FISHERY MANAGEMENT PLAN REVIEW SCHEDULE (July 2023 – June 2028)</b> Revised July 30, 2023					
SPECIES (Date of Last Action)	2023-2024	2024-2025	2025-2026	2026-2027	2027-2028
<b>SPOTTED SEATROUT (2/12) *</b>					
<b>STRIPED MULLET (11/15) †</b>					
<b>HARD CLAM (2/17)</b>					
<b>OYSTER (2/17)</b>					
<b>RED DRUM (8/17)</b>					
<b>BLUE CRAB (2/20)</b>					
<b>BAY SCALLOP (8/20)</b>					
<b>KINGFISHES (8/20)</b>					
<b>RIVER HERRING (2/22)*</b>					
<b>INTERJURISDICTIONAL (5/22)*</b>					
<b>SOUTHERN FLOUNDER (5/22)</b>					
<b>SHRIMP (8/22)</b>					
<b>ESTUARINE STRIPED BASS (2/23)</b>					

\* Plan review began in FY 2021

† Plans began in FY 2021. MFC adopted Supplement A to Amendment 1 in May 2023.

This schedule assumes no rulemaking is required to implement amendments.



ROY COOPER  
*Governor*

ELIZABETH S. BISER  
*Secretary*

KATHY B. RAWLS  
*Director*

August 4, 2023

**MEMORANDUM**

**TO:** N.C. Marine Fisheries Commission  
**FROM:** Nathaniel Hancock, Albemarle-Roanoke (A-R) Striped Bass Species Lead, FMP  
Co-Lead Fisheries Management Section  
**SUBJECTS:** Estuarine Striped Bass Amendment 2 Updates

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**Issue**

During the May, 2023 N.C. Marine Fisheries Commission meeting, the Division of Marine Fisheries (hereafter the Division) provided results of the updated stock assessment of the Albemarle Sound-Roanoke River (A-R) Striped Bass stock in North Carolina with data through 2021. Those results are summarized below. In addition this memo provides an update of the indices of abundance through the most recent sampling year of 2022. Adaptive management action required under Amendment 2 to the North Carolina Estuarine Striped Bass Fishery Management Plan (FMP) are also summarized along with an update of current A-R stock striped bass stocking efforts.

**Action Needed**

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

**Findings**

- The stock was modeled using data from 1991 to 2021.
- The stock is still undergoing overfishing.
- The stock is still overfished.
- An external peer review by a panel of experts and Division staff concluded the stock assessment is suitable for management use and is a credible representation of current stock status.
- The peer review panel recognized factors in addition to fishing mortality are likely responsible for the chronic poor recruitment observed since the early 2000s and the current low abundance of the stock. These factors may include river flow and/or blue catfish predation and competition.

	Target	Threshold	2021 Value	Status
<b>Fishing Mortality</b>	0.14	0.20	0.77	Overfishing
<b>Female SSB</b>	163.62 mt (360,720 lb)	124.87 mt (275,286 lb)	16.13 mt (35,566 lb)	Overfished

## Overview

Results from the stock assessment update indicate the A-R striped bass stock is still undergoing overfishing and the stock is still overfished. The estimate of fishing mortality ( $F$ ) in 2021 was 0.77, greater than the  $F_{\text{Threshold}}$  of 0.20, indicating overfishing (Figure 1). The spawning stock biomass (SSB) was 35,566 pounds, less than the  $\text{SSB}_{\text{Threshold}}$  of 275,286 pounds, indicating overfished status (Figure 2).

Evaluation of the trends in survey indices of abundance indicate further concern for the stock. Both observed and predicted recruitment of age-0 fish have been declining and are extremely low in recent years. Female SSB has been declining since 2004. Fisheries-independent data also support the declining trend in overall population abundance observed since the mid-2000s.

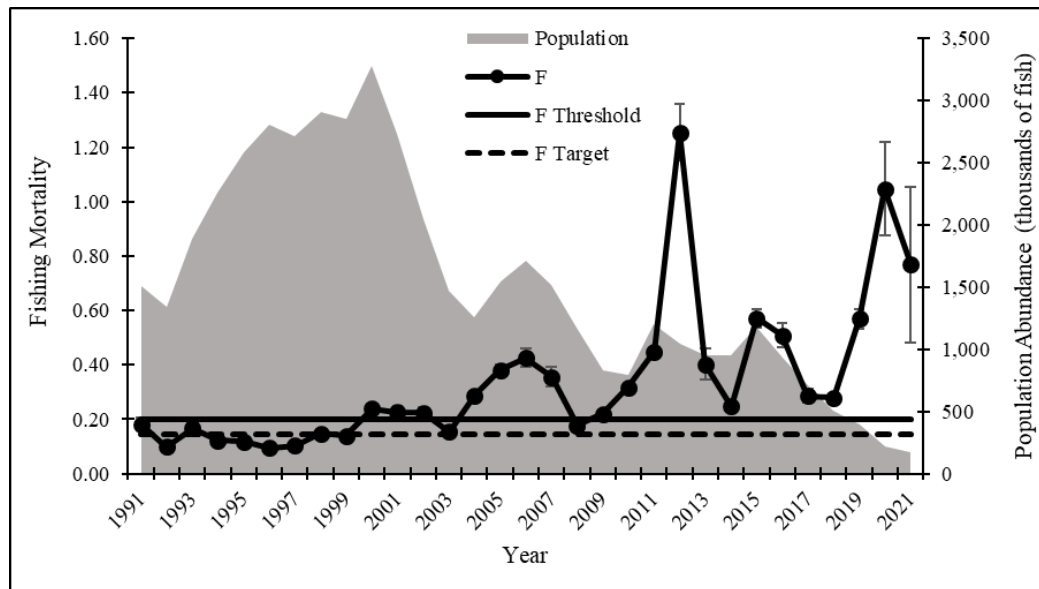


Figure 1. Estimates of fishing mortality ( $F$ ) and population abundance for the Albemarle-Roanoke striped bass stock. Source: Update of the A-R Striped Bass Stock Assessment 2022.

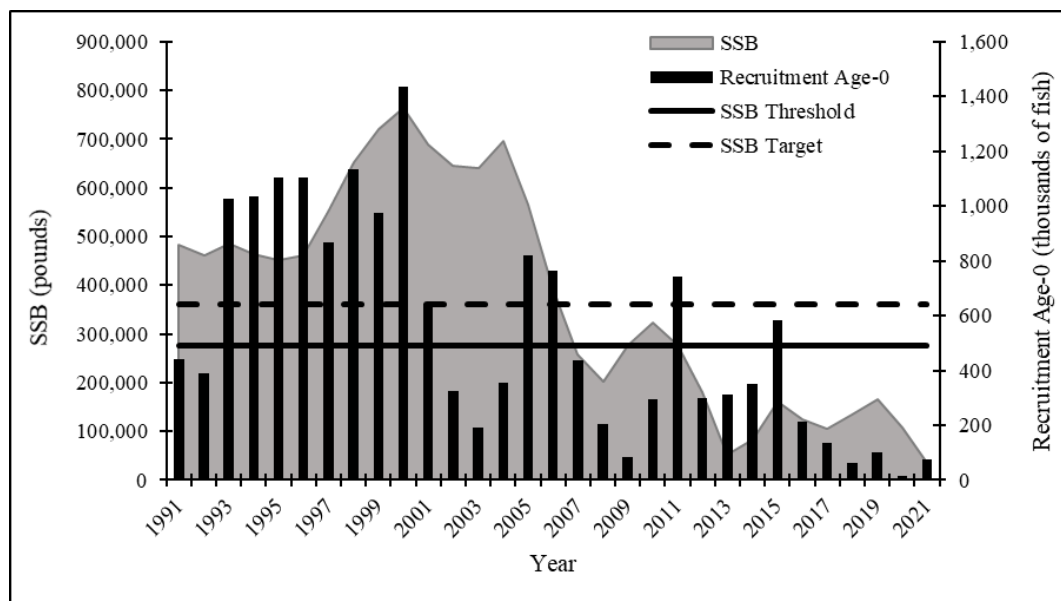


Figure 2. Estimates of spawning stock biomass (SSB) and recruitment of age-0 fish coming into the population each year for the Albemarle-Roanoke striped bass stock. Source: Update of the A-R Striped Bass Stock Assessment 2022.

Potential Causes for Recruitment and Stock Decline

The Division and peer review panel recommended the updated stock assessment model for management use. The peer review panel was confident in the declining trend in overall population abundance and recent poor recruitment based on assessment results and fishery-independent trends from the North Carolina Wildlife Resources Commission’s (NCWRC) electrofishing spawning stock abundance survey, and the Division’s (NCDMF) independent gill net spawning stock abundance survey and juvenile abundance survey (Figures 3–5). It was acknowledged there was a great deal of uncertainty in the potential causes of the decline in recruitment and overall decline in stock abundance. The benchmark review panel recognized that the decline in recruitment was not solely a result of reduced stock abundance due to harvest (i.e., overfishing). The review panel recommended that future assessments consider key abiotic and biotic drivers of recruitment. Spring flow conditions in the Roanoke River (the spawning grounds for A-R Striped Bass) are believed to influence recruitment and ultimately stock abundance and so was included as a high priority for further evaluation in the stock assessment’s research recommendations. Another area of potential influence on the A-R striped bass stock is the prevalence of the non-native blue catfish. The population of blue catfish in the Roanoke River and Albemarle Sound and tributaries has increased dramatically in recent years. The peer reviewers felt predation by blue catfishes could potentially impact recruitment of striped bass directly or could influence food resources for striped bass through competition for prey. The review panel recognized the degree to which this occurs is not known, but future assessments should consider this as a factor that may influence abundance but is not tied to striped bass harvest.

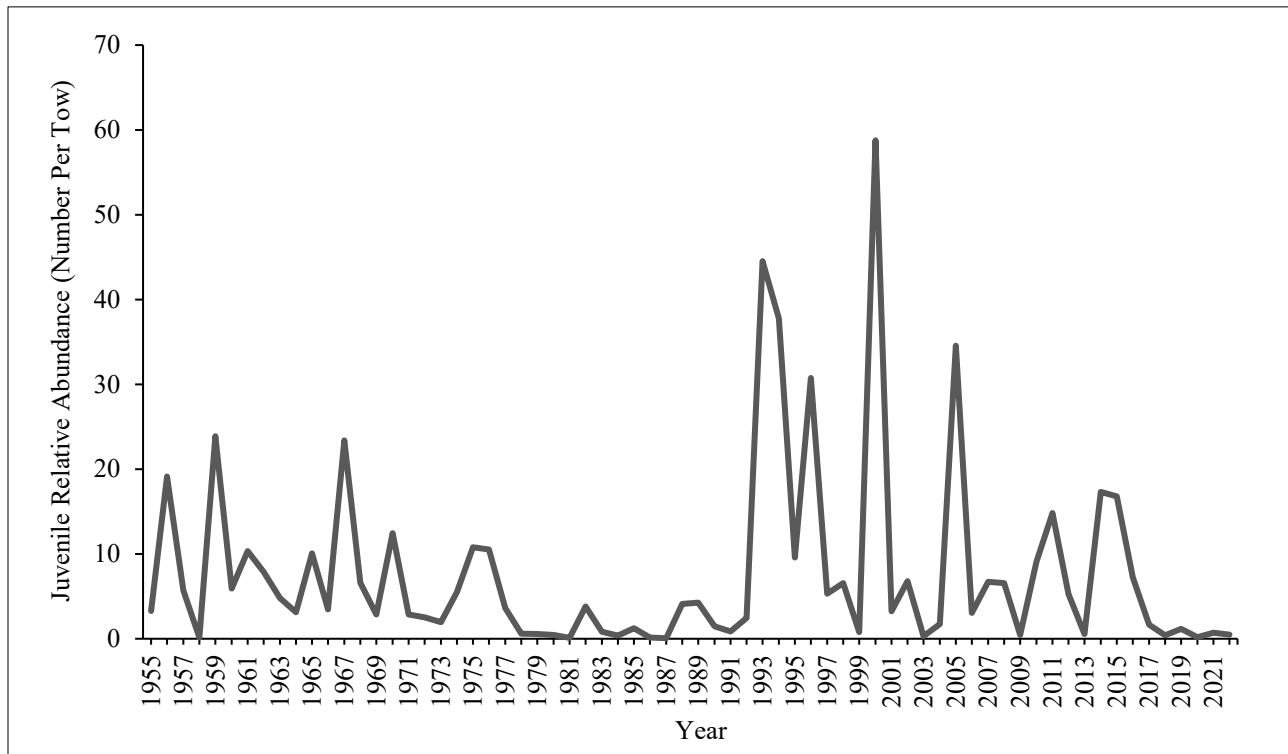


Figure 3. Annual index of relative abundance for young-of-year juvenile striped bass derived from the NCDMF Striped Bass Juvenile Survey, Western Albemarle Sound, 1955–2022.



Figure 4. Annual index of relative abundance for ages 9+ striped bass derived from the NCWRC Electrofishing Spawning Stock Abundance Survey, 1991–2022.

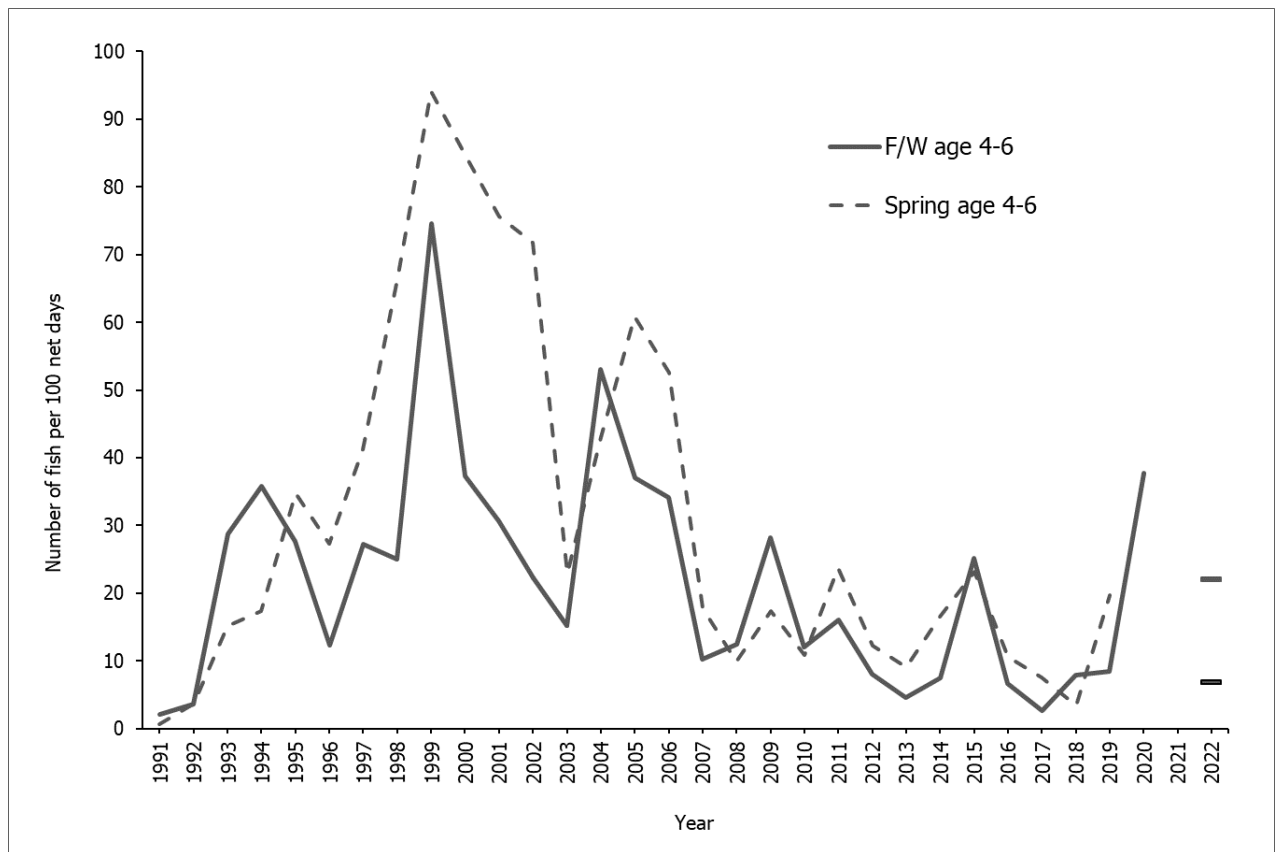


Figure 5. Annual index of relative abundance for ages 4–6 striped bass derived from the NCDMF Fall/Winter and Spring Independent Gill Net Abundance Surveys, 1991–2022.

### **Adaptive Management actions required under Amendment 2 to lower fishing mortality to the target**

Amendment 2 adaptive management states:

- Use peer reviewed stock assessments and updates to recalculate the BRPs and/or TAL. The current TAL of 51,216 lb remains in place until a new TAL is determined. Stock assessments will be updated at least once between benchmarks. Increases or decreases in the TAL will be implemented through Adaptive Management. A harvest moratorium could be necessary if stock assessment results calculate a TAL that is too low to effectively manage, and/or the stock continues to experience spawning failures.
- Use estimates of  $F$  from stock assessments to compare to the  $F$  BRP and if  $F$  exceeds the  $F_{\text{Target}}$  reduce the TAL to achieve the  $F_{\text{Target}}$  through Adaptive Management.

Implementing a new, lower harvest level accomplishes the adaptive management set forth in Amendment 2 to the North Carolina Estuarine Striped Bass FMP.

Based on the most recent stock assessment update, a TAL of 8,349 lb is necessary to reduce  $F$  to the  $F_{\text{Target}}$ .

A Revision to Amendment 2 will be presented to the MFC at its November business meeting.

### **Albemarle Sound-Roanoke River Striped Bass Supplemental Stocking Contingency Plan**

The North Carolina Interjurisdictional Fisheries Cooperative, including the Division, Wildlife Resources Commission, U.S. Fish and Wildlife Service, and the Edenton National Fish Hatchery, annually produces a work plan that outlines striped bass stocking activities in North Carolina coastal rivers. Striped bass have not been stocked in the Albemarle Sound since 1996. However, due to six consecutive years (2017–2022) of A-R stock spawning failures, the 2023 Cooperative Work Plan included stocking approximately 500,000 juvenile Phase-I (about 2 inches long) striped bass in the western Albemarle Sound. Juvenile fish were produced from mature A-R striped bass collected on the Roanoke River spawning grounds in Weldon, N.C. Genetic marking technology will be used to determine the percent of the 2023 year class that was supported by hatchery versus wild spawned fish. Stocking of hatchery reared striped bass will continue in the Albemarle Sound for at least the next three years.



NC Marine Fisheries Commission  
**Rulemaking**  
August 2023 Business Meeting

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ROY COOPER  
*Governor*

ELIZABETH S. BISER  
*Secretary*

KATHY B. RAWLS  
*Director*

July 28, 2023

## MEMORANDUM

**TO:** N.C. Marine Fisheries Commission

**FROM:** Catherine Blum, Rulemaking Coordinator  
Marine Fisheries Commission Office

**SUBJECT:** Rulemaking Update

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### 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. Summarize the outcome of the June 15, 2023, Rules Review Commission (RRC) review of 15A NCAC 03M .0101 from the 2022-2023 rulemaking cycle, with a possible vote by the MFC pursuant to N.C.G.S. § 150B-21.12 regarding this rule.

### Findings

- Periodic Review and Readoption of Rules – Requirements
  - North Carolina N.C.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 a report phase, followed by rule readoption. For 15A NCAC 03 (Marine Fisheries), the MFC completed the initial rule readoption process.
  - For 15A NCAC 18A (Sanitation), the MFC has 79 rules remaining for readoption. On Jan. 16, 2020, the RRC approved the readoption schedule of June 30, 2024, for these rules. The MFC must readopt the remaining rules by this deadline, or the rules will expire and be removed from the N.C. Administrative Code.
  - For the second iteration of the periodic review requirements, the RRC approved the report deadlines effective June 1, 2023. For the MFC rules, the final reports will be due in early 2027. DMF staff will provide further information to the MFC as that time approaches.
- At its August meeting, the MFC is scheduled to receive an update about two ongoing packages of proposed rules and possibly vote pursuant to N.C.G.S. § 150B-21.12 regarding 15A NCAC 03M .0101.

### Action Needed

The MFC will receive a summary of the outcome of the June 15, 2023, RRC review of 15A NCAC 03M .0101 from the 2022-2023 rulemaking cycle, with a possible vote by the MFC pursuant to N.C.G.S. § 150B-21.12 regarding this rule. For more information, please refer to the rulemaking section of the briefing materials.

### **2022-2023 Annual Rulemaking Cycle Update (2 rules)**

At its August 2022 business meeting, the MFC approved 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). A table showing the steps in the process is provided in the rulemaking section of the briefing materials. The MFC gave final approval of the rules at its February 2023 business meeting. The marinas, docking facilities, and other mooring areas rule was approved at the May 18, 2023, RRC meeting and became effective June 1, 2023. A news release and rulebook supplement were distributed; a copy of each document is in the briefing materials. At its June 15, 2023, meeting, the RRC objected to the mutilated finfish rule in accordance with N.C.G.S. § 150B-21.10. The MFC must respond to these objections in accordance with the provisions of N.C.G.S. § 150B-21.12. A copy of the RRC correspondence is in the briefing materials. If ultimately approved by the RRC, the mutilated finfish rule is automatically subject to legislative review pursuant to Session Law 2019-198 and N.C.G.S. § 14-4.1 and would not be reviewed until the 2024 short session.

### **2023-2024 Annual Rulemaking Cycle Update (103 rules)**

At its May 2023 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for 103 rules. A summary of the proposed rules by subject is provided below. A table showing the timing of the steps in the process is included in the rulemaking section of the briefing materials. The proposed rules were published in the Aug. 1, 2023, issue of the *N.C. Register* and a news release was issued; a copy of each document is in the briefing materials. Proposed rules would have an earliest effective date of April 1, 2024, except for rules automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1. Rules that are subject would likely be available for review during the 2024 short session.

### **READOPTION OF SHELLFISH PLANT AND INSPECTION RULES IN 15A NCAC 18A .0300 THROUGH .0800 (85 rules)**

Pursuant to N.C.G.S. § 150B-21.3A, this package of 85 rules in 15A NCAC 03K and 18A is proposed for the readoption of one rule with no changes, readoption of 55 rules with amendments, repeal through readoption of 23 rules, amendment of two rules, adoption of three rules, and the repeal of one rule. Proposed changes would help ensure that North Carolina remains in full compliance with national requirements, provide efficiencies for the DMF in the process of implementing and enforcing the rules, and clarify and update the rules for stakeholders.

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 and protect N.C. shellfish consumers within and outside of the State. The requirements are already being enforced by the DMF consistent with the Guide. Overall, the rules are expected to increase consumer confidence in the safety of N.C. shellfish products, achieve efficiencies in implementing and enforcing the rules, and clarify the requirements for stakeholders.

## DATA COLLECTION AND HARASSMENT PREVENTION FOR THE CONSERVATION OF MARINE AND ESTUARINE RESOURCES (5 rules)

Due to the increasing occurrence and severity of harassment during, and decreasing participation in, DMF data collection initiatives, amendments are proposed to five MFC rules. Proposed amendments set requirements to address harassment by any licensee or person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes (e.g., fishing) of DMF employees that occurs in the process of obtaining data for the conservation of marine and estuarine resources, and data for the protection of public health related to the public health programs that fall under the authority of the MFC. Additional amendments provide the types of data that may be collected. The amendments support the importance of participation by persons engaged in regulated fishing activity in division data collection and provide a safer working environment for division employees.

## OYSTER SANCTUARY RULE CHANGES (1 rule)

Proposed amendments add the boundaries of the two newest oyster sanctuaries (Cedar Island and Gull Shoal) and correct boundaries for three other oyster sanctuaries (Pea Island, Raccoon Island, and Swan Island) where published coordinates were found to be inconsistent with permitted and marked reef boundaries. These changes to permanent rule would protect oysters from bottom disturbing gear so they can serve their intended management function as oyster broodstock sanctuaries, as well as safeguard boaters navigating the sanctuaries; the changes are already in place via the Fisheries Director's proclamation authority (SF-6-2022). Additionally, coordinates for three sanctuaries are proposed to be reorganized to standardize the cardinal directions, for consistency; there are no changes to the overall sanctuaries, nor the coordinate pairs themselves.

## CONFORMING RULE CHANGES FOR SHELLFISH RELAY PROGRAM AND SHELLFISH LEASES AND FRANCHISES (12 rules)

In 2021, the DMF began the process of discontinuing its Shellfish Relay Program (relaying of shellfish from certain polluted areas) due primarily to insufficient resources to run the program and lack of widespread use. The Shellfish Relay Program will end effective May 1, 2024. The MFC received information about the discontinuation of the Shellfish Relay Program at its February 2022 business meeting. DMF identified 11 rules relating to the Shellfish Relay Program that set specific requirements for the relaying of shellfish from certain polluted areas. Changes are proposed to amend portions of rules or repeal rules consistent with rulemaking requirements in the APA.

Additional proposed changes for shellfish lease and franchise requirements are proposed to 15A NCAC 03O .0201 to conform to requirements of Session Law 2019-37 (Act to Provide Further Support to the Shellfish Aquaculture Industry in North Carolina). Specifically, changes incorporate and conform the shellfish production and planting requirements from Session Law 2019-37 for shellfish leases granted before July 1, 2019, and for shellfish leases granted on or after this date. Additional proposed changes require shellfish lease or franchise holders to meet the listed production, marking, and permit requirements for current shellfish leases before being eligible for additional shellfish lease acreage. Doing so would help ensure more efficient and meaningful use of the public trust bottom by preventing persons not in good standing from precluding potential applicants from applying for a shellfish lease in affected areas.

## 2024-2025 Annual Rulemaking Cycle Preview

Division staff will provide a preview of potential rules in the MFC’s 2024-2025 annual rulemaking cycle at its August 2023 business meeting. Subjects under development include management options for false albacore, pot marking requirements, and proposed changes to permit rules.

### 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 were 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 MFC is the agency with the authority for the approval steps prescribed in the process for marine fisheries and crustacea and shellfish sanitation rules.

The review has two parts. The first is a report phase, which has concluded for the first iteration of the periodic review requirements. The second part is 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 had 211 rules in Chapter 03 (Marine Fisheries), of which 172 were subject to readoption, and 164 rules in Chapter 18, Subchapter 18A (Sanitation) that are also subject to readoption.

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	1 Rule Readopted	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.

For 15A NCAC 03 (Marine Fisheries), the MFC completed the initial rule readoption process. For 15A NCAC 18A (Sanitation), the MFC has 79 rules remaining for readoption. For the second iteration of the periodic review requirements, the RRC approved the report deadlines effective June 1, 2023. For the MFC rules, the final reports will be due in early 2027.

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

August 2023

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. 19, 2022	MFC approved Notice of Text for Rulemaking
Oct. 3, 2022	Publication of proposed rules in the <i>North Carolina Register</i>
Oct. 3-Dec. 16, 2022	Public comment period held *
Dec. 16, 2022	Public hearing held **
Feb. 22-24, 2023	MFC approved permanent rules
June 15, 2023	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
June 1, 2023	Effective date of 1 rule not subject to legislative review
June 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

\*The public comment period for these rules was extended from December 2, 2022, to December 16, 2022, at 5 p.m.

\*\*The Marine Fisheries Commission had technical difficulties with the public hearing on proposed rules 15A NCAC 03M .0101 and 18A .0911 scheduled for November 1, 2022, at 6 p.m. via WebEx with a listening station at the Division of Marine Fisheries Central District Office, 5285 Highway 70 West, Morehead City, NC 28557. The public hearing on these rules was rescheduled for December 16, 2022, at 1 p.m. at the same location; no virtual access was provided.

**Roy Cooper**  
Governor

**Elizabeth S. Biser**  
Secretary DEQ



**Kathy B. Rawls**  
Director

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Release: Immediate  
Date: June 1, 2023

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

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**New rule effective today that pertains to classification of shellfish waters near marinas**

**MOREHEAD CITY** – An amended rule goes into effect today that pertains to the classification of shellfish waters near marinas.

Amendments to 15A NCAC 18A .0911, Marinas, Docking Facilities, and Other Mooring Areas, modify requirements to allow the Division of Marine Fisheries to determine necessary buffer closures for shellfish growing waters in and around these areas based on a dilution analysis, which is a more scientific and public health-based rationale than the previous slip count method.

The changes help ensure that North Carolina remains in full compliance with national requirements so that North Carolina shellfish can continue to be sold through interstate commerce. The changes also make implementation and enforceability of requirements clearer.

The rule was amended and readopted under the state-mandated periodic review schedule. The Marine Fisheries Commission gave final approval in February.

Text of the new rule is available in the June 1, 2023 Supplement to North Carolina Marine Fisheries Commission Rules April 1, 2020 at <https://www.deq.nc.gov/marine-fisheries/rules-regulations/marine-fisheries-commission-rules/6-1-23-mfc-rulebook-supplement/open>.

For more information, contact Catherine Blum, Rules Coordinator for the Division of Marine Fisheries, at [catherine.blum@ncdenr.gov](mailto:catherine.blum@ncdenr.gov).

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NORTH CAROLINA  
MARINE FISHERIES COMMISSION  
RULES

APRIL 1, 2020



SUPPLEMENT – JUNE 1, 2023

MARINE FISHERIES COMMISSION  
Rob Bizzell, Chair

DEPARTMENT OF ENVIRONMENTAL QUALITY  
Elizabeth S. Biser, Secretary

DIVISION OF MARINE FISHERIES  
Kathy B. Rawls, Director  
<https://deq.nc.gov/marine-fisheries>



# N.C. MARINE FISHERIES COMMISSION

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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; JULY 1, 2022; AUGUST 23, 2022; SEPTEMBER 1, 2022; OR MARCH 15, 2023.

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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; JUNE 1, 2022; AUGUST 23, 2022; MARCH 15, 2023;  
OR JUNE 1, 2023.

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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 .0104 INTRODUCE, TRANSFER, OR HOLD IMPORTED MARINE AND ESTUARINE ORGANISMS**

(a) To protect the marine and estuarine resources of North Carolina from unacceptable risks from predators, pests, parasites, and disease, it shall be unlawful, except for American eels imported from Maryland, Virginia, or South Carolina for use in an aquaculture operation, without first obtaining a Permit to Introduce, Transfer, or Hold Imported Marine and Estuarine Organisms from the Fisheries Director or without obtaining live marine or estuarine organisms from a permittee to:

- (1) place into the Coastal Fishing Waters of the State live marine or estuarine organisms non-native to the State. For the purpose of this Rule, this action is an introduction.
- (2) place into the coastal fishing waters of the State live marine or estuarine organisms that are native but that originated outside the State's boundaries. For the purpose of this Rule, this action is a transfer.
- (3) hold or maintain any live marine or estuarine organisms, including non-native species that may thrive if introduced into Coastal Fishing Waters, imported into the State in a quarantine or isolation system for live bait or use in an aquaculture operation as defined in Rule .0101 of this Section.
- (4) sell for bait any live marine or estuarine organisms, including non-native species that may thrive if introduced into Coastal Fishing Waters, imported into the State.

(b) Any person desiring to obtain a Permit to Introduce, Transfer, or Hold Imported Marine and Estuarine Organisms shall submit a complete application to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500. For the Fisheries Director to determine the level of risk to any native marine or estuarine resource or the environment, the applicant shall also provide a certification from a:

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

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

(d) The Fisheries Director may hold public meetings prior to granting permits for activities specified in Paragraph (a) of this Rule to gather information concerning risks to native marine or estuarine resources or the environment.

*History Note: Authority G.S. 113-134; 113-170; 113-182; 143B-289.52; S.L. 2017-190; S.L. 2018-114;*  
*Eff. January 1, 1991;*  
*Amended Eff. November 1, 1991;*  
*Recodified from 15A NCAC 3I .0004 Eff. December 17, 1996;*  
*Amended Eff. April 1, 2009;*  
*Readopted Eff. March 15, 2023.*

**15A NCAC 03I .0105 LEAVING DEVICES UNATTENDED**

(a) It shall be unlawful to leave stakes, anchors, nets, buoys, or floating devices in Coastal Fishing Waters if such devices are not being employed in commercial fishing operations, except as otherwise provided by rule or General Statute.

(b) It shall be unlawful to use or possess fishing equipment in Coastal Fishing Waters in violation of this Section or that contains edible species of fish unfit for human consumption.

(c) It shall be unlawful to leave pots in Coastal Fishing Waters for more than five consecutive days if such pots are not being employed in commercial fishing operations, except upon a timely and sufficient showing of hardship as set forth in Paragraph (d) of this Rule or as otherwise provided by General Statute. The Fisheries Director may, by proclamation, modify the five-day requirement if necessary due to hurricanes, tropical storms, other severe weather events recognized by the National Weather Service, or other variable conditions pursuant to 15A NCAC 03H .0103. Inspectors may tag pots with a device approved by the Fisheries Director to aid and assist in the investigation and identification of unattended pots. Any such device attached to a pot by agents of the Fisheries Director shall be removed by the individual using the pot within five days of attachment in order to demonstrate that the pot is being employed in commercial fishing operations.

(d) For the purpose of this Rule, a timely and sufficient showing of hardship in a commercial fishing operation shall be a statement in writing from the owner of the pot or the owner's immediate family, as defined in G.S. 113-168, submitted to the Fisheries Director that a mechanical breakdown of the pot owner's vessel currently registered with the Division of Marine Fisheries pursuant to G.S. 113-168.6, or the death, illness, or incapacity of the owner of the pot or the owner's immediate family prevented or will prevent employing such pots in commercial fishing operations for more than five consecutive days. Statements and supporting documentation shall be mailed to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. Mailing a statement does not automatically exempt a fisherman from the requirements of this Rule. The statement shall specify the number and specific location of the pots, the date by which the pots will be employed in commercial fishing operations or removed from Coastal Fishing Waters, and:

- (1) in the case of a mechanical breakdown, the Commercial Fishing Vessel Registration number, owner's N.C. motor boat registration number of the disabled vessel, date disabled, and description of the arrangements being made to repair the vessel or a copy of the work order showing the name, address, and phone number of the repair facility; or
- (2) in the case of the death, illness, or incapacity of the owner of the pot or the owner's immediate family, the name of the owner 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.

(e) It shall be unlawful to fail to employ in commercial fishing operations or remove from Coastal Fishing Waters all pots for which a hardship request is granted under this Rule within 14 days of the expiration of the hardship.

*History Note: Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1996; Recodified from 15A NCAC 03I .0005 Eff. December 17, 1996; Amended Eff. April 1, 1997; Temporary Amendment Eff. July 1, 1999; Amended Eff. September 1, 2005; August 1, 2000; Readopted Eff. March 15, 2023.*

#### **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 .0109 RESEARCH SANCTUARIES**

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

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

*History Note: Authority G.S. 113-134; 113-181; 113-182; 113-221.1; 143B-289.52; Eff. January 1, 1991; Recodified from 15A NCAC 3I .0009 Eff. December 17, 1996;*



*Readopted Eff. August 23, 2022.*

**15A NCAC 03I .0113 BIOLOGICAL SAMPLING**

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

*History Note: Authority G.S. 113-134; 113-170.3; 113-174.1; 113-182; 143B-289.52;  
Eff. October 1, 1992;  
Recodified from 15A NCAC 3I .0013 Eff. December 17, 1996;  
Readopted Eff. March 15, 2023.*

**15A NCAC 03I .0114 RECORDKEEPING REQUIREMENTS**

(a) It shall be unlawful for a licensed fish dealer:

- (1) to record false information on the North Carolina trip ticket or to fail to legibly record all items on the North Carolina trip ticket for each transaction and submit the trip ticket in accordance with G.S. 113-168.2, including the following:
  - (A) fisherman's name;
  - (B) fisherman's North Carolina license number;
  - (C) dealer's North Carolina license number;
  - (D) start date of trip, including year, month, and day;
  - (E) unload date of trip, including year, month, and day;
  - (F) North Carolina Division of Marine Fisheries Vessel Identification Number or indicate if no vessel was used;
  - (G) crew size;
  - (H) gear fished;
  - (I) waterbody fished;
  - (J) species landed;
  - (K) quantity of each species landed in pounds, numbers of fish, bushels, or other units of measurement;
  - (L) disposition of species;
  - (M) transaction number;
  - (N) number of crab pots or peeler pots fished, if applicable;
  - (O) state where species was taken if other than North Carolina;
  - (P) lease number, if applicable;
  - (Q) bottom type, if applicable; and
  - (R) shellfish harvest area, if applicable.
- (2) to fail to provide to the Division a Trip Ticket Submittal/Transaction form indicating the number of transactions that occurred during the previous month;
- (3) to fail to make paper copies or electronic copies of trip tickets or N.C. Trip Ticket Program Dock Tickets available at the dealer location for inspection by Marine Fisheries inspectors;
- (4) to fail to submit trip tickets to the Division via electronic file transfer if that dealer reported an annual average of greater than 50,000 pounds of finfish for the previous three calendar years. Dealers subject to the electronic reporting requirement shall be notified by the Division via certified mail and within 120 days of receipt shall:
  - (A) initiate electronic file transfer of trip tickets; and
  - (B) continue to report by electronic file transfer until the dealer no longer holds a fish dealer license with finfish or consolidated categories;
- (5) to fail to use software or web-based utilities authorized by the Division when reporting electronically; and
- (6) to fail to keep all trip tickets and all supporting documentation for each transaction including receipts, checks, bills of lading, records, electronic files, and accounts for a period of not less than three years.

(b) It shall be unlawful for a seller licensed under G.S. 113, Article 14A or donor to fail to provide to the fish dealer, at the time of transaction, the following:

- (1) a current and valid license or permit to sell the type of fish being offered and if a vessel is used, the Commercial Fishing Vessel Registration; and
- (2) complete and accurate information on harvest method and area of catch and other information required by the Division, in accordance with G.S. 113-168.2 and G.S. 113-169.3.

(c) It shall be unlawful to transport fish without having ready at hand for inspection a bill of consignment, bill of lading, or other shipping documentation provided by the shipping dealer showing the following items:

- (1) name of the consignee;
- (2) name of the shipper;
- (3) date of the shipment;
- (4) name of fish being shipped; and
- (5) quantity of each fish being shipped.

In the event the fisherman taking the fish is also a licensed fish dealer and ships from the point of landing, all shipping records shall be recorded at the point of landing. Fishermen who transport their fish directly to licensed fish dealers are exempt from this Paragraph.

(d) It shall be unlawful to export fish landed in the State in a commercial fishing operation without a North Carolina licensed fish dealer completing all the recordkeeping requirements in G.S. 113-168.2(i).

(e) It shall be unlawful to offer for sale fish purchased from a licensed fish dealer without having ready at hand for inspection by Marine Fisheries inspectors or other agents of the Fisheries Director written documentation of purchase showing the following items:

- (1) name of the licensed fish dealer;
- (2) name of the purchaser;
- (3) date of the purchase;
- (4) name of fish purchased; and
- (5) quantity of each fish purchased.

(f) It shall be unlawful for a holder of a Fish Dealer License to have fish in possession at a licensed location without written documentation from a licensed fish dealer or a completed North Carolina trip ticket to show the quantity and origin of all fish.

*History Note: Authority G.S. 113-134; 113-168.2; 113-168.3; 113-169.3; 113-170; 113-170.3; 113-170.4; 113-182; 143B-289.52; Eff. March 1, 1994; Recodified from 15A NCAC 3I .0014 Eff. December 17, 1996; Temporary Amendment Eff. July 1, 1999; Amended Eff. June 1, 2013; August 1, 2000; Readopted Eff. March 15, 2023.*

#### **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 .0118 DISPOSAL OF EVIDENCE**

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

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. March 1, 1996;  
Recodified from 15A NCAC 3I .0018 Eff. December 17, 1996;  
Readopted Eff. March 15, 2023.*

**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 .0100 – NET RULES, GENERAL**

**15A NCAC 03J .0101 FIXED OR STATIONARY NETS**

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

- (1) in the channel of the Intracoastal Waterway;

- (2) to block more than two-thirds of a natural or manmade waterway, sound, river, bay, creek, inlet, or other body of water under the authority of the Marine Fisheries Commission;
- (3) in the middle third of a navigation channel marked by State or federal agencies; or
- (4) in a location where it may interfere with navigation.

*History Note: Authority G.S. 113-134; 113-181; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Readopted Eff. March 15, 2023.*

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

- (a) It shall be unlawful to use gill nets:
  - (1) with a mesh length less than two and one-half inches; and
  - (2) in Internal Waters from April 15 through December 15, with a mesh length five inches or greater and less than five and one-half inches.
- (b) The Fisheries Director may, by proclamation, limit or prohibit the use of gill nets or seines in Coastal Fishing Waters, or any portion thereof, or impose any of the following restrictions on gill net or seine fishing operations:
  - (1) specify time;
  - (2) specify area;
  - (3) specify means and methods, including:
    - (A) gill net mesh length, but the maximum length specified shall not exceed six and one-half inches in Internal Waters; and
    - (B) net number and length, but for gill nets with a mesh length four inches or greater, the maximum length specified shall not exceed 2,000 yards per vessel in Internal Waters regardless of the number of individuals involved; and
  - (4) specify season.
- (c) It shall be unlawful to use fixed or stationary gill nets in the Atlantic Ocean, drift gill nets in the Atlantic Ocean for recreational purposes, or any gill nets in Internal Waters unless nets are marked by attaching to them at each end two separate yellow buoys that shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. Gill nets that are not connected together at the top line are considered as individual nets, requiring two buoys at each end of each individual net. Gill nets connected together at the top line are considered as a continuous net requiring two buoys at each end of the continuous net. Any other marking buoys on gill nets used for recreational purposes shall be yellow, except that one additional buoy, any shade of hot pink in color, constructed as specified in this Paragraph, shall be added at each end of each individual net. Any other marking buoys on gill nets used in commercial fishing operations shall be yellow, except that one additional identification buoy of any color or any combination of colors, except any shade of hot pink, may be used at either or both ends. The gear owner's last name and initials shall be identified on a buoy on each end by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. If a vessel is used, the identification shall also include one of the following:
  - (1) gear owner's current motor boat registration number; or
  - (2) gear owner's U.S. vessel documentation name.
- (d) It shall be unlawful to use gill nets:
  - (1) within 200 yards of any flounder or other finfish pound net set with lead and either pound or heart in use, except from August 15 through December 31 in all Coastal Fishing Waters of the Albemarle Sound, including its tributaries to the boundaries between Coastal and Joint Fishing Waters, west of a line beginning at a point 36° 04.5184' N – 75° 47.9095' W on Powell Point; running southerly to a point 35° 57.2681' N – 75° 48.3999' W on Caroon Point, it shall be unlawful to use gill nets within 500 yards of any pound net set with lead and either pound or heart in use; and
  - (2) from March 1 through October 31 in the Intracoastal Waterway within 150 yards of any railroad or highway bridge.
- (e) It shall be unlawful to use gill nets within 100 feet either side of the center line of the Intracoastal Waterway Channel south of the entrance to the Alligator-Pungo River Canal near Beacon "54" in Alligator River to the South Carolina line, unless such net is used in accordance with the following conditions:
  - (1) no more than two gill nets per vessel may be used at any one time;
  - (2) any net used must be attended by the fisherman from a vessel who shall at no time be more than 100 yards from either net; and
  - (3) any individual setting such nets shall remove them, when necessary, in sufficient time to permit unrestricted vessel navigation.
- (f) It shall be unlawful to use runaround, drift, or other non-stationary gill nets, except as provided in Paragraph (e) of this Rule:
  - (1) to block more than two-thirds of any natural or manmade waterway, sound, bay, creek, inlet, or any other body of water; or

- (2) in a location where it will interfere with navigation.
- (g) It shall be unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation in the gill net attended areas designated in 15A NCAC 03R .0112(a).
- (h) It shall be unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation from May 1 through November 30 in the Internal Waters and Joint Fishing Waters of the state designated in 15A NCAC 03R .0112(b).
- (i) It shall be unlawful for any portion of a gill net with a mesh length five inches or greater to be within 10 feet of any point on the shoreline while set or deployed, unless the net is attended from June through October in Internal Waters.
- (j) For the purpose of this Rule and 15A NCAC 03R .0112, "shoreline" shall mean the mean high water line or marsh line, whichever is more seaward.

*History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52; Eff. January 1, 1991; Amended Eff. August 1, 1998; March 1, 1996; March 1, 1994; July 1, 1993; September 1, 1991; Temporary Amendment Eff. October 2, 1999; July 1, 1999; October 22, 1998; Amended Eff. April 1, 2001; Temporary Amendment Eff. May 1, 2001; Amended Eff. April 1, 2016; April 1, 2009; December 1, 2007; September 1, 2005; August 1, 2004; August 1, 2002; Readopted Eff. August 23, 2022.*

#### **15A NCAC 03J .0104 TRAWL NETS**

- (a) It shall be unlawful to possess aboard a vessel while using a trawl net in Internal Waters more than 500 pounds of finfish from December 1 through March 1, and 1,000 pounds of finfish from March 2 through November 30.
- (b) It shall be unlawful to use trawl nets:
- (1) in Internal Waters from 9:00 p.m. on Friday through 5:00 p.m. on Sunday, except:
    - (A) from December 1 through March 1 from one hour after sunset on Friday to one hour before sunrise on Monday in the areas listed in Subparagraph (b)(5) of this Paragraph; or
    - (B) for a holder of a Permit for Weekend Trawling for Live Shrimp in accordance with 15A NCAC 03O .0503;
  - (2) for the taking of oysters;
  - (3) in Albemarle Sound, Currituck Sound, and their tributaries, west of a line beginning on the south shore of Long Point at a point 36° 02.4910' N – 75° 44.2140' W; running southerly to the north shore on Roanoke Island to a point 35° 56.3302' N – 75° 43.1409' W; running northwesterly to Caroon Point to a point 35° 57.2255' N – 75° 48.3324' W;
  - (4) in the areas described in 15A NCAC 03R .0106, except that the Fisheries Director may, by proclamation, open the area designated in 15A NCAC 03R .0106(1) to peeler crab trawling;
  - (5) from December 1 through March 1 from one hour after sunset to one hour before sunrise in the following areas:
    - (A) in Pungo River, north of a line beginning on Currituck Point at a point 35° 24.5833' N – 76° 32.3166' W, running southwesterly to Wades Point to a point 35° 23.3062' N – 76° 34.5135' W;
    - (B) in Pamlico River, west of a line beginning on Wades Point at a point 35° 23.3062' N – 76° 34.5135' W, running southwesterly to Fulford Point to a point 35° 19.8667' N – 76° 35.9333' W;
    - (C) in Bay River, west of a line beginning on Bay Point at a point 35° 11.0858' N – 76° 31.6155' W, running southerly to Maw Point to a point 35° 09.0214' N – 76° 32.2593' W;
    - (D) in Neuse River, west of a line beginning on the Minnesott side of the Neuse River Ferry at a point 34° 57.9116' N – 76° 48.2240' W, running southerly to the Cherry Branch side of the Neuse River Ferry to a point 34° 56.3658' N – 76° 48.7110' W;
    - (E) in New River, all waters upstream of the N.C. Highway 172 Bridge when opened by proclamation; and
  - (6) in designated pot areas opened to the use of pots by Rule .0301(a)(2) of this Subchapter and described in 15A NCAC 03R .0107(a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) within an area bound by the shoreline to the depth of six feet.
- (c) Mesh sizes for shrimp and crab trawl nets shall meet the requirements of 15A NCAC 03L .0103 and .0202.
- (d) The Fisheries Director may, with prior consent of the Marine Fisheries Commission, by proclamation, require bycatch reduction devices or cod end (tailbag) modifications in trawl nets to reduce the catch of finfish that do not meet size limits or are unmarketable as individual foodfish by reason of size.
- (e) It shall be unlawful to use shrimp trawl nets for recreational purposes unless the trawl net is marked by attaching to the cod end (tailbag) a floating buoy, any shade of hot pink in color. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The gear owner's last name and initials shall be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. If a vessel is used, the identification shall also include one of the following:
- (1) gear owner's current motor boat registration number; or

- (2) gear owner's U.S. vessel documentation name.
- (f) It shall be unlawful to use shrimp trawl nets for the taking of blue crabs in Internal Waters, except that it shall be permissible to take or possess blue crabs incidental to shrimp trawling in accordance with the following limitations:
  - (1) for individuals using shrimp trawl nets authorized by a Recreational Commercial Gear License, 50 blue crabs per day, not to exceed 100 blue crabs if two or more Recreational Commercial Gear License holders are on board the same vessel; and
  - (2) for commercial operations, crabs may be taken incidental to lawful shrimp trawl net operations provided that the weight of the crabs shall not exceed the greater of:
    - (A) 50 percent of the total weight of the combined crab and shrimp catch; or
    - (B) 300 pounds.
- (g) The Fisheries Director may, by proclamation, close any area to trawling for specific time periods consistent with the requirements of this Rule.

*History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52; Eff. February 1, 1991; Amended Eff. August 1, 1998; May 1, 1997; March 1, 1994; February 1, 1992; Temporary Amendment Eff. July 1, 1999; Amended Eff. May 1, 2017; April 1, 2014; April 1, 2009; September 1, 2005; August 1, 2004; August 1, 2000; Readopted Eff. August 23, 2022.*

**15A NCAC 03J .0105 PURSE SEINES**

- (a) It shall be unlawful to use purse seines except for the taking of menhaden, Atlantic thread herring, gizzard shad, or pinfish.
- (b) It shall be unlawful to use a purse seine in accordance with the following:
  - (1) in the Atlantic Ocean as described in 15A NCAC 03R .0111.
  - (2) except as provided in Paragraph (c) of this Rule, between January 16 and May 14 in:
    - (A) internal waters; and
    - (B) the Atlantic Ocean within one mile of shore.
  - (3) between January 16 and March 31 in Core Sound.
  - (4) from beyond one mile of shore in the Atlantic Ocean and transported to port between sunset on any Friday and sunrise of the following Monday from the Friday of the Memorial Day weekend through sunset on Labor Day.
  - (5) from beyond one mile of shore in the Atlantic Ocean and transported to port between the hours of sunrise and sunset on the following holidays:
    - (A) Memorial Day;
    - (B) Fourth of July, when the Fourth of July falls on any calendar day Friday through Monday; and
    - (C) Labor Day.
- (c) The Fisheries Director may, by proclamation, open the Atlantic Ocean within one mile of shore and the internal waters specified in Paragraph (d) of this Rule between April 1 and May 14, and may impose any of the following restrictions:
  - (1) specify time;
  - (2) specify area;
  - (3) specify means and methods;
  - (4) specify record keeping requirements;
  - (5) specify season; and
  - (6) specify quantity.
- (d) The internal waters specified in Paragraph (c) of this Rule are as follows:
  - (1) Pamlico Sound;
  - (2) Pamlico River east of a line from Wades Point to Intracoastal Waterway Marker No. 1 at the mouth of Goose Creek;
  - (3) Neuse River east of a line from Wilkinson Point to Cherry Point;
  - (4) Adams Creek;
  - (5) Core Sound and its tributaries;
  - (6) Back Sound, the Straits, and North River;
  - (7) Newport River;
  - (8) North River; and
  - (9) Bogue Sound.
- (e) Menhaden, Atlantic thread herring, gizzard shad, or pinfish may be taken at any time with a purse seine from beyond one mile of shore in the Atlantic Ocean and transported to port except as specified by Session Law 2012-190 and Subparagraphs (b)(4) and (b)(5) of this Rule.



(f) It shall be unlawful for the responsible party to fail to carry out the following requirements when a fish spill from a purse seine occurs:

- (1) within two hours of the spill, notify the Division of Marine Fisheries Communications Center of the spill by phone at 800-682-2632 or 252-726-7021; and
- (2) report to the Fisheries Director of the North Carolina Division of Marine Fisheries in writing within 30 days of the completion of spill clean-up on the circumstances associated with each spill and costs of its clean-up.

*History Note: Authority G.S. 113-134; 113-182; 113-187; 113-221.1; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. October 1, 2008;  
Readopted Eff. March 15, 2023.*

#### **15A NCAC 03J .0106 CHANNEL NETS**

(a) It shall be unlawful to use a channel net:

- (1) until the Fisheries Director specifies by proclamation, time periods and areas for the use of channel nets and other fixed nets for shrimping;
- (2) without yellow light reflective tape on the top portion of each staff or stake and on any buoys located at either end of the net;
- (3) with any portion of the set including boats, anchors, cables, ropes, or nets within 50 feet of the center line of the Intracoastal Waterway Channel;
- (4) in the middle third of any navigation channel marked by U.S. Army Corps of Engineers or U.S. Coast Guard; and
- (5) unless attended by the fisherman who shall be no more than 50 yards from the net at all times.

(b) It shall be unlawful to use or possess aboard a vessel any channel net with a corkline exceeding 40 yards.

(c) It shall be unlawful to leave any channel net, channel net buoy, or channel net stakes in Coastal Fishing Waters from December 1 through March 1.

(d) It shall be unlawful to use floats or buoys of metallic material for marking a channel net set.

(e) From March 2 through November 30, cables used in a channel net operation shall, when not attached to the net, be connected together and any attached buoy shall be connected by non-metal line.

(f) It shall be unlawful to leave channel net buoys in Coastal Fishing Waters without yellow light reflective tape on each buoy and without the gear owner's last name and initials being legibly printed on each buoy. If a vessel is used, the identification shall also include one of the following:

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

(g) It shall be unlawful to use any channel nets, anchors, lines, or buoys in such a manner as to constitute a hazard to navigation.

(h) It shall be unlawful to use channel nets for the taking of blue crabs in Internal Waters, except that it shall be permissible to take or possess blue crabs incidental to channel net operations in accordance with the following limitations:

- (1) crabs may be taken incidental to lawful channel net operations provided that the weight of the crabs shall not exceed:
  - (A) 50 percent of the total weight of the combined crab and shrimp catch; or
  - (B) 300 pounds, whichever is greater.
- (2) The Fisheries Director may, by proclamation, close any area to channel net use for specific time periods consistent with the requirements of this Paragraph.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. September 1, 2005;  
Readopted Eff. August 23, 2022.*

#### **15A NCAC 03J .0109 LONG HAUL AND SWIPE NET REQUIREMENTS**

It shall be unlawful to use a net in a long haul or swipe net fishing operation:

- (1) without a floating buoy that shall be international orange, no less than five inches in diameter, and no less than 11 inches in length attached a minimum of every 100 yards along the cork line;
- (2) without a flag that shall be square in shape, international orange in color, and at least 24 inches by 24 inches in size flying in the rigging so as to be visible when approaching the vessel from any direction; and
- (3) in the Internal Coastal Waters south and west of a line beginning on the west shore of Pamlico Sound at Bluff Point at a point 35° 19.5333' N – 76° 09.3333' W; running southeasterly to Ocracoke Island to a point 35° 08.0000' N – 75° 55.0000' W; without escape panels as follows:

- (a) for long haul operations, two panels four feet deep and six feet long installed with the entire panel within 10 feet of the staff on the end of the bunt net from which the fish are being bailed, with panels in the water while fish are harvested;
- (b) for swipe net operations, two panels three feet deep and five feet long installed with the entire panel within 10 feet of the staff on the end of the bunt net from which the fish are being bailed, with panels in the water while fish are harvested;
- (c) the upper edge of one panel installed within 12 to 24 inches of the float line and the lower edge of the other panel installed within 12 to 24 inches of the lead line; and
- (d) panels constructed of unobstructed trawl rings with a minimum inside diameter of one and nine-sixteenth inches, with the rings fastened together at a maximum of four points per ring.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. January 1991;  
Amended Eff. August 1, 2004; April 1, 1999;  
Readopted Eff. March 15, 2023.*

**15A NCAC 03J .0110 SEINES**

It shall be unlawful to use seines 30 feet or longer for recreational purposes unless the net is marked by attaching to the corkline a floating buoy, any shade of hot pink in color. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The gear owner's last name and initials shall be engraved on the attached buoy or identified by attaching engraved metal or plastic tags to the buoy. If a vessel is used, the identification shall also include one of the following:

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

*History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52;  
Temporary Adoption Eff. July 1, 1999;  
Eff. August 1, 2000;  
Readopted Eff. March 15, 2023.*

**15A NCAC 03J .0111 FYKE OR HOOP NETS**

(a) It shall be unlawful to use fyke or hoop nets in Coastal Fishing Waters without:

- (1) the owner's identification being printed on a sign no less than six inches square, attached on an outside corner stake of each such net; or
- (2) each net being marked by attaching a floating buoy to a single net and a buoy on each end of the line connecting multiple (two or more) nets, when stakes are not used. Buoys shall be of any color except any shade of yellow or any shade of hot pink, or any combination of colors that include any shade of yellow or any shade of hot pink. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The gear owner's last name and initials shall be identified on the attached buoy by using engraved buoys or by attaching engraved metal or plastic tags to the buoy. If a vessel is used, the identification shall also include:
  - (A) gear owner's current motor boat registration number; or
  - (B) gear owner's U.S. vessel documentation name.

(b) It shall be unlawful to use a fyke or hoop net within 200 yards of any operational pound net set.

(c) It shall be unlawful to use a fyke or hoop net within 150 yards of any railroad or highway bridge.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;  
Temporary Adoption Eff. August 1, 2000;  
Amended Eff. April 1, 2003; April 1, 2001;  
Readopted Eff. August 23, 2022.*

**SECTION .0200 – NET RULES, SPECIFIC AREAS**

**15A NCAC 03J .0202 ATLANTIC OCEAN**

In the Atlantic Ocean:

- (1) It shall be unlawful to use nets from June 15 through August 15 in the waters of Masonboro Inlet or in the ocean within 300 yards of the beach between Masonboro Inlet and a line running southeasterly through the water tank 34°

- 13.1500' N – 77° 47.3000' W on the northern end of Wrightsville Beach, a distance of 4400 yards parallel with the beach.
- (2) It shall be unlawful to use trawls within one-half mile of the beach between the North Carolina/Virginia state line and Oregon Inlet.
  - (3) It shall be unlawful to use a trawl with a mesh length less than four inches in the main body, three inches in the extension, and one and three-fourths inches in the cod end or tailbag inshore of a line beginning on the western side of Beaufort Inlet Channel at a point 34° 41.3000' N – 76° 40.1333' W; running westerly parallel to and one-half miles from the shore off Salter Path to a point 34° 40.5333' N – 76° 53.7500' W.
  - (4) It shall be unlawful to use trawl nets, including flynets, southwest of the 9960-Y chain 40250 LORAN C line (running offshore in a southeasterly direction) from Cape Hatteras to the North Carolina/South Carolina state line except:
    - (a) shrimp trawls as defined in 15A NCAC 03L .0103;
    - (b) crab trawls as defined in 15A NCAC 03L .0202; or
    - (c) flounder trawls as defined in 15A NCAC 03M .0503.
  - (5) It shall be unlawful to possess finfish (including pursuant to 15A NCAC 03M .0102) incidental to shrimp or crab trawl operations from December 1 through March 31 unless the weight of the combined catch of shrimp and crabs exceeds the weight of finfish, except an additional 300 pounds of kingfish (*Menticirrhus*, spp.) may be taken south of Bogue Inlet.
  - (6) It shall be unlawful to use unattended gill nets or block or stop nets in the Atlantic Ocean within 300 yards of the beach from Beaufort Inlet to the North Carolina/South Carolina state line from sunset Friday to sunrise Monday from Memorial Day through Labor Day.
  - (7) It shall be unlawful to use gill nets in the Atlantic Ocean with a mesh length greater than seven inches from April 15 through December 15.
  - (8) It shall be unlawful to use shrimp trawls in all waters west of a line beginning at the southeastern tip of Baldhead Island at a point 33° 50.4833' N – 77° 57.4667' W; running southerly in the Atlantic Ocean to a point 33° 46.2667' N – 77° 56.4000' W; from 9:00 p.m. through 5:00 a.m.

*History Note:* Authority G.S. 113-134; 113-182; 143B-289.52;  
 Eff. January 1, 1991;  
 Amended Eff. March 1, 1996; September 1, 1991;  
 Temporary Amendment Eff. December 1, 1997;  
 Amended Eff. October 1, 2008; August 1, 2004; August 1, 1998;  
 Readopted Eff. August 23, 2022.

**15A NCAC 03J .0208 NEW RIVER**

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

*History Note:* Authority G.S. 113-134; 113-182; 143B-289.52;  
 Eff. August 1, 1998;  
 Amended Eff. May 1, 2015; August 1, 2004;  
 Readopted Eff. August 23, 2022.

**SECTION .0300 - POTS, DREDGES, AND OTHER FISHING DEVICES**

**15A NCAC 03J .0301 POTS**

- (a) It shall be unlawful to use pots except during time periods and in areas specified herein:
  - (1) in Internal Waters from December 1 through May 31, except that:
    - (A) in the Northern Region designated in 15A NCAC 03R .0118(1) all pots shall be removed from Internal Waters from January 1 through January 31. Fish pots upstream of the U.S. 17 Bridge across Chowan River and upstream of a line across the mouth of Roanoke, Cashie, Middle, and Eastmost Rivers to the Highway 258 Bridge are exempt from this removal requirement.
    - (B) in the Southern Region designated in 15A NCAC 03R .0118(2) all pots shall be removed from Internal Waters from March 1 through March 15.
  - (2) in Internal Waters from June 1 through November 30 in the Northern Region designated in 15A NCAC 03R .0118(1):
    - (A) in areas described in 15A NCAC 03R .0107(a).

- (B) to allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director may, by proclamation, specify time periods for and designate the areas described in 15A NCAC 03R .0107(b) or any part thereof, for the use of pots.
  - (3) in Internal Waters from May 1 through November 30 in the Southern Region designated in 15A NCAC 03R .0118(2), the Fisheries Director may, by proclamation, specify time periods and areas for the use of pots.
  - (4) in the Atlantic Ocean from May 1 through November 30 the Fisheries Director may, by proclamation, specify time periods and areas for the use of pots.
- (b) It shall be unlawful to use pots:
- (1) in any navigation channel marked by State or Federal agencies; or
  - (2) in any turning basin maintained and marked by the North Carolina Ferry Division.
- (c) It shall be unlawful to use pots in a commercial fishing operation unless each pot is marked by attaching a floating buoy of any color except any shade of yellow or any shade of hot pink, or any combination of colors that include any shade of yellow or any shade of hot pink. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The gear owner's last name and initials shall be engraved on the attached buoy or identified by attaching engraved metal or plastic tags to the buoy. If a vessel is used, the identification shall also include one of the following:
- (1) gear owner's current motor boat registration number; or
  - (2) gear owner's U.S. vessel documentation name.
- (d) Pots attached to shore or a pier shall be exempt from Subparagraphs (a)(2) and (a)(3) of this Rule.
- (e) It shall be unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-eighths-inch bar.
- (f) It shall be unlawful to use pots to take eels with mesh lengths smaller than one-half inch by one-half inch.
- (g) Except for unbaited pots or pots baited with a male crab, it shall be unlawful to use crab pots in Coastal Fishing Waters unless each pot contains no less than three unobstructed escape rings that are at least two and five-sixteenth inches inside diameter and:
- (1) for pots with a divider:
    - (A) two escape rings shall be located on opposite panels of the upper chamber of the pot; and
    - (B) at least one escape ring shall be located within one full mesh of the corner and one full mesh of the bottom of the divider in the upper chamber of the pot.
  - (2) for pots without a divider:
    - (A) two escape rings shall be located on opposite panels of the pot; and
    - (B) at least one escape ring shall be located within one full mesh of the corner and one full mesh of the bottom of the pot.
- For the purpose of this Rule, a "divider" shall mean a panel that separates the crab pot into upper and lower sections.
- (h) The Fisheries Director may, by proclamation, impose on a commercial fishing operation and for recreational purposes any of the following restrictions for pots:
- (1) specify time;
  - (2) specify area;
  - (3) specify means and methods;
  - (4) specify record keeping and reporting requirements;
  - (5) specify season, including a closed season for removal of all pots from Internal Waters;
  - (6) specify species; and
  - (7) specify quantity.
- (i) It shall be unlawful to use more than 150 crab pots per vessel in Newport River.
- (j) It shall be unlawful to remove crab pots from the water or remove crabs from crab pots between one hour after sunset and one hour before sunrise.
- (k) It shall be unlawful to use pots to take crabs unless the line connecting the pot to the buoy is non-floating.
- (l) It shall be unlawful to use pots with leads or leaders to take shrimp. For the purpose of this Rule, "leads" or "leaders" shall mean any fixed or stationary net or device used to direct fish into any gear used to capture fish. Any device with leads or leaders used to capture fish shall not be a pot.

*History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52; Eff. January 1, 1991; Amended Eff. August 1, 1998; May 1, 1997; March 1, 1996; March 1, 1994; October 1, 1992; September 1, 1991; Temporary Amendment Eff. July 1, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. September 1, 2000; Amended Eff. May 1, 2015; April 1, 2014; September 1, 2005; August 1, 2004; August 1, 2002; Readopted Eff. March 15, 2023.*

**15A NCAC 03J .0302 RECREATIONAL USE OF POTS**

(a) It shall be unlawful for a Recreational Commercial Gear License holder to use pots authorized by 15A NCAC 03O .0302 unless each pot is marked by attaching a floating buoy, any shade of hot pink in color. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The gear owner's last name and initials shall be identified on the attached buoy using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. If a vessel is used, the identification shall also include one of the following:

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

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

*History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Temporary Amendment Eff. July 1, 1999;  
Amended Eff. April 1, 2011; August 1, 2000;  
Readopted Eff. March 15, 2023.*

**15A NCAC 03J .0305 TROTLINES (MULTIPLE HOOK OR MULTIPLE BAIT)**

(a) It shall be unlawful to use multiple hook or multiple bait trotlines for recreational purposes unless each multiple hook or multiple bait trotline is marked by attaching to them at each end a floating buoy, any shade of hot pink in color. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The gear owner's last name and initials shall be engraved on the attached buoy or identified by attaching engraved metal or plastic tags to the buoy. If a vessel is used, the identification shall also include one of the following:

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

(b) It shall be unlawful to use multiple hook or multiple bait trotlines in a commercial fishing operation unless each multiple hook or multiple bait trotline is marked by attaching to them at each end a floating buoy of any color except any shade of yellow or any shade of hot pink, or any combination of colors that include any shade of yellow or any shade of hot pink. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The gear owner's last name and initials shall be engraved on the attached buoy or identified by attaching engraved metal or plastic tags to the buoy. If a vessel is used, the identification shall also include one of the following:

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

*History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52;  
Temporary Adoption Eff. July 1, 1999;  
Eff. August 1, 2000;  
Readopted Eff. March 15, 2023.*

**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.*

**15A NCAC 03J .0402 FISHING GEAR RESTRICTIONS**

- (a) It shall be unlawful to use commercial fishing gear in the following areas during dates and times specified for the identified areas:
  - (1) Atlantic Ocean - Dare County:
    - (A) Nags Head:
      - (i) seines and gill nets shall not be used from the North Town Limit of Nags Head at Eight Street southward to Gulf Street:
        - (I) from Wednesday through Saturday of the week of the Nags Head Surf Fishing Tournament held during October of each year the week prior to Columbus Day; and
        - (II) from November 1 through December 15; and
      - (ii) commercial fishing gear shall not be used within 750 feet of licensed fishing piers when open to the public;
    - (B) Oregon Inlet: seines and gill nets shall not be used from the Friday before Easter through December 31:
      - (i) within one-quarter mile of the beach from the National Park Service Ramp #4 (35° 48.2500' N – 75° 32.7000' W) on Bodie Island to the northern terminus of the Bonner Bridge (35° 46.5000' N – 75° 32.3666' W) on Hwy. 12 over Oregon Inlet; and
      - (ii) within the area known locally as "The Pond", a body of water generally located to the northeast of the northern terminus of the Bonner Bridge; and
    - (C) Cape Hatteras (Cape Point): seines and gill nets shall not be used within one-half mile of Cape Point from the Friday before Easter through December 31. The closed area is defined by a circle with a one-half mile radius having the center near Cape Point at a point 35° 12.9000' N – 75° 31.7166' W;
  - (2) Atlantic Ocean - Onslow and Pender counties: commercial fishing gear shall not be used during the time specified for the following areas:
    - (A) Topsail Beach: from January 1 through December 31, that area around Jolly Roger Fishing Pier bordered on the offshore side by a line 750 feet from the end of the pier and on the northeast and southwest by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary; and
    - (B) Surf City:
      - (i) from January 1 to June 30, that area around the Surf City Fishing Pier bordered on the offshore side by a line 750 feet from the end of the pier, on the southwest by a line beginning at a point on the beach one-quarter mile from the pier and on the northeast by a line beginning at a point on the beach 750 feet from the pier extending seaward to intersect the offshore boundaries; and
      - (ii) from July 1 to December 31, those areas around the pier bordered on the offshore side by a line 750 feet from the end of the pier, on the southwest by a line beginning at a point on the beach 750 feet from the pier and on the northeast by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundaries;
  - (3) Atlantic Ocean - New Hanover County: Carolina Beach Inlet through Kure Beach: commercial fishing gear shall not be used during the times specified for the following areas:
    - (A) from the Friday before Easter to November 30, within the zones adjacent to the Carolina Beach and Kure Beach Fishing Piers bordered on the offshore side by a line 750 feet from the ends of the piers and on the north and south by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary, except the southern boundary for Kure Beach Pier is a line beginning on the beach one mile south of the pier to the offshore boundary for the pier; and
    - (B) from May 1 to November 30, within 900 feet of the beach, from Carolina Beach Inlet to the southern end of Kure Beach with the following exceptions:
      - (i) from one-quarter mile north of Carolina Beach Fishing pier to Carolina Beach Inlet from October 1 to November 30:
        - (I) strike nets may be used within 900 feet of the beach; and

- (II) attended nets may be used between 900 feet and one-quarter mile of the beach;
    - (ii) strike nets and attended gill nets may be used within 900 feet of the beach from October 1 to November 30 in other areas except those described in Part (a)(3)(A) and Subpart (a)(3)(B)(i) of this Subparagraph; and
    - (iii) it shall be unlawful to use commercial fishing gear within 900 feet of the beach from Carolina Beach Inlet to a point on the beach 33°55.0026' N – 77°56.6630' W near the former location of New Inlet during the October surf fishing tournament in Carolina Beach; and
  - (4) Pamlico River – Beaufort County: Goose Creek State Park: commercial fishing gear shall not be used from the Friday before Easter through December 31 for the following areas:
    - (A) within 150 feet of the shoreline within park boundaries; and
    - (B) within the marked channel from Dinah Landing to the mouth of Upper Goose Creek.
- (b) It shall be unlawful to use gill nets or seines in the following areas during dates and times specified for the identified areas:
- (1) Neuse River and South River, Carteret County: no more than 1,200 feet of gill nets having a stretched mesh of five inches or larger shall be used:
    - (A) within one-half mile of the shore from Winthrop Point at Adams Creek to Channel Marker "2" at the mouth of Turnagain Bay; and
    - (B) within South River;
  - (2) Cape Lookout, Carteret County:
    - (A) gill nets or seines shall not be used in the Atlantic Ocean within 300 feet of the Rock Jetty (at Cape Lookout between Power Squadron Spit and Cape Point); and
    - (B) seines shall not be used within one-half mile of the shore from Power Squadron Spit south to Cape Point and northward to Cape Lookout Lighthouse including the area inside the "hook" south of a line from the COLREGS Demarcation Line across Bardens Inlet to the eastern end of Shackleford Banks and then to the northern tip of Power Squadron Spit from 12:01 a.m. Saturdays until 12:01 a.m. Mondays from May 1 through November 30;
  - (3) State parks and recreation areas:
    - (A) gill nets or seines shall not be used in the Atlantic Ocean within one-quarter mile of the shore at Fort Macon State Park, Carteret County;
    - (B) gill nets or seines shall not be used in the Atlantic Ocean within one-quarter mile of the shore at Hammocks Beach State Park, Onslow County, from May 1 through October 1, except strike nets and attended gill nets may be used beginning August 15; and
    - (C) gill nets or seines shall not be used within the boat basin and marked entrance channel at Carolina Beach State Park, New Hanover County;
  - (4) mooring facilities and marinas: gill nets or seines shall not be used from May 1 through November 30 within:
    - (A) one-quarter mile of the shore from the east boundary fence to the west boundary fence at U.S. Coast Guard Base Fort Macon at Beaufort Inlet, Carteret County;
    - (B) canals within Pine Knoll Shores, Carteret County;
    - (C) Spooners Creek entrance channel and marina on Bogue Sound, Carteret County;
    - (D) Harbor Village Marina on Topsail Sound, Pender County; and
    - (E) marina and entrance canal within Carolina Marlin Club property adjacent to Newport River, Carteret County;
  - (5) Masonboro Inlet: gill nets and seines shall not be used:
    - (A) within 300 feet of either rock jetty; and
    - (B) within the area beginning 300 feet from the offshore end of the jetties to the Intracoastal Waterway including all the waters of the inlet proper and all the waters of Shinn Creek;
  - (6) Atlantic Ocean fishing piers: at a minimum, gill nets and seines shall not be used within 300 feet of ocean fishing piers when open to the public. If a larger closed area has been delineated by the placement of buoys or beach markers as authorized by G.S. 113-185(a), it shall be unlawful to fish from vessels or with nets within the larger marked zone;
  - (7) Topsail Beach, Pender County: it shall be unlawful to use gill nets and seines from 4:00 p.m. Friday until 6:00 a.m. the following Monday in the three finger canals on the south end of Topsail Beach;
  - (8) Mad Inlet to Tubbs Inlet - Atlantic Ocean, Brunswick County: it shall be unlawful to use gill nets and seines from September 1 through November 15, except that a maximum of four commercial gill nets per vessel not to exceed 200 yards in length individually or 800 yards in combination may be used; and
  - (9) Spooners Creek, Carteret County: it shall be unlawful to use gill nets and seines between sunset and sunrise in Spooners Creek entrance channel in Bogue Sound, all of Spooners Creek proper, and the adjoining tributary canals and channels.

*History Note: Authority G.S. 113-133; 113-134; 113-182; 143B-289.52;  
Eff. March 1, 1996;  
Amended Eff. October 1, 2004; August 1, 2004; April 1, 2001;  
Readopted Eff. August 23, 2022.*

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

- (a) For the purpose of this Rule:
- (1) "hand line" shall mean fishing gear that is set and pulled by hand and consists of one vertical line to which may be attached leader lines with hooks.
  - (2) "hook and line" shall mean one or more hooks attached to one or more lines and shall include rod and reel, a fishing rod designed to be hand-held with a manually or electrically operated reel attached.
  - (3) "spearfishing gear" shall mean spears, Hawaiian slings, or similar devices that propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas, or similar means.
- (b) It shall be unlawful to use fishing gear in Ocean Artificial Reefs designated in 15A NCAC 03R .0119 except hand line, hook and line, and spearfishing gear, and except as further limited in accordance with Paragraph (d) of this Rule.
- (c) It shall be unlawful to possess finfish taken with spearfishing gear in excess of a recreational limit within the boundaries of a designated Ocean Artificial Reef.
- (d) The Fisheries Director may, by proclamation, close the areas designated in 15A NCAC 03R .0119 to the use of specific fishing gear, including the gears otherwise allowed in Paragraph (b) of this Rule, based on biological impacts or user conflicts.
- (e) The Fisheries Director may, by proclamation, designate and modify Ocean Artificial Reefs in Coastal Fishing Waters of the Atlantic Ocean, based on biological impacts or variable spatial distribution, including shifted artificial reef material.

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;  
Eff. August 23, 2022.*

### **SECTION .0500 – POUND NETS**

#### **15A NCAC 03J .0501 DEFINITIONS AND STANDARDS FOR POUND NETS AND POUND NET SETS**

- (a) The following definitions shall apply to this Section:
- (1) "Deployed pound net" means setting of any part of a pound net except for a location identification stake or, for a pound net used in the Atlantic Ocean, a location identification buoy placed at each end of a proposed new location.
  - (2) "Flounder pound net" means a pound net set that produces a catch consisting of 50 percent or more flounder by weight of the entire landed catch, excluding blue crabs or a pound net set with all pounds (holding pen) constructed of four inch stretch mesh or greater.
  - (3) "Operational pound net set" means a pound net set as defined in 15A NCAC 03I .0101 and deployed according to rules and permit conditions with net attached to stakes or anchors for the lead and pound, including only a single pound in a multi-pound set, and a non-restricted opening leading into the pound such that the set is able to catch and hold fish.
  - (4) "Permit period" means from the date of issuance of a new or renewal Pound Net Set Permit to the expiration date.
  - (5) "Pound Net Set Permit" means a Division of Marine Fisheries authorization to set and fish a pound net set in a commercial fishing operation in a specified fishery.
  - (6) "Shrimp pound net" means a pound net set with all pounds (holding pen) constructed of stretch mesh equal to or greater than one and one-fourth inches and less than or equal to two inches.
- (b) It shall be unlawful for a pound net used in a commercial fishing operation to:
- (1) be deployed on a site without first obtaining a Pound Net Set Permit from the Fisheries Director.
  - (2) fail to be operational for a minimum of 30 consecutive days during the Pound Net Set Permit period, except the Fisheries Director may, by proclamation, waive this requirement if a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being met or for compliance with the N.C. Southern Flounder Fishery Management Plan.
- (c) It shall be unlawful for a pound net set in a commercial fishing operation in coastal fishing waters to fail to:
- (1) have the permittee's identification legibly printed on a sign no less than six inches square, securely attached to a stake at the permitted ends of each set at all times. For pound net sets in the Atlantic Ocean using anchors instead of stakes, the set shall be identified with a yellow buoy that shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than 11 inches in length. The permittee's identification shall be legibly printed on the buoy. The identification on signs or buoys shall include the Pound Net Set Permit number and the permittee's last name and initials.



- (2) have yellow light reflective tape or yellow light reflective devices on each pound. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions.
- (3) have a marked navigational opening at least 25 feet wide at the end of every third pound. The opening shall be marked with yellow light reflective tape or yellow light reflective devices on each side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions.

If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

(d) It shall be unlawful to use a Recreational Commercial Gear License (RCGL) shrimp pound net as defined in 15A NCAC 03O .0302(a)(8) in coastal fishing waters unless the shrimp pound net is:

- (1) marked by attaching to the offshore lead, a floating buoy, any shade of hot pink in color. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The gear owner's last name and initials shall be engraved on the attached buoy or identified by attaching engraved metal or plastic tags to the buoy. If a vessel is used, the identification shall also include one of the following:
  - (A) gear owner's current motor boat registration number; or
  - (B) gear owner's U.S. vessel documentation name.
- (2) set a minimum of 100 yards from a RCGL shrimp pound net set or 300 yards from a commercial permitted shrimp pound net set.

(e) Escape Panels:

- (1) The Fisheries Director may, by proclamation, require escape panels in pound net sets and may impose any of the following requirements on the use of escape panels:
  - (A) specify size, number, and location;
  - (B) specify mesh length, but not more than six inches;
  - (C) specify time or season; and
  - (D) specify areas.
- (2) It shall be unlawful to use flounder pound net sets without four unobstructed escape panels in each pound. The escape panels shall be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels shall be a minimum mesh size of five and one-half inches, hung on the diamond, and shall be at least six meshes high and eight meshes long.

(f) The Fisheries Director shall by proclamation establish time periods between December 1 through February 1 and areas where it shall be unlawful to fail to remove all nets from pound net sets in commercial fishing operations in internal coastal waters.

(g) It shall be unlawful within 30 days of abandonment of a permitted pound net set to fail to remove all stakes and associated gear from coastal fishing waters. The responsible party for abandoned pound net gear may be charged the costs incurred by the Division when the Division undertakes removal of the abandoned pound net gear.

*History Note: Authority G.S. 113-134; 113-169.1; 113-181; 113-182; 113-221.1; 143B-289.52; Eff. April 1, 2009; Readopted Eff. March 15, 2023.*

#### **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 .0101 PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH AREAS**

- (a) It shall be unlawful to possess, sell, or take oysters, clams, or mussels from areas that have been designated as polluted by proclamation by the Fisheries Director except as provided in Rules .0103, .0104, .0107, and .0401 of this Subchapter. The Fisheries Director shall issue shellfish polluted area proclamations if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have not been met. The Fisheries Director may reopen any such closed area by proclamation if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557; 800-682-2632 or 252-726-7021.
- (b) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, scallops, and mussels to protect the shellfish populations for management purposes or for protection of public health related to the public health programs that fall under the authority of the Marine Fisheries Commission not specified in Paragraph (a) of this Rule.
- (c) It shall be unlawful to possess or sell oysters, clams, or mussels taken from polluted waters outside North Carolina, except as provided in 15A NCAC 03I .0104.

*History Note: Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 113-221.1; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. July 1, 1993;  
Temporary Amendment Eff. July 1, 1999;  
Amended Eff. August 1, 2000;*

*Temporary Amendment Eff. October 1, 2001;  
Amended Eff. October 1, 2008; April 1, 2003;  
Readopted Eff. March 15, 2023.*

**15A NCAC 03K .0102 RAKES PROHIBITED**

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

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

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. October 1, 2008; February 1, 2008;  
Readopted Eff. March 15, 2023.*

**15A NCAC 03K .0103 SHELLFISH MANAGEMENT AREAS**

(a) For the purpose of this Rule, "Shellfish Management Area" shall mean an area that has environmental conditions suitable for shellfish growth and survival that is designated to establish a localized regulatory strategy to improve the propagation of shellfish and has at least one of the following:

- (1) planted cultch;
- (2) existing shell; or
- (3) existing live shellfish.

(b) The Fisheries Director may, by proclamation, designate and modify Shellfish Management Areas based on biological impacts or variable spatial distribution, including shifted material.

(c) It shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Shellfish Management Area.

(d) It shall be unlawful to take shellfish from any Shellfish Management Area that has been closed in accordance with Paragraph (b) of this Rule, except the Fisheries Director may, by proclamation, open specific areas to allow the taking of shellfish and may impose any of the following requirements based on biological impacts or user conflicts:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods except as set forth in Paragraph (c) of this Rule;
- (4) specify season;
- (5) specify size;
- (6) specify quantity; and
- (7) specify marking requirements.

*History Note: Authority G.S. 113-134; 113-182; 113-204; 113.221.1; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. March 1, 1994;  
Temporary Amendment Eff. October 1, 2001;  
Amended Eff. October 1, 2008; February 1, 2008; April 1, 2003;  
Readopted Eff. March 15, 2023.*

**15A NCAC 03K .0104 PERMITS FOR RELAYING SHELLFISH FROM POLLUTED AREAS**

(a) It shall be unlawful to take shellfish from polluted public waters or franchises for planting on shellfish leases and franchises except as authorized by G.S. 113-203. Shellfish lease and franchise holders shall first obtain a relay permit from the Fisheries Director setting forth the time, area, and method by which such shellfish may be taken. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

(b) The application for a relay permit shall be received by the Division of Marine Fisheries at least 15 days prior to the start of relaying activities.

(c) All relaying activities, including removal, transport, and planting, shall be monitored and observed by the Division.

(d) The season for relaying shellfish may occur within a specified six week period between the date of the statewide closure of oyster season and June 30, as determined by the Fisheries Director based on the following factors:

- (1) the status of shellfish resources available for harvest from public bottom;
- (2) surface water temperatures that are below 50° F (10° C), when shellfish relay shall not occur;
- (3) market factors affecting sale of shellfish from public bottom; and

- (4) availability of Division of Marine Fisheries staff to monitor and observe the shellfish relaying activity.
- (e) The Fisheries Director, shall close by proclamation any shellfish lease or franchise for which the owner has obtained a permit to relay shellfish from polluted public waters or franchises. The leases and franchises shall remain closed until the Fisheries Director issues a proclamation to reopen the leases and franchises to harvest. The reopening of the leases and franchises shall not occur any sooner than 21 days after the end of the relay season described in Paragraph (d) of this Rule.

*History Note: Authority G.S. 113-134; 113-182; 113-203; 113-221.1; 143B-289.52;*  
*Eff. January 1, 1991;*  
*Amended Eff. March 1, 1996; September 1, 1991;*  
*Temporary Amendment Eff. October 1, 2001;*  
*Amended Eff. April 1, 2003;*  
*Readopted Eff. March 15, 2023.*

#### **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.*

#### **15A NCAC 03K .0107 DEPURATION OF CLAMS AND OYSTERS**

- (a) It shall be unlawful to take clams or oysters from polluted public waters or franchises of the State for the purpose of depuration except when the harvest will utilize clams or oysters that would otherwise be destroyed in maintenance dredging operations. All harvest and transport activities within the State of North Carolina related to depuration shall be under the supervision of the Division of Marine Fisheries.
- (b) The Fisheries Director, may, by proclamation, impose any of the following restrictions on the harvest of clams or oysters for depuration:
- (1) specify species;
  - (2) specify areas, except harvest shall not be allowed from designated buffer zones adjacent to sewage outfall facilities;

- (3) specify harvest days;
  - (4) specify time;
  - (5) specify size;
  - (6) specify quantity;
  - (7) specify harvest methods; and
  - (8) specify record keeping requirements.
- (c) Depuration permits:
- (1) it shall be unlawful for individuals to harvest clams or oysters from polluted waters for the purpose of depuration unless they have obtained a Depuration Permit or are listed as designees on a Depuration Permit from the Division setting forth the method of harvest to be employed. Permits shall be issued to licensed North Carolina clam or oyster dealers only. Permittees and designees harvesting under Depuration Permits shall have a current Shellfish License or Shellfish Endorsement on a Standard or Retired Standard Commercial Fishing License. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.
  - (2) in addition to information required in 15A NCAC 03O .0501, the permit application shall provide the name, address, location, and telephone number of the depuration operation where the shellfish will be depurated.
  - (3) clam or oyster dealers desiring to obtain clams or oysters from polluted waters for the purpose of depuration shall apply for a depuration permit at least 15 days prior to initiation of operation.
- (d) Transport of clams or oysters for depuration:
- (1) clams or oysters harvested from polluted waters for depuration in a depuration operation located within the State of North Carolina shall be transported under the supervision of the Division.
  - (2) clams or oysters harvested from polluted waters for depuration in a depuration operation outside the State of North Carolina shall not be transported within the State of North Carolina except under the supervision of the Division.
- (e) It shall be unlawful to ship clams or oysters harvested for depuration to depuration facilities located in a state other than North Carolina unless the facility is in compliance with the applicable rules and laws of the shellfish control agency of that state.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52;  
 Eff. January 1, 1991;  
 Temporary Amendment Eff. October 1, 2001;  
 Amended Eff. October 1, 2008; April 1, 2003;  
 Readopted Eff. March 15, 2023.*

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

- (a) It shall be unlawful to use mechanical methods, except mechanical methods for clamming and mechanical methods for oystering as defined in 15A NCAC 03I .0101, to take shellfish.
- (b) It shall be unlawful to use mechanical methods for oystering or clamming to take shellfish not subject to the restrictions in Rules .0201, .0204, .0302, .0304, .0404, .0501, and .0503 of this Subchapter:
- (1) within any established bed of submerged aquatic vegetation as defined in 15A NCAC 03I .0101 or salt water cordgrass (*Spartina alterniflora*) that may exist together or separately;
  - (2) in areas designated in 15A NCAC 03R .0108, except on shellfish leases and franchises with a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases and Franchises;
  - (3) in areas designated in Rule .0204 of this Subchapter and 15A NCAC 03R .0103; and
  - (4) except following restrictions for the use of mechanical methods specified pursuant to 15A NCAC 03J .0303 and Rules .0201, .0302, .0404, .0501, and .0503 of this Subchapter.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;  
 Eff. October 1, 2008;  
 Readopted Eff. March 15, 2023.*

**15A NCAC 03K .0109 SHELLFISH HARVEST TAGS**

Consistent with the requirements of this Rule, it shall be unlawful to possess or sell oysters, clams, or mussels taken in a commercial fishing operation without a harvest tag affixed to each container of oysters, clams, or mussels. Tags shall be affixed by the harvester and remain in place while being transported to a certified shellfish dealer. Harvest tags shall remain attached to the container until the certified shellfish dealer breaks open the container for washing, grading, packing, other processing, or the container is shipped. Once the initial container is broken open or is emptied the harvest tag shall be kept on file, in chronological order, by the certified shellfish dealer for 90 days. It shall be unlawful for the tag to fail to meet the following criteria:

- (1) harvest tags shall be identified as harvest tags. They shall be durable for at least 90 days, waterproof, and a minimum of two and five-eighths inches by five and one-fourth inches in size.
- (2) harvest tags shall be securely fastened to each container in which shellstock is transported. A harvest tag shall remain securely fastened to each container at a certified shellfish dealer until replaced by a dealer tag once the container is broken open for processing or is shipped. Requirements for dealer tags are described in 15A NCAC 18A .0425. Harvesters who are also certified shellfish dealers may use only their dealer tag if it contains the required harvest and dealer information. The required information shall be included on all lots of shellfish subdivided or combined into market grades or market quantities by a harvester or a certified shellfish dealer.
- (3) bulk harvest tags may be used when shellfish are harvested from one growing area on a single day by an individual harvester. Multiple containers may be utilized on a wrapped pallet, in a single boat, vehicle, conveyance, or other container, and tagged with a single harvest tag containing the information required in this Rule. The bulk tag shall also include a statement that "All shellstock containers in this lot have the same harvest date and area of harvest.", and include the number of individual containers in the unit or an estimate of the total weight, volume, or count.
- (4) tags shall contain legible information arranged in the specific order as follows:
  - (a) the harvester's name, address, and Shellfish License or Standard or Retired Standard Commercial Fishing License with shellfish endorsement number;
  - (b) the date of harvest;
  - (c) the most precise identification of the harvest location as is practicable (e.g., Long Bay, Rose Bay), including the State's two initials "N.C." and the growing area designation;
  - (d) the shellfish lease or franchise number, if applicable;
  - (e) type and quantity of shellfish;
  - (f) the following statement in bold, capitalized font: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS."; and
  - (g) the time of the start of harvest. The time of the start of harvest shall be the time when the first shellfish is initially removed from the water.

*History Note:* Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 143B-289.52;  
 Eff. October 1, 2008;  
 Readopted Eff. March 15, 2023.

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

*History Note:* Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;  
 Eff. May 1, 2015;  
 Repealed Eff. March 15, 2023.

**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.*

**15A NCAC 03K .0202 CULLING REQUIREMENTS FOR OYSTERS**

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

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

*History Note: Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. March 1, 1996; September 1, 1991;  
Temporary Amendment Eff. July 1, 1999;  
Amended Eff. May 1, 2017; August 1, 2000;  
Readopted Eff. March 15, 2023.*

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

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

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

*History Note: Authority G.S. 113-134; 113-182; 113-204; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. August 1, 2004; May 1, 1997;  
Readopted Eff. March 15, 2023.*

**15A NCAC 03K .0205 MARKETING OYSTERS TAKEN FROM A SHELLFISH LEASE OR FRANCHISE**

(a) It shall be unlawful to take, possess, buy, or sell oysters from a shellfish lease or franchise during the open season unless such oysters have been culled in accordance with Rule .0202 of this Section.

(b) All commercial oyster harvesting operations shall operate in accordance with any proclamations issued under the authority of Rule .0110 of this Subchapter.

(c) It shall be unlawful for a shellfish lease or franchise holder or the holder's designees to take or possess oysters from public bottom while possessing aboard a vessel oysters taken from a lease or franchise.

(d) It shall be unlawful for a shellfish lease or franchise holder or the holder's designees to fail to obtain an Aquaculture Operation Permit if the lease or franchise has material extending more than 18 inches above the leased bottom or uses equipment including cages, bags, or predator nets to cultivate shellfish.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. September 1, 1991;  
Temporary Amendment Eff. October 1, 2001;  
Amended Eff. April 1, 2003;  
Readopted Eff. March 15, 2023.*

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

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



*History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;  
Temporary Adoption Eff. October 1, 2001;  
Eff. April 1, 2003;  
Readopted Eff. March 15, 2023.*

**15A NCAC 03K .0208 SEED OYSTER MANAGEMENT AREAS**

- (a) For the purpose of this Rule and 15A NCAC 03R .0116, "Seed Oyster Management Area" shall mean a shellfish producing habitat area located in open harvest waters that has environmental conditions unsuitable for shellfish growth and survival that is designated to establish a localized regulatory strategy to allow the transfer of oysters to shellfish leases or franchises that have more suitable environmental conditions for further grow-out.
- (b) The Fisheries Director may, by proclamation, modify or close Seed Oyster Management Areas designated in 15A NCAC 03R .0116 for the protection of public health related to the public health programs under the authority of the Marine Fisheries Commission.
- (c) It shall be unlawful to take oysters from Seed Oyster Management Areas designated in 15A NCAC 03R .0116 for planting on shellfish leases or franchises without first obtaining a Permit to Transplant Oysters from Seed Oyster Management Areas from the Fisheries Director. The procedures and requirements for obtaining permits are set forth in 15A NCAC 03O .0501.
- (d) It shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Seed Oyster Management Area.

*History Note: Authority G.S. 113-134; 113-182; 113-203; 113-221.1; 143B-289.52;  
Eff. October 1, 2008;  
Readopted Eff. March 15, 2023.*

**15A NCAC 03K .0209 OYSTER SANCTUARIES**

- (a) For the purpose of this Rule and 15A NCAC 03R .0117, "Oyster Sanctuary" shall mean a type of artificial reef and shellfish producing habitat constructed for the purpose of oyster restoration that is managed to sustain populations of oyster broodstock. An Oyster Sanctuary is constructed to maximize habitat complexity and designed to meet its intended function for a minimum of 30 years.
- (b) The Fisheries Director may, by proclamation, close Oyster Sanctuary areas designated in 15A NCAC 03R .0117 to the use of specific fishing gears based on biological impacts or user conflicts.
- (c) The Fisheries Director may, by proclamation, designate and modify Oyster Sanctuaries based on biological impacts or variable spatial distribution, including shifted material.
- (d) It shall be unlawful to use mechanical methods in, or take shellfish from, Oyster Sanctuaries designated in 15A NCAC 03R .0117 or in accordance with Paragraph (c) of this Rule.
- (e) It shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Oyster Sanctuary.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52;  
Eff. October 1, 2008;  
Readopted Eff. March 15, 2023.*

**SECTION .0300 – HARD CLAMS (MERCENARIA)**

**15A NCAC 03K .0301 SIZE AND HARVEST LIMITS OF CLAMS**

- (a) It shall be unlawful to take, land, or possess aboard a vessel more than 6,250 hard clams per commercial fishing operation from public bottom in internal waters. It shall be unlawful to take, possess, sell, or purchase any clams (except Rangia or freshwater clams) less than one inch thick except in accordance with Rule .0305 of this Section. Clams shall be culled where harvested and all clams of less than legal size with their shell, shall be immediately returned to the bottom from which they were taken. In determining whether the size and harvest limits have been exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity being graded, and in cases of violations, may seize and return to public bottom or otherwise dispose of the clams as authorized by law the entire quantity being graded or any portion thereof.
- (b) Size and harvest limits established in Paragraph (a) of this Rule and the season and area limitations established in Rule .0302 of this Section may or may not apply for:
  - (1) harvest limits for temporary openings consistent with the requirements of 15A NCAC 18A .0900 and the North Carolina Hard Clam Fishery Management Plan;
  - (2) maintenance dredging operations, when clams would otherwise be destroyed, upon approval by the Division of Marine Fisheries and consistent with the North Carolina Hard Clam Fishery Management Plan; or
  - (3) relaying of clams from polluted waters to private shellfish bottom as permitted by Rule .0104 of this Subchapter.

*History Note: Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52;*

*Eff. January 1, 1991;*  
*Amended Eff. March 1, 1994;*  
*Readopted Eff. March 15, 2023.*

#### **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.*

#### **15A NCAC 03K .0304 PROHIBITED TAKING OF CLAMS**

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

(b) It shall be unlawful to possess clam trawls or cages aboard a vessel at any time, or have kick or deflector plates otherwise used in the mechanical harvest of clams affixed to a vessel at any time, except during the time period specified for a mechanical clam harvest season in Internal Waters in accordance with Rule .0302(a) of this Section. A period of 14 days before and after the season as specified by proclamation shall be allowed for the installation and removal of kick or deflector plates and clam trawls or cages. Vessels with permits for activities provided for in Rules .0104, .0107, and .0401 of this Subchapter shall be exempt from this Rule during the times those activities are permitted.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;*  
*Eff. January 1, 1991;*  
*Amended Eff. October 1, 2008; February 1, 2008; May 1, 1997; July 1, 1993;*  
*Readopted Eff. March 15, 2023.*

#### **15A NCAC 03K .0305 CLAM SIZE AND HARVEST LIMIT EXEMPTIONS**

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

*History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;*  
*Eff. January 1, 1991;*

*Amended Eff. September 1, 1991;*  
*Readopted Eff. March 15, 2023.*

## **SECTION .0400 – RANGIA CLAMS**

### **15A NCAC 03K .0401 POLLUTED AREA PERMIT REQUIREMENTS**

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

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52;*  
*Eff. January 1, 1991;*  
*Amended Eff. August 1, 2004;*  
*Readopted Eff. March 15, 2023.*

## **SECTION .0500 – SCALLOPS**

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

It shall be unlawful to land or possess more than 10 percent by number sea scallops with a shell height of less than three and one-half inches. In determining whether the 10 percent tolerance limit has been exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity being graded, and in cases of violations, may seize and return to public bottom or otherwise dispose of the sea scallops as authorized by law the entire quantity being graded or any portion thereof.

*History Note: Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52;*  
*Eff. January 1, 1991;*  
*Readopted Eff. March 15, 2023.*

### **15A NCAC 03K .0507 MARKETING SCALLOPS TAKEN FROM A SHELLFISH LEASE OR FRANCHISE**

- (a) All commercial scallop harvesting operations shall operate in accordance with any proclamations issued under the authority of Rule .0110 of this Subchapter.
- (b) It shall be unlawful for a shellfish lease or franchise holder or the holder's designees to take or possess scallops from public bottom while possessing aboard a vessel scallops taken from a lease or franchise.
- (c) It shall be unlawful for a shellfish lease or franchise holder or the holder's designees to fail to obtain an Aquaculture Operation Permit if the lease or franchise has material extending more than 18 inches above the leased bottom or uses equipment including cages, bags, or predator nets to cultivate shellfish.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;*  
*Eff. May 1, 2015;*  
*Readopted Eff. April 1, 2019;*  
*Amended Eff. March 15, 2023.*

## **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.

#### **15A NCAC 03L .0102 WEEKEND SHRIMPING PROHIBITED**

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

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

*History Note:* Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. May 1, 2017; August 1, 2004; March 1, 1994;  
Readopted Eff. March 15, 2023.

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

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

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

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

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

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

(d) It shall be unlawful to take shrimp with trawls that have a combined headrope of greater than 220 feet in Internal Waters in the following areas:

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

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

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

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

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

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

*Eff. January 1, 1991;*  
*Amended Eff. May 1, 2015; April 1, 2009; July 1, 2006;*  
*Readopted Eff. March 15, 2023.*

#### **15A NCAC 03L .0105 RECREATIONAL SHRIMP LIMITS**

It shall be unlawful to:

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

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;*  
*Eff. April 1, 2009;*  
*Amended Eff. May 1, 2015; June 1, 2013;*  
*Readopted Eff. March 15, 2023.*

### **SECTION .0200 – CRAB**

#### **15A NCAC 03L .0201 CRAB HARVEST RESTRICTIONS**

(a) It shall be unlawful to possess blue crabs taken from Crab Harvest Management Areas designated in 15A NCAC 03R .0118(1) from January 1 through January 31, except dealers shall have seven days after the beginning of the closure to sell, offer for sale, or transport blue crabs that were taken from this area prior to the closure.

(b) It shall be unlawful to possess blue crabs taken from Crab Harvest Management Areas designated in 15A NCAC 03R .0118(2) from March 1 through March 15, except dealers shall have seven days after the beginning of the closure to sell, offer for sale, or transport blue crabs that were taken from this area prior to the closure.

(c) It shall be unlawful to possess more than five percent by number of the following hard blue crabs in any combination in any container:

- (1) male hard blue crabs less than five inches from tip of spike to tip of spike;
- (2) immature female hard blue crabs;
- (3) mature female hard blue crabs less than five inches from tip of spike to tip of spike; and
- (4) mature female hard blue crabs with a dark (brown or black) sponge from April 1 through April 30 statewide. For the purpose of this Rule, a "mature female hard blue crab with a dark sponge" shall mean a mature female hard crab that has extruded her eggs on the abdomen or abdominal flap and the eggs have developed a coloration ranging from any shade of brown through black.

(d) It shall be unlawful to possess blue crabs described in Subparagraphs (c)(1) through (c)(3) of this Rule unless individual crabs are sorted and placed into separate containers for each of the following categories:

- (1) soft crabs;
- (2) pink and red-line peeler crabs;
- (3) white line peeler crabs; and
- (4) from March 1 through October 31, male crabs to be used as peeler crab bait.

All blue crabs not sorted into containers as specified shall be deemed hard blue crabs for the purpose of establishing the five percent tolerance described in Paragraph (c) of this Rule.

(e) It shall be unlawful to possess more than five percent by number of white-line peeler crabs in a container of pink and red-line peeler crabs.

(f) It shall be unlawful to:

- (1) sell white-line peeler crabs;
- (2) possess white-line peeler crabs unless they are to be used in the harvester's permitted blue crab shedding operation; or
- (3) possess male white-line peeler crabs from June 1 through September 1.

(g) It shall be unlawful to possess more than 50 blue crabs per person per day, not to exceed 100 blue crabs per vessel per day for recreational purposes.

(h) In order to comply with management measures adopted in the N.C. Blue Crab Fishery Management Plan, the Fisheries Director may, by proclamation, close the harvest of blue crabs and may further restrict commercial and recreational blue crab harvest by imposing any of the following requirements on the taking of blue crabs:

- (1) specify areas;

- (2) specify seasons;
- (3) specify time periods;
- (4) specify means and methods;
- (5) specify culling tolerance; and
- (6) specify limits on harvest based on size, quantity, sex, reproductive stage, or peeler stage.

(i) It shall be unlawful to fail to immediately return hard blue crabs not meeting the requirements of this Rule to the waters from which they were taken.

*History Note: Authority G.S. 113-134; 113-182; 113-182.1; 113-221.1; 143B-289.52; Eff. January 1, 1991; Amended Eff. April 1, 1997; July 1, 1993; Temporary Amendment Eff. July 1, 1999; Amended Eff. April 1, 2014; September 1, 2005; August 1, 2000; Readopted Eff. March 15, 2023.*

**15A NCAC 03L .0202 CRAB TRAWLING**

(a) It shall be unlawful to take or possess aboard a vessel crabs taken by trawl in internal waters except in areas and during such times as the Fisheries Director may specify by proclamation.

(b) It shall be unlawful to use a trawl to take crabs that does not meet mesh length requirements, except as provided in 15A NCAC 03J .0104. The minimum mesh length to take hard crabs with a trawl shall be three inches, except:

- (1) the minimum mesh length shall be four inches in the area of western Pamlico Sound west of a line beginning at a point 35° 48.3693' N - 75° 43.7232' W on Roanoke Marshes Point; running easterly to a point 35° 48.3000' N - 75° 37.1167' W near Beacon "I" at the southern end of Roanoke Island; running southerly to a point 35° 30.7500' N - 75° 40.5667' W near the "S" Beacon at Long Shoal; running southwesterly to a point 35° 12.6167' N - 76° 04.3833' W near the "BL" Beacon on Bluff Shoal; running westerly to a point 35° 08.1000' N - 76° 17.5000' W near the "BI" Beacon at Brant Island Shoal; running southwesterly to a point 35° 04 .6167' N - 76° 27.8000' W on Point of Marsh; and
- (2) the Fisheries Director may, by proclamation, specify areas other than the area described in Subparagraph (b)(1) of this Rule for trawl mesh length use and increase the minimum trawl mesh length to no more than four inches to take hard crabs.

(c) It shall be unlawful to use a trawl with a mesh length less than two inches or with a combined total headrope length exceeding 25 feet to take soft or peeler crabs, except as provided in 15A NCAC 03J .0104.

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52; Eff. February 1, 1991; Amended Eff. April 1, 2014; September 1, 2005; August 1, 2004; March 1, 1994; September 1, 1991; Readopted Eff. March 15, 2023.*

**15A NCAC 03L .0203 CRAB DREDGING**

It shall be unlawful to take crabs with dredges except incidental to lawful oyster dredging operations provided the weight of the crabs shall not exceed the lesser of:

- (1) 10 percent of the total weight of the combined oyster and crab catch; or
- (2) 100 pounds.

The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of dredges to take blue crabs.

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52; Eff. January 1, 1991; Amended Eff. April 1, 2014; May 1, 1997; Readopted Eff. March 15, 2023.*

**15A NCAC 03L .0204 CRAB POTS**

(a) It shall be unlawful to take crabs with pots except as provided in 15A NCAC 03J .0301 and .0302. The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of pots to take blue crabs.

(b) The Fisheries Director may, by proclamation, require the use of terrapin excluder devices in each funnel entrance in crab pots and impose the following restrictions concerning terrapin excluder devices:

- (1) specify areas;

- (2) specify time periods; and
- (3) specify means and methods.

*History Note:* Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;  
 Eff. January 1, 1991;  
 Amended Eff. April 1, 2014;  
 Readopted Eff. March 15, 2023.

**15A NCAC 03L .0205 CRAB SPAWNING SANCTUARIES**

(a) It shall be unlawful to set or use trawls, pots, or mechanical methods for shellfish or take crabs with the use of commercial fishing equipment in crab spawning sanctuaries:

- (1) from March 1 through August 31 for the crab spawning sanctuaries described in 15A NCAC 03R .0110(1); and
- (2) from March 1 through October 31 for the crab spawning sanctuaries described in 15A NCAC 03R .0110(2).

(b) The Fisheries Director may, by proclamation, designate additional areas as crab spawning sanctuaries and may impose the following restrictions in any crab spawning sanctuary:

- (1) specify areas;
- (2) specify time periods;
- (3) specify means and methods; and
- (4) specify limits on harvest based on size, quantity, sex, reproductive stage, or peeler stage.

*History Note:* Authority G.S. 113-134; 113-182; 113-182.1; 113-221.1; 143B-289.52;  
 Eff. January 1, 1991;  
 Amended Eff. May 1, 1997;  
 Temporary Amendment Eff. October 2, 1999;  
 Amended Eff. April 1, 2014; April 1, 2001;  
 Readopted Eff. March 15, 2023.

**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.

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

It shall be unlawful to repack foreign crab meat in North Carolina into another container. For the purpose of this Rule, "foreign" shall mean any place or location outside the United States. This Rule shall apply to all facilities and persons permitted in accordance with 15A NCAC 18A .0135. This Rule shall not apply to crab meat that has been transformed into another product, such as crab cakes or other value-added products.

*History Note:* Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;  
 Eff. August 23, 2022.

## SECTION .0300 – LOBSTER

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

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

- (1) that has eggs or from which eggs have been artificially removed by any method;
- (2) meats, detached meats, detached tails or claws, or any other part of a lobster that has been separated from the lobster;
- (3) that has an outer shell which has been speared; or
- (4) that is a V-notched female lobster. A V-notched female lobster is any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as 1/8 inch, with or without setal hairs. A V-notched female lobster is also any female lobster that is mutilated in a manner that would hide, obscure, or obliterate such a mark.

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

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

*History Note:* Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. March 1, 1996;  
Temporary Amendment Eff. August 1, 2000;  
Amended Eff. April 1, 2009; September 1, 2005; April 1, 2001;  
Readopted Eff. August 23, 2022.

### 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 .0201 STRIPED BASS REQUIREMENTS; GENERAL

(a) For the purpose of this Section, "striped bass" shall mean striped bass (*Morone saxatilis*) and its hybrids taken in Coastal and Joint Fishing Waters or imported from other states.

(b) It shall be unlawful to possess striped bass that are less than 18 inches long (total length) imported from other states.

(c) It shall be unlawful to import, buy, sell, transport, offer to buy or sell, or possess striped bass except during any:

- (1) open striped bass season established for Internal Waters;
- (2) open striped bass season established for the Atlantic Ocean; or
- (3) open striped bass season of another state while in possession of the following:
  - (A) a bill of lading as described in 15A NCAC 03I .0114; and



- (B) a numbered, state-issued tag from the state of origin affixed through the mouth and gill cover. This tag must remain affixed until processed for consumption by the consumer.
- (d) The management areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC 03R .0201.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. March 1, 1994; September 1, 1991;  
Temporary Amendment Eff. May 1, 2000;  
Amended Eff. June 1, 2013; October 1, 2008; October 1, 2004; April 1, 2001;  
Readopted Eff. March 15, 2023.*

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

- (a) It shall be unlawful to possess striped bass from the Coastal Fishing Waters of the Cape Fear River and its tributaries.
- (b) It shall be unlawful to possess striped bass from the Roanoke River Management Area, as designated in 15A NCAC 03R .0201, in a commercial fishing operation.
- (c) The Fisheries Director may, by proclamation, impose any of the following restrictions on the taking of striped bass in a commercial fishing operation or for recreational purposes in Internal Waters during the period from October 1 through April 30:
  - (1) specify fishing days and times;
  - (2) specify area;
  - (3) specify means and methods;
  - (4) specify size, but the minimum size specified shall not be less than 18 inches total length; and
  - (5) specify quantity, except possession for recreational purposes shall not exceed:
    - (A) more than three fish in any one day in the Albemarle Sound Management Area, as designated in 15A NCAC 03R .0201; and
    - (B) more than two fish in any one day in the Joint and Coastal Fishing Waters of the Central Southern Management Area, as designated in 15A NCAC 03R .0201.

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

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. March 1, 1996; November 1, 1991;  
Temporary Amendment Eff. September 1, 1996;  
Amended Eff. April 1, 1997;  
Temporary Amendment Eff. July 1, 1999;  
Amended Eff. June 1, 2013; July 1, 2008; August 1, 2000;  
Readopted Eff. March 15, 2023.*

**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.*

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

- (a) It shall be unlawful to possess striped bass on a vessel with a trawl net on that vessel in Internal Waters except during transit from ocean fishing grounds to port during any open striped bass trawl season in the Atlantic Ocean established by proclamation. Striped bass so possessed shall meet the minimum size limit set by proclamation issued under the authority of Rules .0204 or .0512 of this Subchapter.

(b) It shall be unlawful to possess striped bass on a vessel in the Atlantic Ocean with a trawl net on that vessel except during any open striped bass trawl season in the Atlantic Ocean established by proclamation issued under the authority of Rules .0204 or .0512 of this Subchapter.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. December 1, 2007;  
Readopted Eff. March 15, 2023.*

## 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.*

### 15A NCAC 03M .0302 PURSE GILL NET PROHIBITED

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

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

## SECTION .0500 – OTHER FINFISH

### 15A NCAC 03M .0503 FLOUNDER

(a) It shall be unlawful to possess flounder less than 14 inches total length taken from the Atlantic Ocean in a commercial fishing operation.

(b) From October 1 through April 30, it shall be unlawful to use a trawl in the Atlantic Ocean within three miles of the ocean beach from the North Carolina/Virginia state line (36° 33.000'N) to Cape Lookout (34° 36.000'N) unless each trawl has a mesh length of five and one-half inches or larger diamond mesh (stretched) or six inches or larger square mesh (stretched) applied throughout the body, extensions, and the cod end (tailbag) of the net except as provided in Paragraphs (g) and (h) of this Rule.

(c) License to Land Flounder from the Atlantic Ocean:

- (1) it shall be unlawful to land more than 100 pounds per trip of flounder taken from the Atlantic Ocean unless the owner of the vessel, or in the case of Land or Sell Licenses, the responsible party, has been issued a License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.
- (2) it shall be unlawful for a fish dealer to purchase or offload more than 100 pounds of flounder taken from the Atlantic Ocean by a vessel whose owner, or in the case of Land or Sell Licenses, the responsible party, has not first procured a valid North Carolina License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.
- (3) it shall be unlawful for any person to land flounder from the Atlantic Ocean under a License to Land Flounder from the Atlantic Ocean unless that person is the holder of the license or the master designated on the license.
- (4) it shall be unlawful for any individual to land flounder from the Atlantic Ocean without having ready at hand for inspection a valid License to Land Flounder from the Atlantic Ocean, except as specified in Subparagraph (1) of this Paragraph.

(d) All fish dealer transactions in flounder landed from the Atlantic Ocean shall be conducted in accordance with the Atlantic Ocean Flounder Dealer Permits in 15A NCAC 03O .0503 and permit requirements in 15A NCAC 03O .0500.

(e) It shall be unlawful to transfer flounder taken from the Atlantic Ocean from one vessel to another.

(f) Tailbag liners of any mesh size, the multiple use of two or more cod ends, or other netting material that in any way could restrict the legal size mesh shall not be used or possessed on the deck of a vessel in the Atlantic Ocean from October 1 through April 30 from the North Carolina/Virginia state line (36° 33.000' N) to Cape Lookout (34° 36.0000'N).

(g) Trawls with a cod end mesh size smaller than described in Paragraph (b) of this Rule may be used or possessed on the deck of a vessel provided not more than 100 pounds of flounder per trip from May 1 through October 31 or more than 200 pounds from November 1 through April 30 is possessed aboard or landed from that vessel.

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

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

(i) Commercial Season:

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

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

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

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size;
- (6) specify quantity; and
- (7) require submission of statistical and biological data.

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

*History Note: Authority G.S. 113-134; 113-169.5; 113-182; 113-221.1; 143B-289.52;*  
*Eff. January 1, 1991;*  
*Amended Eff. March 1, 1996; February 1, 1992;*  
*Temporary Amendment Eff. November 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*  
*Temporary Amendment Eff. December 23, 1996;*  
*Amended Eff. April 1, 1997;*  
*Temporary Amendment Eff. June 1, 1998; August 18, 1997;*  
*Amended Eff. April 1, 1999;*  
*Temporary Amendment Eff. May 1, 2000; July 1, 1999;*  
*Amended Eff. April 1, 2001; August 1, 2000;*  
*Temporary Amendment Eff. September 1, 2004;*  
*Temporary Amendment Expired June 12, 2005;*  
*Amended Eff. September 1, 2005;*  
*Readopted Eff. March 15, 2023.*

**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.*

**15A NCAC 03M .0519 SHAD**

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

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;  
Eff. October 1, 2008;  
Amended Eff. April 1, 2012;  
Readopted Eff. August 23, 2022.*

**SUBCHAPTER 03N – FISH HABITAT AREAS**

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

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

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. September 1, 1991;  
Recodified from 15A NCAC 3N .0004 Eff. May 1, 1997;  
Amended Eff. May 1, 1997;  
Readopted Eff. March 15, 2023.*

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

- (a) It shall be unlawful to use trawl nets for any purpose in any of the permanent secondary nursery areas designated in 15A NCAC 03R .0104.
- (b) It shall be unlawful to use trawl nets for any purpose in any of the special secondary nursery areas designated in 15A NCAC 03R .0105, except that the Fisheries Director, may, by proclamation, open any of the special secondary nursery areas, or any portion thereof, designated in 15A NCAC 03R .0105 to shrimp or crab trawling from August 16 through May 14 subject to the provisions of 15A NCAC 03L .0100 and .0200.

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. September 1, 1991;  
Recodified from 15A NCAC 03N .0005 Eff. May 1, 1997;  
Amended Eff. August 1, 2004; May 1, 1997;  
Readopted Eff. March 15, 2023.*

## **SUBCHAPTER 030 – LICENSES, LEASES, FRANCHISES, AND PERMITS**

### **SECTION .0100 – LICENSES**

#### **15A NCAC 030 .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS**

(a) Division of Marine Fisheries licenses are available at offices of the Division or by mail from the Morehead City Office of the Division, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at license agents of the Wildlife Resources Commission in accordance with G.S. 113-270.1.

(b) For the purpose of this Rule, the procedures and requirements for the licensee shall also apply to the responsible party, the person holding power of attorney, the tournament organizer, and the vessel master.

(c) To obtain Division of Marine Fisheries licenses, endorsements, and Commercial Fishing Vessel Registrations, a licensee shall provide a completed application to an office of the Division by mail or in person. Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted. The following shall be required for the application:

- (1) full name, physical address, mailing address, date of birth, and signature of the licensee. If the licensee is not appearing before a license agent or a representative of the Division, the licensee's signature shall be notarized.
- (2) a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.
- (3) current and valid picture identification of the licensee. Acceptable forms of picture identification are state driver's license, state identification card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.
- (4) certification that the applicant does not have four or more marine or estuarine resource convictions during the previous three years.
- (5) current articles of incorporation and a current list of corporate officers when purchasing a license or Commercial Fishing Vessel Registration in a corporate name. In the case of incorporation of an individual fishing vessel, the name of the vessel master shall also be specified. The licensee shall notify the Morehead City Office of the Division within five days of changing the vessel master.
- (6) a current copy of a written partnership agreement shall be provided when purchasing a license, endorsement, or Commercial Fishing Vessel Registration in a partnership name, if a partnership is established.
- (7) valid documentation papers or current motor boat registration, or copy thereof when purchasing a Commercial Fishing Vessel Registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.
- (8) affirmation of liability insurance and that the operator is knowledgeable of United States Coast Guard (USCG) safety requirements for the vessels used in the operation in accordance with G.S. 113-168.6 when purchasing a Commercial Fishing Vessel Registration with a for-hire endorsement.

(d) In addition to the requirements of Paragraph (c) of this Rule, proof of residency for non-residents shall be documented by the licensee with certification of the state of residency. Proof of residency for residents of North Carolina shall be documented by the licensee as follows:

- (1) Standard or Retired Standard Commercial Fishing Licenses: A notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4) and:
  - (A) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident;
  - (B) a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or
  - (C) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty assignment at a military facility in North Carolina.
- (2) All other types of licenses:

- (A) North Carolina voter registration card;
- (B) current North Carolina Driver's License;
- (C) current North Carolina Certificate of Domicile;
- (D) current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or
- (E) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty assignment at a military facility in North Carolina.

(e) In addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be required:

- (1) Blanket For-Hire Captain's CRFL: a valid certification from the USCG that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers.
- (2) Blanket For-Hire Vessel CRFL or Non-Blanket For-Hire Vessel License:
  - (A) valid documentation papers or current motor boat registration, or copies thereof for the vessel engaged as for-hire; or
  - (B) a copy of the pending application and a notarized bill of sale if an application for transfer of documentation is pending.
- (3) Fish Dealer License:
  - (A) the physical address of the established location where business is conducted and, if different, the address where records are kept; and
  - (B) a valid Permit and Certificate of Compliance from the Division of Marine Fisheries Shellfish Sanitation and Recreational Water Quality Section, if purchasing a Fish Dealer License with clam or oyster categories or a consolidated license.
- (4) Land or Sell License:
  - (A) valid documentation papers or current motor boat registration, or copy thereof; or
  - (B) a copy of the pending application and a notarized bill of sale if an application for transfer of documentation is pending.

The fees for a Land or Sell License shall be based on the vessel's homeport as it appears on the USCG documentation papers or the state in which the vessel is registered, in accordance with G.S. 113-169.5.

- (5) Ocean Fishing Pier License:
  - (A) the information required in G.S. 113-169.4; and
  - (B) linear length of the pier. A Marine Fisheries inspector's signature is required to verify the linear length of the pier before the license can be issued.
- (6) Recreational Fishing Tournament License to Sell Fish: name and date or dates of the tournament.
- (7) Spotter Plane License:
  - (A) the information required in G.S. 113-171.1;
  - (B) the current aircraft registration; and
  - (C) a list of operators.

(f) For a License to Land Flounder from the Atlantic Ocean, in addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be applicable:

- (1) for the purpose of this Paragraph, "license year" means the period beginning July 1 of a year through June 30 of the following year.
- (2) to qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:
  - (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina;
  - (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and
  - (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.
- (3) it shall be unlawful for a person to hold more Licenses to Land Flounder from the Atlantic Ocean than the number of vessels that the person owns that individually met the eligibility requirements of Parts (f)(2)(A) and (f)(2)(B) of this Rule.
- (4) the License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel specified at the time of license issuance.
- (5) at the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall specify the name of the vessel master for each License to Land Flounder from the Atlantic Ocean issued.
- (6) the holder of the License to Land Flounder from the Atlantic Ocean shall notify the Morehead City Office of the Division of Marine Fisheries within five days of change as to the vessel master identified on the license.

- (7) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year.
- (g) For a Recreational Fishing Tournament License to Sell Fish, in addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be applicable:
- (1) it shall be unlawful for anyone other than the holder of the Recreational Fishing Tournament License to Sell Fish to sell fish taken during a recreational fishing tournament.
  - (2) fish to be sold under the Recreational Fishing Tournament License to Sell Fish shall be sold only to licensed fish dealers and shall comply with all applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.
  - (3) it shall be unlawful for a licensed recreational fishing tournament organizer to fail to accurately and legibly complete a North Carolina Recreational Fishing Tournament Disposition of Proceeds from the Sale of Fish Form provided by the Division of Marine Fisheries and submit the form to the Division within 30 days after the last day of the tournament.
- (h) It shall be unlawful for a license, endorsement, or Commercial Fishing Vessel Registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.

*History Note: Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169.2-5; 113-171.1; 113-174.3; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. July 1, 1997; March 1, 1994; Temporary Amendment Eff. July 1, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. April 1, 2001; Amended Eff. May 1, 2015; July 1, 2008; December 1, 2006; August 1, 2004; August 1, 2002; Readopted Eff. March 15, 2023.*

**15A NCAC 030 .0102 PROCEDURES AND REQUIREMENTS TO RENEW LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS**

- (a) For the purpose of this Rule, the procedures and requirements for the licensee shall also apply to the responsible party, the person holding power of attorney, the tournament organizer, and the vessel master.
- (b) To renew Division of Marine Fisheries licenses, endorsements, and Commercial Fishing Vessel Registrations, except Recreational Commercial Gear Licenses, a renewal application shall be submitted by the licensee. Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the licensee with deficiency in the application so noted. The following is required for the renewal application:
- (1) full name, physical address, mailing address, date of birth, and signature of the licensee.
  - (2) a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.
  - (3) current and valid picture identification of the licensee. Acceptable forms of picture identification are state driver's license, state identification card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.
  - (4) the information required in Rule .0101(c)(4) through (c)(8) of this Section, if changed since last issuance of the license, endorsement, or Commercial Fishing Vessel Registration.
  - (5) the information required in Rule .0101(e)(1) of this Section, if the linear length of the Ocean Fishing Pier has changed.
  - (6) a valid Permit and Certificate of Compliance from the Division's Shellfish Sanitation and Recreational Water Quality Section, if renewing a Fish Dealer License with clam or oyster categories or a consolidated license.
  - (7) certification that all information on the application is true and accurate. Notarization of the signature on renewal applications shall not be required.

The Division may require current copies of documentation for licenses, endorsements, and Commercial Fishing Vessel Registrations upon renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.

*History Note: Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169.2-5; 113-171.1; 113-174.3; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1994; Temporary Amendment Eff. July 1, 1999; Amended Eff. December 1, 2006; August 1, 2000; Readopted Eff. March 15, 2023.*

**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 .0104 COMMERCIAL UNLOADING OF FISH**

It shall be unlawful to unload fish from a vessel in North Carolina that has been engaged in a commercial fishing operation outside State waters without possessing a valid:

- (1) Standard or Retired Standard Commercial Fishing License with applicable endorsement;
- (2) Shellfish License for North Carolina Residents without a Standard Commercial Fishing License; or
- (3) Land or Sell License.

*History Note: Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.4; 113-169.5; 113-182; 143B-289.52; Eff. January 1, 1991; Temporary Amendment Eff. July 1, 1999; Amended Eff. August 1, 2000; Readopted Eff. March 15, 2023.*

**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 .0109 ASSIGNMENT OF STANDARD COMMERCIAL FISHING LICENSE**

- (a) For the purpose of this Rule, "licensee" shall mean the person issued a Standard Commercial Fishing License and "assignee" shall mean the individual to whom the licensee assigns a Standard Commercial Fishing License in accordance with the requirements of this Rule.
- (b) The Division of Marine Fisheries shall provide assignment forms to the licensee upon request. Only Division assignment forms shall be used to obtain an assignment. On the assignment form, the licensee shall designate what, if any, endorsements are included in the assignment. Endorsements shall not be assigned independent of the Standard Commercial Fishing License. It shall be unlawful for the licensee or the assignee to fail to submit within five days the completed assignment form to any office of the Division in person or by mail to the Morehead City Office. The Morehead City Office is located at 3441 Arendell Street, Morehead City, North Carolina, 28557. If the completed assignment form is not received by the Division within five days from the date it was signed, the assignment shall be null and void. Incomplete forms shall be returned to the licensee with deficiency in the form so noted. An assignment is in effect from the date specified on the assignment form and when:
- (1) the assignment form is complete with all required information;
  - (2) signatures of the current license holder and the assignee are notarized; and
  - (3) the assignee has in the assignee's possession the current licensee's original actual Standard Commercial Fishing License, including applicable endorsements in accordance with G.S. 113-169.2.
- (c) For an extension of time for assignments, a new assignment form shall be completed in accordance with Subparagraphs (b)(1) through (b)(3) of this Rule.
- (d) Assignments shall terminate:
- (1) when the date specified on the assignment form is reached;

- (2) if the licensee or assignee are determined ineligible for a license or assignment;
  - (3) if the Division receives a notarized statement from the current license holder stating a revised date for an earlier assignment termination;
  - (4) upon the licensee or assignee's death; or
  - (5) when the Standard Commercial Fishing License expires.
- (e) It shall be unlawful for an individual assigned a Standard Commercial Fishing License when involved in a commercial fishing operation to fail to have the original actual Standard Commercial Fishing License, any assigned endorsements, and a copy of the assignment form in the individual's possession ready at hand for inspection in accordance with G.S. 113-168.1.
- (f) All landings occurring during the time of the assignment shall be credited to the licensee, not the assignee.
- (g) It shall be unlawful to be assigned more than a single Standard Commercial Fishing License at any one time. It shall be unlawful to assign a Standard Commercial Fishing License to more than one individual at any one time. Assignments shall only be made by the licensee and shall not be further assigned by assignees. Masters identified on the Standard Commercial Fishing Licenses of corporations consisting of an individual fishing vessel shall not assign such licenses.
- (h) It shall be unlawful for a person to accept assignment of a Standard Commercial Fishing License for which they are ineligible.
- (i) It shall be unlawful for any assignee of a Standard Commercial Fishing License not to return the assignment and the Standard Commercial Fishing License with any assigned endorsements to the licensee within five days of notice that the assignment has been terminated or a demand by the licensee to return the license.

*History Note: Authority G.S. 113-134; 113-135; 113-168.1; 113-168.2; 113-168.5; 113-169.2; 113-182; 113-187; 143B-289.52; Eff. January 1, 1991; Temporary Amendment Eff. October 2, 1999; July 1, 1999; Amended Eff. August 1, 2000; Readopted Eff. March 15, 2023.*

**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.*

**15A NCAC 030 .0111 SURRENDER OF LICENSES**

- (a) It shall be unlawful for any licensee to refuse to surrender to an agent of the Secretary all licenses, license receipts, endorsements, commercial fishing vessel registration or decals, and other forms and records relating to the license following service of notice of suspension or revocation of licenses in accordance with G.S. 113-171 and Rule .0114 of this Section.
- (b) It shall be unlawful for any person in custody or possession of any licenses, license receipt, endorsements, commercial fishing vessel registration or decals, and other documentation required to be surrendered to refuse to surrender same to an agent of the Secretary making such demand.
- (c) A license issued by the Division in error shall be required to be surrendered immediately upon service of a notice by an agent of the Fisheries Director to surrender the license.

*History Note: Authority G.S. 113-134; 113-171; 113-182; 143B-289.52; S.L. 2010-145, s. 1; Temporary Adoption Eff. July 1, 1999; Eff. August 1, 2000; Amended Eff. October 1, 2012; Readopted Eff. March 15, 2023.*

**15A NCAC 030 .0113 OCEAN FISHING PIER REPORTING REQUIREMENTS**

It shall be unlawful for the responsible party of the Ocean Fishing Pier License to fail to provide to the Division of Marine Fisheries by the 10th of each month a daily count of anglers fishing from the licensed pier from the previous month, including a daily count of zero for days when anglers did not fish. The information shall be submitted on a paper form provided by the Division or via electronic mail to the electronic mail address provided at the time of license issuance.

*History Note: Authority G.S. 113-134; 113-169.4; 113-170.3; 113-174.1; 113-182; 143B-289.52;*

*Eff. April 1, 2011;*  
*Amended Eff. May 1, 2015;*  
*Readopted Eff. March 15, 2023.*

#### **15A NCAC 030 .0114 SUSPENSION, REVOCATION, AND REISSUANCE OF LICENSES**

(a) All commercial and recreational licenses issued under Article 14A, Article 14B, and Article 25A of Chapter 113 shall be subject to suspension and revocation.

(b) A conviction resulting from being charged by an inspector under G.S. 14-32, 14-33, 14-72, or 14-399 shall be deemed a conviction for the purposes of license suspension or revocation.

(c) Upon receipt of notice of a licensee's conviction as specified in G.S. 113-171 or a conviction as specified in Paragraph (b) of this Rule, the Fisheries Director shall determine whether it is a first, second, third, fourth, or subsequent conviction. Where several convictions result from a single transaction or occurrence, the convictions shall be treated as a single conviction for the purposes of license suspension or revocation. For a second conviction, the Fisheries Director shall suspend all licenses issued to the licensee for a period of 30 days; for a third conviction, the Fisheries Director shall suspend all licenses issued to the licensee for a period of 90 days; for a fourth or subsequent conviction, the Fisheries Director shall revoke all licenses issued to the licensee, except:

- (1) for a felony conviction under G.S. 14-399, the Fisheries Director shall suspend all licenses issued to the licensee for a period of one year;
- (2) for a first conviction under G.S. 113-187(d)(1), the Fisheries Director shall suspend all licenses issued to the licensee for a period of one year; for a second or subsequent conviction under G.S. 113-187(d)(1), the Fisheries Director shall revoke all licenses issued to the licensee;
- (3) for a conviction under G.S. 14-72, 113-208, 113-209, 113-268, or 113-269, the Fisheries Director shall revoke all licenses issued to the licensee; and
- (4) for a conviction under G.S. 14-32 or 14-33, if the offense was committed against a marine fisheries inspector, the Fisheries Director shall revoke all licenses issued to the licensee and the former licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional license authorized in Article 14A, Article 14B, or Article 25A of Chapter 113 for a period of two years.

(d) After the Fisheries Director determines that a conviction requires a suspension or revocation of the licenses of a licensee, the Fisheries Director shall cause the licensee to be served with written notice of suspension or revocation. If the licensee is not an individual, the written notice shall be served upon any responsible individual affiliated with the corporation, partnership, or association. The notice of suspension or revocation shall be served by an inspector or other agent of the Department or by certified mail, shall state the ground upon which it is based, and shall take effect immediately upon service. The agent of the Fisheries Director making service shall collect all license certificates and plates and other forms or records relating to the license as directed by the Fisheries Director. Upon service of a notice of suspension or revocation of a license, it shall be unlawful to fail to surrender any license so suspended or revoked.

(e) If a license has been suspended, the former licensee shall not be eligible to apply for reissuance of license or for any additional license authorized in Article 14A, Article 14B, or Article 25A of Chapter 113 during the suspension period. Licenses shall be returned to the licensee by the Fisheries Director or the Director's agents at the end of a period of suspension.

(f) Where a license has been revoked, the former licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional license authorized in Article 14A, Article 14B and Article 25A of Chapter 113 for a period of one year, except as provided in Subparagraph (c)(4) of this Rule. For a request for reinstatement following revocation, the former licensee shall describe in the request how the licensee will conduct the operations for which the license is sought in accordance with all applicable laws and rules, shall submit the request in writing, and shall mail the request to the Fisheries Director, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. Upon the application of an eligible former licensee after revocation, the Fisheries Director may issue one license sought but not another, as necessary to prevent the hazard of recurring violations of the law.

*History Note: Authority G.S. 113-134; 113-168.1; 113-171; 113-182; 143B-289.52; S.L. 2010-145, s. 1;*  
*Eff. October 1, 2012;*  
*Amended Eff. May 1, 2017;*  
*Readopted Eff. March 15, 2023.*

#### **SECTION .0200 – SHELLFISH LEASES AND FRANCHISES**

#### **15A NCAC 030 .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES**

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

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

- (2) the proposed shellfish lease area shall not be closer than 250 feet from a developed shoreline or a water-dependent shore-based structure, except no minimum setback is required when the area to be leased borders the applicant's property, the property of "riparian owners" as defined in G.S. 113-201.1 who have consented in a notarized statement, or is in an area bordered by undeveloped shoreline. For the purposes of this Rule, a water-dependent shore-based structure shall include docks, wharves, boat ramps, bridges, bulkheads, and groins;
  - (3) the proposed shellfish lease area shall not be closer than 250 feet to an existing lease;
  - (4) the proposed shellfish lease area, either alone or when considered cumulatively with existing leases in the area, shall not interfere with navigation or with existing, traditional uses of the area; and
  - (5) the proposed shellfish lease area shall not be less than one-half acre and shall not exceed 10 acres.
- (b) To be suitable for leasing for shellfish aquaculture purposes, shellfish water column leases superjacent to a shellfish bottom lease shall meet the standards in G.S. 113-202.1 and shellfish water column leases superjacent to franchises recognized pursuant to G.S. 113-206 shall meet the standards in G.S. 113-202.2.
- (c) Franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202:
- (1) they produce and market 10 bushels of shellfish per acre per year; and
  - (2) they are planted with 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre per year, or a combination of cultch and seed shellfish where the percentage of required cultch planted and the percentage of required seed shellfish planted totals at least 100 percent.
- (d) Shellfish water column leases shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and G.S. 113-202.2:
- (1) they produce and market 40 bushels of shellfish per acre per year; or
  - (2) the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.
- (e) The following standards shall be applied to determine compliance with Paragraphs (c) and (d) of this Rule:
- (1) Only shellfish marketed, planted, or produced as defined in 15A NCAC 03I .0101 as the fishing activities "shellfish marketing from leases and franchises," "shellfish planting effort on leases and franchises," or "shellfish production on leases and franchises" shall be included in the shellfish lease and franchise reports required by Rule .0207 of this Section.
  - (2) If more than one shellfish lease or franchise is used in the production of shellfish, one of the leases or franchises used in the production of the shellfish shall be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish shall be produced by only one shellfish lease or franchise. Shellfish transplanted between shellfish leases or franchises shall be credited as planting effort on only one lease or franchise.
  - (3) Production and marketing information and planting effort information shall be compiled and averaged separately to assess compliance with the requirements of this Rule. The shellfish lease or franchise shall meet both the production requirement and the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in compliance for shellfish bottom leases. The shellfish lease or franchise shall meet either the production requirement or the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in compliance for shellfish water column leases.
  - (4) All bushel measurements shall be in standard U.S. bushels.
  - (5) In determining production and marketing averages and planting effort averages for information not reported in bushel measurements, the following conversion factors shall be used:
    - (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
    - (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds of fossil stone equal one bushel.
  - (6) Production and marketing rate averages shall be computed irrespective of transfer of the shellfish lease or franchise. The production and marketing rates shall be averaged for the following situations using the time periods described:
    - (A) for an initial shellfish bottom lease or franchise, over the consecutive full calendar years remaining on the bottom lease or franchise contract after December 31 following the second anniversary of the initial bottom lease or franchise;
    - (B) for a renewal shellfish bottom lease or franchise, over the consecutive full calendar years beginning January 1 of the final year of the previous bottom lease or franchise term and ending December 31 of the final year of the current bottom lease or franchise contract;
    - (C) for a shellfish water column lease, over the first five-year period for an initial water column lease and over the most recent five-year period thereafter for a renewal water column lease; or
    - (D) for a shellfish bottom lease or franchise issued an extension period under Rule .0208 of this Section, over the most recent five-year period.

- (7) In the event that a portion of an existing shellfish lease or franchise is obtained by a new lease or franchise holder, the production history for the portion obtained shall be a percentage of the originating lease or franchise production equal to the percentage of the area of lease or franchise site obtained to the area of the originating lease or franchise.
- (f) Persons holding five or more acres under all shellfish bottom leases and franchises combined shall meet the requirements established in Paragraph (c) of this Rule before submitting an application for additional shellfish lease acreage to the Division of Marine Fisheries.

*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. May 1, 1997; March 1, 1995; March 1, 1994; September 1, 1991; Temporary Amendment Eff. October 1, 2001; Amended Eff. May 1, 2017; October 1, 2008; April 1, 2003; Readopted Eff. August 23, 2022.*

**15A NCAC 030 .0202 SHELLFISH LEASE APPLICATIONS**

(a) Application forms are available from the Division of Marine Fisheries, 3441 Arendell Street, Morehead City, NC 28557 for persons desiring to apply for a shellfish lease. Each application shall be accompanied by a map or diagram prepared at the applicant's expense including an inset vicinity map showing the location of the proposed shellfish lease with detail sufficient to permit on-site identification pursuant to G.S. 113-202(d1).

(b) As a part of the application, the applicant shall submit a Shellfish Lease Management Plan for the area to be leased for shellfish aquaculture purposes on a form provided by the Division that shall:

- (1) state the methods through which the applicant will cultivate and produce shellfish consistent with the requirements in accordance with Rule .0201 of this Section;
- (2) state the time intervals during which phases of cultivation and production will be achieved;
- (3) state the materials and techniques that will be utilized in management of the shellfish lease;
- (4) forecast the results expected to be achieved by the Shellfish Lease Management Plan activities;
- (5) describe the productivity of any other shellfish leases or franchises held by the applicant; and
- (6) state the locations of each corner defining the area to be leased with no more than eight corners.

(c) The completed application, map or diagram, and Shellfish Lease Management Plan for the requested shellfish lease shall be accompanied by the non-refundable filing fee set forth in G.S. 113-202(d1), G.S. 113-202.1(c)(1), and G.S. 113-202.2(c)(1). An incomplete application shall be returned and not considered further until re-submitted complete with all required information.

(d) Applicants and transferees not currently holding a shellfish lease, and applicants and transferees holding one or more shellfish leases that are not meeting production requirements, shall complete the Shellfish Aquaculture Education Program provided by the Division. The Shellfish Aquaculture Education Program shall provide the applicant information on shellfish aquaculture including:

- (1) shellfish lease application process;
- (2) shellfish lease requirements and techniques;
- (3) shellfish sanitation and National Shellfish Sanitation Program requirements;
- (4) shellfish harvest requirements;
- (5) aquaculture permits;
- (6) best management practices; and
- (7) shellfish lease user conflict avoidance.

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

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-206; 143B-289.52; Eff. January 1, 1991; Amended Eff. April 1, 2011; September 1, 2005; May 1, 1997; September 1, 1991; Readopted Eff. August 23, 2022.*

**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 .0204 MARKING SHELLFISH LEASES AND FRANCHISES**

(a) All shellfish leases and franchises shall be marked by the lease or franchise holder as follows:

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

- (A) stakes of wood or plastic material no less than three inches in diameter and no more than 12 inches in diameter at the mean high water mark and extending at least four feet above the mean high water mark for each corner, except stakes more than 12 inches in diameter approved as part of a Coastal Area Management Act Permit issued in accordance with G.S. 113A-118 and G.S. 113-229 shall be allowed. The stakes shall be firmly jettied or driven into the bottom at each corner as identified in Rule .0202(b)(6) of this Section.
- (B) signs displaying the number of the shellfish lease or franchise and the name of the lease or franchise holder printed in letters at least three inches high shall be firmly attached to each corner stake.
- (C) yellow light reflective tape or yellow light reflective devices on each corner stake. The yellow light reflective tape or yellow light reflective devices shall be affixed to each corner stake, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions.
- (D) supplementary stakes of wood or plastic material no less than three inches in diameter and no more than four inches in diameter, not farther apart than 150 feet or closer together than 50 feet and extending at least four feet above the mean high water mark, shall be placed along each boundary, except if doing so interferes with the use of traditional navigation channels.

(2) Shellfish water column leases shall be marked at each corner of the area by signs giving notice and providing caution in addition to the required signs as identified and approved by the Secretary in the Shellfish Lease Management Plan as set forth in Rule .0202 of this Section.

(b) Stakes marking areas of management within shellfish bottom leases or franchises, as approved in the Shellfish Lease Management Plan, shall conform to Part (a)(1)(D) of this Rule and may not exceed one for each 1,200 square feet. Marking at concentrations of stakes greater than one for each 1,200 square feet constitutes use of the water column and a shellfish water column lease is required in accordance with G.S. 113-202.1 or G.S. 113-202.2.

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

(d) It shall be unlawful to exclude or attempt to exclude the public from allowable public trust use of navigable waters on shellfish leases and franchises including fishing, hunting, swimming, wading, and navigation.

(e) The Division has no duty to protect any shellfish lease or franchise not marked in accordance with Paragraph (a) of this Rule.

*History Note: Authority G.S. 76-40; 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. September 1, 1997; March 1, 1994; October 1, 1992; September 1, 1991; Readopted Eff. August 23, 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.*

#### **15A NCAC 030 .0211 FISHING GEAR REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES**

- (a) It shall be unlawful to use any trawl net, long haul seine, swipe net, dredge, or mechanical method for shellfish on any shellfish lease or franchise except:
- (1) for a holder of a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises; or
  - (2) for the purpose of placing and retrieving cages, bags, or other aquaculture gear within any shellfish lease or franchise.
- (b) Permits to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises shall be issued by the Division of Marine Fisheries in compliance with 15A NCAC 030 .0500.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-206; 143B-289.52;*  
*Eff. October 1, 1992;*  
*Amended Eff. August 1, 1998;*  
*Readopted Eff. March 15, 2023.*

### **SECTION .0300 – RECREATIONAL COMMERCIAL GEAR LICENSES**

#### **15A NCAC 030 .0301 ELIGIBILITY FOR RECREATIONAL COMMERCIAL GEAR LICENSES**

Recreational Commercial Gear Licenses shall only be issued to individuals.

*History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52;*  
*Temporary Adoption Eff. August 9, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*  
*Eff. February 1, 1995;*  
*Temporary Amendment Eff. July 1, 1999;*  
*Amended Eff. August 1, 2000;*  
*Readopted Eff. March 15, 2023.*

#### **15A NCAC 030 .0302 AUTHORIZED GEAR FOR RECREATIONAL COMMERCIAL GEAR LICENSES**

- (a) The following are the only commercial fishing gear authorized (including restrictions) for use under a valid Recreational Commercial Gear License:
- (1) one seine 30 feet or over in length but not greater than 100 feet with a mesh length less than two and one-half inches when deployed or retrieved without the use of a vessel or any other mechanical methods. A vessel may be used only to transport the seine;
  - (2) one shrimp trawl with a headrope not exceeding 26 feet in length per vessel;
  - (3) with or without a vessel, five eel, fish, shrimp, or crab pots in any combination, except only two pots of the five may be eel pots. Peeler pots are not authorized for recreational purposes;
  - (4) one multiple hook or multiple bait trotline up to 100 feet in length;
  - (5) gill nets:

- (A) not more than 100 yards of gill nets with a mesh length equal to or greater than two and one-half inches except as provided in Part (C) of this Subparagraph. Attendance shall be required at all times;
  - (B) not more than 100 yards of gill nets with a mesh length equal to or greater than five and one-half inches except as provided in Part (C) of this Subparagraph. Attendance shall be required when used from one hour after sunrise through one hour before sunset in Internal Waters east and north of the Highway 58 Bridge at Emerald Isle and in the Atlantic Ocean east and north of 77° 04.0000' W. Attendance shall be required at all times in Internal Waters west and south of the Highway 58 Bridge at Emerald Isle and in the Atlantic Ocean west and south of 77° 04.0000' W;
  - (C) not more than 100 yards of gill net may be used at any one time, except that when two or more Recreational Commercial Gear License holders are on board a vessel, a maximum of 200 yards may be used from a vessel; and
  - (D) it shall be unlawful to possess on board a vessel more than 100 yards of gill nets with a mesh length less than five and one-half inches and more than 100 yards of gill nets with a mesh length equal to or greater than five and one-half inches identified as recreational commercial fishing equipment when only one Recreational Commercial Gear License holder is on board a vessel. It shall be unlawful to possess on board a vessel more than 200 yards of gill nets with a mesh length less than five and one-half inches and more than 200 yards of gill nets with a mesh length equal to or greater than five and one-half inches identified as recreational commercial fishing equipment when two or more Recreational Commercial Gear License holders are on board a vessel;
- (6) one hand-operated device generating pulsating electrical current for the taking of catfish in the area described in 15A NCAC 03J .0304;
  - (7) skimmer trawls not exceeding 26 feet in total combined width; and
  - (8) one pound net used to take shrimp with each lead 10 feet or less in length and with a minimum lead net mesh of one and one-half inches, and enclosures constructed of net mesh of one and one-fourth inches or greater and with all dimensions being 36 inches or less. Attendance shall be required at all times and all gear shall be removed from the water when not being fished. Gear is to be marked and set as specified in 15A NCAC 03J .0501.
- (b) It shall be unlawful to use more than the quantity of authorized gear specified in Paragraph (a) of this Rule, regardless of the number of individuals on board a vessel possessing a valid Recreational Commercial Gear License.
- (c) It shall be unlawful for an individual to violate the restrictions of or use gear other than that authorized by Paragraph (a) of this Rule.
- (d) Unless otherwise provided, this Rule does not exempt Recreational Commercial Gear License holders from the provisions of other applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.

*History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52;  
 Temporary Adoption Eff. August 9, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
 Eff. February 1, 1995;  
 Temporary Amendment Eff. August 1, 1999; July 1, 1999;  
 Amended Eff. August 1, 2000;  
 Temporary Amendment Eff. August 1, 2000;  
 Amended Eff. April 1, 2009; July 1, 2006; November 1, 2005; August 1, 2002;  
 Readopted Eff. March 15, 2023.*

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

- (a) It shall be unlawful to possess more than a single recreational possession limit when only one individual on board a vessel possesses a valid Recreational Commercial Gear License, regardless of the number of Recreational Commercial Gear Licenses an individual holds, and recreational commercial fishing equipment as described in Rule .0302(a) of this Section is used, regardless of the number of individuals on board a vessel.
- (b) It shall be unlawful to possess individual recreational possession limits in excess of the number of individuals on board a vessel holding a valid Recreational Commercial Gear License except as provided in Paragraph (f) of this Rule.
- (c) It shall be unlawful for any individual who holds both a Recreational Commercial Gear License and a Standard or Retired Standard Commercial Fishing License and who is in possession of identified recreational commercial fishing equipment as described in Rule .0302(a) of this Section to exceed the single recreational possession limit.
- (d) It shall be unlawful for individuals on board a vessel collectively holding only one Recreational Commercial Gear License and any Standard Commercial Fishing License or Retired Standard Commercial Fishing License and who are in possession of any identified

recreational commercial fishing equipment as described in Rule .0302(a) of this Section to exceed the single recreational possession limit.

(e) It shall be unlawful to possess more than 48 quarts, heads on, or 30 quarts, heads off, of shrimp when only one individual on board a vessel possesses a valid Recreational Commercial Gear License, regardless of the number of Recreational Commercial Gear Licenses an individual holds, and recreational commercial fishing equipment as described in Rule .0302(a) of this Section is used.

(f) It shall be unlawful to possess more than 96 quarts, heads on, or 60 quarts, heads off, of shrimp if more than one individual on board a vessel possesses a valid Recreational Commercial Gear License and recreational commercial fishing equipment as described in Rule .0302(a) of this Section is used.

*History Note: Authority G.S. 113-134; 113-170.4; 113-173; 113-182; 143B-289.52;  
Temporary Adoption Eff. August 9, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
Eff. February 1, 1995;  
Temporary Amendment Eff. June 7, 1998;  
Amended Eff. April 1, 1999;  
Temporary Amendment Eff. July 1, 1999;  
Amended Eff. July 1, 2006; August 1, 2000;  
Readopted Eff. March 15, 2023.*

## **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

- (3) 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 030 .0405 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY POOL APPLICATION DOCUMENTATION**

(a) The Standard Commercial Fishing License Eligibility Pool application form required by Rule .0402 of this Section to be submitted to the Division of Marine Fisheries shall include the following items for the applicant:

- (1) participant identification number;
- (2) full name;
- (3) if applying as a business:
  - (A) business name;
  - (B) state of incorporation;
  - (C) charter state;
  - (D) full name of business owner;
  - (E) full names of business agents, if applicable; and
  - (F) type of business entity, either corporation, partnership, sole proprietorship, or limited liability company;
- (4) type of picture identification used to verify the applicant's identify, either state driver's license, state identification card issued by the Division of Motor Vehicles, military identification card, resident alien card, or passport, and identification number and identification expiration date;
- (5) date of birth;
- (6) state of primary residence;
- (7) e-mail address, if applicable;
- (8) physical address;
- (9) mailing address;
- (10) home phone number, business phone number, fax number, and cellular phone number, if applicable; and
- (11) race, gender, height, weight, eye color, and hair color.

If applying as a business, the business agent's information is required for Subparagraphs (a)(2) and (a)(4) through (a)(11) of this Rule.

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

- (1) statements from individuals verifying the applicant's involvement in commercial fishing or the commercial fishing industry, which shall contain the individual's name, address, and telephone number, and the individual's signature shall be notarized;
- (2) proof of income derived from commercial fishing or the commercial fishing industry. Proof of this income shall be tax records; and
- (3) the extent to which the applicant has complied with federal and state laws, regulations, and rules relating to coastal fishing and protection of the environment. Federal compliance will be verified by a notarized statement from the applicant that the applicant has complied with federal laws, as set forth in Rule .0101 of this Subchapter.

(c) All documents required by this Rule shall be notarized.

(d) Applications shall be legible and complete or they will be returned.

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

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24; Temporary Adoption Eff. April 1, 1999; Eff. August 1, 2000; Readopted Eff. March 15, 2023.*

**15A NCAC 030 .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.*

**SECTION .0500 – PERMITS**

**15A NCAC 030 .0502 GENERAL PERMIT CONDITIONS**

- (a) It shall be unlawful to violate any permit condition.
- (b) The following conditions shall apply to all permits issued by the Fisheries Director:
  - (1) it shall be unlawful to:
    - (A) operate under the permit except in areas, at times, and under conditions specified on the permit.
    - (B) operate under a permit without having the permit or copy thereof in possession of the permittee or the permittee's designees at all times of operation and the permit or copy thereof shall be ready at hand for inspection, except for a Pound Net Set Permit.
    - (C) operate under a permit without having a current picture identification in possession and ready at hand for inspection.
    - (D) refuse to allow inspection and sampling of a permitted activity by an agent of the Division of Marine Fisheries.
    - (E) fail to provide complete and accurate information requested by the Division in connection with the permitted activity.
    - (F) provide false information in the application for initial issuance, renewal, or transfer of a permit.
    - (G) hold a permit issued by the Fisheries Director if not eligible to hold any license required as a condition for that permit as stated in Rule .0501 of this Section.
    - (H) fail to provide reports within the timeframe required by the specific permit conditions.
    - (I) fail to keep such records and accounts as required by the rules in this Chapter for determination of conservation policy, equitable and efficient administration and enforcement, or promotion of commercial or recreational fisheries.
    - (J) assign or transfer permits issued by the Fisheries Director, except for a Pound Net Set Permit as authorized by 15A NCAC 03J .0504.
  - (2) the Fisheries Director or the Fisheries Director's agent may, by conditions of the permit, impose on a commercial fishing operation and for recreational purposes any of the following restrictions for the permitted purposes:
    - (A) specify time;
    - (B) specify area;
    - (C) specify means and methods;
    - (D) specify record keeping and reporting requirements;
    - (E) specify season;
    - (F) specify species;
    - (G) specify size;
    - (H) specify quantity;
    - (I) specify disposition of resources;
    - (J) specify marking requirements; and
    - (K) specify harvest conditions.

- (3) unless specifically stated as a condition on the permit, all statutes, rules, and proclamations shall apply to the permittee and the permittee's designees.

*History Note: Authority G.S. 113-134; 113-169.1; 113-170.2; 113-170.3; 113-182; 113-210; 143B-289.52; Temporary Adoption Eff. May 1, 2000; Eff. April 1, 2001; Amended Eff. April 1, 2009; September 1, 2005; Readopted Eff. March 15, 2023.*

#### **15A NCAC 03O .0504 SUSPENSION AND REVOCATION OF PERMITS**

(a) All commercial and recreational permits issued under Article 14A, Article 14B, and Article 25A of Chapter 113, and rules of the Marine Fisheries Commission shall be subject to suspension and revocation. For the purpose of this Rule and in accordance with G.S. 150B-2, "permit" includes "certification" and "certificate of compliance".

(b) If a license is required to hold a permit:

- (1) all permits shall be suspended or revoked if the permittee's license privilege has been suspended or revoked as set forth in G.S. 113-171 and Rule .0114 of this Subchapter. The duration of the permit suspension or revocation shall be the same as the license suspension or revocation.
- (2) in the event a person makes application for a new permit during any period of license or permit suspension, no new permit shall be issued during the suspension period.
- (3) in the case of revocation of license privileges, the former licensee shall not be eligible to apply for reinstatement of a revoked permit while license privileges are revoked.

(c) If a license is not required to hold a permit, in the case of revocation of a permit, the former permittee shall not be eligible to apply for reinstatement of a revoked permit for a period of six months.

(d) It shall be unlawful to violate any permit condition. For violation of permit conditions as specified on the permit, permits may be suspended or revoked according to the following schedule:

- (1) violation of one permit condition in a three-year period, permit shall be suspended for 10 days.
- (2) violation of two permit conditions in a three-year period, permits shall be suspended for 30 days.
- (3) violation of three permit conditions in a three-year period, permits shall be revoked for a period not less than six months.
- (4) violation of any permit conditions as set forth in 15A NCAC 03J .0505(a), permits may be revoked and the former permittee may not be eligible to apply for any future Pound Net Set Permits.

If several permit conditions are violated as a result of a single transaction or occurrence, the permit violations shall be treated as a single violation for the purpose of suspension or revocation.

(e) Permit designees shall not be permitted to participate in a permit operation during any period they are under license suspension or revocation.

(f) If violation of permit conditions requires suspension or revocation of a permit, the Fisheries Director shall cause the permittee to be served with written notice of the intent to commence suspension or revocation. If the permittee is not an individual, the written notice shall be served upon any responsible individual affiliated with the corporation, partnership, or association. The notice of the intent to commence suspension or revocation shall be served by an inspector or other agent of the Department or by certified mail, and shall state the grounds upon which it is based.

(g) The Fisheries Director shall order summary suspension of a permit if he or she finds that the public health, safety, or welfare requires emergency action. Upon such determination, the Fisheries Director shall issue an order giving the reasons for the emergency action. The effective date of the order shall be the date specified on the order or the date of service of a certified copy of the order at the last known address of the permittee, whichever is later.

(h) Upon service of a notice of suspension or revocation of a permit, it shall be unlawful to fail to surrender any permit so suspended or revoked.

(i) It shall be unlawful to fail to surrender a permit issued by the Division in error immediately upon service of a notice by an agent of the Fisheries Director to surrender the permit.

(j) It shall be unlawful to fail to remove all gear, markers, and devices associated with an Aquaculture Operation Permit within 30 days after expiration of the Aquaculture Operation Permit, termination of a shellfish lease for which the Aquaculture Operation Permit was issued, or notice by the Fisheries Director that an existing Aquaculture Operation Permit has been revoked or denied. Similar requirements for gear removal for a Pound Net Set Permit are described in 15A NCAC 03J .0505.

*History Note: Authority G.S. 113-134; 113-171; 113-182; 113-202; 113-221.2; 143B-289.52; 150B-3; S.L. 2010-145; Temporary Adoption Eff. May 1, 2000; Eff. April 1, 2001;*



*Readopted Eff. March 15, 2023.*

## **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 03Q - JURISDICTION OF AGENCIES: CLASSIFICATION OF WATERS**

### **SECTION .0100 - GENERAL REGULATIONS: JOINT**

#### **15A NCAC 03Q .0101 SCOPE AND PURPOSE**

The rules in this Section pertain to the classification of the waters of North Carolina as coastal fishing waters, inland fishing waters, and joint fishing waters. These rules are adopted jointly by the Marine Fisheries Commission and the Wildlife Resources Commission. In addition to the classification of the waters of the State, these joint rules set forth guidelines to determine which fishing activities in joint

fishing waters are regulated by the Marine Fisheries Commission and which are regulated by the Wildlife Resources Commission. Finally, the joint rules set forth special fishing regulations applicable in joint fishing waters that can be enforced by officers of the Division of Marine Fisheries and the Wildlife Resources Commission. These regulations do not affect the jurisdiction of the Marine Fisheries Commission and the Wildlife Resources Commission in any matters other than those specifically set out.

*History Note: Authority G.S. 113-132; 113-134; 143B-289.52;  
Eff. January 1, 1991;  
Readopted Eff. September 1, 2022.*

#### **15A NCAC 03Q .0102 INLAND FISHING WATERS**

Inland fishing waters are all inland waters except private ponds and all waters connecting with or tributary to coastal sounds or the ocean extending inland from the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. All waters that are tributary to inland fishing waters and not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are inland fishing waters. The regulation and licensing of fishing in inland fishing waters is under the jurisdiction of the Wildlife Resources Commission. Regulations and laws administered by the Wildlife Resources Commission regarding fishing in inland fishing waters are enforced by wildlife officers.

*History Note: Authority G.S. 113-132; 113-134; 143B-289.52;  
Eff. January 1, 1991;  
Readopted Eff. September 1, 2022.*

#### **15A NCAC 03Q .0103 COASTAL FISHING WATERS**

Coastal fishing waters are the Atlantic Ocean, the various coastal sounds, and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. All waters that are tributary to coastal fishing waters and not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are coastal fishing waters. The regulation and licensing of fishing in coastal fishing waters is under the jurisdiction of the Marine Fisheries Commission; except that inland game fish exclusive of spotted seatrout, red drum, flounder, white perch, yellow perch, weakfish, and striped bass are subject to regulations by the Wildlife Resources Commission in coastal fishing waters. Regulations and laws administered by the Marine Fisheries Commission regarding fishing in coastal fishing waters are enforced by marine fisheries inspectors. Regulations regarding inland game fish in coastal fishing waters are enforced by wildlife officers unless otherwise agreed to by the Wildlife Resources Commission.

*History Note: Authority G.S. 113-132; 113-134; 143B-289.52;  
Eff. January 1, 1991;  
Readopted Eff. September 1, 2022.*

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

Joint fishing waters are those coastal fishing waters denominated by agreement of the Marine Fisheries Commission and the Wildlife Resources Commission pursuant to G.S. 113-132(e) as joint fishing waters. All waters that are tributary to joint fishing waters and not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are classified as joint fishing waters.

*History Note: Authority G.S. 113-132; 113-134; 143B-289.52;  
Eff. January 1, 1991;  
Readopted Eff. September 1, 2022.*

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

The dividing lines of all major bodies of water and watercourses which are divided by the agreement of the Marine Fisheries Commission and the Wildlife Resources Commission so that portions of the same are constituted inland fishing waters, coastal fishing waters, or joint fishing waters shall be marked with signs insofar as may be practicable. Unmarked and undesignated tributaries shall have the same classification as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the classification of any body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any regulations pertaining to any such body of water or portion thereof.

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

*Eff. January 1, 1991;*  
*Readopted Eff. September 1, 2022.*

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

(a) All coastal fishing laws and regulations administered by the Department of Environmental Quality and the Marine Fisheries Commission apply to joint fishing waters except as otherwise provided in this Section and shall be enforced by marine fisheries inspectors.

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

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

*History Note: Authority G.S. 113-132; 113-134; 143B-289.52;*  
*Eff. January 1, 1991;*  
*Amended Eff. July 1, 1999;*  
*Readopted Eff. September 1, 2022.*

**15A NCAC 03Q .0107 SPECIAL REGULATIONS: JOINT FISHING WATERS**

The following shall supersede any inconsistent rules of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise be applicable in joint fishing waters under the provisions of 15A NCAC 03Q .0106:

- (1) Striped Bass
  - (a) It is unlawful to possess any striped bass or striped bass hybrid that is less than 18 inches total length.
  - (b) It is unlawful to possess striped bass or striped bass hybrids between 22 and 27 inches total length in joint fishing waters of the Central Southern Management Area as designated in 15A NCAC 03R .0201.
  - (c) It is unlawful to possess striped bass or striped bass hybrids May through September in the joint fishing waters of the Central Southern Management Area and the Albemarle Sound Management Area.
  - (d) It is unlawful to possess striped bass or striped bass hybrids taken from the joint fishing waters of the Cape Fear River.
  - (e) It is unlawful to possess more than one daily creel limit of striped bass or striped bass hybrids, in the aggregate, per person per day, regardless of the number of management areas fished.
  - (f) Possession of fish shall be assessed for the creel and size limits of the management area in which the individual is found to be fishing, regardless of the size or creel limits for other management areas visited by that individual in a given day.
  - (g) It is unlawful to engage in net fishing for striped bass or striped bass hybrids in joint fishing waters except as authorized by rules of the Marine Fisheries Commission as set forth in 15A NCAC 03M .0201, .0202, .0204, .0205, and .0512.
- (2) Lake Mattamuskeet:
  - (a) It is unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint fishing waters.
  - (b) It is unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint fishing waters.
- (3) Cape Fear River. It is unlawful to use or attempt to use any net, net stakes, or electrical fishing device within 800 feet of the dam at Lock No.1 on the Cape Fear River.
- (4) Shad: 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.

*History Note: Authority G.S. 113-132; 113-134; 143B-289.52;*  
*Eff. January 1, 1991;*  
*Amended Eff. July 1, 1993; November 1, 1991;*  
*Temporary Amendment Eff. May 1, 2000;*  
*Amended Eff. July 1, 2008; September 1, 2005; April 1, 2001; August 1, 2000;*  
*Readopted Eff. March 15, 2023.*

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

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

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

**15A NCAC 03Q .0109 IMPLEMENTATION OF ESTUARINE STRIPED BASS MANAGEMENT PLANS: RECREATIONAL FISHING**

The Marine Fisheries and Wildlife Resources Commissions shall implement their respective striped bass management plans for recreational fishing pursuant to their respective rule-making powers. To preserve jurisdictional authority of each Commission, the following means are established through which management measures can be implemented by a single instrument in the following management areas:

- (1) In the Roanoke River Management Area, the exclusive authority to open and close seasons and areas and establish size and creel limits, whether inland or joint fishing waters, shall be vested in the Wildlife Resources Commission. An instrument closing any management area in joint fishing waters shall operate as and shall be a jointly-issued instrument opening or closing seasons or areas to harvest in the Roanoke River Management Area.
- (2) In the Albemarle Sound Management Area, the exclusive authority to open and close seasons and areas and establish size and creel limits, whether coastal or joint fishing waters, shall be vested in the Marine Fisheries Commission. The season shall close by proclamation if the quota is about to be exceeded. In the Albemarle Sound Management Area administered by the Marine Fisheries Commission, a proclamation affecting the harvest in joint and coastal fishing waters, excluding the Roanoke River Management Area, shall automatically be implemented and effective as a Wildlife Resources Commission action in the inland fishing waters and tributaries to the waters affected.

*History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. October 1, 2004; September 1, 1991;  
Readopted Eff. September 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 .0110 CRAB SPAWNING SANCTUARIES**

The crab spawning sanctuaries referenced in 15A NCAC 03L .0205 are delineated in the following coastal fishing waters:

- (1) in Areas from Barden Inlet and North:
  - (a) in the Oregon Inlet Area: beginning at a point on the Atlantic Ocean shore of Bodie Island 35° 47.7054' N - 75° 32.3522' W; running northeasterly to a point in the Atlantic Ocean 35° 47.9833' N - 75° 31.8500' W; running southerly to a point in the ocean 35° 46.3500' N - 75° 30.6666' W; running westerly to a point on the Atlantic Ocean shore at 35° 46.1037' N - 75° 31.2785' W; running northerly along the Atlantic shore of Pea Island to and around South Point and continuing southerly along the shore of Pamlico Sound to a point on the south point of Eagle Nest Bay at 35° 43.7085' N - 75° 30.8009' W; running westerly to a point in Pamlico Sound at 35° 43.7100' N - 75° 32.2113' W; running northerly to a point 35° 47.3992' N - 75° 34.1650' W in Pamlico Sound; running northerly to a point on Bodie Island 35° 48.7740' N - 75° 33.8722' W; running southerly along the shore to and around North Point at Oregon Inlet and then northerly on the Atlantic shore to the point of beginning;
  - (b) in the Hatteras Inlet Area: beginning at a point on the Pamlico Sound shoreline of Hatteras Island 35° 12.0846' N - 75° 43.3514' W; running northwesterly to a point in Pamlico Sound 35° 13.6361' N - 75° 45.4451' W; running southwestly to a point near Outer Green Island 35° 11.0794' N - 75° 48.4440' W; running southeasterly to a point on the Pamlico Sound shore of Ocracoke Island 35° 10.7004' N - 75° 47.9094' W; running northeasterly along the shoreline to a point on the northeastern tip of Ocracoke Island 35° 11.2340' N - 75° 46.3051' W; running southeasterly to a point in the Atlantic Ocean at 35° 10.6644' N - 75° 44.5221' W; running northeasterly to a point on the ocean shoreline of Hatteras Island 35° 11.7895' N - 75° 43.5947' W; running southwestly around the tip of Hatteras Island to the point of beginning;
  - (c) in the Ocracoke Inlet Area: beginning at a point on Ocracoke Island 35° 06.2555' N - 75° 59.3722' W; running westerly through Shellcastle Island to a point in Pamlico Sound 35° 05.8599' N - 76° 04.3639' W; running southerly to a point on Portsmouth Island 35° 03.7379' N - 76° 04.7850' W; running northeasterly along the shore of Pamlico Sound around the western side of Ocracoke Inlet and southwestly along the shore of the Atlantic Ocean to a point 35° 03.0500' N - 76° 03.0833' W; running southeasterly offshore to a point in the Atlantic Ocean 35° 02.6333' N - 76° 02.7166' W; running northeasterly to a point in the ocean 35° 03.9666' N - 75° 59.3000' W; running northwesterly to a point on the Atlantic shore of Ocracoke Island 35° 04.7402' N - 75° 59.7124' W; running southwestly along the shore around the eastern side of Ocracoke Inlet and northeasterly along the shore to the point of beginning;
  - (d) Ophelia and Drum Inlet Area: beginning at a point on the Core Sound shore of Core Banks 34° 51.7718' N - 76° 18.5093' W; running northwesterly to a point in Core Sound 34° 52.3431' N - 76° 19.1661' W; running southwestly to a point near Marker "27" in Core Sound 34° 50.6411' N - 76° 22.0094' W; running southwestly to a point in Core Sound 34° 49.0120' N - 76° 23.0288' W; running southeasterly to a point on the Core Sound shore of Core Banks 34° 48.6143' N - 76° 22.3033' W; following the shoreline in a northeasterly direction around the western side of Ophelia Inlet then along the Atlantic Ocean shoreline southwestly to a point on Core Banks 34° 48.9349' N - 76° 21.4582' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Core Banks 34° 51.6790' N - 76° 18.3829' W; running southwestly along the Atlantic Ocean shoreline toward and around the eastern side of Ophelia Inlet, then northeasterly along the Core Sound shore of Core Banks to the point of beginning; and
  - (e) Barden Inlet Area: beginning at a point on the Core Sound shore of Core Banks 34° 40.7131' N - 76° 28.9495' W; running northwesterly to a point on Harkers Island 34° 41.0674' N - 76° 31.5834' W; running southwestly to a point on Shackelford Banks 34° 39.5418' N - 76° 34.0451' W; following the shoreline in southeasterly direction around the northern side of Barden Inlet then along the Atlantic Ocean shoreline northwesterly to a point on Shackelford Banks 34° 38.7748' N - 76° 32.8463' W; running southwestly to a point in the Atlantic Ocean 34° 38.2938' N - 76° 33.5130' W; running southerly to a point near Buoy "2" at the end of the Cape Lookout Jetty in the Atlantic Ocean 34° 37.1253' N - 76° 33.7446' W; running southeasterly to a point on Cape Lookout 34° 36.7229' N - 76° 33.0514' W; running northerly along the Atlantic Ocean shoreline toward and around the southern side of Barden Inlet to a point on Cape Lookout

34° 36.5492' N - 76° 32.2416' W, then running northeasterly along the Core Sound shore of Core Banks to the point of beginning.

(2) in Areas from Beaufort Inlet and West and South:

- (a) Beaufort Inlet Area: beginning at a point on the Back Sound side of Shackleford Banks 34° 41.0017' N - 76° 37.7538' W; running northerly to a point on Carrot Island 34° 42.3553' N - 76° 37.1124' W; running westerly along the shoreline to a point on Carrot Island 34° 42.6291' N - 76° 38.6608' W; running westerly to a point on Town Marsh 34° 42.6394' N - 76° 38.7442' W; running westerly along the shoreline to a point on Town Marsh 34° 42.7915' N - 76° 40.2489' W; running westerly to a point on Bird Shoal 34° 42.7694' N - 76° 40.4764' W; running northerly to a point on Pivers Island 34° 42.9294' N - 76° 40.4301' W; running northerly along the shoreline to a point on Pivers Island 34° 43.1892' N - 76° 40.3873' W; running northerly to a point on Radio Island 34° 43.2344' N - 76° 40.4099' W; running along the shoreline to a point on Radio Island 34° 43.2770' N - 76° 41.2422' W; running along the south side of the Highway 70 Bridge over the Newport River to a point near the Morehead City Port 34° 43.2419' N - 76° 41.7067' W; running southerly along the shore to a point near the Morehead City Port 34° 42.9560' N - 76° 41.6986' W; running southwestly to a point on Goat Island 34° 42.7185' N - 76° 41.9145' W; running southeasterly along the shoreline to a point on Goat Island 34° 42.2031' N - 76° 41.3923' W; running southwestly to a point on shore near Fort Macon State Park 34° 42.1709' N - 76° 41.3693' W; following the shoreline in a southwestly direction around the western shoreline of Beaufort Inlet then along the Atlantic Ocean shoreline to a point on Bogue Banks 34° 41.6480' N - 76° 42.0986' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running easterly then southeasterly and returning to shore parallel to a point on Shackleford Banks 34° 40.6129' N - 76° 38.1521' W; running northwestly along the Atlantic Ocean shoreline around the eastern side of Beaufort Inlet, then running easterly along the Back Sound shore of Shackleford Banks to the point of beginning;
- (b) Bogue Inlet Area: beginning at a point on Bogue Banks 34° 39.1828' N - 77° 05.8503' W; running northerly to a point 34° 40.1526' N - 77° 05.6346' W; running northerly to a point 34° 40.2531' N - 77° 05.6385' W; running westerly to a point 34° 40.2550' N - 77° 05.9450' W; running southerly to a point 34° 40.1732' N - 77° 05.9616' W; running southerly to a point 34° 39.9629' N - 77° 06.1038' W; running southerly to a point 34° 39.5209' N - 77° 06.4042; running southwestly to a point 34° 39.0599' N - 77° 07.3287' W; running southerly to a point on Bear Island 34° 38.3856' N - 77° 07.2373'; following the shoreline in a northeasterly direction around the western shoreline of Bogue Inlet then along the Atlantic Ocean shoreline to a point on Bear Island 34° 37.5607' N - 77° 09.5752' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Bogue Banks 34° 38.7491' N - 77° 05.2548' W; running southwestly along the Atlantic Ocean shoreline around the eastern side of Bogue Inlet to a point 34° 38.7686' N - 77° 06.0596' W; running northerly to a point 34° 38.9900' N - 77° 06.1269' W, then running northeasterly to the point of beginning;
- (c) Bear Inlet Area: beginning at a point on Bear Island 34° 37.7852' N - 77° 09.7128' W; running northerly to a point 34° 37.8817' N - 77° 09.7698' W; running southwestly to a point 34° 37.6695' N - 77° 10.4134' W; running northwestly to a point 34° 37.8105' N - 77° 10.5849' W; running southwestly to a point on Saunders Island 34° 37.4531' N - 77° 11.0624' W; running southeasterly to a point on Browns Island 34° 37.2216' N - 77° 10.8461' W; following the shoreline in northeasterly direction around the western shoreline of Bear Inlet then along the Atlantic Ocean shoreline to a point on Browns Island 34° 36.1188' N - 77° 13.0193' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Bear Island 34° 37.5607' N - 77° 09.5752' W; running southwestly along the Atlantic Ocean shoreline around the eastern shoreline of Bear Inlet, then northeasterly along the shore to the point of beginning;
- (d) Browns Inlet Area: beginning at a point on Browns Island 34° 35.8978' N - 77° 13.8409' W; running northwestly to a point 34° 36.0015' N - 77° 13.9606' W; running westerly to a point 34° 35.9360' N - 77° 14.1340' W; running southerly to a point 34° 35.6631' N - 77° 14.1270' W; following the shoreline in a northeasterly direction around the western shoreline of Browns Inlet then along the Atlantic Ocean shoreline to a point 34° 33.7692' N - 77° 16.8043' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Browns Island 34° 36.1188' N - 77° 13.0193' W; running southwestly along the Atlantic Ocean shoreline around the eastern shoreline of Browns Inlet, then northerly along the shore to the point of beginning;

- (e) New River Inlet Area: beginning at a point on shore on the south side of Wards Channel 34° 32.2064' N - 77° 19.8404' W; running northwesterly to a point 34° 33.1386' N - 77° 20.8902' W; running westerly to a point 34° 33.1097' N - 77° 21.1013' W; running southeasterly to a point 34° 32.3473' N - 77° 20.6013' W; running southwesterly to a point on Topsail Island 34° 32.1096' N - 77° 20.8447' W; following the shore line in a southerly direction around the western shoreline of New River Inlet then along the Atlantic Ocean shoreline to a point 34° 31.3352' N - 77° 21.1694' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point 34° 33.7692' N - 77° 16.8043' W; running southwesterly along the Atlantic Ocean shoreline around the eastern shoreline of New River Inlet, then northeasterly along the shore to the point of beginning;
- (f) Topsail Inlet Area: beginning at a point on Topsail Island 34° 21.9619' N - 77° 37.8381' W; running northwesterly to a point in Topsail Sound 34° 22.1071' N - 77° 37.9944' W; running southwesterly to a point near Marker "5" 34° 21.7185' N - 77° 38.3499' W; running southwesterly to a point near Marker "3" 34° 21.5798' N - 77° 38.5928' W; running southwesterly to a point near Marker "1" 34° 21.1055' N - 77° 39.1749' W; running northwesterly to a point 34° 21.2065' N - 77° 39.6127' W; running southwesterly to a point 34° 20.7450' N - 77° 40.3682' W; running southerly to a point 34° 20.3011' N - 77° 40.3728' W; following the shoreline in a northeasterly direction around the western shoreline of Topsail Inlet then along the Atlantic Ocean shoreline to a point on Lea-Hutaff Island 34° 20.0228' N - 77° 40.4332' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Topsail Island 34° 20.8762' N - 77° 38.9403' W; running southwesterly along the Atlantic Ocean shoreline around the eastern shore of Topsail Inlet, then northeasterly along the Topsail Sound shore of Topsail Island to the point of beginning;
- (g) Rich Inlet Area: beginning at a point on Lea-Hutaff Island 34° 18.1292' N - 77° 42.6492' W; running northwesterly to a point 34° 18.2851' N - 77° 42.9352' W; running southwesterly to a point 34° 18.0190' N - 77° 43.2798' W; running southerly to a point on Figure Eight Island 34° 17.5649' N - 77° 43.1649' W; following the shoreline in an easterly direction around the southern shoreline of Rich Inlet then along the Atlantic Ocean shoreline to a point on Figure Eight Island 34° 17.2243' N - 77° 43.2491' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Lea-Hutaff Island 34° 18.1251' N - 77° 42.4352' W; running southwesterly along the Atlantic Ocean shoreline around the northern shoreline of Rich Inlet, then northeasterly along the shore to the point of beginning;
- (h) Mason Inlet Area: beginning at a point on Figure Eight Island 34° 14.9536' N - 77° 45.9567' W; running northwesterly to a point 34° 15.0409' N - 77° 46.1766' W; running southwesterly to a point 34° 14.8657' N - 77° 46.4044' W; running southwesterly to a point 34° 14.7256' N - 77° 46.5348' W; running southerly to a point on Shell Island 34° 14.2036' N - 77° 46.5189' W; following the shoreline in a northeasterly direction around the southern shoreline of Mason Inlet then along the Atlantic Ocean shoreline to a point on Shell Island 34° 14.1375' N - 77° 46.4263' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Figure Eight Island 34° 14.8474' N - 77° 45.7857' W; running southwesterly along the Atlantic Ocean shoreline around the northern shoreline of Mason Inlet, then northeasterly along the shore to the point of beginning;
- (i) Masonboro Inlet Area: beginning at a point on Wrightsville Beach 34° 11.3446' N - 77° 48.7458' W; running northwesterly to a point 34° 11.4604' N - 77° 49.0510' W; running northwesterly to a point 34° 11.5164' N - 77° 49.2368' W; running northwesterly to a point 34° 11.5255' N - 77° 49.2652' W; running northwesterly to a point 34° 11.5700' N - 77° 49.4425' W; running southwesterly to a point 34° 11.3553' N - 77° 49.5924' W; running easterly to a point 34° 11.3737' N - 77° 49.4628' W; running easterly to a point 34° 11.3737' N - 77° 49.4345' W; following the shoreline southeasterly to a point 34° 11.2551' N - 77° 49.2287' W; running southerly to a point on Masonboro Island 34° 10.8451' N - 77° 49.0242' W; following the shoreline in an easterly direction around the southern shoreline of Masonboro Inlet through a point at the base of the jetty 34° 10.8814' N - 77° 48.7074' W; running southwesterly along the Atlantic Ocean shoreline to a point on Masonboro Island 34° 10.5221' N - 77° 49.1658' W; extending 100 yards seaward from the shoreline and the Atlantic Ocean side of the jetties from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and returning to shore parallel to a point 34° 11.5753' N - 77° 48.3061' W; running southwesterly along the Atlantic Ocean shoreline through a point at the base of the jetty 34° 11.2076' N - 77° 48.5555' W, around the northern shoreline of Masonboro Inlet then northeasterly along the shore to the point of beginning;

- (j) Carolina Beach Inlet Area: beginning at a point on Masonboro Island 34° 04.8168' N - 77° 52.8796' W; running southerly to a point 34° 04.4997' N - 77° 53.0080' W; following the shoreline in an easterly direction to a point 34° 04.5022' N - 77° 52.7982' W; running easterly to a point on Pleasure Island 34° 04.5102' N - 77° 52.7340' W; following the shoreline in an easterly direction around the southern shoreline of Carolina Beach Inlet then along the Atlantic Ocean shoreline to a point on Pleasure Island 34° 04.3505' N - 77° 52.5048' W; extending 100 yards seaward from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Masonboro Island 34° 05.2151' N - 77° 52.1472' W; running southeasterly along the Atlantic Ocean shoreline around the northern shoreline of Carolina Beach Inlet, then westerly along the shore to the point of beginning;
- (k) Cape Fear River Inlet Area: beginning at a point on Bald Head Island 33° 52.7072' N - 78° 00.0449' W; running northeasterly to a point 33° 53.6135' N - 77° 59.2549' W; running northerly to a point 33° 54.4086' N - 77° 59.0330' W; running northerly to a point 33° 54.8399' N - 77° 58.9115' W; running westerly to a point at Southport 33° 54.9503' N - 78° 01.3581' W; running southerly to a point on Fort Caswell 33° 53.7948' N - 78° 01.0782' W; following the shoreline in a southerly direction around the western shoreline of Cape Fear River Inlet then westerly along the Atlantic Ocean shoreline to a point on Caswell Beach 33° 53.4293' N - 78° 01.7604' W; extending 100 yards seaward from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running southerly to point near Buoy "12" 33° 51.8213' N - 78° 01.0179' W; running southeasterly to a point 33° 51.1999' N - 78° 00.0632' W; running northeasterly to a point on Bald Head Island 33° 51.3488' N - 77° 59.9222' W; running northwesterly along the Atlantic Ocean shoreline around the eastern shore of Cape Fear River Inlet, then northeasterly along the shore to the point of beginning;
- (l) Lockwoods Folly Inlet Area: beginning at a point on Oak Island 33° 54.9392' N - 78° 13.6711' W; running northerly to a point on Sheep Island 33° 55.0837' N - 78° 13.6753' W; following the shoreline northwesterly to a point on Sheep Island 33° 55.2263' N - 78° 13.9395' W; running westerly to a point on Holden Beach 33° 55.1794' N - 78° 14.3132' W; following the shoreline in a southwesterly direction around the western shore of Lockwoods Folly Inlet then along the Atlantic Ocean shoreline to a point on Holden Beach 33° 54.8695' N - 78° 14.6180' W; running southerly to a point in the Atlantic Ocean 33° 54.6076' N - 78° 14.6026' W; running easterly to a point in the Atlantic Ocean 33° 54.5564' N - 78° 14.0529' W; running northerly to a point on Oak Island 33° 54.8853' N - 78° 14.0041' W; running northwesterly along the Atlantic Ocean shoreline around the eastern shore of Lockwoods Folly Inlet, then easterly along the shore to the point of beginning;
- (m) Shallotte Inlet Area: beginning at a point near Monks Island 33° 54.5773' N - 78° 22.8077' W; running southwesterly to a point on Ocean Isle Beach 33° 54.2436' N - 78° 23.2758' W; following the shoreline in a southerly direction around the western shore of Shallotte Inlet then along the Atlantic Ocean shoreline to a point on Ocean Isle Beach 33° 53.8151' N - 78° 23.7753' W; extending 100 yards seaward from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running easterly and returning to shore parallel to a point on Big Beach 33° 54.1103' N - 78° 21.9540' W; running westerly along the Atlantic Ocean shoreline around the eastern shore of Shallotte Inlet, then northerly along the shore to the point of beginning; and
- (n) Tubbs Inlet Area: beginning at a point on the Jinks Creek shore of Ocean Isle Beach 33° 52.5844' N - 78° 28.6583' W; running northerly to a point 33° 52.7734' N - 78° 28.7428' W; running southwesterly to a point 33° 52.6815' N - 78° 29.0080' W; running southwesterly to a point on the Eastern Channel shore of Sunset Beach 33° 52.3878' N - 78° 29.1301' W; following the shoreline in an easterly direction around the western shore of Tubbs Inlet then along the Atlantic Ocean shoreline to a point on Sunset Beach 33° 52.3250' N - 78° 29.1865' W; extending 100 yards seaward of the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Ocean Isle Beach 33° 52.5676' N - 78° 28.4027' W; running southwesterly along the Atlantic Ocean shoreline around the eastern shore of Tubbs Inlet then in a northerly direction along the shore to the point of beginning.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. September 1, 1991; Recodified from 15A NCAC 03R .0010 Eff. December 17, 1996; Amended Eff. August 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. March 15, 2023.*

### 15A NCAC 03R .0111 PURSE SEINES PROHIBITED

The areas referenced in 15A NCAC 03J .0105(b)(1) are delineated in the following coastal fishing waters of the Atlantic Ocean:

- (1) in the Atlantic Ocean within an area bounded by a line extending from a point near the Bald Head Lighthouse 33° 52.3500' N - 78° 00.3000' W; running southwesterly to a point near the Cape Fear River ship channel buoy "9" 33° 51.5500' N - 78° 01.5500' W; running northwesterly to a point near the foot of the Yaupon Beach Fishing Pier on Oak Island 33° 54.2000' N - 78° 04.9333' W; following the shoreline easterly to a point near Fort Caswell 33° 53.2166' N - 78° 01.1833' W; running southeasterly to the point of beginning;
- (2) in the Atlantic Ocean from May 1 through September 30:
  - (a) in the area bounded by a line beginning at a point onshore at the northern boundary of Dare County 36° 13.8536' N - 75° 46.3914' W; running easterly 1.5 nautical miles to a point offshore 36° 13.8536' N - 75° 44.3814' W; running southerly parallel to and 1.5 nautical miles from the ocean beach to a point 1.5 nautical miles offshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 44.2225' W; running westerly to a point onshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 42.2416' W; and
  - (b) in the area bounded by a line beginning at a point at the southern limits of Kitty Hawk 36° 03.3187' N - 75° 40.9503' W; running easterly 1.5 nautical miles to a point offshore 36° 03.3187' N - 75° 38.8029' W; running southerly parallel to and 1.5 nautical miles from the ocean beach to a point 1.5 nautical miles offshore of the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 29.2379' W; running westerly to a point onshore at the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 31.5369' W; and
- (3) in the Atlantic Ocean from October 1 through December 31:
  - (a) in the area bounded by a line beginning at a point onshore at the northern boundary of Dare County 36° 13.8536' N - 75° 46.3914' W; running easterly 0.5 nautical miles to a point offshore 36° 13.8536' N - 75° 45.6977' W; running southerly parallel to and 0.5 nautical miles off the ocean beach to a point 0.5 nautical miles offshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 43.5514' W; running westerly 0.5 nautical miles to a point onshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 44.2416' W; and
  - (b) in the area bounded by a line beginning at a point at the southern limits of Kitty Hawk 36° 03.3187' N - 75° 40.9503' W; running easterly 0.5 nautical miles to a point offshore 36° 03.3187' N - 75° 40.2033' W; running southerly parallel to and 0.5 nautical miles off the ocean beach to a point offshore at the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 30.6134' W; running westerly to a point onshore at the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 31.5369' W.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. October 1, 1993;  
Recodified from 15A NCAC 03R .0011 Eff. December 17, 1996;  
Amended Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;  
Amended Eff. March 15, 2023.*

### 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.*

**15A NCAC 03R .0118 CRAB HARVEST MANAGEMENT AREAS**

The areas referenced in 15A NCAC 03L .0201(a) and (b) are delineated in the following coastal fishing waters:

- (1) Northern Region: All Coastal Fishing Waters of the state north and east of a line extending southeast from the Highway 58 Bridge to a point offshore at 34° 36.3292' N - 77° 02.5940' W to the North Carolina/Virginia state line.



- (2) Southern Region: All Coastal Fishing Waters of the State south and west of a line extending southeast from the Highway 58 Bridge to a point offshore at 34° 36.3292' N - 77° 02.5940' W to the North Carolina/South Carolina state line.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. April 1, 2014;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;  
Amended Eff. March 15, 2023.*

#### **15A NCAC 03R .0119 OCEAN ARTIFICIAL REEFS**

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

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

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. August 23, 2022.*

**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 .0135 PERMITS**

- (a) It shall be unlawful to operate a processing facility without first obtaining a Crustacea Permit and Certificate of Compliance from the Division of Marine Fisheries.
- (b) Application for a permit shall be submitted in writing to the Division. Application forms may be obtained from the Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.
- (c) No permit shall be issued by the Division until an inspection by the Division shows that the facility and equipment comply with applicable rules of this Section. The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.
- (d) The permit shall be posted in a conspicuous place in the facility.
- (e) All permits shall expire on March 31 of each year and are non-transferrable.
- (f) Plans and specifications for proposed new construction, expansion of operations, or changes in operating processes shall be submitted to the Division for review and approval prior to beginning construction or making a change.
- (g) A permit may be revoked or suspended in accordance with 15A NCAC 03O .0504.

*History Note:* Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;  
 Eff. October 1, 1992;  
 Readopted Eff. March 15, 2023.

**15A NCAC 18A .0136 APPLICABILITY OF RULES**

The rules in this Section shall apply to the operation of all facilities and persons permitted in Rule .0135 of this Section and all other businesses and persons that buy, sell, transport, or ship cooked crustacea or crustacea meat that has not been transformed into another product.

*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. August 23, 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](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 .0173 REPACKING**

- (a) Crustacea meat for repacking that is processed in North Carolina shall comply with Rules .0134 through .0187 of this Section. Crustacea meat for repacking that is processed outside of North Carolina shall comply with Rule .0182 of this Section.
- (b) Upon request of the Division of Marine Fisheries, the repacker shall provide the Division a current written list of all sources of crustacea meat used for repacking.
- (c) Repacking of crustacea meat:
  - (1) Crustacea meat shall not exceed 40° F (4.4° C) during the repacking process.
  - (2) Repacking shall be conducted separately by time or space from the routine crustacea meat picking and packing process.
  - (3) The food contact surfaces and utensils utilized in the repacking process shall be cleaned and sanitized prior to repacking and thereafter on 30-minute intervals during repacking.
  - (4) Repacked crustacea meat shall be maintained at or below 40° F (4.4° C).
  - (5) Blending or combining of any of the following shall be prohibited:
    - (A) fresh crustacea meat.
    - (B) frozen crustacea meat.
    - (C) pasteurized crustacea meat.
    - (D) crustacea meat packed in another facility.
  - (6) Crustacea meat shall not be repacked more than one time.
  - (7) All empty containers from which crustacea meat was removed and repacked shall be rendered unusable.
- (d) Labeling of repacked crustacea meat:
  - (1) Each container shall be legibly embossed, impressed, or lithographed with the repacker's or the distributor's name and address.
  - (2) Each container shall be legibly embossed, impressed, or lithographed with the repacker's certification number followed by the letters "RP."
  - (3) Each container shall be permanently and legibly identified with a code indicating the repack date.
  - (4) Each container shall be sealed so that tampering can be detected.

- (5) Each container of foreign crustacea meat that has been repacked outside of North Carolina and shipped into North Carolina shall be labeled in accordance with federal labeling requirements.
- (e) Records shall be kept for all purchases of crustacea meat for repacking and sales of repacked meat for one year. The records shall be available for inspection by the Division.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;  
Eff. October 1, 1992;  
Amended Eff. August 1, 2002; April 1, 1997;  
Readopted Eff. August 23, 2022.*

#### **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 .0302 PERMITS**

(a) It shall be unlawful to operate any of the following facilities without first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division of Marine Fisheries:

- (1) depuration facilities;
- (2) repacking plants;
- (3) shellstock plants; and
- (4) shucking and packing plants.

(b) It shall be unlawful to operate as a shellstock dealer without first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division.

(c) It shall be unlawful to operate as a reshipper without first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division if shellfish are purchased and shipped out of state.

(d) Approval for wet storage of shellstock shall be granted only to persons permitted pursuant to this Rule.

(e) Application for a permit shall be submitted in writing to the Division. Application forms may be obtained from the Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.

(f) No permit shall be issued by the Division until an inspection by the Division shows that the facility and equipment comply with all applicable Rules in Sections .0300 through .0800 of this Subchapter. The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.

(g) All permits shall be posted in a conspicuous place in the facility.

(h) All permits shall expire on April 30 of each year and are non-transferrable.

(i) Plans and specifications for proposed new construction, expansion of operations, or changes in operating processes shall be submitted to the Division for review and approval prior to beginning construction or making a change.

(j) A permit may be revoked or suspended in accordance with 15A NCAC 030 .0504.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;  
Eff. February 1, 1987;  
Amended Eff. April 1, 1997;  
Readopted Eff. March 15, 2023.*

#### **15A NCAC 18A .0303 RELAYING PERMITS**

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

*Amended Eff. September 1, 1990;*  
*Repealed Eff. March 15, 2023.*

#### **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 .0425 DEALER TAGS**

(a) Consistent with the rules of this Section, it shall be unlawful to possess shellstock without a dealer tag or label affixed after the shellstock is processed or shipped by the initial certified shellfish dealer. The tag shall be durable, waterproof, and a minimum of two and five-eighths inches by five and one-fourth inches in size. It shall be unlawful for the tag to fail to contain legible information arranged in the specific order as follows:

- (1) the dealer's name, address, and certification number assigned by the appropriate shellfish control agency;
- (2) the original shipper's certification number;
- (3) the harvest date, or if depurated, the date of depuration processing, or if wet stored, the original harvest date and the final harvest date, which is the date removed from wet storage;
- (4) if wet stored or depurated, the wet storage or depuration cycle or lot number. The wet storage lot number shall begin with the letter "W";
- (5) the most precise identification of the harvest location as is practicable, including the initials of the state of harvest, and the state or local shellfish control authority's designation of the growing area by indexing, administrative, or geographic designation. If the authority in another state has not indexed growing areas, then a geographical or administrative designation shall be used (e.g., Long Bay, shellfish lease or franchise number, or lot number);
- (6) the type and quantity of shellstock;
- (7) the following statements in bold, capitalized font:
  - (A) **"THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS.";** and
  - (B) **"RETAILERS; DATE WHEN LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE) \_\_\_\_\_.";**
- (8) the following statement, or equivalent:  
"Consumer Advisory  
Eating raw oysters, clams, or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat raw shellfish and become sick, see a doctor immediately."; and
- (9) the following statement, or equivalent:  
"Keep Refrigerated".

(b) The dealer tag or label shall remain attached to the shellstock container until the container is empty and thereafter shall be kept on file, in chronological order, for 90 days.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;*  
*Eff. February 1, 1987;*  
*Amended Eff. April 1, 1997; January 4, 1994; December 1, 1987;*  
*Temporary Amendment Eff. October 12, 1998; February 1, 1998;*  
*Amended Eff. April 1, 1999;*  
*Readopted Eff. March 15, 2023.*

#### **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 90<sup>th</sup> 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 90<sup>th</sup> 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 90<sup>th</sup> percentile of 43 MPN per 100 milliliters for a five-tube decimal dilution test; or
  - (d) an estimated 90<sup>th</sup> 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 90<sup>th</sup> percentile of 260 MPN per 100 milliliters for a five-tube decimal dilution test; or
- (4) an estimated 90<sup>th</sup> 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 .0911 MARINAS, DOCKING FACILITIES, AND OTHER MOORING AREAS**

The Division of Marine Fisheries shall classify shellfish growing waters with respect to marinas, docking facilities, and other mooring areas as follows:

- (1) the Division shall classify all waters within a marina as prohibited to the harvesting of shellfish for human consumption; and
- (2) the Division shall conduct a dilution analysis, in the form of a volumetric calculation or in-field hydrographic study, to determine the volume of water necessary to dilute the concentration of fecal coliform bacteria to less than 14 MPN. The Division shall classify the water area determined by this dilution analysis as prohibited to the harvesting of shellfish for human consumption. The Division shall conduct the dilution analysis yearly and shall incorporate the following:
  - (a) the findings of the shoreline survey, including the presence of a sewage pumpout system or dump station;
  - (b) the physical factors influencing the dilution and dispersion of human wastes; and
  - (c) for marinas, docking facilities, and mooring areas in close proximity to one another, slip counts and services shall be combined for the purposes of the dilution analysis. Marinas, docking facilities, and mooring areas, each with three slips or more, shall be considered to be in close proximity to one another if the dilution analysis for each individual facility indicates that the dilution areas meet or overlap.

*History Note:* Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;  
Eff. June 1, 1989;  
Amended Eff. July 1, 1993;  
Readopted Eff. June 1, 2023.

#### **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 "n<sup>th</sup>" 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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◆ = go to <https://deq.nc.gov/fisheries-management-proclamations> to check for proclamations

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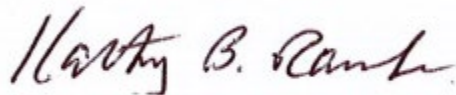
THE ORIGINAL AND OFFICIAL COPY OF TITLE 15A,  
CHAPTER 03 AND SUBCHAPTER 18A OF THE N.C.  
ADMINISTRATIVE CODE ARE ON FILE IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS AND ARE AVAILABLE FOR  
PUBLIC INSPECTION DURING NORMAL WORKING HOURS.

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 – JUNE  
1, 2023" IS THE OFFICIAL CODIFICATION OF THE RULES OF THE N.C.  
MARINE FISHERIES COMMISSION EFFECTIVE AS OF JUNE 1, 2023.



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



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

June 15, 2023

North Carolina Marine Fisheries Commission  
Jennifer Everett, Rulemaking Coordinator  
217 West Jones Street, Raleigh, North Carolina 27603  
**Sent via email only to: Jennifer.Everett@ncdenr.gov**

Re: Extension of the Period of Review for 15A NCAC 02D .0103, .0501, .0546, .0605, .1903, .1904, .1905, .2203; 02Q .0104, .0105, .0206, .0304, .0305, .0307, .0505, .0507, .0508, .0710

Dear Ms. Everett:

At its June meeting today, the Rules Review Commission objected to 15A NCAC 03M .0101 in accordance with G.S. 150B-21.10. Specifically, the Commission adopted the opinion of counsel attached hereto and incorporated by reference.

Please respond to these objections in accordance with the provisions of G.S. 150B-21.12.

If you have any questions regarding the Rules Review Commission's actions, please let me know.

Sincerely,

Lawrence R. Duke  
Commission Counsel

Cc: Catherine Blum  
Phillip Reynolds  
Attachment: Staff Opinion

**Donald R. van der Vaart**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
Senior Administrative Law Judge

## RRC STAFF OPINION

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: MARINE FISHERIES COMMISSION

RULE CITATION: 15A NCAC 03M .0101

RECOMMENDED ACTION: Object, based on:

Unclear or ambiguous - G.S. 150B-21.9(a)(2)

### COMMENT:

The Marine Fisheries Commission has submitted an amendment to an existing permanent rule that was readopted effective April 1, 2019. The Rule regulates the possession of any species of finfish, in joint or coastal waters, that is subject to certain limits set by either Marine Fisheries or by the NC Wildlife Resources Commission. The ambiguity for which this Rule should be objected to is not necessarily in the language of the Rule, but in the structure of the Marine Fisheries / Wildlife Resources joint jurisdiction over joint waters.

In Marine Fisheries' rules, 15A NCAC 03Q .0106 states that Marine Fisheries' regulations shall apply to joint waters, except that Wildlife Resources rules shall apply to joint waters as far as the regulation of "inland game fishes", "inland fishing license requirements for hook and line fishing", and "hook and line fishing". In discussions with Marine Fisheries' representative at the Attorney General's office, Marine Fisheries first agreed to add language to the Rule at issue that would clarify that the rule applied only to coastal and joint waters, as the Agency only has regulatory oversight in these waters. Next, Marine Fisheries agreed to add "or in a rule of the Wildlife Resources Commission for inland game fish", which partially brought this Rule into agreement with 03Q .0106, but Marine Fisheries would not add "or for finfish taken or used as bait for hook and line fishing in joint waters." This creates an internal ambiguity and causes it to conflict with 03Q .0106, as well as with other Wildlife Resources' rules.

Lawrence R. Duke  
Commission Counsel  
Issued June 14, 2023



The problem is that in joint waters, both Marine Fisheries and Wildlife Resources have regulatory jurisdiction and are statutorily required to be in agreement for rules that apply in joint waters. This has been an ongoing problem which neither agency has been able to resolve. While both agencies' rules do not allow possession of fish such as sturgeon or river herring, there are other species where the rules conflict. For instance, Wildlife Resources' rules do not allow for Hickory Shad to be used as cut bait, but Marine Fisheries' rules do. The same issues arise with the regulation of American Eel and Mullet.

While merely adding "or for finfish taken or used as bait for hook and line fishing in joint waters" does not completely resolve the issues between Marine Fisheries and Wildlife Resources in each's regulation of joint waters, it at least will clarify the Rule at issue sufficiently so that the regulated public can be aware which set of rules applies in which waters. Furthermore, the addition of this language will ensure that Marine Fisheries' 03Q .0106 and the Rule at issue here, 03M .0101, are coherent in allocating to Wildlife Resources the regulation of hook and line fishing in joint waters.

1 15A NCAC 03M .0101 is amended with changes as published in 37:07 NCR 541 as follows:

2  
3 **SUBCHAPTER 03M - FINFISH**

4  
5 **SECTION .0100 – FINFISH, GENERAL**

6  
7 **15A NCAC 03M .0101 MUTILATED FINFISH**

8 It shall be unlawful to possess aboard a vessel or while engaged in fishing any species of finfish in joint or coastal  
9 fishing waters that is subject to a ~~size or harvest restriction~~ possession limit, including size limit, recreational bag  
10 limit, commercial trip limit, or season, without having head and tail attached, ~~except~~ unless otherwise specified in a  
11 rule of the Marine Fisheries [Commission or] Commission, a proclamation issued pursuant to a rule of the Marine  
12 Fisheries [Commission.] Commission, or a rule of the Wildlife Resources Commission for inland game fish.

13 (1) ~~\_\_\_\_\_ mullet when used for bait;~~

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

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

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

19 *Eff. January 1, 1991;*

20 *Amended Eff. January 1, 1991;*

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

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

23 *Readopted Eff. April 1, 2019;*

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

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

(a) All coastal fishing laws and regulations administered by the Department of Environmental Quality and the Marine Fisheries Commission apply to joint fishing waters except as otherwise provided in this Section and shall be enforced by marine fisheries inspectors.

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

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

*History Note: Authority G.S. 113-132; 113-134; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. July 1, 1999;  
Readopted Eff. September 1, 2022.*

**15A NCAC 10C .0106 APPLICABILITY OF RULES: JOINT FISHING WATERS**

(a) All coastal fishing laws and regulations administered by the Department of Environmental Quality and the Marine Fisheries Commission apply to joint fishing waters except as otherwise provided in this Section and shall be enforced by marine fisheries inspectors.

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

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

*History Note: Authority G.S. 113-132; 113-134; 113-271; 113-275; 113-182; 113-292; 113-333;  
Eff. January 1, 1977;  
Amended Eff. April 1, 1990; April 15, 1979;  
Readopted Eff. September 1, 2022.*

## N.C. Marine Fisheries Commission 2023-2024 Annual Rulemaking Cycle

August 2023

Time of Year	Action
February-April 2023	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
May 26, 2023	MFC approved Notice of Text for Rulemaking
Aug. 1, 2023	Publication of proposed rules in the <i>North Carolina Register</i>
Aug. 1-Oct. 2, 2023	Public comment period held
Aug. 16, 2023	Public hearing held via WebEx with listening station
Nov. 17, 2023	MFC receives public comments and votes on final approval of permanent rules
Jan. 18, 2024	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
April 1, 2024	Proposed effective date of rules not subject to legislative review
April 1, 2024	Rulebook supplement available online
2024 legislative session	Possible effective date of rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
June 30, 2024	Readoption deadline for 15A NCAC 18A

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**August 1, 2023**

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## Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings

Rules Division

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2023 – December 2023

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 <sup>th</sup> day from publication in the Register
37:13	01/03/23	12/07/22	01/18/23	03/06/23	03/20/23	04/20/2023	05/01/23	09/30/23
37:14	01/17/23	12/20/22	02/01/23	03/20/23	04/20/23	05/18/2023	06/01/23	10/14/23
37:15	02/01/23	01/10/23	02/16/23	04/03/23	04/20/23	05/18/2023	06/01/23	10/29/23
37:16	02/15/23	01/25/23	03/02/23	04/17/23	04/20/23	05/18/2023	06/01/23	11/12/23
37:17	03/01/23	02/08/23	03/16/23	05/01/23	05/20/23	06/15/2023	07/01/23	11/26/23
37:18	03/15/23	02/22/23	03/30/23	05/15/23	05/20/23	06/15/2023	07/01/23	12/10/23
37:19	04/03/23	03/13/23	04/18/23	06/02/23	06/20/23	07/20/2023	08/01/23	12/29/23
37:20	04/17/23	03/24/23	05/02/23	06/16/23	06/20/23	07/20/2023	08/01/23	01/12/24
37:21	05/01/23	04/10/23	05/16/23	06/30/23	07/20/23	08/17/2023	09/01/23	01/26/24
37:22	05/15/23	04/24/23	05/30/23	07/14/23	07/20/23	08/17/2023	09/01/23	02/09/24
37:23	06/01/23	05/10/23	06/16/23	07/31/23	08/20/23	09/21/2023	10/01/23	02/26/24
37:24	06/15/23	05/24/23	06/30/23	08/14/23	08/20/23	09/21/2023	10/01/23	03/11/24
38:01	07/03/23	06/12/23	07/18/23	09/01/23	09/20/23	10/19/2023	11/01/23	03/29/24
38:02	07/17/23	06/23/23	08/01/23	09/15/23	09/20/23	10/19/2023	11/01/23	04/12/24
38:03	08/01/23	07/11/23	08/16/23	10/02/23	10/20/23	11/16/2023	12/01/23	04/27/24
38:04	08/15/23	07/25/23	08/30/23	10/16/23	10/20/23	11/16/2023	12/01/23	05/11/24
38:05	09/01/23	08/11/23	09/16/23	10/31/23	11/20/23	12/14/2023	01/01/24	05/28/24
38:06	09/15/23	08/24/23	09/30/23	11/14/23	11/20/23	12/14/2023	01/01/24	06/11/24
38:07	10/02/23	09/11/23	10/17/23	12/01/23	12/20/23	01/18/2024	02/01/24	06/28/24
38:08	10/16/23	09/25/23	10/31/23	12/15/23	12/20/23	01/18/2024	02/01/24	07/12/24
38:09	11/01/23	10/11/23	11/16/23	01/02/24	01/20/24	02/15/2024	03/01/24	07/28/24
38:10	11/15/23	10/24/23	11/30/23	01/16/24	01/20/24	02/15/2024	03/01/24	08/11/24
38:11	12/01/23	11/07/23	12/16/23	01/30/24	02/20/24	03/21/2024	04/01/24	08/27/24
38:12	12/15/23	11/22/23	12/30/23	02/13/24	02/20/24	03/21/2024	04/01/24	09/10/24

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



## EXPLANATION OF THE PUBLICATION SCHEDULE

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

### GENERAL

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

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

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

### FILING DEADLINES

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

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

### NOTICE OF TEXT

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

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

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

**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

**TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Marine Fisheries Commission intends to adopt the rules cited as 15A NCAC 18A .0437-.0439, amend the rules cited as 15A NCAC 03I .0101, .0113; 03K .0101, .0110, .0301; 03O .0101, .0109, .0112, .0201, .0301, .0501, .0503; 03R .0117; 18A .0302, .0901, .0906, repeal the rules cited as 15A NCAC 03K .0104, .0401, .0403, .0405; 18A .0704, readopt with substantive changes the rules cited as 15A NCAC 18A .0301, .0401-.0410, .0412-.0422, .0424, .0426-.0430, .0432-.0435, .0501, .0502, .0504, .0601-.0603, .0605-.0616, .0618-.0620, .0701, .0801, readopt without substantive changes the rule cited as 15A NCAC 18A .0423, repeal through readoption the rules cited as 15A NCAC 18A .0305, .0411, .0436, .0503, .0604, .0617, .0621, .0702, .0703, .0705-.0713 and .0802-.0806.*

*Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rules is available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.*

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

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

**Proposed Effective Date:** April 1, 2024 (15A NCAC 03K .0110; 03R .0117; 18A .0301, .0305, .0401-.0418, .0421-.0424, .0426, .0428-.0430, .0432-.0439, .0501-.0504, .0601-.0621, .0701-.0713, .0801-.0806)

**Rules automatically subject to legislative review:** S.L. 2019-198: 15A NCAC 03I .0113; 03K .0101, .0104, .0301, .0401, .0403, .0405; 03O .0101, .0109, .0112, .0301, .0501, .0503; 18A .0302, .0419, .0420, .0427; S.L. 2019-37: 15A NCAC 03O .0201

15A NCAC 03I .0101- Pending legislative review of 15A NCAC 03O .0201

15A NCAC 18A .0901, .0906 - Pending legislative review of 15A NCAC 03K .0104

**Public Hearing:**

**Date:** August 16, 2023

**Time:** 6:00 p.m.

**Location:**

WebEx Events meeting link:  
<https://ncdenrits.webex.com/ncdenrits/j.php?MTID=mfc74bc5016579e7a09f2b2ef4c36727d>  
Event number: 2425 745 2610  
Event password: 1234  
Event phone number: 1-415-655-0003  
Listening station: Division of Marine Fisheries Central District Office, 5285 Highway 70 West, Morehead City, NC 28557

**Reason for Proposed Action:**

Shellfish Relay Program

- 15A NCAC 03I .0101 DEFINITIONS
- 15A NCAC 03K .0101 PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH AREAS
- 15A NCAC 03K .0104 PERMITS FOR RELAYING SHELLFISH FROM POLLUTED AREAS
- 15A NCAC 03K .0301 SIZE AND HARVEST LIMITS OF CLAMS
- 15A NCAC 03K .0401 POLLUTED AREA PERMIT REQUIREMENTS
- 15A NCAC 03K .0403 DISPOSITION OF MEATS
- 15A NCAC 03K .0405 OYSTERS, HARD CLAMS, OR MUSSELS PROHIBITED
- 15A NCAC 03O .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES
- 15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS
- 15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC
- 15A NCAC 18A .0901 DEFINITIONS
- 15A NCAC 18A .0906 RESTRICTED AREAS

*Proposed repeals (15A NCAC 03K .0104, .0401, .0403, .0405) and amendments (15A NCAC 03I .0101, 03K .0101, .0301, 03O .0201, .0501, .0503, 18A .0901, .0906) make conforming changes to remove outdated shellfish relay requirements to reflect the discontinuation of the N.C. Division of Marine Fisheries Shellfish Relay Program. Additional proposed amendments to 15A NCAC 03K .0101 clarify exceptions for activities allowed in polluted shellfish areas that require an Aquaculture Seed Transport Permit, Depuration Permit, or Shellfish Relocation Permit. Additional proposed amendments to 15A NCAC 03I .0101 move three defined terms to 15A NCAC 03O .0201 and update them consistent with Session Law 2019-37, Section 3, to apply to that section of rules about shellfish leases and franchises. Proposed amendments to Paragraphs (c) through (h) of 15A NCAC 03O .0201 incorporate and conform the shellfish production and planting requirements from Session Law 2019-37 for shellfish leases granted before July 1, 2019 and for shellfish leases granted on or after this date; proposed amendments to Paragraph (i) require shellfish lease or franchise holders to meet the listed production, marking, and permit requirements for current*

shellfish leases before being eligible for additional shellfish lease acreage. Doing so would help ensure more efficient and meaningful use of the public trust bottom by preventing persons not in good standing from precluding potential applicants from applying for a shellfish lease in affected areas. A technical change is proposed to 15A NCAC 03I .0101(5)(k) to remove Elizabeth City from the definition of "Office of the Division" since the license office there is permanently closed; the remaining offices are also proposed to be listed in geographic order from south to north. Additional minor changes to this group of rules correct cross-references to other rules.

Data Collection and Harassment Prevention for the Conservation of Marine and Estuarine Resources

**15A NCAC 03I .0113 DATA COLLECTION**

Proposed amendments set requirements to address harassment by any licensee or person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes (e.g., fishing) of N.C. Division of Marine Fisheries employees that occurs in the process of obtaining data for the conservation of marine and estuarine resources, and data for the protection of public health related to the public health programs that fall under the authority of the N.C. Marine Fisheries Commission. Additional amendments provide the types of data that may be collected. The amendments support the importance of participation by persons engaged in regulated fishing activity in division data collection and provide a safer working environment for division employees.

**15A NCAC 03O .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS**

**15A NCAC 03O .0109 ASSIGNMENT OF STANDARD COMMERCIAL FISHING LICENSE**

**15A NCAC 03O .0112 FOR-HIRE LICENSE REQUIREMENTS**

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

Proposed amendments make it unlawful for a holder of a Standard Commercial Fishing License or Retired Standard Commercial Fishing License (15A NCAC 03O .0101), an assignee of a Standard Commercial Fishing License (15A NCAC 03O .0109), a person involved in regulated activity related to for-hire fishing (15A NCAC 03O .0112), and a holder of a Recreational Commercial Gear License (15A NCAC 03O .0301) to fail to participate in and provide accurate information for data collection in accordance with 15A NCAC 03I .0113 and for survey programs administered by the N.C. Division of Marine Fisheries. The amendments support the importance of participation by persons engaged in regulated fishing activity in division data collection for the conservation of marine and estuarine resources and the protection of public health related to the public health programs that fall under the authority of the N.C. Marine Fisheries Commission, and also provide a safer working environment for division employees.

Oyster Sanctuary Changes

**15A NCAC 03R .0117 OYSTER SANCTUARIES**

Proposed amendments add the boundaries of the two newest oyster sanctuaries (Cedar Island and Gull Shoal) and correct boundaries for three other oyster sanctuaries (Pea Island, Raccoon Island, and Swan Island) where recently published coordinates were found to be inconsistent with permitted and marked reef boundaries. These changes will protect oysters from bottom disturbing gear and safeguard boaters navigating the sanctuaries. Coordinates for three sanctuaries are proposed to be reorganized to standardize the cardinal directions, for consistency; there are no changes to the overall sanctuary, nor the coordinate pairs themselves.

15A NCAC 18A Readoptions

**15A NCAC 03K .0110, 18A .0301, .0302, .0305, .0401-.0424, .0426-.0430, .0432-.0439, .0501-.0504, .0601-.0621, .0701-.0713, .0801-.0806**

North Carolina G.S. 150B-21.3A requires State agencies to review their existing rules every 10 years to determine which rules are still necessary, and to either readopt or repeal each rule as appropriate. This group of 85 rules in 15A NCAC 03 and 18A is proposed for the readoption of one rule with no changes, readoption of 55 rules with amendments, repeal through readoption of 23 rules, amendment of two rules, adoption of three rules, and the repeal of one rule pursuant to this requirement. Proposed changes would help ensure that North Carolina remains in full compliance with National Shellfish Sanitation Program requirements, allow the N.C. Division of Marine Fisheries to increase clarity of rules for stakeholders, and allow the division to efficiently support and enforce rules for the protection of public health related to the consumption of shellfish.

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

**Comment period ends:** October 2, 2023

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov). If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

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

State funds affected

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

CHAPTER 03 - MARINE FISHERIES

SUBCHAPTER 03I – GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .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.
- (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.~~
- (4)(i) "Swipe net operations" means fishing a seine towed by one vessel.
  - ~~(m)(j)~~ "Transport" means to ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
  - ~~(n)(k)~~ "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;
  - (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
  - (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.

- 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, Solengastrea (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~~ resources, except as otherwise defined in 15A NCAC 03O .0109.

- (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, Morehead City, Washington, Morehead City, Roanoke Island, and Elizabeth City, and Roanoke Island, 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.

Authority G.S. 113-134; 113-174; 113-182; 143B-289.52.

15A NCAC 03I .0113 BIOLOGICAL SAMPLING DATA COLLECTION

(a) For the purpose of this Rule, "responsible person" shall mean any licensee or person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes.

(b) It shall be unlawful for any licensee under Chapter 113, Subchapter IV, of the General Statutes responsible person to refuse to allow the Fisheries Director or the Fisheries Director's agents to obtain biological data, harvest information, or other statistical data necessary or useful to the conservation and management of marine and estuarine resources from for the taking of fish in the licensee's possession by the responsible person. Such data shall include, but is not limited to, may include:

- (1) species identification, identification;
(2) species length, length;
(3) species weight, weight;
(4) species age, age;
(5) species sex, sex;
(6) number, number of species;
(7) quantity of catch;
(8) area of catch, catch;
(9) harvest method, and of quantity catch, method;
(10) gear and gear specifications;
(11) target species;
(12) number of hours and days the responsible person spent fishing;
(13) state, county, and zip code of responsible person;
(14) number of individuals fishing with responsible person; and
(15) social and economic data, including fishing expenditures.

(c) It shall be unlawful for any responsible person to refuse to allow the Fisheries Director or the Fisheries Director's agents to obtain data for the protection of public health related to the public health programs that fall under the authority of the Marine Fisheries Commission.

(d) It shall be unlawful for any responsible person to harass the Fisheries Director or the Fisheries Director's agents in any way related to the requirements of Paragraphs (b) and (c) of this Rule, including verbal or physical harassment or sexual harassment. For the purpose of this Rule, "harassment" shall be defined consistent with 50 CFR 600.725(o), (t), and (u), including to:

- (1) harass;
(2) sexually harass, including making sexual connotations;

- (3) oppose;
(4) impede;
(5) intimidate;
(6) interfere;
(7) prohibit or bar by command, impediment, threat, coercion, interference, or refusal of reasonable assistance, the Fisheries Director or the Fisheries Director's agents from conducting his or her duties; or
(8) tamper with or destroy samples or equipment;
50 CFR 600.725(o), (t), and (u), is incorporated by reference except as provided in Paragraph (e) of this Rule, including subsequent amendments and editions. A copy of the reference material can be found at https://www.ecfr.gov/current/title-50/chapter-VI/part-600/subpart-H/section-600.725, at no cost.
(e) Exceptions to 50 CFR 600.725(t) include "assault".

Authority G.S. 113-134; 113-170.3; 113-174.1; 113-181; 113-182; 113-221.2; 143B-289.52.

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

SECTION .0100 – SHELLFISH, GENERAL

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

(a) It shall be unlawful to possess, sell, or take oysters, clams, or mussels from areas that have been designated as polluted by proclamation by the Fisheries Director except as provided in Rules .0103, .0104, .0107, and .0401 of this Subchapter, except in accordance with:

- (1) a Depuration Permit as set forth in Rule .0107 of this Section;
(2) an Aquaculture Seed Transplant Permit; or
(3) a Shellfish Relocation Permit. The Fisheries Director may, by proclamation, designate sites for relocation where shellfish would otherwise be destroyed due to maintenance dredging, construction, or other development activities.

Individuals shall obtain an Aquaculture Seed Transplant Permit from the Secretary, or a Depuration Permit or a Shellfish Relocation Permit from the Fisheries Director setting forth the time, area, and method by which such shellfish may be taken. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

(b) The Fisheries Director shall issue shellfish polluted area proclamations if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have not been met. The Fisheries Director may reopen any such closed area by proclamation if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557; 800-682-2632 or 252-726-7021.

(c) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, scallops, and mussels to protect the shellfish populations for management purposes or for protection

of public health related to the public health programs that fall under the authority of the Marine Fisheries Commission not specified in ~~Paragraph (a)~~ Paragraphs (a) or (b) of this Rule.

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

Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 113-203; 113-221.1; 113-221.2; 143B-289.52.

**15A NCAC 03K .0104 PERMITS FOR RELAYING SHELLFISH FROM POLLUTED AREAS**

Authority G.S. 113-134; 113-182; 113-203; 113-221.1; 143B-289.52.

**15A NCAC 03K .0110 PUBLIC HEALTH AND CONTROL OF OYSTERS, CLAMS, SCALLOPS, AND MUSSELS**

(a) The National Shellfish Sanitation Program Guide for Control of Molluscan Shellfish, Section II: Model Ordinance (Model Ordinance) includes requirements for the sale or distribution of shellfish from approved areas or shellstock shellfish dealers, as defined in 15A NCAC 18A .0301, and to ensure that shellfish have not been adulterated or mislabeled misbranded during cultivation, harvesting, processing, storage, or transport. To protect public health, the Fisheries Director may, by proclamation, impose requirements of the Model Ordinance as set forth in Paragraph (b) of this Rule on any of the following:

- (1) the cultivation, distribution, harvesting, processing, sale, storage, or transport ~~of~~ of:
  - (A) oysters;
  - (B) clams;
  - (C) scallops; ~~or~~ and
  - (D) mussels;
- (2) areas used to store shellfish;
- (3) means and methods to take shellfish;
- (4) vessels used to take shellfish; ~~or~~ and
- (5) shellstock conveyances as defined in 15A NCAC 18A .0301.

(b) Proclamations issued under this Rule may impose any of the following requirements:

- (1) specify time and temperature controls;
- (2) specify sanitation requirements to prevent a food safety hazard, as defined in 15A NCAC 18A .0301, or cross-contamination or adulteration of shellfish;
- (3) specify sanitation control procedures set forth in 21 ~~Code of Federal Regulations (CFR) Part~~ CFR 123.11;
- (4) specify Hazard Analysis Critical Control Point (HACCP) requirements set forth in 21 ~~CFR Part~~ CFR:
  - (A) 123.3 Definitions;
  - (B) 123.6 HACCP Plan;
  - (C) 123.7 Corrective Actions;
  - (D) 123.8 Verification;
  - (E) 123.9 Records; and
  - (F) 123.28 Source Controls;

- (5) specify tagging and labeling requirements;
- (6) implement the National Shellfish Sanitation Program's training requirements for shellfish harvesters and certified shellfish dealers;
- (7) require sales records and collection and submission of information to provide a mechanism for tracing shellfish product back to the water body of origin; and
- (8) require product recall and specify recall procedures.

21 CFR 123.3, 123.6-9, 123.11, and 123.28 are hereby incorporated by reference, including subsequent amendments and editions. A copy of the reference materials material can be found at [http://www.ecfr.gov/cgi-bin/text-idx?SID=f4cdd666e75f54ceda1d9938f4edd9ab&mc=true&tpl=/ecfrbrowse/Title21/21tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=f4cdd666e75f54ceda1d9938f4edd9ab&mc=true&tpl=/ecfrbrowse/Title21/21tab_02.tpl), free of charge. <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123?toc=1>, at no cost.

(c) 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 15A NCAC 03I .0102 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.

Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 113-221.2; 143B-289.52.

**SECTION .0300 - HARD CLAMS (MERCENARIA)**

**15A NCAC 03K .0301 SIZE AND HARVEST LIMITS OF CLAMS**

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

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

- (1) harvest limits for temporary openings consistent with the requirements of 15A NCAC 18A .0900 and the North Carolina Hard Clam Fishery Management Plan; or
- (2) maintenance dredging operations, when clams would otherwise be destroyed, upon approval by the Division of Marine Fisheries and

- (3) consistent with the North Carolina Hard Clam Fishery Management ~~Plan; or Plan.~~ ~~relaying of clams from polluted waters to private shellfish bottom as permitted by Rule .0104 of this Subchapter.~~

- (2) a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.

- (3) current and valid picture identification of the licensee. Acceptable forms of picture identification are state driver's license, state identification card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.

- (4) certification that the applicant does not have four or more marine or estuarine resource convictions during the previous three years.

- (5) current articles of incorporation and a current list of corporate officers when purchasing a license or Commercial Fishing Vessel Registration in a corporate name. In the case of incorporation of an individual fishing vessel, the name of the vessel master shall also be specified. The licensee shall notify the Morehead City Office of the Division within five days of changing the vessel master.

- (6) a current copy of a written partnership agreement shall be provided when purchasing a license, endorsement, or Commercial Fishing Vessel Registration in a partnership name, if a partnership is established.

- (7) valid documentation papers or current motor boat registration, or copy thereof when purchasing a Commercial Fishing Vessel Registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

- (8) affirmation of liability insurance and that the operator is knowledgeable of United States Coast Guard (USCG) safety requirements for the vessels used in the operation in accordance with G.S. 113-168.6 when purchasing a Commercial Fishing Vessel Registration with a for-hire endorsement.

- (d) In addition to the requirements of Paragraph (c) of this Rule, proof of residency for non-residents shall be documented by the licensee with certification of the state of residency. Proof of residency for residents of North Carolina shall be documented by the licensee as follows:

- (1) Standard or Retired Standard Commercial Fishing Licenses: A notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4) and:

- (A) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident;

- (B) a notarized certification that the applicant was not required to file a

Authority G.S. 113-134; 113-136; 113-137; 113-182; 113-221.2; 143B-289.52.

**SECTION .0400 - RANGIA CLAMS**

**15A NCAC 03K .0401 POLLUTED AREA PERMIT REQUIREMENTS**

Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52.

**15A NCAC 03K .0403 DISPOSITION OF MEATS**

Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-298.52.

**15A NCAC 03K .0405 OYSTERS, HARD CLAMS, OR MUSSELS PROHIBITED**

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

**SUBCHAPTER 030 - LICENSES, LEASES, FRANCHISES, AND PERMITS**

**SECTION .0100 - LICENSES**

**15A NCAC 030 .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS**

(a) Division of Marine Fisheries licenses are available at offices of the Division or by mail from the Morehead City Office of the Division, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at license agents of the Wildlife Resources Commission in accordance with G.S. 113-270.1.

(b) For the purpose of this Rule, the procedures and requirements for the licensee shall also apply to the responsible party, the person holding power of attorney, the tournament organizer, and the vessel master.

(c) To obtain Division of Marine Fisheries licenses, endorsements, and Commercial Fishing Vessel Registrations, a licensee shall provide a completed application to an office of the Division by mail or in person. Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted. The following shall be required for the application:

- (1) full name, physical address, mailing address, date of birth, and signature of the licensee. If the licensee is not appearing before a license agent or a representative of the Division, the licensee's signature shall be notarized.

- (C) North Carolina State Income Tax Return for the previous calendar or tax year; or
- (C) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty assignment at a military facility in North Carolina.
- (2) All other types of licenses:
  - (A) North Carolina voter registration card;
  - (B) current North Carolina Driver's License;
  - (C) current North Carolina Certificate of Domicile;
  - (D) current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or
  - (E) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty assignment at a military facility in North Carolina.
- (e) In addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be required:
  - (1) Blanket For-Hire Captain's CRFL: a valid certification from the USCG that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers.
  - (2) Blanket For-Hire Vessel CRFL or Non-Blanket For-Hire Vessel License:
    - (A) valid documentation papers or current motor boat registration, or copies thereof for the vessel engaged as for-hire; or
    - (B) a copy of the pending application and a notarized bill of sale if an application for transfer of documentation is pending.
  - (3) Fish Dealer License:
    - (A) the physical address of the established location where business is conducted and, if different, the address where records are kept; and
    - (B) a valid Permit and Certificate of Compliance from the Division of Marine Fisheries Shellfish Sanitation and Recreational Water Quality Section, if purchasing a Fish Dealer License with clam or oyster categories or a consolidated license.
  - (4) Land or Sell License:
    - (A) valid documentation papers or current motor boat registration, or copy thereof; or

- (B) a copy of the pending application and a notarized bill of sale if an application for transfer of documentation is pending.
- The fees for a Land or Sell License shall be based on the vessel's homeport as it appears on the USCG documentation papers or the state in which the vessel is registered, in accordance with G.S. 113-169.5.
- (5) Ocean Fishing Pier License:
    - (A) the information required in G.S. 113-169.4; and
    - (B) linear length of the pier. A Marine Fisheries inspector's signature is required to verify the linear length of the pier before the license can be issued.
  - (6) Recreational Fishing Tournament License to Sell Fish: name and date or dates of the tournament.
  - (7) Spotter Plane License:
    - (A) the information required in G.S. 113-171.1;
    - (B) the current aircraft registration; and
    - (C) a list of operators.
  - (f) For a License to Land Flounder from the Atlantic Ocean, in addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be applicable:
    - (1) for the purpose of this Paragraph, "license year" means the period beginning July 1 of a year through June 30 of the following year.
    - (2) to qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:
      - (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina;
      - (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and
      - (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.
    - (3) it shall be unlawful for a person to hold more Licenses to Land Flounder from the Atlantic Ocean than the number of vessels that the person owns that individually met the eligibility requirements of Parts (f)(2)(A) and (f)(2)(B) of this Rule.
    - (4) the License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel specified at the time of license issuance.
    - (5) at the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall specify the name of the vessel

master for each License to Land Flounder from the Atlantic Ocean issued.

(6) the holder of the License to Land Flounder from the Atlantic Ocean shall notify the Morehead City Office of the Division of Marine Fisheries within five days of change as to the vessel master identified on the license.

(7) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year.

(g) For a Recreational Fishing Tournament License to Sell Fish, in addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be applicable:

(1) it shall be unlawful for anyone other than the holder of the Recreational Fishing Tournament License to Sell Fish to sell fish taken during a recreational fishing tournament.

(2) fish to be sold under the Recreational Fishing Tournament License to Sell Fish shall be sold only to licensed fish dealers and shall comply with all applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.

(3) it shall be unlawful for a licensed recreational fishing tournament organizer to fail to accurately and legibly complete a North Carolina Recreational Fishing Tournament Disposition of Proceeds from the Sale of Fish Form provided by the Division of Marine Fisheries and submit the form to the Division within 30 days after the last day of the tournament.

(h) It shall be unlawful for a license, endorsement, or Commercial Fishing Vessel Registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.

(i) If requested by the Division, it shall be unlawful for a licensee to fail to participate in and provide accurate information for data collection in accordance with 15A NCAC 03I .0113 and for survey programs administered by the Division.

*Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169.2-5; 113-171.1; 113-174.3; 113-182; 143B-289.52.*

**15A NCAC 030 .0109 ASSIGNMENT OF STANDARD COMMERCIAL FISHING LICENSE**

(a) For the purpose of this Rule, "licensee" shall mean the person issued a Standard Commercial Fishing License and "assignee" shall mean the individual to whom the licensee assigns a Standard Commercial Fishing License in accordance with the requirements of this Rule.

(b) If requested by the Division of Marine Fisheries, it shall be unlawful for a licensee or assignee to fail to participate in and provide accurate information for data collection in accordance with 15A NCAC 03I .0113 and for survey programs administered by the Division.

~~(b)(c)~~ The Division of Marine Fisheries shall provide assignment forms to the licensee upon request. Only Division assignment forms shall be used to obtain an assignment. On the assignment

form, the licensee shall designate what, if any, endorsements are included in the assignment. Endorsements shall not be assigned independent of the Standard Commercial Fishing License. It shall be unlawful for the licensee or the assignee to fail to submit within five days the completed assignment form to any office of the Division in person or by mail to the Morehead City Office. The Morehead City Office is located at 3441 Arendell Street, Morehead City, North Carolina, 28557. If the completed assignment form is not received by the Division within five days from the date it was signed, the assignment shall be null and void. Incomplete forms shall be returned to the licensee with deficiency in the form so noted. An assignment is in effect from the date specified on the assignment form and when:

- (1) the assignment form is complete with all required information;
- (2) signatures of the current license holder and the assignee are notarized; and
- (3) the assignee has in the assignee's possession the current licensee's original actual Standard Commercial Fishing License, including applicable endorsements in accordance with G.S. 113-169.2.

~~(e)(d)~~ For an extension of time for assignments, a new assignment form shall be completed in accordance with Subparagraphs (b)(1) through (b)(3) of this Rule.

~~(d)(e)~~ Assignments shall terminate:

- (1) when the date specified on the assignment form is reached;
- (2) if the licensee or assignee are determined ineligible for a license or assignment;
- (3) if the Division receives a notarized statement from the current license holder stating a revised date for an earlier assignment termination;
- (4) upon the licensee or assignee's death; or
- (5) when the Standard Commercial Fishing License expires.

~~(e)(f)~~ It shall be unlawful for an individual assigned a Standard Commercial Fishing License when involved in a commercial fishing operation to fail to have the original actual Standard Commercial Fishing License, any assigned endorsements, and a copy of the assignment form in the individual's possession ready at hand for inspection in accordance with G.S. 113-168.1.

~~(f)(g)~~ All landings occurring during the time of the assignment shall be credited to the licensee, not the assignee.

~~(g)(h)~~ It shall be unlawful to be assigned more than a single Standard Commercial Fishing License at any one time. It shall be unlawful to assign a Standard Commercial Fishing License to more than one individual at any one time. Assignments shall only be made by the licensee and shall not be further assigned by assignees. Masters identified on the Standard Commercial Fishing Licenses of corporations consisting of an individual fishing vessel shall not assign such licenses.

~~(h)(i)~~ It shall be unlawful for a person to accept assignment of a Standard Commercial Fishing License for which they are ineligible.

~~(i)(j)~~ It shall be unlawful for any assignee of a Standard Commercial Fishing License not to return the assignment and the Standard Commercial Fishing License with any assigned endorsements to the licensee within five days of notice that the

assignment has been terminated or a demand by the licensee to return the license.

*Authority G.S. 113-134; 113-135; 113-168.1; 113-168.2; 113-168.5; 113-169.2; 113-182; 113-187; 143B-289.52.*

**15A NCAC 030 .0112 FOR-HIRE LICENSE REQUIREMENTS**

(a) The license requirements for an operator of a vessel engaged in a for-hire operation are set forth in G.S. 113-174.3. Either the vessel owner or the for-hire vessel operator may seek to obtain the applicable for-hire vessel license. Only the vessel owner shall seek to obtain the applicable registration and endorsement required by G.S. 113-168.6. For the purpose of this Rule, "for-hire vessel operator" shall include the holder of a Blanket For-Hire Captain's Coastal Recreational Fishing License, Blanket For-Hire Vessel Coastal Recreational Fishing License, or Non-Blanket For-Hire Vessel License, as set forth in G.S. 113-174.3.

(b) It shall be unlawful for a for-hire vessel operator to operate without:

- (1) holding the United States Coast Guard certification required in Rule .0101(a) of this Section;
- (2) having a copy of the for-hire license in possession and ready at hand for inspection; and
- (3) having current picture identification in possession and ready at hand for inspection.

(c) If requested by the Division of Marine Fisheries, it shall be unlawful for a for-hire vessel operator or responsible person to fail to participate in and provide accurate information for biological sampling data collection in accordance with 15A NCAC 03I.0113 and for survey programs administered by the Division. For the purpose of this Rule, "responsible person" shall mean any licensee or person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes, including regulated activity related to for-hire fishing.

(d) Requirements for display of licenses and registrations for a vessel engaged in for-hire recreational fishing are set forth in Rule .0106 of this Section.

*Authority G.S. 113-134; 113-168.6; 113-174.1; 113-174.3; 113-181; 143B-289.52.*

**SECTION .0200 – SHELLFISH LEASES AND FRANCHISES**

**15A NCAC 030 .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES**

(a) For the purpose of this Section:

- (1) "extensive shellfish culture" shall mean shellfish grown on the bottom without the use of cages, racks, bags, or floats.
- (2) "intensive shellfish culture" shall mean shellfish grown on the bottom or in the water column using cages, racks, bags, or floats.
- (3) "plant" shall mean providing evidence of purchasing shellfish seed or planting shellfish

seed or authorized cultch materials on a shellfish lease or franchise.

- (4) "produce" shall mean the culture and harvest of oysters, clams, scallops, or mussels from a shellfish lease or franchise and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.

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

- (1) the proposed shellfish lease area shall not contain a "natural shellfish bed," as defined in G.S. 113-201.1, or have 10 bushels or more of shellfish per acre;
- (2) the proposed shellfish lease area shall not be closer than 250 feet from a developed shoreline or a water-dependent shore-based structure, except no minimum setback is required when the area to be leased borders the applicant's property, the property of "riparian owners" as defined in G.S. 113-201.1 who have consented in a notarized statement, or is in an area bordered by undeveloped shoreline. For the ~~purposes~~ purpose of this Rule, a water-dependent shore-based structure shall include docks, wharves, boat ramps, bridges, bulkheads, and groins;
- (3) the proposed shellfish lease area shall not be closer than 250 feet to an existing lease;
- (4) the proposed shellfish lease area, either alone or when considered cumulatively with other existing leases in the area, lease areas in the vicinity, shall not interfere with navigation or with existing, traditional uses of the area; and
- (5) the proposed shellfish lease area shall not be less than one-half acre and shall not exceed 10 acres.

~~(b)(c)~~ To be suitable for leasing for shellfish aquaculture purposes, shellfish water column leases superjacent to a shellfish bottom lease shall meet the standards in G.S. 113-202.1 and shellfish water column leases superjacent to franchises ~~recognized pursuant to G.S. 113-206~~ shall meet the standards in G.S. 113-202.2.

~~(e)(d)~~ ~~Franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases~~ Shellfish bottom leases and franchises granted on or before July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202:

- (1) they produce ~~and market~~ 10 bushels of shellfish per acre per year; and
- (2) they are planted with 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre per year, or a combination of cultch and seed shellfish where the percentage of required cultch planted and the percentage of required seed shellfish planted totals at least 100 percent.

~~(d)~~(e) Shellfish water column leases granted on or before July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and G.S. 113-202.2:

- (1) they produce ~~and market~~ 40 bushels of shellfish per acre per year; or
- (2) the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.

(f) Shellfish bottom leases and franchises granted after July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202.2:

- (1) they produce a minimum of 20 bushels of shellfish per acre averaged over the previous three-year period beginning in year five of the shellfish bottom lease or franchise; or
- (2) for intensive culture bottom operations, the holder of the shellfish bottom lease or franchise provides evidence of purchasing a minimum of 23,000 shellfish seed per acre annually and for extensive culture bottom operations, the holder of the lease or franchise plants a minimum of 15,000 shellfish seed per acre per year.

(g) Shellfish water column leases granted after July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and 113-202.2:

- (1) they produce a minimum of 50 bushels of shellfish per acre averaged over the previous three-year period beginning in year five of the shellfish water column lease; or
- (2) the holder of the shellfish water column lease provides evidence of purchasing a minimum of 23,000 shellfish seed per acre annually.

~~(e)~~(h) The following standards shall be applied to determine compliance with Paragraphs ~~(e)~~ and ~~(d)~~(d), (e), (f), and (g) of this Rule:

- (1) ~~Only only~~ shellfish ~~marketed, planted, planted~~ or produced as defined in ~~15A-NCAC 03I.0104~~ as the fishing activities "shellfish marketing from leases and franchises," "shellfish planting effort on leases and franchises," or "shellfish production on leases and franchises" Paragraph (a) of this Rule shall be included in the annual shellfish lease and franchise production reports required by Rule .0207 of this Section.
- (2) ~~If~~ if more than one shellfish lease or franchise is used in the production of shellfish, one of the leases or franchises used in the production of the shellfish shall be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish shall be produced by only one shellfish lease or franchise. Shellfish transplanted between shellfish leases or franchises shall be credited as planting effort on only one lease or franchise.
- (3) ~~Production and marketing~~ production information and planting effort information

shall be compiled and averaged separately to assess compliance with the requirements of this Rule. ~~The shellfish lease or franchise~~ Shellfish bottom leases and franchises granted on or before July 1, 2019 shall meet both the production requirement and the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in ~~compliance for shellfish bottom leases.~~ compliance. ~~The shellfish lease or franchise~~ Shellfish bottom leases and franchises granted after July 1, 2019 and shellfish water column leases shall meet either the production requirement or the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in ~~compliance for shellfish water column leases.~~ compliance.

(4) ~~All~~ all bushel measurements shall be in standard U.S. bushels.

(5) ~~In~~ in determining production and marketing averages and planting effort averages for information not reported in bushel measurements, the following conversion factors shall be used:

- (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
- (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds of fossil stone equal one bushel.

(6) ~~Production and marketing~~ production rate averages shall be computed irrespective of transfer of the shellfish lease or franchise. The ~~production and marketing~~ rates shall be averaged for the following situations using the time periods described:

- (A) for an initial shellfish bottom lease or franchise, over the consecutive full calendar years remaining on the bottom lease or franchise contract after December 31 following the second anniversary of the initial bottom lease or franchise;
- (B) for a renewal shellfish bottom lease or franchise, over the consecutive full calendar years beginning January 1 of the final year of the previous bottom lease or franchise term and ending December 31 of the final year of the current bottom lease or franchise contract;
- (C) for a shellfish water column lease, over the first five-year period for an initial water column lease and over the most recent five-year period thereafter for a renewal water column lease; or
- (D) for a shellfish bottom lease or franchise issued an extension period



under Rule .0208 of this Section, over the most recent five-year period.

- (7) ~~In~~ in the event that a portion of an existing shellfish lease or franchise is obtained by a new lease or franchise holder, the production history for the portion obtained shall be a percentage of the originating lease or franchise production equal to the percentage of the area of lease or franchise site obtained to the area of the originating lease or franchise.

~~(f)(i) Persons To be eligible for additional shellfish lease acreage, persons holding five or more any acres under all a shellfish bottom leases and franchises combined lease or franchise shall meet the requirements established in Paragraph (e) of this Rule before submitting an application for additional shellfish lease acreage to the Division of Marine Fisheries. in:~~

- (1) Paragraphs (d), (e), (f), and (g) of this Rule;
- (2) Rule .0204 of this Section; and
- (3) Rule .0503(a) of this Subchapter.

Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52; S.L. 2019-37, s. 3.

**SECTION .0300 – RECREATIONAL COMMERCIAL GEAR LICENSES**

**15A NCAC 030 .0301 ELIGIBILITY AND REQUIREMENTS FOR RECREATIONAL COMMERCIAL GEAR LICENSES**

- (a) Recreational Commercial Gear Licenses shall only be issued to individuals.
- (b) If requested by the Division of Marine Fisheries, it shall be unlawful for a Recreational Commercial Gear License holder to fail to participate in and provide accurate information for data collection in accordance with 15A NCAC 03I .0113 and for survey programs administered by the Division.

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

**SECTION .0500 - PERMITS**

**15A NCAC 030 .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS**

- (a) To obtain a Division of Marine Fisheries permit, an applicant, responsible party, or person holding a power of attorney shall provide the following information:
  - (1) the full name, physical address, mailing address, date of birth, and signature of the applicant on the application and, if the applicant is not appearing before a license agent or the designated Division of Marine Fisheries contact, the applicant's signature on the application shall be notarized;
  - (2) a current picture identification of the applicant, responsible party, or person holding a power of attorney, acceptable forms of which shall include driver's license, North Carolina Identification card issued by the North Carolina Division of Motor Vehicles, military

identification card, resident alien card (green card), or passport or, if applying by mail, a copy thereof;

- (3) for permits that require a list of designees, the full names and dates of birth of the designees of the applicant who will be acting pursuant to the requested permit;
- (4) certification that the applicant and his or her designees do not have four or more marine or estuarine resource convictions during the previous three years;
- (5) for permit applications from business entities:
  - (A) the business name;
  - (B) the type of business entity: corporation, "educational institution" as defined in 15A NCAC 03I .0101, limited liability company (LLC), partnership, or sole proprietorship;
  - (C) the name, address, and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
  - (D) for a corporation applying for a permit in a corporate name, the current articles of incorporation and a current list of corporate officers;
  - (E) for a partnership that is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit; and
  - (F) for business entities other than corporations, copies of current assumed name statements if filed with the Register of Deeds office for the corresponding county and copies of current business privilege tax certificates, if applicable; and

(6) additional information as required for specific permits.

- (b) A permittee shall hold a valid:
  - (1) Standard or Retired Standard Commercial Fishing License in order to hold:
    - (A) an Atlantic Ocean Striped Bass Commercial Gear Permit;
    - (B) a Permit for Weekend Trawling for Live Shrimp; or
    - (C) a Pound Net Set Permit.

The master designated on the single vessel corporation Standard Commercial Fishing License is the individual required to hold the Permit for Weekend Trawling for Live Shrimp.

- (2) Fish Dealer License in the proper category in order to hold dealer permits for monitoring fisheries under a quota or allocation for that category.
- (c) An individual who is assigned a valid Standard Commercial Fishing License with applicable endorsements shall be eligible to

hold any permit that requires a Standard Commercial Fishing License except a Pound Net Set Permit.

(d) If mechanical methods to take shellfish are used, a permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement in order for a permittee to hold a:

- (1) Depuration Permit;
- (2) ~~Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;~~
- (3)(2) Permit to Transplant Oysters from Seed Oyster Management Areas; or
- (4) ~~Permit to Transplant Prohibited (Polluted) Shellfish; or~~
- (5)(3) Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises, except as provided in G.S. 113-169.2.

(e) If mechanical methods to take shellfish are not used, a permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order for a permittee to hold a:

- (1) Depuration Permit; or
- (2) ~~Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;~~
- (3)(2) Permit to Transplant Oysters from Seed Oyster Management Areas; or Areas.
- (4) ~~Permit to Transplant Prohibited (Polluted) Shellfish.~~

(f) Aquaculture Operation Permit and Aquaculture Collection Permit:

- (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
- (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.

(g) Atlantic Ocean Striped Bass Commercial Gear Permit:

- (1) An applicant for an Atlantic Ocean Striped Bass Commercial Gear Permit shall declare one of the following types of gear for an initial permit and at intervals of three consecutive license years thereafter:
  - (A) a gill net;
  - (B) a trawl net; or
  - (C) a beach seine.

For the purpose of this Rule, a "beach seine" shall mean a swipe net constructed of multi-filament or multi-fiber webbing fished from the ocean beach that is deployed from a vessel launched from the ocean beach where the fishing operation takes place. Gear declarations shall be binding on the permittee for three consecutive license years without regard to subsequent annual permit issuance.

- (2) A person is not eligible for more than one Atlantic Ocean Striped Bass Commercial Gear

Permit regardless of the number of Standard Commercial Fishing Licenses, Retired Standard Commercial Fishing Licenses, or assignments held by that person.

(h) Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with the deficiency in the application noted.

(i) A permit shall be issued only after the application is deemed complete and the applicant certifies his or her agreement to abide by the permit general and specific conditions established under 15A NCAC 03J .0501, .0505, 03K .0103, .0104, .0107, .0111, .0401, .0501 and .0505, 03K .0103 and .0107, Rule .0211 of this Subchapter, and Rules .0502 and .0503 of this Section, as applicable to the requested permit.

(j) In determining whether to issue, modify, or renew a permit, the Fisheries Director or his or her agent shall evaluate factors such as the following:

- (1) potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
- (2) the applicant's demonstration of a valid justification for the permit; and
- (3) whether the applicant has a history of eight or more fisheries violations within 10 years.

(k) The Division of Marine Fisheries shall notify the applicant in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information or reasons why the permit should not be denied or modified.

(l) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or State fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.

(m) For permit renewals, the permittee's signature on the application shall certify all information is true and accurate. Notarized signatures on renewal applications shall not be required.

(n) It shall be unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.

(o) It shall be unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.

(p) Permit applications shall be available at all Division of Marine Fisheries offices.

*Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52.*

**15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC**

- (a) Aquaculture Operation Permit and Aquaculture Collection Permit:

- (1) It shall be unlawful to conduct aquaculture operations using marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
- (2) It shall be unlawful:
  - (A) to take marine and estuarine resources from Coastal Fishing Waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director;
  - (B) to sell or use for any purpose not related to North Carolina aquaculture marine and estuarine resources taken pursuant to an Aquaculture Collection Permit; or
  - (C) to fail to submit to the Fisheries Director an annual report, due on December 1 of each year on the form provided by the Division of Marine Fisheries, stating the amount and disposition of marine and estuarine resources collected under authority of an Aquaculture Collection Permit.
- ~~(3) Lawfully permitted shellfish-relaying activities authorized by 15A NCAC 03K .0103 and .0104 shall be exempt from requirements to have an Aquaculture Operation Permit or Aquaculture Collection Permit issued by the Fisheries Director.~~
- ~~(4)~~(3) Aquaculture Operation Permits and Aquaculture Collection Permits shall be issued or renewed on a calendar year basis.
- ~~(5)~~(4) It shall be unlawful to fail to provide the Division with a listing of all designees acting pursuant to an Aquaculture Collection Permit at the time of application.
- (b) Atlantic Ocean Striped Bass Commercial Gear Permit:
  - (1) It shall be unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.
  - (2) It shall be unlawful to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year, regardless of the number of Standard Commercial Fishing licenses, Retired Standard Commercial Fishing licenses, or assignments.
- (c) Blue Crab Shedding Permit: It shall be unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.
- (d) Coastal Recreational Fishing License Exemption Permit:
  - (1) It shall be unlawful for the responsible party seeking exemption from recreational fishing license requirements for eligible individuals to conduct an organized fishing event held in Joint or Coastal Fishing Waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.
- (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational fishing activity conducted solely for the participation and benefit of one of the following groups of eligible individuals:
  - (A) individuals with physical or mental impairment;
  - (B) members of the United States Armed Forces and their dependents, upon presentation of a valid military identification card;
  - (C) individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal marine or estuarine resource management agencies or instructors affiliated with educational institutions; and
  - (D) disadvantaged youths as set forth in 42 U.S. Code 12511.

For the purpose of this Paragraph, educational institutions include high schools and other secondary educational institutions.
- (3) The Coastal Recreational Fishing License Exemption Permit shall be valid for the date, time, and physical location of the organized fishing event for which the exemption is granted and the duration of the permit shall not exceed one year from the date of issuance.
- (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued if all of the following, in addition to the information required in Rule .0501 of this Section, is submitted to the Fisheries Director, in writing, at least 30 days prior to the event:
  - (A) the name, date, time, and physical location of the event;
  - (B) documentation that substantiates local, state, or federal involvement in the organized fishing event, if applicable;
  - (C) the cost or requirements, if any, for an individual to participate in the event; and
  - (D) an estimate of the number of participants.
- (e) Dealer permits for monitoring fisheries under a quota or allocation:
  - (1) During the commercial season opened by proclamation or rule for the fishery for which a dealer permit for monitoring fisheries under a quota or allocation shall be issued, it shall be unlawful for a fish dealer issued such permit to fail to:
    - (A) fax or send via electronic mail by noon daily, on forms provided by the Division of Marine Fisheries, the previous day's landings for the permitted fishery to the Division.

Landings for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable to fax or electronically mail the required information, the permittee shall call in the previous day's landings to the Division;

- (B) submit the required form set forth in Part (e)(1)(A) of this Rule to the Division upon request or no later than five days after the close of the season for the fishery permitted;
- (C) maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;
- (D) contact the Division daily, regardless of whether a transaction for the fishery for which a dealer is permitted occurred; and
- (E) record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.

(2) Atlantic Ocean Flounder Dealer Permit:

- (A) It shall be unlawful for a fish dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
- (B) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.

(3) Black Sea Bass North of Cape Hatteras Dealer Permit: It shall be unlawful for a fish dealer to purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of Cape Hatteras (35° 15.0321' N) per day per commercial fishing operation during the open season unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.

(4) Spiny Dogfish Dealer Permit: It shall be unlawful for a fish dealer to purchase or possess more than 100 pounds of spiny dogfish per day per commercial fishing operation unless the dealer has a Spiny Dogfish Dealer Permit.

(5) Striped Bass Dealer Permit:

- (A) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
  - (i) the Atlantic Ocean;
  - (ii) the Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; or
  - (iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.

(B) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest areas opened by proclamation without having a valid Division of Marine Fisheries-issued tag for the applicable area affixed through the mouth and gill cover or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. Division striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the Division offices. The Division shall specify the quantity of tags to be issued based on historical striped bass landings. It shall be unlawful for the permittee to fail to surrender unused tags to the Division upon request.

(f) Horseshoe Crab Biomedical Use Permit:

- (1) It shall be unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
- (2) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit an annual report on the use of horseshoe crabs to the Division of Marine Fisheries, due on February 1 of each year. Such reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, a statement of percent mortality up to the point of release, the harvest method, the number or percent of males and females, and the disposition of bled crabs prior to release.
- (3) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab. The Atlantic States Marine Fisheries Commission Interstate Fishery Management

Plan for Horseshoe Crab is incorporated by reference including subsequent amendments and editions. Copies of this plan are available via the Internet from the Atlantic States Marine Fisheries Commission at <http://www.asmfc.org/fisheries-management/program-overview> and at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557, at no cost.

(g) Permit for Weekend Trawling for Live Shrimp:

- (1) It shall be unlawful to take shrimp with trawls from 9:00 p.m. on Friday through 12 noon on Saturday without first obtaining a Permit for Weekend Trawling for Live Shrimp.
- (2) It shall be unlawful for a holder of a Permit for Weekend Trawling for Live Shrimp to use trawls from 12:01 p.m. on Saturday through 4:59 p.m. on Sunday.
- (3) It shall be unlawful for a permit holder during the timeframe specified in Subparagraph ~~(k)(1)~~(g)(1) of this Rule to:
  - (A) use trawl nets to take live shrimp except from areas open to the harvest of shrimp with trawls;
  - (B) take shrimp with trawls that have a combined headrope length of greater than 40 feet in Internal Coastal Waters;
  - (C) possess more than one gallon of dead shrimp (heads on) per trip;
  - (D) fail to have a functioning live bait tank or a combination of multiple functioning live bait tanks, with aerators or circulating water, with a minimum combined tank capacity of 50 gallons; or
  - (E) fail to call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-726-7021 prior to each weekend use of the permit, specifying activities and location.

(h) Pound Net Set Permit: The holder of a Pound Net Set Permit shall follow the Pound Net Set Permit conditions as set forth in 15A NCAC 03J .0505.

(i) Scientific or Educational Activity Permit:

- (1) It shall be unlawful for institutions or agencies seeking exemptions from license, rule, proclamation, or statutory requirements to collect, hold, culture, or exhibit for scientific or educational purposes any marine or estuarine species without first obtaining a Scientific or Educational Activity Permit.
- (2) The Scientific or Educational Activity Permit shall only be issued for collection methods and possession allowances approved by the Division of Marine Fisheries.
- (3) The Scientific or Educational Activity Permit shall only be issued for approved activities

conducted by or under the direction of Scientific or Educational institutions as defined in 15A NCAC 03I .0101.

- (4) It shall be unlawful for the responsible party issued a Scientific or Educational Activity Permit to fail to submit an annual report on collections and, if authorized, sales to the Division, due on December 1 of each year, unless otherwise specified on the permit. The reports shall be filed on forms provided by the Division. Scientific or Educational Activity permits shall be issued on a calendar year basis.
  - (5) It shall be unlawful to sell marine or estuarine species taken under a Scientific or Educational Activity Permit without:
    - (A) the required license for such sale;
    - (B) an authorization stated on the permit for such sale; and
    - (C) providing the information required by 15A NCAC 03I .0114 if the sale is to a licensed fish dealer.
  - (6) It shall be unlawful to fail to provide the Division with a list of all designees acting under a Scientific or Educational Activity Permit at the time of application.
  - (7) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-726-7021 ~~not~~ no later than 24 hours prior to use of the permit, specifying activities and location.
- (j) Under Dock Oyster Culture Permit:
- (1) It shall be unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.
  - (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth in G.S. 113-210(c).
  - (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries pursuant to G.S. 113-210(j), demonstrating the applicant's knowledge of:
    - (A) the application process;
    - (B) permit criteria;
    - (C) basic oyster biology and culture techniques;
    - (D) shellfish harvest area closures due to pollution;
    - (E) safe handling practices;
    - (F) permit conditions; and
    - (G) permit revocation criteria.
  - (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.

Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52.

**SUBCHAPTER 03R - DESCRIPTIVE BOUNDARIES**

**SECTION .0100 - DESCRIPTIVE BOUNDARIES**

**15A NCAC 03R .0117 OYSTER SANCTUARIES**

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

- (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~~ 35° 40.0800' N - 75° 36.7998' W; running southerly to a point ~~35° 05.4760' N - 76° 23.4040' W~~ 35° 39.8400' N - 75° 36.7998' W; running westerly to a point ~~35° 05.3680' N - 76° 23.4040' W~~ 35° 39.8400' N - 75° 37.0800' W; running northerly to a point ~~35° 05.3680' N - 76° 23.5370' W~~ 35° 40.0800' N - 75° 37.0800' 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~~ 35° 33.8600' N - 75° 49.7670' W; running southerly to a point ~~35° 33.8600' N - 75° 49.7670' W~~ 35° 33.7510' N - 75° 49.7670' W; running westerly to a point ~~35° 33.7510' N - 75° 49.7670' W~~ 35° 33.7510' N - 75° 49.9000' W; running northerly to a point ~~35° 33.7510' N - 75° 49.9000' W~~ 35° 33.7510' N - 75° 49.9000' W

- (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) Gull Shoal: within the area described by a line beginning at a point 35° 23.4520' N - 75° 58.0533' W; running southerly to a point 35° 22.9481' N - 75° 58.0721' W; running westerly to a point 35° 22.9596' N - 75° 58.5359' W; running northerly to a point 35° 23.4638' N - 75° 58.5173' W; running easterly to the point of beginning.
- (~~f~~)(g) 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~~)(h) West Bluff: within the area described by a line beginning at a point ~~35° 18.3160' N - 76° 10.2960' W~~ 35° 18.3160' N - 76° 10.0690' W; running southerly to a point ~~35° 18.3160' N - 76° 10.0690' W~~ 35° 18.1290' N - 76° 10.0690' W; running westerly to a point ~~35° 18.1290' N - 76° 10.0690' W~~ 35° 18.1290' N - 76° 10.2960' W; running northerly to a point ~~35° 18.1290' N - 76° 10.2960' W~~ 35° 18.1290' N - 76° 10.2960' W; running easterly to the point of beginning.
- (~~h~~)(i) 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~~)(j) Swan Island: within the area described by a line beginning at a point ~~35° 05.6170' N - 76° 27.5040' W~~ 35° 05.6414' N - 76° 26.7651' W;

running southerly to a point ~~35° 05.6020' N - 76° 26.7650' W~~ 35° 05.4846' N - 76° 26.7638' W; running westerly to a point ~~35° 05.4850' N - 76° 26.7640' W~~ 35° 05.4992' N - 76° 27.5033' W; running northerly to a point ~~35° 05.4990' N - 76° 27.5030' W~~ 35° 05.6554' N - 76° 27.5041' W; running easterly to the point of beginning.

~~(j)~~(k) Raccoon Island: within the area described by a line beginning at a point ~~35° 05.4760' N - 76° 23.5370' W~~ 35° 05.4760' N - 76° 23.4040' W; running southerly to a point ~~35° 05.4760' N - 76° 23.4040' W~~ 35° 05.3680' N - 76° 23.4040' W; running westerly to a point ~~35° 05.3860' N - 76° 23.4040' W~~ 35° 05.3680' N - 76° 23.5370' W; running northerly to a point ~~35° 05.3680' N - 76° 23.5370' W~~ 35° 05.4760' N - 76° 23.5370' W; running easterly to the point of beginning.

(l) Cedar Island: within the area described by a line beginning at a point 35° 03.4632' N - 76° 22.5603' W; running southerly to a point 35° 03.1653' N - 76° 22.5699' W; running westerly to a point 35° 03.1731' N - 76° 22.9321' W; running northerly to a point 35° 03.4710' N - 76° 22.9226' W; running easterly to the point of beginning.

~~(k)~~(m) 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~~ 35° 02.6940' N - 76° 30.7940' W; running southerly to a point ~~35° 02.6940' N - 76° 30.7940' W~~ 35° 02.5380' N - 76° 30.7940' W; running westerly to a point ~~35° 02.5380' N - 76° 30.7940' W~~ 35° 02.5380' N - 76° 30.9840' W; running northerly to a point ~~35° 02.5380' N - 76° 30.9840' W~~ 35° 02.6940' 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.

Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52.

**CHAPTER 18 - ENVIRONMENTAL HEALTH**

**SUBCHAPTER 18A - SANITATION**

**SECTION .0300 – SANITATION OF SHELLFISH - GENERAL**

**15A NCAC 18A .0301 DEFINITIONS**

The following definitions shall apply throughout Sections .0300 to ~~.0900~~ through .0800 of this Subchapter:

(1) "Adulterated" ~~means the following:~~ means:

(a) ~~Any~~ any shellfish that have been harvested from ~~prohibited areas;~~ polluted areas as defined in 15A NCAC 03I .0101;

(b) ~~Any~~ any shellfish that have been shucked, packed, or otherwise processed in a plant ~~which that~~ which that has not been permitted by the Division of Marine Fisheries in accordance with these rules or by another state shellfish control "authority" as defined in the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section I: Purposes and Definitions, in accordance with these Rules; This definition is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost;

(c) any shellfish that may have been contaminated by flood waters in accordance with Rule .0405 of this Subchapter;

~~(e)~~(d) ~~Any~~ any shellfish ~~which that~~ which that exceed the ~~bacteriological~~ standards in Rule .0430 of this Subchapter; and

~~(d)~~(e) ~~Any~~ any shellfish ~~which are that~~ which are that have been deemed to be an imminent ~~hazard;~~ hazard.

- (2) ~~"Approved area" means an area determined suitable for the harvest of shellfish for direct market purposes.~~
- (3) ~~"Bulk shipment" means a shipment of loose shellstock.~~
- (4) ~~"Buy boat or buy truck" means any boat which that complies with Rule .0419 of this Subchapter or truck which complies with Rule .0420 of this Subchapter that is used by a person permitted under these Rules to transport shellstock from one or more harvesters to a facility permitted under these Rules.~~
- (5)(2) "Certification number" means the unique identification number assigned by the state shellfish dealer agency to each certified shellfish ~~dealer.~~ dealer for each location. It consists of a ~~one to five digit~~ one-to-five-digit number preceded by the ~~two letter~~ two-letter state abbreviation and followed by the ~~two letter symbol~~ two-letter abbreviation designating the type of operation certified.
- (3) "Clean" means free from dirt, debris, dust, marks, stains, waste materials, litter, or foreign material.
- (6)(4) "Critical control point" means a point, ~~step~~ step, or procedure in a food process at which control can be applied, and a food safety hazard can as a result be prevented, ~~eliminated~~ eliminated, or reduced to acceptable levels.
- (7)(5) "Critical limit" means the maximum or minimum value to which a physical, ~~biological~~ biological, or chemical parameter must be controlled at a critical control point to prevent, ~~eliminate~~ eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard.
- (8)(6) ~~"Depurate" or "Depuration" "deputation" means mechanical purification or the removal of adulteration from live shellstock by any artificially controlled means. the process of reducing the pathogenic organisms that may be present in shellstock by using a controlled aquatic environment as the treatment process.~~
- (9)(7) "Depuration facility" means the physical structure wherein depuration is accomplished, including all the appurtenances necessary to the effective operation thereof. any establishment or place where the depuration of shellfish occurs by a shellfish dealer.
- (10)(8) ~~"Division" means the Division of Environmental Health or its authorized agent.~~ 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, ~~ehemical~~ chemical, or physical property that may cause a food to be unsafe for human consumption.
- (12) "Good repair" means maintained to function as designed and without defect.
- (12)(13) "HACCP plan" means a written document that delineates the procedures a shellfish dealer follows to implement food safety controls.
- (13)(14) "Hazard analysis critical control point (HACCP)" means a system of inspection, ~~control~~ control, and monitoring measures initiated by a shellfish dealer to identify microbiological, ~~ehemical~~ chemical, or physical food safety hazards ~~which that~~ are likely to occur in shellfish products produced by the dealer.
- (14)(15) "Heat shock process" means the practice of heating shellstock to facilitate removal of the shellfish meat from the shell.
- (15)(16) ~~"Imminent hazard" means a situation which is likely to cause an immediate threat to human life, and immediate threat of serious physical injury, an immediate threat of serious physical adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken. has the same meaning as defined in G.S. 130A-2.~~
- (14)(17) "In-shell product" means non-living, processed shellfish with one or both shells present.
- (16)(18) "Misbranded" means the following: as defined in G.S. 106-30 shall include any shellfish that are not labeled in compliance with these Rules.
- (a) Any shellfish which are not labeled with a valid identification number awarded by regulatory authority of the state or territory of origin of the shellfish; or
- (b) Any shellfish which are not labeled as required by these Rules.
- (19) "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.
- (17) ~~"Operating season" means the season of the year during which a shellfish product is processed.~~
- (18) ~~"Person" means an individual, corporation, company, association, partnership, unit of government or other legal entity.~~



- (20) "Pests" means animals or insects, including dogs, cats, birds, rodents, flies, and larvae.
- (21) "Plant" means the establishment or place where shellfish processing occurs by shellfish dealers.
- (22) "Processing" or "processed" means any activity associated with the handling, shucking, freezing, packing, labeling, or storing of shellfish in preparation for distribution. This includes the activities of a shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor.
- (19) ~~"Prohibited area" means an area unsuitable for the harvesting of shellfish for direct market purposes.~~
- (20)(23) "Recall procedure" means the detailed procedure the permitted shellfish dealer will use to retrieve product from the market when it is determined that the product may not be safe for human consumption as determined by the State Health Director, is adulterated or misbranded.
- (21) ~~"Relaying or transplanting" means the act of removing shellfish from one growing area or shellfish grounds to another area or ground for any purpose.~~
- (22)(24) "Repacking plant" means a shipper, the establishment or place where a shellfish dealer, other than the original shucker-packer, who repacks shucked shellfish into other containers for delivery to the consumer, containers.
- (23)(25) ~~"Reshipper" means a shipper who ships shucked shellfish in original containers, or shellstock, from permitted shellstock dealers to other dealers or to consumers. person that purchases shellfish from a shellfish dealer and sells the product without repacking or relabeling to another shellfish dealer, wholesaler, or retailer.~~
- (26) "Responsible individual" means the individual present at a shellfish dealer that is the supervisor at the time of the inspection. If no individual is the supervisor, then any employee is the responsible individual.
- (24) ~~"Sanitary survey" means the evaluation of factors having a bearing on 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.~~
- (25)(27) "Sanitize" means the a bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619, 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.](#)
- (26)(28) "SELL BY date" means a date conspicuously placed on a container or tag by which a consumer is informed of the latest date the product will remain suitable for sale.
- (27)(29) "Shellfish" means oysters, mussels, scallops scallops, and all varieties of clams. However, clams, whether shucked or in the shell, fresh, frozen, whole, or in part, the term The requirements of Sections .0300 through .0800 of this Subchapter shall not include apply to scallops when if the final product is the shucked adductor muscle only.
- (30) "Shellfish dealer" means a plant to which a Shellfish Dealer Permit and Certificate of Compliance is issued by the Division for the activities of shellstock shipping, shucking or packing, repacking, reshipping, or depuration.
- (28)(31) "Shellstock" means any live molluscan shellfish which that remain in their shells.
- (29)(32) "Shellstock conveyance" means all trucks, vessels, trailers, or other conveyances used to transport shellstock.
- (30) ~~"Shellstock dealer" means a person who buys, sells, stores, or transports or causes to be transported shellstock which was not obtained from a person permitted under these Rules.~~
- (31)(33) "Shellstock plant" means any establishment or place where shellstock are washed, packed, or otherwise prepared for sale. sale by a shellfish dealer.
- (32)(34) "Shucking and packing plant" means any establishment or place where shellfish are shucked and packed for sale. sale by a shellfish dealer.
- (35) "Use" means employ, set, operate, or permit to be operated or employed.
- (33)(36) "Wet storage" means the temporary placement storage by a shellfish dealer of shellstock from approved areas, a growing area in the open status and classified as "approved" or "conditionally approved" as defined in Rule .0901 of this Subchapter, in containers or floats in natural bodies of water water, or in tanks containing natural or synthetic sea water. water at any permitted land-based activity or facility.

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

**15A NCAC 18A .0302 PERMITS**

(a) It shall be unlawful to operate any of the following facilities without first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division of Marine Fisheries:

- (1) depuration facilities;
- (2) repacking plants;
- (3) shellstock plants; and
- (4) shucking and packing plants.

- (b) It shall be unlawful to operate as a ~~shellstock~~ shellfish dealer without first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division.
- (c) It shall be unlawful to operate as a reshipper without first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division if shellfish are purchased and shipped out of state.
- (d) Approval for wet storage of shellstock shall be granted only to persons permitted pursuant to this Rule.
- (e) Application for a permit shall be submitted in writing to the Division. Application forms may be obtained from the Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.
- (f) No permit shall be issued by the Division until an inspection by the Division shows that the facility and equipment comply with all applicable Rules in Sections .0300 through .0800 of this Subchapter. The owner or responsible ~~person~~ individual shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.
- (g) All permits shall be posted in a conspicuous place in the facility.
- (h) All permits shall expire on April 30 of each year and are non-transferrable.
- (i) Plans and specifications for proposed new construction, expansion of operations, or changes in operating processes shall be submitted to the Division for review and approval prior to beginning construction or making a change.
- (j) A permit may be revoked or suspended in accordance with 15A NCAC 030 .0504.

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

**15A NCAC 18A .0305 APPEALS PROCEDURE**

Authority G.S. 130A-230.

**SECTION .0400 - SANITATION OF SHELLFISH - GENERAL OPERATION STANDARDS**

**15A NCAC 18A .0401 APPLICABILITY OF RULES**

The rules in this Section shall apply to the operation of all facilities and persons permitted in Rule .0302 of this Subchapter, including shellfish dealers, shellstock plants, reshippers, shucking and packing plants, repacking plants, depuration facilities, permittees with facilities approved for wet storage, and all other businesses and persons that buy, sell, transport, or ship shellfish. ~~These Rules do~~ rules shall not apply to ~~persons~~ individuals possessing shellfish for personal use.

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

**15A NCAC 18A .0402 GENERAL REQUIREMENTS FOR OPERATION**

- ~~(a) During the operating season the plant shall be used for no purpose other than the handling of shellfish. All unnecessary equipment and materials shall be removed from the plant and the floors kept clear for thorough cleaning.~~
- ~~(b)(a) All floors, walls, shucking benches and stools, shucking blocks, tables, skimmers, blowers, colanders, buckets, or any~~

~~other equipment or utensils used in the processing operation shall be cleaned and sanitized daily, or more frequently as may be necessary during the day's operation to prevent the introduction of undesirable microbiological organisms and filth into the shellfish product. Shellfish dealers shall provide mechanical refrigeration that is capable of maintaining an ambient temperature of 45°F or less and be sized to handle one day's production. The mechanical refrigeration shall include an automatic temperature regulating control and be equipped with an accurate, operating thermometer in the refrigerated storage area. If the sole means of refrigeration is a portable unit, that unit shall be capable of operating utilizing alternating current electrical power that will allow the unit to be plugged into a power supply during transport and at the certified facility.~~

~~(e)(b) Ceilings and windows shall also be kept clean. Refrigerators, refrigeration rooms, and ice boxes shall be washed and sanitized. Food contact surfaces shall be easily cleanable, corrosion-resistant, constructed of non-toxic and food-grade materials, and shall be kept in good repair. Shellfish dealers shall only use food contact surface equipment that conforms to standards found in the guidance document within the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section II: Model Ordinance titled "Shellfish Industry Equipment Construction Guide", which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp> at no cost.~~

~~(c) Food contact surfaces of equipment, utensils, and containers shall be cleaned at the end of each day or operation and shall be sanitized prior to the start-up of each day's activities. Food contact surfaces shall also be cleaned and sanitized following any interruption during which the surfaces have become contaminated.~~

~~(d) Non-food contact surfaces such as equipment, floors, walls, ceilings, and windows shall be kept clean and in good repair.~~

~~(d)(e) Wheelbarrows, measures, baskets, shovels, and other implements used in the handling of shellstock shall not be used for any other purpose and shall be cleaned and stored in the shellstock room when not in prior to use.~~

~~(f) Shellfish dealers shall provide a temperature measuring device accurate to +/- 2°F for use in monitoring product temperatures.~~

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

**15A NCAC 18A .0403 SUPERVISION AND TRAINING**

(a) The ~~owner~~ shellfish dealer shall personally supervise or shall designate ~~an~~ a responsible individual whose principal duty shall be to supervise and be responsible for compliance with the Rules rules of this Subchapter. No unauthorized ~~persons~~ individuals shall be allowed in any processing area of the plant during periods of operation. For the purpose of this Rule, "unauthorized individual" shall mean an individual that is not designated and trained by the shellfish dealer or responsible individual to perform specific processing tasks in the facility.

(b) The shellfish dealer shall ensure that all employees that manufacture, process, pack, or hold food obtain training in the principles of food hygiene and food safety, including the

importance of employee health and personal hygiene, in accordance with 21 CFR 117.4, 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-117/subpart-A/section-117.4> at no cost. Employees shall complete the training within 30 days following the initial hire date. The shellfish dealer or responsible individual shall maintain a record of the completed training.

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

**15A NCAC 18A .0404 CONSTRUCTION**

Shellfish plants shall be ~~adequate in size and construction~~ sized and constructed to permit compliance with the operational provisions of Sections .0300 through .0800 of this Subchapter.

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

**15A NCAC 18A .0405 PLANT LOCATION FACILITY FLOODING**

(a) Shellfish plants shall be located so that they will not be subject to flooding by high tides.

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

(c) Any shellfish that may have been contaminated by flood waters shall be deemed adulterated and shall be destroyed.

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

**15A NCAC 18A .0406 FLOORS**

Floors shall be ~~of~~ concrete or other equally impervious material, constructed so that they ~~may be~~ are easily and thoroughly cleaned cleanable, and shall be sloped so that water drains completely and rapidly. For new construction, the joints between walls and floors shall be rounded to expedite cleaning, completely, and kept in good repair. The junction between floors and walls shall be sealed to render them impervious to water in areas where the floor gets wet and is used to store shellfish, process food, or clean equipment and utensils.

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

**15A NCAC 18A .0407 WALLS AND CEILINGS**

Walls to a height of at least two feet above the floor shall be constructed of smooth concrete or other equally impervious material. The remainder of the walls and ceilings shall be smooth concrete, cement plaster, or other material approved by the Division and shall be painted with a light color washable paint.

(a) Walls and ceilings in areas where shellfish are stored, handled, processed, or packaged or where food handling equipment or packaging materials are stored shall be constructed of smooth, easily cleanable, non-corrosive, impervious material. The walls

and ceilings in these areas shall also be light-colored, such as white in color, so that unclean surfaces can be detected.

(b) Doors and windows shall be tightly fitted and kept in good repair so as to keep pests and weather out of the facility.

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

**15A NCAC 18A .0408 LIGHTING**

(a) Natural or artificial lighting shall be provided in all parts of the plant. ~~Light bulbs, fixtures, or other glass suspended within the plant shall be safety type or otherwise protected to prevent contamination in case of breakage.~~ Lighting intensities shall be a minimum of 25 ~~foot-candles~~ foot-candles on working surfaces in packing and shucking ~~rooms, rooms~~ and a minimum of 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, fixtures, or other glass within the plant shall be shatterproof or shielded to prevent food contamination in case of breakage.

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

**15A NCAC 18A .0409 VENTILATION**

Ventilation shall be provided to ~~eliminate prevent~~ odors and ~~econdensation, condensation~~ from contaminating shellfish, food contact surfaces, or food packaging materials.

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

**15A NCAC 18A .0410 FLY PEST CONTROL**

(a) All ~~outside exterior~~ openings shall be ~~screened, screened~~ or provided with wind ~~curtains curtains~~, or be provided with other fly control methods ~~approved by the Division~~ to prevent the entrance of pests. All screens shall be kept in good repair. All ~~outside exterior~~ doors shall open outward and shall be self-closing.

(b) The use and storage of pesticides and rodenticides shall comply with all applicable ~~state State~~ and federal ~~guidelines, laws~~ and rules.

(c) No pets or other animals shall be allowed in those portions of the facility where shellfish, food handling equipment, or packaging materials are stored, handled, processed, or packaged.

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

**15A NCAC 18A .0411 RODENT AND ANIMAL CONTROL**

*Authority G.S. 130A-230.*

**15A NCAC 18A .0412 PLUMBING AND HAND WASHING FACILITIES**

(a) All plumbing shall be in compliance with applicable plumbing codes.

(b) Hand washing facilities shall be provided with running water at a minimum temperature of 100°F dispensed from a hot and cold combination faucet.

(c) Hand washing facilities shall be provided in or adjacent to each bathroom and in shucking and packing rooms. Hand washing facilities in packing areas shall be located where supervisors can observe employee use.

(d) Hand washing facilities shall be separate from three-compartment or other sinks used for cleaning equipment and utensils.

(e) Soap, single service towels in protected dispensers, and an easily cleanable waste receptacle shall be available and used at hand washing facilities. Other hand drying devices may be used if approved by the Division of Marine Fisheries based upon being equally effective at drying hands without the potential for recontamination.

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

**15A NCAC 18A .0413 WATER SUPPLY**

~~(a) The water supply shall be from a source approved by the Division.~~

~~(b) The water supply used shall be located, constructed, maintained, and operated in accordance with the Commission for Public Health's rules governing water supplies. Copies of 15A NCAC 18A .1700 and 15A NCAC 18C may be obtained from the Division.~~

(a) The water supply used shall be in accordance with 15A NCAC 18A .1720 through .1728, 15A NCAC 18C, or 02 NCAC 09C .0703, which are incorporated by reference, including subsequent amendments.

(b) If the water supply is from a private source, samples for bacteriological analysis shall be collected by the Division of Marine Fisheries prior to use and after the water supply has been repaired or disinfected, 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 shall be prohibited. A backflow or back siphonage of a solid, liquid, or gas containment into the water supply shall be precluded by use of an air gap or backflow prevention device in accordance with applicable plumbing codes.

(d) Hot and cold running water under pressure shall be provided to food preparation, utensil, and hand washing 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.

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

**15A NCAC 18A .0414 TOILET FACILITIES**

~~Separate and convenient toilet facilities shall be provided for each sex employed and shall comply with the N.C. State Building Code, Volume 2, Plumbing. Floors, walls, and ceilings shall be smooth, easily cleanable and kept clean. Fixtures shall be kept~~

~~clean. All toilet wastes and other sewage shall be disposed of in a public sewer system or in the absence of a public sewer system, by an on site sewage disposal system approved by the Department in accordance with G.S. 130A-335.~~

(a) Toilets shall be provided in the plant by the owner or responsible individual and shall be kept clean and in good repair.

(b) Toilet tissue, in a holder, shall be provided by the owner or responsible individual.

(c) Toilet room doors shall not open directly into a processing area and shall be tight-fitting and self-closing.

(d) All toilet wastes and other sewage shall be disposed of in accordance with 15A NCAC 18A .1900 or 15A NCAC 02H .0200, which are incorporated by reference, including subsequent amendments.

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

**15A NCAC 18A .0415 WASTE DISPOSAL PREMISES**

~~Shells, washings, and other wastes shall be disposed of in a sanitary landfill or in a sanitary manner approved by the Division.~~

(a) The premises shall be maintained free from conditions that may constitute an attractant, breeding place, or harborage for pests such as unmowed weeds or grass, uncontained litter or waste, or unused equipment.

(b) To prevent pests and odors, shells and other solid waste shall not be permitted to accumulate on the premises.

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

**15A NCAC 18A .0416 PERSONAL HYGIENE**

(a) All employees shall wash their hands thoroughly with soap and running water before beginning work and again after each ~~interruption~~ interruption or if their hands may have become soiled or contaminated. ~~Signs to this effect shall be posted in conspicuous places in the plant by the operator.~~ Hand washing signs shall be posted by the owner or responsible individual at each hand washing facility in a language understood by employees.

~~(b) All persons handling shucked shellfish shall sanitize their hands before beginning work and again after each interruption.~~

(e)(b) All persons ~~individuals~~ employed or engaged in the ~~handling, shucking, or packing~~ packing, or repacking of shellfish shall wear clean, washable outer clothing. Clean plastic or rubber aprons, overalls, and rubber gloves shall be considered satisfactory.

(c) All individuals employed or engaged in the shucking, packing, or repacking of shellfish shall wear hair restraints and 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.

(d) Employees shall not eat, drink, use electronic cigarettes or vaping products, or use tobacco in any form in the rooms where shellfish are stored, processed, or handled.

(e) ~~All persons~~ An individual known to be a carrier of any disease which that can be transmitted through the handling of shellfish or who have has an infected wound or open lesion on any exposed

portion of ~~their bodies~~ the body shall be prohibited from handling ~~shellfish~~ shellfish or coming into contact with food contact surfaces.

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

**15A NCAC 18A .0417 LOCKERS EMPLOYEES' PERSONAL ARTICLES**

~~A separate room or locker shall be provided for storing employees' street clothing, aprons, gloves, and personal articles. Employees' street clothing, aprons, gloves, food, drink, and personal articles shall be stored in a room or locker separate from any area where shellfish are shucked or packed or any area that is used for the cleaning or storage of utensils.~~

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

**15A NCAC 18A .0418 SUPPLY STORAGE**

~~(a) Storage room shall be provided for storing shipping containers, tags, and other supplies. Shipping containers, boxes, and other supplies shall be stored in a storage room or area. The storage room or area shall be kept clean.~~

~~(b) Pesticides, rodenticides, chemical agents, sanitizers, and other toxic substances shall be stored separate from processing areas or food contact surfaces. Each of the following categories of toxic substances shall be stored separate from one another:~~

- ~~(1) pesticides and rodenticides;~~
- ~~(2) detergents, sanitizers, and cleaning agents; and~~
- ~~(3) caustic acids, polishes, and other chemicals.~~

~~(c) Cleaning compounds, sanitizers, and other toxic substances shall be labeled and used in accordance with the manufacturer's label directions.~~

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

**15A NCAC 18A .0419 HARVEST BOATS VESSELS AND VEHICLES**

~~All boats used in the harvesting and handling of shellstock shall be kept clean and repaired such that the shellstock thereon shall not be subject to adulteration by bilge water, by leakage of water from prohibited areas, or by other means. Decks, holds, or bins used for shellstock on boats shall not be washed with water from prohibited areas. Human wastes shall not be discharged into shellfish waters.~~

~~(a) It shall be unlawful to use vessels or vehicles that are engaged in the commercial harvest, handling, or transport of shellstock in such a manner that allows contact of shellstock with bilge water, standing water, or other sources of contamination in the vessel or vehicle.~~

~~(b) It shall be unlawful to allow dogs or other animals on or inside vessels or vehicles that are engaged in the commercial harvest or transport of shellstock.~~

~~(c) It shall be unlawful to discharge human waste overboard from vessels or vehicles used in the harvesting of shellstock.~~

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

**15A NCAC 18A .0420 TRANSPORTING SHELLSTOCK SHELLFISH**

~~(a) All shellstock shellfish storage areas in trucks, buy boats, buy trucks, vessels, trailers, and other conveyances used for transporting shellstock shellfish shall be enclosed, tightly constructed, painted with a light color washable paint, kept clean, and shall be subject to inspection by the Division. Division of Marine Fisheries.~~

~~(b) Shellstock shall be shipped under temperature and sanitary conditions in accordance with these Rules which will keep them alive and clean and will prevent adulteration or deterioration. All shellstock shall be kept under mechanical refrigeration at a temperature of 45°F (7.1°C) or below. All conveyances used to transport shellstock shall be equipped with an operating thermometer. It shall be unlawful to transport shellstock and in-shell product unless shipped under mechanical refrigeration and the shipping conveyance is pre-chilled and maintained at an ambient temperature of 45°F or below. The storage area of the shipping conveyance shall be equipped with an accurate, operating thermometer.~~

~~(c) Buy boats and buy trucks shall be kept clean with water from a source approved by the Division under Rule .0413 of this Subchapter. Buy boats and buy trucks shall provide storage space for clean shipping containers, identification tags, and records. It shall be unlawful to transport shucked shellfish unless maintained under temperature control of 45°F or below.~~

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

**15A NCAC 18A .0421 DAILY-RECORD RECORDS**

~~(a) All permitted persons shellfish dealers who conduct any business of buying, selling, or shipping shellfish shall keep an accurate, daily record which that shall show the names and addresses of all persons from whom shellfish are received, the address of any shellfish dealer from whom shellfish are received, the location of the source of shellfish, and the names and addresses of all persons to whom shellfish are sold or shipped. shipped with the exception of retail sales. These records shall be recorded and shall be kept on file for a minimum of one year. year for fresh shellfish, and a minimum of two years for frozen shellfish. All records shall be open to inspection by the Division of Marine Fisheries at the dealer facility at any time during business hours.~~

~~(b) All shellfish dealers who receive shellstock from licensed harvesters shall record the following information at the time of receipt:~~

- ~~(1) harvester name;~~
- ~~(2) harvest area;~~
- ~~(3) time of the start of harvest;~~
- ~~(4) quantity and type of shellfish received;~~
- ~~(5) time shellfish were received; and~~
- ~~(6) time shellfish were mechanically refrigerated.~~

~~(c) Each shellfish shipment shipped by a shellfish dealer shall be accompanied by a shipping document that includes:~~

- (1) name, address, and certification number of shipping dealer;
- (2) name and address of major consignee;
- (3) type and quantity of shellfish product;
- (4) date and time of shipment;
- (5) documentation that shipping conveyance is pre-chilled at 45°F or below prior to shipment; and
- (6) temperature of shellstock recorded by shipping dealer at time of shipment.

(d) A dealer receiving a shellfish shipment from another shellfish dealer shall record the temperature of the shipping conveyance and the temperature of the shellfish product received. These records shall be kept on file for a minimum of one year for fresh shellfish, and a minimum of two years for frozen shellfish. All records shall be open to inspection by the Division at the dealer facility at any time during business hours.

(e) Within 72 hours of any purchase or sale of shellfish, each purchase or sale shall be entered into a permanently bound ledger book, computer record, or any other method that permanently records the information and is organized so that it can be reviewed by the Division.

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

**15A NCAC 18A .0422 SHELLSTOCK CLEANING**

No person shall offer for sale any shellstock ~~which~~ that have not been washed free of ~~bottom~~ harvest area sediments and detritus. Water used for shellstock washing shall be obtained from a water source in accordance with Rule .0413 of this Section or from a growing area in the open status and classified as "approved" or "conditionally approved" as defined in Rule .0901 of this Subchapter.

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

**15A NCAC 18A .0423 SALE OF LIVE SHELLSTOCK (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 18A .0424 SHELLFISH RECEIVING**

No ~~person~~ shellfish dealer shall receive or ~~accept~~ accept:

- (1) any shellfish shellstock from:
  - (a) a licensed shellfish harvester unless unless:
    - (i) the container or package bears the harvest tag ~~or label~~ required by these Rules, as required in Rule 15A NCAC 03K .0109 and in accordance with the HACCP plan; and
    - (ii) the shellstock was harvested from a growing area in the open status and classified as "approved" or "conditionally approved" as defined in Rule .0901 of this Subchapter and as indicated on the harvest tag; or

- (b) another shellfish dealer unless the container or package bears the tag as required in Rule .0425 of this Section or, in the case of a bulk shipment, Rule .0426 of this Section; and

- (2) any shellfish from another shellfish dealer unless:

- (a) it is accompanied by the documentation required in Rule .0421(c) of this Section; and
- (b) the shellfish temperature and other critical limits are in compliance with the HACCP plan.

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

**15A NCAC 18A .0426 BULK SHIPMENTS BETWEEN SHELLFISH DEALERS**

(a) For the purpose of this Rule:

- (1) "bulk shipment" shall mean a shipment of a shellstock lot between shellfish dealers.
- (2) "shellstock lot" shall mean a single type of bulk shellstock or containers of shellstock of no more than one day's harvest from a single growing area harvested by one or more harvesters.

(b) ~~Shipment in bulk~~ Bulk shipments shall not be made except ~~where~~ if the shipment is from only one consignor to one ~~consignee~~ consignee and ~~accompanied by the uniform shipping tag.~~ consignee, both of which shall be shellfish dealers.

(c) When a shellstock lot is shipped, if multiple containers are used they shall be on a wrapped pallet, in a tote, in a net bailer, or other container and the unit shall be tagged with a single tag in accordance with Rule .0425 of this Section. The single tag shall also include a statement that "All shellstock containers in this lot have the same harvest date and area of harvest" and shall include the number of individual containers in the unit.

(d) The shellfish dealer shall provide a transaction record that accompanies the bulk shipment that contains the same information required on a dealer's tag in Rule .0425 of this Section and additionally states the name of the consignee, which shall be a shellfish dealer.

(e) Bulk shipments shall be kept above the floor using pallets to prevent the shellstock from becoming contaminated, unless the shipping conveyance has a channeled floor.

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

**15A NCAC 18A .0427 SHELLSTOCK SHELLFISH STORAGE**

Shellstock held in wet or dry storage must be kept so that they will not become adulterated. All shellstock held in dry storage shall be kept under mechanical refrigeration at a temperature of 45°F (7.1°C) or below. All refrigerated shellstock storage areas shall be equipped with an operating thermometer.

(a) It shall be unlawful to fail to keep shellstock and in-shell product under mechanical refrigeration at a temperature of 45°F

or below unless otherwise required by proclamation issued under the authority of 15A NCAC 03K .0110 or otherwise specified in the HACCP plan.

(b) Refrigerated storage areas shall be equipped with an accurate, operating thermometer.

(c) It shall be unlawful to fail to keep shucked shellfish under temperature control at a temperature of 45°F or below.

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

**15A NCAC 18A .0428 SAMPLING AND TESTING**

Samples of shellfish may be taken and bacteriologically examined for any public health reason under the authority of the Marine Fisheries Commission by agents of the Division of Marine Fisheries at any time or place. This may include bacteriological examination or analysis for poisonous or deleterious substances as listed in the latest approved edition of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section IV: Guidance Documents, Chapter II: Growing Areas; Action Levels, Tolerances and Guidance Levels for Poisonous or Deleterious Substances in Seafood, which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost. Samples of shellfish shall be furnished, upon request, request of the Division, by operators of plants, trucks, carriers, stores, restaurants, and other places where shellfish are sold.

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

**15A NCAC 18A .0429 STOPSALE EMBARGO OR DISPOSAL OF SHELLFISH**

(a) When it has been determined by the Division of Marine Fisheries that shellfish have not been grown, harvested, stored, treated, transported, handled, shucked, packed, or offered for sale in compliance with ~~15A NCAC 18A Sections .0300 through .0900~~ of this Subchapter, those shellfish shall may be deemed adulterated, adulterated in accordance with Rule .0438 of this Section, except as required in Rules .0405 and .0430 of this Section.

(b) Shellfish or shellfish products processed or prepared for sale to the public determined to be adulterated or misbranded shall be subject to stopsale or disposal by the Division. The Division may temporarily or permanently issue an order to stop sale or condemn, destroy, or otherwise dispose of all shellfish or shellfish containers found to be adulterated or misbranded, embargo or disposal by the Division in accordance with G.S. 113-221.4. The authority of marine fisheries inspectors to seize shellfish or shellfish products pursuant to G.S. 113-137 shall not be affected by this Rule.

(c) All shellfish shall be disposed of in a manner prescribed by the Division or by a court of appropriate jurisdiction.

(c) If voluntary disposal of adulterated or misbranded shellfish or shellfish products is alternatively chosen by the shellfish dealer, responsible individual, or other person or facility specified in Rule

.0401 of this Section, the product disposal shall be observed by a Division employee.

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

**15A NCAC 18A .0430 BACTERIOLOGICAL AND CONTAMINATION STANDARDS**

Shellfish shucked or in the shell and intended or offered for sale in North Carolina that exceed an Escherichia coli Most Probable Number of 230 per 100 grams of sample or a total bacteria count of more than 500,000 per gram or contain pathogenic organisms in sufficient numbers to be hazardous to the public health shall be deemed adulterated by the Division. Shellfish contaminated by any other substance which renders it unsafe for human consumption shall be deemed adulterated by the Division. shall be deemed adulterated by the Division of Marine Fisheries if:

- (1) the concentration of Escherichia coli exceeds a Most Probable Number (MPN), as defined in Rule .0901 of this Subchapter, of 230 per 100 grams of sample;
- (2) the total bacteria count, as determined by a standard plate count, exceeds 500,000 colony-forming units, as defined in Rule .0901 of this Subchapter; or
- (3) the shellfish contain any contaminant that renders it unsafe for human consumption in accordance with the latest approved edition of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section IV: Guidance Documents, Chapter II: Growing Areas; Action Levels, Tolerances and Guidance Levels for Poisonous or Deleterious Substances in Seafood, which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost.

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

**15A NCAC 18A .0432 PUBLIC DISPLAY OF CONSUMER ADVISORY**

All facilities and persons shellfish dealers permitted in by Rule .0302 of this Subchapter and all other businesses and persons that sell or serve raw shellfish shall post one of the following consumer advisories or an equivalent statement in a conspicuous place where it may be readily observed by the public the following consumer advisory: in the area where raw shellfish is sold or served:

- (1) "Consumer Advisory  
Eating raw or undercooked oysters, clams, whole scallops, or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach

or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat shellfish and become sick, see a doctor ~~immediately.~~ immediately.; or

- (2) "Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."

Nothing in this Rule is intended to supersede regulation of restaurants or other establishments subject to 15A NCAC 18A .2600 or the U.S. Food Code.

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

**15A NCAC 18A .0433 HAZARD ANALYSIS**

Each shellfish dealer shall conduct a hazard analysis to determine the food safety hazards that are reasonably likely to occur for each kind of shellfish product processed by that dealer and to identify the preventative measures that the dealer can apply to control those hazards. For the purpose of this Rule, "reasonably likely to occur" shall mean a food safety hazard for which a processor would establish controls because experience, illness data, scientific reports, or other information provide a basis to conclude that there is a reasonable possibility that it will occur in the absence of those controls, as defined in 21 CFR 123.6, 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-123>, at no cost.

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

**15A NCAC 18A .0434 HACCP PLAN**

(a) Each shellfish dealer shall have and implement a written HACCP Plan. plan specific to each kind of shellfish product processed. The owner or authorized designee individual shall sign the plan when implemented and after any modification. implemented, which shall signify that the plan has been accepted for implementation by the dealer. The HACCP plan shall also be signed by the owner or authorized individual after any modification or verification of the plan as required by this Rule. The plan shall be reviewed and updated, if necessary, at least annually. The plan shall, at a minimum:

- (1) ~~List~~ list the food safety hazards that are reasonably likely to occur;
- (2) ~~List~~ list the critical control points for each of the food safety hazards;
- (3) ~~List~~ list the critical limits that must be met for each of the critical control points;
- (4) ~~List~~ 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~~ list any corrective action plans to be followed in response to deviations from critical limits at critical control points;

- (6) ~~Provide~~ provide a record keeping system that documents critical control point monitoring; and
- (7) ~~List~~ list the verification procedures, and frequency thereof, that the dealer will use.

For the purpose of this Rule, "reasonably likely to occur" shall mean a food safety hazard for which a processor would establish controls because experience, illness data, scientific reports, or other information provide a basis to conclude that there is a reasonable possibility that it will occur in the absence of those controls, as defined in 21 CFR 123.6, 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-123>, at no cost.

(b) With the exception of a shellfish dealer that has not been permitted for interstate commerce, the following functions shall be performed by an individual who has successfully completed training in the application of HACCP principles to shellfish processing:

- (1) developing a HACCP plan;
- (2) reassessing and modifying the HACCP plan; and
- (3) performing the record review specified in Paragraph (d) of this Rule.

(c) If a deviation from a critical limit occurs, the shellfish dealer shall take corrective action in accordance with 21 CFR 123.7, 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-123/subpart-A/section-123.7#p-123.7\(b\)](https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123/subpart-A/section-123.7#p-123.7(b)), at no cost.

(d) At least annually, each shellfish dealer shall verify that the HACCP plan is being implemented to control food safety hazards. Verification procedures shall include:

- (1) a reassessment of the plan when a change occurs that could affect the hazard analysis, and a review of any consumer complaints that have been received; and
- (2) a review, including signing and dating by the trained individual or responsible individual, of the records that document the monitoring of critical control points, the taking of corrective actions, and the calibrating of any process-monitoring instruments. This review shall occur within one week of the day that the records are made.

(e) All records required by this Rule shall be retained at the dealer facility for at least one year after the date they were prepared in the case of refrigerated products, and at least two years after the date they were prepared in the case of frozen products and shall include:

- (1) the name and location of the dealer;
- (2) the date and time of the activity that the record reflects;
- (3) the signature or initials of the individual performing the operation; and
- (4) the identity of the product and the production code, if any.



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

**15A NCAC 18A .0435 SANITATION MONITORING REQUIREMENTS**

(a) Each shellfish dealer shall ~~monitor, at a minimum,~~ monitor the following sanitation ~~items:~~ items when the plant is operational:

- (1) ~~Safety~~ safety of water;
- (2) ~~Condition~~ condition and cleanliness of food contact surfaces;
- (3) ~~Prevention~~ prevention of ~~cross-contamination;~~ cross-contamination;
- (4) ~~Maintenance~~ maintenance of hand ~~sanitizing~~ sanitizing, and toilet facilities;
- (5) ~~Protection~~ protection of shellfish, shellfish packaging ~~materials~~ materials, and food contact surfaces from ~~adulteration;~~ becoming adulterated;
- (6) ~~Proper~~ proper labeling, ~~storage~~ storage, and use of toxic compounds;
- (7) ~~Control~~ control of employees with adverse health conditions; and
- (8) ~~Exclusion~~ exclusion of pests from the facility.

(b) Monitoring records of these sanitation items shall be recorded at least daily and shall include the date and time of the activity that the record reflects, and the signature or initials of the individual performing the operation. The records shall be reviewed and signed by the owner or designated individual within one week of recording.

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

**15A NCAC 18A .0436 MONITORING RECORDS**

Authority G.S. 130A-230.

**15A NCAC 18A .0437 IN-SHELL PRODUCT**

(a) In-shell product shall be kept under mechanical refrigeration at a temperature of 45°F or below.

(b) In-shell product shall be tagged or labeled to contain the following indelible and legible information listed in sequential order:

- (1) the shellfish dealer's name, address, and certification number assigned by the shellfish control agency in the state of the shellfish dealer's location;
- (2) the original shipper's certification number, except if the in-shell product is depurated, the original shipper's certification number is not required;
- (3) a "SELL BY DATE" that indicates the shelf-life or the words "BEST IF USED BY" followed by a date when the product would be expected to reach the end of its shelf-life. The date shall include month, day, and year;
- (4) if the in-shell product is depurated, the depuration cycle number or lot number;

(5) the most precise identification of the harvest location as is practicable, including the initials of the state of harvest, and the state or local shellfish control authority's designation of the growing area by indexing, administrative, or geographic designation. If the authority in another state has not indexed growing areas, then a geographical or administrative designation shall be used (e.g., Long Bay, shellfish lease or franchise number, or lot number);

(6) the type and quantity of in-shell product; and  
(7) the following statement in bold type on each tag or label: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS." "RETAILERS: DATE WHEN LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE) \_\_\_\_\_." OR "THIS LABEL IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RELABELED AND THEREAFTER KEPT ON FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS." "RETAILERS: DATE WHEN LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE) \_\_\_\_\_."

(c) In-shell product shall include one of the following consumer advisories, or equivalent statement:

- (1) "Consumer Advisory Eating raw or undercooked oysters, clams, whole scallops, or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat shellfish and become sick, see a doctor immediately."
- (2) "Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."

(d) The statement "Keep Refrigerated" or an equivalent statement shall be included on the tag or label.

(e) If in-shell product for retail sale is packed in individual containers of five pounds or less and shipped in a master container that includes a tag in compliance with Paragraph (b) of this Rule, the individual containers of five pounds or less shall not require tags as specified in Paragraph (b) of this Rule if a lot code number is included on each container that allows traceback of the in-shell product to the master container. A consumer advisory shall be included on each retail package in accordance with Paragraph (c) of this Rule.

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

**15A NCAC 18A .0438 INSPECTIONS AND COMPLIANCE SCHEDULE**

(a) If a critical deficiency is detected during an inspection of a shellfish dealer by a Division of Marine Fisheries inspector:

- (1) the deficiency shall be corrected by the shellfish dealer during that inspection; or
- (2) the shellfish dealer shall immediately cease production affected by the deficiency.

If the shellfish dealer fails to correct the deficiency during the inspection, the Division shall initiate the suspension or revocation process for the Shellfish Dealer Permit and Certificate of Compliance as set forth in 15A NCAC 03O .0504. For the purpose of this Rule, "critical deficiency" shall mean a condition or practice that results in the production of a shellfish product that is adulterated or presents a threat to the health or safety of the consumer.

(b) Shellfish products affected by a critical deficiency shall be controlled to prevent adulterated product from reaching consumers. The Division shall:

- (1) embargo or destroy adulterated shellfish in accordance with Rule .0429 of this Section;
- (2) initiate a recall of adulterated shellfish; and
- (3) notify enforcement officials for the United States Food and Drug Administration, as well as shellfish control authorities in states that are known to have received adulterated shellfish.

(c) If a key or other deficiency is detected during an inspection of a shellfish dealer by a Division inspector, a compliance schedule shall be issued by the Division inspector that provides a time frame by which the deficiency shall be corrected by the shellfish dealer. For the purpose of this Rule, "key or other deficiency" shall mean a deficiency other than a critical deficiency.

(d) If a shellfish dealer fails to meet the compliance schedule, the Division shall proceed with one of the following options:

- (1) revise the existing compliance schedule;
- (2) initiate the suspension or revocation process for the Shellfish Dealer Permit and Certificate of Compliance as set forth in 15A NCAC 03O .0504; or
- (3) seek other administrative remedies.

(e) Nothing in this Rule shall be construed to limit or make null any option for remedy in accordance with Rule 15A NCAC 03O .0504 or other available administrative remedy.

Authority G.S. 113-134; 113-182; 113-221.2; 113-221.4; 143B-289.52.

**15A NCAC 18A .0439 RECALL PROCEDURE**

Each shellfish dealer shall adopt and adhere to a written procedure for conducting recalls of adulterated or misbranded shellfish products. This written procedure shall be based on, and complementary to, the FDA Enforcement Policy on Recalls, CFR Title 21, Chapter 1, Subchapter A., Part 7-Enforcement Policy. This procedure shall include shellfish dealers notifying the Division of Marine Fisheries and any consignee receiving affected product when a recall begins, as well as removal or correction of the affected product.

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

**SECTION .0500 - OPERATION OF SHELLSTOCK PLANTS AND RESHIPERS**

**15A NCAC 18A .0501 GENERAL REQUIREMENTS FOR SHELLSTOCK PLANTS AND RESHIPERS**

The rules in Section .0400 and the rules of this Section shall apply for the operation of shellstock plants and reshippers.

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

**15A NCAC 18A .0502 GRADING SHELLSTOCK AND COMMINGLING**

(a) For the purpose of this Rule:

- (1) "commingling" shall mean the act of combining different lots of shellfish harvested on different days in the same growing area or combining different lots of shellstock harvested from different growing areas.
- (2) "lot" shall mean clams from one day's harvest, from a single growing area, harvested by one or more harvesters.

~~(a)~~(b) The grading of shellstock by a shellfish dealer shall be conducted only in a permitted shellstock plant.

~~(b)~~(c) A separate grading room or area separate from other processing operations shall be required for the grading of shellstock.

(d) The grader used to grade shellstock, and any other accessories or tables used in the grading operation, shall be constructed to be easily cleanable and shall be kept in good repair.

(e) Shellfish dealers shall not commingle any shellfish, except for clams with prior approval of a commingling plan by the Division of Marine Fisheries. A commingling plan shall be approved by the Division based on limiting the dates of harvest and growing areas and maintaining lot identity so that each individual lot of shellfish can be traced back to its harvest source.

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

**15A NCAC 18A .0503 GRADER**

Authority G.S. 130A-230.

**15A NCAC 18A .0504 RESHIPERS**

~~(a) Reshippers shall meet all applicable requirements for shellstock plants. When shucked shellfish are reshipped, they shall be obtained from a permitted shipper. The shucked shellfish shall be received in approved shipping containers at a temperature of 40°F (4°C) or below. The temperature of the shellfish shall not exceed 40°F (4°C) during the holding and shipping periods.~~

~~(b) Reshippers shall keep adequate and accurate records indicating the source from which shellfish were purchased, the date purchased, the name of the waters from which the shellfish were harvested, and the names and addresses of persons to whom the shellfish were sold for a period of one year.~~

Reshippers shall only purchase shellfish from other shellfish dealers and sell the product to other shellfish dealers, wholesalers, or retailers without repacking or relabeling.

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

**SECTION .0600 - OPERATION OF SHELLFISH SHUCKING AND PACKING PLANTS AND REPACKING PLANTS**

**15A NCAC 18A .0601 ~~GENERAL REQUIREMENTS FOR SHUCKING AND PACKING PLANTS AND REPACKING PLANTS~~**

The rules in Section .0400 and the rules of this Section shall apply for the operation of shucking and packing plants and repacking plants.

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

**15A NCAC 18A .0602 SEPARATION OF OPERATIONS**

A shucking and packing plant shall provide separate ~~rooms~~ areas for shellstock storage, shucking, heat shock, and general storage. A ~~separate~~ packing area with delivery shelf that is separate from other processing areas and with a delivery window or shelf as set forth in Rule .0605 of this Section shall be required.

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

**15A NCAC 18A .0603 HOT WATER SYSTEM**

An automatically regulated hot water system shall be provided ~~which that~~ has sufficient capacity to furnish water at a temperature of at least 130°F (54°C) during all hours of shucking and packing plant operation.

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

**15A NCAC 18A .0604 HANDWASHING FACILITIES**

*Authority G.S. 130A-230.*

**15A NCAC 18A .0605 DELIVERY WINDOW OR SHELF**

(a) A delivery window or a non-corrosive shelf shall be installed in the partition between the shucking ~~room~~ area and packing area. No shuckers or unauthorized personnel shall be allowed in the packing room or area. The If a delivery window is used it shall be equipped with a shelf completely covered with smooth, non-corrosive metal or other impervious material ~~approved by the Division for such purpose~~, and shall be sloped to drain towards the shucking ~~room~~ area.

(b) No shuckers or individuals that are not designated as packers by the owner or responsible individual shall be allowed in the packing area.

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

**15A NCAC 18A .0606 NON-FOOD CONTACT SURFACES**

All non-food contact surfaces of equipment such as cabinets and shelving shall be ~~non-absorbent~~, impervious and constructed to be easily ~~cleaned~~; cleanable.

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

**15A NCAC 18A .0607 SHUCKING BENCHES**

Shucking benches, tables, and contiguous walls to a height of at least two feet above the bench top, shall be of smooth concrete, non-corrosive metal, or other durable ~~non-absorbent~~ impervious material, free from cracks and pits, and ~~so~~ constructed so that drainage is complete ~~and rapid~~ and is directed away from the stored shellfish. Shucking blocks shall be solid, one-piece construction, removable, and easily cleanable. The stands, ~~stalls~~ stalls, and stools shall be of smooth material and shall be painted with a ~~light colored~~ light-colored washable ~~paint~~; paint, such as white in color, so that unclean surfaces can be detected.

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

**15A NCAC 18A .0608 EQUIPMENT CONSTRUCTION**

(a) All pails, skimmers, measures, tanks, tubs, blowers, paddles, and other equipment, ~~which that~~ come into contact with shucked shellfish or with ice used for direct cooling of shellfish, shall be made of smooth, non-corrosive, impervious materials and constructed so as to be easily cleanable and shall be kept clean and in good repair.

(b) All equipment, including external and internal blower lines and hoses below a point two inches above the overflow level of the tank and blower drain valves, shall be constructed as to be easily ~~cleanable~~; cleanable and there shall be no V-type threads in the food-product zone of the blower.

(c) The blower and skimmer drain shall not be directly connected with the sewer. There shall be an air ~~gap, approved by the Division~~; gap between the blower and skimmer outlets. A floor drain shall be provided.

(d) Air-pump intakes shall be located in a place protected from dirt and other contamination, and shall be equipped with filters.

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

**15A NCAC 18A .0609 SANITIZING EQUIPMENT**

Washing and sanitizing facilities, including a three-compartment wash sink of adequate size to wash the largest utensils used in the ~~plant~~ shucking and packing plant, shall be provided in a section of the plant ~~convenient to~~ so that it can service the work areas. The sink shall be kept in good repair. Permanent hot and cold water connections, with combination supply faucets, shall be installed so that all vats may receive hot and cold water. Either steam, hot water, or a sanitizing solution shall be used to sanitize utensils and equipment.

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

**15A NCAC 18A .0610 EQUIPMENT SANITATION**

All utensils and tools, such as opening knives, shucking pails, measures, skimmers, colanders, tanks, tubs, paddles, and containers ~~which that~~ come in contact with the shellfish shall be thoroughly cleaned and then ~~sanitized~~; sanitized by:

- (1) ~~by~~ steam in a steam chamber or box equipped with an indicating thermometer located in the coldest zone, by exposure to a temperature of 170°F (~~76°C~~) for at least 15 minutes, or to a temperature of 200°F (~~93°C~~) for at least five minutes;
- (2) ~~by~~ immersion in hot water at a temperature of 170°F (~~76°C~~) for at least two ~~minutes~~ ~~(a thermometer is required)~~; minutes;
- (3) ~~by~~ immersion for at least one minute in, or exposure for at least one minute ~~to~~, to a constant flow ~~of of~~, a solution containing not less than 100 parts per million chlorine residual. Utensils and equipment ~~which have to that must~~ be washed in place ~~will shall~~ require washing, rinsing, and sanitizing; or
- (4) ~~by a bactericidal treatment method which will provide equivalent sanitization to that provided by the methods authorized in (1), (2), or (3), as determined by the Division. If the bactericidal immersion or spray treatment is employed, testing kits shall be used to ensure that minimum solution strengths are maintained throughout the cleaning process. other equivalent products and procedures approved in 21 CFR 178.1010, 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-1/subchapter-B/part-178/subpart-B/section-178.1010, at no cost.~~

A testing method or equipment shall be available and used to test chemical sanitizers to ensure minimum prescribed strengths.

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

**15A NCAC 18A .0611 EQUIPMENT STORAGE**

Equipment and utensils ~~which that~~ have been cleaned and ~~given bactericidal treatment~~ sanitized shall be stored in a manner to protect against prevent contamination.

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

**15A NCAC 18A .0612 ICE**

(a) Ice shall be obtained from a water supply approved by the Division of Marine Fisheries pursuant to Rule .0413 of this Subchapter and shall be stored and handled in a sanitary manner. 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.

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

**15A NCAC 18A .0613 SHELLFISH SHUCKING**

(a) Shellfish shall be shucked in a manner ~~that they are not subject to adulteration. to prevent contamination.~~ Shellstock shall be ~~reasonably~~ free of ~~mud when excessive sediment prior to being~~ shucked. Only live shellstock shall be shucked.

(b) Shucking of shellstock shall only be permitted on ~~approved~~ shucking tables or ~~benches~~; benches in accordance with Rules .0402 and .0607 of this Subchapter. Floors ~~used by shuckers~~ shall not be used for the storage of shellfish or the retention of shucking pails or other food contact containers.

(c) When shellstock are stored in the shucking room, protection shall be provided for the storage space to prevent ~~possible adulteration~~ the shellstock from becoming adulterated from wash water wastes and from the feet of the employees.

(d) Shucking pails shall be placed so as to exclude the drippings from shells and from the hands of shuckers. The pails shall be rinsed with running tap water before each filling.

(e) ~~Shucked shellfish, when washed, shellfish~~ shall be ~~thoroughly~~ washed on a skimmer or a container approved by the Division of Marine Fisheries with cold running water from a source ~~approved by the Division under in accordance with Rule .0413 of this Subchapter.~~

(f) The return of excess shucked shellfish from the packing room shall not be allowed. All shucked shellfish shall be packed before ~~leaving it leaves~~ the packing room.

(g) If blowers are used for cleansing, the total time that shellfish are in contact with water after leaving the shucker, including the time of washing, rinsing, and any other contact with ~~water water~~, shall not be more than 30 minutes. In computing the time of contact with water, the length of time that shellfish are in contact with water that is ~~agitated, agitated~~ shall be calculated at twice ~~its~~ the actual length. length of time that the shellfish are in contact with the water. Before packing into containers for shipment or delivery for consumption, the shellfish shall be ~~drained and packed drained.~~ Shellfish shall be packed without any added substance.

(h) ~~Pre cooling of shucked shellfish shall be done in equipment which meets National Sanitation Foundation standards or the equivalent.~~

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

**15A NCAC 18A .0614 CONTAINERS**

(a) Containers used for transporting shucked shellfish shall be made from ~~food safe materials approved by the United States Food and Drug Administration.~~ food-safe materials. These containers shall not be reused for packing shellfish.

(b) ~~Shucked shellfish shall be packed and shipped in containers, sealed so that tampering can be detected. Each individual container shall have permanently recorded container, so as to be conspicuous, the shucker/packer's, repacker's, or distributor's~~

~~name and address, and the shucker/packer's or repacker's certification number. The shucker/packer's or repacker's name and address and certification number shall be permanently and visibly recorded on the label of each container used for shucked shellfish.~~

~~(c) Any container of shucked shellfish which that has a capacity of 64 fluid ounces or more shall be dated as of the date shucked include the words "DATE SHUCKED" followed by the date shucked permanently recorded on both the lid and sidewall or bottom, bottom of the container. The date shall consist of either the abbreviation for the month and number of the day of the month or the Julian format (YDDD), the last digit of the four-digit year and the three-digit number corresponding to the day of the year.~~

~~(d) Any container of shucked shellfish which that has a capacity of less than 64 fluid ounces shall indicate a SELL BY date, include the words "SELL BY" or "BEST IF USED BY" followed by a date when the product will reach the end of its projected shelf life. The date shall consist of the abbreviation for the month and number of the day of the month.~~

~~(e) For fresh frozen shellfish, the year shall be added to the date for non-Julian format. If fresh frozen, the container shall be labeled as frozen in equal size type immediately adjacent to the type of shellfish. If a frozen container of shucked shellfish is thawed and repacked, the container shall be labeled as previously frozen.~~

~~(f) Each container of shucked shellfish shall include a consumer advisory. The following statement, or an equivalent statement, shall be included on all containers: "Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."~~

~~(g) No person shall use containers bearing a certification number other than the number assigned to him, him or her.~~

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

**15A NCAC 18A .0615 SHELLFISH COOLING**

~~Shucked shellfish shall be cooled to an internal temperature of 45°F (7°C) or less within two hours after delivery to the packing room. Storage temperatures shall be 40°F (4°C) or below. No ice or other foreign substance shall be allowed to come into contact with the shellfish after processing has been completed.~~

~~(a) For shellstock that has not been refrigerated prior to processing, shucked meats and in-shell product shall be chilled to an internal temperature of 45°F or less within three hours of shucking or processing.~~

~~(b) For shellstock that has been refrigerated prior to processing, shucked meats and in-shell product shall be chilled to an internal temperature of 45°F or less within four hours after removal from refrigeration.~~

~~(c) If heat shock is used, once shellstock is shucked, the shucked shellfish meats shall be cooled to an internal temperature of 45°F or less within two hours from the time of heat shock.~~

~~(d) Shucked and packed shellfish shall be stored in covered containers at an ambient temperature of 45°F or less or covered in ice.~~

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

**15A NCAC 18A .0616 SHELLFISH FREEZING**

~~(a) If shellfish are to be frozen, they shall be frozen within three days of shucking and packing and the shucked date shall be preceded by the letter (F), packing. Containers of frozen shellfish shall be labeled in accordance with Rule .0614 of this Section.~~

~~(b) A temperature of 0°F (-18°C) 0°F or less shall be maintained in the frozen storage rooms.~~

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

**15A NCAC 18A .0617 SHIPPING**

*Authority G.S. 130A-230.*

**15A NCAC 18A .0618 HEAT SHOCK METHOD OF PREPARATION OF SHELLFISH**

~~(a) Facilities. If a shucking and packing plant uses the heat shock process, it shall be done in a separate room adjacent to the shellstock storage room and the shucking room.~~

~~(b) Tank construction. The heat shock tank shall be constructed of smooth, non-corrosive metal, designed to drain quickly and completely and to be easily and thoroughly cleaned, cleanable.~~

~~(c) Booster heaters. All heat shock tanks shall be equipped with booster heaters that are thermostatically controlled.~~

~~(d) Shellstock washing. All shellstock subjected to the heat shock process shall be thoroughly washed with flowing potable water immediately prior to the heat shock operation.~~

~~(e) Water temperature. During the heat shock process the water shall be maintained at not less than 140°F (60°C) or more than 150°F (65°C), 150°F. An accurate thermometer shall be available and used to determine the temperature during the heat shock process. The heat shock tanks shall be drained and cleaned at the end of each day's operation.~~

~~(f) Alternatives to heat shock method. Nothing in these Rules this Rule shall be construed to prohibit any other process which that has been found by the Division of Marine Fisheries to be equally effective.~~

~~(g) Water requirements. At least eight gallons of heat shock water shall be maintained in the tank for each one-half one-half bushel of shellstock being treated. All water used in the heat shock process shall be from a source approved by the Division under in accordance with Rule .0413 of this Subchapter.~~

~~(h) Cooling. Immediately after the heat shock process, all treated shellstock shall be subjected to a cool-down with flowing potable tap water. All heat-shocked heat-shocked shellstock shall be handled in a manner to prevent adulteration of the product, the product from becoming adulterated. Shellfish which that have been subjected to the heat shock process shall be cooled to an internal temperature of 45°F (7°C) or below within two hours after this process and shall be placed in storage at 40°F (4°C) 45°F or below.~~

~~(i) Cleaning. At the close of each day's operation, the heat shock tank shall be completely emptied of all water, mud, and detritus, and thoroughly cleaned and then rinsed with flowing potable water.~~

- (j) ~~Sanitizing~~. All heat shock tanks shall be sanitized immediately before starting each day's operation.
- (k) The procedure for the heat shock process shall be posted in a location that can be viewed by employees to help ensure the correct procedure can be followed.

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

**15A NCAC 18A .0619 REPACKING OF SHELLFISH**

- (a) If repacking is practiced, it shall be ~~done strictly conducted~~ in accordance with all the requirements ~~stipulated~~ for shucking and packing plants in the rules of this Section except those for requirements related to shucking.
- (b) The shucked shellfish to be repacked shall be received at the repacking plant ~~in approved shipping containers~~ at a temperature of ~~32° - 40°F (0° - 4°C)~~ 45°F or less.
- (c) Shellfish shall not be repacked more than one time.
- (d) The temperature of the shellfish shall not exceed an internal temperature of 45°F (7°C) for more than two hours during the repacking process.
- (e) ~~Containers with a capacity of 64 fluid ounces or less in which shucked shellfish are repacked shall indicate a SELL BY date preceded by the letter R. Containers with a capacity above 64 fluid ounces in which shucked shellfish are repacked shall be dated to show the original shucking date and repacking date, which will be preceded by the letter (R).~~ Containers of repacked shellfish shall be repacked and labeled in accordance with Rule .0614 of this Section, except that the original date of shucking shall be added to the new repacked container or the original date of shucking shall be used in establishing the "SELL BY" or "BEST IF USED BY" date.
- (f) Repackers shall keep ~~accurate~~ records indicating the source from which shellfish were purchased, the date packed, the date of purchase, ~~the area within the state or territory from which the shellfish were harvested,~~ and the names and addresses of ~~persons shellfish dealers~~ to whom ~~the~~ shellfish were sold.

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

**15A NCAC 18A .0620 SHELLFISH THAWING AND REPACKING**

- (a) Frozen shellfish shall be thawed ~~under temperatures not to exceed 45° F (7° C)~~ at a temperature of 45°F or less.
- (b) Shellfish held for thawing shall be separated from other shellfish.
- (c) Thawed shellfish shall not exceed ~~45° F (7° C)~~ 45°F for more than two hours during the repacking process.
- (d) Containers of repacked, thawed shellfish shall be labeled as required in Rule .0619 of this Section and shall also be labeled as "PREVIOUSLY FROZEN", or equivalent.
- (e) Thawed ~~shellfish, which shellfish that~~ remain in original ~~containers, containers~~ shall be labeled as required in Rule .0614 of this Section and shall also be labeled as "PREVIOUSLY FROZEN", or equivalent.

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

**15A NCAC 18A .0621 RECALL PROCEDURE**

Authority G.S. 130A-230.

**SECTION .0700 - OPERATION OF DEPURATION (MECHANICAL PURIFICATION) FACILITIES**

**15A NCAC 18A .0701 GENERAL REQUIREMENTS FOR DEPURATION**

- (a) ~~The Rules in Section .0400 shall apply for the operation of depuration facilities. In addition to and to the extent not inconsistent with other applicable provisions of North Carolina Marine Fisheries Commission rules, requirements for depuration shall be in accordance with the 2019 Revision of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish chapter titled "Depuration", which is incorporated by reference, not including subsequent amendments and editions. A copy of the reference material is available online at:~~ <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost.
- (b) 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).
- (c) If there is an immediate or ongoing critical need for a method for the analysis of depuration process water and shellfish that are used to evaluate the effectiveness of the depuration process 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.

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

**15A NCAC 18A .0702 FACILITY SUPERVISION  
15A NCAC 18A .0703 FACILITY DESIGN AND SANITATION**

Authority G.S. 130A-230.

**15A NCAC 18A .0704 LABORATORY PROCEDURES**

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

15A NCAC 18A .0705 FACILITY OPERATIONS  
 15A NCAC 18A .0706 SHELLFISH SAMPLING PROCEDURES  
 15A NCAC 18A .0707 DEPURATION PROCESS  
 WATER CONTROL - SAMPLING PROCEDURES  
 15A NCAC 18A .0708 DEPURATION TREATMENT  
 PROCESS WATER - STANDARDS  
 15A NCAC 18A .0709 DEPURATION - SHELLFISH  
 MEAT STANDARDS  
 15A NCAC 18A .0710 ULTRAVIOLET UNIT  
 15A NCAC 18A .0711 SHELLSTOCK STORAGE  
 15A NCAC 18A .0712 DEPURATION - TAGGING AND  
 RELEASE OF SHELLFISH  
 15A NCAC 18A .0713 DEPURATION - RECORDS

*Authority G.S. 130A-230.*

**SECTION .0800 - WET STORAGE OF SHELLSTOCK**

**15A NCAC 18A .0801 GENERAL REQUIREMENTS FOR WET STORAGE OF SHELLSTOCK**

(a) The rules in Section .0400 shall apply for wet storage of shellstock. In addition to and to the extent not inconsistent with other applicable provisions of North Carolina Marine Fisheries Commission Rules, requirements for wet storage shall be in accordance with the 2019 Revision of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish (hereinafter referred to as "Model Ordinance") chapter titled "Wet Storage in Approved and Conditionally Approved Growing Areas", which is incorporated by reference except as provided in Paragraph (b) of this Rule, not including subsequent amendments and editions. A copy of the reference material is available online at: <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost.

(b) Amendments and exceptions to the Model Ordinance chapter titled "Wet Storage in Approved and Conditionally Approved Growing Areas" incorporated by reference include:

- (1) Section @.01, .04, C(1)(a) is amended to read: "Except for a water source in accordance with Rule .0413 of this Subchapter, the quality of the surface source water prior to treatment shall meet, at a minimum, the bacteriological standards for the conditionally approved classification in the open status. Water classified as prohibited or restricted shall not be used as source water."
- (2) the following sections are not incorporated by reference and shall not apply: Sections @.01, .04, C(2)(a)(ii), @.01, .04, C(2)(b), @.01, .04, C(2)(c), and @.01, .04, C(2)(d).

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

15A NCAC 18A .0802 PLANT DESIGN: SANITATION:  
 AND WET STORAGE  
 15A NCAC 18A .0803 WET STORAGE WATER  
 15A NCAC 18A .0804 SHELLSTOCK CLEANING  
 15A NCAC 18A .0805 WET STORAGE TANKS  
 15A NCAC 18A .0806 SHELLSTOCK CONTAINERS

*Authority G.S. 130A-230.*

**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 90<sup>th</sup> 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 90<sup>th</sup> 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.

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

**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)~~(b) Depuration of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and 15A NCAC 18A .0300 and .0700.
- ~~(d)~~(c) 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 90<sup>th</sup> percentile of 260 MPN per 100 milliliters for a five-tube decimal dilution test; or
  - (4) an estimated 90<sup>th</sup> percentile of 163 CFU per 100 milliliters for a membrane filter membrane-Thermotolerant Escherichia coli (mTEC) test.

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

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**Roy Cooper**  
Governor

**Elizabeth S. Biser**  
Secretary DEQ



**Kathy B. Rawls**  
Director

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Release: Immediate  
Date: Aug. 1, 2023

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

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**MEDIA ADVISORY: Comment period opens, public hearing scheduled for 103 marine fisheries rules**

**MOREHEAD CITY** – The N.C. Marine Fisheries Commission is accepting public comment on 103 proposed rules pertaining to data collection and the prevention of harassment of N.C. Division of Marine Fisheries staff, the Shellfish Relay Program and shellfish leases and franchises, oyster sanctuaries, and shellfish sanitation procedures.

A public hearing will be held by web conference on Aug. 16 at 6 p.m. A listening station will be established at the N.C. Division of Marine Fisheries Central District Office at 5285 Highway 70 West, Morehead City. The public may join the meeting online; however, those who wish to comment during the hearing must register to speak by noon on the day of the hearing. Those who wish to speak at the listening station may sign up when they arrive.

Members of the public may also submit written comments through an online form or through the mail to N.C. Marine Fisheries Commission Rules Comments, P.O. Box 769, Morehead City, N.C. 28557. Comments must be posted online or be received by the N.C. Division of Marine Fisheries by 5 p.m. Oct. 2, 2023.

Links to the public hearing registration form and online comment form, as well as text of the proposed rules and links to join the meeting, can be found on the N.C. Marine Fisheries Commission's [2023-2024 Proposed Rules Page](#).

**Data Collection and Harassment Prevention** -- Proposed amendments to 15A NCAC 03I .0113 broaden and enhance protections for Division of Marine Fisheries employees from verbal, physical or sexual harassment by those engaging in fishing activities while the employees are in the process of obtaining data about fishing activity. Proposed amendments also strengthen rule language that requires fishermen to cooperate with Division data collection programs. The proposed amendments are needed because the Division has had increasing occurrence and severity of harassment incidences and decreasing participation in its data collection initiatives.

**Shellfish Relay Program and Shellfish Leases and Franchises** – The proposed repeals of 15A NCAC 03K .0104, .0401, .0403, and .0405 and amendments to 15A NCAC 03I .0101, 03K .0101, .0301, 03O .0201, .0501, .0503, 18A .0901, and .0906 remove outdated shellfish relay requirements, reflecting the discontinuation of the Division of Marine Fisheries Shellfish Relay Program. Proposed changes to a shellfish lease rule (15A NCAC 03O .0201) require shellfish lease or franchise holders to meet the listed production, marking, and permit requirements for current shellfish leases before being eligible for additional shellfish lease acreage. Doing so would help ensure more efficient and meaningful use of the public trust bottom by preventing persons not in good standing from precluding potential applicants from applying for a shellfish lease in affected areas.

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**Website:** <http://www.ncmarinefisheries.net>

**Facebook:** <https://www.facebook.com/NCMarineFisheries>

**Instagram:** [https://www.instagram.com/NC\\_DMFB](https://www.instagram.com/NC_DMFB)

**Twitter:** [https://twitter.com/NC\\_DMFB](https://twitter.com/NC_DMFB)

P.O. Box 769, 3441 Arendell St., Morehead City N.C. 28577

**Oyster Sanctuaries** – Proposed amendments to 15A NCAC 03R .0117 add the boundaries of the two newest oyster sanctuaries (Cedar Island and Gull Shoal) and correct boundaries for three other oyster sanctuaries (Pea Island, Raccoon Island, and Swan Island). These changes were implemented by proclamation while the rulemaking process is undertaken.

**Commercial Shellfish Sanitation and Processing Procedures** – Rules in 15A NCAC 03 and 18A are proposed for re-adoption, amendment, or repeal under a state-mandated periodic review schedule. The proposed changes are to ensure that North Carolina remains in compliance with National Shellfish Sanitation Program requirements. Many of the proposed rules codify existing practices or regulations implemented by proclamation.

The proposed rule changes will be presented to the N.C. Marine Fisheries Commission for final approval in November 2023 and have an earliest effective date of April 1, 2024.

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

<b>WHO:</b>	Marine Fisheries Commission
<b>WHAT:</b>	Public Hearing for Proposed Rules
<b>WHEN:</b>	Aug. 16 at 6 p.m.
<b>WHERE:</b>	Meeting by Web Conference <a href="#">Click Here</a> for Information and to Sign Up to Speak

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