



RULEMAKING UPDATE

Rulemaking Memo

**2021-2022 Annual Rulemaking
Cycle "Package B" Rules**

**2021-2022 Annual Rulemaking
Cycle "Package C" Rules**



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Jan. 28, 2022

MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: Catherine Blum, Rulemaking Coordinator
Marine Fisheries Commission Office

SUBJECT: Rulemaking Update

Issue

Update the N.C. Marine Fisheries Commission (MFC) on the status of rulemaking in support of the Periodic Review and Expiration of Existing Rules per N.C.G.S. § 150B-21.3A. Request the MFC vote on final approval of readoption and amendment of 109 rules in the 2021-2022 "Package B".

Findings

- Periodic Review and Readoption of Rules – Requirements
 - North Carolina G.S. 150B-21.3A, enacted in 2013, requires state agencies to review existing rules every 10 years in accordance with a prescribed process that includes rule readoption.
 - 15A NCAC 03 – Marine Fisheries: On June 14, 2018, the Rules Review Commission (RRC) approved the readoption schedule of June 30, 2022 for 172 MFC rules.
 - 15A NCAC 18A – Sanitation: On Jan. 16, 2020, the RRC approved the readoption schedule of June 30, 2024 for 164 MFC rules.
 - The MFC must readopt these rules by these deadlines or the rules will expire and be removed from the N.C. Administrative Code.
- Regarding the 109 rules in "Package B", two public comments were received about six rules.
- At its February meeting, the MFC is scheduled to receive an update about the public comments and vote on final approval of readoption and amendment of 109 rules in 15A NCAC 03 and 18A in accordance with N.C.G.S. § 150B-21.3A.
- If approved, the rules have an intended effective date of May 1, 2022, except for rules automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1.

Action Needed

In accordance with N.C.G.S. § 150B-21.3A, the MFC is scheduled to vote on final approval of readoption and amendment of 109 rules in 15A NCAC 03 and 18A as published in the *N.C. Register* Oct. 1, 2021, except for additional minor changes recommended to 15A NCAC 03O .0402.

Recommendation

The Division of Marine Fisheries (DMF) recommends the MFC vote on final approval of readoption and amendment of 109 rules in 15A NCAC 03 and 18A in accordance with N.C.G.S. § 150B-21.3A. For more information, please refer to the rulemaking section of the briefing materials.

2020-2021 Annual Rulemaking Cycle Update

At its August 2020 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for the 50 rules in "Package B". Three of the proposed rules address user conflicts associated with shellfish leases while supporting a productive shellfish aquaculture industry, as required by NCGA Session Law 2019-37. The proposed changes would increase setback requirements from developed shorelines for new shellfish leases; limit the allowable number of corner markers for demarcating shellfish leases to simplify the polygon shapes; set new criteria for shellfish lease stakes and signage to alleviate navigation concerns; and, initiate a new shellfish leaseholder training program that emphasizes user conflict reduction strategies. The MFC gave final approval of the rules at its February 2021 meeting. The rules are automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1. The proposed rules could be effective as early as the 30th legislative day of the 2022 short session.

2021-2022 Annual Rulemaking Cycle

"Package A" (56 rules)

Periodic Review and Expiration of Existing Rules – Update

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

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

On Aug. 2, 2021 a news release was issued and the proposed rules were published in the *N.C. Register*. The MFC accepted public comments on the proposed rules from Aug. 2 through 5 p.m. Oct. 1, 2021. One written public comment was received about one interjurisdictional species rule. An online public hearing was held via WebEx on Aug. 18, 2021 at 6 p.m.; no members of the public were in attendance. The MFC gave final approval of the rules at its November 2021 business meeting. The rules were submitted to the RRC for review at its Jan. 20, 2022 meeting. The RRC extended the period of review for the rules in order to allow additional time to address technical change requests; DMF staff are continuing to address the requests. The next RRC meeting is Feb. 17, 2022.

The intended effective date of the rule package is April 1, 2022. Thirteen of the rules are subject to or affected by rules that are automatically subject to legislative review pursuant to Session Law 2019-198 and N.C.G.S. § 14-4.1, and thus are expected to have a delayed effective date. The MFC may request a group of related rules to become effective at the same time per N.C.G.S. § 150B-21.3. One of the rules automatically subject to legislative review prohibits the repacking of foreign crab meat in North Carolina into another container. The proposed rule could be effective as early as the 30th legislative day of the 2022 short session. A separate rule is under development to require additional labeling requirements for repacked foreign crab meat in North Carolina and is scheduled to be included in the MFC's 2022-2023 Rulemaking Cycle to begin the rulemaking process at the MFC's August 2022 business meeting.

"Package B" (109 rules)

Periodic Review and Expiration of Existing Rules – Vote on Final Approval of Readoption

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

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

On Oct. 1, 2021 a news release was issued and the proposed rules were published in the *N.C. Register*. The MFC accepted public comments on the proposed rules from Oct. 1 through 5 p.m. Nov. 30, 2021. Two public comments were submitted, described with the corresponding subjects below. An online public hearing was held via WebEx on Oct. 27, 2021; no members of the public attended. The MFC will receive an update on the public comments at its February 2022 business meeting when it is scheduled to vote on final approval of the rules in accordance with N.C.G.S. § 150B-21.3A.

For more information, please refer to the documents for "Package B" in the rulemaking section of the briefing materials, including a table showing the timing of the steps in the process, the Oct. 1, 2021 *N.C. Register* publication of the proposed rules, a summary of the public hearing, and the written comments received. Additional minor changes recommended to 15A NCAC 03O .0402 are also provided for the MFC's final approval, described with the corresponding subject below. The fiscal analyses for the proposed rules are available on the division website at <https://deq.nc.gov/mfc-proposed-rules> (click on 2021-2022 "Package B").

The intended effective date of the rule package is May 1, 2022. Rules with an asterisk (*) are automatically subject to legislative review pursuant to Session Law 2019-198 and N.C.G.S. § 14-4.1, and thus are expected to have a delayed effective date. The MFC may request a group of related rules to become effective at the same time per N.C.G.S. § 150B-21.3.

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

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

SHELLFISH LEASING REGULATIONS (9 rules)

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

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

One written public comment was submitted about the proposed rules with a general question about shellfish leases. Specifically, the person asked how the public and landowners that are adjacent to a proposed lease are notified so that comments can be submitted. Part of the shellfish lease application process includes a requirement for the applicant to provide evidence they attempted to notify by certified mail the adjacent riparian property owners within 250 feet from where the proposed shellfish lease is located. The notification must include instructions for the property owner to submit written comments to the DMF within 30 days of the notice. Additional notification avenues include the new shellfish lease website and the DMF news release distribution list. The DMF continues to explore other tools and forms of communication to help ensure the public and landowners are informed about proposed shellfish leases. There were no other public comments submitted on the nine "shellfish leasing regulations" rules.

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

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

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

One written public comment was submitted by the Wildlife Resources Commission (WRC) about five rules, three of which are in this group of 40 rules: 15A NCAC 03M .0201, .0202, and .0503. The comments relate to the MFC and WRC joint rules and requirements for hook and line fishing in joint fishing waters.

Separately, the DMF recommends minor changes to 15A NCAC 03O .0402 since publication of the rule in the *N.C. Register*. The changes are shown in yellow highlighting in a revised version of the rule that is provided on the last page of the rulemaking section of the briefing materials. This version of the rule is presented for the MFC's final approval. The changes serve to alleviate burden on the public to have to submit an eligibility application for the Standard Commercial Fishing License Eligibility Pool only to the Morehead City office of the DMF. Instead, the application can be submitted to any DMF office. This simpler process is already occurring, but the corresponding change to the rule was initially overlooked.

15A NCAC 03I, 03J, 03K, 03O, AND 03R FOR DEFINITIONS, IMPORTED SPECIES, RECORDKEEPING, GEAR, MARKETING SHELLFISH, AND LICENSES (18 rules)
(15A NCAC 03I .0101, .0104*, .0114*, 03J .0105*, .0109*, .0305*, 03K .0205*, .0507*, 03O .0101*, .0102*, .0103, .0104*, .0105, .0107, .0109*, .0110, .0113*, 03R .0111)

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

One written public comment was submitted by the WRC about five rules, two of which are in this group of 18 rules: 15A NCAC 03I .0101 and 03J .0305. The comments relate to the MFC and WRC joint rules and requirements for hook and line fishing in joint fishing waters.

COMMERCIAL BLUE CRAB HARVEST AND GEAR REGULATIONS (8 rules)
(15A NCAC 03J .0301*, 03L .0201*, .0202*, .0203*, .0204*, .0205*, 03R .0110, .0118)

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

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

The MFC is scheduled to vote on final approval to readopt 11 rules in 15A NCAC 03 pursuant to the requirements of N.C.G.S. § 150B-21.3A. Proposed changes seek to conform rules related to permit and license suspensions and revocations to standards of the Administrative Procedure Act (APA; N.C.G.S. § 150B) and to increase clarity of rules. The majority of changes are conforming and clarifying amendments that incur no impacts. Proposed changes with anticipated impacts provide authority to deal with rare events related to permits and licenses; provide significant context to the differences in license and permit suspensions, revocations, and requirements; and provide administrative alternatives to increase overall DMF efficiency. Changes proposed to 15A

NCAC 03J .0501 for Pound Net Set Permits would delegate narrow proclamation authority to the DMF director to waive the 30-day pound net set requirement for the southern flounder fishery that has seasons that are now less than 30 days in length, maintaining compliance with the requirements of Amendment 2 to the Southern Flounder Fishery Management Plan. In all, these proposed changes provide benefits in terms of increased DMF efficiency and increased protection of marine resources.

15A NCAC 03P RULES (8 rules)

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

The MFC is scheduled to vote on final approval to readopt and repeal through readoption eight rules in 15A NCAC 03 pursuant to the requirements of N.C.G.S. § 150B-21.3A. Proposed changes conform these administrative procedures rules to the requirements of the APA, namely N.C.G.S. § 150B-4, Declaratory rulings, N.C.G.S. § 150B-20, Petitioning an agency to adopt a rule, and several articles of N.C.G.S. § 150B that address administrative hearings and their judicial review.

Throughout the rules, elements that merely repeat the content of law are proposed to be struck, per N.C.G.S. § 150B-19. Additional proposed changes make minor technical and clarifying amendments. Overall, the proposed changes would increase efficiency in contested case hearings, declaratory rulings, and petitions for rulemaking. One proposed change in 15A NCAC 03P .0301 removes the burden for petitioners to submit 15 hard copies of a petition since the majority of petitions are submitted electronically.

15A NCAC 03K AND 18A CRUSTACEA AND SHELLFISH RULES (12 rules)

(15A NCAC 03K .0103*, .0104*, .0107*, .0109*, .0208*, .0209*, 18A .0135*, .0302*, .0303, .0304, .0425*, .0912)

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

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

2022-2023 Annual Rulemaking Cycle Preview

Division staff will provide a preview of potential rules in the MFC’s 2022-2023 annual rulemaking cycle at its February 2022 business meeting. Additional rules in 15A NCAC 18A proposed for readoption are expected to be part of the rulemaking cycle. Please see Figure 1, detailed in the Background Information section below, that shows the MFC’s rule readoption schedule. This cycle is scheduled to begin the rulemaking process at the MFC's August 2022 business meeting. Proposed rules would have an earliest effective date of April 1, 2023, 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 be reviewed during the 2024 short session.

Background Information

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

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

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

Rules	2017	2018	2019	2020	2021	2022	2023	2024
Chapter 03 (172 rules)	Report	41 Rules Readopted	2 Rules Readopted	13 Rules Readopted	Rule Readoption (116)	6/30/22 deadline		
Subchapter 18A (164 rules)			Report	42 Rules Readopted	Rule Readoption (42)	Rule Readoption (80)	6/30/24 deadline	

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

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

February 2022

Time of Year	Action
February-July 2021	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
Aug. 26, 2021	MFC approved Notice of Text for Rulemaking
Oct. 1, 2021	Publication of proposed rules in the <i>North Carolina Register</i>
Oct. 1-Nov. 30, 2021	Public comment period held
Oct. 27, 2021	Public hearing held via WebEx
Feb. 25, 2022	MFC votes on approval of 109 permanent rules
April 2022	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
May 1, 2022	Proposed effective date of 38 of 109 rules not subject to legislative review; rulebook supplement available online
June 30, 2022	Readoption deadline for 15A NCAC 03
2023 legislative session	Possible effective date of 71 of 109 rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
June 30, 2024	Readoption deadline for 15A NCAC 18A

NORTH CAROLINA REGISTER

VOLUME 36 • ISSUE 07 • Pages 387 – 570

October 1, 2021

I. EXECUTIVE ORDERS	
Executive Order No. 228-232	387 – 406
II. IN ADDITION	
Low-Income Housing Tax Credit Qualified Allocation Plan	407 – 442
III. PROPOSED RULES	
Environmental Quality, Department of	
Environmental Management Commission	443 – 450
Marine Fisheries Commission	450 – 511
Wildlife Resources Commission	511 – 513
Occupational Licensing Boards and Commissions	
Barber Examiners, Board of	513 – 515
IV. APPROVED RULES	516 – 566
Agriculture and Consumer Services, Department of	
Agriculture, Board of	
Commerce, Department of	
Credit Union Division	
Natural and Cultural Resources, Department of	
Department	
Elections, State Board of	
Board	
Health and Human Services, Department of	
Social Services Commission	
Environmental Quality, Department of	
Coastal Resources Commission	
Transportation, Department of	
Motor Vehicles, Division of	
Occupational Licensing Boards and Commissions	
Cosmetic Art Examiners, Board of	
Nursing, Board of	
Veterinary Medical Board	
V. RULES REVIEW COMMISSION	567 – 570

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

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

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NORTH CAROLINA REGISTER
Publication Schedule for January 2021 – December 2021

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
35:13	01/04/21	12/08/20	01/19/21	03/05/21	03/22/21	04/15/21	05/01/21	10/01/21
35:14	01/15/21	12/21/20	01/30/21	03/16/21	03/22/21	04/15/21	05/01/21	10/12/21
35:15	02/01/21	01/08/21	02/16/21	04/05/21	04/20/21	05/20/21	06/01/21	10/29/21
35:16	02/15/21	01/25/21	03/02/21	04/16/21	04/20/21	05/20/21	06/01/21	11/12/21
35:17	03/01/21	02/08/21	03/16/21	04/30/21	05/20/21	06/17/21	07/01/21	11/26/21
35:18	03/15/21	02/22/21	03/30/21	05/14/21	05/20/21	06/17/21	07/01/21	12/10/21
35:19	04/01/21	03/11/21	04/16/21	06/01/21	06/21/21	07/15/21	08/01/21	12/27/21
35:20	04/15/21	03/24/21	04/30/21	06/14/21	06/21/21	07/15/21	08/01/21	01/10/22
35:21	05/03/21	04/12/21	05/18/21	07/02/21	07/20/21	08/19/21	09/01/21	01/28/22
35:22	05/17/21	04/26/21	06/01/21	07/16/21	07/20/21	08/19/21	09/01/21	02/11/22
35:23	06/01/21	05/10/21	06/16/21	08/02/21	08/20/21	09/16/21	10/01/21	02/26/22
35:24	06/15/21	05/24/21	06/30/21	08/16/21	08/20/21	09/16/21	10/01/21	03/12/22
36:01	07/01/21	06/10/21	07/16/21	08/30/21	09/20/21	10/21/21	11/01/21	03/28/22
36:02	07/15/21	06/23/21	07/30/21	09/13/21	09/20/21	10/21/21	11/01/21	04/11/22
36:03	08/02/21	07/12/21	08/17/21	10/01/21	10/20/21	11/18/21	12/01/21	04/29/22
36:04	08/16/21	07/26/21	08/31/21	10/15/21	10/20/21	11/18/21	12/01/21	05/13/22
36:05	09/01/21	08/11/21	09/16/21	11/01/21	11/22/21	12/16/21	01/01/22	05/29/22
36:06	09/15/21	08/24/21	09/30/21	11/15/21	11/22/21	12/16/21	01/01/22	06/12/22
36:07	10/01/21	09/10/21	10/16/21	11/30/21	12/20/21	01/20/22	02/01/22	06/28/22
36:08	10/15/21	09/24/21	10/30/21	12/14/21	12/20/21	01/20/22	02/01/22	07/12/22
36:09	11/01/21	10/11/21	11/16/21	01/03/22	01/20/22	02/17/22	03/01/22	07/29/22
36:10	11/15/21	10/22/21	11/30/21	01/14/22	01/20/22	02/17/22	03/01/22	08/12/22
36:11	12/01/21	11/05/21	12/16/21	01/31/22	02/21/22	03/17/22	04/01/22	08/28/22
36:12	12/15/21	11/22/21	12/30/21	02/14/22	02/21/22	03/17/22	04/01/22	09/11/22

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

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

- (4) The required area or length of mitigation required shall be multiplied by 1 for restoration, 1.5 for establishment, 2 for enhancement and 5 for preservation. These multipliers do not apply to approved mitigation sites where the Interagency Review Team has approved other ratios;
- (5) Mitigation shall comply with the requirements set forth in G.S. 143-214.11. Mitigation projects implemented within waters or wetlands that are regulated under Section 404 of the Clean Water Act or Section 1300 of this Subchapter may be used to satisfy the requirements of this Paragraph;
- (6) Acceptable methods of mitigation as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, include restoration, including both re-establishment and rehabilitation, establishment (creation), enhancement and preservation. No more than 25 percent of the mitigation required by Subparagraph (2) or (3) of this Paragraph may be met through preservation, unless the Director determines that the public good would be better served by a higher percentage of preservation;
- (7) Mitigation for impacts to federally non-jurisdictional wetlands and federally non-jurisdictional classified surface waters shall be conducted in North Carolina within the same river basin and in accordance with 33 CFR Part 332, available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, unless otherwise approved by the Director; and
- (8) In-kind mitigation is required unless the Director determines that other forms of mitigation would provide greater water quality or aquatic life benefit.

.0201-.0203, .0301-.0303; 18A .0135, .0302, .0425, and repeal through readoption the rules cited as 15A NCAC 03K .0111; 03P .0304; 18A .0303, .0304 and .0912.

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

Proposed Effective Date: May 1, 2022

Public Hearing:

Date: October 27, 2021

Time: 6:00 p.m.

Location: WebEx Events meeting link:

<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=ed0e9941d47aa734c7988fa208a056f76>

Event number: 161 493 7847 Event password: 1234 Event phone number: 1-415-655-0003

Reason for Proposed Action:

15A NCAC 03I .0109 RESEARCH SANCTUARIES
15A NCAC 03J .0404 OCEAN ARTIFICIAL REEF GEAR RESTRICTIONS

15A NCAC 03R .0119 OCEAN ARTIFICIAL REEFS
In accordance with G.S. 150B-21.3A, one rule in 15A NCAC 03I is proposed for readoption and two rules in 15A NCAC 03J and 03R are proposed for adoption to restrict highly efficient fishing gears on artificial reefs in State ocean waters to protect all species of finfish, as a complement to the restrictions for artificial reefs in the Exclusive Economic Zone for snapper grouper species. The rules set requirements for research sanctuaries and artificial reefs in State waters, define highly efficient gears, and codify the geographic boundaries of the 13 existing artificial reef sites in State ocean waters. The purpose of the State artificial reef programs is to develop hard bottom habitat that aggregate fishery resources and improve user access to fisheries. By restricting the use of highly efficient fishing gears on artificial reefs, the likelihood of overexploitation is reduced. Gears with this characteristic may be considered all those other than hand line, hook and line, rod and reel, and spearfishing gear. All harvest by spearfishing gear would be restricted to recreational limits.

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

15A NCAC 03O .0203 SHELLFISH LEASE APPLICATION PROCESSING

15A NCAC 03O .0205 SHELLFISH LEASE RENEWAL
15A NCAC 03O .0206 SHELLFISH LEASE APPLICATION: REQUEST FOR REVIEW

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

15A NCAC 03O .0208 TERMINATION PROCEDURES FOR SHELLFISH LEASES AND FRANCHISES

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

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

15A NCAC 03O .0211 FISHING GEAR REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES

Authority G.S. 143-211(c); 143-214.7C; 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c).

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 03J .0404; 03R .0119, amend the rules cited as 15A NCAC 03K .0507; 03R .0110, .0111, .0118, readopt with substantive changes the rules cited as 15A NCAC 03I .0101, .0104, .0105, .0109, .0113, .0114, .0118; 03J .0101, .0105, .0109, .0110, .0301, .0302, .0305, .0501-.0505; 03K .0101-.0109, .0201, .0202, .0204, .0205, .0207-.0209, .0301, .0302, .0304, .0305, .0401, .0505; 03L .0101-.0103, .0105, .0201-.0205; 03M .0201, .0202, .0204, .0205, .0503; 03N .0104, .0105; 03O .0101-.0105, .0107, .0109-.0111, .0113, .0114, .0203, .0205-.0211, .0301-.0303, .0401-.0406, .0502, .0504; 03P .0101, .0102,

PROPOSED RULES

In accordance with G.S. 150B-21.3A, nine rules 15A NCAC 03 are proposed for readoption and repeal through readoption to further address recommendations laid out in Session Law 2019-37 and the subsequent Shellfish Aquaculture User Conflict Study completed by the Department of Environmental Quality, Division of Marine Fisheries, and Marine Fisheries Commission. Most rule changes conform to three other recently approved shellfish lease rules. Additional changes are proposed to continue supporting the efficiency of the State's shellfish lease program and production. Specifically, changes seek to streamline and shorten processes for shellfish lease applications, shellfish lease application grievances by the public, production reporting requirements, and shellfish lease transfers and subleases.

- 15A NCAC 03I .0113 **BIOLOGICAL SAMPLING**
- 15A NCAC 03I .0118 **DISPOSAL OF EVIDENCE**
- 15A NCAC 03J .0101 **FIXED OR STATIONARY NETS**
- 15A NCAC 03J .0110 **SEINES**
- 15A NCAC 03J .0302 **RECREATIONAL USE OF POTS**
- 15A NCAC 03K .0101 **PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH AREAS**
- 15A NCAC 03K .0102 **RAKES PROHIBITED**
- 15A NCAC 03K .0105 **RECREATIONAL HARVEST OF SHELLFISH**
- 15A NCAC 03K .0106 **TAKING OR UNLOADING OYSTERS AND CLAMS ON SUNDAY OR AT NIGHT**
- 15A NCAC 03K .0108 **DREDGES AND MECHANICAL METHODS PROHIBITED**
- 15A NCAC 03K .0201 **OYSTER HARVEST MANAGEMENT**
- 15A NCAC 03K .0202 **CULLING REQUIREMENTS FOR OYSTERS**
- 15A NCAC 03K .0204 **MECHANICAL METHODS FOR OYSTERING PROHIBITED**
- 15A NCAC 03K .0207 **OYSTER SIZE AND HARVEST LIMIT EXEMPTIONS**
- 15A NCAC 03K .0301 **SIZE AND HARVEST LIMITS OF CLAMS**
- 15A NCAC 03K .0302 **MECHANICAL HARVEST OF CLAMS FROM PUBLIC BOTTOM**
- 15A NCAC 03K .0304 **PROHIBITED TAKING OF CLAMS**
- 15A NCAC 03K .0305 **CLAM SIZE AND HARVEST LIMIT EXEMPTIONS**
- 15A NCAC 03K .0401 **POLLUTED AREA PERMIT REQUIREMENTS**
- 15A NCAC 03K .0505 **SEA SCALLOPS SIZE LIMIT AND TOLERANCE**
- 15A NCAC 03L .0101 **SHRIMP HARVEST RESTRICTIONS**
- 15A NCAC 03L .0102 **WEEKEND SHRIMPING PROHIBITED**
- 15A NCAC 03L .0103 **PROHIBITED NETS, MESH LENGTHS, AND AREAS**
- 15A NCAC 03L .0105 **RECREATIONAL SHRIMP LIMITS**
- 15A NCAC 03M .0201 **STRIPED BASS REQUIREMENTS; GENERAL**

- 15A NCAC 03M .0202 **STRIPED BASS SEASON, SIZE, AND HARVEST LIMIT: INTERNAL WATERS**
 - 15A NCAC 03M .0204 **STRIPED BASS SEASON, SIZE, AND HARVEST LIMIT: ATLANTIC OCEAN**
 - 15A NCAC 03M .0205 **STRIPED BASS; PROHIBITED TRAWLING**
 - 15A NCAC 03M .0503 **FLOUNDER**
 - 15A NCAC 03N .0104 **PROHIBITED GEAR, PRIMARY NURSERY AREAS**
 - 15A NCAC 03N .0105 **PROHIBITED GEAR, SECONDARY NURSERY AREAS**
 - 15A NCAC 03O .0301 **ELIGIBILITY FOR RECREATIONAL COMMERCIAL GEAR LICENSES**
 - 15A NCAC 03O .0302 **AUTHORIZED GEAR FOR RECREATIONAL COMMERCIAL GEAR LICENSES**
 - 15A NCAC 03O .0303 **POSSESSION LIMITS FOR RECREATIONAL COMMERCIAL GEAR LICENSES**
 - 15A NCAC 03O .0401 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD**
 - 15A NCAC 03O .0402 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY APPLICATION PROCESS**
 - 15A NCAC 03O .0403 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD REVIEW**
 - 15A NCAC 03O .0404 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY CRITERIA**
 - 15A NCAC 03O .0405 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY APPLICATION DOCUMENTATION**
 - 15A NCAC 03O .0406 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY POOL CERTIFICATION**
- In accordance with G.S. 150B-21.3A, 40 rules in 15A NCAC 03 are proposed for readoption that relate to general rules, gear, shellfish, crustacea, finfish, nursery areas, and licenses. The rules have been reviewed to conform to rulemaking requirements and contain clarifying and technical changes.*
- 15A NCAC 03I .0101 **DEFINITIONS**
 - 15A NCAC 03I .0104 **INTRODUCE, TRANSFER, OR HOLD IMPORTED MARINE AND ESTUARINE ORGANISMS**
 - 15A NCAC 03I .0114 **RECORDKEEPING REQUIREMENTS**
 - 15A NCAC 03J .0105 **PURSE SEINES**
 - 15A NCAC 03J .0109 **LONG HAUL AND SWIPE NET REQUIREMENTS**
 - 15A NCAC 03J .0305 **TROT LINES (MULTIPLE HOOK OR MULTIPLE BAIT)**
 - 15A NCAC 03K .0205 **MARKETING OYSTERS TAKEN FROM A SHELLFISH LEASE OR FRANCHISE**
 - 15A NCAC 03K .0507 **MARKETING SCALLOPS TAKEN FROM A SHELLFISH LEASE OR FRANCHISE**
 - 15A NCAC 03O .0101 **PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS**
 - 15A NCAC 03O .0102 **PROCEDURES AND REQUIREMENTS TO RENEW LICENSES,**

ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS

- 15A NCAC 03O .0103 AUXILIARY VESSELS**
- 15A NCAC 03O .0104 COMMERCIAL UNLOADING OF FISH**
- 15A NCAC 03O .0105 MUSSEL DEALERS**
- 15A NCAC 03O .0107 LICENSE REPLACEMENT AND FEES**
- 15A NCAC 03O .0109 ASSIGNMENT OF STANDARD COMMERCIAL FISHING LICENSE**
- 15A NCAC 03O .0110 LICENSE REFUNDS**
- 15A NCAC 03O .0113 OCEAN FISHING PIER REPORTING REQUIREMENTS**

15A NCAC 03R .0111 PURSE SEINES PROHIBITED
In accordance with G.S. 150B-21.3A, 18 rules in 15A NCAC 03 are proposed for readoption that relate to definitions, imported species, recordkeeping, gear, marketing shellfish, and licenses. Overall, most changes are conforming and technical in nature. Small benefits are expected related to removing a time requirement for obtaining a tournament license and by broadening the types of recordkeeping permissible for inspection by Marine Fisheries Inspectors at fish dealer locations by including electronic trip tickets. A proposed change to marking requirements for commercial trotlines would likely incur a small financial cost to select fishermen. The change is expected to make trotlines easier to identify and monitor, as well as result in consistent marking requirements across gear types. A small opportunity cost is expected for a portion of shellfish lease holders to obtain and comply with the reporting requirements of an aquaculture operation permit. The permit consolidates all existing shellfish lease requirements into a single management tool and over half of lease holders already hold the permit. Having all shellfish lease holders subject to the same permit requirement facilitates the tracking and monitoring of shellfish leases overall and the timely handling of potential public health issues, ultimately enhancing the resource.

- 15A NCAC 03J .0301 POTS**
- 15A NCAC 03L .0201 CRAB HARVEST RESTRICTIONS**
- 15A NCAC 03L .0202 CRAB TRAWLING**
- 15A NCAC 03L .0203 CRAB DREDGING**
- 15A NCAC 03L .0204 CRAB POTS**
- 15A NCAC 03L .0205 CRAB SPAWNING SANCTUARIES**
- 15A NCAC 03R .0110 CRAB SPAWNING SANCTUARIES**
- 15A NCAC 03R .0118 CRAB HARVEST MANAGEMENT AREAS**

In accordance with G.S. 150B-21.3A, eight rules in 15A NCAC 03 are proposed for readoption and amendment that conform rule language with new blue crab and gear management measures approved through Amendment 3 to the N.C. Blue Crab Fishery Management Plan. All of these new measures are already in effect via proclamation following adoption of the plan by the Marine Fisheries Commission in February 2020. The proposed changes codify these existing requirements in permanent rule. A proposed change to marking requirements for pots would likely incur a small financial cost to select fishermen. The change is expected to make pots easier to identify and monitor, as well as result in consistent marking requirements across gear types. The Division

of Marine Fisheries estimates at least half of commercial fishermen using this gear already meet the requirements.

- 15A NCAC 03I .0105 LEAVING DEVICES UNATTENDED**
- 15A NCAC 03J .0501 DEFINITIONS AND STANDARDS FOR POUND NETS AND POUND NET SETS**
- 15A NCAC 03J .0502 POUND NET SET PERMIT APPLICATION AND PROCESSING**
- 15A NCAC 03J .0503 POUND NET SET PERMIT RENEWAL**
- 15A NCAC 03J .0504 POUND NET SET PERMIT TRANSFER**
- 15A NCAC 03J .0505 POUND NET SET PERMIT CONDITIONS**
- 15A NCAC 03O .0111 SURRENDER OF LICENSES**
- 15A NCAC 03O .0114 SUSPENSION, REVOCATION, AND REISSUANCE OF LICENSES**
- 15A NCAC 03O .0502 PERMIT CONDITIONS**
- 15A NCAC 03O .0504 SUSPENSION AND REVOCATION OF PERMITS**
- 15A NCAC 03P .0101 LICENSE, PERMIT, OR CERTIFICATE DENIAL: REQUEST FOR REVIEW**

In accordance with G.S. 150B-21.3A, 11 rules in 15A NCAC 03 are proposed for readoption that conform rules related to permit and license suspensions and revocations to standards of the Administrative Procedure Act (G.S. 150B) and increase clarity of the rules. The majority of changes are conforming and clarifying amendments that incur no impacts. Proposed changes with anticipated impacts provide authority to deal with rare events related to permits and licenses; provide significant context to the differences in license and permit suspensions, revocations, and requirements; and provide administrative alternatives to increase overall Division of Marine Fisheries efficiency. Changes proposed to 15A NCAC 03J .0501 for Pound Net Set Permits would delegate narrow proclamation authority to the division director to waive the 30-day pound net set requirement for the southern flounder fishery that has seasons that are now less than 30 days in length, maintaining compliance with the requirements of Amendment 2 to the N.C. Southern Flounder Fishery Management Plan. In all, these proposed changes provide benefits in terms of increased division efficiency and increased protection of marine and estuarine resources.

- 15A NCAC 03P .0102 CONTESTED CASE HEARING PROCEDURES**
- 15A NCAC 03P .0201 DECLARATORY RULINGS: GENERALLY**
- 15A NCAC 03P .0202 PROCEDURE FOR REQUESTING DECLARATORY RULINGS**
- 15A NCAC 03P .0203 DISPOSITION OF REQUESTS FOR DECLARATORY RULING**
- 15A NCAC 03P .0301 FORM AND CONTENTS OF PETITIONS FOR RULEMAKING**
- 15A NCAC 03P .0302 REVIEW OF RULEMAKING PETITIONS BY A COMMITTEE OF THE COMMISSION**
- 15A NCAC 03P .0303 PRESENTATION OF RULEMAKING PETITIONS TO THE COMMISSION**

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

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

15A NCAC 03K .0103 SHELLFISH MANAGEMENT AREAS

15A NCAC 03K .0104 PERMITS FOR RELAYING SHELLFISH FROM POLLUTED AREAS

15A NCAC 03K .0107 DEPURATION OF CLAMS AND OYSTERS

15A NCAC 03K .0109 SHELLFISH HARVEST TAGS

15A NCAC 03K .0208 SEED OYSTER MANAGEMENT AREAS

15A NCAC 03K .0209 OYSTER SANCTUARIES

15A NCAC 18A .0135 PERMITS

15A NCAC 18A .0302 PERMITS

15A NCAC 18A .0303 RELAYING PERMITS

15A NCAC 18A .0304 DEPURATION HARVESTING PERMITS

15A NCAC 18A .0425 DEALER TAGS

15A NCAC 18A .0912 SHELLFISH MANAGEMENT AREAS

In accordance with G.S. 150B-21.3A, 12 rules in 15A NCAC 03 and 18A are proposed for adoption and repeal through readoption that relate to crustacea and shellfish and set specific requirements for shellfish management areas, depuration of shellfish, crustacea and shellfish permits, and shellfish tagging. Session Law 2011-145 abolished the Division of Environmental Health and transferred the Shellfish Sanitation and Recreational Water Quality Section to the Division of Marine Fisheries under a Type I transfer. Prior to this change, the Division of Environmental Health advised the Division of Marine Fisheries on certain matters relating to public health of crustacea and shellfish and the Division of Environmental Health rules bore this out by one division advising the other. Now that the authority for these rules all fall under the Marine Fisheries Commission, amendments are proposed to rules that have overlapping content, including the repeal through readoption of three rules.

In addition, amendments are proposed to increase efficiency for the Division of Marine Fisheries by making rule requirements more clear and consistent and by moving established requirements from proclamations and permit conditions into rules. Additional proposed amendments to shellfish management areas would broaden the Division of Marine Fisheries director's

proclamation authority to address variable conditions. Changes to crustacea and shellfish permits and dealer tags would clearly make it unlawful to engage in the listed activities without first obtaining the required permit and certificate of compliance, or if dealer tags are not being included on shellstock. The amendments would enhance the protection of public health by strengthening the ability of Marine Fisheries Inspectors to enforce crustacea and shellfish permit, and harvest and dealer requirements in case it is needed if someone was out of compliance, although typically voluntary compliance is achieved.

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: November 30, 2021

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Rule(s) is automatically subject to legislative review: S.L. 2017-190 and S.L. 2019-198: 15A NCAC 03I .0104; S.L. 2019-198: 15A NCAC 03I .0105, .0109, .0113, .0114, .0118; 03J .0101, .0105, .0109, .0110, .0301, .0302, .0305, .0404, .0501; 03K .0101-.0104, .0107-.0109, .0202, .0204, .0205, .0207-.0209, .0301, .0304, .0305, .0401, .0505, .0507; .03L .0102, .0103, .0105, .0201-.0205; 03M .0201, .0202, .0205, .0503; 03N .0104, .0105; 03O .0101, .0102, .0104, .0109, .0111, .0113, .0114, .0211, .0301-.0303, .0405, .0502, .0504; 18A .0135, .0302 and .0425

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~~ enforcement and management terms:

(a) ~~Commercial Quota.~~ Total "Commercial quota" means total quantity of fish allocated for harvest by commercial fishing operations.

(b) ~~Educational Institution.~~ A "Educational institution" means a college, university, or community college accredited by an accrediting agency recognized by the U.S. Department of Education; an Environmental Education Center certified by the N.C. Department of ~~Environment and Natural Resources~~ Environmental Quality Office of Environmental Education and Public Affairs; or a zoo or aquarium certified by the Association of Zoos and Aquariums.

(c) ~~Internal Coastal Waters or Internal Waters.~~ All "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except the Atlantic Ocean.

(d) ~~Length of finfish.~~ length of finfish:

(i) ~~Curved fork length.~~ A "Curved fork length" means a length determined by measuring along a line tracing the contour of the body from the tip of the upper jaw to the middle of the fork in the caudal (tail) fin.

(ii) ~~Fork length.~~ A "Fork length" means a length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin, except that fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.

(iii) ~~Pectoral fin curved fork length.~~ A "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the

pectoral fin and the top of the caudal keel.

(iv) ~~Total length.~~ A "Total length" means a length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.

(e) "Nongovernmental conservation organization" means an organization whose primary mission is the conservation of natural resources.

(f) "Polluted" means any shellfish growing waters:

(i) that are contaminated with fecal material, pathogenic microorganisms, poisonous or deleterious substances, or marine biotoxins that render the consumption of shellfish from those growing waters hazardous;

(ii) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source outfall with public health significance;

(iii) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be in or adjacent to a marina;

(iv) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be impacted by other potential sources of pollution that render the consumption of shellfish from those growing waters hazardous; or

(v) where the Division of Marine Fisheries is unable to complete the monitoring necessary to determine the presence of contamination or potential pollution sources.

(e)(g) ~~Recreational Possession Limit. Restrictions~~ "Recreational possession limit" means restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.

- (f)(h) ~~Recreational Quota. Total~~ "Recreational quota" means total quantity of fish allocated for harvest for a recreational purpose.
- (g)(i) ~~Regular Closed Oyster Season.~~ "Regular closed oyster season" means March 31 through October 15, unless amended by the Fisheries Director through proclamation authority.
- (h)(j) ~~Scientific Institution. One~~ "Scientific institution" means one of the following entities:
- (i) ~~An~~ an educational institution as defined in this Item;
 - (ii) A 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 ~~Subitems (h)(i)~~ Sub-items (j)(i) and (ii) of this Item.
- (i) ~~Seed Oyster Management Area. An open harvest area that, by reason of poor growth characteristics, predation rates, overcrowding or other factors, experiences poor utilization of oyster populations for direct harvest and sale to licensed dealers and is designated by the Marine Fisheries Commission as a source of seed for public and private oyster culture.~~
- (2) ~~Fishing Activities:~~ fishing activities:
- (a) ~~Aquaculture operation. An~~ "Aquaculture operation" means an operation that produces artificially propagated stocks of marine or estuarine ~~resources~~ resources, or other non-native species that may thrive if introduced into Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of rearing on private bottom (with or without the superadjacent water column) or in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following:
- (i) food;
 - (ii) predator protection;
 - (iii) salinity;
 - (iv) temperature controls; or
 - (v) ~~water circulation,~~ utilizing technology not found in the natural environment.
- (v) ~~water circulation, utilizing technology not found in the natural environment.~~
- (b) ~~Attended. Being~~ "Attended" means being in a vessel, in the water or on the shore, and immediately available to work the gear and be within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
- (c) ~~Blue Crab Shedding. The~~ "Blue crab shedding" means the process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following:
- (i) food;
 - (ii) predator protection;
 - (iii) salinity;
 - (iv) temperature controls; or
 - (v) water circulation, utilizing technology not found in the natural environment. A shedding operation does not include transporting pink or red-line peeler crabs to a permitted shedding operation.
- (d) ~~Depuration. Purification~~ "Depuration" means mechanical purification or the removal of adulteration from live oysters, clams, or mussels by any ~~natural or~~ artificially controlled means.
- (e) ~~Long Haul Operations. Fishing~~ "Long haul operation" means fishing a seine towed between two vessels.
- (f) ~~Peeler Crab. A~~ "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
- (g) ~~Possess. Any~~ "Possess" means any actual or constructive holding whether under claim of ownership or not.
- (h) ~~Recreational Purpose. A~~ "Recreational purpose" means a fishing activity that is not a commercial fishing operation as defined in G.S. 113-168.
- (i) ~~Shellfish marketing from leases and franchises. The~~ "Shellfish marketing from leases and franchises" means the harvest of oysters, clams, scallops, or mussels from privately held shellfish

- bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.
- (j) ~~Shellfish planting effort on leases and franchises.~~ "Shellfish planting effort on leases and franchises" means the process of obtaining authorized cultch materials, seed shellfish, and ~~polluted~~ shellfish stocks from polluted waters and the placement of those materials on privately held shellfish bottoms for increased shellfish production.
- (k) ~~Shellfish production on leases and franchises.~~ "Shellfish production on leases and franchises" means:
- (i) ~~The~~ the culture of oysters, clams, scallops, or mussels on shellfish leases and franchises from a sublegal harvest size to a marketable size.
- (ii) ~~The~~ the transplanting (relay) of oysters, clams, scallops, or mussels from areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.
- (l) ~~Swipe Net Operations. Fishing~~ "Swipe net operations" means fishing a seine towed by one vessel.
- (m) ~~Transport. Ship,~~ "Transport" means to ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
- (n) ~~Use. Employ,~~ "Use" means to employ, set, operate, or permit to be operated or employed.
- (3) ~~Gear:~~ gear:
- (a) ~~Bunt Net.~~ The "Bunt net" means the last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.
- (b) ~~Channel Net.~~ A "Channel net" means a net used to take shrimp that is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a vessel.
- (c) ~~Commercial Fishing Equipment or Gear.~~ All "Commercial fishing equipment or gear" means all fishing equipment used in Coastal Fishing Waters except:
- (i) ~~Cast~~ cast nets;
- (ii) ~~Collapsible~~ collapsible crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;
- (iii) ~~Dip~~ dip nets or scoops having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
- (iv) ~~Gigs~~ gigs or other pointed implements that are propelled by hand, whether or not the implement remains in the hand;
- (v) ~~Hand~~ hand operated rakes no more than 12 inches wide and weighing no more than six pounds and hand operated tongs;
- (vi) ~~Hook and line and bait and line~~ hook and line, and bait and line equipment other than multiple-hook or multiple-bait trotline;
- (vii) ~~Landing~~ landing nets used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;
- (viii) ~~Minnow~~ minnow traps when no more than two are in use;
- (ix) ~~Seines~~ seines less than 30 feet in length;
- (x) ~~Spears,~~ spears, Hawaiian slings, or similar devices that propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas, or similar means.
- (d) ~~Corkline.~~ The "Corkline" means the support structure a net is attached to that is nearest to the water surface when in use. Corkline length is measured from the outer most mesh knot at one end of the corkline following along the line to the outer most mesh knot at the opposite end of the corkline.
- (e) ~~Dredge.~~ A "Dredge" means a device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of

- oysters, clams, crabs, scallops, or conchs.
- (f) ~~Fixed or stationary net.~~ A "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.
- (g) ~~Fyke Net.~~ An "Fyke net" means an entrapment net supported by a series of internal or external hoops or frames, with one or more lead or leaders that guide fish to the net mouth. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).
- (h) ~~Gill Net.~~ A "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills in its mesh as a result of net design, construction, mesh length, webbing diameter, or method in which it is used.
- (i) ~~Headrope.~~ The "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest to the water surface when in use. Headrope length is measured from the outer most mesh knot at one end of the headrope following along the line to the outer most mesh knot at the opposite end of the headrope.
- (j) ~~Hoop Net.~~ An "Hoop net" means an entrapment net supported by a series of internal or external hoops or frames. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).
- (k) ~~Lead.~~ A "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic, wire, or similar material set vertically in the water and held in place by stakes or anchors to guide fish into an enclosure. Lead length is measured from the outer most end of the lead along the top or bottom line, whichever is longer, to the opposite end of the lead.
- (l) ~~Mechanical methods for clamming. Dredges.~~ "Mechanical methods for clamming" means dredges, hydraulic clam dredges, stick rakes, and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.
- (m) ~~Mechanical methods for oystering. Dredges.~~ "Mechanical methods for oystering" means dredges, patent tongs, stick rakes, and other rakes when towed by engine power, and any other method that utilizes mechanical means to harvest oysters.
- (n) ~~Mesh Length.~~ The "Mesh length" means the distance from the inside of one knot to the outside of the opposite knot, when the net is stretched hand-tight in a manner that closes the mesh opening.
- (o) ~~Pound Net Set.~~ A "Pound net set" means a fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support the trap. The holding pen, enclosures, and lead(s) are not conical, nor are they supported by hoops or frames.
- (p) ~~Purse Gill Nets.~~ Any "Purse gill net" means any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
- (q) ~~Seine.~~ A "Seine" means a net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh length, webbing diameter, or method in which it is used.
- (4) ~~Fish habitat areas.~~ The "Fish habitat areas" means the estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species utilized in the food chain. Fish habitats as used in this definition, are vital for portions of the entire life cycle, including the early growth and development of fish species. Fish habitats in all Coastal Fishing Waters, as determined through marine and estuarine survey sampling, include:
- (a) ~~Anadromous fish nursery areas.~~ Those "Anadromous fish nursery areas" means those areas in the riverine and

- estuarine systems utilized by post-larval and later juvenile anadromous fish.
- (b) ~~Anadromous fish spawning areas.~~ Those "Anadromous fish spawning areas" means those areas where evidence of spawning of anadromous fish has been documented in Division sampling records through direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- (c) ~~Coral:~~ "Coral" means:
- (i) ~~Fire~~ fire corals and hydrocorals (Class Hydrozoa);
 - (ii) ~~Stony~~ stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or
 - (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.), and sea pansies (*Renilla* sp.).
- (d) ~~Intertidal Oyster Bed.~~ A "Intertidal oyster bed" means a formation, regardless of size or shape, formed of shell and live oysters of varying density.
- (e) ~~Live rock.~~ Living "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~~ sponges (Phylum Porifera);
 - (v) ~~Hard~~ hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones,
- (vi) Solengastrea (Class Anthozoa);
 - (vii) Bryozoans (Phylum Bryozoa);
 - (viii) ~~Tube~~ tube worms (Phylum Annelida), fan worms (*Sabellidae*), feather duster and Christmas treeworms (*Serpulidae*), and sand castle worms (*Sabellaridae*);
 - (ix) ~~Mussel~~ mussel banks (Phylum Mollusca: Gastropoda); and
 - (x) ~~Acorn~~ acorn barnacles (Arthropoda: Crustacea: *Semibalanus* sp.).
- (f) ~~Nursery areas.~~ Areas "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.~~ Historic "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.~~ Locations "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.~~ Submerged "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.
- (5) Licenses, licenses, permits, leases and franchises, and record keeping:
- (a) ~~Assignment.~~ Temporary "Assignment" means temporary transfer 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.~~ "Designee" means any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
- (c) ~~For Hire Vessel.~~ As "For hire vessel", as defined by G.S. 113-174, means when the vessel is fishing in state State waters or when the vessel originates from or returns to a North Carolina port.
- (d) "Franchise" means a franchise recognized pursuant to G.S. 113-206.
- ~~(d)(e)~~ Holder. A "Holder" means a person who has been lawfully issued in ~~his or her~~ the person's name a license, permit, franchise, lease, or assignment.
- ~~(e)(f)~~ Land: "Land" means:
- (i) ~~For~~ for commercial fishing operations, when fish reach the shore or a structure connected to the shore.
- (ii) ~~For~~ for purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when fish reach the shore or a structure connected to the shore.

- (iii) ~~For~~ for recreational fishing operations, when fish are retained in possession by the fisherman.
- (f)(g) ~~Licensee.~~ Any "Licensee" means any person holding a valid license from the Department to take or deal in marine fisheries resources.
- (g)(h) ~~Logbook. Paper~~ "Logbook" means paper forms provided by the Division and electronic data files generated from software provided by the Division for the reporting of fisheries statistics by persons engaged in commercial or recreational fishing or for-hire operators.
- (h)(i) ~~Master. Captain~~ "Master" means captain or operator of a vessel or one who commands and has control, authority, or power over a vessel.
- (i)(j) ~~New fish dealer. Any~~ "New fish dealer" means any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
- (j)(k) ~~Office of the Division. Physical~~ "Office of the Division" means physical locations of the Division conducting license and permit transactions in Wilmington, Washington, Morehead City, Roanoke Island, and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses or Coastal Recreational Fishing Licenses are not considered Offices of the Division.
- (k)(l) ~~Responsible party. Person~~ "Responsible party" means the person who coordinates, supervises, or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations, and the person responsible for use of the issued license in compliance with applicable statutes and rules.
- (l)(m) ~~Tournament Organizer. The~~ "Tournament organizer" means the person who coordinates, supervises, or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.

- (m)(n) ~~Transaction. Act~~ "Transaction" means an act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed, or landed.
- (n)(o) ~~Transfer. Permanent~~ "Transfer" means permanent transferal to another person of privileges under a license for which transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.
- (o)(p) ~~Trip Ticket. Paper~~ "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 .0104 INTRODUCE, TRANSFER, OR HOLD IMPORTED MARINE AND ESTUARINE ORGANISMS

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

- (1) ~~To~~ place into the coastal fishing waters of the ~~state~~ State live marine ~~and~~ or estuarine organisms ~~not native~~ non-native to the ~~state.~~ State. For the purpose of this Rule, this action is an introduction.
- (2) ~~To~~ place into the coastal fishing waters of the ~~state~~ State live marine ~~and~~ or estuarine organisms ~~which that~~ which that are native but ~~which that~~ which that originated outside the State's boundaries. For the purpose of this Rule, this action is a transfer.
- (3) ~~To~~ hold or maintain any live marine or estuarine ~~organism~~ organisms, including non-native species that may thrive if introduced into Coastal Fishing Waters, imported into the ~~state~~ State in a quarantine or isolation system for live bait or use in an aquaculture operation as defined in ~~15A NCAC 03I .0101. Rule .0101 of this Section.~~
- (4) ~~To~~ sell for bait any live marine or estuarine ~~organism~~ organisms, including non-native species that may thrive if introduced into Coastal Fishing Waters, imported into the ~~state.~~ State.

(b) Any person desiring to obtain a Permit to Introduce, ~~Transfer~~ Transfer, or Hold Imported Marine and Estuarine Organisms ~~must make written~~ shall submit a complete application to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769,

Morehead City, NC ~~28557-0769~~. 28557. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500. ~~In order for~~ For the Fisheries Director to determine the level of risk to any native marine or estuarine resource or the environment, the applicant shall ~~provide~~; also provide a certification from a:

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

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

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

Authority G.S. 113-134; 113-170; 113-182; 143B-289.52; S.L. 2017-190; S.L. 2018-114.

15A NCAC 03I .0105 LEAVING DEVICES UNATTENDED

(a) It is ~~shall be~~ unlawful to leave stakes, anchors, nets, buoys, or floating devices in ~~any coastal fishing waters when~~ Coastal Fishing Waters if such devices are not being employed in commercial fishing operations 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.~~

~~(b)(c) It is shall be~~ unlawful to leave pots in ~~any coastal fishing waters~~ Coastal Fishing Waters for more than five consecutive days, ~~when~~ days if such pots are not being employed in commercial fishing operations, except upon a timely and sufficient showing of hardship as ~~defined~~ set forth in ~~Subparagraph (b)(2)~~ Paragraph (c) 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. (4) Agents of the Fisheries Director may tag pots with a device approved by the Fisheries Director to aid and assist in the investigation and identification of unattended pots. Any such device attached to a pot by agents of the Fisheries Director ~~must~~ shall be removed by the individual ~~utilizing~~ using the pot within five days of

attachment in order to demonstrate that the pot is being employed in commercial fishing operations.

~~(d)(2) For the purposes of Paragraph (b) of this Rule only, purpose of this Rule,~~ a timely and sufficient showing of hardship in a commercial fishing operation shall be ~~written notice given 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(s) vessel~~ currently registered with the Division of Marine Fisheries ~~under~~ pursuant to G.S. 113-168.6, or the death, ~~illness~~ illness, or incapacity of the owner of the pot or ~~his~~ the owner's immediate family, ~~as defined in G.S. 113-168,~~ family prevented or will prevent employing such pots in commercial fishing operations for more than five consecutive days. ~~The notice, specifying the time needed because of hardship, shall be received by the Fisheries Director before any pot is left in coastal fishing waters for five consecutive days without being employed in fishing operations, and shall state, in addition to the following, 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, and the date on by which the pots will be employed in commercial fishing operations or removed from coastal fishing waters: Coastal Fishing Waters, and:~~

~~(A)(1) in the case of a mechanical breakdown, the notice shall state the commercial fishing vessel registration~~ 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 address, and phone number of the repair facility; or

~~(B)(2) in the case of the death, illness illness, or incapacity of the owner of the pot or his the owner's immediate family, the notice shall state the name of the owner or immediate family member, member and either the date of death, the date and nature death or the date of the illness or incapacity. The Fisheries Director may require a doctor's verification of that the illness or incapacity: incapacity occurred.~~

~~(e)(3) The Fisheries Director may, by proclamation, modify the five day requirement, if necessary due to hurricanes, severe weather or other variable conditions. Failure It shall be unlawful to fail to employ in commercial fishing operations or remove from coastal fishing waters Coastal Fishing Waters all pots for which notice of a hardship request is received granted under this Rule within 14 days of the expiration of the hardship shall be violation of this Rule: hardship.~~

~~(e) It is unlawful to set or have any fishing equipment in coastal fishing waters in violation of this Section or which contains edible species of fish unfit for human consumption.~~

Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52.

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

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

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

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

Authority G.S. 113-134; 113-181; 113-182; 113-221.1; 143B-289.52.

15A NCAC 03I .0113 BIOLOGICAL SAMPLING

It ~~is~~ shall be unlawful for any licensee under Chapter 113, Subchapter IV, of the General Statutes to refuse to allow the Fisheries Director or ~~his~~ 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.

Authority G.S. 113-134; 113-170.3; 113-170.4; 113-174.1; 113-182; 143B-289.52.

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

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

- (1) ~~To~~ to fail to complete accurately and legibly all mandatory items on the North Carolina trip ticket for each transaction and submit the trip ticket in accordance with G.S. 113-168.2;
- (2) ~~To~~ to fail to provide to the Division of Marine Fisheries a Trip Ticket Submittal/Transaction form indicating the number of transactions that occurred during the previous month;

(3) ~~To~~ to fail to make paper copies or electronic copies of trip tickets available at the dealer location for inspection by Marine ~~Patrol~~ Fisheries inspectors;

(4) ~~To~~ to fail to submit trip tickets to the Division via electronic file transfer if that dealer reported an annual average of greater than 50,000 pounds of finfish for the previous three calendar years. Dealers subject to the electronic reporting requirement shall be notified by the Division via certified mail and within 120 days of receipt shall:

- (A) ~~Initiate~~ initiate electronic file transfer of trip tickets; and
- (B) ~~Continue~~ continue to report by electronic file transfer until the dealer no longer holds a fish dealer license with finfish or consolidated categories;

(5) ~~To~~ to fail to use software or web-based utilities authorized by the Division when reporting electronically. Electronic submittals shall meet all other recordkeeping requirements in accordance with G.S. 113-168.2; and

(6) ~~To~~ to fail to keep all trip tickets and all supporting documentation for each transaction including receipts, checks, bills of lading, records, electronic ~~files~~ files, and accounts for a period of not less than three years.

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

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

(c) It ~~is~~ shall be unlawful to transport fish without having ready at hand for inspection a bill of consignment, bill of lading, or other shipping documentation provided by the shipping dealer showing ~~thereon the name of the consignee, name of the shipper, the date of the shipment, and the quantity of each species of fish shipped.~~ the following items:

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

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

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

(e) It is ~~is~~ shall be unlawful to offer for sale fish purchased from a licensed fish dealer without having ready at hand for inspection by Marine ~~Patrol~~ Fisheries inspectors or other ~~agent~~ agents of the Fisheries Director written documentation of purchase showing ~~thereon the name of the licensed dealer, name of the purchaser,~~ date of the purchase, and the quantity of each species purchased. the following items:

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

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

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.

15A NCAC 03I .0118 DISPOSAL OF EVIDENCE

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

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

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

SECTION .0100 - NET RULES, GENERAL

15A NCAC 03J .0101 FIXED OR STATIONARY NETS

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

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

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

15A NCAC 03J .0105 PURSE SEINES

(a) It is ~~is~~ shall be unlawful to use purse seines except for the taking of menhaden, Atlantic thread herring, gizzard ~~shad~~ shad, or ~~pinfish,~~ as further restricted by Paragraphs (b) and (c) of this Rule. pinfish.

(b) It is ~~is~~ shall be unlawful to ~~take menhaden, Atlantic thread herring, gizzard shad or pinfish with~~ use a purse seine in violation of any of the following limitations: accordance with the following:

- (1) ~~In~~ in the Atlantic Ocean ~~during the periods and within an area as~~ described:
 - (A) by Session Law 2012-190; and
 - (A)(B) ~~In~~ in 15A NCAC 03R ~~0111, .0111.~~ 0111.
 - (B) By Session Law 2007-320.
- (2) ~~Except except as provided in Subparagraph (5) of this Paragraph,~~ Paragraph (c) of this Rule, between January 16 and May 14 in:
 - (A) Internal waters, internal waters; and
 - (B) the Atlantic Ocean within one mile of shore.
- (3) ~~Between~~ between January 16 and March 31 in Core Sound.
- (4) ~~In internal waters except in:~~
 - (A) Pamlico Sound;
 - (B) Pamlico River east of a line from Wades Point to Intracoastal Waterway Marker No. 1 at the mouth of Goose Creek;
 - (C) Neuse River east of a line from Wilkinson Point to Cherry Point;
 - (D) Adams Creek;
 - (E) Core Sound and its tributaries;
 - (F) Back Sound, the Straits, and North river;
 - (G) Newport River;
 - (H) North River, and
 - (I) Bogue Sound.

- (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.

(5)(c) The Fisheries Director may, by proclamation, open the Atlantic Ocean within one mile of shore and the internal waters specified in Subparagraph (4) of this Paragraph (d) of this Rule between April 1 and May 14, and may impose any ~~or all~~ of the following restrictions:

- (1) specify time;

- (2) ~~specify area;~~
- (A)(3) ~~Specify specify means and methods by area which may be employed in the taking; methods;~~
- (4) ~~specify record keeping requirements;~~
- (5) ~~specify season; and~~
- (B)(6) ~~Limit the quantity; and specify quantity.~~
- (C) ~~Require submission of statistical and biological data.~~

Authority G.S. 113-134; 113-182; 113-187; 113-221.1; 143B-289.52.

15A NCAC 03J .0109 ~~LONG-HAUL FISHING OPERATIONS, IDENTIFICATION LONG HAUL AND SWIPE NET REQUIREMENTS~~

It is ~~shall~~ be unlawful to ~~to~~ ~~or~~ ~~pull~~ ~~use~~ a net in a ~~long haul long haul~~ or swipe net fishing ~~excluding operations with nets made entirely of monofilament and having a mesh length of three inches or greater;~~ operation:

(d) The internal waters specified in Paragraph (c) of this Rule are as follows:

- (1) Pamlico Sound;
- (2) Pamlico River east of a line from Wades Point to Intracoastal Waterway Marker No. 1 at the mouth of Goose Creek;
- (3) Neuse River east of a line from Wilkinson Point to Cherry Point;
- (4) Adams Creek;
- (5) Core Sound and its tributaries;
- (6) Back Sound, the Straits, and North River;
- (7) Newport River;
- (8) North River; and
- (9) Bogue Sound.

~~(e)(e)~~ Menhaden, Atlantic thread herring, gizzard ~~shad shad~~, or pinfish may be taken at any time with a purse seine from beyond one mile of shore in the Atlantic Ocean and transported to port except as specified by Session Law ~~2007-320~~ 2012-190 and Subparagraphs (b)(5) and (b)(6) of this Rule. ~~and except as prohibited below:~~

- (1) ~~It is unlawful to take menhaden, Atlantic thread herring, gizzard shad or pinfish by use of a purse seine between sunset on any Friday and sunrise of the following Monday from the Friday of the Memorial Day weekend through sunset on Labor Day each year.~~
- (2) ~~It is unlawful to take menhaden, Atlantic thread herring, gizzard shad or pinfish by use of a purse seine between the hours of sunrise and sunset on the following holidays:~~
 - (A) ~~Memorial Day;~~
 - (B) ~~Fourth of July, when the Fourth of July falls on any calendar day Friday through Monday; and~~
 - (C) ~~Labor Day.~~

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

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

- (1) ~~Without without~~ a floating buoy that shall be international orange, no less than five inches in diameter, and no less than 11 inches in length attached a minimum of every 100 yards along the cork line. The buoy shall be international orange and shall be no less than five inches in diameter and no less than 11 inches in length; and line;
- (2) ~~Without without~~ a flag, flag that shall be square in shape, international orange in color, and at least 24 inches by 24 inches in size, size flying in the rigging so as to be visible when approaching the vessel from any direction. direction; and
- (3) ~~In in the internal coastal waters~~ Internal Coastal Waters south and west of a line beginning on the west shore of Pamlico Sound at Bluff Point at a point 35° 19.5333' N - 76° 09.3333' W; running southeasterly to Ocracoke Island to a point 35° 08.0000' N - 75° 55.0000' W, W; without escape panels as follows:
 - (a) ~~For for~~ long haul operations, two panels four feet deep and six feet long ~~shall be~~ installed with the entire panel within 10 feet of the staff on the end of the bunt net from which the fish are being ~~bailed. The bailed, with~~ panels ~~shall be~~ in the water while fish are ~~harvested. harvested;~~
 - (b) ~~For for~~ swipe net operations, two panels three feet deep and five feet long ~~shall be~~ installed with the entire panel within 10 feet of the staff on the end of the bunt net from which the fish are being ~~bailed. The bailed, with~~ panels ~~shall be~~ in the water while fish are ~~harvested. harvested;~~
 - (c) ~~The the~~ upper edge of one panel ~~shall be~~ installed within 12 to 24 inches of the float line and the lower edge of the other panel ~~shall be~~ installed within 12 to 24 inches of the lead ~~line. line;~~ and
 - (d) ~~The panels shall be~~ constructed of unobstructed trawl rings with ~~an a~~ minimum inside diameter ~~no less than of one and nine-sixteenth inches (1 9/16"). The inches, with the rings shall be fastened together at a maximum of four points per ring.~~

Authority G.S. 113-134; 113-182; ~~143B-289.4~~; 143B-289.52.

15A NCAC 03J .0110 SEINES

It ~~is shall be~~ unlawful to use seines 30 feet or over in length for recreational purposes unless the net is marked by attaching to the corkline ~~one~~ a floating buoy, any shade of hot pink in color, ~~which~~ color. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The ~~owner~~ gear owner's last name and initials shall always be identified on the attached buoy using an engraved ~~buoys~~ buoy or by attaching engraved metal or plastic tags to the buoy. ~~Such If a vessel is used, the identification shall also include owner's last name and initials and if a vessel is used,~~ one of the following:

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

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

SECTION .0300 - POTS, DREDGES, AND OTHER FISHING DEVICES

15A NCAC 03J .0301 POTS

(a) It ~~is shall be~~ unlawful to use pots except during time periods and in areas specified herein:

- (1) ~~In Coastal Fishing in Internal Waters from December 1 through May 31, except that that:~~
 - (A) in the Northern Region designated in 15A NCAC 03R .0118(1) all pots shall be removed from Internal Waters from January 15 1 through February 7. January 31. Fish pots upstream of the U.S. 17 Bridge across Chowan River and upstream of a line across the mouth of Roanoke, Cashie, Middle, and Eastmost Rivers to the Highway 258 Bridge are exempt from the January 15 through February 7 this removal requirement. The Fisheries Director may, by proclamation, reopen various waters to the use of pots after January 19 if it is determined that such waters are free of pots.
 - (B) in the Southern Region designated in 15A NCAC 03R .0118(2) all pots shall be removed from Internal Waters from March 1 through March 15.
- (2) ~~From in Internal Waters from June 1 through November 30, north and east of the Highway 58 Bridge at Emerald Isle:~~ 30 in the Northern Region designated in 15A NCAC 03R .0118(1):
 - (A) ~~In~~ in areas described in 15A NCAC 03R ~~.0107(a); .0107(a).~~
 - (B) ~~To to~~ to allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director may, by proclamation, specify time periods for

~~or and~~ designate the areas described in 15A NCAC 03R ~~.0107(b); .0107(b)~~ or any part thereof, for the use of pots.

- (3) ~~From in Internal Waters from~~ May 1 through November 30 in the ~~Atlantic Ocean and west and south of the Highway 58 Bridge at Emerald Isle in areas and during time periods designated by the Fisheries Director by proclamation.~~ Southern Region designated in 15A NCAC 03R .0118(2), the Fisheries Director may, by proclamation, specify time periods and areas for the use of pots.
- (4) ~~in the Atlantic Ocean from May 1 through November 30~~ the Fisheries Director may, by proclamation, specify time periods and areas for the use of pots.

~~The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of pots to take blue crabs.~~

- (b) It ~~is shall be~~ unlawful to use pots:
 - (1) in any navigation channel marked by State or Federal agencies; or
 - (2) in any turning basin maintained and marked by the North Carolina Ferry Division.

(c) It ~~is shall be~~ unlawful to use pots in a commercial fishing ~~operation,~~ operation unless each pot is marked by attaching a floating buoy of any color except any shade of yellow or any shade of hot pink, or any combination of colors that include any shade of yellow or any shade of hot pink. ~~that~~ Buoys shall be of solid foam or other solid buoyant material ~~and~~ no less than five inches in diameter and no less than five inches in length. ~~Buoys may be of any color except yellow or hot pink or any combination of colors that include yellow or hot pink.~~ The owner gear owner's last name and initials shall always be identified on the attached buoy by using an engraved ~~buoys~~ buoy or by attaching engraved metal or plastic tags ~~attached~~ to the buoy. ~~The~~ If a vessel is used, the identification shall also include one of the following:

- (1) gear owner's current ~~motorboat~~ motor boat registration number; or
- (2) gear owner's U.S. vessel documentation ~~name;~~ or name.
- (3) ~~gear owner's last name and initials.~~

(d) Pots attached to shore or a pier shall be exempt from Subparagraphs (a)(2) and (a)(3) of this Rule.

(e) It ~~is shall be~~ unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-eighths-inch bar.

(f) It ~~is shall be~~ unlawful to use pots to take eels with mesh lengths smaller than one-half inch by one-half ~~inch,~~ inch, ~~except until January 1, 2017 eel pots of any mesh length with an escape panel that is at least four inches square with a mesh length of one inch by one-half inch located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots shall be allowed.~~ inch.

(g) ~~It is~~ Except for unbaited pots or pots baited with a male crab, it shall be unlawful to use crab pots in Coastal Fishing Waters unless each pot contains no less than ~~two~~ three unobstructed escape rings that are at least two and ~~five sixteenths~~ five-sixteenths inches inside diameter and; ~~and~~ located in the ~~opposite~~ opposite outside

panels of the upper chamber of the pot, except the following are exempt from the escape ring requirements:

- ~~(1)~~ unbaited pots;
- ~~(2)~~ pots baited with a male crab; and
- ~~(3)~~ pots set in areas and during time periods described in 15A NCAC 03R .0118.
- (1) for pots with a divider:
 - (A) two escape rings shall be located on opposite panels of the upper chamber of the pot; and
 - (B) at least one escape ring shall be located within one full mesh of the corner and one full mesh of the bottom of the divider in the upper chamber of the pot.
- (2) for pots without a divider:
 - (A) two escape rings shall be located on opposite panels of the pot; and
 - (B) at least one escape ring shall be located within one full mesh of the corner and one full mesh of the bottom of the pot.

For the purpose of this Rule, a "divider" shall mean a panel that separates the crab pot into upper and lower sections.

(h) The Fisheries Director may, by proclamation, ~~exempt the escape ring requirements described in Paragraph (g) of this Rule in order to allow the harvest of mature female crabs and may impose any or all of the following restrictions:~~ restrictions for pots:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- ~~(4)~~ specify requirements for a commercial fishing operation or for recreational purposes;
- ~~(5)~~ specify record keeping and reporting requirements;
- ~~(4)(6)~~ specify seasons; and season, including a closed season for removal of all pots from Internal Waters;
- ~~(7)~~ specify species; and
- ~~(5)(8)~~ specify quantity.

(i) It is shall be unlawful to use more than 150 crab pots per vessel in Newport River.

(j) It is shall be unlawful to remove crab pots from the water or remove crabs from crab pots between one hour after sunset and one hour before sunrise.

(k) It is shall be unlawful to use pots to take crabs unless the line connecting the pot to the buoy is non-floating.

(l) It is shall be unlawful to use pots with leads or leaders to take shrimp. For the purpose of this Rule, "leads" or "leaders" ~~are defined as shall mean~~ any fixed or stationary net or device used to direct fish into any gear used to capture fish. Any device with leads or leaders used to capture fish shall not be a pot.

Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52.

15A NCAC 03J .0302 RECREATIONAL USE OF POTS

(a) It is shall be unlawful for a Recreational Commercial Gear License holder to use pots authorized by 15A NCAC 03O .0302 unless each pot is marked by attaching ~~one~~ a floating buoy, any shade of hot pink in ~~color, which~~ color. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The ~~owner gear~~ owner's last name and initials shall always be identified on the attached buoy using an engraved ~~buoys~~ buoy or by attaching engraved metal or plastic tags to the buoy. ~~Such If a vessel is used, the identification shall also include the owner's last name and initials and if a vessel is used,~~ one of the following:

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

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

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

15A NCAC 03J .0305 TROT LINES (MULTIPLE HOOK OR MULTIPLE BAIT)

(a) It is shall be unlawful to use multiple hook or multiple bait trotlines for recreational purposes unless ~~such trotlines are~~ each multiple hook or multiple bait trotline is marked by attaching to them at each end ~~one~~ a floating buoy, any shade of hot pink in ~~color, which~~ color. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The ~~owner gear~~ owner's last name and initials shall always be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. ~~Such If a vessel is used, the identification shall also include owner's last name and initials and if a vessel is used,~~ one of the following:

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

(b) It shall be unlawful to use multiple hook or multiple bait trotlines in a commercial fishing operation unless each multiple hook or multiple bait trotline is marked by attaching to them at each end a floating buoy of any color except any shade of yellow or any shade of hot pink, or any combination of colors that include any shade of yellow or any shade of hot pink. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The gear owner's last name and initials shall be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. If a vessel is used, the identification shall also include one of the following:

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

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

SECTION .0400 - FISHING GEAR

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.

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

SECTION .0500 – POUND NETS

15A NCAC 03J .0501 DEFINITIONS AND STANDARDS FOR POUND NETS AND POUND NET SETS

- (a) ~~For the purpose of this Section the following terms are hereby defined: The following definitions shall apply to this Section:~~
- (1) Pound Net Set Permit. A Division authorization to set and fish a pound net set in a commercial fishing operation in a specified location in a specified fishery.
 - (2) Permit period. One year from the date of issuance of a new or renewal pound net set permit.
 - (3)(1) Deployed pound net. Setting "Deployed pound net" means setting of any part of a pound net, net except for a location identification stake or or, for a pound net used in the Atlantic Ocean, 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.
- (4)(3) ~~Operational pound net set. A "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 location in a specified fishery.
- (5) ~~Flounder pound net. A pound net set that produces a catch consisting of 50 percent or more flounder by weight of the entire landed catch, excluding blue crabs or a pound net set with all pounds (holding pen) constructed of four inch stretch mesh or greater.~~
- (6) ~~Shrimp pound net. A "Shrimp pound net" 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 is shall be~~ unlawful for a pound net used in a commercial fishing operation to:
- (1) ~~Be be~~ deployed on a site without first obtaining a Pound Net Set Permit from the Fisheries Director.
 - (2) ~~Fail fail~~ to be operational for a minimum of 30 consecutive days during the pound net set permit period unless Pound Net Set Permit period, except the Fisheries Director may, by proclamation, waive this requirement if a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being met, met or for compliance with the N.C. Southern Flounder Fishery Management Plan.
- (c) ~~It is shall be~~ unlawful for a pound net set in a commercial fishing operation in coastal fishing waters to fail to:
- (1) ~~Have have~~ the permittee's identification legibly printed on a sign no less than six inches square, securely attached to a stake at the permitted ends of each set at all times. For pound net sets in the Atlantic Ocean using anchors instead of stakes, the set shall be identified with a yellow buoy, which buoy that shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than 11 inches in length. The permittee's identification shall be legibly printed on the buoy. The identification on signs or buoys shall include the Pound Net

Set Permit number and the permittee's last name and initials.

- (2) ~~Have~~ have yellow light reflective tape or yellow light reflective devices on each pound. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions.
- (3) ~~Have~~ have a marked navigational opening at least 25 feet wide at the end of every third pound. The opening shall be marked with yellow light reflective tape or yellow light reflective devices on each side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions.

If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

(d) It ~~is~~ shall be unlawful to use a Recreational Commercial Gear License (RCGL) shrimp pound net as defined in 15A NCAC 030 .0302 ~~(a)(8)~~ .0302(a)(8) in coastal fishing waters unless the shrimp pound net is:

- (1) ~~Marked~~ marked by attaching to the offshore lead, ~~one~~ a floating buoy, any shade of hot pink in ~~color, which is~~ color. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The ~~owner gear owner's~~ last name and initials shall be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. ~~The~~ If a vessel is used, the identification shall also include ~~owner's last name and initials~~ and if a vessel is used, one of the following:
 - (A) ~~Gear~~ gear owner's current motor boat registration number; or
 - (B) ~~Owner's~~ gear owner's U.S. vessel documentation name.
- (2) ~~Set~~ set a minimum of 100 yards from a RCGL shrimp pound net set or 300 yards from an operational permitted shrimp pound net set.

(e) Escape Panels:

- (1) The Fisheries Director may, by proclamation, require escape panels in pound net sets and may impose any ~~or all~~ of the following requirements ~~or restrictions~~ on the use of escape panels:
 - (A) ~~Specify~~ specify size, number, and ~~location.~~ location;
 - (B) ~~Specify~~ specify mesh length, but not more than six ~~inches.~~ inches;
 - (C) ~~Specify~~ specify time or ~~season.~~ season; and
 - (D) ~~Specify~~ specify areas.

- (2) It ~~is~~ shall be unlawful to use flounder pound net sets without four unobstructed escape panels in each pound. The escape panels shall be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels shall be a minimum mesh size of five and one-half inches, hung on the diamond, and shall be at least six meshes high and eight meshes long.

(f) ~~During 1 December through 1 February the~~ The Fisheries Director shall by proclamation establish time periods between December 1 through February 1 and areas where it ~~is~~ shall be unlawful to fail to remove all nets from pound net sets in commercial fishing operations in internal coastal waters.

(g) It ~~is~~ shall be unlawful within 30 days of abandonment of a permitted pound net set to fail to remove all stakes and associated gear from coastal fishing waters. The responsible party for abandoned pound net gear may be charged the costs incurred by the Division when the Division undertakes removal of the abandoned pound net gear.

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

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

(a) All initial, ~~renewal~~ renewal, or transfer applications for Pound Net Set Permits, and the operation of such pound net sets, shall comply with the ~~rules~~ requirements governing all permits as provided in 15A NCAC 030 .0502. The procedures and requirements for obtaining permits are set forth in 15A NCAC 030 .0501.

(b) Applicants for Pound Net Set permits shall meet the following eligibility requirements as determined by the Fisheries Director:

- (1) ~~Applicant~~ the applicant is an individual and not a corporation, partnership, organization or other entity;
- (2) ~~Applicant~~ the applicant has in the past complied with fisheries rules and laws and does not have any licenses or privileges under suspension or revocation. In addition, a history of habitual fisheries violations evidenced by eight or more convictions in 10 years shall make an individual ineligible.
- (3) ~~Applicant~~ the applicant has in the past complied with all permit conditions, ~~rules~~ rules, and laws related to pound nets.
- (4) ~~Applicant~~ the applicant holds proper valid ~~license(s) and permit(s)~~ licenses and permits necessary to fish the type of net indicated in the application.

(c) Applications for Pound Net Set permits shall include the following:

- (1) ~~A~~ a base map provided by the Division of Marine Fisheries indicating the proposed set location including an inset vicinity map showing the location of the proposed set with detail sufficient to permit on-site identification and location.

- (2) ~~Declaration~~ declaration of the type of pound net that will be deployed at the site. One of the following pound net fisheries shall be specified:
- (A) ~~Flounder~~ flounder pound net set;
 - (B) ~~Bait~~ bait pound net set;
 - (C) ~~Shrimp~~ shrimp pound net set;
 - (D) ~~Blue~~ blue crab pound net set; or
 - (E) ~~Other~~ other finfish pound net set.

(d) For proposed new ~~location(s); locations,~~ the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Set Permit allowing for public comment for 20 days, and after the comment period, may hold public meetings to take comments on the proposed pound net set. If the Director does not approve or deny the application within 90 days of receipt of a complete and verified application, the application is shall be deemed denied. The applicant shall be notified of denial in writing. Approval is shall be conditional based upon the applicant's continuing compliance with eligibility requirements set out in Paragraph (e) of this Rule and specific conditions contained on the Pound Net Set Permit. The applicant may contest final decision to approve or deny the denial of a Pound Net Set Permit application may be appealed by the applicant by filing a petition for a contested case ~~hearing, in writing, within 60 days from the date of mailing notice of such final decision to the applicant, with the Office of Administrative Hearings, under G.S. 150B-23.~~

(e) In order for a site to be deemed suitable for a pound net set, the proposed set location shall meet the following criteria as determined by the Fisheries Director:

- (1) ~~The~~ the proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not interfere with ~~public~~ navigation or with existing, traditional uses of the area other than navigation, and will not violate 15A NCAC 03J .0101 and .0102;
- (2) ~~The~~ the proposed pound net set will not interfere with the rights of any riparian or littoral landowner, including the construction or use of piers;
- (3) ~~The~~ the proposed pound net set will not, by its proximate location, interfere with existing pound net sets in the area. Flounder or other finfish pound net sets will be a minimum of 1,000 yards, as measured in a perpendicular direction, from any point on a line following the permitted location of existing pound net sets; except
 - (A) in Chowan River as referenced in 15A NCAC 03J .0203; and
 - (B) for renewal of pound net sets permitted prior to January 1, 2003;
- (4) ~~The~~ the proposed shrimp or blue crab pound net set will be a minimum of 300 yards, as measured in a perpendicular direction, from any point on a line following the permitted location of existing pound net sets;
- (5) ~~The~~ the proposed pound net set is not located in Core Sound in areas designated in 15A NCAC

03R .0113 except that only those Pound Net Set ~~Permits~~ permits valid within the specified area as of March 1, 1994, may be renewed or transferred subject to the requirements of this Rule; and

- (6) ~~Issuance~~ issuance of the proposed Pound Net Set Permit is in compliance with management measures adopted in fishery management plans.

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

15A NCAC 03J .0503 POUND NET SET PERMIT RENEWAL

An application for renewal of an existing Pound Net Set Permit shall be filed not less than 30 days prior to the date of expiration of the existing ~~permit, permit~~ and shall not be processed unless filed by the permittee. The Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Set ~~Permit, Permit,~~ as set forth in the rules of this Section. The Fisheries Director may hold public meetings and may conduct such investigations necessary to determine if the permit should be renewed.

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

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

It is shall be unlawful to transfer a Pound Net Set Permit without a completed application for transfer being submitted to the Division of Marine Fisheries not less than 45 days before the date of the transfer. The application shall be made by the proposed new permittee in writing and shall be accompanied by a copy of the current permittee's permit and an application for a Pound Net Set Permit in the new permittee's name. The Fisheries Director may hold a public meeting and conduct such investigations necessary to determine if the permit should be transferred. The transferred permit expires on the same date as the initial permit. Upon death of the permittee, the permit may be transferred to the Administrator/Executor of the estate of the permittee if transferred within six months of the Administrator/Executor's qualification in accordance with Chapter 28A of the North Carolina General Statutes. The Administrator/Executor shall provide a copy of the deceased permittee's death certificate, a copy of letters of administration/letters ~~testamentary~~ testamentary, and a list of eligible immediate family members as defined in G.S. 113-168 to the Morehead City Office of the Division. Once transferred to the Administrator/Executor, the Administrator/Executor may transfer the ~~permit(s) permit or permits~~ to eligible immediate family members of the deceased permittee. No transfer is effective until approved and processed by the Division.

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

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

- (a) It is shall be unlawful for a ~~permittee; permittee to:~~
 - (1) ~~To~~ fail to notify the Division of Marine Fisheries ~~Marine Patrol~~ Communications

Center by phone at 800-682-2632 or 252-726-7021 within 72 hours by phone of:

- (A) ~~Of~~ an operational pound net set. Notification shall include the name of permittee, type of net, Pound Net Set Permit number, county where located, a specific location site, and how many pounds are in the set; and
- (B) ~~Of~~ a change to the type of net being set at the permitted site.
- (2) ~~To~~ make false notifications.
- (3) ~~To~~ fail to render the pound net set inoperable during any closed season for the type of fishery for which the pound net is permitted.

Failure to comply with this Paragraph is shall be grounds for the Fisheries Director to revoke any Pound Net Set Permits held by the permittee and for denial of any future applications for Pound Net Set Permits.

- (b) Pound net sets ~~are~~ shall be subject to inspection at all times.
- (c) Daily reporting may be a condition of the permit for a pound net set for fisheries under a quota.
- (d) It is shall be unlawful to fail to remove all pound net stakes and associated gear within 30 days after expiration of the permit or notice by the Fisheries Director that an existing Pound Net Set Permit has been revoked or denied.

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

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

SECTION .0100 – SHELLFISH, GENERAL

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

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

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

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

Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; ~~113-221; 113-221.1; 143B-289.52.~~

15A NCAC 03K .0102 RAKES PROHIBITED RAKES

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

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

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

15A NCAC 03K .0103 SHELLFISH MANAGEMENT AREAS

~~(a) The Fisheries Director may, by proclamation, designate Shellfish Management Areas which meet either of the following criteria. The area has:~~

- (1) ~~conditions of bottom type, salinity, currents, cover or cultch necessary for shellfish growth;~~
- (2) ~~shellfish populations or shellfish enhancement projects that may:~~
 - (A) ~~produce commercial quantities of shellfish at 10 bushels or more per acre;~~
 - (B) ~~produce shellfish suitable for transplanting as seed or for relaying from prohibited (polluted) areas; or~~
 - (C) ~~serve as sanctuaries to increase spawning and disease resistance or to prevent predation.~~

(a) For the purpose of this Rule, "Shellfish Management Area" shall mean an area that has environmental conditions suitable for shellfish growth and survival that is designated to establish a localized regulatory strategy to improve the propagation of shellfish and has at least one of the following:

- (1) planted cultch;
- (2) existing shell; or
- (3) existing live shellfish.

(b) The Fisheries Director may, by proclamation, designate and modify Shellfish Management Areas based on biological impacts or variable spatial distribution, including shifted material.

~~(b)(c)~~ It is shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Shellfish or Seed Management area-Area. These areas shall be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal

or relocation or the absence of any marker affect the applicability of any rule pertaining to any such body of water or portion thereof. (e)(d) It is ~~shall be~~ unlawful to take shellfish from any Shellfish Management Area ~~which that~~ has been closed ~~and posted~~, in accordance with Paragraph (b) of this Rule, except ~~that~~ the Fisheries Director may, by proclamation, open specific areas to allow the taking of shellfish and may ~~designate time, place, character, or dimensions of any method or equipment that may be employed~~. impose any of the following requirements based on biological impacts or user conflicts:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods except as set forth in Paragraph (c) of this Rule;
- (4) specify season;
- (5) specify size;
- (6) specify quantity; and
- (7) specify marking requirements.

Authority G.S. 113-134; 113-182; 113-204; ~~113-221; 113-221.1;~~ 143B-289.52.

15A NCAC 03K .0104 PERMITS FOR PLANTING RELAYING SHELLFISH FROM PROHIBITED/POLLUTED POLLUTED AREAS

(a) It is ~~shall be~~ unlawful to take ~~oysters or clams~~ shellfish from ~~prohibited (polluted) polluted~~ polluted public waters or franchises for planting on shellfish leases and franchises except as authorized by G.S. 113-203. ~~Lease~~ Shellfish lease and franchise holders shall first obtain a relay permit from the Fisheries Director setting forth the time, area, and method by which such shellfish may be taken. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

(b) The application for a relay permit shall be received by the Division of Marine Fisheries at least 15 days prior to the start of relaying activities.

(c) All relaying activities, including removal, transport, and planting, shall be monitored and observed by the Division.

~~(b)(d)~~ The season for relaying ~~elams~~ shellfish shall be ~~for~~ may occur within a specified six week period between the date of the statewide closure of oyster season and June 30, as determined by the Fisheries Director based on the following factors:

- (1) the status of ~~oyster~~ shellfish resources available for harvest from public ~~bottom and~~ bottom;
- (2) surface water temperatures that are below 50° F (10° C), when shellfish relay shall not occur;
- (3) market factors affecting sale of ~~oysters~~ shellfish from public ~~bottom which will assist in determining the statewide closure date~~ bottom; and
- (4) manpower available availability of Division of Marine Fisheries staff to monitor and observe the shellfish relaying activity.

~~(e)~~ For areas designated by the Fisheries Director as sites where shellfish would otherwise be destroyed in maintenance dredging operations, the season as set out in Paragraph (b) of this Rule shall ~~not apply.~~

~~(d)(e)~~ The Fisheries Director, ~~acting upon recommendations of the Division of Environmental Health~~, shall close ~~and reopen~~ by proclamation any ~~private~~ shellfish beds lease or franchise for which the owner has obtained a permit to relay ~~oysters and clams~~ shellfish from ~~prohibited (polluted) polluted~~ polluted public waters, waters or franchises. The leases and franchises shall remain closed until the Fisheries Director issues a proclamation to reopen the leases and franchises to harvest. The reopening of the leases and franchises shall not occur any sooner than 21 days after the end of the relay season described in Paragraph (d) of this Rule.

Authority G.S. 113-134; 113-182; 113-203; ~~113-221; 113-221.1;~~ 143B-289.52.

15A NCAC 03K .0105 RECREATIONAL HARVEST OF SHELLFISH

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

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

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

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

Authority G.S. 113-134; 113-169.2; 113-182; 143B-289.52.

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

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

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

(c) Oysters and clams taken on Sunday Sundays from public bottom under the provisions of 15A NCAC 03K Rule .0105 of this Section or from shellfish leases and franchises pursuant to G.S. 113-208 ~~are~~ shall be exempt from Paragraph (b) of this Rule.

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

15A NCAC 03K .0107 DEPURATION OF SHELLFISH CLAMS AND OYSTERS

(a) It is ~~shall be~~ unlawful to take clams or oysters from the polluted public ~~or private prohibited (polluted)~~ waters or franchises of the ~~state~~ State for the purpose of depuration except when the harvest will utilize shellfish clams or oysters that would otherwise be destroyed in maintenance dredging operations. All harvest and transport activities within the State of North Carolina related to depuration shall be under the supervision of the Division

of Marine Fisheries or the Division of Environmental Health Fisheries. For the purpose of this Rule, the term depuration does not include relaying of clams or oysters from shellfish leases or franchises as authorized by 15A NCAC 03K .0104.

(b) The Fisheries Director, may, by proclamation, impose any or all of the following restrictions on the harvest of clams or oysters for depuration:

- (1) Specify specify species;
- (2) Specify areas specify areas, except harvest will shall not be allowed from designated buffer zones adjacent to sewage outfall facilities;
- (3) Specify specify harvest days;
- (4) Specify time period; specify time;
- (5) Specify specify quantity or size;
- (6) specify quantity;
- (6)(7) Specify specify harvest methods; and
- (7)(8) Specify specify record keeping requirements.

(c) Depuration permits:

- (1) ~~It is~~ it shall be unlawful for individuals to harvest clams or oysters from ~~prohibited (polluted)~~ polluted waters for the purpose of depuration unless they have obtained a Depuration Permit or are listed as designees on a Depuration Permit from the Division of ~~Marine Fisheries and Division of Environmental Health~~ setting forth the method of harvest to be employed. Permits shall be issued to licensed North Carolina ~~Clam or Oyster Dealers~~ clam or oyster dealers only. Permittees and designees harvesting under Depuration Permits ~~must~~ shall have a current Shellfish License or Shellfish Endorsement on a Standard or Retired Standard Commercial Fishing License. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.
- (2) ~~It~~ in addition to information required in 15A NCAC 03O .0501, the permit application shall provide the name, address, ~~location~~ location, and telephone number of the depuration operation where the shellfish will be depurated.
- (3) ~~Clam or Oyster Dealers~~ clam or oyster dealers desiring to obtain ~~prohibited (polluted)~~ clams or oysters from polluted waters for the purpose of depuration shall apply for a depuration permit at least 15 days prior to initiation of operation.

(d) Transport of clams or oysters for depuration:

- (1) ~~Clams~~ clams or oysters harvested from ~~prohibited (polluted)~~ polluted waters for depuration in a depuration operation located within the State of North Carolina shall be transported under the supervision of the ~~Division of Marine Fisheries or the Division of Environmental Health~~ Division.
- (2) ~~Clams~~ clams or oysters harvested from ~~prohibited (polluted)~~ polluted waters for depuration in a depuration operation outside the State of North Carolina shall not be transported within the State of North Carolina except under

the supervision of the ~~Division of Marine Fisheries or the Division of Environmental Health~~ Division.

(e) It ~~is~~ shall be unlawful to ship clams or oysters harvested for depuration to depuration facilities located in a state other than North Carolina unless the facility is in compliance with the applicable rules and laws of the shellfish control agency of that state.

~~(f) The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.~~

Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52.

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

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

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

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

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

**15A NCAC 03K .0109 ~~SHELLFISH HARVESTER~~
HARVEST AND DEALER TAGS**

~~It is~~ Consistent with the requirements of this Rule, it shall be unlawful to possess or sell oysters, clams, or mussels taken in a commercial fishing operation without a harvest tag affixed to each container of oysters, ~~clams~~ clams, or mussels. Tags shall be affixed by the harvester ~~or dealer~~ and remain in place while being transported to a certified shellfish dealer. Harvest tags shall remain attached to the container until the certified shellfish dealer breaks open the container for washing, grading, packing, other processing, or the container is shipped. Once the initial container is broken open or is emptied the harvest tag shall be kept on file, in chronological order, by the certified shellfish dealer for 90

days. It shall be unlawful for the tag to fail to ~~and shall~~ meet the following criteria:

- (1) ~~Tags harvest tags~~ shall be identified as harvest tags. They shall be durable for at least 90 days, ~~water resistant, waterproof,~~ and a minimum of two and five-eighths inches by five and one-fourth inches in size.
- (2) ~~Tags harvest tags~~ shall be securely fastened to ~~the outside of~~ each container in which shellstock is transported. A ~~harvester or dealer harvest tag~~ shall be remain securely fastened to ~~the outside of~~ each container at a certified shellfish dealer until replaced by a dealer tag once the container is broken open for processing or is shipped. Requirements for dealer tags are described in 15A NCAC 18A .0425. ~~location except, bulk shipments of shellfish in one container and from the same source may have one tag with all required information attached.~~ Harvesters who are also certified shellfish dealers may use only their dealer tag if it contains the required harvest and dealer information. The required information shall be included on all lots of shellfish subdivided or combined into market grades or market quantities by a harvester or a certified shellfish dealer.
- (3) ~~Tags shall be attached to all shellfish stored at a dealer location.~~ bulk harvest tags may be used when shellfish are harvested from one growing area on a single day by an individual harvester. Multiple containers may be utilized on a wrapped pallet, in a single boat, vehicle, conveyance, or other container, and tagged with a single harvest tag containing the information required in this Rule. The bulk tag shall also include a statement that "All shellstock containers in this lot have the same harvest date and area of harvest.", and include the number of individual containers in the unit or an estimate of the total weight, volume, or count.
- (4) ~~Tags tags~~ shall contain legible information arranged in the specific order as follows:
 - (a) ~~The the~~ harvester's name, ~~address address, and shellfish license or standard or retired standard commercial fishing license~~ Shellfish License or Standard or Retired Standard Commercial Fishing License with shellfish endorsement ~~number.~~ number;
 - (b) ~~The the~~ date of ~~harvest.~~ harvest;
 - (c) ~~The the~~ most precise ~~description~~ identification of the harvest location as is practicable (e.g., Long Bay, Rose Bay) ~~that can be easily located by maps and charts.~~ Bay), including at a minimum the State's two initials

"N.C." and the growing area designation;

- (d) the shellfish lease or franchise number, if applicable;
- ~~(d)(e)~~ Type type and quantity of shellfish shellfish;
- ~~(e)(f)~~ The the following statement in bold, capitalized ~~type:~~ font: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS". DAYS."; and
- ~~(f)(g)~~ the time of the start of harvest. The time of the start of harvest shall be the time when the first shellfish is initially removed from the water.

Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 143-221; 143B-289.52.

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

- ~~(a) Permits to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises shall be issued in compliance with the general rules governing all permits in 15A NCAC 03O .0500. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0501.~~
- ~~(b) It is unlawful to harvest shellfish by the use of mechanical methods from shellfish leases or franchises without first obtaining a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises.~~

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

SECTION .0200 – OYSTERS

15A NCAC 03K .0201 OYSTER HARVEST MANAGEMENT

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

U.S. bushels in a commercial fishing operation per day.

Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52.

15A NCAC 03K .0202 CULLING REQUIREMENTS FOR OYSTERS

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

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

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

Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52.

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

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

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

Authority G.S. 113-134; 113-182; 113-204; 143B-289.52.

15A NCAC 03K .0205 MARKETING OYSTERS TAKEN FROM A PRIVATE SHELLFISH BOTTOMS LEASE OR FRANCHISE

(a) It is ~~shall be~~ unlawful to take, possess, buy, or sell oysters from a shellfish ~~leases~~ lease or ~~franchises~~ franchise during the

open season unless such oysters have been culled in accordance with Rule ~~15A NCAC 03K .0202~~ .0202 of this Section.

~~(b) It is unlawful to sell, purchase or possess oysters during the regular closed season without the lease or franchise holder delivering to the purchaser or other recipient a certification, on a form provided by the Division, that the oysters were taken from a valid shellfish lease or franchise. Certification forms shall be furnished by the Division to lease and franchise holders upon request.~~

(b) All commercial oyster harvesting operations shall operate in accordance with any proclamations issued under the authority of Rule .0110 of this Subchapter.

~~(c) It is shall be~~ unlawful for a shellfish ~~lease or franchise holders holder or their~~ the holder's designees to take or possess oysters from public bottom while possessing aboard a vessel oysters taken from a ~~shellfish leases~~ lease or ~~franchises~~ franchise.

(d) It shall be unlawful for a shellfish lease or franchise holder or 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.

Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52.

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

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

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

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.

~~(a)~~(c) It is ~~shall be~~ unlawful to take oysters from Seed Oyster Management Areas designated in 15A NCAC 03R .0116 for planting on shellfish leases or franchises without first obtaining a Permit to Transplant Oysters from Seed Oyster Management Areas from the Fisheries Director. The procedures and

requirements for obtaining permits are set forth in 15A NCAC 03O .0501.

~~(b)(d)~~ It is shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Seed Oyster Management Area.

Authority G.S. 113-134; 113-182; 113-203; ~~113-221;~~ 143B-289.52.

15A NCAC 03K .0209 OYSTER SANCTUARIES

~~(a) It is unlawful to use a trawl net, long haul seine, or swipe net in Oyster Sanctuaries designated in 15A NCAC 03R .0117. These areas shall be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any rule pertaining to any such body of water or portion thereof.~~

(a) For the purpose of this Rule and 15A NCAC 03R .0117, "Oyster Sanctuary" shall mean a type of artificial reef and shellfish producing habitat constructed for the purpose of oyster restoration that is managed to sustain populations of oyster broodstock. An Oyster Sanctuary is constructed to maximize habitat complexity and designed to meet its intended function for a minimum of 30 years.

(b) The Fisheries Director may, by proclamation, close Oyster Sanctuary areas designated in 15A NCAC 03R .0117 to the use of specific fishing gears based on biological impacts or user conflicts.

(c) The Fisheries Director may, by proclamation, designate and modify Oyster Sanctuaries based on biological impacts or variable spatial distribution, including shifted material.

~~(b)(d) It is shall be~~ unlawful to use mechanical methods ~~for oystering or clamming~~ in, or to take oysters or clams from shellfish from, Oyster Sanctuaries designated in 15A NCAC 03R .0117, .0117 or in accordance with Paragraph (c) of this Rule.

(e) It shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Oyster Sanctuary.

Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52.

SECTION .0300 - HARD CLAMS (MERCENARIA)

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

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

portions of the entire quantity of ~~clams being graded~~ graded, and in cases of violations, may seize and return to public bottom or ~~other disposition~~ otherwise dispose of the clams as authorized by law of the entire quantity being graded or any portion thereof.

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

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

Authority G.S. 113-134; 113-136; 113-137; 113-182; ~~113-221;~~ 143B-289.52.

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

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

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

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

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

Other areas opened for purposes as set out in ~~15A NCAC 03K 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.

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

15A NCAC 03K .0304 PROHIBITED TAKING OF CLAMS

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

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

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

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

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

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

SECTION .0400 - RANGIA CLAMS

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

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

Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52.

SECTION .0500 - SCALLOPS

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

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

Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52.

15A NCAC 03K .0507 MARKETING SCALLOPS TAKEN FROM A SHELLFISH LEASES LEASE OR FRANCHISES FRANCHISE

(a) ~~It shall be unlawful to sell, purchase, or possess scallops during the closed season without the lease or franchise holder delivering to the purchaser or other recipient a certification, on a form provided by the Division of Marine Fisheries, that the scallops were taken from a valid shellfish lease or franchise. Certification forms shall be furnished by the Division to lease and franchise holders upon request.~~

(a) All commercial scallop harvesting operations shall operate in accordance with any proclamations issued under the authority of Rule .0110 of this Subchapter.

(b) It shall be unlawful for a shellfish lease or franchise holders holder or their the holder's designees to take or possess scallops from public bottom while possessing aboard a vessel scallops taken from a shellfish leases lease or franchises franchise.

(c) It shall be unlawful for a shellfish lease or franchise holder or 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.

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

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

SECTION .0100 - SHRIMP

15A NCAC 03L .0101 SHRIMP HARVEST RESTRICTIONS

(a) It is ~~shall be~~ unlawful to take shrimp until the Fisheries Director, by proclamation, opens the season.

(b) The Fisheries Director may, by proclamation, impose any ~~or~~ ~~all~~ of the following restrictions on the taking of shrimp:

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

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

15A NCAC 03L .0102 WEEKEND SHRIMPING PROHIBITED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15A NCAC 03L .0105 RECREATIONAL SHRIMP LIMITS

It is shall be unlawful to:

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

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

SECTION .0200 – CRABS

15A NCAC 03L .0201 CRAB HARVEST RESTRICTIONS

(a) It shall be unlawful to possess blue crabs taken from Crab Harvest Management Areas designated in 15A NCAC 03R .0118(1) from January 1 through January 31, except dealers shall have seven days after the beginning of the closure to sell, offer for sale, or transport blue crabs that were taken from this area prior to the closure.

(b) It shall be unlawful to possess blue crabs taken from Crab Harvest Management Areas designated in 15A NCAC 03R .0118(2) from March 1 through March 15, except dealers shall have seven days after the beginning of the closure to sell, offer for sale, or transport blue crabs that were taken from this area prior to the closure.

(a) It is unlawful to possess more than 10 percent by number in any container, male and immature female hard blue crabs less than five inches from tip of spike to tip of spike and to fail to return hard blue crabs not meeting this restriction to the waters from which taken, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs. All blue crabs not sorted into containers as specified in Paragraph (b) of this Rule shall be deemed hard blue crabs for the purpose of establishing the 10 percent culling tolerance.

(b) It is unlawful to possess blue crabs less than five inches from tip of spike to tip of spike unless individual crabs are sorted to and placed in separate containers for each of the following categories:

- (1) soft crabs;
(2) pink and red-line peeler crabs;
(3) white-line peeler crabs; and
(4) from March 1 through October 31, male crabs to be used as peeler crab bait.

The Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

(c) It shall be unlawful to possess more than five percent by number of the following hard blue crabs in any combination in any container:

- (1) male hard blue crabs less than five inches from tip of spike to tip of spike;
(2) immature female hard blue crabs;
(3) mature female hard blue crabs less than five inches from tip of spike to tip of spike; and
(4) mature female hard blue crabs with a dark (brown or black) sponge from April 1 through April 30 statewide. For the purpose of this Rule, a "mature female hard blue crab with a dark sponge" shall mean a mature female hard crab that has extruded her eggs on the abdomen or abdominal flap and the eggs have developed a coloration ranging from any shade of brown through black.

(d) It shall be unlawful to possess blue crabs described in Subparagraphs (c)(1) through (c)(3) of this Rule unless individual crabs are sorted and placed into separate containers for each of the following categories:

- (1) soft crabs;
(2) pink and red-line peeler crabs;
(3) white line peeler crabs; and

(4) from March 1 through October 31, male crabs to be used as peeler crab bait.

All blue crabs not sorted into containers as specified shall be deemed hard blue crabs for the purpose of establishing the five percent tolerance described in Paragraph (c) of this Rule.

(e)(e) It is shall be unlawful to possess more than five percent by number of white-line peelers peeler crabs in a container of pink and red-line peeler crabs, peelers, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

(e)(f) It is shall be unlawful to:

- (1) sell white-line peelers; peeler crabs;
(2) possess white-line peelers peeler crabs unless they are to be used in the harvester's permitted blue crab shedding operation; and or
(3) possess male white-line peelers peeler crabs from June 1 through September 1.

The Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

(e)(g) It is shall be unlawful to possess more than 50 blue crabs per person per day, not to exceed 100 blue crabs per vessel per day for recreational purposes, purposes, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

(f)(h) In order to comply with management measures adopted in the N.C. Blue Crab Fishery Management Plan, the Fisheries Director may, by proclamation, close the harvest of blue crabs and take the following actions for may further restrict commercial and recreational blue crab harvest: harvest by imposing any of the following requirements on the taking of blue crabs:

- (1) specify areas;
(2) specify seasons;
(3) specify time periods;
(4) specify means and methods;
(5) specify culling tolerance; and
(6) specify limits on harvest based on size, quantity, sex, reproductive stage, or peeler stage.

(i) It shall be unlawful to fail to immediately return hard blue crabs not meeting the requirements of this Rule to the waters from which they were taken.

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

15A NCAC 03L .0202 CRAB TRAWLING

(a) It is shall be unlawful to take or possess aboard a vessel crabs taken by trawl in internal waters except in areas and during such times as the Fisheries Director may specify by proclamation.

(b) It is shall be unlawful to use a trawl to take crabs that does not meet mesh length requirements, except as provided in 15A NCAC 03J .0104. The minimum mesh length to take hard crabs with a trawl is shall be three inches, except:

- (1) The the minimum mesh length is shall be four inches in the area of western Pamlico Sound west of a line beginning at a point 35° 48.3693' N - 75° 43.7232' W on Roanoke Marshes Point; running easterly to a point 35° 48.3000' N - 75° 37.1167' W near Beacon "1" at the southern end

of Roanoke Island; running southerly to a point 35° 30.7500' N - 75° 40.5667' W near the "S" Beacon at Long Shoal; running southwesterly to a point 35° 12.6167' N - 76° 04.3833' W near the "BL" Beacon on Bluff Shoal; running westerly to a point 35° 08.1000' N - 76° 17.5000' W near the "BI" Beacon at Brant Island Shoal; running southwesterly to a point 35° 04 .6167' N - 76° 27.8000' W on Point of Marsh; and

- (2) ~~The~~ the Fisheries Director may, by proclamation, specify areas other than the area described in Subparagraph (b)(1) of this Rule for trawl mesh length use and increase the minimum trawl mesh length to no more than four inches to take hard crabs.

(c) It ~~is~~ shall be unlawful to use a trawl with a mesh length less than two inches or with a combined total headrope length exceeding 25 feet to take soft or peeler crabs, except as provided in 15A NCAC 03J .0104.

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

15A NCAC 03L .0203 CRAB DREDGING

~~(a)~~ It ~~is~~ shall be unlawful to take crabs with dredges ~~except~~ except

- ~~(1)~~ from January 1 through March 1 in the area of Pamlico Sound described in 15A NCAC 03R .0109; and
- ~~(2)~~ incidental to lawful oyster dredging operations in areas not subject to the exception in Subparagraph (a)(1) of this Rule provided the weight of the crabs shall not exceed: exceed the lesser of:
 - ~~(A)(1)~~ 50 10 percent of the total weight of the combined oyster and crab catch; or
 - ~~(B)(2)~~ 500 pounds, whichever is less. 100 pounds.

The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of dredges to take blue crabs.

~~(b) It is unlawful to take crabs with dredges between sunset and sunrise and between sunset on any Saturday and sunrise on the following Monday, except in the Atlantic Ocean.~~

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

15A NCAC 03L .0204 CRAB POTS

(a) It ~~is~~ shall be unlawful to take crabs with pots except as provided in 15A NCAC 03J .0301 and .0302. The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of pots to take blue crabs.

(b) The Fisheries Director may, by proclamation, require the use of terrapin excluder devices in each funnel entrance in crab pots and impose the following restrictions concerning terrapin excluder devices:

- (1) specify areas;
- (2) specify time periods; and

- (3) specify means and methods.

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

15A NCAC 03L .0205 CRAB SPAWNING SANCTUARIES

(a) It ~~is~~ shall be unlawful to set or use trawls, pots, ~~and~~ or mechanical methods for ~~oysters or clams shellfish~~ or take crabs with the use of commercial fishing equipment ~~from the crab spawning sanctuaries described in 15A NCAC 03R .0110 from March 1 through August 31.~~ in crab spawning sanctuaries:

- (1) from March 1 through August 31 for the crab spawning sanctuaries described in 15A NCAC 03R .0110(1); and
- (2) from March 1 through October 31 for the crab spawning sanctuaries described in 15A NCAC 03R .0110(2).

(b) The Fisheries Director may, by proclamation, designate additional areas as crab spawning sanctuaries and may impose the following restrictions in any crab spawning sanctuary:

- (1) specify areas;
- (2) specify time periods;
- (3) specify means and methods; and
- (4) specify limits on harvest based on size, quantity, sex, reproductive stage, or peeler stage.

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

SUBCHAPTER 03M - FINFISH

SECTION .0200 - STRIPED BASS

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

(a) ~~Striped bass is defined as striped bass~~ For the purpose of this Section, "striped bass" shall mean striped bass (Morone saxatilis) and its hybrids taken in coastal and joint fishing waters. Coastal and Joint Fishing Waters.

(b) It ~~is~~ shall be unlawful to possess striped bass ~~imported from other states that are less than 18 inches long (total length).~~ length) imported from other states.

(c) It ~~is~~ shall be unlawful to import, buy, sell, transport, offer to buy or sell, or possess striped bass except during any:

- (1) open striped bass season established for ~~internal coastal waters;~~ Internal Waters;
- (2) open striped bass season established for the Atlantic Ocean; or
- (3) open striped bass season of another state without possession of the following:
 - (A) ~~A~~ a bill of lading as described in 15A NCAC 03I .0114; and
 - (B) ~~A~~ a numbered, state-issued tag from the ~~State~~ state of origin affixed through the mouth and gill cover. This tag must remain affixed until processed for consumption by the consumer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0503 FLOUNDER

(a) It ~~is shall be~~ unlawful to possess flounder less than 14 inches total length taken from the Atlantic Ocean in a commercial fishing operation.

(b) From October 1 through April 30, it shall be unlawful to use a trawl in the Atlantic Ocean within three miles of the ocean beach from the North Carolina/Virginia state line (36° 33.000'N) to Cape Lookout (34° 36.000'N) unless each trawl has a mesh length of ~~5-1/2~~ five and one-half inches or larger diamond mesh (stretched) or ~~6~~ six inches or larger square mesh (stretched) applied throughout the body, ~~extension(s)~~ extensions, and the cod end (tailbag) of the net except as provided in Paragraphs (g) and (h) of this Rule.

(c) License to Land Flounder from the Atlantic Ocean:

- (1) ~~It is 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~~ vessel, or in the case of Land or Sell Licenses, the responsible party, has been issued a License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.
- (2) ~~It is it shall be~~ unlawful for a fish dealer to purchase or offload more than 100 pounds of flounder taken from the Atlantic Ocean by a vessel whose owner, or in the case of Land or Sell Licenses, the responsible party, has not first procured a valid North Carolina License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.
- (3) ~~It is it shall be~~ unlawful for any person to land flounder from the Atlantic Ocean under a License to Land Flounder from the Atlantic Ocean unless that person is the holder of the license or the master designated on the license.
- (4) ~~It is it shall be~~ 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.

Ocean, except as specified in Subparagraph ~~(e)(1) of this Rule.~~ (1) of this Paragraph.

(d) All fish dealer transactions in flounder landed from the Atlantic Ocean ~~must~~ shall be conducted in accordance with the Atlantic Ocean Flounder Dealer Permits in 15A NCAC 03O .0503 and related ~~rules~~ requirements in 15A NCAC 03O .0500.

(e) It ~~is~~ shall be unlawful to transfer flounder taken from the Atlantic Ocean from one vessel to another.

(f) Tailbag liners of any mesh size, the multiple use of two or more cod ends, or other netting material that in any way could restrict the legal size mesh shall not be used or possessed on the deck of a vessel in the Atlantic Ocean from October 1 through April 30 from the North Carolina/Virginia state line (36° 33.000' N) to Cape Lookout (34° 36.0000'N).

(g) Trawls with a cod end mesh size smaller than described in Paragraph (b) of this Rule may be used or possessed on the deck of a vessel provided not more than 100 pounds of flounder per trip from May 1 through October 31 or more than 200 pounds from November 1 through April 30 is possessed aboard or landed from that vessel.

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

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

(i) Commercial ~~Season:~~ Season:

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

(3) ~~During~~ during any closed season prior to November 1, vessels may land up to 100 pounds of flounder per trip taken from the Atlantic Ocean.

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

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

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- ~~(4)(5)~~ Specify specify size;
- ~~(2)~~ Specify season;
- ~~(3)~~ Specify area;
- ~~(4)(6)~~ Specify specify quantity; and
- ~~(5)~~ Specify means/methods; and
- ~~(6)(7)~~ Require require submission of statistical and biological data.

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

Authority G.S. 113-134; 113-169.5; 113-182; 143-221; 113-221.1; 143B-289.52.

SUBCHAPTER 03N - FISH HABITAT AREAS

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

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

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

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

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

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

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

SUBCHAPTER 030 - LICENSES, LEASES, FRANCHISES
FRANCHISES, AND PERMITS

SECTION .0100 - LICENSES

15A NCAC 030 .0101 PROCEDURES AND
REQUIREMENTS TO OBTAIN LICENSES,
ENDORSEMENTS ENDORSEMENTS, AND
COMMERCIAL FISHING VESSEL REGISTRATIONS

(a) Division of Marine Fisheries licenses are available at offices of the Division or by mail from the Morehead City Office of the Division, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at license agents of the Wildlife Resources Commission in accordance with G.S. 113-270.1.

(b) For the purpose of this Rule, the procedures and requirements for the licensee shall also apply to the responsible party, the person holding power of attorney, the tournament organizer, and the vessel master.

~~(a)~~(c) To obtain any Division of Marine Fisheries licenses, endorsements, commercial fishing vessel registrations, and Commercial Fishing Vessel Registrations, a licensee shall provide a completed application to an office of the Division by mail or in person. Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted. The following shall be required for the application: except Recreational Fishing Tournament Licenses to Sell Fish and Land or Sell Licenses, the following information is required for the application by the licensee, a responsible party, or person holding a power of attorney:

- (1) Full full name, physical address, mailing address, date of birth, and signature of the licensee on the application. licensee. If the licensee is not appearing before a license agent or a representative of the Division, the licensee's signature on the application shall be notarized; notarized.
- (2) a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.
- ~~(2)~~(3) Current current and valid picture identification of licensee or responsible party. the licensee. Acceptable forms of picture identification are state driver's license, state identification card, card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof; thereof.
- ~~(3)~~(4) Certification certification that the applicant does not have four or more marine or estuarine resource violations convictions during the previous three years; years.

- ~~(4)~~ Valid documentation papers or current motor boat registration, or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted;
- (5) Current current articles of incorporation and a current list of corporate officers when purchasing a license or commercial fishing vessel registration Commercial Fishing Vessel Registration in a corporate name. In the case of incorporation of an individual fishing vessel, the name of the vessel master of that vessel shall also be specified. The responsible party licensee shall notify the Morehead City Office of the Division of Marine Fisheries within five days of change of the master specified for that vessel; changing the vessel master.
- ~~(6)~~ a current copy of a written partnership agreement shall be provided when purchasing a license, endorsement, or Commercial Fishing Vessel Registration in a partnership name, if a partnership is established.
- (7) valid documentation papers or current motor boat registration, or copy thereof when purchasing a Commercial Fishing Vessel Registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.
- ~~(6)~~(8) An affirmation of liability insurance and that the operator is knowledgeable of United States Coast Guard (USCG) safety requirements for the vessel(s) vessels used in the operation in accordance with G.S. 113-168.6 when purchasing a commercial fishing vessel registration Commercial Fishing Vessel Registration with a for-hire endorsement.
- (7) If a partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when purchasing a license, endorsement, or commercial fishing vessel registration in a partnership name;
- (8) For nonresidents, certification of the state of residency;
- (9) In addition to the information required in G.S. 113-169.4, linear length of pier when purchasing an Ocean Fishing Pier License;
- (10) In addition to the information required in G.S. 113-171.1, current aircraft registration and list of operator(s) when purchasing a Spotter Plane License;
- (11) In addition, for fish dealers licenses, the physical address of the established location where business is conducted and, if different, the address where records are kept;
- (12) When purchasing a Fish Dealer License with clam or oyster categories or a consolidated

~~license, the applicant shall provide valid certification as a North Carolina certified shellfish dealer;~~

(13) ~~In addition, for the Blanket For Hire Captain's Coastal Recreational Fishing License (CRFL), the applicant shall provide a valid certification from the USCG that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers; and~~

(14) ~~In addition, for the Blanket For Hire Vessel CRFL or the Non-Blanket For Hire Vessel License, valid documentation papers or current motor boat registration or copies thereof for the vessel engaged as for hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.~~

(d) In addition to the requirements of Paragraph (c) of this Rule, proof of residency for non-residents shall be documented by the licensee with certification of the state of residency. Proof of residency for residents of North Carolina shall be documented by the licensee as follows:

(1) Standard or Retired Standard Commercial Fishing Licenses: A notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4) and:

(A) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident;

(B) a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or

(C) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty assignment at a military facility in North Carolina.

(2) All other types of licenses:

(A) North Carolina voter registration card;

(B) current North Carolina Driver's License;

(C) current North Carolina Certificate of Domicile;

(D) current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or

(E) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty

assignment at a military facility in North Carolina.

(e) In addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be required:

(1) Blanket For-Hire Captain's CRFL: a valid certification from the USCG that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers.

(2) Blanket For-Hire Vessel CRFL or Non-Blanket For-Hire Vessel License:

(A) valid documentation papers or current motor boat registration, or copies thereof for the vessel engaged as for-hire; or

(B) a copy of the pending application and a notarized bill of sale if an application for transfer of documentation is pending.

(3) Fish Dealer License:

(A) the physical address of the established location where business is conducted and, if different, the address where records are kept; and

(B) a valid Permit and Certificate of Compliance from the Division of Marine Fisheries Shellfish Sanitation and Recreational Water Quality Section, if purchasing a Fish Dealer License with clam or oyster categories or a consolidated license.

(4) Land or Sell License:

(A) valid documentation papers or current motor boat registration, or copy thereof; or

(B) a copy of the pending application and a notarized bill of sale if an application for transfer of documentation is pending.

The fees for a Land or Sell License shall be based on the vessel's homeport as it appears on the USCG documentation papers or the state in which the vessel is registered, in accordance with G.S. 113-169.5.

(5) Ocean Fishing Pier License:

(A) the information required in G.S. 113-169.4; and

(B) linear length of the pier. A Marine Fisheries inspector's signature is required to verify the linear length of the pier before the license can be issued.

(6) Recreational Fishing Tournament License to Sell Fish: name and date or dates of the tournament.

(7) Spotter Plane License:

(A) the information required in G.S. 113-171.1;

(B) the current aircraft registration; and

(C) a list of operators.

~~(b)(f)~~ For a License to Land Flounder from the Atlantic Ocean, in addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be applicable:

- (1) for the purpose of this Paragraph, "license year" means the period beginning July 1 of a year through June 30 of the following year.
- ~~(1)(2)~~ To qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:
 - (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina; and
 - (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and
 - (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.
- ~~(2)(3)~~ ~~It is lawful~~ it shall be unlawful for a person to hold more Licenses to Land Flounder from the Atlantic Ocean equal to ~~than~~ the number of vessels that ~~he owns~~ the person owns that individually met the eligibility requirements of Parts ~~(b)(1)(A)(f)(2)(A)~~ and ~~(b)(1)(B)(f)(2)(B)~~ of this Rule.
- ~~(3)(4)~~ ~~The~~ the License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel specified at the time of license issuance.
- ~~(4)(5)~~ ~~At~~ at the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall specify the name of the vessel master ~~of the vessel~~ for each License to Land Flounder from the Atlantic Ocean issued.
- ~~(5)(6)~~ ~~The~~ the holder of the License to Land Flounder from the Atlantic Ocean shall notify the Morehead City Office of the Division of Marine Fisheries within five days of change as to the vessel master identified on the license.
- ~~(6)(7)~~ Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year and ~~expire on June 30.~~ year.

(g) For a Recreational Fishing Tournament License to Sell Fish, in addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be applicable:

- (1) it shall be unlawful for anyone other than the holder of the Recreational Fishing Tournament License to Sell Fish to sell fish taken during a recreational fishing tournament.
- (2) fish to be sold under the Recreational Fishing Tournament License to Sell Fish shall be sold only to licensed fish dealers and shall comply with all applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.

(3) it shall be unlawful for a licensed recreational fishing tournament organizer to fail to accurately and legibly complete a North Carolina Recreational Fishing Tournament Disposition of Proceeds from the Sale of Fish Form provided by the Division of Marine Fisheries and submit the form to the Division within 30 days after the last day of the tournament.

(h) It shall be unlawful for a license, endorsement, or Commercial Fishing Vessel Registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.

~~(e) To obtain a Recreational Fishing Tournament License to Sell Fish, the tournament organizer shall apply with the Division of Marine Fisheries at least 30 days prior to the starting date of the tournament with the following required information:~~

- ~~(1) Full name, physical address, mailing address, date of birth, signature of the tournament organizer, name of tournament, and dates of tournament on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature shall be notarized on the application.~~
- ~~(2) Current picture identification of tournament organizer. Acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.~~

~~(d) To obtain a Land or Sell License, the following information is required for a proper application:~~

- ~~(1) Full name, physical address, mailing address, date of birth, and signature of the responsible party or master for the vessel on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature on the application shall be notarized on the application;~~
- ~~(2) Current picture identification of responsible party or master. Acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card), or passport; or if applying by mail, a copy thereof;~~
- ~~(3) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.~~

Fees shall be based on the vessel's homeport as it appears on the U.S. Coast Guard documentation papers or the State in which the vessel is registered, in accordance with G.S. 113-169.5.

(e) Proof of residency in North Carolina for:

- ~~(1) Standard Commercial Fishing License or Retired Standard Commercial Fishing License shall require a notarized certification from the~~

applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4); and

- (A) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident;
 - (B) a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or
 - (C) military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.
- (2) All other types of licenses:
- (A) North Carolina voter registration card; or
 - (B) Current North Carolina Driver's License; or
 - (C) Current North Carolina Certificate of Domicile; or
 - (D) Current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or
 - (E) Military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.

(f) Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.

(g) It is unlawful for a license or registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.

(h) Licenses are available at Offices of the Division or by mail from the Morehead City Office, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at Wildlife Service Agents who have been designated as agents of the Department.

(i) To renew any Marine Fisheries licenses, endorsements, and commercial fishing vessel registration, except Recreational Commercial Gear Licenses, the following is required for the renewal application by the licensee, a responsible party, or person holding a power of attorney:

- (1) The information required in Subparagraphs (a)(4), (a)(5), and (a)(6) of this Rule are only required if a change has occurred since the last issuance of license, endorsement, or commercial fishing vessel registration.
- (2) Certification that articles of incorporation and list of corporate officers, if incorporated,

written partnership agreement, if written partnership, or documentation papers or motor boat registration previously provided for initial license purchase are still valid and current for renewal.

- (3) Current and valid state driver's license or state identification picture identification numbers and expiration dates shall be verified on mail license renewal applications or any other electronic license renewal process, otherwise the licensee shall provide a photocopy for renewal by mail or visit a Division License Office and present a current and valid picture identification pursuant to Subparagraph (a)(2) of this Rule.
- (4) The licensee's or responsible party's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications shall not be required.
- (5) The Division of Marine Fisheries may require current copies of documentation for licenses, endorsements, or commercial fishing vessel registration on renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.
- (6) If the linear length of the pier has not changed for the Ocean Fishing Pier License renewal, the responsible party shall certify that the length is accurate; otherwise, a Marine Patrol Officer's signature is required to certify the linear length before the license can be renewed.
- (7) Certification that shellfish dealer certification by North Carolina previously provided for issuance of Fish Dealer License with clam or oyster categories or consolidated license is still valid and current for renewal.

Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169; 113-169.2-5; 113-171.1; 113-174.3; 113-182; 143B-289.52.

15A NCAC 030 .0102 RECREATIONAL FISHING TOURNAMENT LICENSE TO SELL FISH PROCEDURES AND REQUIREMENTS TO RENEW LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS

(a) It is unlawful for anyone other than the holder of the Recreational Fishing Tournament License to Sell Fish to sell fish taken during a recreational fishing tournament.

(b) Fish to be sold under the Recreational Fishing Tournament License to Sell Fish must be sold only to licensed fish dealers and shall comply with all applicable rules of the Marine Fisheries Commission (MFC) or provisions of proclamations issued by the Fisheries Director as authorized by the MFC.

(c) It is unlawful for a licensed recreational fishing tournament organizer to fail to accurately and legibly complete and file within 30 days after the last day of the tournament a North Carolina Recreational Fishing Tournament Disposition of Proceeds from the Sale of Fish Form provided by the Division.

(a) For the purpose of this Rule, the procedures and requirements for the licensee shall also apply to the responsible party, the person holding power of attorney, the tournament organizer, and the vessel master.

(b) To renew Division of Marine Fisheries licenses, endorsements, and Commercial Fishing Vessel Registrations, except Recreational Commercial Gear Licenses, a renewal application shall be submitted by the licensee. Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the licensee with deficiency in the application so noted. The following is required for the renewal application:

- (1) full name, physical address, mailing address, date of birth, and signature of the licensee.
- (2) a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.
- (3) current and valid picture identification of the licensee. Acceptable forms of picture identification are state driver's license, state identification card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.
- (4) the information required in Rule .0101(c)(4) through (c)(8) of this Section, if changed since last issuance of the license, endorsement, or Commercial Fishing Vessel Registration.
- (5) the information required in Rule .0101(e)(1) of this Section, if the linear length of the Ocean Fishing Pier has changed.
- (6) a valid Permit and Certificate of Compliance from the Division's Shellfish Sanitation and Recreational Water Quality Section, if renewing a Fish Dealer License with clam or oyster categories or a consolidated license.
- (7) certification that all information on the application is true and accurate. Notarization of the signature on renewal applications shall not be required.

The Division may require current copies of documentation for licenses, endorsements, and Commercial Fishing Vessel Registrations upon renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.

Authority G.S. 113-134; 113-168; ~~113-168.4~~; 113-168.1-6; 113-169.2-5; 113-171.1; 113-174.3; 113-182; 143B-289.52.

15A NCAC 030 .0103 AUXILIARY VESSELS

(a) Buy boats, run boats, purse boats or any other vessels used in conjunction with commercial fishing operations, except vessels without motors used in connection with other vessels with commercial fishing vessel registrations, shall have a commercial fishing vessel registration. It shall be unlawful to fail to comply with Commercial Fishing Vessel Registration requirements set forth in G.S. 113-168.6 to operate a buy vessel, run vessel, purse

vessel, or any other vessel used in conjunction with a commercial fishing operation, except as specified.

(b) ~~A person~~ An individual in command of a vessel that is auxiliary to a vessel with a ~~commercial fishing vessel registration~~ Commercial Fishing Vessel Registration with a ~~person~~ an individual aboard who holds a Standard Commercial Fishing License or a Retired Standard Commercial Fishing License engaged in a commercial fishing operation using a pound net, ~~long haul, long haul, or beach seine or purse seine~~ is exempt from the provisions of G.S. 113-168.2 (a1).

Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.5; 113-168.6; ~~113-169~~; ~~113-182~~; 143B-289.52.

15A NCAC 030 .0104 COMMERCIAL UNLOADING OF FISH

It is shall be unlawful to unload fish from a vessel in North Carolina ~~which~~ that has been engaged in a commercial fishing operation outside ~~state~~ State waters without possessing a valid:

- (1) Standard or Retired Standard Commercial Fishing Licenses; ~~or~~ License with applicable endorsement;
- (2) ~~Menhaden License for Nonresidents Without a Standard Commercial Fishing License; or~~
- (3)(2) Shellfish License for North Carolina Residents without a Standard Commercial Fishing Licenses; License; or
- (4)(3) Land or Sell License.

Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.4; ~~113-169~~; 113-169.5; ~~113-182~~; 143B-289.52.

15A NCAC 030 .0105 REQUIREMENTS FOR BAIT AND MUSSEL DEALERS

(a) ~~Persons dealing in minnows, live shrimp, or both minnows and live shrimp for bait purposes, who are subject to licensing requirements under G.S. 113-169.3 are required to purchase only the license applicable to finfish dealers. A bona fide dealer in shrimp, licensed under the provisions of G.S. 113-169.3, may, however, deal in minnows as well as live shrimp for bait purposes, as an incident of his operations under his shrimp dealer's license.~~

(b) Persons dealing in mussels who are subject to licensing requirements under the provisions of G.S. 113-169.3 ~~are~~ shall be required to purchase only the license applicable to clam dealers and ~~meet the shellfish dealer certification requirements in 15A NCAC 030 .0101(a)(11).~~ shall be required to hold a valid Permit and Certificate of Compliance from the Division of Marine Fisheries Shellfish Sanitation and Recreational Water Quality Section, as described in Rule .0101 of this Section.

Authority G.S. 113-134; 113-169.3; ~~113-182~~; 143B-289.52.

15A NCAC 030 .0107 LOST LICENSE REPLACEMENT AND FEES

(a) Lost licenses except Blanket Coastal Recreational Fishing Licenses, endorsements, and commercial fishing vessel registration decals may be replaced upon payment of a fee of ten dollars (\$10.00) or a fee equal to the initial cost of the license, endorsement, or commercial fishing vessel registration,

~~whichever is less.~~ A licensee shall receive a replacement for a commercial license, endorsement, Commercial Fishing Vessel Registration decal, or Recreational Commercial Gear License upon payment to the Division of Marine Fisheries a fee of ten dollars (\$10.00) or a fee equal to the initial cost of the license, endorsement, or Commercial Fishing Vessel Registration, whichever is less.

~~(b) The replacement fee for the Blanket Coastal Recreational Fishing Licenses is five dollars (\$5.00). A licensee shall receive a replacement Coastal Recreational Fishing License or a for-hire license as defined in G.S. 113-174.3 upon payment to the Division of Marine Fisheries a fee of five dollars (\$5.00).~~

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.

15A NCAC 030 .0109 ASSIGNMENT OF SCFL STANDARD COMMERCIAL FISHING LICENSE

~~(a) For the purpose of this Rule, "licensee" shall mean the person issued a Standard Commercial Fishing License and "assignee" shall mean the individual to whom the licensee assigns a Standard Commercial Fishing License in accordance with the requirements of this Rule.~~

~~(a)(b) The Division of Marine Fisheries shall provide assignment forms to the licensee upon issuance of the Standard Commercial Fishing License request. Assignment must be made on the Only Division assignment forms. forms shall be used to obtain an assignment. On the assignment form, the Standard Commercial Fishing License holder must licensee shall designate what, if any, endorsements are included in the assignment. Endorsements may shall not be assigned independent of the Standard Commercial Fishing License. It is shall be unlawful for the Standard Commercial Fishing License holder licensee or the assignee to fail to submit within five days the completed assignment form to any office of the Division in person or by mail to the Morehead City Division Office. The Morehead City Office is located at 3441 Arendell Street, Morehead City, North Carolina, 28557. If the completed assignment form is not received by the Division within five days from the date it was signed, the assignment shall be null and void. Incomplete forms shall be returned to the licensee with deficiency in the form so noted. An assignment is in effect from the date specified on the assignment form and when:~~

- ~~(1) the assignment form is properly completed; complete with all required information;~~
- ~~(2) signatures of the current license holder and the assignee are notarized; and~~
- ~~(3) the assignee has in their the assignee's possession the current licensee's original actual Standard Commercial Fishing License with License, including applicable endorsements of the current license holder. in accordance with G.S. 113-169.2.~~

~~(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.~~

~~(b)(d) Assignments terminate when: shall terminate:~~

- ~~(1) when the date specified on the assignment form is reached; or~~

- ~~(2) if the licensee or assignee are determined ineligible for a license or assignment; or~~
- ~~(3) if the Division receives a notarized statement from the current license holder stating a revised date for an earlier assignment termination; or~~
- ~~(4) upon the licensee or assignee's death; or~~
- ~~(5) when the Standard Commercial Fishing License expires.~~

~~If the properly completely assignment form is not received by the Division within five days from the date it was signed, the assignment is null and void. For an extension of time for assignments, a new assignment form must be completed in accordance with Subparagraphs (a)(1) (3) of this Rule.~~

~~(e)(e) It is shall be unlawful for an individual assigned a Standard Commercial Fishing License to fail to have available ready at hand for inspection all required documents as stated under G.S. 113-168.1. The assignee when involved in a commercial fishing operation must to fail to have the original actual Standard Commercial Fishing License and License, any assigned endorsements endorsements, and a copy of the assignment form in their the individual's possession ready at hand for inspection. inspection in accordance with G.S. 113-168.1.~~

~~(d)(f) All landings occurring during the time of the assignment shall be credited to the Standard Commercial Fishing License holder; licensee, not the assignee.~~

~~(e)(g) It is shall be unlawful to be assigned more than a single Standard Commercial Fishing License at any one time. It is shall be unlawful to assign a Standard Commercial Fishing License to more than one individual at any one time. Assignments may shall only be made by the person issued the Standard Commercial Fishing License licensee and may shall not be further assigned by assignees. Masters identified on the Standard Commercial Fishing Licenses of corporations consisting of an individual fishing vessel may shall not assign such licenses.~~

~~(f)(h) It is shall be unlawful for a person to accept assignment of a Standard Commercial Fishing License for which they are ineligible.~~

~~(g) Assignments submitted without complete and required information shall be deemed not in effect and shall not be considered further until resubmitted with all required information.~~

~~(h)(i) It is shall be unlawful for any assignee of a Standard Commercial Fishing License not to return the assignment and the Standard Commercial Fishing License with any assigned endorsements to the assignor of that license licensee within five days of notice that the assignment has been terminated or a demand by the assignor licensee to return the license.~~

Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.5; 113-169.2; 113-182; 143B-289.52.

15A NCAC 030 .0110 LICENSE REFUNDS

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

Authority G.S. 113-134; 113-168.1; 113-173; 113-182; 143B-289.52; 147-84; 1993 (Regular Session 1994), c. 576, s. 3.

15A NCAC 030 .0111 SURRENDER OF LICENSES

(a) It ~~is~~ shall be unlawful for any licensee to refuse to surrender to an agent of the Secretary all licenses, license receipts, endorsements, commercial fishing vessel registration or decals, and other forms and records relating to the license following service of notice of suspension or revocation of licenses in accordance with G.S. ~~443-474~~, 113-171 and Rule .0114 of this Section.

(b) It ~~is~~ shall be unlawful for any person in custody or possession of any licenses, license receipt, endorsements, commercial fishing vessel registration or decals, and other documentation required to be surrendered to refuse to surrender same to an agent of the Secretary making such demand.

(c) A license issued by the Division in error shall be required to be surrendered immediately upon service of a notice by an agent of the Fisheries Director to surrender the license.

Authority G.S. 113-134; 113-171; 113-182; 143B-289.52; S.L. 2010-145.

15A NCAC 030 .0113 OCEAN FISHING PIER REPORTING REQUIREMENTS

It ~~is~~ shall be unlawful for the responsible party of the Ocean Fishing Pier License to fail to provide to the Division of Marine Fisheries by the 10th of each month a daily count of anglers fishing from the licensed pier from the previous month, including a daily count of zero for days when anglers did not fish. The information shall be submitted on a paper form provided by the Division or via electronic mail to the electronic mail address provided at the time of license ~~application~~, issuance.

Authority G.S. 113-134; 113-169.4; 113-174.1; 113-182; 143B-289.52.

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 demonstrate in the request that the licensee will conduct the operations for which the license is sought in ~~accord~~ accordance with all applicable laws and rules, shall submit the request in writing, and shall ~~send mail~~ send mail the request to the Fisheries Director, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. Upon the application of an eligible former licensee after revocation, the Fisheries Director may issue one license sought but not another, as necessary to prevent the hazard of recurring violations of the law.

(g) ~~A licensee shall not willfully~~ It shall be unlawful to evade the service prescribed in this Rule.

Authority G.S. 113-134; 113-168.1; 113-171; 113-182; 143B-289.52; S.L. 2010-145.

SECTION .0200 – LEASES AND FRANCHISES

15A NCAC 030 .0203 SHELLFISH LEASE APPLICATION PROCESSING

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

(b) If the initial or amended ~~shellfish~~ lease application is deemed consistent with all applicable requirements, the Secretary or ~~his~~ 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 ~~his~~ 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 ~~which that~~ would otherwise be denied. Should an applicant decide not to accept any special condition imposed on the ~~shellfish~~ lease by the Secretary, the application shall be considered denied.

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

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

"I _____ certify that this map was (drawn by me)(drawn under my supervision) from (an actual survey made

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

~~Surveyor or Engineer~~

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

(e) Proposed shellfish bottom lease areas remain public bottom until a lease contract has been executed by the Secretary.

(f) Proposed ~~shellfish~~ water column lease areas superjacent to ~~shellfish~~ bottom leases and ~~recognized perpetual~~ franchises remain public water until a lease contract has been executed by the Secretary.

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

15A NCAC 030 .0205 SHELLFISH LEASE RENEWAL

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

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

(b) ~~Lease~~ A shellfish lease renewal ~~applications application~~ shall be accompanied by ~~management plans meeting a Shellfish Lease Management Plan that meets the requirements of 15A NCAC 030 .0202(b). Rule .0202 of this Section.~~ The non-refundable filing fee set forth in G.S. 113-202(j) shall accompany each renewal application for a shellfish bottom ~~leases. lease.~~

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

(c) To be eligible to renew a shellfish lease, persons holding any acres under a shellfish lease or franchise shall meet the requirements established in Rules .0201 and .0204 of this Section and 15A NCAC 030 .0503(a).

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

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

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

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

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

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

~~from the Secretary may appeal this decision as outlined in G.S. 113-202(g).~~

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

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

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

Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52.

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

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

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

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

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

15A NCAC 030 .0208 ~~TERMINATION OF PROCEDURES FOR SHELLFISH BOTTOM LEASES AND FRANCHISES AND WATER COLUMN LEASES~~

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

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

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

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

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

- (4) damage to the shellfish lease or franchise from a manmade disaster that triggers a state emergency declaration or federal emergency declaration.

~~(d)(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 (c)(4)(b)(1) of this Rule, the notice shall also state the name of the leaseholder shellfish lease or franchise holder or immediate family member and either the date of death or the date and nature of the illness or incapacity. The Fisheries Director may require a doctor's verification that the illness or incapacity occurred. In the case of hardship as described in Subparagraphs (b)(2) through (b)(4) of this Rule, the notice shall also include documentation of damage to the shellfish lease or franchise. Written notice and supporting documentation shall be addressed to the Director of the Division of Marine Fisheries, 3441 Arendell St., Street, P.O. Box 769, Morehead City, NC 28557.~~

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

15A NCAC 030 .0209 ~~TRANSFER OF INTEREST ASSIGNMENT OF SHELLFISH LEASES AND FRANCHISES~~

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

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

~~(a) Within 30 days after transfer of ownership of all or any portion of interest in a shellfish lease or franchise, the new owner shall notify the Division, and provide the number of the lease or franchise and the county in which it is located. Such notification shall be accompanied by a management plan prepared by the new owner in accordance with 15A NCAC 030 .0202(b).~~

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

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

~~(b)(d) If the new owner obtains a The smallest portion of an existing shellfish bottom lease or franchise, it shall not contain less than franchise to be transferred or subleased shall be one-half acre acre. and the required notification to the Division shall be~~

~~accompanied by a survey prepared in accordance with the standards in 15A NCAC 03O .0203(d).~~

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

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

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

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

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

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

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

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

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

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

Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-205; 113-206; 143B-289.52.

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

~~(a) It is shall be unlawful to use any trawl net, long haul seine, swipe net, dredge, or mechanical method for elams or oysters~~

~~shellfish on any shellfish lease or franchise except; unless it has been duly authorized by the Fisheries Director as provided in 15A NCAC 3K .0206 and .0303.~~

~~(1) for a holder of a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises; or~~

~~(2) for the purpose of placing and retrieving cages, bags, or other aquaculture gear within any shellfish lease or franchise.~~

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

Authority G.S. 113-134; 113-182; 113-201; 113-206; 143B-289.52.

SECTION .0300 – RECREATIONAL COMMERCIAL GEAR LICENSES

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

(a) It is ~~shall be~~ unlawful for any individual to hold more than one Recreational Commercial Gear License.

(b) Recreational Commercial Gear Licenses shall only be issued to individuals.

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

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

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

(1) ~~One one~~ seine 30 feet or over in length but not greater than 100 feet with a mesh length less than ~~2-1/2 two and one-half~~ inches when deployed or retrieved without the use of a vessel or any other mechanical methods. A vessel may be used only to transport the seine;

(2) ~~One one~~ shrimp trawl with a headrope not exceeding 26 feet in length per ~~vessel. vessel;~~

(3) ~~With with~~ or without a vessel, five eel, fish, shrimp, or crab pots in any combination, except only two pots of the five may be eel pots. Peeler pots are not authorized for recreational purposes;

(4) ~~One one~~ multiple hook or multiple bait trotline up to 100 feet in length;

(5) ~~Gill Nets; gill nets;~~
 (A) ~~Not not~~ more than 100 yards of gill nets with a mesh length equal to or greater than ~~2-1/2 two and one-half~~ inches except as provided in Part (C) of this Subparagraph. Attendance is ~~shall be~~ required at all times;

(B) ~~Not not~~ more than 100 yards of gill nets with a mesh length equal to or greater than ~~5-1/2 five and one-half~~

inches except as provided in Part (C) of this Subparagraph. Attendance ~~is shall be~~ required when used from one hour after sunrise through one hour before sunset in ~~internal-coastal fishing waters~~ Internal Waters east and north of the Highway 58 Bridge at Emerald Isle and in the Atlantic Ocean east and north of 77° 04.0000' W. Attendance ~~is shall be~~ required at all times in ~~internal-coastal fishing waters~~ Internal Waters west and south of the Highway 58 Bridge at Emerald Isle and in the Atlantic Ocean west and south of 77° 04.0000' W; ~~and~~

- (C) ~~Not not~~ more than 100 yards of gill net may be used at any one time, except that when two or more Recreational Commercial Gear License holders are on ~~board~~, board a vessel, a maximum of 200 yards may be used from a vessel; and
- (D) ~~It is it shall be~~ unlawful to possess ~~aboard on board~~ a vessel more than 100 yards of gill nets with a mesh length less than ~~5-1/2~~ five and one-half inches and more than 100 yards of gill nets with a mesh length equal to or greater than ~~5-1/2~~ five and one-half inches identified as recreational commercial fishing equipment when only one Recreational Commercial Gear License holder is on ~~board~~; board a vessel. It ~~is shall be~~ unlawful to possess ~~aboard on board~~ a vessel more than 200 yards of gill nets with a mesh length less than ~~5-1/2~~ five and one-half inches and more than 200 yards of gill nets with a mesh length equal to or greater than ~~5-1/2~~ five and one-half inches identified as recreational commercial fishing equipment when two or more Recreational Commercial Gear License holders are on ~~board~~; board a vessel;
- (6) A one hand-operated device generating pulsating electrical current for the taking of catfish in the area described in 15A NCAC 03J .0304;
- (7) ~~Skimmer~~ skimmer trawls not exceeding 26 feet in total combined ~~width~~; width; and
- (8) ~~One one~~ pound net used to take shrimp with each lead 10 feet or less in length and with a minimum lead net mesh of ~~1-1/2~~ one and one-half inches, and enclosures constructed of net mesh of ~~1-1/4~~ one and one-fourth inches or greater and with all dimensions being 36 inches or less. Attendance ~~is shall be~~ required at all times and all gear ~~must shall~~ be removed from

the water when not being fished. Gear is to be marked and set as specified in 15A NCAC 03J .0501.

- (b) It ~~is shall be~~ unlawful to use more than the quantity of authorized gear specified in ~~Subparagraphs (a)(1) through (a)(8) of Paragraph (a) of this Rule~~, regardless of the number of individuals ~~aboard on board~~ a vessel possessing a valid Recreational Commercial Gear License.
- (c) It ~~is shall be~~ unlawful for ~~a person~~ an individual to violate the restrictions of or use gear other than that authorized by Paragraph (a) of this Rule.
- (d) Unless otherwise provided, this Rule does not exempt Recreational Commercial Gear License holders from the provisions of other applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.

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

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

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

equipment as ~~defined~~ described in ~~45A NCAC 030 Rule .0302(a) of this Section~~ is used.

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

SECTION .0400 – STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY

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

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

(b) The Standard Commercial Fishing License Eligibility Board shall not review an application for eligibility without a quorum of the 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.

Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

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 shall be are available at all offices of the Division of Marine Fisheries and online at <https://deq.nc.gov/about/divisions/marine-fisheries/licenses-permits-and-leases/commercial-fishing-licenses/eligibility-pool> and ~~must~~ shall be submitted to the Morehead City Office of the ~~Division of Marine Fisheries~~ Division, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557 for processing.

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

(c) Individuals who currently hold or are eligible to purchase a Standard or Retired Standard Commercial Fishing License shall not be eligible to apply for additional Standard Commercial Fishing Licenses through the Standard Commercial Fishing License Eligibility Pool.

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

(e) Persons claiming retirement from commercial fishing or transferring their Standard Commercial Fishing License ~~may not apply for pool eligibility~~ shall not be eligible to apply for a Standard Commercial Fishing License through the Standard

Commercial Fishing License Eligibility Pool for two years from the date of the last ~~transfer~~ transfer, except as provided in ~~45A NCAC 030 .0404(3).~~ Rule .0404(3) of this Section.

(f) Applicants shall notify the Division of ~~Marine Fisheries~~ within 30 days of a change of address.

Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

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's~~ applicant meeting or not meeting required eligibility criteria for the Standard Commercial Fishing License Eligibility Pool.

(b) The Marine Fisheries Commission shall determine the number of licenses available from the ~~pool~~ Standard Commercial Fishing License Eligibility Pool at ~~their~~ its first regularly scheduled meeting following July 1 of each year.

(c) The Standard Commercial Fishing License Eligibility Board shall meet to review applications as often as deemed necessary by the ~~Chairman Chair~~ of the Eligibility Board.

Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

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

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

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

For the purposes of this Rule, ~~significant involvement means~~ "significant involvement" shall mean persons or corporations who are

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

(2) ~~Compliance with Applicable Laws and Regulations;~~ compliance with applicable laws, regulations, and rules:

(a) ~~The~~ the applicant shall not have any licenses, ~~endorsements or commercial fishing vessel registrations~~ endorsements, or Commercial Fishing Vessel Registrations issued by the Division of Marine Fisheries or the right to hold such under suspension or revocation at the time of application or during the eligibility review; ~~or~~

(b) ~~If~~ if selected for the Standard Commercial Fishing License Eligibility Pool, the applicant shall become ineligible for the Standard Commercial Fishing License Eligibility Pool if any licenses, ~~endorsements or registrations~~ endorsements, or Commercial Fishing Vessel Registrations or the right to hold such issued by the Division of ~~Marine Fisheries~~ are suspended or revoked; ~~or~~

(c) ~~Four~~ four convictions within the last three years or the number of convictions ~~which~~ that would cause suspension or revocation of ~~license, endorsement, or registration~~ licenses, endorsements, or Commercial Fishing Vessel Registrations within the last three years shall result in the application being ~~denied;~~ or denied. An applicant for the Standard Commercial Fishing License Eligibility Pool shall provide certification that the applicant does not have four or more marine or estuarine resource convictions during the previous three years; and

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

For purposes of eligibility for the Standard Commercial Fishing License Eligibility Pool,

the term convictions shall include ~~but not be limited to~~ any conviction for violation of any provision of Chapter 113 of the North Carolina General Statutes and any rule implementing or authorized by such ~~statutes;~~ statutes, any conviction for violation of G.S. 76-40 and any rule implementing or authorized by such ~~statute;~~ statute, any conviction of Chapter 75A of the North Carolina General Statutes and any rule implementing or authorized by such ~~statutes;~~ statutes, any conviction for violation of any provision of Article 7 of Chapter 143B of the North Carolina General Statutes and any rule implementing or authorized by such ~~statutes;~~ statutes, any conviction of, resist, obstruct, or delay involving a ~~Marine Patrol Officer or Wildlife Officer~~ Marine Fisheries Inspector or Wildlife Protector under G.S. 14-223; 14-223, and any conviction involving assaultive behavior toward a ~~Marine Patrol Officer~~ Marine Fisheries Inspector or other governmental official of the Department of ~~Environment and Natural Resources~~ Environmental Quality or the ~~Wildlife Resources Commission~~ Commission; ~~Applicants for the Standard Commercial Fishing License Eligibility Pool must provide certification that the applicant does not have four or more marine or estuarine resource violations during the previous three years.~~

(3) ~~The~~ the responsible party shall not have transferred a Standard Commercial Fishing License granted by the ~~Standard Commercial Fishing License Eligibility Board;~~ Board; and

(4) ~~All applicants~~ an applicant for the Standard Commercial Fishing License Eligibility Pool ~~must~~ shall meet all other statutory eligibility requirements for ~~the~~ a Standard Commercial Fishing License.

Authority G.S. 113-134; 113-168.1; 113-168.2; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

15A NCAC 030 .0405 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY POOL APPLICATION DOCUMENTATION

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

(1) ~~Statements~~ statements from individuals verifying the ~~applicant's involvement~~ applicant's involvement in commercial fishing or the commercial fishing industry, which shall contain the ~~individual's~~ individual's name, ~~address~~ address, and telephone ~~number~~ number, and ~~must be notarized;~~ the individual's signature shall be notarized;

(2) ~~Proof~~ proof of income derived from commercial fishing or the commercial fishing

industry. Proof of this income shall be tax records, records; and

- (3) The extent to which the applicant has complied with federal and state laws, regulations, and rules relating to coastal fishing and protection of the environment. Federal compliance will be verified by a notarized statement from the applicant that he the applicant has complied with federal laws.

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

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

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

Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

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

Eligibility Pool shall receive a notice from the Division.

Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

SECTION .0500 - PERMITS

15A NCAC 030 .0502 PERMIT CONDITIONS; GENERAL PERMIT CONDITIONS

(a) It shall be unlawful to violate any permit condition.

(b) The following conditions shall apply to all permits issued by the Fisheries Director:

- (1) it is unlawful to it shall be unlawful to:
(A) operate under the permit except in areas, at times, and under conditions specified on the permit; permit.
(2)(B) it is unlawful to operate under a permit without having the permit or copy thereof in possession of the permittee or his or her 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 Permits; Set Permit.
(3)(C) it is unlawful to operate under a permit without having a current valid picture identification in possession and ready at hand for inspection; inspection.
(4)(D) it is unlawful to refuse to allow inspection and sampling of a permitted activity by an agent of the Division; Division of Marine Fisheries.
(5)(E) it is unlawful to fail to provide complete and accurate information requested by the Division in connection with the permitted activity; activity.
(F) provide false information in the application for initial issuance, renewal, or transfer of a permit.
(6)(G) it is unlawful to hold a permit issued by the Fisheries Director when if not eligible to hold any license required as a condition for that permit as stated in 15A NCAC 030 .0501; Rule .0501 of this Section.
(7)(H) it is unlawful to fail to provide reports within the timeframe required by the specific permit conditions; conditions.
(8)(I) it is unlawful to fail to keep such records and accounts as required by the rules in this Chapter for determination of conservation policy, equitable and efficient administration and enforcement, or promotion of commercial or recreational fisheries; fisheries.

- ~~(9)~~(J) ~~it is unlawful to~~ assign or transfer permits issued by the Fisheries Director, except for a Pound Net Permits Set Permit as authorized by 15A NCAC 03J .0504; .0504.
- (10)(2) the Fisheries Director, Director or his agent, the Fisheries Director's agent may, by conditions of the permit, ~~specify~~ impose any ~~or all~~ of the following restrictions for the permitted purposes:
- ~~(a)~~ species;
 - ~~(b)~~ quantity or size;
 - ~~(c)~~ time period;
 - ~~(e)~~ location;
 - ~~(d)~~ means and methods;
 - ~~(f)~~ disposition of resources;
 - ~~(g)~~ marking requirements; or
 - ~~(h)~~ harvest conditions.
 - (A) specify time;
 - (B) specify area;
 - (C) specify means and methods;
 - (D) specify requirements for a commercial fishing operation or for recreational purposes;
 - (E) specify record keeping and reporting requirements;
 - (F) specify season;
 - (G) specify species;
 - (H) specify size;
 - (I) specify quantity;
 - (J) specify disposition of resources;
 - (K) specify marking requirements; and
 - (L) specify harvest conditions.
- (11)(3) unless specifically stated as a condition on the permit, all statutes, ~~rules~~ rules, and proclamations shall apply to the permittee and ~~his or her designees; and the permittee's designees.~~
- (12) as a condition of accepting the permit from the Fisheries Director, the permittee agrees to abide by all conditions of the permit and agrees that if specific conditions of the permit, as identified on the permit, are violated or if false information was provided in the application for initial issuance, renewal or transfer, the permit may be suspended or revoked by the Fisheries Director.

- (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.
- (c) If a license is not required to hold a permit, in the case of revocation of a permit, the former permittee shall not be eligible to apply for reinstatement of a revoked permit for a period of six months.
- (a)(d) It shall be unlawful to violate any permit condition. For violation of specific permit conditions (as specified on the permit), permits may be suspended or revoked according to the following schedule:
- (1) violation of one specific permit condition in a ~~three-year~~ three-year period, permit shall be suspended for 10 ~~days;~~ days.
 - (2) violation of two specific permit conditions in a ~~three-year~~ three-year period, permits shall be suspended for 30 ~~days;~~ days.
 - (3) violation of three specific permit conditions in a ~~three-year~~ three-year period, permits shall be revoked for a period not less than six months.
 - (4) violation of any permit conditions as set forth in 15A NCAC 03J .0505(a), permits may be revoked and the former permittee may not be eligible to apply for any future Pound Net Set Permits.

If several permit conditions are violated as a result of a single transaction or occurrence, the permit violations shall be treated as a single violation for the purpose of suspension or revocation. If the permit condition violated is the refusal to provide information upon request by Division staff, either by telephone, in writing or in person, the Fisheries Director may suspend the permit. Such permit may be reinstated 10 days after the requested information is provided.

~~(b) All permits will be suspended or revoked when the permittee's license privilege has been suspended or revoked as set out in G.S. 113-171. The duration of the suspension or revocation shall be the same as the license suspension or revocation. In the event the person makes application for a new permit during any period of license suspension, no new permit will be issued during the suspension period. In case of revocation of license privileges, the minimum waiting period before application for a new permit to be considered will be six months.~~

~~(e)(e) Permit designees shall not be permitted to participate in a permit operation during any period they are under license suspension or revocation.~~

(f) If violation of permit conditions requires suspension or revocation of a permit, the Fisheries Director shall cause the

Authority G.S. 113-134; 113-169.1; 113-182; 113-210; 143B-289.52.

**15A NCAC 030 .0504 SUSPENSION/REVOCATION
SUSPENSION AND REVOCATION OF PERMITS**

(a) All commercial and recreational permits issued under Article 14A, Article 14B, and Article 25A of Chapter 113, and rules of the Marine Fisheries Commission shall be subject to suspension and revocation. For the purpose of this Rule and in accordance with G.S. 150B-2, "permit" includes "certification" and "certificate of compliance".

permittee to be served with written notice of the intent to commence suspension or revocation. If the permittee is not an individual, the written notice shall be served upon any responsible individual affiliated with the corporation, partnership, or association. The notice of the intent to commence suspension or revocation shall be served by an inspector or other agent of the Department or by certified mail, and shall state the grounds upon which it is based.

(g) The Fisheries Director shall order summary suspension of a permit if it finds that the public health, safety, or welfare requires emergency action. Upon such determination, the Fisheries Director shall issue an order giving the reasons for the emergency action. The effective date of the order shall be the date specified on the order or the date of service of a certified copy of the order at the last known address of the permittee, whichever is later.

~~(d)~~(h) Upon service of a notice of suspension or revocation of a permit, it is shall be unlawful to fail to surrender any permit so suspended or revoked.

(i) It shall be unlawful to fail to surrender a permit issued by the Division in error immediately upon service of a notice by an agent of the Fisheries Director to surrender the permit.

(j) It shall be unlawful to evade the service prescribed in this Rule.

(k) It shall be unlawful to fail to remove all gear, markers, and devices associated with an Aquaculture Operation Permit within 30 days after expiration of the Aquaculture Operation Permit, termination of a shellfish lease for which the Aquaculture Operation Permit was issued, or notice by the Fisheries Director that an existing Aquaculture Operation Permit has been revoked or denied. Similar requirements for gear removal for a Pound Net Set Permit are described in 15A NCAC 03J .0505.

Authority G.S. 113-134; 113-171; 113-182; 113-202; 113-221.2; 143B-289.52; 150B-3; S.L. 2010-145.

SUBCHAPTER 03P - ~~HEARING~~ ADMINISTRATIVE PROCEDURES

SECTION .0100 - HEARING PROCEDURES

15A NCAC 03P .0101 LICENSE, PERMIT, OR CERTIFICATE DENIAL: REQUEST FOR REVIEW

(a) Except in cases where summary suspension is applicable, before the Division of Marine Fisheries may commence proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, notice shall be given to the license holder that the license holder may file a petition for a contested case in accordance with G.S. 113-171(e) and may request a final agency decision in accordance with G.S. 113-171(f).

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

~~(b)~~(c) Except in cases where G.S. 443-474 113-171, 15A NCAC 03O .0114, or summary suspension is applicable, before the Division may commence proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, permit, notice shall be given to the license holder that permittee that the permittee:

(1) may request an opportunity to show compliance with all requirements for retention of the permit by submitting a statement in writing to the personnel designated in the notice to commence proceedings; and

~~(1)~~(2) the license holder has a the right, through filing a request for a contested case hearing in the Office of Administrative Hearings, to a hearing before an administrative law judge, judge and a final agency decision by the Marine Fisheries Commission; and

~~(2)~~(2) the license holder may request an opportunity to show compliance with all requirements for retention of the license by submitting a statement in writing to the personnel designated in the notice to commence proceedings.

~~(e)~~(d) Any statements submitted by the license holder permittee to show compliance with all requirements for retention of the license permit shall be postmarked or emailed within 15 10 days of receipt of the notice to commence proceedings. proceedings, except for a permit related to endangered or threatened species or a species managed by a quota, any statements to show compliance shall be postmarked or emailed within five days of receipt of the notice to commence proceedings. Statements and any supporting documentation shall be addressed to the personnel designated in the notice and mailed if mailed, sent to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557, 28557, or if emailed, sent to the email address provided in the notice for the designated personnel.

~~(d)~~(e) Upon receipt of a statement and any supporting documentation from the license holder, permittee, the Division shall review the statement and, within 15 10 days, shall notify the license holder permittee in writing with the Division's determination whether the license holder permittee demonstrated compliance with all requirements for retention of the license. permit. In making this determination, the Division may consider criteria including material changes made enabling the license holder permittee to conduct the operations for which the license permit is held in accord accordance with all applicable laws and rules rules, and processing errors made by the Division.

~~(e) The Division shall order summary suspension of a license if it finds that the public health, safety, or welfare requires emergency action. Upon such determination, the Fisheries Director shall issue an order giving the reasons for the emergency action. The effective date of the order shall be the date specified on the order or the date of service of a certified copy of the order at the last known address of the license holder, whichever is later.~~

Authority G.S. 113-134; 113-171; 113-182; 113-221.2; 143B-289.52; 150B-3; 150B-23.

15A NCAC 03P .0102 CONTESTED CASE HEARING PROCEDURES

Administrative Contested case hearings shall be held in accordance with G.S. 150B, and the administrative hearing procedures codified at 15A NCAC 1B .0200. Article 3 of Chapter 150B of the General Statutes.

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

SECTION .0200 - DECLARATORY RULINGS

15A NCAC 03P .0201 DECLARATORY RULINGS: GENERALLY

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Marine Fisheries Commission may issue a declaratory ruling as provided in G.S. ~~150B-4~~, 150B-4 and rules of this Section.

Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4.

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

(a) All requests for a declaratory ruling shall be ~~filed~~ submitted in writing ~~with the Director of the~~ to the Marine Fisheries Commission Chair and addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, Department of Environment and Natural Resources (DENR), 3441 Arendell Street, P.O. Box 769, Morehead City, North Carolina NC 28557.

(b) All requests shall include the following:

- (1) the ~~aggrieved person's~~ petitioner's name and address;
- (2) the rule, ~~statute~~ statute, or order upon which a ruling is desired;
- (3) a ~~concise~~ statement as to whether the request is for a ruling ~~on~~ on:
 - (A) the validity of a ~~rule or~~ rule;
 - (B) ~~on~~ the applicability of a rule, ~~order~~ order, or statute to a given factual situation; or
 - (C) a conflict or inconsistency within the Commission or the Department of Environmental Quality regarding interpretation of a law or rule adopted by the Commission;
- (4) arguments or data ~~which that~~ that demonstrate that the petitioner is aggrieved by the rule or statute or its potential application to ~~him~~; the petitioner;
- (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner; ~~and~~
- (6) a draft of the proposed ruling; and
- (7) a statement of whether an oral argument is desired, and, if so, the reasons for requesting such an oral argument.

~~(b)(c)~~ (c) A request for a ruling on the validity of a Commission rule shall state the petitioner's reasons for questioning the validity of the rule and a brief or legal memorandum supporting the petitioner's position. A request for a ruling on the applicability of a rule, order, or statute ~~must shall~~ include a description of the statement of the specific facts to a given factual situation ~~on which the ruling is to be based~~; and documentation supporting those facts. A request for a ruling on the validity of a Commission rule must state the ~~aggrieved person's~~ reasons for questioning the validity of the rule. A request for a ruling to resolve a conflict or inconsistency within the Commission or the Department regarding interpretation of a law or rule adopted by the Commission shall include a written description identifying the

conflict or inconsistency, the interpretation provided by the agency, and the law or rule in question. A person may ask for ~~both~~ multiple types of declaratory rulings in a single request. A request for a ruling must include ~~or be accompanied by~~:

- (1) a statement of the facts proposed for adoption by the Commission; and
- (2) a draft of the proposed ruling.

(d) In the manner provided in G.S. 150B-23(d), any other person may request to intervene in the request for declaratory ruling. The request to intervene shall be determined by the Commission Chair.

~~(e) Before deciding the merits of the request, the Commission may:~~

- (1) ~~request additional written submissions from petitioner(s);~~
- (2) ~~request a written response from the Division staff or any other person; or~~
- (3) ~~hear oral argument from the petitioner(s) and Division staff.~~

~~(d) Unless the Division waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. Upon written request, the requesting party and the Division may each be allowed to present oral arguments to the Commission at a regularly scheduled meeting. Neither party may offer testimony or conduct cross examination before the Commission. The declaratory ruling shall be determined on the basis of the statement of facts submitted by the parties.~~

~~(e) Whenever the Commission believes "for good cause" that the issuance of a declaratory ruling is undesirable, the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the ruling, stating the reasons for the refusal to issue a ruling on the request.~~

~~(f) For purposes of Paragraph (e) of this Rule, the Commission shall ordinarily refuse to issue a ruling on a request for declaratory ruling on finding that:~~

- (1) ~~the petitioner(s) and the Division cannot agree on a set of facts sufficient to support a meaningful ruling;~~
- (2) ~~there has been a similar determination in a previous contested case or declaratory ruling;~~
- (3) ~~the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court; or~~
- (4) ~~no genuine controversy exists as to the application of a statute or rule to the factual situation presented.~~

~~(g) The Commission shall keep a record of each declaratory ruling, which shall include at a minimum the following items:~~

- (1) ~~the request for a ruling;~~
- (2) ~~any written submissions by the parties;~~
- (3) ~~the statement of facts on which the ruling was based;~~
- (4) ~~any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;~~
- (5) ~~any other matter considered by the Commission in making the decision; and~~

(6) ~~the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.~~

~~(h) A declaratory ruling is binding on the Commission and the person requesting it unless it is altered or set aside by the court. The Commission may not retroactively change a declaratory ruling, but nothing in this Section prevents the Commission from prospectively changing a ruling.~~

~~(i) Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits or deny the request within 60 days of receipt of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.~~

Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4.

15A NCAC 03P .0203 DEFINITION DISPOSITION OF REQUESTS FOR DECLARATORY RULING

(a) The Marine Fisheries Commission Chair shall make a determination on the completeness of a request for declaratory ruling based on the requirements of this Section.

(b) Before the Commission decides the merits of the request, the Commission Chair may:

- (1) request additional written submissions from the petitioner;
- (2) allow the petitioner to file a reply to the response submitted in accordance with Subparagraph (1) of this Paragraph; and
- (3) request oral arguments from the petitioner or 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 Rule .0202 of this Section, a declaratory ruling shall be deemed to be "in effect" until in effect until:

- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered; amended, altered or repealed;
- (2) any court of the Appellate Division of the General Court of Justice construes the statute or rule that is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling;
- (3) until the Commission changes the declaratory ruling prospectively for good reasons; prospectively; or
- (4) until any court sets aside the declaratory ruling in litigation between the Commission or Department of Environment and Natural Resources Environmental Quality and the party requesting the ruling; rule; or until any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling.

Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4.

SECTION .0300 - PETITIONS FOR RULEMAKING

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

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Marine Fisheries Commission (~~hereinafter referred to as the Commission~~) shall make his submit the person's request in a written petition addressed to the Chairman of the Marine Fisheries Commission Chair and submitted addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. Commission staff at: Marine Fisheries Commission Division of Marine Fisheries PO Box 769 Morehead City, North Carolina 28557.

(b) The petition shall specify it is filed pursuant to G.S. 150B-20 and shall contain the following information:

- (1) the text of the proposed rule(s);
- (2) the statutory authority for the agency to promulgate the rule(s);
- (3) a statement of the reasons for adoption of the proposed rule(s);
- (4) a statement of the effect on existing rules;
- (5) copies of any documents and data supporting the proposed rule(s);
- (6) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including an estimate of cost factors for persons affected by the proposed rule(s);
- (7) a description of those most likely to be affected by the proposed rule(s); and
- (8) the name(s) and address(es) of the petitioner(s).
- (1) the text of the proposed rules for adoption or amendment;
- (2) a statement of the reasons for adoption or amendment of the proposed rules, or the repeal of existing rules;
- (3) a statement of the effect of the requested rule changes on:
 - (A) existing rules;
 - (B) existing practices in the area involved;
 - and
 - (C) those most likely to be affected by the requested rule changes; and
- (4) the name and address of the petitioner.

(c) The petitioner may include the following information within the request:

- (1) the statutory authority for the agency to promulgate the rules;
- (2) a statement of the cost factors for persons affected by the proposed rules;
- (3) a statement explaining the computation of the cost factors;
- (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rules; and
- (5) documents and data supporting the proposed rules.

~~(c) When petitions and supporting documents and data exceed 10 pages in length, 15 copies of the entire petition and any attachments shall be submitted.~~

(d) In its review of the proposed rules, the Commission shall consider:

- (1) whether it has the authority to adopt the rules;
- (2) the effect of the proposed rules on existing rules, programs, and practices;
- (3) probable costs and cost factors of the proposed rules; and
- (4) the impact of the rules on the public and regulated entities.

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

Authority G.S. 113-134; 113-182; 113-182.1; 113-201; 143B-289.51; 143B-289.52; 150B-20.

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

(a) The Marine Fisheries Commission ~~Chairman~~ Chair may refer ~~duly submitted petitions~~ complete petitions, as set forth in Rule .0301 of this Section, to the appropriate standing advisory ~~committee(s)~~ committees or other advisory ~~committee(s)~~ committees of the Commission for review and recommended action. Copies of petitions for rulemaking shall be distributed to the Commission members when referred to a committee of the Commission.

(b) ~~The Chairman~~ Within 10 days of the assignment of the complete petition, the Chair of the Committee assigned to review a submitted petition for rulemaking shall announce the date of a meeting to consider the ~~petition within 10 days of the assignment of the petition.~~

(c) At least 15 days before the Committee meeting, the Committee ~~Chairman~~ Chair shall send notice of the Committee meeting to the petitioner, members of the Commission, and persons who have requested notice of petitions for rulemaking.

~~The~~ If the petition is referred to a Committee, the petitioner shall be afforded the opportunity to present the petition for rulemaking to the Committee. The Fisheries Director, through Division of Marine Fisheries staff, or their legal counsel may make a presentation to the Committee.

(e) The Committee Chair shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Committee Chair may determine whether additional interested persons shall make oral presentations before the Committee.

~~(e)(f) Interested~~ At least 10 days before the Committee meeting, interested persons must shall request the opportunity to make a presentation to the Committee(s) Committees through the Committee(s) chair(s). Chairs of the Committees. The request shall:

- (1) state the interest of the ~~person,~~ person;
- (2) state the person=s person's position on the petition for rulemaking, rulemaking; and
- (3) be accompanied by supporting materials.

~~The Chairman of the Committee will determine whether additional interested persons make oral presentations before the Committee.~~

~~(f) The Chairman of the Committee will determine whether a public meeting should be conducted by the Committee before it makes a recommendation on the petition for rulemaking.~~

(g) During the ~~Committee=s~~ Committee's review, members of the Commission, other than Committee members, who are present may participate as a member of the Committee in discussions of the petition but may not vote on the recommended action on the petition.

Authority G.S. 113-134; 113-182; 143B-289.52; 150B-20.

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

(a) ~~Petitions~~ A complete petition for rulemaking, ~~when deemed complete by the Marine Fisheries Commission Chairman,~~ as set

forth in Rule .0301 of this Section, shall be presented to the Marine Fisheries Commission for its consideration and determination at the next regularly scheduled meeting of the Commission.

(b) If the petition for rulemaking was reviewed by a Committee pursuant to Rule .0302 of this Section, the petition and the Committee's recommended action shall be presented through the Chair of the Committee or other designated member of the Committee during the business session of the Commission. Unless the Commission Chair rules otherwise, discussion on the petition shall be limited to the members of the Commission, legal counsel to the Commission, the Fisheries Director, Division of Marine Fisheries staff, legal counsel to the 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 and notify the person(s) who submitted the petition of the decision in writing; 150B-20; or
- (2) deny the petition in writing, stating the reason or reasons for the denial, and send the written denial to the person(s) person or persons who submitted the petition.

Authority G.S. 113-134; 113-182; ~~143B-289.51~~; 143B-289.52; 150B-20.

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

If the Marine Fisheries Commission denies the petition for rulemaking, the petitioner(s) may seek judicial review of the denial under G.S. 150B, Article 4 of Chapter 150B of the General Statutes.

Authority G.S. 113-134; 113-182; 143B-289.51; 150B-20.

SUBCHAPTER 03R - DESCRIPTIVE BOUNDARIES

SECTION .0100 - DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0110 CRAB SPAWNING SANCTUARIES

The crab spawning sanctuaries within which the taking of crabs may be restricted or prohibited are described as follows:

referenced in 15A NCAC 03L .0205 are delineated in the following coastal fishing waters:

- (1) in Areas from Barden Inlet and North:
 - (a) ~~In in~~ the Oregon Inlet Area. Beginning 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° 48.5740' N - 75° 33.8722' W~~; 35° 48.7740' N - 75° 33.8722' W; running southerly along the shore to and around North Point at Oregon Inlet and then northerly on the Atlantic shore to the point of beginning;
 - (b) ~~In in~~ the Hatteras Inlet Area. Beginning 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° 11.7894' N - 75° 43.5946' W~~; 35° 11.7895' N - 75° 43.5947' W; running southwestly around the tip of Hatteras Island to the point of beginning;
 - (c) ~~In in~~ the Ocracoke Inlet Area. Beginning 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° 03.7378' N – 76° 04.7850' W; 35° 03.7379' N – 76° 04.7850' W; running northeasterly along the shore of Pamlico Sound around the western side of Ocracoke Inlet and southwesterly along the shore of the Atlantic Ocean to a point 35° 03.0500' N – 76° 03.0833' W; running southeasterly offshore to a point in the Atlantic Ocean 35° 02.6333' N - 76° 02.7166' W; running northeasterly to a point in the ocean 35° 03.9666' N - 75° 59.3000' W; running northwesterly to a point on the Atlantic shore of Ocracoke Island 35° 04.7402' N – 75° 59.7124' W; running southwesterly along the shore around the eastern side of Ocracoke Inlet and northeasterly along the shore to the point of beginning;

(4)(d) In the Drum Inlet Area. Beginning at a point on the Core Sound shore of Core Banks 34° 52.81101' N – 76° 17.1780' W; running northwesterly to a point in Core Sound 34° 53.7347' N – 76° 18.0439' W; running southwesterly to a point in Core Sound 34° 50.8286' N – 76° 21.2515' W; running southeasterly to a point on the Core Sound shore of Core Banks 34° 50.1496' N – 76° 20.3924' W; following the shoreline in a northeasterly direction around the western side of Drum Inlet then along the Atlantic Ocean shoreline to a point on Core Banks 34° 50.0049' N – 76° 20.3741' W; running southeasterly to a point in the Atlantic Ocean 34° 49.4995' N – 76° 19.8407' W; running northeasterly to a point in the Atlantic Ocean 34° 52.2167' N – 76° 16.7476' W; running northwesterly to a point on the ocean shore of Core Banks 34° 52.6147' N – 76° 17.0705' W; running southwesterly toward and around the eastern side of Drum Inlet, then in a northeasterly direction along the Core Sound shore of Core Sound to the point of beginning; Ophelia and Drum Inlet Area: beginning at a point on the Core Sound shore of Core Banks 34° 51.7718' N - 76° 18.5093' W; running northwesterly to a point in Core Sound

34° 52.3431' N - 76° 19.1661' W; running southwesterly to a point near Marker "27" in Core Sound 34° 50.6411' N - 76° 22.0094' W; running southwesterly to a point in Core Sound 34° 49.0120' N - 76° 23.0288' W; running southeasterly to a point on the Core Sound shore of Core Banks 34° 48.6143' N - 76° 22.3033' W; following the shoreline in a northeasterly direction around the western side of Ophelia Inlet then along the Atlantic Ocean shoreline southwesterly to a point on Core Banks 34° 48.9349' N - 76° 21.4582' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Core Banks 34° 51.6790' N - 76° 18.3829' W; running southwesterly along the Atlantic Ocean shoreline toward and around the eastern side of Ophelia Inlet, then northeasterly along the Core Sound shore of Core Banks to the point of beginning; and

(5)(e) In the Bardens Inlet Area. Beginning at a point on Core Banks near the southern side of Hogpen Bay 34° 40.7047' N – 76° 29.6108' W; running westerly to a point near Marker "35" at 34° 40.7071' N – 76° 31.5922' W; running southwesterly to a point on Shackleford Banks 34° 38.9974' N – 76° 32.4858' W; running southeasterly around the eastern end of Shackleford Banks and then northwesterly along the ocean shoreline to a point on shore 34° 38.5608' N – 76° 32.6863' W; running southwesterly through Buoy "4" to Buoy "2" at the end of the Cape Lookout Jetty 34° 37.1272' N – 76° 33.7381' W; running southeasterly to the base of the Cape Lookout Jetty 34° 36.7836' N – 76° 33.1569' W; running northerly to the end of Power Squadron Spit, around Lookout Bight and northerly up Core Banks to the point of beginning; Barden Inlet Area: beginning at a point on the Core Sound shore of Core Banks 34° 40.7131' N – 76° 28.9495' W; running northwesterly to a point on Harkers Island 34° 41.0674' N – 76° 31.5834' W; running southwesterly to a point on Shackleford Banks 34° 39.5418' N -

76° 34.0451' W; following the shoreline in southeasterly direction around the northern side of Barden Inlet then along the Atlantic Ocean shoreline northwesterly to a point on Shackleford Banks 34° 38.7748' N - 76° 32.8463' W; running southwesterly to a point in the Atlantic Ocean 34° 38.2938' N - 76° 33.5130' W; running southerly to a point near Buoy "2" at the end of the Cape Lookout Jetty in the Atlantic Ocean 34° 37.1253' N - 76° 33.7446' W; running southeasterly to a point on Cape Lookout 34° 36.7229' N - 76° 33.0514' W; running northerly along the Atlantic Ocean shoreline toward and around the southern side of Barden Inlet to a point on Cape Lookout 34° 36.5492' N - 76° 32.2416' W, then running northeasterly along the Core Sound shore of Core Banks to the point of beginning.

(2) in Areas from Beaufort Inlet and West and South:

(a) Beaufort Inlet Area: beginning at a point on the Back Sound side of Shackleford Banks 34° 41.0017' N - 76° 37.7538' W; running northerly to a point on Carrot Island 34° 42.3553' N - 76° 37.1124' W; running westerly along the shoreline to a point on Carrot Island 34° 42.6291' N - 76° 38.6608' W; running westerly to a point on Town Marsh 34° 42.6394' N - 76° 38.7442' W; running westerly along the shoreline to a point on Town Marsh 34° 42.7915' N - 76° 40.2489' W; running westerly to a point on Bird Shoal 34° 42.7694' N - 76° 40.4764' W; running northerly to a point on Pivers Island 34° 42.9294' N - 76° 40.4301' W; running northerly along the shoreline to a point on Pivers Island 34° 43.1892' N - 76° 40.3873' W; running northerly to a point on Radio Island 34° 43.2344' N - 76° 40.4099' W; running along the shoreline to a point on Radio Island 34° 43.2770' N - 76° 41.2422' W; running along the south side of the Highway 70 Bridge over the Newport River to a point near the Morehead City Port 34° 43.2419' N - 76° 41.7067' W; running southerly along the shore to a point near the Morehead City Port 34° 42.9560' N - 76° 41.6986' W; running southwesterly to a point on Goat Island 34° 42.7185' N - 76°

41.9145' W; running southeasterly along the shoreline to a point on Goat Island 34° 42.2031' N - 76° 41.3923' W; running southwesterly to a point on shore near Fort Macon State Park 34° 42.1709' N - 76° 41.3693' W; following the shoreline in a southwesterly direction around the western shoreline of Beaufort Inlet then along the Atlantic Ocean shoreline to a point on Bogue Banks 34° 41.6480' N - 76° 42.0986' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running easterly then southeasterly and returning to shore parallel to a point on Shackleford Banks 34° 40.6129' N - 76° 38.1521' W; running northwesterly along the Atlantic Ocean shoreline around the eastern side of Beaufort Inlet, then running easterly along the Back Sound shore of Shackleford Banks to the point of beginning;

(b) Bogue Inlet Area: beginning at a point on Bogue Banks 34° 39.1828' N - 77° 05.8503' W; running northerly to a point 34° 40.1526' N - 77° 05.6346' W; running northerly to a point 34° 40.2531' N - 77° 05.6385' W; running westerly to a point 34° 40.2550' N - 77° 05.9450' W; running southerly to a point 34° 40.1732' N - 77° 05.9616' W; running southerly to a point 34° 39.9629' N - 77° 06.1038' W; running southerly to a point 34° 39.5209' N - 77° 06.4042; running southwesterly 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 southwesterly 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 southwesterly to a point 34° 37.6695' N - 77° 10.4134' W; running northwesterly to a point 34° 37.8105' N - 77° 10.5849' W; running southwesterly 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 southwesterly along the Atlantic Ocean shoreline around the eastern shoreline of Bear Inlet, then northeasterly along the shore to the point of beginning;
- (d) Browns Inlet Area: beginning at a point on Browns Island 34° 35.8978' N - 77° 13.8409' W; running northwesterly to a point 34° 36.0015' N - 77° 13.9606' W; running westerly to a point 34° 35.9360' N - 77° 14.1340' W; running southerly to a point 34° 35.6631' N - 77° 14.1270' W; following the shoreline in a northeasterly direction around the western shoreline of Browns Inlet then along the Atlantic Ocean shoreline to a point 34° 33.7692' N - 77° 16.8043' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Browns Island 34° 36.1188' N - 77° 13.0193' W; running southwesterly along the Atlantic Ocean shoreline around the eastern shoreline of Browns Inlet, then northerly along the shore to the point of beginning;
- (e) New River Inlet Area: beginning at a point on shore on the south side of Wards Channel 34° 32.2064' N - 77° 19.8404' W; running northwesterly to a point 34° 33.1386' N - 77° 20.8902' W; running westerly to a point 34° 33.1097' N - 77° 21.1013' W; running southeasterly to a point 34° 32.3473' N - 77° 20.6013' W; running southwesterly to a point on Topsail Island 34° 32.1096' N - 77° 20.8447' W; following the shore line in a southerly direction around the western shoreline of New River Inlet then along the Atlantic Ocean shoreline to a point 34° 31.3352' N - 77° 21.1694' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point 34° 33.7692' N - 77° 16.8043' W; running southwesterly along the Atlantic Ocean shoreline around the eastern shoreline of New River Inlet, then northeasterly along the shore to the point of beginning;
- (f) Topsail Inlet Area: beginning at a point on Topsail Island 34° 21.9619' N - 77° 37.8381' W; running northwesterly to a point in Topsail Sound 34° 22.1071' N - 77° 37.9944' W; running southwesterly to a point near Marker "5" 34° 21.7185' N - 77° 38.3499' W; running southwesterly to a point near Marker "3" 34° 21.5798' N - 77° 38.5928' W; running southwesterly to a point near Marker "1" 34° 21.1055' N - 77° 39.1749' W; running northwesterly to a point 34° 21.2065' N - 77° 39.6127' W; running southwesterly to a point 34° 20.7450' N - 77° 40.3682' W; running southerly to a point 34° 20.3011' N - 77° 40.3728' W; following the shoreline in a northeasterly direction around the western shoreline of Topsail Inlet then along the Atlantic Ocean shoreline to a point on Lea-Hutaff Island 34° 20.0228' N - 77° 40.4332' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Topsail Island 34° 20.8762' N - 77° 38.9403' W; running southwesterly along the

Atlantic Ocean shoreline around the eastern shore of Topsail Inlet, then northeasterly along the Topsail Sound shore of Topsail Island to the point of beginning;

(g) Rich Inlet Area: beginning at a point on Lea-Hutaff Island 34° 18.1292' N - 77° 42.6492' W; running northwesterly to a point 34° 18.2851' N - 77° 42.9352' W; running southwesterly to a point 34° 18.0190' N - 77° 43.2798' W; running southerly to a point on Figure Eight Island 34° 17.5649' N - 77° 43.1649' W; following the shoreline in an easterly direction around the southern shoreline of Rich Inlet then along the Atlantic Ocean shoreline to a point on Figure Eight Island 34° 17.2243' N - 77° 43.2491' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Lea-Hutaff Island 34° 18.1251' N - 77° 42.4352' W; running southwesterly along the Atlantic Ocean shoreline around the northern shoreline of Rich Inlet, then northeasterly along the shore to the point of beginning;

(h) Mason Inlet Area: beginning at a point on Figure Eight Island 34° 14.9536' N - 77° 45.9567' W; running northwesterly to a point 34° 15.0409' N - 77° 46.1766' W; running southwesterly to a point 34° 14.8657' N - 77° 46.4044' W; running southwesterly to a point 34° 14.7256' N - 77° 46.5348' W; running southerly to a point on Shell Island 34° 14.2036' N - 77° 46.5189' W; following the shoreline in a northeasterly direction around the southern shoreline of Mason Inlet then along the Atlantic Ocean shoreline to a point on Shell Island 34° 14.1375' N - 77° 46.4263' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Figure Eight Island 34° 14.8474' N - 77° 45.7857' W; running southwesterly along the Atlantic Ocean shoreline around the northern shoreline of Mason Inlet, then

northeasterly along the shore to the point of beginning;

(i) Masonboro Inlet Area: beginning at a point on Wrightsville Beach 34° 11.3446' N - 77° 48.7458' W; running northwesterly to a point 34° 11.4604' N - 77° 49.0510' W; running northwesterly to a point 34° 11.5164' N - 77° 49.2368' W; running northwesterly to a point 34° 11.5255' N - 77° 49.2652' W; running northwesterly to a point 34° 11.5700' N - 77° 49.4425' W; running southwesterly to a point 34° 11.3553' N - 77° 49.5924' W; running easterly to a point 34° 11.3737' N - 77° 49.4628' W; running easterly to a point 34° 11.3737' N - 77° 49.4345' W; following the shoreline southeasterly to a point 34° 11.2551' N - 77° 49.2287' W; running southerly to a point on Masonboro Island 34° 10.8451' N - 77° 49.0242' W; following the shoreline in an easterly direction around the southern shoreline of Masonboro Inlet through a point at the base of the jetty 34° 10.8814' N - 77° 48.7074' W; running southwesterly along the Atlantic Ocean shoreline to a point on Masonboro Island 34° 10.5221' N - 77° 49.1658' W; extending 100 yards seaward from the shoreline and the Atlantic Ocean side of the jetties from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and returning to shore parallel to a point 34° 11.5753' N - 77° 48.3061' W; running southwesterly along the Atlantic Ocean shoreline through a point at the base of the jetty 34° 11.2076' N - 77° 48.5555' W, around the northern shoreline of Masonboro Inlet then northeasterly along the shore to the point of beginning;

(j) Carolina Beach Inlet Area: beginning at a point on Masonboro Island 34° 04.8168' N - 77° 52.8796' W; running southerly to a point 34° 04.4997' N - 77° 53.0080' W; following the shoreline in an easterly direction to a point 34° 04.5022' N - 77° 52.7982' W; running easterly to a point on Pleasure Island 34° 04.5102' N - 77° 52.7340' W; following the shoreline in an easterly direction around the southern shoreline of Carolina Beach Inlet then along the Atlantic Ocean shoreline to

a point on Pleasure Island 34° 04.3505' N - 77° 52.5048' W; extending 100 yards seaward from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Masonboro Island 34° 05.2151' N - 77° 52.1472' W; running southeasterly along the Atlantic Ocean shoreline around the northern shoreline of Carolina Beach Inlet, then westerly along the shore to the point of beginning;

(k) Cape Fear River Inlet Area: beginning at a point on Bald Head Island 33° 52.7072' N - 78° 00.0449' W; running northeasterly to a point 33° 53.6135' N - 77° 59.2549' W; running northerly to a point 33° 54.4086' N - 77° 59.0330' W; running northerly to a point 33° 54.8399' N - 77° 58.9115' W; running westerly to a point at Southport 33° 54.9503' N - 78° 01.3581' W; running southerly to a point on Fort Caswell 33° 53.7948' N - 78° 01.0782' W; following the shoreline in a southerly direction around the western shoreline of Cape Fear River Inlet then westerly along the Atlantic Ocean shoreline to a point on Caswell Beach 33° 53.4293' N - 78° 01.7604' W; extending 100 yards seaward from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running southerly to point near Buoy "12" 33° 51.8213' N - 78° 01.0179' W; running southeasterly to a point 33° 51.1999' N - 78° 00.0632' W; running northeasterly to a point on Bald Head Island 33° 51.3488' N - 77° 59.9222' W; running northwesterly along the Atlantic Ocean shoreline around the eastern shore of Cape Fear River Inlet, then northeasterly along the shore to the point of beginning;

(l) Lockwoods Folly Inlet Area: beginning at a point on Oak Island 33° 54.9392' N - 78° 13.6711' W; running northerly to a point on Sheep Island 33° 55.0837' N - 78° 13.6753' W; following the shoreline northwesterly to a point on Sheep Island 33° 55.2263' N - 78° 13.9395' W; running westerly to a point on Holden Beach 33° 55.1794' N - 78° 14.3132' W; following the shoreline in a southwesterly direction around the western shore of Lockwoods Folly

Inlet then along the Atlantic Ocean shoreline to a point on Holden Beach 33° 54.8695' N - 78° 14.6180' W; running southerly to a point in the Atlantic Ocean 33° 54.6076' N - 78° 14.6026' W; running easterly to a point in the Atlantic Ocean 33° 54.5564' N - 78° 14.0529' W; running northerly to a point on Oak Island 33° 54.8853' N - 78° 14.0041' W; running northwesterly along the Atlantic Ocean shoreline around the eastern shore of Lockwoods Folly Inlet, then easterly along the shore to the point of beginning;

(m) Shallotte Inlet Area: beginning at a point near Monks Island 33° 54.5773' N - 78° 22.8077' W; running southwestly 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 southwestly to a point 33° 52.6815' N - 78° 29.0080' W; running southwestly 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 southwestly 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.

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

15A NCAC 03R .0111 PURSE SEINES PROHIBITED

The areas referenced in 15A NCAC 03J .0105(b)(1) are delineated in the following coastal fishing waters of the Atlantic Ocean:

~~(a)(1) It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from in the Atlantic Ocean within an area bounded by a line extending from a point near the Bald Head Lighthouse (33° 52.3500' N - 78° 00.3000' W) 33° 52.3500' N - 78° 00.3000' W; running southwesterly to a point near the Cape Fear River ship channel buoy "9" (33° 51.5500' N - 78° 01.5500' W), then 33° 51.5500' N - 78° 01.5500' W; running northwesterly to a point near the foot of the Yaupon Beach Fishing Pier on Oak Island (33° 54.2000' N - 78° 04.9333' W), then 33° 54.2000' N - 78° 04.9333' W; following the shoreline easterly to a point near Fort Caswell (33° 53.2166' N - 78° 01.1833' W), then 33° 53.2166' N - 78° 01.1833' W; running southeasterly back to the point of origin: beginning;~~

~~(b)(2) It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from in the Atlantic Ocean from May 1 through September 30:~~

~~(1)(a) In that in the area bounded by a line beginning at a point onshore at the northern boundary of Dare County 36° 13.8536' N - 75° 46.3914' W; running easterly 1.5 nautical miles to a point offshore 36° 13.8536' N - 75° 44.3814' W; running southerly parallel to and 1.5 nautical miles from the ocean beach to a point 1.5 nautical miles offshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 44.2225' W; running westerly to a point onshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 42.2416' W; and~~

~~(2)(b) In that in the area bounded by a line beginning at a point at the southern limits of Kitty Hawk 36° 03.3187' N - 75° 40.9503' W; running easterly 1.5 nautical miles to a point offshore 36° 03.3187' N - 75° 38.8029' W; running southerly parallel to and 1.5 nautical miles from the ocean beach to a point 1.5 nautical miles offshore of the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 29.2379' W; running westerly to a point onshore at~~

the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 31.5369' W; W; and

~~(e)(3) It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from the in the Atlantic Ocean from October 1 through December 31:~~

~~(1)(a) In that in the area bounded by a line beginning at a point onshore at the northern boundary of Dare County 36° 13.8536' N - 75° 46.3914' W; running easterly 0.5 nautical miles to a point offshore 36° 13.8536' N - 75° 45.6977' W; running southerly parallel to and 0.5 nautical miles off the ocean beach to a point 0.5 nautical miles offshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 43.5514' W; running westerly 0.5 nautical miles to a point onshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 44.2416' W; and~~

~~(2)(b) In that in the area bounded by a line beginning at a point at the southern limits of Kitty Hawk 36° 03.3187' N - 75° 40.9503' W; running easterly 0.5 nautical miles to a point offshore 36° 03.3187' N - 75° 40.2033' W; running southerly parallel to and 0.5 nautical mile miles off the ocean beach to a point offshore at the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 30.6134' W; running westerly to a point onshore at the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 31.5369' W.~~

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

15A NCAC 03R .0118 EXEMPTED CRAB POT ESCAPE RING AREAS CRAB HARVEST MANAGEMENT AREAS

The areas referenced in 15A NCAC 03J .0301(g) 03L .0201(a) and (b) are delineated in the following coastal fishing waters:

(1) ~~Pamlico Sound within the area described by a line beginning at a point 35° 43.7457' N - 75° 30.7014' W on the south shore of Eagles Nest Bay on Pea Island; running westerly to a point 35° 42.9500' N - 75° 34.1500' W; running southerly to a point 35° 39.3500' N - 75° 34.4000' W; running southeasterly to a point 35° 35.8931' N - 75° 31.1514' W in Chicamacomico Channel near Beacon "ICC"; running southerly to a point 35° 28.5610' N - 75° 31.5825' W on Gull Island; running southwesterly to a point 35° 22.8671' N - 75° 33.5851' W in Avon Channel near Beacon "1AV"; running southwesterly to a point 35° 18.9603' N - 75° 36.0817' W in Cape Channel near Beacon "2"; running westerly to a point~~

35° 16.7588' N 75° 44.2554' W in Rollinson Channel near Beacon "42RC"; running southwesterly to a point 35° 14.0337' N 75° 45.9643' W southwest of Oliver Reef near the quick flashing beacon; running westerly to a point 35° 09.3650' N 76° 00.6377' W in Big Foot Slough Channel near Beacon "14BF"; running southwesterly to a point 35° 08.4523' N 76° 02.6651' W in Nine Foot Shoal Channel near Beacon "9"; running westerly to a point 35° 07.1000' N 76° 06.9000' W; running southwesterly to a point 35° 01.4985' N 76° 11.4353' W near Beacon "HL"; running southwesterly to a point 35° 00.2728' N 76° 12.1903' W near Beacon "1CS"; running southerly to a point 34° 59.5027' N 76° 12.3204' W in Wainwright Channel immediately east of the northern tip of Wainwright Island; running southwesterly to a point 34° 59.3610' N 76° 12.6040' W on Wainwright Island; running easterly to a point at 34° 58.7853' N 76° 09.8922' W on Core Banks; running easterly and northerly along the shoreline across the inlets following the COLREGS Demarcation line up the Outer Banks to the point of beginning. Northern Region: All Coastal Fishing Waters of the state north and east of a line extending southeast from the Highway 58 Bridge to a point offshore at 34° 36.3292' N - 77° 02.5940' W to the North Carolina/Virginia state line.

- (2) Newport River, from April 1 through June 15 – within the area described by a line beginning at a point 34° 49.5080' N 76° 41.4440' W; running westerly along the south side of the Highway 101 Bridge over Core Creek to a point on the west shore 34° 49.5260' N 76° 41.5130' W; running along the shoreline of Newport River and its tributaries to a point 34° 49.3050' N 76° 44.2350' W; running westerly along the south side of the Highway 101 Bridge over Harlowe Canal to a point on the west shore 34° 49.2980' N 76° 44.2610' W; running along the shoreline of Newport River and its tributaries to a point 34° 45.2478' N 76° 46.4479' W; running southerly along the Inland Coastal Waters boundary line to a point 34° 45.1840' N 76° 46.4488' W; running along the shoreline of Newport River and its tributaries to a point 34° 43.2520' N 76° 41.6840' W; running easterly along the north side of the Highway 70 Bridge over Newport River to a point 34° 43.2840' N 76° 41.2200' W; running along the shoreline of Newport River and its tributaries to a point 34° 43.3530' N 76° 40.2080' W; running easterly across Gallant Channel to a point 34° 43.3521' N 76° 40.0871' W; running along the shoreline of Newport River and its tributaries back to the point of beginning.

Southern Region: All Coastal Fishing Waters of the State south and west of a line extending southeast from the Highway 58 Bridge to a point offshore at 34° 36.3292' N - 77° 02.5940' W to the North Carolina/South Carolina state line.

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

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.

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

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

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

15A NCAC 18A .0135 PERMITS

- (a) ~~No person shall~~ It shall be unlawful to operate a processing facility without a permit issued by the Division: first obtaining a Crustacea Permit and Certificate of Compliance from the Division of Marine Fisheries.
- (b) ~~No person shall operate a repacker facility without a repacker permit issued by the Division.~~
- (~~e~~)(b) Application for a permit shall be submitted in writing ~~on an application form available from~~ to the Division. Application forms may be obtained from the Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.
- (~~d~~)(c) No permit shall be issued by the Division until an inspection by the Division shows that the facility and equipment comply with applicable rules of this Section. The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.
- (e) ~~A permit issued to one person is not transferrable to another person.~~
- (~~f~~)(d) The permit shall be posted in a conspicuous place in the facility. ~~All permits shall expire on March 31 of each year.~~
- (e) All permits shall expire on March 31 of each year and are non-transferrable.
- (~~g~~)(f) Plans and specifications for proposed new construction, expansion of ~~operations~~ operations, or changes in operating processes shall be submitted to the Division for review and approval prior to beginning ~~construction.~~ construction or making a change.
- (~~h~~)(g) A permit may be revoked or suspended ~~pursuant to G.S. 130A-23;~~ in accordance with 15A NCAC 030 .0504.
- (i) ~~The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.~~

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

SECTION .0300 – SANITATION OF SHELLFISH - GENERAL

15A NCAC 18A .0302 PERMITS

- (a) ~~No person shall~~ It shall be unlawful to operate any of the following facilities without a permit issued by the Division: first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division of Marine Fisheries:
 - (1) ~~Depuration~~ depuration facilities;
 - (2) repacking plants;
 - (~~2~~)(3) Shellstock ~~shellstock~~ plants; and
 - (~~3~~)(4) Shucking ~~shucking~~ and packing plants; plants.
 - (4) Repacking plants.
- (b) ~~No person shall~~ It shall be unlawful to operate as a shellstock dealer without a permit issued by the Division: first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division.
- (c) ~~A permit may be issued to a reshipper when required for out of state shipment.~~ It shall be unlawful to operate as a reshipper

without first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division if shellfish are purchased and shipped out of state.

- (d) Approval for wet storage of shellstock shall be granted only to persons permitted pursuant to this Rule.
- (e) Application for a permit shall be submitted in writing to the ~~Division at the Shellfish Sanitation Office, Fisheries Building, Arendell Street, Morehead City, North Carolina, 28557.~~ Division. Application forms ~~are available~~ may be obtained from the ~~Division.~~ Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.
- (f) No permit shall be issued by the Division until an inspection by the Division shows that the ~~facilities~~ facility and equipment comply with all applicable rules Rules in Sections .0300 through .0800 of this Subchapter. The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.
- (g) All permits shall be posted in a conspicuous place in the ~~facilities.~~ All permits shall expire on April 30 of each year. facility.
- (h) All permits shall expire on April 30 of each year and are non-transferrable.
- (~~h~~)(i) Plans and specifications for proposed new ~~construction or remodeling~~ construction, expansion of operations, or changes in operating processes shall be submitted to the Division for review and ~~approval.~~ approval prior to beginning construction or making a change.
- (~~i~~)(j) A permit may be revoked or suspended ~~pursuant to G.S. 130A-23;~~ in accordance with 15A NCAC 030 .0504.

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

15A NCAC 18A .0303 RELAYING PERMITS

~~If a person is granted a relaying permit by the Division and the Division of Marine Fisheries, shellfish may be removed from certain designated prohibited areas for conditioning and purification prior to marketing and marketed after relaying in a large body of clean water, but only under the following conditions:~~

- (1) ~~Application for relaying must be received by the North Carolina Division of Marine Fisheries and the Division 15 days prior to relaying.~~
- (2) ~~Removal and relaying shall be under the supervision of the Division and the Division of Marine Fisheries.~~
- (3) ~~Shellfish relayed from a prohibited area to a designated area of approved water shall remain down for a period of not less than fourteen days when the water in which shellfish are relayed has a temperature above 50°F (10°C). When the water temperature is below 50°F (10°C), shellfish shall not be relayed.~~

Authority G.S. 130A-230.

15A NCAC 18A .0304 DEPURATION HARVESTING PERMITS

If a person is granted a depuration harvesting permit by the Division and the Division of Marine Fisheries, shellfish may be removed from certain designated prohibited areas for depuration prior to marketing and marketed after depuration in a permitted facility, but only under the following conditions:

- (1) Application for a depuration harvesting permit must be received by the Division of Marine Fisheries and the Division 15 days prior to harvesting for depuration purposes.
(2) Harvesting for depuration purposes shall be under the supervision of the Division and the Division of Marine Fisheries.

Authority G.S. 130A-230.

SECTION .0400 - SANITATION OF SHELLFISH - GENERAL OPERATION STANDARDS

15A NCAC 18A .0425 TAGGING DEALER TAGS

(a) In order that information may be available to the Division with reference to the origin of shellstock, Consistent with the rules of this Section, it shall be unlawful to possess containers holding shellstock shall be identified with without a uniform dealer tag or label affixed after the shellstock is processed or shipped by the initial certified shellfish dealer. The tag shall be durable, waterproof, and measure at least 2 5/8 by 5 1/4 inches (6.7 by 13.3 centimeters). a minimum of two and five-eighths inches by five and one-fourth inches in size. The It shall be unlawful for the tag shall to fail to contain legible information arranged in the specific order as follows:

- (1) the dealer's name, address, and certification number assigned by the appropriate shellfish control agency;
(2) the original shipper's certification number;
(3) the harvest date, date, or if depurated, the date of depuration processing, or if wet stored, the original harvest date, and the final harvest date, which is the date removed from wet storage;
(4) if wet stored or depurated, the wet storage or depuration cycle or lot number. The wet storage lot number shall begin with the letter "W";
(4)(5) the harvest location, including the country or state abbreviation; the most precise identification of the harvest location as is practicable, including the initials of the state of harvest, and the state or local shellfish control authority's designation of the growing area by indexing, administrative, or geographic designation. If the authority in another state has not indexed growing areas, then a geographical or administrative designation shall be used (e.g., Long Bay, shellfish lease or franchise number, or lot number);
(5) when the shellstock has been in wet storage, the statement "THIS PRODUCT WAS IN WET STORAGE AT (FACILITY

CERTIFICATION NUMBER) FROM (DATE) TO (DATE)";

- (6) the type and quantity of shellfish; shellstock;
(7) the following statement shall appear statements in bold, capitalized type font:

(A) "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS;" DAYS."; and
(B) "RETAILERS; DATE WHEN LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE) .";

- (8) the following statement, or equivalent, equivalent:

"Consumer Advisory Eating raw oysters, clams, or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat raw shellfish and become sick, see a doctor immediately." immediately.";

- (9) the following statement, or equivalent: "Keep Refrigerated".

(b) The uniform dealer tag or label shall remain attached to the shellstock container until the container is empty and thereafter shall be kept on file file, in chronological order, for 90 days.

(c) All shellstock from a depuration facility must be identified as having been cleansed by a depuration facility identified by a name and permit number on the tag.

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

SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS

15A NCAC 18A .0912 SHELLFISH MANAGEMENT AREAS

When the Division of Marine Fisheries begins operations to relocate shellfish from a restricted or conditionally approved area to an approved area, the Division will recommend to the Division of Marine Fisheries that the area of relocation be closed until cleansing requirements for relayed shellfish have been satisfied.

Authority G.S. 130A-230.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to adopt the rule cited as 15A NCAC 10H .1601.

**MARINE FISHERIES COMMISSION
SUMMARY OF PUBLIC HEARING FOR PROPOSED RULES
DIVISION OF MARINE FISHERIES
WEBEX ONLINE HEARING
OCT. 27, 2021, 6 PM**

Marine Fisheries Commission: Pete Kornegay

Division of Marine Fisheries Staff: Catherine Blum, Jacob Boyd, Corrin Flora, Dana Gillikin, Nathaniel Hancock, Daniel Ipock, Shannon Jenkins, Janelle Johnson, Tina Moore, Brandi Salmon, Dan Zapf

Public: None

Media: None

Marine Fisheries Commissioner Pete Kornegay, serving as the hearing officer, opened the public hearing for Marine Fisheries Commission proposed rules at 6 p.m. No one from the public or media was in attendance. Seeing no one to provide comments on the proposed rules, Commissioner Kornegay closed the hearing at 6:10 p.m.

/cb

Respondent

< 1 Anonymous >

49:22
Time to complete

1. Name: *

Art Beyer

2. City: *

Manteo

3. State: *

North Carolina

4. Are your comments for or against the proposed rulemaking? *

- For
- Against
- Undecided

5. Please enter your comments on proposed changes to the rules and cite the rule or rules on which you are commenting.

15A NCAC 03O .0206 SHELLFISH LEASE APPLICATION: REQUEST FOR 3 REVIEW When someone applies for a lease, how will the public, or in particular adjacent landowners, know of the application being reviewed so that any comments can be made? Having adjacent landowners be made aware of current lease applications would be helpful.



◊ North Carolina Wildlife Resources Commission ◊

Cameron N. Ingram, Executive Director

November 30, 2021

Catherine Blum
Rulemaking Coordinator
N.C. Division of Marine Fisheries
P.O. Box 769
Morehead City, NC 28557
catherine.blum@ncdenr.gov

RE: Comments on Division of Marine Fisheries Rules

The Wildlife Resources Commission (WRC) respectfully submits the following comments on the Division of Marine Fisheries (DMF) Rules, noticed in the N.C. Register on October 1, 2021.

General

Subparagraph (b)(2) of Rule 03I .0101 defines “Internal Coastal Waters” and “Internal Waters”. While these definitions are not new additions, and can be used synonymously, it appears that “Coastal” has been removed throughout the noticed rules, thus leaving the majority of the language to say, “Internal Waters”. While the WRC interprets this to exclude Joint Fishing Waters, it could be confusing to the public, as the removal of “Coastal” may be misinterpreted to mean all waters except the Atlantic Ocean.

15A NCAC 03M .0200 STRIPED BASS

As proposed, the WRC takes issue with the following rules in this section and encourages discussion between staff of the two agencies prior to adoption:

Rule 03M .0201(a)

- The DMF does not have authority to regulate striped bass in all Joint Fishing Waters. In accordance with jointly adopted rules, the DMF does not have authority over striped bass in the Roanoke River Management Area (10C .0110, .0111/03Q .0108, .0109). Additionally, seasons, size and creel limits for Joint Fishing Waters in the Central Southern Management Area are established through jointly adopted rules 10C .0107/03Q .0107. Paragraph (a) should clarify areas where requirements of this rule apply.

Rule 03M .0202(c)

- Per joint rules (10C .0106, .0110, .0111/03Q .0106, .0108, .0109) the Fisheries Director can only impose restrictions on the recreational hook and line fishery for striped bass in the Albemarle Sound Management Area. In the Central Southern Management Area, a proclamation could not be unilaterally issued by DMF for hook and line restrictions in Joint

Fishing Waters because of joint rule 10C .0107/03Q .0107. In the Roanoke River Management Area, the WRC has sole authority over the recreational hook and line fishery per 10C .0110/03Q .0108.

15A NCAC 03M .0503 FLOUNDER

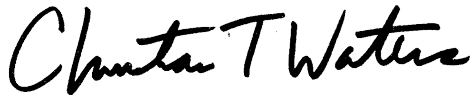
It is unclear if this rule applies to both the commercial and recreational fishery. Specific to paragraph (k), while the Fisheries Director may manage by proclamation, the inland and joint hook and line fishery are managed by the WRC per joint rules 10C .0106 and 03Q .0106.

15A NCAC 03J .0305 TROT LINES (MULTIPLE HOOK OR MULTIPLE BAIT)

Trotlines are considered hook and line by the WRC, and this rule would not apply to recreational fishing in Joint Fishing Waters. Additionally, the marking requirements are inconsistent with WRC requirements in 15A NCAC 10C .0206 and could be confusing to recreational anglers. The WRC would encourage discussion between the two agencies to ensure compatibility and avoid unnecessarily confusing the regulated public.

As always, we appreciate the opportunity to comment on these proposed rules and look forward to collaborating with you to improve the compatibility of our regulations. If you have any questions, please contact me at 919-707-0221 or christian.waters@ncwildlife.org.

Regards,

A handwritten signature in black ink that reads "Christian T. Waters". The signature is written in a cursive, flowing style.

Christian T. Waters
Inland Fisheries Division Chief
N.C. Wildlife Resources Commission

1 15A NCAC 03O .0402 is readopted with changes as published in 36:07 NCR 494 as follows:

2
3 **15A NCAC 03O .0402 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY APPLICATION**
4 **PROCESS**

5 (a) Application forms for determination of eligibility for the Standard Commercial Fishing ~~Licenses~~License
6 Eligibility Pool shall be are available at all offices of the Division of Marine Fisheries and online at
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11 (b) Only one application per individual for determination of eligibility for the Standard Commercial Fishing ~~Licenses~~
12 License Eligibility Pool shall be accepted or may be pending at any one time. An applicant may have only one entry
13 in the ~~eligibility pool~~ Standard Commercial Fishing License Eligibility Pool at any one time.

14 (c) Individuals who currently hold or are eligible to purchase a Standard or Retired Standard Commercial Fishing
15 License shall not be eligible to apply for additional Standard Commercial Fishing Licenses through the Standard
16 Commercial Fishing ~~Licenses~~License Eligibility Pool.

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

20 (e) Persons claiming retirement from commercial fishing or transferring their Standard Commercial Fishing License
21 ~~may not apply for pool eligibility~~ shall not be eligible to apply for a Standard Commercial Fishing License through
22 the Standard Commercial Fishing License Eligibility Pool for two years from the date of the last ~~transfer~~ transfer,
23 except as provided in ~~15A NCAC 03O .0404(3)~~ Rule .0404(3) of this Section.

24 (f) Applicants shall notify the Division of Marine Fisheries within 30 days of a change of address.

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

**Fiscal Impact Analysis for Readoption of 15A NCAC 03Q .0100
Pursuant to N.C.G.S. § 150B-21.3A**

Rule Amendments: 15A NCAC 03Q .0101-.0109

Name of Commission: N.C. Marine Fisheries Commission

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

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

Authority:

North Carolina General Statutes

N.C.G.S. § 113-128.	Definitions relating to agencies and their powers.
N.C.G.S. § 113-129.	Definitions related to resources.
N.C.G.S. § 113-132.	Jurisdiction of fisheries agencies.
N.C.G.S. § 113-134.	Rules.
N.C.G.S. § 113-174.1.	License required; general provisions governing licenses.
N.C.G.S. § 113-182.	Regulation of fishing and fisheries.
N.C.G.S. § 113-292.	Authority of the Wildlife Resources Commission in regulation of inland fishing and the introduction of exotic species.
N.C.G.S. § 143B-289.52.	Marine Fisheries Commission - powers and duties.
N.C.G.S. § 150B-21.3A.	Periodic review and expiration of existing rules.

I. Necessity:

N.C. General Statute § 150B-21.3A requires State agencies to review their existing rules every 10 years to determine which rules are still necessary, and to either readopt or repeal each rule as appropriate. In 2020, the Marine Fisheries Commission (MFC) proposed the rules in 15A NCAC 03Q .0100 for readoption without substantive change pursuant to this requirement. The deadline for readoption of these rules is June 30, 2022. In consideration of public comments received during the rulemaking process, the agency proposed changes to the rules and gave final approval to readopt the amended rules Sept. 9, 2021. To demonstrate substantial compliance with N.C.G.S. § 150B-21.2(g), the agency is publishing the text of the rules as readopted and accepting comments pursuant to N.C.G.S. § 150B-21.2(f).

II. Summary

The nine rules in 15A NCAC 03Q .0100 (Appendix I) have been reviewed to conform to the requirements of N.C.G.S. § 150B-21.3A and authorizing statutes and also to address public comment received during the rulemaking process. None of the proposed readoptions contain amendments that produce procedural changes, and therefore no economic costs to the State are incurred and only qualitative benefits are expected in the form of clarity of requirements. In short, all proposed changes are either intended to provide heightened clarity to rule language or to conform rule language to authorizing statutes, fishery management plans (FMPs), and ongoing management practices.

In short, each agency interprets differently who manages which species in joint fishing waters. Therefore, the primary focus of the MFC in readopting the rules in 03Q .0100 is to conform the rules to the authorizing statutes that are in force today and clarify which agency has authority to manage which species, consistent with current management practices for the agencies and regulated stakeholders. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

III. Introduction and Purpose of Rule Changes

The purpose of the MFC is to manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources within its jurisdiction, as described in N.C.G.S. § 113-132, including commercial and recreational fisheries resources (Chapter 143B, Article 7, Part 5D). Session Law 1965-957 amended Subchapter IV of Chapter 113 of the General Statutes of North Carolina to create N.C.G.S. § 113-132, Jurisdiction of fisheries agencies. This was done in part to clarify the conservation laws of the State and the authority and jurisdiction of what are now the MFC and the WRC. Paragraph (e) of this statute states the "Marine Fisheries Commission and the Wildlife Resources Commission may make joint regulations governing the responsibilities of each agency and modifying the applicability of licensing and other regulatory provisions as may be necessary for rational and compatible management of the marine and estuarine and wildlife resources in joint fishing waters."

In accordance with N.C.G.S. § 113-132, the nine rules in 15A NCAC 03Q .0100, subtitled "Jurisdiction of Agencies: Classification of Waters" were originally adopted jointly by the MFC and the WRC. As a result, both agencies must approve re-adoption of the rules.

Staff from the DMF and the WRC first met about these joint rules in July 2018, but after two years, various efforts had failed to yield a set of joint rules on which the two agencies could agree. To ensure it would meet its statutory obligation to re-adopt its rules before the deadline, the MFC approved Notice of Text for Rulemaking for the nine rules in 15A NCAC 03Q .0100 at its August 2020 business meeting for re-adoption without change. The proposed rules were published in the *N.C. Register* Oct. 1, 2020. The MFC accepted public comments from Oct. 1 through Nov. 30, 2020 and received one written public comment from the WRC (Appendix II). No other public comments were submitted. In consideration of the public comments received during the rulemaking process, the MFC proposed changes to the rules. Specifically, proposed changes conformed the rules to authorizing statutes, removed text that merely repeated the

content of laws or rules, updated a list of species to match current management practices by both agencies, used defined terms consistently, and clarified existing text. The MFC placed final re-adoption of the rules on the agenda for its August 2021 quarterly business meeting. At the WRC's request, the MFC delayed the vote on final re-adoption to allow additional input from the WRC. This resulted in additional edits to the nine joint rules. The MFC gave final approval of the revised joint rules at a special meeting held Sept. 9, 2021.

Summary of Pertinent Authorizing Statutes

There are three laws central to the proposed changes to the rules. The first is N.C.G.S. § 113-132, Jurisdiction of fisheries agencies, as described above. This law provides express authority for the MFC and the WRC to make joint rules for "rational and compatible management of the marine and estuarine and wildlife resources in joint fishing waters", which is where the jurisdictions of the two agencies overlap.

The second law is N.C.G.S. § 113-174.1, License required; general provisions governing licenses. The Coastal Recreational Fishing License (CRFL) was implemented effective Jan. 1, 2007, after these joint rules were last amended. To account for the various licenses available to adhere to the requirements to engage in recreational fishing in the State, N.C.G.S. § 113-174.1 was amended. Under current laws, there are now three categories of recreational fishing licenses available to an angler to fish in joint fishing waters: Coastal Recreational Fishing Licenses (for coastal and joint fishing waters); Inland Fishing Licenses (for inland and joint fishing waters); and Unified Licenses (for inland, joint, and coastal fishing waters).

The third law is N.C.G.S. § 113-129, Definitions relating to resources. This law defines "coastal fishing waters", "inland fishing waters", and "joint fishing waters". Coastal fishing waters include out to three miles in the Atlantic Ocean through the sounds and estuarine waters up to the dividing line with inland fishing waters. All references in laws and rules to commercial fishing waters apply to coastal fishing waters. Inland fishing waters include all waters connecting with or tributary to the coastal sounds or the ocean upstream from the dividing line with coastal fishing waters. Joint fishing waters are coastal fishing waters that have a significant number of freshwater fish as agreed upon by the MFC and the WRC. By law, joint fishing waters are a subset of coastal fishing waters.

To understand these freshwater fish, it is helpful to review the definition of "inland game fish", which is also set out in N.C.G.S. § 113-129, in item (10). Inland game fish are the species of freshwater fish found in any waters (inland, joint, and coastal fishing waters), and the species of migratory saltwater fish when found in inland fishing waters that have an important element of sport in taking and that are designated as inland game fish in WRC rule; in other words, fish prized for the sport it gives the angler in its capture, rather than for value as food. Importantly, no species of fish of commercial importance not already classified as a game fish in commercial fishing waters as of Jan. 1, 1965, may be classified as an inland game fish in coastal fishing waters without the concurrence of the MFC.

Finally, it is important to describe a pertinent WRC rule that is not subject to joint re-adoption that is related to N.C.G.S. § 113-129(10). Rule 15A NCAC 10C .0301 (Appendix III) designates inland game fishes. The WRC adopted the rule in 1976. It has been amended seven times since

and the WRC readopted the rule Aug. 1, 2020. It includes various freshwater fish that are found in any waters, such as mountain, rainbow, and brook trout; walleye; and various species of pickerel, black bass, crappie, and sunfish. Some migratory saltwater fish are also in the rule, including yellow perch; spotted seatrout; flounder; red drum; striped bass; American and hickory shad; and several species of catfish. These fish are listed in the rule with the caveat "when found in inland fishing waters" because concurrence of the MFC is required by N.C.G.S. § 113-129(10) for these fish to be classified as inland game fish in coastal fishing waters (unless they were already classified as a game fish as of Jan. 1, 1965). This concurrence does not appear to have ever been sought by the WRC or given by the MFC until Sept. 9, 2021 when the MFC readopted the nine rules in 15A NCAC 03Q .0100 and updated the list of species that are of commercial importance in 15A NCAC 03Q .0103(b).

The Nov. 20, 2020 WRC public comments specifically stated in reference to this rule that "the list of inland game fish is outdated. This sentence should be revised to either list current species or reference Rule 15A NCAC 10C .0301 Inland Game Fishes Designated." Amendments to 03Q .0103 will accomplish this.

Summary of Proposed Changes to 15A NCAC 03Q .0100

With this background, an explanation of the proposed changes to each of the MFC joint rules is provided here. Overall, proposed changes conformed the rules to authorizing statutes, removed text that merely repeats the content of laws or rules, updated a list of species to match current management practices by both agencies, used defined terms consistently, and clarified existing text. Please refer to Appendix I for the proposed rules and to see the referenced line numbers.

15A NCAC 03Q .0101 SCOPE AND PURPOSE

Proposed changes conform to the authorizing statutes. On **line 13**, text has been added that links to N.C.G.S. § 113-132, Jurisdiction of fisheries agencies. This law sets out that the MFC has jurisdiction over the conservation of marine and estuarine resources and the WRC has jurisdiction over the conservation of wildlife resources. Where these jurisdictions overlap, which is called "joint fishing waters", the two agencies have concurrent jurisdiction and may have "jointly adopted rules" to determine who manages what species. Proposed changes rely on the statutory definition of "joint fishing waters" (N.C.G.S. § 113-129(10a)).

The rulemaking process for the joint rules is set out in the Administrative Procedure Act in N.C.G.S. § 150B-21.2, Procedure for adopting a permanent rule, as referred to now on **line 12**. On **lines 15 and 16**, "jointly adopted rules" replaces "guidelines", to conform to the language in N.C.G.S. § 113-132. Proposed changes on **lines 19 and 20** address the WRC comments to refer to Division of Marine Fisheries (DMF) and WRC officers consistently, which is done by referring to how each agency's officers are defined in N.C.G.S. § 113-128 ("marine fisheries inspectors" and "wildlife protectors").

On **line 24** in the history note of the rule, N.C.G.S. § 113-292 is proposed to be added. This law is entitled "Authority of the Wildlife Resources Commission in regulation of inland fishing and introduction of exotic species". It is the analog to the law for the MFC's authority over marine and estuarine resources in coastal fishing waters, which is N.C.G.S. § 113-182, "Regulation of fishing and fisheries". Other minor changes adjust punctuation; word choice, such as using "that"

instead of "which"; and rearrange existing text to improve readability and make the rule easier to understand. These types of minor changes are proposed across the group of rules and are not discussed further in this document. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

15A NCAC 03Q .0102 INLAND FISHING WATERS

Proposed changes address the WRC comments to remove text that repeats the content of laws, as shown on **lines 4 through 7**, specifically by referencing N.C.G.S. § 113-129 instead of repeating text from the law. Once again on **line 9**, text has been added that links to N.C.G.S. § 113-132, Jurisdiction of fisheries agencies, conforming the rule to an authorizing statute. Proposed changes on **lines 13 and 14** address the WRC comments to refer to DMF and WRC officers consistently. On **line 16**, in the history note of the rule, N.C.G.S. § 113-292 is proposed to be added. Again, this WRC law is the analog to the law for the MFC's authority. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

15A NCAC 03Q .0103 COASTAL FISHING WATERS

Many of the same types of changes already summarized in the first two rules are proposed in this rule as well. On **lines 4 through 6**, proposed changes remove text that repeats the content of laws, addressing the WRC comments. So again, N.C.G.S. § 113-129 is referenced instead of repeating text from the law.

Changes are proposed to conform to the authorizing statutes on **line 8** for the Jurisdiction of fisheries agencies, N.C.G.S. § 113-132, and on **line 10** for the Coastal Recreational Fishing License, N.C.G.S. § 113-174.1. This law became effective Jan. 1, 2007 and implemented the Coastal Recreational Fishing License, or "CRFL", for recreational fishing in saltwater (see Article 14B of Chapter 113 for all CRFL types). It is important to note this law was enacted well after the MFC's joint rules were originally adopted or last amended.

Under the current laws, there are now three categories of recreational fishing licenses available to an angler fishing in joint fishing waters. Coastal Recreational Fishing Licenses allow fishing in coastal and joint fishing waters, Inland Fishing Licenses (see Article 21 of Chapter 113) allow fishing in inland and joint fishing waters, and Unified Licenses (see Article 25A of Chapter 113) allow fishing in all three waterbody types: coastal, joint, and inland fishing waters. Before there was a "saltwater" recreational fishing license, in essence there were recreational waters and commercial waters, known as coastal fishing waters today. Joint fishing waters were designated as coastal fishing waters where the authority of the MFC and the WRC may overlap based on the presence of freshwater species of fish managed by the WRC (N.C.G.S. § 113-129(10a)). The only available license for recreational fishing in joint fishing waters prior to Jan. 1, 2007 was an Inland Fishing License. This same information about the recreational fishing licenses is important for the summary of the proposed repeal of 03Q .0106 described further below.

On lines 9 through 27, proposed changes to 03Q .0103 address the WRC's comments to either list the current species in the rule or reference the WRC's inland game fish rule. To explain further, on **lines 9-13**, the existing text of the rule states that fishing in coastal fishing waters is under the MFC's jurisdiction except for inland game fish that are in coastal fishing waters, which fall under the WRC's authority. There are only three exceptions currently listed: spotted seatrout, weakfish, and striped bass, as shown on **lines 12 and 13**. Inland game fish are designated in the WRC's rule 15A NCAC 10C .0301 (Appendix III). A reference to this rule is proposed to be added on **line 12** of 03Q .0103. Also on **line 11** there is proposed text citing another authorizing statute, N.C.G.S. § 113-129, item (10). This item is the statutory definition of "inland game fish". The law states that as of Jan. 1, 1965, no species of fish of commercial importance may be classified as a game fish in coastal fishing waters without the concurrence of the MFC. This concurrence does not appear to have been sought by the WRC or granted by the MFC until Sept. 9, 2021 when the MFC gave final approval of the revised joint rules at a special meeting and it ties into a closer look at the WRC's inland game fish rule, 10C .0301.

The WRC adopted rule 10C .0301 in 1976. It has been amended seven times since and was readopted Aug. 1, 2020. It designates inland game fishes under the WRC's authority. The rule includes various freshwater fish that are found in any waters (inland, joint, and coastal fishing waters), such as mountain, rainbow, and brook trout; walleye; and various species of pickerel, black bass, crappie, and sunfish. Some migratory saltwater fish are also in the rule, including yellow perch; spotted seatrout; flounder; red drum; striped bass; American and hickory shad; and several species of catfish. A review of this rule helps to identify the species that may be of commercial importance by the addition of the phrase "when found in inland fishing waters" (Appendix III). These species and groups of species have been designated over the years by the WRC as inland game fish only when found in inland fishing waters. This seems to be the approach taken by the WRC over the years instead of seeking concurrence by the MFC about species not of commercial importance in coastal fishing waters.

Again, in its public comments on the MFC's joint rules, the WRC suggested either listing the current species that are of commercial importance and that are under the jurisdiction of the MFC in the rule, or referencing the WRC rule. So in 03Q .0103, the "half full" approach to list the species under MFC authority in an MFC rule provides the most clarity, which is what is shown on **lines 14 through 24**. The list of 11 species was based on a review of ongoing DMF fishery dependent biological (fish house) sampling and commercial landings as reported by the N.C. Trip Ticket Program and is consistent with current management practices by the MFC and the WRC, for regulated stakeholders, and continues the same conservation management measures currently in place for fisheries resources of the State. In other words, proposed changes merely update this rule to match current conditions.

On lines 25 through 27, proposed changes set a control date of Aug. 1, 2020 for incorporating by reference 10C .0301. So, the WRC rule is adopted by reference in this rule, specifically not including subsequent amendments. This ensures that any future potential inland game fish designations have the opportunity for MFC concurrence first, as N.C.G.S. § 113-129(10) requires.

Another benefit of the proposed changes is to clarify the WRC has authority in all waters for inland game fish that are not of commercial importance. These joint rules address who manages what species in joint fishing waters. If a species is a freshwater fish that is not of commercial importance, the WRC has authority for that species in inland, joint, and coastal fishing waters.

Lastly, on **lines 28-32**, proposed changes address the WRC comments to refer to DMF and WRC officers consistently. On **line 34** in the history note of the rule, N.C.G.S. § 113-292 is proposed to be added. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State; however final adoption of this rule is the MFC concurrence required by N.C.G.S. § 113-129(10) for those species that are not of commercial importance.

15A NCAC 03Q .0104 JOINT FISHING WATERS

Once again, proposed changes address the WRC comments to remove text that repeats the content of laws. On **line 5**, N.C.G.S. § 113-129 is referenced instead of repeating text from the law. Additional changes are proposed to conform to the authorizing statutes by adding text that links to N.C.G.S. § 113-132, Jurisdiction of fisheries agencies, as shown on **lines 7 and 9**. Proposed new text on **lines 11 through 13** clarifies each agency has authority for hook and line recreational fishing in accordance with N.C.G.S. § 113-132. This ties into the changes summarized for rule 03Q .0103 consistent with the addition of the Coastal Recreational Fishing License (N.C.G.S. § 113-174.1) and also ties into the proposed repeal of 03Q .0106 that is described further below. On **lines 14 and 15**, proposed text addresses the WRC comments to refer to DMF and WRC officers consistently. On **line 16** in the history note of the rule, N.C.G.S. § 113-292 is proposed to be added. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

15A NCAC 03Q .0105 POSTING DIVIDING LINES

Proposed changes consist only of minor technical and conforming changes to improve readability and make the rule easier to understand. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

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

This rule is proposed for repeal through readoption. Paragraph (a) of the rule on **lines 4 through 6** only repeats the content of laws and rules and so, consistent with the WRC comments to remove text that repeats the content of laws, the text is not needed.

Paragraph (b) of the rule on **lines 7 through 11** is now addressed by proposed changes to 03Q .0102(b) and (c), .0103(b) and (c), and .0104(b). A change to the authorizing statutes involved with these rules is what triggered these changes and results in .0106 no longer being necessary. N.C.G.S. § 113-174.1 became effective Jan. 1, 2007 and implemented the Coastal Recreational Fishing License, or "CRFL", for recreational fishing in saltwater (see Article 14B of Chapter 113

for all CRFL types). It is important to note this law was enacted well after the MFC's joint rules were originally adopted or last amended.

Under the current laws, there are now three categories of recreational fishing licenses available to an angler to fish in joint fishing waters. Coastal Recreational Fishing Licenses allow fishing in coastal and joint fishing waters, Inland Fishing Licenses (see Article 21 of Chapter 113) allow fishing in inland and joint fishing waters, and Unified Licenses (see Article 25A of Chapter 113) allow fishing in all three waterbody types: coastal, joint, and inland fishing waters. Before there was a "saltwater" recreational fishing license, in essence there were recreational waters and commercial waters, known as coastal fishing waters today. Joint fishing waters were designated as coastal fishing waters where the authority of the MFC and the WRC may overlap based on the presence of freshwater species of fish managed by the WRC. The only available license for recreational fishing in joint fishing waters prior to Jan. 1, 2007 was an Inland Fishing License.

Rule .0106 was originally needed to clarify what licensing and fishing requirements applied in joint fishing waters (thus its title, "Applicability of Rules: Joint Waters"). Now that a "saltwater" recreational fishing license has been enacted by N.C.G.S. § 113-174.1, the purpose of .0106 has been made moot and requirements can and are proposed to reside in the rule for the respective waterbody type: .0102 (Inland Fishing Waters), .0103 (Coastal Fishing Waters), and .0104 (Joint Fishing Waters). In particular, new Paragraph (b) of .0104 clears up ambiguity in the phrase in .0106(b)(3) "except as hereinafter provided" by plainly stating each agency shall implement their respective hook and line recreational fishing requirements in joint fishing waters.

For the proposed rule changes across 03Q .0100, in addition to following the requirement to remove text from rule that merely repeats the content of laws, the MFC is adhering to the requirement that a rule cannot supersede the authority of laws. With the conforming amendments made across the group of nine MFC joint rules, .0106 is unnecessary and needs to be repealed. The cumulative effect of repealing 03Q .0106 is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

15A NCAC 03Q .0107 SPECIAL REGULATIONS FOR JOINT FISHING WATERS

The purpose of this rule is to harmonize potential differences between MFC and WRC rules relative to specific subjects. These subjects currently include striped bass, as shown on **lines 10 through 28**, Lake Mattamuskeet, as shown on **lines 29 through 33**, Cape Fear River, as shown on **lines 34 and 35**, and shad, on **lines 36 and 37**.

The shad portion of the rule has been suspended by proclamation starting in 2014 (FF-3-2014) due to ongoing changes needed to conform to the N.C. American Shad Sustainable Fishery Plan, which is part of Amendment 3 to the Atlantic States Marine Fisheries Commission Interstate FMP for Shad and River Herring. At the interstate level, the shad requirements in the rule have been changing and are expected to continue changing, so they need to be removed from the rule while continuing to rely on existing proclamation authority (15A NCAC 03M .0512) to set shad requirements. Additionally, in November 2021, the MFC approved the repeal of another rule with the same requirements for shad (15A NCAC 03M .0519). The removal of the shad requirements from 03Q .0107 makes a necessary update to a rule that does not reflect existing

management practices and results in no change to current management practices by the MFC or the WRC and no change for regulated stakeholders.

Other proposed changes to 03Q .0107 on **lines 4 through 6** address the WRC comments to refer to DMF and WRC officers consistently. Additionally, minor conforming and technical changes are proposed throughout the rule to improve readability and make the rule easier to understand. On **page 2, line 2** in the history note of the rule, N.C.G.S. § 113-292 is proposed to be added. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

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

Proposed changes consist only of minor technical and conforming changes to improve readability and make the rule easier to understand. On **line 19** in the history note of the rule, N.C.G.S. § 113-292 is proposed to be added. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

15A NCAC 03Q .0109 IMPLEMENTATION OF ESTUARINE STRIPED BASS FISHERY MANAGEMENT PLAN: RECREATIONAL FISHING

The N.C. Estuarine Striped Bass FMP is mandated in accordance with N.C.G.S. § 113-182.1 and N.C.G.S. § 143B-289.52, both of which are part of the Fisheries Reform Act of 1997 and require the DMF to prepare FMPs for adoption by the MFC for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. This FMP is jointly developed with the WRC and is what governs management of estuarine striped bass in North Carolina waters since estuarine striped bass occur in inland, joint, and coastal fishing waters. This FMP is also how North Carolina maintains compliance with the Atlantic States Marine Fisheries Commission Interstate FMP for Atlantic Striped Bass, as a portion of that migratory ocean stock of fish occurs in North Carolina State waters.

The changes to 03Q .0109 for recreational fishing simply conform out-of-date rule language to current management practices and result in no change in current management practices by the MFC or the WRC and no change for regulated stakeholders. Proposed changes on **lines 7 and 18** link to the N.C. Estuarine Striped Bass FMP, as is already stated in 03Q .0108, and clarify the quota is set by this FMP.

On **line 9**, the existing rule text reflects a practice of implementing management measures "by a single instrument" (proclamation) issued under the authority of the MFC to implement estuarine striped bass restrictions that apply across the jurisdiction of both agencies. Under the current rule text, if a proclamation was implemented by authority of the MFC and became effective for restrictions for the harvest of estuarine striped bass in the joint and coastal fishing waters of the Albemarle Sound Management Area, it would automatically become effective as a WRC action

in the affected inland fishing waters (Roanoke River Management Area) without further action by the WRC.

However, in actuality, this is not how the management practices have occurred in the past or are occurring. Changes to the rule reflect the management practices of each agency that have been occurring for decades. Instead of a single proclamation being issued, the MFC and the WRC each take its own action to implement equivalent management measures within its own jurisdiction, in the Albemarle Sound Management Area or the Roanoke River Management Area, respectively. The authority for each agency to take its own action for the management of estuarine striped bass is set out separately from 03Q .0109. For the MFC, this authority is found in N.C.G.S. § 113-221.1, 15A NCAC 03M .0202, and 03M .0512 for proclamations. For the WRC, this authority is found in N.C.G.S. § 150B-21.1(a)(7) for temporary rulemaking and N.C.G.S. § 113-292 and 15A NCAC 10C .0314 for proclamations. Proposed changes simply conform the rule to existing authority and management that provides flexibility to both agencies to prevent estuarine striped bass harvest from exceeding the total allowable take of fish under the FMP.

On **line 24** in the history note of the rule, N.C.G.S. § 113-292 is proposed to be added. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

Collectively, changes were proposed to 15A NCAC 03Q .0100 rules in consideration of the public comments received during the rulemaking process. Specifically, proposed changes conformed the rules to authorizing statutes, removed text that merely repeated the content of laws or rules, updated a list of species to match current management practices by both agencies, used defined terms consistently, and clarified existing text.

IV. Fiscal Impact Analysis

The nine rules in 15A NCAC 03Q .0100 have been reviewed to conform to the requirements of N.C.G.S. § 150B-21.3A and authorizing statutes and also to address public comment received during the rulemaking process. None of the proposed readoptions contain amendments that produce procedural changes, and therefore no economic costs to the State are incurred and only qualitative benefits are expected in the form of clarity of requirements. In short, all proposed changes are either intended to provide heightened clarity to rule language or to conform rule language to authorizing statutes, FMPs, and ongoing management practices. Four of the rules have proposed changes beyond simple conforming changes or minor changes to adjust punctuation and word choice or improve readability; these four rules are summarized here in regards to fiscal impact.

15A NCAC 03Q .0103 COASTAL FISHING WATERS

The Nov. 20, 2020 WRC public comments specifically stated in reference to this rule that "the list of inland game fish is outdated. This sentence should be revised to either list current species or reference rule 15A NCAC 10C .0301 Inland Game Fishes Designated." Amendments to 03Q .0103 accomplished this and were given final approval by the MFC Sept. 9, 2021. The "half full" approach to list the species under MFC authority in an MFC rule provides the most clarity. The

list of 11 species was based on a review of ongoing DMF fishery dependent biological (fish house) sampling and commercial landings as reported by the N.C. Trip Ticket Program and is consistent with current management practices by the MFC and the WRC, for regulated stakeholders, and continues the same conservation management measures currently in place for fisheries resources of the State. In other words, proposed changes merely update this rule to match current conditions, so no economic costs to the State are incurred and only qualitative benefits are expected in the form of clarity of requirements.

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

This rule is proposed for repeal through readoption. Rule .0106 was originally adopted to clarify what licensing and fishing requirements applied in joint fishing waters (thus its title, "Applicability of Rules: Joint Waters"). Now that a "saltwater" recreational fishing license has been enacted by N.C.G.S. § 113-174.1, the purpose of .0106 has been made moot and requirements can and are proposed to reside in the rule for the respective waterbody type: 03Q .0102 (Inland Fishing Waters), 03Q .0103 (Coastal Fishing Waters), and 03Q .0104 (Joint Fishing Waters). With the conforming amendments made across the group of nine MFC joint rules, 03Q .0106 is unnecessary and needs to be repealed.

15A NCAC 03Q .0107 SPECIAL REGULATIONS FOR JOINT FISHING WATERS

The purpose of this rule is to harmonize potential differences between MFC and WRC rules relative to specific subjects. The shad portion of the rule has been suspended by proclamation starting in 2014 (FF-3-2014) due to ongoing changes needed to conform to the N.C. American Shad Sustainable Fishery Plan, which is part of Amendment 3 to the Atlantic States Marine Fisheries Commission Interstate FMP for Shad and River Herring. At the interstate level, the shad requirements in the rule have been changing and are expected to continue changing, so they need to be removed from the rule while continuing to rely on existing proclamation authority (15A NCAC 03M .0512) to set shad requirements. The removal of the shad requirements from 03Q .0107 makes a necessary update to a rule that does not reflect existing management practices, so no economic costs to the State are incurred and only qualitative benefits are expected in the form of clarity of requirements.

**15A NCAC 03Q .0109 IMPLEMENTATION OF ESTUARINE STRIPED BASS
FISHERY MANAGEMENT PLAN: RECREATIONAL
FISHING**

Proposed changes to this rule update the rule to reflect the management practices of each agency that have been occurring for decades. Instead of a single proclamation being issued, the MFC and the WRC each take its own action to implement equivalent management measures within its own jurisdiction, in the Albemarle Sound Management Area or the Roanoke River Management Area, respectively. Proposed changes simply conform the rule to existing authority and management that provides flexibility to both agencies to prevent estuarine striped bass harvest from exceeding the total allowable take of fish under the FMP.

The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

Therefore, no economic costs to the State are incurred and only qualitative benefits are expected in the form of clarity of requirements.

1 **Appendix I. Proposed Rules for Readoption.**

2

3 15A NCAC 03Q .0101 is proposed for readoption with substantive changes as follows:

4

5 **SUBCHAPTER 03Q - JURISDICTION OF AGENCIES: CLASSIFICATION OF WATERS**

6

7 **SECTION .0100 - GENERAL REGULATIONS: JOINT**

8

9 **15A NCAC 03Q .0101 SCOPE AND PURPOSE**

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

23

24 *History Note: Authority G.S. 113-132; 113-134; 113-182; 113-292; 143B-289.52;*

25 *Eff. January 1, 1991;*

26 *Readopted Eff. August 1, 2022.*

1 15A NCAC 03Q .0102 is proposed for reoption with substantive changes as follows:

2

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

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

10 (b) The regulation and licensing of fishing in inland fishing waters is shall be under the jurisdiction of the Wildlife
11 Resources Commission.

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

15

16 *History Note: Authority G.S. 113-132; 113-134; 113-182; 113-292; 143B-289.52;*

17 *Eff. January 1, 1991;*

18 *Readopted Eff. August 1, 2022.*

1 15A NCAC 03Q .0103 is proposed for readoption with substantive changes as follows:

2

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

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

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

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

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

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

33

34 *History Note: Authority G.S. 113-132; 113-134; 113-182; 113-292; 143B-289.52;*

35 *Eff. January 1, 1991;*

36 *Readopted Eff. August 1, 2022.*

1 15A NCAC 03Q .0104 is proposed for reoption with substantive changes as follows:

2

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

4 (a) Joint fishing waters are those coastal fishing waters, hereinafter set out, denominated by agreement of defined in
5 G.S. 113-129 and are waters adopted by both the Marine Fisheries Commission and the Wildlife Resources
6 Commission pursuant to G.S. 113-132(e) as joint fishing waters. waters when concurrent jurisdiction exists in
7 accordance with G.S. 113-132. All waters which that are tributary to joint fishing waters and which that are not
8 otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources
9 Commission in rule in accordance with G.S. 113-132 shall be are classified as joint fishing waters. The regulation and
10 licensing of fishing in joint waters shall be as stated in 15A NCAC 3Q .0106.

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

16

17 *History Note: Authority G.S. 113-132; 113-134; 113-182; 113-292; 143B-289.52;*
18 *Eff. January 1, 1991;*
19 *Readopted Eff. August 1, 2022.*

1 15A NCAC 03Q .0105 is proposed for readoption with substantive changes as follows:

2

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

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

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

13

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

15 *Eff. January 1, 1991;*

16 *Readopted Eff. August 1, 2022.*

1 15A NCAC 03Q .0106 is proposed for repeal through readoption as follows:

2

3 **15A NCAC 03Q .0106 APPLICABILITY OF RULES: JOINT WATERS**

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

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

9 (1) ~~all laws and regulations pertaining to inland game fishes,~~

10 (2) ~~all laws and regulations pertaining to inland fishing license requirements for hook and line fishing,~~

11 (3) ~~all laws and regulations pertaining to hook and line fishing except as hereinafter provided.~~

12

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

14 *Eff. January 1, 1991;*

15 *Amended Eff. July 1, 1999;*

16 *Repealed Eff. August 1, 2022.*

1 15A NCAC 03Q .0107 is proposed for readoption with substantive changes as follows:

2

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

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

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

11 (a) ~~It is it shall be~~ unlawful to possess any striped bass or striped bass hybrid that is less than
12 18 inches long (total length).

13 (b) ~~It is it shall be~~ unlawful to possess striped bass or striped bass hybrids between the lengths
14 of 22 and 27 inches (total length) in joint fishing waters of the Central Southern
15 Management Area as designated in 15A NCAC 03R .0201.

16 (c) ~~It is it shall be~~ unlawful to possess striped bass or striped bass hybrids May through
17 September in the joint fishing waters of the Central Southern Management Area and the
18 Albemarle Sound Management ~~Area~~Area as designated in 15A NCAC 03R .0201.

19 (d) ~~It is it shall be~~ unlawful to possess striped bass or striped bass hybrids taken from the joint
20 fishing waters of the Cape Fear River.

21 (e) ~~It is it shall be~~ unlawful to possess more than one daily creel limit of striped bass or striped
22 bass hybrids, in the aggregate, per person per day, regardless of the number of management
23 areas fished.

24 (f) ~~Possession-possession~~ of fish shall be assessed for the creel and size limits of the
25 management area in which the individual is found to be fishing, regardless of the size or
26 creel limits for other management areas visited by that individual in a given day.

27 (g) ~~It is it shall be~~ unlawful to engage in net fishing for striped bass or striped bass hybrids in
28 joint fishing waters except as authorized by rules of the Marine Fisheries Commission.

29 (2) Lake Mattamuskeet:

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

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

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

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

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*History Note: Authority G.S. 113-132; 113-134; 113-182; 113-292; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. July 1, 1993; November 1, 1991;
Temporary Amendment Eff. May 1, 2000;
Amended Eff. July 1, 2008; September 1, 2005; April 1, 2001; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03Q .0108 is proposed for reoption with substantive changes as follows:

2

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

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

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

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19 *History Note: Authority G.S. 113-132; 113-134; 113-182; 113-292; 143B-289.52;*
20 *Eff. January 1, 1991;*
21 *Amended Eff. October 1, 2004; September 1, 1991;*
22 *Readopted Eff. August 1, 2022.*

1 15A NCAC 03Q .0109 is proposed for readoption with substantive changes as follows:

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

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

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

23

24 *History Note: Authority G.S. 113-132; 113-134; 113-182; 113-292; 143B-289.52;*

25 *Eff. January 1, 1991;*

26 *Amended Eff. October 1, 2004; September 1, 1991;*

27 *Readopted Eff. August 1, 2022.*

Appendix II. WRC Public Comments.



North Carolina Wildlife Resources Commission

Cameron Ingram, Executive Director

November 20, 2020

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RE: Comments on Division of Marine Fisheries Joint Fishing Water Rules (15A NCAC 03Q .0100)

The Wildlife Resources Commission (WRC) respectfully submits the following comments on the Division of Marine Fisheries (DMF) Joint Fishing Water Rules, formally proposed by the Marine Fisheries Commission (MFC) on August 20, 2020 and noticed in the N.C. Register on October 1, 2020.

15A NCAC 03Q .0101 Scope and Purpose

This rule states that all rules in Section 03Q .0100 are adopted jointly by the MFC and WRC. As such, we believe that re-adoption of these rules will require a vote from both boards prior to completion of the rule-making process. While the WRC does not oppose the MFC noticing these unchanged rules, we would appreciate the chance to discuss potential updates to these 30-year old rules and the DMF's plan to ensure joint re-adoption prior to final approval.

15A NCAC 03Q .0102 Inland Fishing Waters

Per G.S. 150B-19(4), an agency may not adopt a rule that repeats the content of a law, a rule, or a federal regulation. The first sentence of this rule re-states the statutory definition of coastal fishing waters and should be revised to reference G.S. 113-129.

15A NCAC 03Q .0103 Coastal Fishing Waters

Per G.S. 150B-19(4), an agency may not adopt a rule that repeats the content of a law, a rule, or a federal regulation. The first sentence of this rule re-states the statutory definition of coastal fishing waters and should be revised to reference G.S. 113-129. Additionally, the list of inland game fish is outdated. This sentence should be revised to either list current species or reference Rule 15A NCAC 10C .0301 Inland Game Fishes Designated.

15A NCAC 03Q .0105 Posting Dividing Lines

While posting dividing lines was historically the preferred and most accurate method for differentiating the classifications on the water, this is likely no longer the most accurate means of communicating this information to the public. We believe, at a minimum, this rule should be updated to reference the

Appendix II. WRC Public Comments.

descriptive boundaries of Coastal-Joint-Inland Waters, currently in Rule 03Q .0202, and direct the public to online maps for more accurate and dependable information. However, we also believe the descriptive boundaries of Coastal-Joint-Inland Waters should be moved to this rule or another joint rule within this Section, to ensure mutual agreement on the dividing lines through joint rulemaking in the future.

15A NCAC 03Q .0106 Applicability of Regulations: Joint Waters

Subparagraph (b)(2) of this Rule is inaccurate, as it does not account for the Coastal Recreational Fishing License (CRFL). Since 2007, either an inland fishing license or CRFL has been acceptable licensure for hook-and-line fishing in joint waters. Additionally, as license requirements are specified in statute, we recommend removing them from this rule.

Subparagraph (b)(3) does not accurately describe how regulations are implemented and enforced on the water. Over time, the premise from which this rule was written has changed, as has the application. Amendments are needed to make requirements of this rule reflect expectations of implementation on the water. These amendments should be determined based on discussion and agreement between the DMF and the WRC. Prior to readoption, the WRC would welcome a discussion on amendments to this rule.

General

The names of both DMF and WRC enforcement officers are inconsistent throughout these rules. Please update all rules to use the phrase "wildlife officers" when referencing WRC enforcement.

The WRC intends to modify the joint rules in Section 10C .0100 to address the issues mentioned above and incorporate technical changes to ensure compliance with current Administrative Procedure Act requirements. We would be happy to share those proposed amendments with the DMF and would welcome the opportunity to collaborate on changes to ensure consistency between joint fishing water rules in both sections of the N.C. Administrative Code prior to readoption.

We look forward to working with you and thank you for the opportunity to comment on these proposed rules. If you have any questions, please contact me at 919-707-0011 or carrie.ruhlman@ncwildlife.org.

Regards,



Carrie Ruhlman
Rulemaking Coordinator
N.C. Wildlife Resources Commission

Appendix III. WRC Rule 15A NCAC 10C .0301, with emphasis.

SECTION .0300 - GAME FISH

15A NCAC 10C .0301 INLAND GAME FISHES DESIGNATED

The following fishes are classified and designated as inland game fishes:

- (1) mountain trout, all species including but not limited to rainbow, brown and brook trout;
- (2) muskellunge, chain (jack) and redfin pickerel;
- (3) yellow perch, **when found in inland waters**, walleye and sauger;
- (4) black bass, including Alabama, largemouth, smallmouth, spotted and redeye bass;
- (5) black and white crappie;
- (6) sunfish, including bluegill (bream), redbreast (robin), redear (shellcracker), pumpkinseed, warmouth, rock bass, (redeye), flier, Roanoke bass, and all other species of the sunfish family (Centrarchidae) not specifically listed in this Rule;
- (7) spotted sea trout (speckled trout), **when found in inland fishing waters;**
- (8) flounder, **when found in inland fishing waters;**
- (9) red drum (channel bass, red fish, puppy drum), **when found in inland fishing waters;**
- (10) striped bass, white bass, white perch and Morone hybrids (striped bass-white bass), **when found in inland fishing waters;**
- (11) American and hickory shad, **when found in inland fishing waters;**
- (12) kokanee salmon; and
- (13) black bullhead, brown bullhead, flat bullhead, snail bullhead, white catfish, and yellow bullhead, **when found in inland fishing waters.**

History Note: Authority G.S. 113-134;
Eff. February 1, 1976;
Amended Eff. June 1, 2005; June 1, 2004; July 1, 1996; July 1, 1990; July 1, 1983; January 1, 1981; January 1, 1980;
Readopted Eff. August 1, 2020.