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Jan. 27, 2023

## MEMORANDUM

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

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

**SUBJECT:** Rulemaking Update

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### Issue

Update the N.C. Marine Fisheries Commission (MFC) on the status of rulemaking in support of the Periodic Review and Expiration of Existing Rules per N.C.G.S. § 150B-21.3A. Request the MFC vote on final approval of two rules in the 2022-2023 Annual Rulemaking Cycle. Request the MFC vote on preferred management options and associated proposed language for rulemaking for three issues in the 2023-2024 Annual Rulemaking Cycle.

### Findings

- Periodic Review and Readoption of Rules – Requirements
  - North Carolina G.S. § 150B-21.3A, enacted in 2013, requires state agencies to review existing rules every 10 years in accordance with a prescribed process that includes rule readoption. For 15A NCAC 03 (Marine Fisheries), the MFC completed the rule readoption process.
  - For 15A NCAC 18A (Sanitation), the MFC has 80 rules remaining for readoption. On Jan. 16, 2020, the Rules Review Commission (RRC) approved the readoption schedule of June 30, 2024, for these rules.
  - The MFC must readopt the remaining rules by this deadline or the rules will expire and be removed from the N.C. Administrative Code.
- Regarding final approval of the rules in the 2022-2023 Annual Rulemaking Cycle, four public comments in total were received about the two rules. If approved, one rule has an earliest effective date of May 1, 2023 (marinas) and one rule is automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1 (mutilated finfish).
- Regarding rules in the 2023-2024 Annual Rulemaking Cycle, the MFC's preferred management options and associated proposed language for rulemaking are needed for development of the required fiscal analyses so that the formal rulemaking process can be ready to begin at the MFC's May 2023 business meeting.

## 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 two rules in 15A NCAC 03 and 18A as published in the *N.C. Register* Oct. 3, 2022. The MFC is also scheduled to vote on preferred management options and associated proposed language for rulemaking for three issues in the 2023-2024 Annual Rulemaking Cycle.

## Recommendations

- 2022-2023 Annual Rulemaking Cycle: The Division of Marine Fisheries (DMF) recommends the MFC vote on final approval of readoption and amendment of two rules in 15A NCAC 03 and 18A in accordance with N.C.G.S. § 150B-21.3A.
- 2023-2024 Annual Rulemaking Cycle:
  - "Data Collection and Harassment Prevention for the Conservation of Marine and Estuarine Resources": the DMF recommends Option 2, amend the rules.
  - "Oyster Sanctuary Rule Changes": the DMF recommends Option 2, amend the rules.
  - "Conforming Rule Changes for Shellfish Relay Program and Shellfish Leases and Franchises": the DMF recommends supporting the single option presented to amend the rules, consistent with requirements of the N.C. Administrative Procedure Act (APA; N.C.G.S. § 150B).
- For more information, please refer to the rulemaking section of the briefing materials.

## 2021-2022 Annual Rulemaking Cycle Update

### "Package B" (109 rules)

At its August 2021 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for 109 rules. The MFC gave final approval of the rules at its February 2022 business meeting. There were 38 rules that were not automatically subject to legislative review that became effective June 1 or July 1, 2022. Most fishermen saw very little change from these rules. A news release and a rulebook supplement were distributed on each of these dates. The remaining 71 rules are automatically subject to legislative review pursuant to Session Law 2019-198 and N.C.G.S. § 14-4.1, and thus are expected to have a delayed effective date. Three rules, covering highly efficient gears, artificial reefs, and research sanctuaries, became effective Aug. 23, 2022, which was the 31<sup>st</sup> legislative day of the 2022 short session; a news release and a rulebook supplement were distributed. The remaining 68 rules are available for legislative review during the 2023 long session.

These 68 rules cover the following subjects:

- Shellfish leasing regulations;
- 15A NCAC 03 rules with conforming changes;
- 15A NCAC 03I, 03J, 03K, 03O, and 03R for imported species, recordkeeping, gear, marketing shellfish, and licenses;
- Commercial blue crab harvest and gear regulations;
- Permit and license suspensions and revocations and pound net gears; and
- 15A NCAC 03K and 18A crustacea and shellfish.

## "Package C" (9 rules)

At its March 2022 special meeting, the MFC approved Notice of Text for Rulemaking to begin the process for nine joint rules that pertain to the classification of the waters of North Carolina as coastal fishing waters, inland fishing waters, and joint fishing waters. The rules were proposed for re-adoption with no changes. The MFC gave final approval of the rules at its June 23, 2022, special meeting, and the Wildlife Resources Commission (WRC) gave its concurrence of the MFC's rules at its June 28, 2022, special meeting. These nine MFC rules and the 11 WRC joint rules (that the WRC approved April 14, 2022, and for which the MFC gave its concurrence May 26, 2022) became effective Sept. 1, 2022, except for one MFC rule (15A NCAC 03Q .0107) that is automatically subject to legislative review pursuant to Session Law 2019-198 and N.C.G.S. § 14-4.1 and is available for legislative review during the 2023 long session.

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

At its August 2022 business meeting, the MFC approved Notice of Text for Rulemaking to begin the rule amendment and re-adoption process for two rules. A table of the steps in the process is included in the briefing materials and a summary of the proposed rules by subject is provided below. The proposed rules were published in the Oct. 3, 2022, issue of the *N.C. Register*, beginning the public comment process; an excerpt is included in the briefing materials.

The MFC accepted public comments on the proposed rules from Oct. 3 through 5 p.m. Dec. 16, 2022. Four written public comments were submitted about the rules, described with the corresponding subjects below. Additionally, three written public comments were submitted about unrelated topics (Shellfish Enterprise Areas, the southern flounder season, and nets). All seven comments are included in a table in the briefing materials. A public hearing was held at the DMF's Central District Office in Morehead City on Dec. 16 at 1 p.m. No members of the public were in attendance; a summary of the hearing is included in the briefing materials. The hearing was rescheduled due to technical issues that occurred on the date it was initially scheduled (Nov. 1), as described in the Nov. 7 news release that is included in the briefing materials.

The MFC is scheduled to receive the public comments and vote on final approval of the rules at its February 2023 business meeting. The mutilated finfish rule is automatically subject to legislative review pursuant to Session Law 2019-198 and N.C.G.S. § 14-4.1 and would not be reviewed until the 2024 short session. The earliest effective date of the marinas, docking facilities, and other mooring areas rule is May 1, 2023.

## **MUTILATED FINFISH (15A NCAC 03M .0101)**

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

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

Three written public comments were submitted about the proposed mutilated finfish rule, one in support. Of the two who expressed opposition to the proposed rule changes, one commenter stated that the use of certain finfish for bait, like mullet, pin fish, spot, and Atlantic croaker, should not be curtailed. A second commenter stated opposition to removing the exception for the use of mullet as bait. It is important to note that as described above, the amended rule would grant authority to the Fisheries Director to use her discretion about the use of bait in the context of the then-current variable conditions and the available data and information about a particular fishery.

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

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

For the harvest classification of shellfish growing waters in and around marinas, the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish requires that a pollution assessment be used to determine the necessary classification in and around the marina docks, and that a dilution analysis be used to determine the size of any harvest closure that may be necessary because of the pollution assessment. The current rule already requires that a pollution assessment be used to determine the necessary classification in and around the marina docks, but it does not require a dilution analysis to determine closure size, and instead prescribes specific closure measurements based on a limited number of marina characteristics. The proposed rule would maintain the pollution assessment requirement and would also require that a dilution analysis be used to determine closure size. Also, the elimination of an exemption clause from the rule would allow for more clarity among

stakeholders and help ensure consistent, clear, and more efficient enforcement across marinas. With the elimination of this portion of the rule, slip owners at these marinas would have additional flexibility with the type and size of boat they are able to dock there. DMF and Division of Coastal Management staffs spend resources repeatedly enforcing marinas' designations over time with changing homeowners' associations. DMF resources could be used in other ways if the exemption is eliminated. Overall, the acreage of water that could potentially change designation is an extremely small amount: approximately 58 acres out of 1.46 million acres that are open to shellfish harvest.

One written public comment was submitted about the proposed rule changes. The commenter stated that the proposed rule changes for detection of fecal contamination near marinas is acceptable, but the rule should also include testing to address chemical contamination by marinas. The proposed rule describes the procedures used to establish prohibited buffer zones around marinas based on the relative risk of wastewater contamination from overboard discharges of sewage. The MFC has other rules that address the risk of chemical contamination, such as 15A NCAC 18A .0907, Prohibited Waters. This rule states "Shellfish growing waters shall be classified as prohibited if: . . . the shellfish growing waters are contaminated with fecal material, pathogenic microorganisms, poisonous or deleterious substances, or marine biotoxins that render consumption of shellfish from those growing waters hazardous." The risk of contamination from "poisonous or deleterious substances" is assessed during a "shoreline survey", which is defined in 15A NCAC 18A .0901 as "an in-field inspection by the Division to identify and evaluate any potential or actual pollution sources or other environmental factors that may impact the sanitary quality of a shellfish growing area." These detailed surveys are completed every three years with updates in the intervening years to reflect any major changes in pollution source impacts that may have occurred.

### **2023-2024 Annual Rulemaking Cycle (101 rules)**

At the MFC's November 2022 business meeting, DMF staff provided a preview of potential rules in the MFC's 2023-2024 annual rulemaking cycle. This cycle is scheduled to begin the rulemaking process at the MFC's May 2023 business meeting; a table of the steps in the process is included in the briefing materials. Additional rules in 15A NCAC 18A proposed for readoption are expected to be part of the rulemaking cycle (83 rules). Please see Figure 1, detailed in the Background Information section below, that shows the MFC's rule readoption schedule. A summary of this group of proposed rules is provided below. Proposed rules would have an earliest effective date of April 1, 2024, except for rules automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1. Rules that are subject would likely be available for review during the 2024 short session.

Additional rules in the 2023-2024 Annual Rulemaking Cycle are anticipated to be included for three other issues. The MFC's preferred management options and associated proposed language for rulemaking are needed for development of the required fiscal analyses so that the formal rulemaking process can be ready to begin in May. A table summarizing these issues is included in the briefing materials, as are the three issue papers; a summary description is also included here.

### **READOPTON OF SHELLFISH PLANT AND INSPECTION RULES IN 15A NCAC 18A .0300 THROUGH .0800 (83 rules)**

Pursuant to N.C.G.S. § 150B-21.3A, this package of 83 rules in 15A NCAC 18A is proposed for the readoption of 56 rules with amendments, repeal through readoption of 23 rules, adoption of three rules, and the repeal of one rule. Proposed changes would help ensure that North Carolina remains in



full compliance with national requirements, provide efficiencies for the DMF in the process of implementing and enforcing the rules, and clarify and update the rules for stakeholders. North Carolina is part of the National Shellfish Sanitation Program (NSSP), which is a federal/state cooperative program designed to “promote and improve the sanitation of shellfish (oysters, clams, mussels, and scallops) moving in interstate commerce” as stated in Section I, page 2 of the NSSP Guide for the Control of Molluscan Shellfish (Guide). DMF staff work together with representatives from other states, the federal government, and industry through the Interstate Shellfish Sanitation Conference to develop guidelines for all state shellfish programs that are summarized in the Guide.

North Carolina must meet the minimum standards included in the Guide for N.C. shellfish to be able to be sold through interstate commerce and protect N.C. shellfish consumers within and outside of the State. The requirements are already being enforced by the DMF consistent with the Guide. Overall, the rules are expected to increase consumer confidence in the safety of N.C. shellfish products, achieve efficiencies in implementing and enforcing the rules, and clarify the requirements for stakeholders.

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

Due to the increasing occurrence and severity of harassment during, and decreasing participation in, DMF data collection initiatives, amendments are proposed to five MFC rules. Proposed amendments set requirements to address harassment by any person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes (e.g., fishing), not just licensees, of DMF employees that occurs in the process of obtaining data for the conservation of marine and estuarine resources, and data for the protection of public health related to the public health programs that fall under the authority of the MFC. Additional amendments more fully characterize the types of data that may be collected.

The amendments would support the importance of participation by persons engaged in regulated fishing activity in DMF data collection and provide a safer working environment for DMF employees. Data collected from the commercial and recreational fishing sectors are essential in fisheries management for the state and play a vital role in federal fisheries management, as well. The proposed amendments to these rules broaden the scope of enforceability to enhance protections for DMF employees as they collect data. Such protections not only enhance the DMF's data collection efforts, but also improve DMF's ability to provide a workplace that is free from unlawful harassment, which typically leads to higher employee satisfaction, lower turnover, and better recruitment. Overall, the rules are expected to enhance fisheries management and create a safer working environment for DMF employees.

#### OYSTER SANCTUARY RULE CHANGES (1 rule)

Proposed amendments add the boundaries of the two newest oyster sanctuaries (Cedar Island and Gull Shoal) and correct boundaries for three other oyster sanctuaries (Pea Island, Raccoon Island, and Swan Island) where published coordinates were recently found to be inconsistent with permitted and marked reef boundaries. These changes to permanent rule would protect oysters from bottom disturbing gear so they can serve their intended management function as oyster broodstock sanctuaries, as well as safeguard boaters navigating the sanctuaries; the changes are already in place via the Fisheries Director's proclamation authority (SF-6-2022). Additionally, coordinates for three

sanctuaries are proposed to be reorganized to standardize the cardinal directions, for consistency; there are no changes to the overall sanctuaries, nor the coordinate pairs themselves.

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

In 2021, the DMF began the process of discontinuing its Shellfish Relay Program (relaying of shellfish from certain polluted areas) due primarily to insufficient resources to run the program and lack of widespread use. The Shellfish Relay Program will end effective May 1, 2024. The MFC received information about the discontinuation of the Shellfish Relay Program at its February 2022 business meeting. DMF informed the MFC that more information would be provided at its February 2023 business meeting, including corresponding proposed rule amendments. DMF identified 11 rules relating to the Shellfish Relay Program that set specific requirements for relaying of shellfish from certain polluted areas. Changes are proposed to amend portions of rules or repeal rules consistent with rulemaking requirements in the APA.

Additional proposed changes for shellfish lease and franchise requirements are proposed to 15A NCAC 03O .0201 to conform to requirements of Session Law 2019-37 (Act to Provide Further Support to the Shellfish Aquaculture Industry in North Carolina). Section 3 of the Act increased production and planting requirements for shellfish leases and franchises. Subsection 3 (d) of the Act requires the MFC to amend 15A NCAC 03O .0201 consistent with Subsection 3 (c) of the Act that sets shellfish production and planting requirements for leases granted July 1, 2019 and after. Changes are proposed to conform this rule to the requirements of this law.

**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<br>(172 rules)        | Report | 41 Rules<br>Readopted | 2 Rules<br>Readopted | 13 Rules<br>Readopted | 116 Rules<br>Readopted | 6/30/22<br>deadline       |                            |                     |
| Subchapter<br>18A<br>(164 rules) |        |                       | Report               | 42 Rules<br>Readopted | 42 Rules<br>Readopted  | Rule<br>Readoption<br>(1) | Rule<br>Readoption<br>(79) | 6/30/24<br>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 2022-2023 Annual Rulemaking Cycle

February 2023

| Time of Year             | Action   |
|--------------------------|--|
| February-July 2022       | Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management |
| Aug. 19, 2022            | MFC approved Notice of Text for Rulemaking   |
| Oct. 3, 2022             | Publication of proposed rules in the <i>North Carolina Register</i>                                  |
| Oct. 3-Dec. 16, 2022     | Public comment period held *   |
| Dec. 16, 2022            | Public hearing held **   |
| Feb. 22-24, 2023         | MFC votes on approval of permanent rules   |
| April 20, 2023           | Rules reviewed by Office of Administrative Hearings/<br>Rules Review Commission                      |
| May 1, 2023              | Proposed effective date of 1 rule not subject to legislative review                                  |
| May 1, 2023              | Rulebook supplement available online   |
| 2024 legislative session | Possible effective date of 1 rule subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.   |
| June 30, 2024            | Readoption deadline for 15A NCAC 18A   |

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

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

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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 2022 – December 2022

| FILING DEADLINES      |            |                     | NOTICE OF TEXT                   |                                | PERMANENT RULE                                       |                  |                                      | TEMPORARY RULES  |
|-----------------------|------------|---------------------|----------------------------------|--------------------------------|--|------------------|--------------------------------------|--|
| Volume & issue number | Issue date | Last day for filing | Earliest date for public hearing | End of required comment Period | Deadline to submit to RRC for review at next meeting | RRC Meeting Date | Earliest Eff. Date of Permanent Rule | 270 <sup>th</sup> day from publication in the Register |
| 36:13                 | 01/03/22   | 12/08/21            | 01/18/22                         | 03/04/22                       | 03/21/22   | 04/21/2022       | 05/01/22                             | 09/30/22   |
| 36:14                 | 01/18/22   | 12/22/21            | 02/02/22                         | 03/21/22                       | 04/20/22   | 05/19/2022       | 06/01/22                             | 10/15/22   |
| 36:15                 | 02/01/22   | 01/10/22            | 02/16/22                         | 04/04/22                       | 04/20/22   | 05/19/2022       | 06/01/22                             | 10/29/22   |
| 36:16                 | 02/15/22   | 01/25/22            | 03/02/22                         | 04/18/22                       | 04/20/22   | 05/19/2022       | 06/01/22                             | 11/12/22   |
| 36:17                 | 03/01/22   | 02/08/22            | 03/16/22                         | 05/02/22                       | 05/20/22   | 06/16/2022       | 07/01/22                             | 11/26/22   |
| 36:18                 | 03/15/22   | 02/22/22            | 03/30/22                         | 05/16/22                       | 05/20/22   | 06/16/2022       | 07/01/22                             | 12/10/22   |
| 36:19                 | 04/01/22   | 03/11/22            | 04/16/22                         | 05/31/22                       | 06/20/22   | 07/21/2022       | 08/01/22                             | 12/27/22   |
| 36:20                 | 04/18/22   | 03/25/22            | 05/03/22                         | 06/17/22                       | 06/20/22   | 07/21/2022       | 08/01/22                             | 01/13/23   |
| 36:21                 | 05/02/22   | 04/08/22            | 05/17/22                         | 07/01/22                       | 07/20/22   | 08/18/2022       | 09/01/22                             | 01/27/23   |
| 36:22                 | 05/16/22   | 04/25/22            | 05/31/22                         | 07/15/22                       | 07/20/22   | 08/18/2022       | 09/01/22                             | 02/10/23   |
| 36:23                 | 06/01/22   | 05/10/22            | 06/16/22                         | 08/01/22                       | 08/22/22   | 09/15/2022       | 10/01/22                             | 02/26/23   |
| 36:24                 | 06/15/22   | 05/24/22            | 06/30/22                         | 08/15/22                       | 08/22/22   | 09/15/2022       | 10/01/22                             | 03/12/23   |
| 37:01                 | 07/01/22   | 06/10/22            | 07/16/22                         | 08/30/22                       | 09/20/22   | 10/20/2022       | 11/01/22                             | 03/28/23   |
| 37:02                 | 07/15/22   | 06/23/22            | 07/30/22                         | 09/13/22                       | 09/20/22   | 10/20/2022       | 11/01/22                             | 04/11/23   |
| 37:03                 | 08/01/22   | 07/11/22            | 08/16/22                         | 09/30/22                       | 10/20/22   | 11/17/2022       | 12/01/22                             | 04/28/23   |
| 37:04                 | 08/15/22   | 07/25/22            | 08/30/22                         | 10/14/22                       | 10/20/22   | 11/17/2022       | 12/01/22                             | 05/12/23   |
| 37:05                 | 09/01/22   | 08/11/22            | 09/16/22                         | 10/31/22                       | 11/21/22   | 12/15/2022       | 01/01/23                             | 05/29/23   |
| 37:06                 | 09/15/22   | 08/24/22            | 09/30/22                         | 11/14/22                       | 11/21/22   | 12/15/2022       | 01/01/23                             | 06/12/23   |
| 37:07                 | 10/03/22   | 09/12/22            | 10/18/22                         | 12/02/22                       | 12/20/22   | 01/19/2023       | 02/01/23                             | 06/30/23   |
| 37:08                 | 10/17/22   | 09/26/22            | 11/01/22                         | 12/16/22                       | 12/20/22   | 01/19/2023       | 02/01/23                             | 07/14/23   |
| 37:09                 | 11/01/22   | 10/11/22            | 11/16/22                         | 01/03/23                       | 01/20/23   | 02/16/2023       | 03/01/23                             | 07/29/23   |
| 37:10                 | 11/15/22   | 10/24/22            | 11/30/22                         | 01/17/23                       | 01/20/23   | 02/16/2023       | 03/01/23                             | 08/12/23   |
| 37:11                 | 12/01/22   | 11/07/22            | 12/16/22                         | 01/30/23                       | 02/20/23   | 03/16/2023       | 04/01/23                             | 08/28/23   |
| 37:12                 | 12/15/22   | 11/22/22            | 12/30/22                         | 02/13/23                       | 02/20/23   | 03/16/2023       | 04/01/23                             | 09/11/23   |

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.

- (1) Aluminum;
- (2) Antimony;
- (3) Arsenic;
- (4) Barium;
- (5) Beryllium;
- (6) Boron;
- (7) Cadmium;
- (8) Calcium;
- (9) Chromium, Hexavalent (Chromium VI);
- (10) Chromium, Total;
- (11) Chromium, Trivalent (Chromium III);
- (12) Cobalt;
- (13) Copper;
- (14) Hardness, Total (Calcium + Magnesium);
- (15) Iron;
- (16) Lead;
- (17) Lithium;
- (18) Magnesium;
- (19) Manganese;
- (20) Mercury;
- (21) Molybdenum;
- (22) Nickel;
- (23) Potassium;
- (24) Phosphorus;
- (25) Selenium;
- (26) Silica;
- (27) Silver;
- (28) Sodium;
- (29) Strontium;
- (30) Thallium;
- (31) Tin;
- (32) Titanium;
- (33) Vanadium; and
- (34) Zinc.

- ~~(17)~~(18) Organochlorine Pesticides;
- ~~(18)~~(19) Organophosphorus Pesticides;
- (20) Per- and Polyfluoroalkyl Substances (PFAS);
- ~~(19)~~(21) Phenols;
- ~~(20)~~(22) Phthalate Esters;
- ~~(21)~~(23) Polychlorinated Biphenyls;
- ~~(22)~~(24) Polynuclear Aromatic Hydrocarbons;
- ~~(23)~~(25) Purgeable Aromatics;
- ~~(24)~~(26) Purgeable Halocarbons;
- ~~(25)~~(27) Purgeable Organics;
- ~~(26)~~(28) Total Organic Halides;
- ~~(27)~~(29) Total Petroleum Hydrocarbons – Diesel Range Organics;
- ~~(28)~~(30) Total Petroleum Hydrocarbons – Gasoline Range Organics; and
- ~~(29)~~(31) Volatile Petroleum Hydrocarbons.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).*

\*\*\*\*\*

*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 amend the rule cited as 15A NCAC 03M .0101 and readopt with substantive changes the rule cited as 15A NCAC 18A .0911.*

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

**Proposed Effective Date:**  
 15A NCAC 03M .0101- Subject to Legislative Review  
 15A NCAC 18A .0911-May 1, 2023

**Public Hearing:**  
**Date:** November 1, 2022  
**Time:** 6:00 p.m.

**Location:**  
 WebEx Events meeting link:  
<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e18e682448138378a2107f624ed6aad80> Event number: 2435 343 7920  
 Event password: 1234  
 Event phone number: 1-415-655-0003  
 Listening station: Division of Marine Fisheries Central District Office, 5285 Highway 70 West, Morehead City, NC 28557

**Reason for Proposed Action:**  
**Rule 15A NCAC 03M .0101** is proposed for amendment to provide flexibility to manage variable conditions for the use of finfish as cut bait by simplifying the rule such that only species subject to a possession limit are subject to the requirements unless otherwise specified in a Marine Fisheries Commission rule or a proclamation issued under the authority of a Marine Fisheries Commission rule.  
**Rule 15A NCAC 18A .0911** is proposed for amendment in accordance with G.S. 150B-21.3A to help ensure that North Carolina remains in full compliance with national requirements so that N.C. shellfish can continue to be sold through interstate

(d) Organics: Each of the organic Parameters listed in this Paragraph shall be considered a certifiable Parameter. One or more Parameter Methods shall be listed with a laboratory's certified Parameters. Analytical methods shall be determined from the sources listed in Rule .0805(a)(1) of this Section. Certifiable organic Parameters are as follows:

- (1) 1,2-Dibromoethane (EDB); 1,2-Dibromo-3-chloro-propane (DBCP); 1,2,3-Trichloropropane (TCP);
- (2) Acetonitrile;
- (3) Acrolein, Acrylonitrile;
- (4) Adsorbable Organic Halides;
- (5) Base/Neutral and Acid Organics;
- (6) Benzidines;
- (7) Chlorinated Acid Herbicides;
- (8) Chlorinated Hydrocarbons;
- (9) Chlorinated Phenolics;
- (10) Explosives;
- (11) Extractable Petroleum Hydrocarbons;
- (12) Haloethers;
- (13) N-Methylcarbamates;
- (14) Nitroaromatics and Isophorone;
- (15) Nitrosamines;
- (16) Nonhalogenated Volatile Organics;
- (17) Organic Fluorine;



commerce; allow the Division of Marine Fisheries to determine necessary buffer closures for shellfish growing waters in and around marinas based on a more scientific and public health-based rationale; and make implementation and enforceability of requirements clearer.

**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:** December 2, 2022

**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 is automatically subject to legislative review:** S.L. 2019-198: 15A NCAC 03M .0101

**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 03M - FINFISH**

**SECTION .0100 – FINFISH, GENERAL**

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

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

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

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

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

**CHAPTER 18 - ENVIRONMENTAL HEALTH**

**SUBCHAPTER 18A - SANITATION**

**SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS**

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

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

- (1) ~~All all~~ waters within the immediate vicinity of a marina shall be classified as prohibited to the harvesting of shellfish for human consumption. ~~Excluded from this classification are marinas with less than 30 slips, having no boats over 24 feet in length, no boats with heads and no boats with cabins. Marinas permitted prior to the effective date of this Rule may continue to have boats up to 21 feet in length with cabins and not be subject to the mandatory water classification of prohibited in the immediate vicinity of the marina.~~
- (2) Owners of marinas conforming to the exclusion provisions in Item (1) of this Rule shall make quarterly reports to the Division. These reports shall include the following information:
  - (a) number of slips;
  - (b) number and length of boats;
  - (c) number and length of boats with cabins;
  - (d) number of boats with heads; and
  - (e) number of boats with "porta-potties."

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

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

|       | Number of Slips in Marina |               | Size of Prohibited Area (Feet) |               |
|-------|---------------------------|---------------|--------------------------------|---------------|
|       | Open System               | Closed System | Open System                    | Closed System |
| 11-25 | 100                       |               | 200                            |               |
| 26-50 | 150                       |               | 275                            |               |
| 51-75 | 175                       |               | 325                            |               |

76-100

200

400

Open system marinas exceeding 100 slips shall require an additional 25 feet for each 25 slips or portion thereof over 100. A closed system marina shall require 50 feet for each 25 slips or portion thereof over 100. Closed system private or residential marinas with more than 75 slips shall require a prohibited area of the number of feet determined above, or 100 feet outside the entrance canal, whichever is greater. Closed system commercial marinas with more than 50 slips shall require a prohibited area of the number of feet determined above, or 100 feet outside the entrance canal, whichever is greater.

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

- (a) the findings of the shoreline survey, including the presence of a sewage pumpout system or dump station; and
- (b) the physical factors influencing the dilution and dispersion of human wastes; and

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

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

(6) The cumulative impacts of multiple marinas, entrance canals, or other mooring areas, in close proximity to each other are expected to adversely affect public trust waters. When these situations occur the Division will recommend closures exceeding those outlined in Item (3) of

this Rule. The following guides will be used in determining close proximity:

- (a) marina entrance canals within 225 feet of each other;
- (b) open system marinas within 450 feet of each other (Mooring areas shall be considered open system marinas);
- (c) where closure areas meet or overlap; and
- (d) open system marinas within 300 feet of a marina entrance canal.

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

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 16 – BOARD OF DENTAL EXAMINERS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dental Examiners intends to adopt the rules cited as 21 NCAC 16Q .0103, .0104 and amend the rules cited as 21 NCAC 16Q .0202, .0302, .0405 and .0703.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncdentalboard.org](http://www.ncdentalboard.org)

**Proposed Effective Date:** February 1, 2023

**Public Hearing:**

**Date:** November 17, 2022

**Time:** 6:30 p.m.

**Location:** 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

**Reason for Proposed Action:**

*21 NCAC 16Q .0103 is proposed to address the practice requirements for a permit holder to administer general anesthesia, moderate conscious sedation, and moderate pediatric sedation.*

*21 NCAC 16Q .0104 is proposed to address requirements for facility inspections and evaluations.*

*21 NCAC 16Q .0202 is proposed for amendment to set out modified requirements for a general anesthesia permit applicant or holder.*

*21 NCAC 16Q .0302 is proposed for amendment to set out modified requirements for a moderate conscious sedation permit applicant or holder.*

*21 NCAC 16Q .0405 is proposed for amendment to set out modified requirements for a moderate pediatric conscious sedation permit applicant or holder.*

*21 NCAC 16Q .0703 is proposed for amendment to change requirements for adverse occurrence reporting.*

**Comments may be submitted to:** Bobby White, 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

MFC 2022-2023 Proposed Rules Public Comments

|   | Created          | Name               | Address: City | Address: State | Are your comments for or against the proposed rulemaking? | Please enter your comments on proposed changes to the rules and cite the rule or rules on which you are commenting.   |
|---|------------------|--------------------|---------------|----------------|---|---|
| 1 | 10/5/2022 16:14  | William Ready      | Newpo         | North Carolina | For   | I support the opening of Bogue Sound shellfish leases.  |
| 2 | 10/26/2022 20:50 | Christopher Elkins | Gloucester    | North Carolina | Undecided   | <p>Re: Inadequacy of Rulemaking 15A NCAC 18A .0911</p> <p>Background.<br/>                     Rule 15A NCAC 18A .0911 is proposed for amendment to help ensure that North Carolina remains in full compliance with national requirements so that N.C. shellfish can continue to be sold through interstate commerce; allow the Division of Marine Fisheries to determine necessary buffer closures for shellfish growing waters in and around marinas based on a more scientific and public health-based rationale; and make implementation and enforceability of requirements clearer.</p> <p>The Division of Marine Fisheries (the Division) has done a very good job in the last decade bringing the shellfish sanitation lab up to speed and updating procedures for detection of the proxies for fecal pathogens. They should be commended for it. The new rule to establish detection of fecal contamination near or around the perimeter of marinas is also just fine but is woefully inadequate to protect the public's health.</p> <p>I say this because the State continues to ignore the plethora of chemicals and endocrine disruptors that have been described by the Division at Habitat Advisory Committee and MFC meetings. To test for all of these toxins would be impossible, but testing a subset of these, originating from marinas (or previously dumped into marinas and contaminating the bottom) is both possible and prudent.</p> <p>I have spoken to this subject this in previous meetings where persons sought to place upwellers for clam seed to grow. When these shellfish are moved to open waters, the coliforms are removed in just a few days, as indicated by the lack coliforms (proxies). However, we never test for toxic chemicals that shellfish were exposed to when in the marina. Toxic chemicals are well documented in marina waters. Moreover, unlike coliform proxies (and the enteric pathogens they represent), these chemicals are not usually rendered harmless by cooking.</p> |

|   |                  |                       |             |                |           |  |
|---|------------------|-----------------------|-------------|----------------|-----------|--|
| 2 | 10/26/2022 20:50 | Christopher Elkins    | Gloucester  | North Carolina | Undecided | <p>(Christopher Elkins, continued)</p> <p>Perhaps the most disturbing is the fact that many of these chemicals are "Forever Chemicals", such as the PFAS family of toxins, and the FDA limits can be very minute.</p> <p>Finally, the geographic boundaries of many marinas are contiguous with shellfish harvesting areas and some Outstanding Resource Waters. For example, Marshallberg Harbor is abutted up against Sleepy Creek, an important source of NC "salty" oysters. Marshallberg Harbor is infamous for its sinking and abandoned boats and subsequent fuel leaks. There are many such harbors bordering shellfish waters in Harkers Island and Downeast NC.</p> <p>If the Division and the State are serious about protection of public health, it is time to start a program to address chemical contamination by marinas of the public trust waters.</p> <p>Thank you for your service,<br/>Christopher Elkins PhD</p> |
| 3 | 11/2/2022 12:34  | Richard Reighard Gray | Candler, NC | North Carolina | For       | I am a surf fisherman and we need to be able to cut up our bait and salt it in order to preserve it. Please make changes to your current rules as we don't want to break any laws. Where I go fishing there is no electricity or refrigeration and we must keep our bait on ice for weeks at a time, we can't keep the whole carcass.  |
| 4 | 11/3/2022 17:07  | David Grant Cash      | ROCK HILL   | South Carolina | Against   | Use of certain fin fish for bait, i.e. mullet, pin fish, spots and croaker should not be curtailed. I use mullet that I buy and salt down in South Carolina weeks prior to my fishing trip.  |
| 5 | 11/4/2022 8:19   | Brad Seadore          | Bolivia     | North Carolina | Undecided | Suggest NC state conform to size of finfish, increasing size limits instead of staggering the time lines to catch fish. Season 2022 flounder was a joke. I know numerous fishermen from Oak Island, Dutchmens Creek, and especially Sunset Harbor that exceeded the daily limits and size limits because of panic over the current limitations and lack of Marine personal visible. Flounder should start at size 18 inches same as Reds. Move trout to 15 inches. Correlation with SC, GA, AI, TX on sizes and timelines  |
| 6 | 11/7/2022 10:19  | emilio                | ancaya      | North Carolina | Against   | I am a surf fisherman. I am against removing the mutilated fish exception of mullet when used as bait.   |
| 7 | 11/11/2022 8:50  | Gordon B Jones        | Kitty Hawk  | North Carolina | For       | Please keep the nets out and give our state's declining fisheries a chance to recover.   |

**MARINE FISHERIES COMMISSION  
SUMMARY OF PUBLIC HEARING FOR PROPOSED RULES  
DIVISION OF MARINE FISHERIES  
CENTRAL DISTRICT OFFICE, MOREHEAD CITY, N.C.  
DEC. 16, 2022, 1 PM**

**Marine Fisheries Commission:** None

**Division of Marine Fisheries Staff:** Catherine Blum, Paula Farnell, Andy Haines, Tina Moore

**Public:** None

**Media:** None

Division of Marine Fisheries Rulemaking Coordinator Catherine Blum, serving as the hearing officer, opened the public hearing for Marine Fisheries Commission proposed rules at 1 p.m. No one from the public or media was in attendance. Seeing no one to provide comments on the proposed rules, Mrs. Blum closed the hearing at 1:10 p.m.

/cb

Roy Cooper  
*Governor*

Elizabeth S. Biser  
*Secretary*



Kathy B. Rawls  
*Director*

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Release: Immediate  
Date: Nov. 7, 2022

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

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### **Public hearing for two marine fisheries proposed rules rescheduled for Dec. 16**

**MOREHEAD CITY** – The N.C. Marine Fisheries Commission will hold a public hearing on two marine fisheries proposed rules at 1 p.m. Dec. 16 at the Division of Marine Fisheries' Central District Office, 5285 Highway 70 West, Morehead City. The hearing was originally scheduled for a Nov. 1 web conference but was cancelled due to technical difficulties.

Those who wish to speak at the hearing may sign up on location prior to the meeting.

The first proposed rule sets requirements for the harvest classification of shellfish growing waters in and around marinas, docking facilities, and other mooring areas. It is proposed for re-adoption and amendment to help ensure that North Carolina remains in full compliance with national requirements so N.C. shellfish can continue to be sold through interstate commerce. Proposed amendments would allow the N.C. Division of Marine Fisheries to determine necessary buffer closures for shellfish growing waters in and around these areas based on a more scientific and public health-based rationale and make implementation and enforceability of requirements clearer.

The second proposed rule makes amendments to mutilated finfish requirements.

The current mutilated finfish rule (15A NCAC 03M .0101) has been on the books since 1991. It requires while fishing or aboard a vessel, the head and tail remain attached to any finfish that is subject to a possession limit, including a size limit, recreational bag limit, commercial trip limit, or season. It makes three exceptions:

1. Mullet used as bait;
2. Hickory shad used as bait; and
3. Tuna in a commercial fishing operation that meets the measurement required in a separate rule.

Currently, there is no provision to add species to the list of exceptions without going through a lengthy permanent rulemaking process. The proposed amended rule would give the Director of the Division of Marine Fisheries authority to add or remove species from the list of exceptions by proclamation to address variable conditions as warranted.

For instance, American eel, spot, Atlantic croaker, and bluefish are now subject to possession limits that did not exist when the rule was adopted. They are all commonly used as cut bait, creating a conflict with the current rule. The proposed amended rule would allow the director to add these species to the list of exceptions or specify terms of use.

Additionally, the exception for mullet may need to be modified based on the recent striped mullet stock assessment and potential management measures developed through the upcoming fishery management plan.

Due to the adjusted hearing schedule, the deadline for written comments has also been extended to 5 p.m. Dec. 16, 2022. Members of the public may submit written comments through an online form or through the mail to N.C. Marine Fisheries Commission Rules Comments, P.O. Box 769, Morehead City, N.C. 28557. Comments must be posted online or be received by the N.C. Division of Marine Fisheries by 5 p.m. Dec. 16, 2022.

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**Facebook:** <http://www.facebook.com/ncdeq>

**Twitter:** <http://twitter.com/NCDEQ>

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1601 Mail Service Center, Raleigh, NC 27699-1601



Roy Cooper  
*Governor*

Elizabeth S. Biser  
*Secretary*



Kathy B. Rawls  
*Director*

The online comment form and text of the proposed rules can be found on the N.C. Marine Fisheries Commission's [Proposed Rules Page](#).

The proposed rule changes will be presented to the N.C. Marine Fisheries Commission for final approval in February 2023 and have an earliest effective date of May 1, 2023.

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

**WHO:** Marine Fisheries Commission  
**WHAT:** Public Hearing for Proposed Rules  
**WHEN:** Dec. 16 at 1 p.m.  
**WHERE:** N.C. Division of Marine Fisheries  
Central District Office  
5285 Highway 70 West, Morehead City

###

# N.C. Marine Fisheries Commission 2023-2024 Annual Rulemaking Cycle

February 2023

| Time of Year             | Action   |
|--------------------------|--|
| February-April 2023      | Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management |
| May 26, 2023             | MFC votes on approval of Notice of Text for Rulemaking   |
| Aug. 1, 2023             | Publication of proposed rules in the <i>North Carolina Register</i>                                  |
| Aug. 1-Oct. 2, 2023      | Public comment period held   |
| August/September 2023    | Public hearing held (details TBD)  |
| Nov. 17, 2023            | MFC votes on approval of permanent rules   |
| Jan. 18, 2024            | Rules reviewed by Office of Administrative Hearings/<br>Rules Review Commission                      |
| April 1, 2024            | Proposed effective date of rules not subject to legislative review                                   |
| April 1, 2024            | Rulebook supplement available online   |
| 2024 legislative session | Possible effective date of rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.    |
| June 30, 2024            | Readoption deadline for 15A NCAC 18A   |

## Issue Paper Review for February 2023 Marine Fisheries Commission Meeting

| Issue Paper Title   | Issue   | Origination                              | Proposed Rules   | Division of Marine Fisheries Recommendation  |
|---|---|--|--|--|
| <p>DATA COLLECTION AND HARASSMENT PREVENTION FOR THE CONSERVATION OF MARINE AND ESTUARINE RESOURCES</p> | <p>Amend N.C. Marine Fisheries Commission (MFC) rules to clarify and enhance efforts by the N.C. Division of Marine Fisheries (DMF) to collect biological data, statistics, market information, research data, and other information as is necessary or useful to the promotion of sports and commercial fisheries in North Carolina, the conservation of marine and estuarine resources, and the protection of public health related to the public health programs that fall under the authority of the MFC, consistent with N.C. laws. Broaden and enhance protections for DMF employees from harassment while collecting data and information.</p> | <p>N.C. Division of Marine Fisheries</p> | <ul style="list-style-type: none"> <li>• 15A NCAC 03I .0113</li> <li>• 15A NCAC 03O .0101</li> <li>• 15A NCAC 03O .0109</li> <li>• 15A NCAC 03O .0112</li> <li>• 15A NCAC 03O .0301</li> </ul>   | <p>Option 2, amend the rules.</p>  |
| <p>OYSTER SANCTUARY RULE CHANGES</p>  | <p>Amend rules to add the boundaries of the two newest oyster sanctuaries (Cedar Island and Gull Shoal) and update boundaries for three other sanctuaries (Pea Island, Raccoon Island, and Swan Island) for which errors were discovered.</p>   | <p>N.C. Division of Marine Fisheries</p> | <ul style="list-style-type: none"> <li>• 15A NCAC 03R .0117</li> </ul>   | <p>Option 2, amend the rules.</p>  |
| <p>CONFORMING RULE CHANGES FOR SHELLFISH RELAY PROGRAM AND SHELLFISH LEASES AND FRANCHISES</p>          | <p>Conform N.C. Marine Fisheries Commission rules to reflect the discontinuation of the Shellfish Relay Program, consistent with rulemaking requirements in the N.C. Administrative Procedure Act (Chapter 150B).</p>   | <p>N.C. Division of Marine Fisheries</p> | <ul style="list-style-type: none"> <li>• 15A NCAC 03I .0101</li> <li>• 15A NCAC 03K .0101</li> <li>• 15A NCAC 03K .0104</li> <li>• 15A NCAC 03K .0301</li> <li>• 15A NCAC 03K .0401</li> <li>• 15A NCAC 03K .0403</li> <li>• 15A NCAC 03K .0405</li> <li>• 15A NCAC 03O .0201</li> <li>• 15A NCAC 03O .0501</li> <li>• 15A NCAC 03O .0503</li> <li>• 15A NCAC 18A .0901</li> <li>• 15A NCAC 18A .0906</li> </ul> | <p>Support the single option presented to amend the rules, consistent with requirements of the N.C. Administrative Procedure Act (Chapter 150B).</p> |

# **Data Collection and Harassment Prevention for the Conservation of Marine and Estuarine Resources Issue Paper**

**January 26, 2023**

## **I. ISSUE**

Amend N.C. Marine Fisheries Commission (MFC) rules to clarify and enhance efforts by the N.C. Division of Marine Fisheries (DMF) to collect biological data, statistics, market information, research data, and other information as is necessary or useful to the promotion of sports and commercial fisheries in North Carolina, the conservation of marine and estuarine resources, and the protection of public health related to the public health programs that fall under the authority of the MFC, consistent with N.C. laws. Broaden and enhance protections for DMF employees from harassment while collecting data and information.

## **II. ORIGINATION**

DMF

## **III. BACKGROUND**

Responsible fisheries management requires a variety of data inputs collected directly from commercial and recreational activities (dependent sampling) and also from separate sampling programs conducted by researchers (independent sampling). These sampling programs provide information on the health of the targeted and non-targeted fish populations, harvest methods that minimize unintended impacts, demographics of participants in commercial and recreational activities, and the economic contribution of these activities to the people and businesses in the state. Successful collection of data from dependent sampling programs relies on participation of the people involved in these activities and outreach on these programs is a necessary component that can contribute to improvements of willful participation. Many stakeholders and members of the public willingly participate in DMF's data collection initiatives. Nevertheless, there have been instances where individuals refuse to answer survey questions or allow DMF employees to obtain samples, and these instances have escalated in recent years. A portion of these interactions also have been hostile and have bordered on being unsafe. Current rules are not comprehensive in their requirement for participation in data collection programs or in their protection against hostile or offensive interactions with DMF employees for these programs. DMF has a duty to ensure its employees can perform their job functions in an environment that is both physically safe and free from unlawful harassment. In light of this duty, and of recent incidences of harassment of federal and state observers, the DMF is proposing several rule amendments to broaden and enhance protections for its employees, consistent with existing protections for federal employees.

Two recent incidents have highlighted the need to address these rule limitations, both involving samplers with DMF's Marine Recreational Information Program (MRIP). The MRIP is a dependent sampling program designed to collect data about recreational fisheries. MRIP samplers conduct in-person interviews with recreational participants to answer survey questions and collect biological samples from their catch.

In June 2022, there were two incidences in northern North Carolina where individuals associated with for-hire operations harassed MRIP samplers and interfered with data collection. The first incident involved an MRIP sampler intercepting anglers coming off for-hire vessels after their fishing trips. The MRIP sampler witnessed several mates on the for-hire vessels tell the anglers not to answer any of the sampler's questions, and the anglers refused to participate in the survey or provide biological samples. The second incident involved a female MRIP sampler trying to intercept anglers at the same location as the previous incident. When the MRIP sampler attempted to collect biological samples from the fish caught on the trip, the captain made an explicit statement with a sexual connotation while he was video recording her with his phone. The MRIP sampler left the site immediately and was unable to collect any biological samples or survey data. Although these incidents were reported to DMF's Marine Patrol, it was determined that the requirement for participation in biological sampling found in MFC Rule 15A NCAC 03I .0113 could only be enforced with license holders. Because the anglers were allowed to fish under the charter business's Blanket For-Hire Vessel Coastal Recreational Fishing License (CRFL), they did not hold a license and, therefore, could not be held to the requirements of the rule. It was also determined by Marine Patrol that there were no enforceable requirements that would protect DMF employees from harassment or offensive actions.

For-hire data have become increasingly important as for-hire license sales have steadily increased in recent years. As these new participants enter the recreational for-hire fleet, they may not be familiar with standard DMF sampling

events and data collection processes, leading to decreased participation in the MRIP survey. To address this, DMF employees have engaged in additional outreach efforts with the recreational for-hire industry. For example, DMF held two in-person outreach events in October 2022 in the northern area of the state. DMF employees were available to discuss the MRIP and provide an open platform so that for-hire guides and the public could ask questions and learn more about DMF and its data collection initiatives. These meetings served as a way for DMF to connect with its stakeholders on current topics and obtain feedback on how DMF can better collaborate with the for-hire industry in future endeavors. Participants commented that the outreach meetings were beneficial to both parties and should continue to occur.

Isolated incidents of harassment or refusal to participate in data collection efforts also have occurred with participants in commercial fishing operations. DMF employees collect data from commercial participants during fishing activities by fisheries observers and through sampling after fishing activities from landed catch at licensed seafood dealers. Fisheries observers collect a wide range of data for commercial and, to a lesser extent, recreational fisheries either while onboard the fishing vessel or from a DMF-owned (i.e., alternative platform) vessel nearby. Observations of fishing activities using estuarine anchored gill nets are a requirement of DMF's Endangered Species Act Section 10 Incidental Take Permits under the Endangered Species Act, which authorize limited numbers of sea turtle and Atlantic sturgeon interactions in otherwise lawful fishing operations using this gear in N.C. estuarine waters. Participants in the estuarine anchored gill net fishery must obtain an Estuarine Gill Net Permit (EGNP; M-24-2014; <http://portal.ncdenr.org/web/mf/proclamation-m-24-2014>), which facilitates communication from observers to the fishers to schedule observed trips.

Though rare, refusal by participants to provide information and harassment of fisheries observers have occurred. For example, in April 2021, a commercial fisherman was asked for information about his fishing gear by two DMF observers on an alternative platform vessel. The fisherman made an explicit statement with a sexual connotation and refused to provide the information being requested. The observers reported it immediately to the observer coordinator, who relayed the specifics of the event to Marine Patrol. Marine Patrol issued a citation for the incident and the defendant was charged with and found guilty in Dare County District Court of violation of permit conditions by the master of a vessel for harassing the observer in the course of collecting data, and during any other type of communication by an observer. Even though DMF won the case on a simple charge of harassment, the incident highlighted the need to also address concerns about harassment of a sexual nature. To protect observers, a short-term solution was created whereby the special condition form for the EGNP was amended in 2021. The specific permit conditions initially read:

*“It is unlawful for an EGNP holder as well as the master and crew members of the boat, to interfere with, or obstruct the observer in the course of collecting data or samples.”*

and

*“It is unlawful for an EGNP holder as well as the master and crew members of the boat, to harass the observer in the course of setting up trips, collecting data and samples, or during any other type of communication. Harassment includes but is not limited to intimidating, resisting, impeding, threatening, and coercion of observers either verbally or physically.”*

In March 2022 following the outcome of the above-described case, this language was strengthened to include harassment of observers by the use of connotations of a sexual nature and read:

*“It is unlawful for an EGNP holder, as well as the master and crew members of the boat, to interfere with, or obstruct the observer in the course of collecting data or samples, which shall include refusal or failure to provide information on fishing gear parameters or to provide any captured finfish or sea turtle to division staff. 15A NCAC 030.0502(1)”*

and

*“It is unlawful for an EGNP holder, as well as the master and crew members of the boat, to harass the observer in the course of setting up trips, collecting data and samples, or during any other type of communication. Harassment shall be defined consistent with the federal regulations, 50 CFR §600.725(o),*

*(t), and (u), and may be verbal or physical including, but not limited to, sexual connotations, intimidating, resisting, impeding, threatening, bribing, and coercion of observers.”*

In the fall of 2022, the following language was updated and added to the specific permit conditions for all permits, not just the EGNP, to provide additional protection for all DMF employees, not just observers, to provide short-term protections:

*“It shall be unlawful for a permittee or, anyone engaged in permitted activity, to refuse to allow the Fisheries Director or their agents to obtain biological data, harvest information, statistical data, or harass these agents in any way. Harassment shall be defined consistent with the federal regulations, 50 CFR §600.725(o), (t), and (u), and may be verbal or physical including, but not limited to, sexual connotations, intimidating, resisting, impeding, threatening, bribing, or coercion.”*

The above examples highlight the need for a long-term solution to protect all DMF employees from harassment in all its forms, regardless of the type of fishing activity, not just by holders of a license or permit. Related, is the need for fishers to provide data, information, and samples so that the DMF can properly manage fisheries in compliance with state and federal laws and meet the requirements of Endangered Species Act Section 10 Incidental Take Permits. These data, information, and samples needed are broader than questions about or samples from fish that are in possession of the licensee under the current requirements of 15A NCAC 03I .0113. A long-term solution is to amend this rule to explicitly require licensees, and any person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes, to provide the data, information, and samples upon request, and to explicitly prohibit harassment consistent with federal regulations. Table 1 provides a summary of recent actions and the results of those actions leading to proposed rule changes.

Table 1. Summary of recent actions leading to proposed rule changes.

| Time Period | Action   | Result  |
|-------------|--|---|
| April 2021  | Commercial fisherman charged with observer harassment  | DMF identified need to protect observers from harassment by EGNP holders and protect data collection  |
| Summer 2021 | DMF added harassment and data collection requirements to EGNP specific condition form  | DMF observers offered protection from harassment by EGNP holders and data collection protected  |
| March 2022  | Commercial fisherman found guilty of observer harassment in Dare County District Court   | DMF identified need to protect observers from harassment in all its forms by EGNP holders   |
| March 2022  | DMF added comprehensive harassment requirements to EGNP specific condition form  | DMF observers offered protection from harassment in all its forms by EGNP holders   |
| June 2022   | Two incidences of harassment of and refusal to provide data to MRIP samplers by individuals associated with for-hire operations                    | DMF identified need to protect all employees from harassment in all its forms for all regulated fishing activity and protect data collection        |
| Fall 2022   | DMF added comprehensive harassment and data collection requirements to specific condition form for all DMF-issued permits                          | All DMF employees offered protection from harassment in all its forms by all permit holders and data collection protected                           |
| Fall 2022   | DMF identified need to amend rules to address harassment and data collection for all regulated fishing activity                                    | DMF developed rule changes to protect all employees from harassment in all its forms for all regulated fishing activity and protect data collection |
| Spring 2023 | DMF proposed rule changes to protect all DMF employees from harassment in all forms for all regulated fishing activity and protect data collection | To be determined through the rulemaking process   |



Data collected from the commercial and recreational sectors are essential in fisheries management for the state and play a vital role in federal fisheries management, as well. The proposed amendments to this rule broaden the scope to enhance protections for DMF employees as they collect data. Such protections not only enhance the DMF's data collection efforts, but also improve DMF's ability to provide a workplace that is free from unlawful harassment, consistent with the requirements of Title VII of the Civil Rights Act of 1964. While compliance with Title VII is an important goal in reducing civil liability for the DMF, improvements to workplace protections have numerous additional benefits. A workplace free from unlawful harassment typically leads to higher employee satisfaction, lower turnover, and better recruitment.

The proposed additional requirements are consistent with similar efforts that the federal government has taken to protect its employees during sampling events by including language adapted from the Code of Federal Regulations, 50 CFR § 600.725(o), (t), and (u) (<https://www.ecfr.gov/current/title-50/chapter-VI/part-600/subpart-H/section-600.725>). The protections in the CFR were based on those included in the Magnuson-Stevens Fishery Conservation and Management Act (MSA), specifically 16 U.S.C. 1857, Section 307, Prohibited Acts, which makes it unlawful for any person "to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this Act, or any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this Act . . ." (<https://www.govinfo.gov/content/pkg/USCODE-2021-title16/html/USCODE-2021-title16-chap38-subchapIV-sec1857.htm>). Rule language in 50 CFR § 600.725, effective July 1, 1996, was based on the reorganization of requirements across nine CFR parts relevant to the MSA. The MSA and referenced USC and CFR help to demonstrate the importance of keeping fishery observers safe from harassment, as explained on the corresponding NOAA Fisheries webpage (<https://www.fisheries.noaa.gov/feature-story/keeping-fishery-observers-safe-harassment>).

Lastly, the MFC also has authority for the sanitation requirements for harvesting, processing, and handling of scallops, shellfish, and crustaceans of in-state origin and those shipped into the state. It is equally important for the DMF to be able to obtain data for the protection of public health related to the public health programs that fall under the authority of the MFC, which are ultimately for the conservation of marine and estuarine resources.

#### **IV. AUTHORITY**

|                         |   |
|-------------------------|---|
| 50 CFR § 600.725.       | General prohibitions.   |
| N.C.G.S. § 113-130.     | Definitions relating to activities of public.   |
| N.C.G.S. § 113-134.     | Rules.  |
| N.C.G.S. § 113-170.3.   | Record-keeping requirements.  |
| N.C.G.S. § 113-174.1.   | License required; general provisions governing licenses.  |
| N.C.G.S. § 113-181.     | Duties and powers of Department.  |
| N.C.G.S. § 113-182.     | Regulation of fishing and fisheries.  |
| N.C.G.S. § 113-221.2.   | Additional rules to establish sanitation requirements for scallops, shellfish, and crustacea; permits and permit fees authorized. |
| N.C.G.S. § 143B-289.52. | Marine Fisheries Commission – Powers and Duties.  |

#### **V. DISCUSSION**

Due to the increasing occurrence and severity of harassment and decreasing participation in DMF data collection initiatives, amendments are proposed to several MFC rules. The amendments add requirements to broaden and enhance protections for DMF employees from harassment that could occur in the process of obtaining data about fishing activity. The amendments also broaden the applicability of the requirements beyond fish in the licensee's possession by including anyone engaged in these regulated activities. Proposed amendments also list the types of data that may be collected. A detailed description of the changes proposed to each affected rule follows.

#### **15A NCAC 03I .0113 BIOLOGICAL SAMPLING DATA COLLECTION**

Proposed amendments to 15A NCAC 03I .0113 would set requirements to address harassment by any licensee or person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes (e.g., fishing) of DMF employees that occurs in the process of obtaining data for the conservation of marine and estuarine resources, and data for the protection of public health related to the public health programs that fall under the authority of the MFC.

Additional amendments would provide the types of data that may be collected. The amendments would support the importance of participation by persons engaged in regulated fishing activity in DMF data collection and provide a safer working environment for DMF employees.

Specifically, language is proposed to define a "responsible person" to expand the applicability of the rule to other persons involved in regulated fishing activity, not just licensees. Adding "responsible person" to the rule would close a loophole that currently allows anglers who fish under a blanket license, such as the Ocean Fishing Pier License or one of the for-hire blanket licenses, to refuse to participate in data collection initiatives, so that they could be subject to prosecution by Marine Patrol for offenses. The changes would also allow Marine Patrol to prosecute mates or other non-licensed employees engaged in a for-hire operation if they interfere with DMF sampling efforts. Amendments to this rule would also broaden the requirements to apply to all participants, commercial and recreational. Doing so would equalize the expectations across sectors; currently, the requirements addressing harassment related to data collection only exist in the special conditions of commercial, DMF-issued permits.

Proposed language to be added to 15A NCAC 03I .0113 to protect DMF employees collecting data is adapted from requirements about harassment to protect federal samplers identified in the CFR (50 CFR § 600.725(o), (t), and (u)). While the CFR applies broadly to "any person," the proposed rule change would apply to licensees, permittees, and those engaged in regulated activity (e.g., fishing). This addition to the rule would provide the ability to prosecute offenders, regardless of whether they hold a license or permit and regardless of sector, and hold them accountable for their harassment and should contribute to reducing the number of harassment cases in the future. This requirement would also provide a sense of security to DMF employees in knowing that MFC rules can potentially deter hostile or offensive interactions while they perform their duties regardless of the setting (e.g., in the office, at a fishing dock, or on the water). The only exception to incorporation of the language from 50 CFR § 600.725(o), (t), and (u) is for "assault", which for Marine Patrol is handled under separate statutory authority.

Regarding data collection, the title of Rule 15A NCAC 03I .0113 is proposed to be changed from "Biological Sampling" to "Data Collection" because DMF collects more than just biological data from stakeholders. For example, data such as residential location, fishing effort, and socioeconomics of participants are just a few data points that are collected by DMF employees that do not explicitly fall under the biological sampling umbrella but fall under the DMF's authority. Changing the title of the rule is consistent with clarifying the authority for and increasing the support to collect more overarching fisheries data to better inform fisheries managers about the fishing activities in N.C. marine and estuarine waters for the conservation of those resources. Changes are also proposed to the body of the rule to list in detail the types of data that may be collected. The list is not intended to be exhaustive, but rather to more accurately characterize the types of data needed for DMF statistics and surveys, Endangered Species Act Section 10 Incidental Take Permit reports, and the protection of public health for programs that fall under the authority of the MFC, which are ultimately for the conservation of marine and estuarine resources.

As discussed, proposed changes to 15A NCAC 03I .0113 include defining "responsible person" to expand the applicability of the rule to other persons involved in regulated fishing activity, not just licensees. In Rule 15A NCAC 03I .0101(5)(k), a "responsible party" is defined as the "person who coordinates, supervises, or otherwise directs operations of a business entity, such as 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". This definition does not capture all participants within certain fishing activities, particularly in for-hire fishing trips. "Responsible party" is used to identify one specific entity that will be held accountable for any requirements pertaining to a license. "Responsible person" can be used to include multiple entities that partake in regulated fishing activity but are not a license holder or a designated representative of the license. A for-hire deckhand, mate, fish cleaner, and customer would be considered a responsible person but would not be considered a responsible party because none of these individuals are required to be a license holder. "Responsible party" is defined in rule to be used more broadly over a larger set of rules, whereas "responsible person" would only apply to Rule 15A NCAC 03I .0113 and Rule 15A NCAC 03O .0112 (described below). Because of these slight differences between "responsible person" and "responsible party", other related rules were evaluated to determine if additional changes are necessary to incorporate all intended participants.

## **15A NCAC 03O .0112 FOR-HIRE LICENSE REQUIREMENTS**

Rule 15A NCAC 03O .0112 titled "For-Hire License Requirements" currently includes requirements for participation by the for-hire vessel operator in data collection efforts by DMF. Because the paying customers on the for-hire trip are also the anglers participating in the fishing activity, the customers are the individuals that get interviewed by MRIP samplers. Therefore, the customer should be included in the definition of the "responsible person" and added to the rule in addition to the "for-hire vessel operator". Not only would "responsible person" require for-hire customers to participate in data collection, but it would also include other people, such as mates, fish cleaners, or other employees, that contribute to the for-hire fishing experience.

## **15A NCAC 03O .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS**

## **15A NCAC 03O .0109 ASSIGNMENT OF STANDARD COMMERCIAL FISHING LICENSE**

## **15A NCAC 03O .0301 ELIGIBILITY AND REQUIREMENTS FOR RECREATIONAL COMMERCIAL GEAR LICENSES**

Rules 15A NCAC 03O .0101, .0109, and .0301 set requirements for a holder of a Standard Commercial Fishing License (SCFL) or Retired Standard Commercial Fishing License, an assignee of a SCFL, and a holder of a Recreational Commercial Gear License, respectively. Each of these rules contains proposed changes to link the licensee or assignee to the requirements proposed in 15A NCAC 03I .0113 for harassment and data collection. These changes would ensure that all licensed participants are subject to the same requirements, regardless of license type.

The evaluation of other MFC rules revealed that no changes are needed to 15A NCAC 03O .0102, which sets the procedures and requirements for renewing licenses, or to 15A NCAC 03O .0113, which sets reporting requirements for holders of an Ocean Fishing Pier License. These rules serve administrative functions for the license renewal process or for submitting a monthly headcount of individuals participating in ocean pier fishing. The rules are provided in Appendix I for reference.

## **CONCLUSION**

Changing the rule requirements outlined in this document is the most prudent long-term solution to the issues identified above. DMF is dedicated to investing the time needed to work through the rulemaking process. If the rules become effective, outreach events will be scheduled to educate those who participate in regulated fishing activity and the public on the changes. These outreach events will continue to stress the importance of participation in DMF data collection initiatives and will remind the public that participation is mandatory. Additionally, all DMF employees will be notified of the rule changes so that they are aware of the broadened, enhanced protections to provide a safer working environment regardless of the work setting.

NOTE: RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION), SHOWN HERE WITH GRAY SHADING. ADDITIONAL PROPOSED CHANGES THAT WILL BE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2024 SHORT SESSION) ARE SHOWN WITHOUT SHADING.

1 VI. PROPOSED RULE(S)

2  
3 15A NCAC 03I .0113 is readopted as published in 36:07 NCR 462 as follows:

4 15A NCAC 03I .0113 is proposed for amendment as follows:

5  
6 **15A NCAC 03I .0113 BIOLOGICAL SAMPLING DATA COLLECTION**

7 (a) For the purpose of this Rule, "responsible person" shall mean any licensee or person engaged in regulated activity  
8 under Chapter 113, Subchapter IV, of the General Statutes.

9 (b) It is shall be unlawful for any licensee under Chapter 113, Subchapter IV, of the General Statutes responsible  
10 person to refuse to allow the Fisheries Director or his the Fisheries Director's agents to obtain biological data, harvest  
11 information, or other statistical data necessary or useful to the conservation and management of marine and estuarine  
12 resources from for the taking of fish in the licensee's possession by the responsible person. Such data shall include,  
13 but is not limited to, may include:

- 14 (1) species identification, identification;
- 15 (2) species length, length;
- 16 (3) species weight, weight;
- 17 (4) species age, age;
- 18 (5) species sex, sex;
- 19 (6) number, number of species;
- 20 (7) quantity of catch;
- 21 (8) area of catch, catch;
- 22 (9) harvest method, and of quantity catch, method;
- 23 (10) gear and gear specifications;
- 24 (11) target species;
- 25 (12) number of hours and days the responsible person spent fishing;
- 26 (13) state, county, and zip code of responsible person;
- 27 (14) number of individuals fishing with responsible person; and
- 28 (15) socioeconomics, including fishing expenditures.

29 (c) It shall be unlawful for any responsible person to refuse to allow the Fisheries Director or the Fisheries Director's  
30 agents to obtain data for the protection of public health related to the public health programs that fall under the  
31 authority of the Marine Fisheries Commission.

32 (d) It shall be unlawful for any responsible person to harass the Fisheries Director or the Fisheries Director's agents  
33 in any way related to the requirements of Paragraphs (b) and (c) of this Rule, including verbal or physical harassment  
34 or sexual harassment. For the purpose of this Rule, "harassment" shall be defined consistent with 50 CFR 600.725(o),

35 (t), and (u), including to:

- 36 (1) harass;

**NOTE:** RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION), SHOWN HERE WITH GRAY SHADING. ADDITIONAL PROPOSED CHANGES THAT WILL BE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2024 SHORT SESSION) ARE SHOWN WITHOUT SHADING.

- 1           (2)     sexually harass, including making sexual connotations;  
2           (3)     oppose;  
3           (4)     impede;  
4           (5)     intimidate;  
5           (6)     interfere;  
6           (7)     prohibit or bar by command, impediment, threat, coercion, interference, or refusal of reasonable  
7                     assistance, the Fisheries Director or the Fisheries Director's agents from conducting his or her duties;  
8                     or  
9           (8)     tamper with or destroy samples or equipment;

10 50 CFR 600.725(o), (t), and (u), is incorporated by reference except as provided in Paragraph (e) of this Rule, including  
11 subsequent amendments and editions. A copy of the reference material can be found at  
12 <https://www.ecfr.gov/current/title-50/chapter-VI/part-600/subpart-H/section-600.725>, at no cost.  
13 (e) Exceptions to 50 CFR 600.725(t) include "assault".  
14

15 *History Note:*     *Authority G.S. 113-134; 113-170.3; ~~113-170.4~~; 113-174.1; 113-181; 113-182; 113-221.2; 143B-*  
16                     *289.52;*  
17                     *Eff. October 1, 1992;*  
18                     *Recodified from 15A NCAC 3I .0013 Eff. December 17, 1996;*  
19                     *Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*  
20                     *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

NOTE: RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION). ADDITIONAL PROPOSED CHANGES THAT WILL BE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2024 SHORT SESSION) ARE SHOWN WITH YELLOW HIGHLIGHTING.

15A NCAC 03O .0101 is readopted as published in 36:07 NCR 482-485 as follows:

15A NCAC 03O .0101 is proposed for amendment as follows:

## SUBCHAPTER 03O - LICENSES, LEASES, ~~FRANCHISES~~ FRANCHISES, AND PERMITS

### SECTION .0100 - LICENSES

#### 15A NCAC 03O .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ~~ENDORSEMENTS~~ ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS

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

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

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

(1) Full full name, physical address, mailing address, date of birth, and signature of the licensee on the application. ~~licensee. If the licensee is not appearing before a license agent or a representative of the Division, the licensee's signature on the application shall be notarized;~~ notarized.

(2) a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.

~~(2)~~(3) Current current and valid picture identification of licensee or responsible party. ~~the licensee. Acceptable forms of picture identification are state driver's license, state identification card, card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof;~~ thereof.

~~(3)~~(4) Certification certification that the applicant does not have four or more marine or estuarine resource violations convictions during the previous three years; ~~years.~~

(4) Valid documentation papers or current motor boat registration, or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted;

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- 1           (5)     ~~Current-current~~ articles of incorporation and a current list of corporate officers when purchasing a  
2           license or ~~commercial fishing vessel registration~~ Commercial Fishing Vessel Registration in a  
3           corporate name. In the case of incorporation of an individual fishing vessel, the name of the vessel  
4           master ~~of that vessel~~ shall also be specified. The ~~responsible party~~ licensee shall notify the Morehead  
5           City Office of the Division of ~~Marine Fisheries~~ within five days of ~~change of the master specified~~  
6           ~~for that vessel~~; changing the vessel master.
- 7           (6)     a current copy of a written partnership agreement shall be provided when purchasing a license,  
8           endorsement, or Commercial Fishing Vessel Registration in a partnership name, if a partnership is  
9           established.
- 10          (7)     valid documentation papers or current motor boat registration, or copy thereof when purchasing a  
11          Commercial Fishing Vessel Registration. If an application for transfer of documentation is pending,  
12          a copy of the pending application and a notarized bill of sale may be submitted.
- 13          ~~(6)~~(8)    An affirmation of liability insurance and that the operator is knowledgeable of United States Coast  
14          Guard (USCG) safety requirements for the vessel(s)-vessels used in the operation in accordance  
15          with G.S. 113-168.6 when purchasing a commercial fishing vessel registration ~~Commercial Fishing~~  
16          Vessel Registration with a for-hire endorsement.
- 17          (7)     ~~If a partnership is established by a written partnership agreement, a current copy of such agreement~~  
18          ~~shall be provided when purchasing a license, endorsement, or commercial fishing vessel registration~~  
19          ~~in a partnership name;~~
- 20          (8)     For nonresidents, certification of the state of residency;
- 21          (9)     In addition to the information required in G.S. 113-169.4, linear length of pier when purchasing an  
22          Ocean Fishing Pier License;
- 23          (10)    In addition to the information required in G.S. 113-171.1, current aircraft registration and list of  
24          operator(s) when purchasing a Spotter Plane License;
- 25          (11)    In addition, for fish dealers licenses, the physical address of the established location where business  
26          is conducted and, if different, the address where records are kept;
- 27          (12)    ~~When purchasing a Fish Dealer License with clam or oyster categories or a consolidated license, the~~  
28          ~~applicant shall provide valid certification as a North Carolina certified shellfish dealer;~~
- 29          (13)    ~~In addition, for the Blanket For Hire Captain's Coastal Recreational Fishing License (CRFL), the~~  
30          ~~applicant shall provide a valid certification from the USCG that allows carrying six or fewer~~  
31          ~~passengers or a certification from the USCG that allows carrying more than six passengers; and~~
- 32          (14)    ~~In addition, for the Blanket For Hire Vessel CRFL or the Non Blanket For Hire Vessel License,~~  
33          ~~valid documentation papers or current motor boat registration or copies thereof for the vessel~~  
34          ~~engaged as for hire. If an application for transfer of documentation is pending, a copy of the pending~~  
35          ~~application and a notarized bill of sale may be submitted.~~



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

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

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

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

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

14 (2) All other types of licenses:

15 (A) North Carolina voter registration card;

16 (B) current North Carolina Driver's License;

17 (C) current North Carolina Certificate of Domicile;

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

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

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

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

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

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

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

31 (3) Fish Dealer License:

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

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



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1           (4)     Land or Sell License:

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

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

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

7           (5)     Ocean Fishing Pier License:

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

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

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

12          (7)     Spotter Plane License:

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

14                   (B)     the current aircraft registration; and

15                   (C)     a list of operators.

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

18           (1)     for the purpose of this Paragraph, "license year" means the period beginning July 1 of a year through  
19                                 June 30 of the following year.

20   ~~(1)(2)~~ To to qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:

21                   (A)     have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each  
22                                 year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license  
23                                 years for which the person had a vessel that was licensed to land in North Carolina; ~~and~~

24                   (B)     have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-  
25                                 94, or 1994-95 license years; and

26                   (C)     hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or  
27                                 Sell License.

28   ~~(2)(3)~~ It is lawful it shall be unlawful for a person to hold more Licenses to Land Flounder from the Atlantic  
29   Ocean equal to than the number of vessels that he owns the person owns that individually met the  
30   eligibility requirements of Parts ~~(b)(1)(A)-(f)(2)(A)~~ and ~~(b)(1)(B)-(f)(2)(B)~~ of this Rule.

31   ~~(3)(4)~~ The the License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel  
32   specified at the time of license issuance.

33   ~~(4)(5)~~ At at the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean  
34   shall specify the name of the vessel master of the vessel for each License to Land Flounder from the  
35   Atlantic Ocean issued.

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1           ~~(5)~~(6) ~~The~~ the holder of the License to Land Flounder from the Atlantic Ocean shall notify the Morehead  
2           City Office of the Division of Marine Fisheries within five days of change as to the vessel master  
3           identified on the license.

4           ~~(6)~~(7) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license ~~year and expire~~  
5           ~~on June 30~~ year.

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

8           (1) it shall be unlawful for anyone other than the holder of the Recreational Fishing Tournament License  
9           to Sell Fish to sell fish taken during a recreational fishing tournament.

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

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

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

20          (i) If requested by the Division, it shall be unlawful for a licensee to fail to participate in and provide accurate  
21          information for data collection in accordance with 15A NCAC 03I .0113 and for survey programs administered by  
22          the Division.

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

26          ~~(1) Full name, physical address, mailing address, date of birth, signature of the tournament organizer,~~  
27          ~~name of tournament, and dates of tournament on the license application. If the licensee is not~~  
28          ~~appearing before a representative of the Division, the licensee's signature shall be notarized on the~~  
29          ~~application.~~

30          ~~(2) Current picture identification of tournament organizer. Acceptable forms of picture identification~~  
31          ~~are driver's license, state identification card, military identification card, resident alien card (green~~  
32          ~~card), or passport; or if purchased by mail, a copy thereof.~~

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

34          ~~(1) Full name, physical address, mailing address, date of birth, and signature of the responsible party or~~  
35          ~~master for the vessel on the license application. If the licensee is not appearing before a~~

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1           ~~representative of the Division, the licensee's signature on the application shall be notarized on the~~  
2           ~~application;~~

3           ~~(2) Current picture identification of responsible party or master. Acceptable forms of picture~~  
4           ~~identification are driver's license, state identification card, military identification card, resident alien~~  
5           ~~card (green card), or passport; or if applying by mail, a copy thereof;~~

6           ~~(3) Valid documentation papers or current motor boat registration or copy thereof when purchasing a~~  
7           ~~commercial fishing vessel registration. If an application for transfer of documentation is pending,~~  
8           ~~a copy of the pending application and a notarized bill of sale may be submitted.~~

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

11           ~~(e) Proof of residency in North Carolina for:~~

12           ~~(1) Standard Commercial Fishing License or Retired Standard Commercial Fishing License shall~~  
13           ~~require a notarized certification from the applicant that the applicant is a resident of the State of~~  
14           ~~North Carolina as defined by G.S. 113-130(4); and~~

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

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

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

22           ~~(2) All other types of licenses:~~

23           ~~(A) North Carolina voter registration card; or~~

24           ~~(B) Current North Carolina Driver's License; or~~

25           ~~(C) Current North Carolina Certificate of Domicile; or~~

26           ~~(D) Current North Carolina Identification Card issued by the North Carolina Division of Motor~~  
27           ~~Vehicles; or~~

28           ~~(E) Military identification, military dependent identification and permanent change of station~~  
29           ~~orders or assignment orders substantiating individual's active duty assignment at a military~~  
30           ~~facility in North Carolina.~~

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

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

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

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

7 (1) ~~The information required in Subparagraphs (a)(4), (a)(5), and (a)(6) of this Rule are only required~~  
8 ~~if a change has occurred since the last issuance of license, endorsement, or commercial fishing vessel~~  
9 ~~registration.~~

10 (2) ~~Certification that articles of incorporation and list of corporate officers, if incorporated, written~~  
11 ~~partnership agreement, if written partnership, or documentation papers or motor boat registration~~  
12 ~~previously provided for initial license purchase are still valid and current for renewal.~~

13 (3) ~~Current and valid state driver's license or state identification picture identification numbers and~~  
14 ~~expiration dates shall be verified on mail license renewal applications or any other electronic license~~  
15 ~~renewal process, otherwise the licensee shall provide a photocopy for renewal by mail or visit a~~  
16 ~~Division License Office and present a current and valid picture identification pursuant to~~  
17 ~~Subparagraph (a)(2) of this Rule.~~

18 (4) ~~The licensee's or responsible party's signature on the application shall certify all information as true~~  
19 ~~and accurate. Notarization of signature on renewal applications shall not be required.~~

20 (5) ~~The Division of Marine Fisheries may require current copies of documentation for licenses,~~  
21 ~~endorsements, or commercial fishing vessel registration on renewal when necessary to verify~~  
22 ~~inconsistent information or the information cannot be verified by independent sources.~~

23 (6) ~~If the linear length of the pier has not changed for the Ocean Fishing Pier License renewal, the~~  
24 ~~responsible party shall certify that the length is accurate; otherwise, a Marine Patrol Officer's~~  
25 ~~signature is required to certify the linear length before the license can be renewed.~~

26 (7) ~~Certification that shellfish dealer certification by North Carolina previously provided for issuance~~  
27 ~~of Fish Dealer License with clam or oyster categories or consolidated license is still valid and current~~  
28 ~~for renewal.~~

29  
30 *History Note:* ~~Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169; 113-169.2-5; 113-171.1; 113-174.3; 113-~~  
31 ~~182; 143B-289.52;~~

32 ~~Eff. January 1, 1991;~~

33 ~~Amended Eff. July 1, 1997; March 1, 1994;~~

34 ~~Temporary Amendment Eff. July 1, 1999;~~

35 ~~Amended Eff. August 1, 2000;~~

36 ~~Temporary Amendment Eff. April 1, 2001;~~

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- 1 *Amended Eff. May 1, 2015; July 1, 2008; December 1, 2006; August 1, 2004; August 1, 2002;*
- 2 *Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*
- 3 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

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1 15A NCAC 03O .0109 is readopted with changes as published in 36:07 NCR 487 as follows:

2 15A NCAC 03O .0109 is proposed for amendment as follows:

3  
4 **15A NCAC 03O .0109 ASSIGNMENT OF ~~SCFL~~ STANDARD COMMERCIAL FISHING LICENSE**

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

8 (b) If requested by the Division of Marine Fisheries, it shall be unlawful for a licensee or assignee to fail to participate  
9 in and provide accurate information for data collection in accordance with 15A NCAC 03I .0113 and for survey  
10 programs administered by the Division.

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

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

27 ~~(c)(d)~~ For an extension of time for assignments, a new assignment form shall be completed in accordance with  
28 Subparagraphs (b)(1) through (b)(3) of this Rule.

29 ~~(b)(d)(e)~~ Assignments ~~terminate when;~~ shall terminate:

- 30 (1) when the date specified on the assignment form is reached; ~~or~~  
31 (2) if the licensee or assignee are determined ineligible for a license or assignment; ~~or~~  
32 (3) if the Division receives a notarized statement from the current license holder stating a revised date  
33 for an earlier assignment termination; ~~or~~  
34 (4) upon the licensee or assignee's death; or  
35 (5) when the Standard Commercial Fishing License expires.

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

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

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

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

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

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

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

24  
25 *History Note:* Authority G.S. 113-134; 113-135; 113-168.1; 113-168.2; 113-168.5; 113-169.2; 113-182; 113-187;  
26 143B-289.52;  
27 Eff. January 1, 1991;  
28 Temporary Amendment Eff. October 2, 1999; July 1, 1999;  
29 Amended Eff. August 1, 2000;  
30 Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).  
31 Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).

1 15A NCAC 03O .0112 is proposed for amendment as follows:

2

3 **15A NCAC 03O .0112 FOR-HIRE LICENSE REQUIREMENTS**

4 (a) The license requirements for an operator of a vessel engaged in a for-hire operation are set forth in G.S. 113-174.3.  
5 Either the vessel owner or the for-hire vessel operator may seek to obtain the applicable for-hire vessel license. Only  
6 the vessel owner shall seek to obtain the applicable registration and endorsement required by G.S. 113-168.6. For the  
7 purpose of this Rule, "for-hire vessel operator" shall include the holder of a Blanket For-Hire Captain's Coastal  
8 Recreational Fishing License, Blanket For-Hire Vessel Coastal Recreational Fishing License, or Non-Blanket For-  
9 Hire Vessel License, as set forth in G.S. 113-174.3.

10 (b) It shall be unlawful for a for-hire vessel operator to operate without:

- 11 (1) holding the United States Coast Guard certification required in Rule .0101(a) of this Section;  
12 (2) having a copy of the for-hire license in possession and ready at hand for inspection; and  
13 (3) having current picture identification in possession and ready at hand for inspection.

14 (c) If requested by the Division of Marine Fisheries, it shall be unlawful for a for-hire vessel operator or responsible  
15 person to fail to participate in and provide accurate information for ~~biological sampling data collection~~ in accordance  
16 with 15A NCAC 03I .0113 and for survey programs administered by the Division. For the purpose of this Rule,  
17 "responsible person" shall mean any licensee or person engaged in regulated activity under Chapter 113, Subchapter  
18 IV, of the General Statutes, including regulated activity related to for-hire fishing.

19 (d) Requirements for display of licenses and registrations for a vessel engaged in for-hire recreational fishing are set  
20 forth in Rule .0106 of this Section.

21

22 *History Note: Authority G.S. 113-134; 113-168.6; 113-174.1; 113-174.3; 113-181; 143B-289.52;*

23 *Eff. July 1, 2008;*

24 *Readopted Eff. April 1, 2019;*

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



**NOTE:** RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION). ADDITIONAL PROPOSED CHANGES THAT WILL BE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2024 SHORT SESSION) ARE SHOWN WITH YELLOW HIGHLIGHTING.

1 15A NCAC 03O .0301 is readopted with changes as published in 36:07 NCR 492 as follows:

2 15A NCAC 03O .0301 is proposed for amendment as follows:

3

4

**SECTION .0300 – RECREATIONAL COMMERCIAL GEAR LICENSES**

5

6 **15A NCAC 03O .0301 ELIGIBILITY AND REQUIREMENTS FOR RECREATIONAL COMMERCIAL**  
7 **GEAR LICENSES**

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

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

10 (b) If requested by the Division of Marine Fisheries, it shall be unlawful for a Recreational Commercial Gear License  
11 holder to fail to participate in and provide accurate information for data collection in accordance with 15A NCAC 03I  
12 .0113 and for survey programs administered by the Division.

13

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

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

17 *Eff. February 1, 1995;*

18 *Temporary Amendment Eff. July 1, 1999;*

19 *Amended Eff. August 1, 2000;*

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

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

## VII. PROPOSED MANAGEMENT OPTIONS

### Option 1: status quo

- + Does not require lengthy rulemaking process.
- Does not support efforts to clarify importance of and enhance compliance with state and federal laws for collection of data and information necessary for conservation of marine and estuarine resources.
- Does not clarify MFC rules by specifying additional types of data collection authorized.
- Does not protect DMF employees from harassment while collecting data and information.

### Option 2: amend rules

- + More fully complies with state and federal laws.
- + Helps ensure collection of data and information necessary for conservation of marine and estuarine resources.
- + Clarifies MFC rules by specifying additional types of data collection authorized.
- + Further protects DMF employees from harassment while collecting data and information.
- Requires lengthy rulemaking process.

## VIII. RECOMMENDATION

The DMF recommends Option 2.

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Nov. 4, 2022

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Dec. 7, 2022  
Dec. 15, 2022  
Jan. 5, 2023  
Jan. 19, 2023  
Jan. 26, 2023

**NOTE:** RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION). NO ADDITIONAL CHANGES ARE PROPOSED.

**Appendix I. Marine Fisheries Commission rules that do not need additional changes.**

15A NCAC 03O .0102 is readopted as published in 36:07 NCR 485-486 as follows:

**15A NCAC 03O .0102 ~~RECREATIONAL FISHING TOURNAMENT LICENSE TO SELL FISH~~  
PROCEDURES AND REQUIREMENTS TO RENEW LICENSES,  
ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS**

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

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

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

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

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

- ~~(1) full name, physical address, mailing address, date of birth, and signature of the licensee.~~
- ~~(2) a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.~~
- ~~(3) current and valid picture identification of the licensee. Acceptable forms of picture identification are state driver's license, state identification card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.~~
- ~~(4) the information required in Rule .0101(c)(4) through (c)(8) of this Section, if changed since last issuance of the license, endorsement, or Commercial Fishing Vessel Registration.~~
- ~~(5) the information required in Rule .0101(e)(1) of this Section, if the linear length of the Ocean Fishing Pier has changed.~~
- ~~(6) a valid Permit and Certificate of Compliance from the Division's Shellfish Sanitation and Recreational Water Quality Section, if renewing a Fish Dealer License with clam or oyster categories or a consolidated license.~~

**NOTE:** RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION). NO ADDITIONAL CHANGES ARE PROPOSED.

- (7) certification that all information on the application is true and accurate. Notarization of the signature on renewal applications shall not be required.

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

*History Note: Authority G.S. 113-134; 113-168; ~~113-168.4~~; 113-168.1-6; 113-169.2-5; 113-171.1; 113-174.3; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. March 1, 1994;  
Temporary Amendment Eff. July 1, 1999;  
Amended Eff. April 1, 2020; December 1, 2006; August 1, 2000;  
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

**NOTE:** RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION). NO ADDITIONAL CHANGES ARE PROPOSED.

15A NCAC 03O .0113 is readopted with changes as published in 36:07 NCR 488 as follows:

**15A NCAC 03O .0113 OCEAN FISHING PIER REPORTING REQUIREMENTS**

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

*History Note: Authority G.S. 113-134; 113-169.4; **113-170.3**; 113-174.1; 113-182; 143B-289.52;  
Eff. April 1, 2011;  
Amended Eff. May 1, 2015;  
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

## **OYSTER SANCTUARY RULE CHANGES ISSUE PAPER**

**Jan. 5, 2023**

### **I. ISSUE**

Rule amendments are proposed to add the boundaries of the two newest oyster sanctuaries (Cedar Island and Gull Shoal) and update boundaries for three other sanctuaries (Pea Island, Raccoon Island, and Swan Island).

### **II. ORIGINATION**

North Carolina Division of Marine Fisheries (DMF) Habitat and Enhancement Section

### **III. BACKGROUND**

Marine protected areas (MPAs) are a management tool for restoration and conservation of marine species and ecosystems. Management strategies applied within MPA boundaries can vary widely, however, in most cases, management in these areas includes some degree of harvest restriction (e.g., gear type, seasonality, or total prohibition). In general, the abundance and size of individuals within MPAs are often significantly greater and larger, respectively, than outside MPAs, which can also lead to a “spill-over effect” of larvae and individuals from inside to outside the MPA (Gell and Roberts 2002, Halpern 2003, Sobel and Dahlgren 2004). In other words, fish are generally larger and more abundant in MPAs. In pursuit of shellfish rehabilitation, DMF has applied the MPA model through its Oyster Sanctuary Program. This program is responsible for creating artificial reef habitat, designed to support healthy and abundant oyster populations throughout Pamlico Sound and its tributaries. Once built, a reef site is protected from harvest to preserve broodstock and is called an “oyster sanctuary.” With healthy and abundant broodstock populations inside sanctuary boundaries, these sites continue to serve their intended function by supplying oyster larvae to other reefs nearby.

It is important to distinguish that while all artificial reef habitat is considered “reef,” not all reefs are considered “sanctuary.” The term “oyster sanctuary” refers only to reefs protected from oyster harvest and some bottom disturbing gears through North Carolina Marine Fisheries Commission (MFC) rule 15A NCAC 03K .0209. It is also important to consider that the created habitat within sanctuary or artificial reef boundaries always exists as a collection of separate reef habitat patches. Therefore, sanctuaries and artificial reefs are sometimes referred to as reef sites. In most cases concerning reef sites managed by the Oyster Sanctuary Program, the entire reef site authorized by state and federal permits is protected from oyster harvest. Therefore, the terms “reef,” “sanctuary,” and “reef site” are often used interchangeably. When describing area, as seen in Tables 1 and 2 (see Section VI.), typically the boundary area is the total sanctuary area (acres) delineated in rule or by proclamation. Habitat footprint area refers to the cumulative total area of reef patches only, not to include unconsolidated soft bottom. For example, in Table 1, the Croatan Sound Oyster Sanctuary site has 3.10 acres of habitat within the overall boundary of 7.73 acres, meaning 4.63 acres of the site do not have habitat material present, but harvest is prohibited within the entire site.

The Blue-Ribbon Advisory Council on Oysters (BRACO) made the first recommendations concerning the establishment of oyster sanctuaries in North Carolina in 1995. The BRACO recommended the state provide selected areas where wild oyster stocks can adapt to present water quality and disease conditions without being subjected to the additional stress of habitat disturbance and oyster harvest. In addition to providing a sanctuary for oysters, these areas would also provide good nursery habitat for other species increasing their abundance for commercial and recreational fishing. The protected oysters would also provide increased water filtration, reducing turbidity and excess nutrients in the estuary. As part of the recommendation, oyster sanctuaries would be closed to the taking of shellfish (oysters, clams, mussels, and scallops) and to bottom disturbing activities such as trawling, long hauling, and dredging for an indefinite period (Frankenberg 1995). DMF initially developed 10 oyster sanctuaries in Pamlico Sound and its tributaries. These sanctuaries were originally designated as shellfish management areas by proclamation, as authorized by Rule 15A NCAC 03K .0103. For these reef sites to serve their intended function as oyster broodstock sanctuaries, harvest protections needed to be applied. As part of the 2008 Oyster Fishery Management Plan Amendment 2, the MFC moved the protection of oyster sanctuaries from proclamation into rules 15A NCAC 03K .0209 and 03R .0117, Oyster Sanctuaries. Since 2008, DMF has expanded the Oyster Sanctuary Program by constructing seven additional sanctuaries, using funding from the North Carolina General Assembly,

The Nature Conservancy, National Oceanic and Atmospheric Administration National Estuarine Counsel, Coastal Recreational Fishing Licenses, and other mitigation sources.

Further, the North Carolina General Assembly recognized the importance of oyster sanctuaries in the 2014 and 2015 legislative sessions. Session Law 2014-120, Section 44 as amended by Session Law 2015-241, Section 14.9 established the Senator Jean Preston Oyster Sanctuary Network (Figure 1). This was done “to enhance shellfish habitats within the Albemarle and Pamlico Sounds and their tributaries to benefit fisheries, water quality, and the economy... achieved through the establishment of a network of oyster sanctuaries, harvestable enhancement sites, and coordinated support for the development of shellfish aquaculture.”

Today DMF maintains and manages 15 oyster sanctuaries in the network, 13 of which are currently in Rule 15A NCAC 03R .0117. The sanctuaries encompass 566.22 acres total, with over 205,643 tons of material deployed for oyster habitat (Table 1). The two newest sanctuaries (Cedar Island and Gull Shoal), not in the oyster sanctuary rules, are described in proclamation SF-6-2022. That proclamation also suspends portions of the current rule to provide technical corrections on published coordinates for three sanctuaries (Pea Island, Raccoon Island, and Swan Island). All 15 oyster sanctuaries, whether protected by Rule or proclamation, are presently marked with corner buoys. Buoy marking is a United States Coast Guard permitting requirement, therefore DMF will continue to maintain buoys in perpetuity regardless of harvest or gear protections.

#### **IV. AUTHORITY**

N.C.G.S. § 113-134. Rules.  
N.C.G.S. § 113-182. Regulation of fishing and fisheries.  
N.C.G.S. § 113-201. Legislative findings and declaration of policy; authority of Marine Fisheries Commission.  
N.C.G.S. § 113-204. Propagation of shellfish.  
N.C.G.S. § 143B-289.52. Marine Fisheries Commission – Powers and Duties.

Session Law 2014-120, Section 44, as amended by Session Law 2015-241, Section 14.9.

#### **V. DISCUSSION**

Rule amendments are proposed to add the boundaries of the two newest oyster sanctuaries (Cedar Island and Gull Shoal) and update boundaries for three other oyster sanctuaries (Pea Island, Raccoon Island, and Swan Island).

##### Addition of Two Recently Developed Oyster Sanctuaries

There are presently 13 developed oyster sanctuaries protected by MFC rules (15A NCAC 03K .0209 and 03R .0117), the last of which were added effective May 1, 2021. Since then, two additional sanctuaries have been developed (Cedar Island and Gull Shoal; Figures 2 and 3). For these reef sites to serve their intended management function as oyster broodstock sanctuaries, harvest protections need to be applied. While these sites are currently protected by proclamation, it is proposed to add these two new sites to the existing Rule 15A NCAC 03R .0117, delineating the sanctuary boundaries in permanent rule.

##### Technical Corrections of Boundary Coordinates for Three Sites in Rule

Following publication of the rulebook supplement in September 2022, DMF discovered 3 of the 13 sanctuaries (Pea Island, Raccoon Island, and Swan Island) had incorrect coordinates. Technical corrections to the rule text are required in order to match the permitted and marked boundaries of the three sanctuary sites. These changes will delineate all reef site area intended for oyster sanctuary purposes so that protections provided by Rule 15A NCAC 03K .0209 may be accurately applied. In addition, accurately delineated boundaries will help safeguard boaters navigating the area. Coordinates for three sanctuaries are proposed for consistency to standardize the cardinal directions; there are no changes to the overall sanctuary nor the coordinate pairs.

##### Summary and Implications

Historically, oyster sanctuary site selection leaned heavily on a limited understanding of oyster habitat suitability and was largely dependent upon where historic oyster reefs once existed. New strategies and techniques used for deployment, as well as new technology for physical and biological monitoring have substantially improved oyster reef enhancement success and have reduced errors. A more modern habitat suitability index (HSI) model rates areas based on salinity gradient, bottom type, tidal flow, larval transport, wave action, and prevailing wind data as well as

historic oyster presence data and input from stakeholders and managers. This approach is proven to be a better method to select areas to develop as sanctuaries and accurately delineate their boundaries.

DMF recommends amending Rule 15A NCAC 03R .0117 by adding boundaries for two additional oyster sanctuaries (Cedar Island and Gull Shoal) developed since the rule was last amended. DMF also proposes technical corrections to boundaries of three existing sanctuaries (Pea Island, Raccoon Island, and Swan Island). Corrections to these sanctuary coordinates are necessary to encompass existing reef material and match permitted and marked boundaries. The proposed modifications align the MFC rules with delineated boundaries in permits, which is essential for state and federal regulatory consistency as well as safe maritime navigation.

Rule 15A NCAC 03R .0117 (1)(f) and (1)(l) show proposed changes to incorporate the boundaries of the new sanctuaries, Cedar Island and Gull Shoal. The proposed changes in 15A NCAC 03R .0117 (1)(c), (1)(j), and (1)(k) update the boundaries of Pea Island, Swan Island, and Raccoon Island sanctuaries. Proposed changes result in a net total increase of 256 acres of protected oyster sanctuary area (Table 2). The proposed changes in 15A NCAC 03R .0117 (1)(d), (1)(h), and (2)(a) reorganize coordinates to standardize the cardinal directions and have no impact on the total acres of protected oyster sanctuary area.

## VI. TABLES AND FIGURES

Table 1. Oyster sanctuary names, spatial extents (acres), and material deployed (tons).

| OS# | Site Name      | Boundary Size+<br>(Acres) | Habitat<br>Footprint*<br>(Acres) | Total Material<br>Deployed* (Tons) |
|-----|----------------|---------------------------|----------------------------------|------------------------------------|
| 1   | Croatan Sound  | 7.73                      | 3.10                             | 2,093                              |
| 2   | Deep Bay       | 17.20                     | 4.15                             | 1,749                              |
| 3   | West Bay       | 6.56                      | 2.27                             | 2,329                              |
| 5   | Crab Hole      | 30.52                     | 13.26                            | 36,489                             |
| 7   | Middle Bay     | 4.59                      | 0.27                             | 900                                |
| 8   | Neuse River    | 11.29                     | 3.55                             | 7,357                              |
| 9   | West Bluff     | 29.39                     | 2.82                             | 10,162                             |
| 10  | Gibbs Shoal    | 54.60                     | 8.19                             | 22,447                             |
| 11  | Long Shoal     | 10.01                     | 1.13                             | 2,173                              |
| 12  | Raccoon Island | 9.97                      | 1.61                             | 1,824                              |
| 13  | Pea Island     | 46.37                     | 2.62                             | 3,420                              |
| 14  | Little Creek   | 20.59                     | 6.14                             | 5,700                              |
| 15  | Swan Island    | 80.32                     | 10.93                            | 55,000                             |
| 16  | Cedar Island   | 75.01                     | 5.10                             | 36,000                             |
| 17  | Gull Shoal     | 161.91                    | TBD                              | 36,000                             |
| --  | <b>Total</b>   | <b>566.22</b>             | <b>65.14</b>                     | <b>223,643</b>                     |

- Sanctuaries (1-11, 14) are under authority of rules 15A NCAC 03K .0209 and 03R .0117.
  - Sanctuaries (12, 13, 15-17) are under authority of Rule 15A NCAC 03K .0103 via Proclamation SF-6-2022.
  - Sanctuaries (4, 6) were removed from Rule 15A NCAC 03R .0117 effective May 1, 2021, as the sites are no longer biologically productive and were not serving their management purpose as oyster sanctuaries.
- + Boundary sizes are calculated on areas bound by delineating coordinates in 15A NCAC 03R .0117.
- \* Values for Habitat Footprint and Total Material Deployed are subject to increase over time, as reef enhancement and construction are ongoing.



Table 2. Current and proposed boundary acreages for oyster sanctuaries delineated in MFC Rule 15A NCAC 03R .0117.

| OS # | Site Name      | Current Boundary (Acres) | Proposed Boundary (Acres) | Difference (Acres) |
|------|----------------|--------------------------|---------------------------|--------------------|
| 12   | Raccoon Island | 9.97                     | 9.97                      | 0                  |
| 13   | Pea Island     | 46.37                    | 46.37                     | 0                  |
| 15   | Swan Island    | 60.31                    | 80.32                     | 20.01              |
| 16   | Cedar Island   | 0                        | 75.01                     | 75.01              |
| 17   | Gull Shoal     | 0                        | 161.91                    | 161.91             |
| --   | <b>Total</b>   | <b>116.90</b>            | <b>373.58</b>             | <b>256.21</b>      |

## Jean Preston Oyster Sanctuary Network

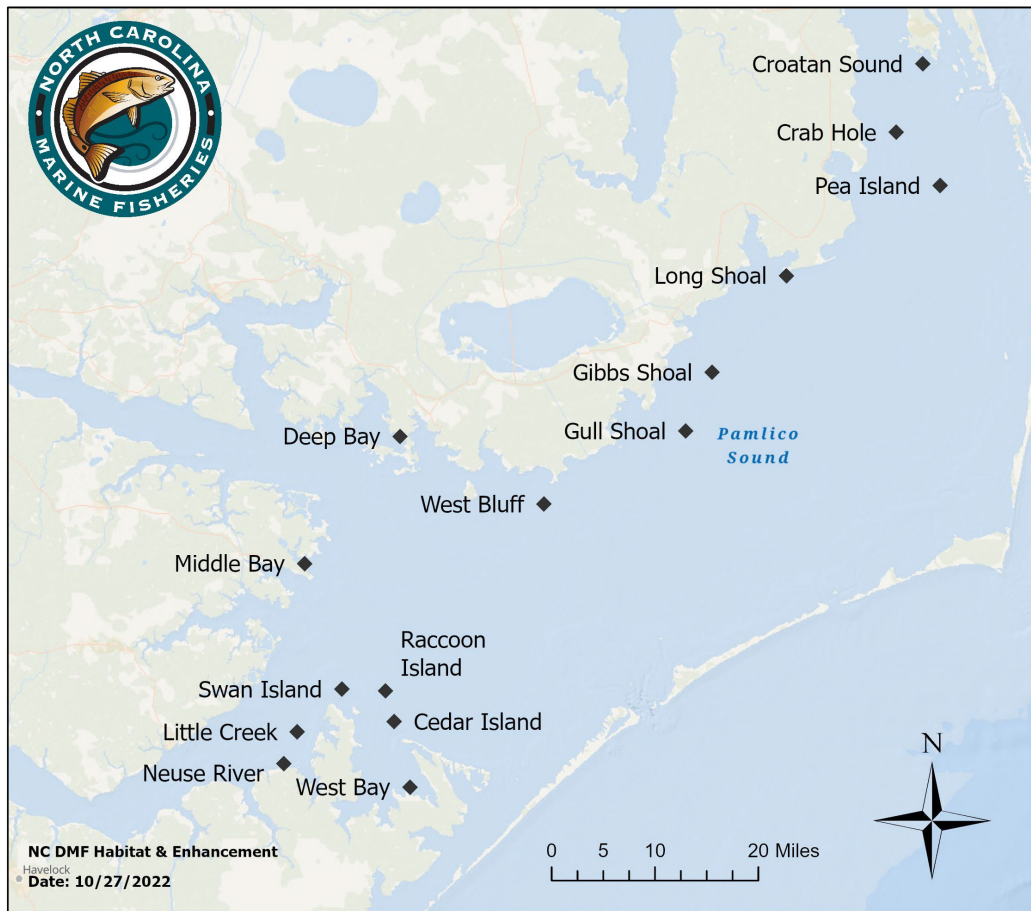


Figure 1. Oyster sanctuary locations.

# OS-16 Cedar Island

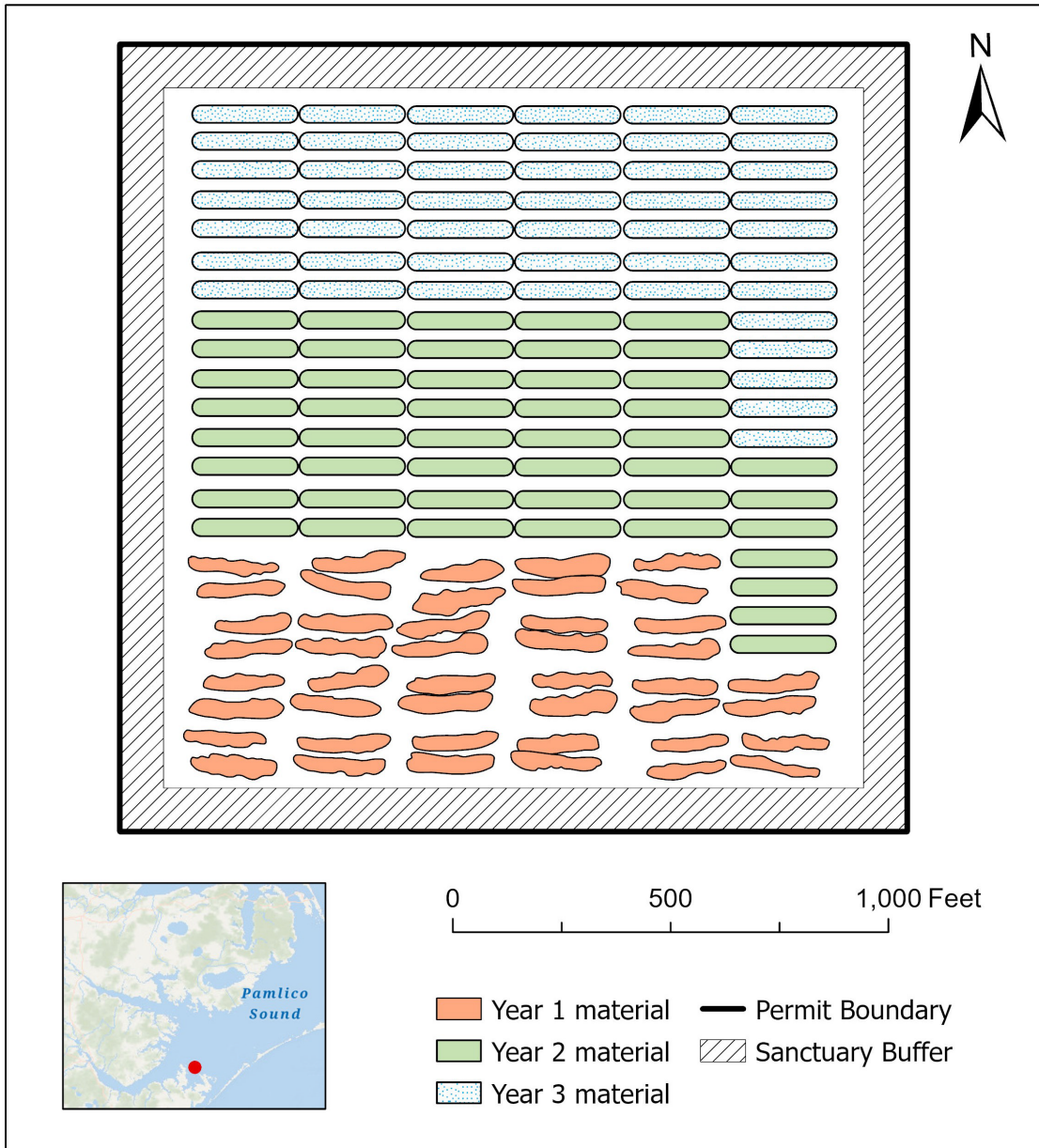
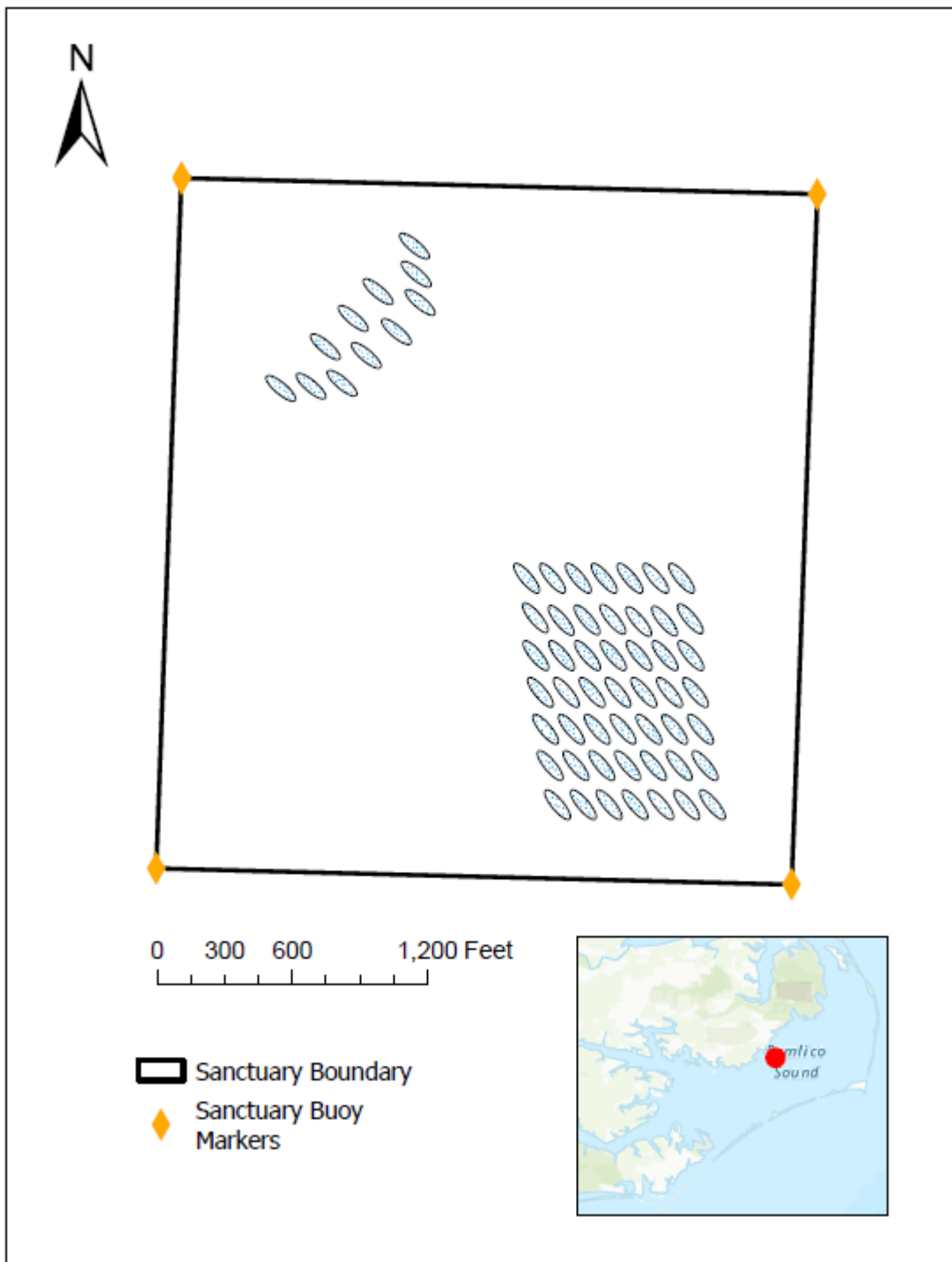


Figure 2. Cedar Island Oyster Sanctuary. With three years planned to fully develop the area, illustrated above is the footprint from the first 18,000 tons of material deployed and approximate distribution for future material (target completion summer 2023).

# OS-17 Gull Shoal



**Figure 3. Gull Shoal Oyster Sanctuary.** The development of the site is under the purview of the Division of Mitigation Services. Details on material footprint will be known after completion of this 162-acre site.

1 VII. PROPOSED RULE(S)

2  
3 15A NCAC 03R .0117 OYSTER SANCTUARIES

4 The Oyster Sanctuaries referenced in 15A NCAC 03K .0209 are delineated in the following ~~coastal water~~  
5 ~~areas:~~ Coastal Fishing Waters:

6 (1) Pamlico Sound area:

7 (a) Croatan Sound: within the area described by a line beginning at a point 35° 48.2842' N -  
8 75° 38.3360' W; running southerly to a point 35° 48.1918' N - 75° 38.3360' W; running  
9 westerly to a point 35° 48.1918' N - 75° 38.4575' W; running northerly to a point 35°  
10 48.2842' N - 75° 38.4575' W; running easterly to the point of beginning.

11 (b) Crab Hole: within the area described by a line beginning at a point 35° 43.6833' N - 75°  
12 40.5083' W; running southerly to a point 35° 43.5000' N - 75° 40.5083' W; running  
13 westerly to a point 35° 43.5000' N - 75° 40.7500' W; running northerly to a point 35°  
14 43.6833' N - 75° 40.7500' W; running easterly to the point of beginning.

15 (c) Pea Island: within the area described by a line beginning at a point ~~35° 05.4760' N - 76°~~  
16 ~~23.5370' W~~ 35° 40.0800' N - 75° 36.7998' W; running southerly to a point ~~35° 05.4760'~~  
17 ~~N - 76° 23.4040' W~~ 35° 39.8400' N - 75° 36.7998' W; running westerly to a point ~~35°~~  
18 ~~05.3680' N - 76° 23.4040' W~~ 35° 39.8400' N - 75° 37.0800' W; running northerly to a  
19 point ~~35° 05.3680' N - 76° 23.5370' W~~ 35° 40.0800' N - 75° 37.0800' W; running  
20 easterly to the point of beginning.

21 (d) Long Shoal: within the area described by a line beginning at a point ~~35° 33.8600' N - 75°~~  
22 ~~49.9000' W~~ 35° 33.8600' N - 75° 49.7670' W; running southerly to a point ~~35° 33.8600'~~  
23 ~~N - 75° 49.7670' W~~ 35° 33.7510' N - 75° 49.7670' W; running westerly to a point ~~35°~~  
24 ~~33.7510' N - 75° 49.7670' W~~ 35° 33.7510' N - 75° 49.9000' W; running northerly to a  
25 point ~~35° 33.7510' N - 75° 49.9000' W~~ 35° 33.8600' N - 75° 49.9000' W; running easterly  
26 to the point of beginning.

27 (e) Gibbs Shoal: within the area described by a line beginning at a point 35° 27.3550' N -  
28 75° 55.9190' W; running southerly to a point 35° 27.1010' N - 75° 55.9190' W; running  
29 westerly to a point 35° 27.1010' N - 75° 56.2300' W; running northerly to a point 35°  
30 27.3550' N - 75° 56.2300' W; running easterly to the point of beginning.

31 (f) ~~Gull Shoal: within the area described by a line beginning at a point 35° 23.4520' N - 75°~~  
32 ~~58.0533' W; running southerly to a point 35° 22.9481' N - 75° 58.0721' W; running~~  
33 ~~westerly to a point 35° 22.9596' N - 75° 58.5359' W; running northerly to a point 35°~~  
34 ~~23.4638' N - 75° 58.5173' W; running easterly to the point of beginning.~~

35 (f)(g) Deep Bay: within the area described by a line beginning at a point 35° 22.9126' N - 76°  
36 22.1612' W; running southerly to a point 35° 22.7717' N - 76° 22.1612' W; running

1 westerly to a point 35° 22.7717' N - 76° 22.3377' W; running northerly to a point 35°  
2 22.9126' N - 76° 22.3377' W; running easterly to the point of beginning.

3 ~~(g)~~(h) West Bluff: within the area described by a line beginning at a point 35° 18.3160' N - 76°  
4 ~~10.2960' W~~ 35° 18.3160' N - 76° 10.0690' W; running southerly to a point 35° 18.3160' N -  
5 ~~76° 10.0690' W~~ 35° 18.1290' N - 76° 10.0690' W; running westerly to a point 35°  
6 18.1290' N - 76° 10.0690' W 35° 18.1290' N - 76° 10.2960' W; running northerly to a point  
7 35° 18.1290' N - 76° 10.2960' W 35° 18.3160' N - 76° 10.2960' W; running easterly to the  
8 point of beginning.

9 ~~(h)~~(i) Middle Bay: within the area described by a line beginning at a point 35° 14.1580' N - 76°  
10 30.1780' W; running southerly to a point 35° 14.1150' N - 76° 30.1780' W; running  
11 westerly to a point 35° 14.1150' N - 76° 30.3320' W; running northerly to a point 35°  
12 14.1580' N - 76° 30.3320' W; running easterly to the point of beginning.

13 ~~(i)~~(j) Swan Island: within the area described by a line beginning at a point 35° 05.6170' N -  
14 ~~76° 27.5040' W~~ 35° 05.6414' N - 76° 26.7651' W; running southerly to a point 35°  
15 05.6020' N - 76° 26.7650' W 35° 05.4846' N - 76° 26.7638' W; running westerly to a  
16 point 35° 05.4850' N - 76° 26.7640' W 35° 05.4992' N - 76° 27.5033' W; running  
17 northerly to a point 35° 05.4990' N - 76° 27.5030' W 35° 05.6554' N - 76° 27.5041' W;  
18 running easterly to the point of beginning.

19 ~~(j)~~(k) Raccoon Island: within the area described by a line beginning at a point 35° 05.4760' N -  
20 ~~76° 23.5370' W~~ 35° 05.4760' N - 76° 23.4040' W; running southerly to a point 35°  
21 05.4760' N - 76° 23.4040' W 35° 05.3680' N - 76° 23.4040' W; running westerly to a  
22 point 35° 05.3860' N - 76° 23.4040' W 35° 05.3680' N - 76° 23.5370' W; running  
23 northerly to a point 35° 05.3680' N - 76° 23.5370' W 35° 05.4760' N - 76° 23.5370' W;  
24 running easterly to the point of beginning.

25 ~~(l)~~ Cedar Island: within the area described by a line beginning at a point 35° 03.4632' N -  
26 ~~76° 22.5603' W~~; running southerly to a point 35° 03.1653' N - 76° 22.5699' W; running  
27 westerly to a point 35° 03.1731' N - 76° 22.9321' W; running northerly to a point 35°  
28 03.4710' N - 76° 22.9226' W; running easterly to the point of beginning.

29 ~~(k)~~(m) West Bay: within the area described by a line beginning at a point 34° 58.8517' N - 76°  
30 21.3632' W; running southerly to a point 34° 58.7661' N - 76° 21.3632' W; running  
31 westerly to a point 34° 58.7661' N - 76° 21.4735' W; running northerly to a point 34°  
32 58.8517' N - 76° 21.4735' W; running easterly to the point of beginning.

33 (2) Neuse River area:

34 (a) Little Creek: within the area described by a line beginning at a point 35° 02.6940' N - 76°  
35 ~~30.9840' W~~ 35° 02.6940' N - 76° 30.7940' W; running southerly to a point 35° 02.6940' N

1 ~~76° 30.7940' W~~ 35° 02.5380' N - 76° 30.7940' W; running westerly to a point ~~35°~~  
2 ~~02.5380' N - 76° 30.7940' W~~ 35° 02.5380' N - 76° 30.9840' W; running northerly to a  
3 point ~~35° 02.5380' N - 76° 30.9840' W~~ 35° 02.6940' N - 76° 30.9840' W; running easterly  
4 to the point of beginning.

5 (b) Neuse River: within the area described by a line beginning at a point 35° 00.4910' N -  
6 76° 31.9350' W; running southerly to a point 35° 00.3750' N - 76° 31.9350' W; running  
7 westerly to a point 35° 00.3750' N - 76° 32.0750' W; running northerly to a point 35°  
8 00.4910' N - 76° 32.0750' W; running easterly to the point of beginning.

9  
10 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52;*  
11 *Eff. October 1, 2008;*  
12 *Amended Eff. April 1, 2011;*  
13 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*  
14 *2018;*  
15 *Amended Eff. May 1, 2021; April 1, 2024.*

## VIII. LITERATURE CITED

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Gell, F. R. and C. M. Roberts 2002. The fishery effects of marine reserves and fishery closures. World Wildlife Fund-US, Washington D.C., USA.

Halpern, B.S. 2003. The impact of marine reserves: Do reserves work and does reserve size matter? *Ecol Appl* 13: S117-S137.

Sobel, J. A. and C. P. Dahlgren. (2004) Marine reserves. A guide to science, design and use. Island Press, Washington, D.C., USA.

## IX. PROPOSED MANAGEMENT OPTIONS

(+ Potential positive impact of action)

(- Potential negative impact of action)

### 1. *Status quo*

- New oyster sanctuaries not fully protected in rule
- Inaccurate boundaries remain in rule for existing oyster sanctuaries
- Navigational hazards to boaters
- Does not comply with principles of rulemaking in G.S. 150-B
- Inconsistent with state and federal permitting
- +/- Expenses for marine patrol and buoy maintenance

### 2. Amend rule to add two new oyster sanctuaries and update boundaries of three sanctuaries

- + New oyster sanctuaries fully protected in rule
- + Existing oyster sanctuary boundary lines would be updated
- + Safeguards boaters navigating the oyster sanctuaries
- + Complies with principles of rulemaking in G.S. 150-B
- + Net increase of more than 256 acres of high-quality oyster habitat
- +/- Expenses for marine patrol and buoy maintenance

## X. RECOMMENDATION

DMF recommends the MFC approve Notice of Text for rulemaking in support of the proposed changes (Option 2).

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Nov. 15, 2022

Revised: Nov. 29, 2022  
Jan. 5, 2023

**Conforming Rule Changes for Shellfish Relay Program and Shellfish Leases and Franchises  
Issue Paper  
Feb. 2, 2023**

**I. ISSUE**

Conform North Carolina Marine Fisheries Commission (MFC) rules to reflect the discontinuation of the Shellfish Relay Program, consistent with rulemaking requirements in the North Carolina Administrative Procedure Act (APA; Chapter 150B).

**II. ORIGINATION**

North Carolina Division of Marine Fisheries (DMF)

**III. BACKGROUND**

In 2021, the DMF began the process of discontinuing its Shellfish Relay Program (relaying of shellfish from certain polluted areas) due primarily to insufficient resources to run the program and lack of widespread use. The Shellfish Relay Program will end effective May 1, 2024. The MFC received information about the discontinuation of the Shellfish Relay Program at its February 2022 business meeting. DMF informed the MFC that more information would be provided at its February 2023 business meeting, including corresponding proposed rule amendments.

DMF identified 14 rules relating to the Shellfish Relay Program that set specific requirements for relaying of shellfish from certain polluted areas. Changes are proposed to amend portions of rules or repeal rules consistent with rulemaking requirements in the APA.

**IV. AUTHORITY**

North Carolina General Statutes

|                    |   |
|--------------------|---|
| G.S. § 14-4.1.     | Legislative review of regulatory crimes.  |
| G.S. § 113-134.    | Rules.  |
| G.S. § 113-182.    | Regulation of fishing and fisheries.  |
| G.S. § 113-201.    | Legislative findings and declaration of policy; authority of Marine Fisheries Commission.   |
| G.S. § 113-202.    | New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.                          |
| G.S. § 113-203.    | Transplanting of oysters and clams.   |
| G.S. § 113-221.2.  | Additional rules to establish sanitation requirements for scallops, shellfish, and crustacea; permits and permit fees authorized. |
| G.S. § 143B-289.52 | Marine Fisheries Commission – powers and duties.  |
| Chapter 150B       | Administrative Procedure Act  |

Marine Fisheries Commission Rules

|                    |   |
|--------------------|---|
| 15A NCAC 03I .0101 | DEFINITIONS                                       |
| 15A NCAC 03K .0101 | PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH AREAS |
| 15A NCAC 03K .0103 | SHELLFISH MANAGEMENT AREAS*                       |
| 15A NCAC 03K .0104 | PERMITS FOR SHELLFISH FROM POLLUTED AREAS**       |
| 15A NCAC 03K .0107 | DEPURATION OF CLAMS AND OYSTERS**                 |
| 15A NCAC 03K .0301 | SIZE AND HARVEST LIMITS OF CLAMS**                |
| 15A NCAC 03K .0401 | POLLUTED AREA PERMIT REQUIREMENTS**               |
| 15A NCAC 03K .0403 | DISPOSITION OF MEATS**                            |
| 15A NCAC 03K .0405 | OYSTERS, HARD CLAMS, OR MUSSELS PROHIBITED        |
| 15A NCAC 03O .0501 | PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS     |
| 15A NCAC 03O .0503 | PERMIT CONDITIONS; SPECIFIC                       |
| 15A NCAC 18A .0303 | RELAYING PERMITS***                               |
| 15A NCAC 18A .0901 | DEFINITIONS                                       |
| 15A NCAC 18A .0906 | RESTRICTED AREAS                                  |



\* Rule is undergoing readoption, already amended to remove relay language, and anticipated to be effective pending legislative review in the 2023 long session.

\*\* Rule is undergoing readoption and anticipated to be effective pending legislative review in the 2023 long session.

\*\*\* Rule is anticipated to be repealed, effective pending legislative review in the 2023 long session.

## V. DISCUSSION

According to the APA, specifically G.S. § 150B-19.1(b), the MFC is charged with reviewing its rules annually to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in G.S. § 150B-19.1(a). DMF identified 14 rules relating to the Shellfish Relay Program (15A NCAC 03I .0101, 03K .0101, .0103, .0104, .0107, .0301, .0401, .0403, .0405, 03O .0501, .0503, 18A .0303, .0901, and .0906) that set specific requirements for relaying of shellfish from certain polluted areas. Consistent with the APA, these rules or portions of these rules are unnecessary due to the discontinuation of the Shellfish Relay Program.

### Shellfish Relay Requirements

Amendments are proposed to these rules that have shellfish relay requirements, including the repeal of **15A NCAC 03K .0104, .0401, .0403, and .0405**. Three rules that have shellfish relay content are currently undergoing readoption and are already proposed for amendment to remove relay language (**15A NCAC 03K .0103, .0107**; see Appendix I) or proposed to be repealed (**15A NCAC 18A .0303**), effective pending legislative review in the 2023 long session.

Rule **15A NCAC 03I .0101** defines terms that apply globally to Chapter 03 (Marine Fisheries) of the N.C. Administrative Code. Specifically, Subitems (2)(i), (2)(j), and (2)(k) of this rule define terms related to shellfish leases and franchises and the associated planting, culture, marketing, transplanting (relay), and harvest of shellfish. These defined terms only appear in 15A NCAC 03O .0200, which sets standards and requirements for shellfish leases and franchises. These terms are proposed to be deleted from 15A NCAC 03I .0101; globally applicable definitions for these terms are not necessary. There are a few differences in statutes and rules for shellfish production as it pertains to shellfish leases and franchises. As a result, definitions are proposed to be added to 15A NCAC 03O .0201 to harmonize these differences, defined for the purpose of this section of rules. These changes are explained in the associated sub-section of the discussion section further below. Additionally, a technical change is proposed to 15A NCAC 03I .0101(5)(k) to remove Elizabeth City from the definition of "Office of the Division" since the license office there is permanently closed; the remaining offices are also proposed to be listed in geographic order from south to north.

Rule **15A NCAC 03K .0101** makes it unlawful to take shellfish from areas that have been designated as polluted. The current rule provides exceptions as set out in four other rules that contain shellfish relay requirements. These rules are either undergoing readoption and include the removal of shellfish relay requirements or are rules described here that are proposed to be amended or repealed to remove shellfish relay requirements. Proposed changes to 15A NCAC 03K .0101 update the exceptions to this otherwise unlawful activity. These exceptions would apply to the holder of any of three permits: Depuration, Aquaculture Seed Transplant, or Shellfish Relocation. Requirements for these permits would ensure shellfish taken from polluted areas would not be for immediate human consumption but would be for restoration purposes or would be subject to transplant to private beds for growout or for depuration prior to human consumption. Currently, an exception for "maintenance dredging operations" is provided in 15A NCAC 03K .0104, proposed for repeal. This exception is proposed to be expanded in 15A NCAC 03K .0101 to include "maintenance dredging, construction, or other development activities" to be more comprehensive.

**15A NCAC 03K .0301** is currently undergoing readoption, effective pending legislative review in the 2023 long session. Additional proposed changes would remove shellfish relay requirements by deleting Subparagraph (b)(3).

Proposed changes to **15A NCAC 03O .0501** Paragraphs (d) and (e), **15A NCAC 03O .0503** Subparagraph (a)(3), **15A NCAC 18A .0901** Item (19), and **15A NCAC 18A .0906** Paragraph (b) remove shellfish relay requirements. Additionally, two unrelated technical changes are needed. One change is needed to 15A NCAC 03O .0501(i) to correct a cross-reference to 15A NCAC 03K .0111 (repeal), to reference 15A NCAC 03O .0211 (adoption) instead. A second technical change is needed to 15A NCAC 03O .0503 to correct a cross-reference in Subparagraph (g)(3) to read "Subparagraph (g)(1)" not "Subparagraph (k)(1)".

### Shellfish Lease and Franchise Requirements

Regarding additional proposed changes to 15A NCAC 03O .0201 for shellfish lease and franchise requirements, Session Law 2019-37 (Act to Provide Further Support to the Shellfish Aquaculture Industry in North Carolina) increased production and planting requirements for shellfish leases and franchises via Section 3 of the Act. Subsection 3 (d) of the Act requires the MFC to amend 15A NCAC 03O .0201 consistent with Subsection 3 (c) of the Act that sets shellfish production and planting requirements for leases granted July 1, 2019 and after. Changes are proposed to conform this rule to the requirements of this law.

Specifically, definitions for "extensive shellfish culture" and "intensive shellfish culture" set forth in Session Law 2019-37 are proposed to be added for the purpose of 15A NCAC 03O .0200 in Rule 15A NCAC 03O .0201 in Paragraph (a). Upon the effective date of this rule, Section 3 of this law will expire and so the definitions need to be added to MFC rule. Additional definitions for "plant" and "produce" are proposed to clarify the use of the terms for the purpose of this rule. There are a few differences in statutes and rules for shellfish production as it pertains to shellfish leases and franchises, as mentioned in the discussion section regarding 15A NCAC 03I .0101. Session Law 2019-37, G.S. 113-203 (see Appendix II), and other laws contain requirements for and intersect with shellfish relay and shellfish leases and franchises. The proposed definitions harmonize these differences, along with conforming changes throughout the rule to delete references to "marketing" shellfish. The term is antiquated and essentially means "harvest", which is remedied by the proposed definitions. Also, as a result of separate rule changes that became effective June 1, 2022, all shellfish lease holders are required to have an Aquaculture Operation Permit. This makes moot the need to retain the reference to a "marketable size" because requirements are now set through this permit; there are not currently any minimum size requirements and there is not a "marketable size" definition beyond the three-inch minimum size limit for wild harvest. So, in Paragraph (a), the proposed definition for "plant" in (a)(3) covers 15A NCAC 03I .0101(2)(j) for "shellfish planting effort on leases and franchises" and (2)(k) for "shellfish production on leases and franchises", except "sublegal harvest size to a marketable size" from 03I .0101(2)(k)(i) was left out because it does not align with how the industry works today. The proposed definition for "produce" in (a)(4) covers 15A NCAC 03I .0101(2)(i) for "shellfish marketing from leases and franchises".

Subparagraph (b)(4) is proposed for amendment to clarify to what "area" refers. Proposed changes and additions to Paragraphs (c) through (h) incorporate and conform the shellfish production and planting requirements from the law for shellfish leases granted before July 1, 2019 and for shellfish leases granted on or after this date. Shellfish leases are granted for 10-year terms, so these distinctions will need to persist in the rule until the last shellfish lease granted prior to July 1, 2019 has expired at which time the rule can be amended again. Lastly, proposed changes to Paragraph (i) require shellfish lease or franchise holders to meet the listed production, marking, and permit requirements for current shellfish leases before being eligible for additional shellfish lease acreage. Doing so would help ensure more efficient and meaningful use of the public trust bottom by preventing persons not in good standing from precluding potential applicants from applying for a shellfish lease in affected areas.

1 **VI. PROPOSED RULE(S)**

2  
3 15A NCAC 03I .0101 is proposed for amendment as follows:

4  
5 **SUBCHAPTER 03I – GENERAL RULES**

6  
7 **SECTION .0100 – GENERAL RULES**

8  
9 **15A NCAC 03I .0101 DEFINITIONS**

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

11 (1) enforcement and management terms:

- 12 (a) "Commercial quota" means total quantity of fish allocated for harvest by commercial  
13 fishing operations.
- 14 (b) "Educational institution" means a college, university, or community college accredited by  
15 an accrediting agency recognized by the U.S. Department of Education; an Environmental  
16 Education Center certified by the N.C. Department of Environmental Quality Office of  
17 Environmental Education and Public Affairs; or a zoo or aquarium certified by the  
18 Association of Zoos and Aquariums.
- 19 (c) "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except  
20 the Atlantic Ocean.
- 21 (d) length of finfish:
- 22 (i) "Curved fork length" means a length determined by measuring along a line tracing  
23 the contour of the body from the tip of the upper jaw to the middle of the fork in  
24 the caudal (tail) fin.
- 25 (ii) "Fork length" means a length determined by measuring along a straight line the  
26 distance from the tip of the snout with the mouth closed to the middle of the fork  
27 in the caudal (tail) fin, except that fork length for billfish is measured from the tip  
28 of the lower jaw to the middle of the fork of the caudal (tail) fin.
- 29 (iii) "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal  
30 insertion of the pectoral fin to the fork of the tail measured along the contour of  
31 the body in a line that runs along the top of the pectoral fin and the top of the  
32 caudal keel.
- 33 (iv) "Total length" means a length determined by measuring along a straight line the  
34 distance from the tip of the snout with the mouth closed to the tip of the  
35 compressed caudal (tail) fin.
- 36 (e) "Nongovernmental conservation organization" means an organization whose primary  
37 mission is the conservation of natural resources.

- 1 (f) "Polluted" means any shellfish growing waters as defined in 15A NCAC 18A .0901:
- 2 (i) that are contaminated with fecal material, pathogenic microorganisms, poisonous
- 3 or deleterious substances, or marine biotoxins that render the consumption of
- 4 shellfish from those growing waters hazardous;
- 5 (ii) that have been determined through a sanitary survey as defined in 15A NCAC
- 6 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source
- 7 outfall with public health significance;
- 8 (iii) that have been determined through a sanitary survey as defined in 15A NCAC
- 9 18A .0901 to be in or adjacent to a marina;
- 10 (iv) that have been determined through a sanitary survey as defined in 15A NCAC
- 11 18A .0901 to be impacted by other potential sources of pollution that render the
- 12 consumption of shellfish from those growing waters hazardous; or
- 13 (v) where the Division of Marine Fisheries is unable to complete the monitoring
- 14 necessary to determine the presence of contamination or potential pollution
- 15 sources.
- 16 (g) "Recreational possession limit" means restrictions on size, quantity, season, time period,
- 17 area, means, and methods where take or possession is for a recreational purpose.
- 18 (h) "Recreational quota" means total quantity of fish allocated for harvest for a recreational
- 19 purpose.
- 20 (i) "Regular closed oyster season" means March 31 through October 15, unless amended by
- 21 the Fisheries Director through proclamation authority.
- 22 (j) "Scientific institution" means one of the following entities:
- 23 (i) an educational institution as defined in this Item;
- 24 (ii) a state or federal agency charged with the management of marine or estuarine
- 25 resources; or
- 26 (iii) a professional organization or secondary school working under the direction of,
- 27 or in compliance with mandates from, the entities listed in Sub-items (j)(i) and (ii)
- 28 of this Item.
- 29 (2) fishing activities:
- 30 (a) "Aquaculture operation" means an operation that produces artificially propagated stocks of
- 31 marine or estuarine resources, or other non-native species that may thrive if introduced into
- 32 Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of
- 33 rearing on private bottom (with or without the superadjacent water column) or in a
- 34 controlled environment. A controlled environment provides and maintains throughout the
- 35 rearing process one or more of the following:
- 36 (i) food;
- 37 (ii) predator protection;

- 1 (iii) salinity;
- 2 (iv) temperature controls; or
- 3 (v) water circulation, utilizing technology not found in the natural environment.
- 4 (b) "Attended" means being in a vessel, in the water or on the shore, and immediately available
- 5 to work the gear and be within 100 yards of any gear in use by that person at all times.
- 6 Attended does not include being in a building or structure.
- 7 (c) "Blue crab shedding" means the process whereby a blue crab emerges soft from its former
- 8 hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a
- 9 controlled environment. A controlled environment provides and maintains throughout the
- 10 shedding process one or more of the following:
- 11 (i) food;
- 12 (ii) predator protection;
- 13 (iii) salinity;
- 14 (iv) temperature controls; or
- 15 (v) water circulation, utilizing technology not found in the natural environment. A
- 16 shedding operation does not include transporting pink or red-line peeler crabs to
- 17 a permitted shedding operation.
- 18 (d) "Depuration" means mechanical purification or the removal of adulteration from live
- 19 oysters, clams, or mussels by any artificially controlled means.
- 20 (e) "Long haul operation" means fishing a seine towed between two vessels.
- 21 (f) "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and
- 22 having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
- 23 (g) "Possess" means any actual or constructive holding whether under claim of ownership or
- 24 not.
- 25 (h) "Recreational purpose" means a fishing activity that is not a commercial fishing operation
- 26 as defined in G.S. 113-168.
- 27 (i) ~~"Shellfish marketing from leases and franchises" means the harvest of oysters, clams,~~
- 28 ~~scallops, or mussels from privately held shellfish bottoms and lawful sale of those shellfish~~
- 29 ~~to the public at large or to a licensed shellfish dealer.~~
- 30 (j) ~~"Shellfish planting effort on leases and franchises" means the process of obtaining~~
- 31 ~~authorized cultch materials, seed shellfish, and shellfish stocks from polluted waters and~~
- 32 ~~the placement of those materials on privately held shellfish bottoms for increased shellfish~~
- 33 ~~production.~~
- 34 (k) ~~"Shellfish production on leases and franchises" means:~~
- 35 (i) ~~the culture of oysters, clams, scallops, or mussels on shellfish leases and~~
- 36 ~~franchises from a sublegal harvest size to a marketable size.~~

- 1                                   (ii)     ~~the transplanting (relay) of oysters, clams, scallops, or mussels from areas closed~~  
2                                   ~~due to pollution to shellfish leases and franchises in open waters and the natural~~  
3                                   ~~cleansing of those shellfish.~~
- 4                   (4)(i)     "Swipe net operations" means fishing a seine towed by one vessel.
- 5                   (5)(j)     "Transport" means to ship, carry, or cause to be carried or moved by public or private  
6                                   carrier by land, sea, or air.
- 7                   (6)(k)     "Use" means to employ, set, operate, or permit to be operated or employed.
- 8                   (3)     gear:
- 9                                   (a)     "Bunt net" means the last encircling net of a long haul or swipe net operation constructed  
10                                   of small mesh webbing. The bunt net is used to form a pen or pound from which the catch  
11                                   is dipped or bailed.
- 12                                   (b)     "Channel net" means a net used to take shrimp that is anchored or attached to the bottom  
13                                   at both ends or with one end anchored or attached to the bottom and the other end attached  
14                                   to a vessel.
- 15                                   (c)     "Commercial fishing equipment or gear" means all fishing equipment used in Coastal  
16                                   Fishing Waters except:
- 17   (i)     cast nets;
- 18   (ii)    collapsible crab traps, a trap used for taking crabs with the largest open dimension  
19   no larger than 18 inches and that by design is collapsed at all times when in the  
20   water, except when it is being retrieved from or lowered to the bottom;
- 21   (iii)  dip nets or scoops having a handle not more than eight feet in length and a hoop  
22   or frame to which the net is attached not exceeding 60 inches along the perimeter;
- 23   (iv)  gigs or other pointed implements that are propelled by hand, whether or not the  
24   implement remains in the hand;
- 25   (v)    hand operated rakes no more than 12 inches wide and weighing no more than six  
26   pounds and hand operated tongs;
- 27   (vi)  hook and line, and bait and line equipment other than multiple-hook or multiple-  
28   bait trotline;
- 29   (vii)  landing nets used to assist in taking fish when the initial and primary method of  
30   taking is by the use of hook and line;
- 31   (viii) minnow traps when no more than two are in use;
- 32   (ix)  seines less than 30 feet in length;
- 33   (x)    spears, Hawaiian slings, or similar devices that propel pointed implements by  
34   mechanical means, including elastic tubing or bands, pressurized gas, or similar  
35   means.
- 36                                   (d)     "Corkline" means the support structure a net is attached to that is nearest to the water  
37                                   surface when in use. Corkline length is measured from the outer most mesh knot at one end

- 1 of the corkline following along the line to the outer most mesh knot at the opposite end of  
2 the corkline.
- 3 (e) "Dredge" means a device towed by engine power consisting of a frame, tooth bar or smooth  
4 bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
- 5 (f) "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure  
6 attached to the bottom, at both ends of the net.
- 7 (g) "Fyke net" means an entrapment net supported by a series of internal or external hoops or  
8 frames, with one or more lead or leaders that guide fish to the net mouth. The net has one  
9 or more internal funnel-shaped openings with tapered ends directed inward from the mouth,  
10 through which fish enter the enclosure. The portion of the net designed to hold or trap fish  
11 is completely enclosed in mesh or webbing, except for the openings for fish passage into  
12 or out of the net (funnel area).
- 13 (h) "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills  
14 in its mesh as a result of net design, construction, mesh length, webbing diameter, or  
15 method in which it is used.
- 16 (i) "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest  
17 to the water surface when in use. Headrope length is measured from the outer most mesh  
18 knot at one end of the headrope following along the line to the outer most mesh knot at the  
19 opposite end of the headrope.
- 20 (j) "Hoop net" means an entrapment net supported by a series of internal or external hoops or  
21 frames. The net has one or more internal funnel-shaped openings with tapered ends directed  
22 inward from the mouth, through which fish enter the enclosure. The portion of the net  
23 designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the  
24 openings for fish passage into or out of the net (funnel area).
- 25 (k) "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic,  
26 wire, or similar material set vertically in the water and held in place by stakes or anchors  
27 to guide fish into an enclosure. Lead length is measured from the outer most end of the lead  
28 along the top or bottom line, whichever is longer, to the opposite end of the lead.
- 29 (l) "Mechanical methods for clamming" means dredges, hydraulic clam dredges, stick rakes,  
30 and other rakes when towed by engine power, patent tongs, kicking with propellers or  
31 deflector plates with or without trawls, and any other method that utilizes mechanical  
32 means to harvest clams.
- 33 (m) "Mechanical methods for oystering" means dredges, patent tongs, stick rakes, and other  
34 rakes when towed by engine power, and any other method that utilizes mechanical means  
35 to harvest oysters.
- 36 (n) "Mesh length" means the distance from the inside of one knot to the outside of the opposite  
37 knot, when the net is stretched hand-tight in a manner that closes the mesh opening.

- 1 (o) "Pound net set" means a fish trap consisting of a holding pen, one or more enclosures, lead  
2 or leaders, and stakes or anchors used to support the trap. The holding pen, enclosures, and  
3 lead(s) are not conical, nor are they supported by hoops or frames.
- 4 (p) "Purse gill net" means any gill net used to encircle fish when the net is closed by the use  
5 of a purse line through rings located along the top or bottom line or elsewhere on such net.
- 6 (q) "Seine" means a net set vertically in the water and pulled by hand or power to capture fish  
7 by encirclement and confining fish within itself or against another net, the shore or bank  
8 as a result of net design, construction, mesh length, webbing diameter, or method in which  
9 it is used.
- 10 (4) "Fish habitat areas" means the estuarine and marine areas that support juvenile and adult populations  
11 of fish species, as well as forage species utilized in the food chain. Fish habitats as used in this  
12 definition, are vital for portions of the entire life cycle, including the early growth and development  
13 of fish species. Fish habitats in all Coastal Fishing Waters, as determined through marine and  
14 estuarine survey sampling, include:
- 15 (a) "Anadromous fish nursery areas" means those areas in the riverine and estuarine systems  
16 utilized by post-larval and later juvenile anadromous fish.
- 17 (b) "Anadromous fish spawning areas" means those areas where evidence of spawning of  
18 anadromous fish has been documented in Division sampling records through direct  
19 observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- 20 (c) "Coral" means:
- 21 (i) fire corals and hydrocorals (Class Hydrozoa);  
22 (ii) stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or  
23 (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which  
24 include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.),  
25 and sea pansies (*Renilla* sp.).
- 26 (d) "Intertidal oyster bed" means a formation, regardless of size or shape, formed of shell and  
27 live oysters of varying density.
- 28 (e) "Live rock" means living marine organisms or an assemblage thereof attached to a hard  
29 substrate, excluding mollusk shells, but including dead coral or rock. Living marine  
30 organisms associated with hard bottoms, banks, reefs, and live rock include:
- 31 (i) Coralline algae (Division Rhodophyta);  
32 (ii) *Acetabularia* sp., mermaid's fan and cups (*Udotea* sp.), watercress (*Halimeda* sp.),  
33 green feather, green grape algae (*Caulerpa* sp.)(Division Chlorophyta);  
34 (iii) *Sargassum* sp., *Dictyopteris* sp., *Zonaria* sp. (Division Phaeophyta);  
35 (iv) sponges (Phylum Porifera);



- 1 (v) hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class  
2 Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, Solengastrea  
3 (Class Anthozoa);
- 4 (vi) Bryozoans (Phylum Bryozoa);
- 5 (vii) tube worms (Phylum Annelida), fan worms (Sabellidae), feather duster and  
6 Christmas treeworms (Serpulidae), and sand castle worms (Sabellaridae);
- 7 (viii) mussel banks (Phylum Mollusca: Gastropoda); and
- 8 (ix) acorn barnacles (Arthropoda: Crustacea: Semibalanus sp.).
- 9 (f) "Nursery areas" means areas that for reasons such as food, cover, bottom type, salinity,  
10 temperature, and other factors, young finfish and crustaceans spend the major portion of  
11 their initial growing season. Primary nursery areas are those areas in the estuarine system  
12 where initial post-larval development takes place. These are areas where populations are  
13 uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system  
14 where later juvenile development takes place. Populations are composed of developing  
15 sub-adults of similar size that have migrated from an upstream primary nursery area to the  
16 secondary nursery area located in the middle portion of the estuarine system.
- 17 (g) "Shellfish producing habitats" means historic or existing areas that shellfish, such as clams,  
18 oysters, scallops, mussels, and whelks use to reproduce and survive because of such  
19 favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those  
20 shellfish producing areas closed to shellfish harvest due to pollution.
- 21 (h) "Strategic Habitat Areas" means locations of individual fish habitats or systems of habitats  
22 that provide exceptional habitat functions or that are particularly at risk due to imminent  
23 threats, vulnerability, or rarity.
- 24 (i) "Submerged aquatic vegetation (SAV) habitat" means submerged lands that:
- 25 (i) are vegetated with one or more species of submerged aquatic vegetation including  
26 bushy pondweed or southern naiad (*Najas guadalupensis*), coontail  
27 (*Ceratophyllum demersum*), eelgrass (*Zostera marina*), horned pondweed  
28 (*Zannichellia palustris*), naiads (*Najas* spp.), redhead grass (*Potamogeton*  
29 *perfoliatus*), sago pondweed (*Stuckenia pectinata*, formerly *Potamogeton*  
30 *pectinatus*), shoalgrass (*Halodule wrightii*), slender pondweed (*Potamogeton*  
31 *pusillus*), water stargrass (*Heteranthera dubia*), water starwort (*Callitriche*  
32 *heterophylla*), waterweeds (*Elodea* spp.), widgeongrass (*Ruppia maritima*), and  
33 wild celery (*Vallisneria americana*). These areas may be identified by the presence  
34 of above-ground leaves, below-ground rhizomes, or reproductive structures  
35 associated with one or more SAV species and include the sediment within these  
36 areas; or

1 (ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i)  
2 of this Rule within the past 10 annual growing seasons and that meet the average  
3 physical requirements of water depth (six feet or less), average light availability  
4 (secchi depth of one foot or more), and limited wave exposure that characterize  
5 the environment suitable for growth of SAV. The past presence of SAV may be  
6 demonstrated by aerial photography, SAV survey, map, or other documentation.  
7 An extension of the past 10 annual growing seasons criteria may be considered  
8 when average environmental conditions are altered by drought, rainfall, or storm  
9 force winds.

10 This habitat occurs in both subtidal and intertidal zones and may occur in isolated patches  
11 or cover extensive areas. In defining SAV habitat, the Marine Fisheries Commission  
12 recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not  
13 intend the submerged aquatic vegetation definition, or this Rule or 15A NCAC 03K .0304  
14 and .0404, to apply to or conflict with the non-development control activities authorized  
15 by that Act.

16 (5) licenses, permits, leases and franchises, and record keeping:

- 17 (a) "Assignment" means temporary transferal to another person of privileges under a license  
18 for which assignment is permitted. The person assigning the license delegates the privileges  
19 permitted under the license to be exercised by the assignee, but retains the power to revoke  
20 the assignment at any time, and is still the responsible party for the license.
- 21 (b) "Designee" means any person who is under the direct control of the permittee or who is  
22 employed by or under contract to the permittee for the purposes authorized by the permit.
- 23 (c) "For hire vessel", as defined by G.S. 113-174, means when the vessel is fishing in State  
24 waters or when the vessel originates from or returns to a North Carolina port.
- 25 (d) "Franchise" means a franchise recognized pursuant to G.S. 113-206.
- 26 (e) "Holder" means a person who has been lawfully issued in the person's name a license,  
27 permit, franchise, lease, or assignment.
- 28 (f) "Land" means:
- 29 (i) for commercial fishing operations, when fish reach the shore or a structure  
30 connected to the shore.
- 31 (ii) for purposes of trip tickets, when fish reach a licensed seafood dealer, or where  
32 the fisherman is the dealer, when fish reach the shore or a structure connected to  
33 the shore.
- 34 (iii) for recreational fishing operations, when fish are retained in possession by the  
35 fisherman.
- 36 (g) "Licensee" means any person holding a valid license from the Department to take or deal  
37 in marine fisheries resources.

- 1 (h) "Logbook" means paper forms provided by the Division and electronic data files generated  
2 from software provided by the Division for the reporting of fisheries statistics by persons  
3 engaged in commercial or recreational fishing or for-hire operators.
- 4 (i) "Master" means captain or operator of a vessel or one who commands and has control,  
5 authority, or power over a vessel.
- 6 (j) "New fish dealer" means any fish dealer making application for a fish dealer license who  
7 did not possess a valid dealer license for the previous license year in that name. For  
8 purposes of license issuance, adding new categories to an existing fish dealers license does  
9 not constitute a new dealer.
- 10 (k) "Office of the Division" means physical locations of the Division conducting license and  
11 permit transactions in Wilmington, ~~Morehead City,~~ Washington, ~~Morehead City,~~ ~~Roanoke~~  
12 ~~Island,~~ and ~~Elizabeth City,~~ and ~~Roanoke Island,~~ North Carolina. Other businesses or  
13 entities designated by the Secretary to issue Recreational Commercial Gear Licenses or  
14 Coastal Recreational Fishing Licenses are not considered Offices of the Division.
- 15 (l) "Responsible party" means the person who coordinates, supervises, or otherwise directs  
16 operations of a business entity, such as a corporate officer or executive level supervisor of  
17 business operations, and the person responsible for use of the issued license in compliance  
18 with applicable statutes and rules.
- 19 (m) "Tournament organizer" means the person who coordinates, supervises, or otherwise  
20 directs a recreational fishing tournament and is the holder of the Recreational Fishing  
21 Tournament License.
- 22 (n) "Transaction" means an act of doing business such that fish are sold, offered for sale,  
23 exchanged, bartered, distributed, or landed.
- 24 (o) "Transfer" means permanent transferal to another person of privileges under a license for  
25 which transfer is permitted. The person transferring the license retains no rights or interest  
26 under the license transferred.
- 27 (p) "Trip ticket" means paper forms provided by the Division and electronic data files  
28 generated from software provided by the Division for the reporting of fisheries statistics  
29 by licensed fish dealers.

30  
31 *History Note: Authority G.S. 113-134; 113-174; 113-182; 143B-289.52;*  
32 *Eff. January 1, 1991;*  
33 *Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993;*  
34 *Recodified from 15A NCAC 03I .0001 Eff. December 17, 1996;*  
35 *Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997;*  
36 *Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999;*  
37 *Amended Eff. August 1, 2000;*

1                    *Temporary Amendment Eff. August 1, 2000;*  
2                    *Amended Eff. May 1, 2015; April 1, 2014; April 1, 2011; April 1, 2009; October 1, 2008; December*  
3                    *1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001;*  
4                    *Readopted Eff. June 1, 2022;*  
5                    *Amended Eff. (Pending legislative review of 15A NCAC 03O .0201).*

1 15A NCAC 03K .0101 is readopted with changes as published in 36:07 NCR 470 as follows:

2 15A NCAC 03K .0101 is proposed for amendment as follows:

3  
4 **SUBCHAPTER 03K - OYSTERS, CLAMS, ~~SCALLOPS~~ SCALLOPS, AND MUSSELS**

5  
6 **SECTION .0100 – SHELLFISH, GENERAL**

7  
8 **15A NCAC 03K .0101 PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH**  
9 **AREAS/ACTIVITIES AREAS**

10 (a) It ~~is shall be~~ unlawful to possess, sell, or take oysters, ~~clams-clams,~~ or mussels from areas ~~which-that~~ have been  
11 designated as ~~prohibited (polluted)-polluted~~ by proclamation by the Fisheries Director except as provided in ~~15A~~  
12 ~~NCAC 03K Rules .0103, .0104, .0107, and .0401-.0401~~ of this Subchapter. The Fisheries Director shall issue ~~such~~  
13 ~~shellfish polluted area~~ proclamations ~~upon notice by the Division of Environmental Health that duly adopted if~~ criteria  
14 for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have not been met. The Fisheries  
15 Director may reopen any such closed area ~~upon notification from the Division of Environmental Health that duly~~  
16 ~~adopted by proclamation if~~ criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900  
17 have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of  
18 Marine Fisheries, 3441 Arendell ~~St., Street,~~ P.O. Box 769, Morehead City, NC 28557; 800-682-2632 or 252-(252)  
19 726-7021.

20  
21 [VERSION OF PARAGRAPH (a) AFTER READOPTION CHANGES, PROPOSED FOR FURTHER  
22 AMENDMENT:]

23 (a) It shall be unlawful to possess, sell, or take oysters, clams, or mussels from areas that have been designated as  
24 polluted by proclamation by the Fisheries Director ~~except as provided in Rules .0103, .0104, .0107, and .0401 of this~~  
25 ~~Subchapter. except prior to taking such shellfish, in accordance with:~~

- 26 (1) a Depuration Permit as set forth in Rule .0107 of this Section;  
27 (2) an Aquaculture Seed Transplant Permit; or  
28 (3) a Shellfish Relocation Permit. The Fisheries Director may, by proclamation, designate sites for  
29 relocation where shellfish would otherwise be destroyed due to maintenance dredging, construction,  
30 or other development activities.

31 Individuals shall obtain an Aquaculture Seed Transport Permit from the Secretary, or a Depuration Permit or a  
32 Shellfish Relocation Permit from the Fisheries Director setting forth the time, area, and method by which such shellfish  
33 may be taken. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

34 (b) The Fisheries Director shall issue shellfish polluted area proclamations if criteria for approved shellfish harvest  
35 areas in accordance with 15A NCAC 18A .0900 have not been met. The Fisheries Director may reopen any such  
36 closed area by proclamation if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900

1 have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of  
2 Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557; 800-682-2632 or 252-726-7021.

3 \_\_\_\_\_  
4 ~~(b)(c)~~ The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, ~~scallops~~ scallops, and  
5 mussels ~~in order~~ to protect the shellfish populations for management purposes or for protection of public health  
6 purposes related to the public health programs that fall under the authority of the Marine Fisheries Commission not  
7 specified in ~~Paragraph (a)~~ Paragraphs (a) or (b) of this Rule.

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

10  
11 *History Note:* Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; ~~113-221;~~ 113-203; 113-221.1; 113-221.2;  
12 143B-289.52;  
13 *Eff. January 1, 1991;*  
14 *Amended Eff. July 1, 1993;*  
15 *Temporary Amendment Eff. July 1, 1999;*  
16 *Amended Eff. August 1, 2000;*  
17 *Temporary Amendment Eff. October 1, 2001;*  
18 *Amended Eff. October 1, 2008; April 1, 2003;*  
19 *Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*  
20 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03K .0104 is readopted as published in 36:07 NCR 471 as follows:

2 15A NCAC 03K .0104 is proposed for repeal as follows: [ENTIRE BODY OF READOPTED RULE WILL BE  
3 STRUCK THROUGH]

4  
5 **15A NCAC 03K .0104 PERMITS FOR ~~PLANTING~~ RELAYING SHELLFISH FROM**  
6 **PROHIBITED/POLLUTED/POLLUTED AREAS**

7 (a) It ~~is shall be~~ unlawful to take ~~oysters or clams shellfish~~ from ~~prohibited (polluted) polluted~~ public waters ~~or~~  
8 ~~franchises~~ for planting on ~~shellfish~~ leases and franchises except as authorized by G.S. 113-203. ~~Lease Shellfish lease~~  
9 and franchise holders shall first obtain a ~~relay~~ permit from the Fisheries Director setting forth the time, area, and  
10 method by which such shellfish may be taken. The procedures and requirements for obtaining permits are found in  
11 15A NCAC 03O .0500.

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

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

15 (b)(d) ~~The season for relaying clams shall be between April 1 and May 15 and the season for relaying oysters shellfish~~  
16 ~~shall be for may occur within~~ a specified six week period between the date of the statewide closure of oyster season  
17 and June 30, as determined by the Fisheries Director based on ~~the following factors:~~

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

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

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

32  
33 *History Note: Authority G.S. 113-134; 113-182; 113-203; ~~113-221; 113-221.1; 143B-289.52;~~*

34 *Eff. January 1, 1991;*

35 *Amended Eff. March 1, 1996; September 1, 1991;*

36 *Temporary Amendment Eff. October 1, 2001;*

37 *Amended Eff. April 1, 2003;*

1  
2

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



1 15A NCAC 03K .0301 is readopted with changes as published in 36:07 NCR 475 as follows:

2 15A NCAC 03K .0301 is proposed for amendment as follows: [FOLLOWING READOPTION OF RULE,  
3 SUBPARAGRAPH (b)(3) IN ITS ENTIRETY WILL BE STRUCK THROUGH. SUBPARAGRAPHS (b)(1) and  
4 (b)(2) WILL BE JOINED BY "OR".]

5  
6 **SECTION .0300 - HARD CLAMS (MERCENARIA)**  
7

8 **15A NCAC 03K .0301 SIZE AND HARVEST ~~LIMIT~~LIMITS OF CLAMS**

9 (a) It ~~is shall be~~ unlawful to take, land, or possess aboard a vessel more than 6,250 hard clams per commercial fishing  
10 operation from public bottom in internal waters. It ~~is shall be~~ unlawful to take, possess, sell, or purchase any clams  
11 (except Rangia or freshwater clams) less than one inch thick except in accordance with ~~15A NCAC 3K .0305(b)-Rule~~  
12 .0305 of this Section. Clams shall be culled where harvested and all clams of less than legal size with their shell, shall  
13 be immediately returned to the bottom from which ~~[it was ]they were~~ taken. ~~Agents of the Fisheries Director are in~~  
14 determining whether the size and harvest limits have been exceeded, Marine Fisheries Inspectors shall be authorized  
15 and empowered to grade all, or any portion, or any combination of portions of the entire quantity ~~of clams~~ being  
16 ~~graded-graded,~~ and in cases of violations, may seize and return to public bottom or ~~other disposition-otherwise dispose~~  
17 of the clams as authorized by law ~~of~~ the entire quantity being graded or any portion thereof.

18 (b) Size and harvest limits established in Paragraph (a) of this Rule and the season and area limitations established in  
19 ~~15A NCAC 3K .0302 Rule .0302 of this Section may or~~ may not ~~apply:apply for:~~

- 20 (1) ~~For harvest limits for~~ temporary openings ~~made upon the recommendation of Division of~~  
21 Environmental Health, consistent with the requirements of 15A NCAC 18A .0900 and the North  
22 Carolina Hard Clam Fishery Management Plan;  
23 (2) ~~For~~ maintenance dredging operations, when clams would otherwise be destroyed, upon approval by  
24 the Division of Marine Fisheries and consistent with the North Carolina Hard Clam Fishery  
25 Management Plan; or  
26 (3) ~~For~~ relaying of ~~polluted~~ clams from polluted waters to private shellfish ~~bottoms-bottom~~ as permitted  
27 by 15A NCAC 3K .0104.Rule .0104 of this Subchapter.  
28

29 *History Note:* Authority G.S. 113-134; 113-136; 113-137; 113-182; 113-221; 113-221.2; 143B-289.52;  
30 Eff. January 1, 1991;  
31 Amended Eff. March 1, 1994;  
32 Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).  
33 Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).

1 15A NCAC 03K .0401 is readopted as published in 36:07 NCR 476 as follows:  
2 15A NCAC 03K .0401 is proposed for repeal as follows: [ENTIRE BODY OF READOPTED RULE WILL BE  
3 STRUCK THROUGH]  
4

5 **SECTION .0400 - RANGIA CLAMS**  
6

7 **15A NCAC 03K .0401 ~~PROHIBITED (POLLUTED) POLLUTED AREA PERMIT~~**  
8 **REQUIREMENTREQUIREMENTS**

9 It ~~is shall be~~ unlawful to take Rangia clams or their shells by any method from ~~prohibited (polluted) polluted~~ waters  
10 without first ~~securing-obtaining~~ a Permit to Harvest Rangia Clams from ~~Prohibited (Polluted) Polluted~~ Areas from the  
11 Fisheries Director. The permit application shall include a list of all designees operating under the permit. ~~Such-The~~  
12 permit shall designate the area, means and methods, and ~~time(s)-times~~ in which Rangia clams may be taken. The  
13 permit applicant shall designate the licensed fish dealer where the Rangia clams are to be landed and the method for  
14 disposing of Rangia clam meats. The procedures and requirements for obtaining permits are found in 15A NCAC 03O  
15 .0500.  
16

17 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52;*

18 *Eff. January 1, 1991;*

19 *Amended Eff. August 1, 2004;*

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

21 *Repealed Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03K .0403 is proposed for repeal as follows:

2

3 **15A NCAC 03K .0403 DISPOSITION OF MEATS**

4 ~~It shall be unlawful to dispose of meats from Rangia clams taken from prohibited (polluted) waters by a method that~~  
5 ~~will result in human consumption or create risk of human consumption.~~

6

7 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-298.52;*

8 *Eff. January 1, 1991;*

9 *Amended Eff. August 1, 2004;*

10 *Readopted Eff. April 1, 2019;*

11 *Repealed Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03K .0405 is proposed for repeal as follows:

2

3 **15A NCAC 03K .0405 OYSTERS, HARD CLAMS, OR MUSSELS PROHIBITED**

4 ~~It shall be unlawful to possess oysters, hard clams, or mussels while taking Rangia clams or their shells from a~~  
5 ~~prohibited (polluted) area.~~

6

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

8 *Eff. August 1, 2004;*

9 *Readopted Eff. April 1, 2019;*

10 *Repealed Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03O .0201 is proposed for amendment as follows:

2  
3 **SECTION .0200 – SHELLFISH LEASES AND FRANCHISES**

4  
5 **15A NCAC 03O .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH LEASES AND**  
6 **FRANCHISES**

7 (a) For the purpose of this Section:

- 8 (1) "extensive shellfish culture" shall mean shellfish grown on the bottom without the use of cages,  
9 racks, bags, or floats.
- 10 (2) "intensive shellfish culture" shall mean shellfish grown on the bottom or in the water column using  
11 cages, racks, bags, or floats.
- 12 (3) "plant" shall mean providing evidence of purchasing shellfish seed or planting shellfish seed or  
13 authorized cultch materials on a shellfish lease or franchise.
- 14 (4) "produce" shall mean the culture and harvest of oysters, clams, scallops, or mussels from a shellfish  
15 lease or franchise and lawful sale of those shellfish to the public at large or to a licensed shellfish  
16 dealer.

17 ~~(a)~~(b) All areas of the public bottom underlying Coastal Fishing Waters shall meet the following standards and  
18 requirements, in addition to the standards in G.S. 113-202, in order to be deemed suitable for leasing for shellfish  
19 aquaculture purposes:

- 20 (1) the proposed shellfish lease area shall not contain a "natural shellfish bed," as defined in G.S. 113-  
21 201.1, or have 10 bushels or more of shellfish per acre;
- 22 (2) the proposed shellfish lease area shall not be closer than 250 feet from a developed shoreline or a  
23 water-dependent shore-based structure, except no minimum setback is required when the area to be  
24 leased borders the applicant's property, the property of "riparian owners" as defined in G.S. 113-  
25 201.1 who have consented in a notarized statement, or is in an area bordered by undeveloped  
26 shoreline. For the ~~purposes~~purpose of this Rule, a water-dependent shore-based structure shall  
27 include docks, wharves, boat ramps, bridges, bulkheads, and groins;
- 28 (3) the proposed shellfish lease area shall not be closer than 250 feet to an existing lease;
- 29 (4) the proposed shellfish lease area, either alone or when considered cumulatively with other existing  
30 ~~leases in the area,~~lease areas in the vicinity, shall not interfere with navigation or with existing,  
31 traditional uses of the area; and
- 32 (5) the proposed shellfish lease area shall not be less than one-half acre and shall not exceed 10 acres.

33 ~~(b)~~(c) To be suitable for leasing for shellfish aquaculture purposes, shellfish water column leases superjacent to a  
34 shellfish bottom lease shall meet the standards in G.S. 113-202.1 and shellfish water column leases superjacent to  
35 franchises ~~recognized pursuant to G.S. 113-206~~ shall meet the standards in G.S. 113-202.2.

1 ~~(e)(d)~~ Franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases Shellfish bottom leases and  
2 franchises granted on or before July 1, 2019 shall be terminated unless they meet the following requirements, in  
3 addition to the standards in and as allowed by G.S. 113-202:

- 4 (1) they produce ~~and market~~ 10 bushels of shellfish per acre per year; and
- 5 (2) they are planted with 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre  
6 per year, or a combination of cultch and seed shellfish where the percentage of required cultch  
7 planted and the percentage of required seed shellfish planted totals at least 100 percent.

8 ~~(d)(e)~~ Shellfish water column leases granted on or before July 1, 2019 shall be terminated unless they meet the  
9 following requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and G.S. 113-202.2:

- 10 (1) they produce ~~and market~~ 40 bushels of shellfish per acre per year; or
- 11 (2) the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.

12 (f) Shellfish bottom leases and franchises granted after July 1, 2019 shall be terminated unless they meet the following  
13 requirements, in addition to the standards in and as allowed by G.S. 113-202:

- 14 (1) they produce a minimum of 20 bushels of shellfish per acre averaged over the previous three-year  
15 period beginning in year five of the shellfish bottom lease or franchise; or
- 16 (2) for intensive culture bottom operations, the holder of the shellfish bottom lease or franchise provides  
17 evidence of purchasing a minimum of 23,000 shellfish seed per acre annually and for extensive  
18 culture bottom operations, the holder of the lease or franchise plants a minimum of 15,000 shellfish  
19 seed per acre per year.

20 (g) Shellfish water column leases granted after July 1, 2019 shall be terminated unless they meet the following  
21 requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and 113-202.2:

- 22 (1) they produce a minimum of 50 bushels of shellfish per acre averaged over the previous three-year  
23 period beginning in year five of the shellfish water column lease; or
- 24 (2) the holder of the shellfish water column lease provides evidence of purchasing a minimum of 23,000  
25 shellfish seed per acre annually.

26 ~~(e)(h)~~ The following standards shall be applied to determine compliance with Paragraphs (e) and (d)-(d), (e), (f), and  
27 (g) of this Rule:

- 28 (1) ~~Only~~ only shellfish ~~marketed, planted, planted~~ or produced as defined in ~~15A NCAC 031.0101~~ as  
29 the fishing activities "~~shellfish marketing from leases and franchises,~~" "~~shellfish planting effort on~~  
30 ~~leases and franchises,~~" or "~~shellfish production on leases and franchises~~" Paragraph (a) of this Rule  
31 shall be included in the annual shellfish lease and franchise production reports required by Rule  
32 .0207 of this Section.
- 33 (2) ~~If~~ if more than one shellfish lease or franchise is used in the production of shellfish, one of the leases  
34 or franchises used in the production of the shellfish shall be designated as the producing lease or  
35 franchise for those shellfish. Each bushel of shellfish shall be produced by only one shellfish lease  
36 or franchise. Shellfish transplanted between shellfish leases or franchises shall be credited as  
37 planting effort on only one lease or franchise.

1 (3) ~~Production and marketing production~~ information and planting effort information shall be compiled  
2 and averaged separately to assess compliance with the requirements of this Rule. ~~The shellfish lease~~  
3 ~~or franchise~~ Shellfish bottom leases and franchises granted on or before July 1, 2019 shall meet both  
4 the production requirement and the planting effort requirement within the dates set forth in G.S.  
5 113-202.1 and G.S. 113-202.2 to be deemed in ~~compliance for shellfish bottom leases. The shellfish~~  
6 ~~lease or franchise~~ compliance. Shellfish bottom leases and franchises granted after July 1, 2019 and  
7 shellfish water column leases shall meet either the production requirement or the planting effort  
8 requirement within the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in  
9 ~~compliance for shellfish water column leases.~~ compliance.

10 (4) ~~All~~ all bushel measurements shall be in standard U.S. bushels.

11 (5) ~~In~~ in determining production and marketing averages and planting effort averages for information  
12 not reported in bushel measurements, the following conversion factors shall be used:

13 (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and

14 (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds  
15 of fossil stone equal one bushel.

16 (6) ~~Production and marketing production~~ rate averages shall be computed irrespective of transfer of the  
17 shellfish lease or franchise. The production ~~and marketing~~ rates shall be averaged for the following  
18 situations using the time periods described:

19 (A) for an initial shellfish bottom lease or franchise, over the consecutive full calendar years  
20 remaining on the bottom lease or franchise contract after December 31 following the  
21 second anniversary of the initial bottom lease or franchise;

22 (B) for a renewal shellfish bottom lease or franchise, over the consecutive full calendar years  
23 beginning January 1 of the final year of the previous bottom lease or franchise term and  
24 ending December 31 of the final year of the current bottom lease or franchise contract;

25 (C) for a shellfish water column lease, over the first five-year period for an initial water column  
26 lease and over the most recent five-year period thereafter for a renewal water column lease;  
27 or

28 (D) for a shellfish bottom lease or franchise issued an extension period under Rule .0208 of  
29 this Section, over the most recent five-year period.

30 (7) ~~In~~ in the event that a portion of an existing shellfish lease or franchise is obtained by a new lease or  
31 franchise holder, the production history for the portion obtained shall be a percentage of the  
32 originating lease or franchise production equal to the percentage of the area of lease or franchise site  
33 obtained to the area of the originating lease or franchise.

34 ~~(f)(i) Persons~~ To be eligible for additional shellfish lease acreage, persons holding five or more any acres under ~~all a~~  
35 ~~shellfish bottom leases and franchises combined~~ lease or franchise shall meet the requirements established ~~in~~  
36 ~~Paragraph (e) of this Rule before submitting an application for additional shellfish lease acreage to the Division of~~  
37 Marine Fisheries in:

1           (1)     Paragraphs (d), (e), (f), and (g) of this Rule;

2           (2)     Rule .0204 of this Section; and

3           (3)     Rule .0503(a) of this Subchapter.

4

5     *History Note:     Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206;*  
6                     *143B-289.52; S.L. 2019-37, s. 3;*

7                     *Eff. January 1, 1991;*

8                     *Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; September 1, 1991;*

9                     *Temporary Amendment Eff. October 1, 2001;*

10                    *Amended Eff. May 1, 2017; October 1, 2008; April 1, 2003;*

11                    *Readopted Eff. August 23, 2022;*

12                    *Amended Eff. (Pending legislative review pursuant to S.L. 2019-37).*



1 15A NCAC 03O .0501 is proposed for amendment as follows:  
2

3 **SECTION .0500 - PERMITS**  
4

5 **15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS**

6 (a) To obtain a Division of Marine Fisheries permit, an applicant, responsible party, or person holding a power of  
7 attorney shall provide the following information:

- 8 (1) the full name, physical address, mailing address, date of birth, and signature of the applicant on the  
9 application and, if the applicant is not appearing before a license agent or the designated Division  
10 of Marine Fisheries contact, the applicant's signature on the application shall be notarized;
- 11 (2) a current picture identification of the applicant, responsible party, or person holding a power of  
12 attorney, acceptable forms of which shall include driver's license, North Carolina Identification card  
13 issued by the North Carolina Division of Motor Vehicles, military identification card, resident alien  
14 card (green card), or passport or, if applying by mail, a copy thereof;
- 15 (3) for permits that require a list of designees, the full names and dates of birth of the designees of the  
16 applicant who will be acting pursuant to the requested permit;
- 17 (4) certification that the applicant and his or her designees do not have four or more marine or estuarine  
18 resource convictions during the previous three years;
- 19 (5) for permit applications from business entities:
- 20 (A) the business name;
- 21 (B) the type of business entity: corporation, "educational institution" as defined in 15A NCAC  
22 03I .0101, limited liability company (LLC), partnership, or sole proprietorship;
- 23 (C) the name, address, and phone number of responsible party and other identifying  
24 information required by this Subchapter or rules related to a specific permit;
- 25 (D) for a corporation applying for a permit in a corporate name, the current articles of  
26 incorporation and a current list of corporate officers;
- 27 (E) for a partnership that is established by a written partnership agreement, a current copy of  
28 such agreement shall be provided when applying for a permit; and
- 29 (F) for business entities other than corporations, copies of current assumed name statements if  
30 filed with the Register of Deeds office for the corresponding county and copies of current  
31 business privilege tax certificates, if applicable; and
- 32 (6) additional information as required for specific permits.

33 (b) A permittee shall hold a valid:

- 34 (1) Standard or Retired Standard Commercial Fishing License in order to hold:
- 35 (A) an Atlantic Ocean Striped Bass Commercial Gear Permit;
- 36 (B) a Permit for Weekend Trawling for Live Shrimp; or
- 37 (C) a Pound Net Set Permit.

1 The master designated on the single vessel corporation Standard Commercial Fishing License is the  
2 individual required to hold the Permit for Weekend Trawling for Live Shrimp.

3 (2) Fish Dealer License in the proper category in order to hold dealer permits for monitoring fisheries  
4 under a quota or allocation for that category.

5 (c) An individual who is assigned a valid Standard Commercial Fishing License with applicable endorsements shall  
6 be eligible to hold any permit that requires a Standard Commercial Fishing License except a Pound Net Set Permit.

7 (d) If mechanical methods to take shellfish are used, a permittee and his designees shall hold a valid Standard or  
8 Retired Standard Commercial Fishing License with a Shellfish Endorsement in order for a permittee to hold a:

9 (1) Depuration Permit;

10 ~~(2) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;~~

11 ~~(3)(2) Permit to Transplant Oysters from Seed Oyster Management Areas; or~~

12 ~~(4) Permit to Transplant Prohibited (Polluted) Shellfish; or~~

13 ~~(5)(3) Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises, except as~~  
14 provided in G.S. 113-169.2.

15 (e) If mechanical methods to take shellfish are not used, a permittee and his designees shall hold a valid Standard or  
16 Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order for a  
17 permittee to hold a:

18 (1) Depuration Permit; or

19 ~~(2) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;~~

20 ~~(3)(2) Permit to Transplant Oysters from Seed Oyster Management Areas; or Areas.~~

21 ~~(4) Permit to Transplant Prohibited (Polluted) Shellfish.~~

22 (f) Aquaculture Operation Permit and Aquaculture Collection Permit:

23 (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold  
24 an Aquaculture Collection Permit.

25 (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for  
26 the species harvested and the gear used under the Aquaculture Collection Permit.

27 (g) Atlantic Ocean Striped Bass Commercial Gear Permit:

28 (1) An applicant for an Atlantic Ocean Striped Bass Commercial Gear Permit shall declare one of the  
29 following types of gear for an initial permit and at intervals of three consecutive license years  
30 thereafter:

31 (A) a gill net;

32 (B) a trawl net; or

33 (C) a beach seine.

34 For the purpose of this Rule, a "beach seine" shall mean a swipe net constructed of multi-filament  
35 or multi-fiber webbing fished from the ocean beach that is deployed from a vessel launched from  
36 the ocean beach where the fishing operation takes place. Gear declarations shall be binding on the  
37 permittee for three consecutive license years without regard to subsequent annual permit issuance.

1 (2) A person is not eligible for more than one Atlantic Ocean Striped Bass Commercial Gear Permit  
2 regardless of the number of Standard Commercial Fishing Licenses, Retired Standard Commercial  
3 Fishing Licenses, or assignments held by that person.

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

7 (i) A permit shall be issued only after the application is deemed complete and the applicant certifies his or her  
8 agreement to abide by the permit general and specific conditions established under 15A NCAC 03J .0501, .0505, 03K  
9 ~~.0103, .0104, .0107, .0111, .0401, .0501 and .0505, 03K .0103 and .0107, Rule .0211 of this Subchapter~~, and Rules  
10 .0502 and .0503 of this Section, as applicable to the requested permit.

11 (j) In determining whether to issue, modify, or renew a permit, the Fisheries Director or his or her agent shall evaluate  
12 factors such as the following:

- 13 (1) potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries  
14 Commission;
- 15 (2) the applicant's demonstration of a valid justification for the permit; and
- 16 (3) whether the applicant has a history of eight or more fisheries violations within 10 years.

17 (k) The Division of Marine Fisheries shall notify the applicant in writing of the denial or modification of any permit  
18 request and the reasons therefor. The applicant may submit further information or reasons why the permit should not  
19 be denied or modified.

20 (l) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise  
21 established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of  
22 permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration  
23 of the activity, compliance with federal or State fishery management plans or implementing rules, conflicts with other  
24 fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.

25 (m) For permit renewals, the permittee's signature on the application shall certify all information is true and accurate.  
26 Notarized signatures on renewal applications shall not be required.

27 (n) It shall be unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change  
28 of name or address, in accordance with G.S. 113-169.2.

29 (o) It shall be unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee  
30 prior to use of the permit by that designee.

31 (p) Permit applications shall be available at all Division of Marine Fisheries offices.

32  
33 *History Note: Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52;*  
34 *Temporary Adoption Eff. September 1, 2000; May 1, 2000;*  
35 *Eff. April 1, 2001;*  
36 *Temporary Amendment Eff. October 1, 2001;*

1 *Amended Eff. May 1, 2017; May 1, 2015; April 1, 2011; April 1, 2009; July 1, 2008; December 1,*  
2 *2007; September 1, 2005; April 1, 2003; August 1, 2002;*  
3 *Readopted Eff. April 1, 2019;*  
4 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03O .0503 is proposed for amendment as follows:

2  
3 **15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC**

4 (a) Aquaculture Operation Permit and Aquaculture Collection Permit:

5 (1) It shall be unlawful to conduct aquaculture operations using marine and estuarine resources without  
6 first securing an Aquaculture Operation Permit from the Fisheries Director.

7 (2) It shall be unlawful:

8 (A) to take marine and estuarine resources from Coastal Fishing Waters for aquaculture  
9 purposes without first obtaining an Aquaculture Collection Permit from the Fisheries  
10 Director;

11 (B) to sell or use for any purpose not related to North Carolina aquaculture marine and estuarine  
12 resources taken pursuant to an Aquaculture Collection Permit; or

13 (C) to fail to submit to the Fisheries Director an annual report, due on December 1 of each year  
14 on the form provided by the Division of Marine Fisheries, stating the amount and  
15 disposition of marine and estuarine resources collected under authority of an Aquaculture  
16 Collection Permit.

17 ~~(3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 shall  
18 be exempt from requirements to have an Aquaculture Operation Permit or Aquaculture Collection  
19 Permit issued by the Fisheries Director.~~

20 ~~(4)~~(3) Aquaculture Operation Permits and Aquaculture Collection Permits shall be issued or renewed on  
21 a calendar year basis.

22 ~~(5)~~(4) It shall be unlawful to fail to provide the Division with a listing of all designees acting pursuant to  
23 an Aquaculture Collection Permit at the time of application.

24 (b) Atlantic Ocean Striped Bass Commercial Gear Permit:

25 (1) It shall be unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation  
26 without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.

27 (2) It shall be unlawful to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit  
28 during a license year, regardless of the number of Standard Commercial Fishing licenses, Retired  
29 Standard Commercial Fishing licenses, or assignments.

30 (c) Blue Crab Shedding Permit: It shall be unlawful to possess more than 50 blue crabs in a shedding operation  
31 without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.

32 (d) Coastal Recreational Fishing License Exemption Permit:

33 (1) It shall be unlawful for the responsible party seeking exemption from recreational fishing license  
34 requirements for eligible individuals to conduct an organized fishing event held in Joint or Coastal  
35 Fishing Waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.

1 (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational  
2 fishing activity conducted solely for the participation and benefit of one of the following groups of  
3 eligible individuals:

4 (A) individuals with physical or mental impairment;

5 (B) members of the United States Armed Forces and their dependents, upon presentation of a  
6 valid military identification card;

7 (C) individuals receiving instruction on recreational fishing techniques and conservation  
8 practices from employees of state or federal marine or estuarine resource management  
9 agencies or instructors affiliated with educational institutions; and

10 (D) disadvantaged youths as set forth in 42 U.S. Code 12511.

11 For the purpose of this Paragraph, educational institutions include high schools and other secondary  
12 educational institutions.

13 (3) The Coastal Recreational Fishing License Exemption Permit shall be valid for the date, time, and  
14 physical location of the organized fishing event for which the exemption is granted and the duration  
15 of the permit shall not exceed one year from the date of issuance.

16 (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued if all of the  
17 following, in addition to the information required in Rule .0501 of this Section, is submitted to the  
18 Fisheries Director, in writing, at least 30 days prior to the event:

19 (A) the name, date, time, and physical location of the event;

20 (B) documentation that substantiates local, state, or federal involvement in the organized  
21 fishing event, if applicable;

22 (C) the cost or requirements, if any, for an individual to participate in the event; and

23 (D) an estimate of the number of participants.

24 (e) Dealer permits for monitoring fisheries under a quota or allocation:

25 (1) During the commercial season opened by proclamation or rule for the fishery for which a dealer  
26 permit for monitoring fisheries under a quota or allocation shall be issued, it shall be unlawful for a  
27 fish dealer issued such permit to fail to:

28 (A) fax or send via electronic mail by noon daily, on forms provided by the Division of Marine  
29 Fisheries, the previous day's landings for the permitted fishery to the Division. Landings  
30 for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable  
31 to fax or electronically mail the required information, the permittee shall call in the  
32 previous day's landings to the Division;

33 (B) submit the required form set forth in Part (e)(1)(A) of this Rule to the Division upon request  
34 or no later than five days after the close of the season for the fishery permitted;

35 (C) maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;

36 (D) contact the Division daily, regardless of whether a transaction for the fishery for which a  
37 dealer is permitted occurred; and

- 1 (E) record the permanent dealer identification number on the bill of lading or receipt for each  
2 transaction or shipment from the permitted fishery.
- 3 (2) Atlantic Ocean Flounder Dealer Permit:
- 4 (A) It shall be unlawful for a fish dealer to allow vessels holding a valid License to Land  
5 Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single  
6 transaction at their licensed location during the open season without first obtaining an  
7 Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the  
8 Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
- 9 (B) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100  
10 pounds of flounder from a single transaction from the Atlantic Ocean without first  
11 obtaining an Atlantic Ocean Flounder Dealer Permit.
- 12 (3) Black Sea Bass North of Cape Hatteras Dealer Permit: It shall be unlawful for a fish dealer to  
13 purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of  
14 Cape Hatteras (35° 15.0321' N) per day per commercial fishing operation during the open season  
15 unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.
- 16 (4) Spiny Dogfish Dealer Permit: It shall be unlawful for a fish dealer to purchase or possess more than  
17 100 pounds of spiny dogfish per day per commercial fishing operation unless the dealer has a Spiny  
18 Dogfish Dealer Permit.
- 19 (5) Striped Bass Dealer Permit:
- 20 (A) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken  
21 from the following areas without first obtaining a Striped Bass Dealer Permit validated for  
22 the applicable harvest area:
- 23 (i) the Atlantic Ocean;
- 24 (ii) the Albemarle Sound Management Area as designated in 15A NCAC 03R .0201;
- 25 or
- 26 (iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area  
27 as designated in 15A NCAC 03R .0201.
- 28 (B) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest  
29 areas opened by proclamation without having a valid Division of Marine Fisheries-issued  
30 tag for the applicable area affixed through the mouth and gill cover or, in the case of striped  
31 bass imported from other states, a similar tag that is issued for striped bass in the state of  
32 origin. Division striped bass tags shall not be bought, sold, offered for sale, or transferred.  
33 Tags shall be obtained at the Division offices. The Division shall specify the quantity of  
34 tags to be issued based on historical striped bass landings. It shall be unlawful for the  
35 permittee to fail to surrender unused tags to the Division upon request.
- 36 (f) Horseshoe Crab Biomedical Use Permit:
- 37 (1) It shall be unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.

- 1 (2) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to  
2 fail to submit an annual report on the use of horseshoe crabs to the Division of Marine Fisheries,  
3 due on February 1 of each year. Such reports shall be filed on forms provided by the Division and  
4 shall include a monthly account of the number of crabs harvested, a statement of percent mortality  
5 up to the point of release, the harvest method, the number or percent of males and females, and the  
6 disposition of bled crabs prior to release.
- 7 (3) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to  
8 fail to comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management  
9 Plan for Horseshoe Crab. The Atlantic States Marine Fisheries Commission Interstate Fishery  
10 Management Plan for Horseshoe Crab is incorporated by reference including subsequent  
11 amendments and editions. Copies of this plan are available via the Internet from the Atlantic States  
12 Marine Fisheries Commission at <http://www.asmfmc.org/fisheries-management/program-overview>  
13 and at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC  
14 28557, at no cost.

15 (g) Permit for Weekend Trawling for Live Shrimp:

- 16 (1) It shall be unlawful to take shrimp with trawls from 9:00 p.m. on Friday through 12 noon on Saturday  
17 without first obtaining a Permit for Weekend Trawling for Live Shrimp.
- 18 (2) It shall be unlawful for a holder of a Permit for Weekend Trawling for Live Shrimp to use trawls  
19 from 12:01 p.m. on Saturday through 4:59 p.m. on Sunday.
- 20 (3) It shall be unlawful for a permit holder during the timeframe specified in Subparagraph ~~(k)(1)~~(g)(1)  
21 of this Rule to:
- 22 (A) use trawl nets to take live shrimp except from areas open to the harvest of shrimp with  
23 trawls;
- 24 (B) take shrimp with trawls that have a combined headrope length of greater than 40 feet in  
25 Internal Coastal Waters;
- 26 (C) possess more than one gallon of dead shrimp (heads on) per trip;
- 27 (D) fail to have a functioning live bait tank or a combination of multiple functioning live bait  
28 tanks, with aerators or circulating water, with a minimum combined tank capacity of 50  
29 gallons; or
- 30 (E) fail to call the Division of Marine Fisheries Communications Center at 800-682-2632 or  
31 252-726-7021 prior to each weekend use of the permit, specifying activities and location.

32 (h) Pound Net Set Permit: The holder of a Pound Net Set Permit shall follow the Pound Net Set Permit conditions as  
33 set forth in 15A NCAC 03J .0505.

34 (i) Scientific or Educational Activity Permit:

- 35 (1) It shall be unlawful for institutions or agencies seeking exemptions from license, rule, proclamation,  
36 or statutory requirements to collect, hold, culture, or exhibit for scientific or educational purposes  
37 any marine or estuarine species without first obtaining a Scientific or Educational Activity Permit.



- 1 (2) The Scientific or Educational Activity Permit shall only be issued for collection methods and  
2 possession allowances approved by the Division of Marine Fisheries.
- 3 (3) The Scientific or Educational Activity Permit shall only be issued for approved activities conducted  
4 by or under the direction of Scientific or Educational institutions as defined in 15A NCAC 03I .0101.
- 5 (4) It shall be unlawful for the responsible party issued a Scientific or Educational Activity Permit to  
6 fail to submit an annual report on collections and, if authorized, sales to the Division, due on  
7 December 1 of each year, unless otherwise specified on the permit. The reports shall be filed on  
8 forms provided by the Division. Scientific or Educational Activity permits shall be issued on a  
9 calendar year basis.
- 10 (5) It shall be unlawful to sell marine or estuarine species taken under a Scientific or Educational  
11 Activity Permit without:
- 12 (A) the required license for such sale;
- 13 (B) an authorization stated on the permit for such sale; and
- 14 (C) providing the information required by 15A NCAC 03I .0114 if the sale is to a licensed fish  
15 dealer.
- 16 (6) It shall be unlawful to fail to provide the Division with a list of all designees acting under a Scientific  
17 or Educational Activity Permit at the time of application.
- 18 (7) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries  
19 Communications Center at 800-682-2632 or 252-726-7021 not later than 24 hours prior to use of  
20 the permit, specifying activities and location.
- 21 (j) Under Dock Oyster Culture Permit:
- 22 (1) It shall be unlawful to cultivate oysters in containers under docks for personal consumption without  
23 first obtaining an Under Dock Oyster Culture Permit.
- 24 (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth  
25 in G.S. 113-210(c).
- 26 (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct  
27 answers, based on an educational package provided by the Division of Marine Fisheries pursuant to  
28 G.S. 113-210(j), demonstrating the applicant's knowledge of:
- 29 (A) the application process;
- 30 (B) permit criteria;
- 31 (C) basic oyster biology and culture techniques;
- 32 (D) shellfish harvest area closures due to pollution;
- 33 (E) safe handling practices;
- 34 (F) permit conditions; and
- 35 (G) permit revocation criteria.
- 36 (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of  
37 the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.

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*History Note: Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52;*  
*Temporary Adoption Eff. September 1, 2000; August 1, 2000; May 1, 2000;*  
*Eff. April 1, 2001;*  
*Amended Eff. May 1, 2017; May 1, 2015; April 1, 2014; April 1, 2009; July 1, 2008; January 1,*  
*2008; September 1, 2005; October 1, 2004; August 1, 2004; August 1, 2002;*  
*Readopted Eff. April 1, 2019;*  
*Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 18A .0901 is proposed for amendment as follows:  
2

3 **SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS**  
4

5 **15A NCAC 18A .0901 DEFINITIONS**

6 The following definitions shall apply to this Section.

- 7 (1) "Approved" means shellfish growing waters determined suitable by the Division for the harvesting  
8 of shellfish for direct market purposes.
- 9 (2) "Closed-system marina" means a marina constructed in canals, basins, tributaries, or any other area  
10 with restricted tidal flow.
- 11 (3) "Colony forming unit" means an estimate of the number of viable bacteria cells in a sample as  
12 determined by a plate count.
- 13 (4) "Commercial marina" means a marina that offers one or more of the following services: fuel,  
14 transient dockage, haul-out facilities, or repair services.
- 15 (5) "Conditionally approved" means shellfish growing waters that are subject to predictable intermittent  
16 pollution but that may be used for harvesting shellfish for direct market purposes when management  
17 plan criteria are met.
- 18 (6) "Division" means the Division of Marine Fisheries or its authorized agent.
- 19 (7) "Estimated 90<sup>th</sup> percentile" means a statistic that measures the variability in a sample set that shall  
20 be calculated by:
- 21 (a) calculating the arithmetic mean and standard deviation of the sample result logarithms  
22 (base 10);
- 23 (b) multiplying the standard deviation in Sub-Item (a) of this Item by 1.28;
- 24 (c) adding the product from Sub-Item (b) of this Item to the arithmetic mean; and
- 25 (d) taking the antilog (base 10) of the results from Sub-Item (c) of this Item to determine the  
26 estimated 90<sup>th</sup> percentile.
- 27 (8) "Fecal coliform" means bacteria of the coliform group that will produce gas from lactose in a  
28 multiple tube procedure liquid medium (EC or A-1) within 24 plus or minus two hours at 44.5° C  
29 plus or minus 0.2° C in a water bath.
- 30 (9) "Geometric mean" means the antilog (base 10) of the arithmetic mean of the sample result logarithm.
- 31 (10) "Marina" means any water area with a structure (such as a dock, basin, floating dock) that is utilized  
32 for docking or otherwise mooring vessels and constructed to provide temporary or permanent  
33 docking space for more than 10 boats.
- 34 (11) "Marine biotoxins" means any poisonous compound produced by marine microorganisms and  
35 accumulated by shellstock.
- 36 (12) "Median" means the middle number in a given sequence of numbers, taken as the average of the  
37 two middle numbers when the sequence has an even number of numbers.

- 1 (13) "Most probable number (MPN)" means a statistical estimate of the number of bacteria per unit  
2 volume and is determined from the number of positive results in a series of fermentation tubes.
- 3 (14) "National Shellfish Sanitation Program (NSSP)" means the cooperative federal-state-industry  
4 program for the sanitary control of shellfish that is adequate to ensure that the shellfish produced in  
5 accordance with the NSSP Guide For The Control Of Molluscan Shellfish will be safe and sanitary.
- 6 (15) "Open-system marina" means a marina constructed in an area where tidal currents have not been  
7 impeded by natural or man-made barriers.
- 8 (16) "Private marina" means any marina that is not a commercial marina as defined in this Rule.
- 9 (17) "Prohibited" means shellfish growing waters unsuitable for the harvesting of shellfish for direct  
10 market purposes.
- 11 (18) "Public health emergency" means any condition that may immediately cause shellfish waters to be  
12 unsafe for the harvest of shellfish for human consumption.
- 13 (19) "Restricted" means shellfish growing waters from which shellfish may be harvested only by permit  
14 and are subjected to a treatment process through ~~relaying or~~ depuration that renders the shellfish  
15 safe for human consumption.
- 16 (20) "Sanitary survey" means the written evaluation of factors that affect the sanitary quality of a shellfish  
17 growing area including sources of pollution, the effects of wind, tides, and currents in the  
18 distribution and dilution of polluting materials, and the bacteriological quality of water.
- 19 (21) "Shellfish" means the term as defined in G.S. 113-129, except the term shall not include scallops  
20 when the final product is the shucked adductor muscle only.
- 21 (22) "Shellfish growing area" means a management unit that defines the boundaries of a sanitary survey  
22 and that is used to track the location where shellfish are harvested.
- 23 (23) "Shellfish growing waters" means marine or estuarine waters that support or could support shellfish  
24 life.
- 25 (24) "Shellstock" means live molluscan shellfish in the shell.
- 26 (25) "Shoreline survey" means an in-field inspection by the Division to identify and evaluate any  
27 potential or actual pollution sources or other environmental factors that may impact the sanitary  
28 quality of a shellfish growing area.
- 29 (26) "Systematic random sampling strategy" means a sampling strategy designed to assess the  
30 bacteriological water quality of shellfish growing waters impacted by non-point sources of pollution  
31 and scheduled sufficiently far in advance to support random collection with respect to environmental  
32 conditions.

33  
34 *History Note:* Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;  
35 Eff. June 1, 1989;  
36 Amended Eff. August 1, 1998; February 1, 1997; September 1, 1990;  
37 Readopted Eff. May 1, 2021;



1 15A NCAC 18A .0906 is proposed for amendment as follows:

2

3 **15A NCAC 18A .0906 RESTRICTED AREAS**

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

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

8 ~~(b) Relaying of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and~~  
9 ~~15A NCAC 18A .0300.~~

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

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

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

22

23 *History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;*  
24 *Eff. June 1, 1989;*  
25 *Readopted Eff. May 1, 2021;*  
26 *Amended Eff. (Pending legislative review of 15A NCAC 03K .0104).*

## VII. PROPOSED MANAGEMENT OPTION

This issue paper presents a single option for consideration, as it is the only option that achieves the objective of the proposed rule changes: to conform MFC rules to reflect the discontinuation of the Shellfish Relay Program May 1, 2024, consistent with rulemaking requirements in the APA.

- + Complies with State law.
- + Clarifies MFC rules by removing out-of-date requirements.
- Requires lengthy rulemaking process.

## VIII. RECOMMENDATION

The DMF recommends supporting the single option presented in this paper. A portion of the proposed rules are automatically subject to legislative review pursuant to Session Law 2019-198. The MFC may request a group of related rules to become effective at the same time per N.C.G.S. § 150B-21.3. Under this scenario, the earliest possible effective date of the rule changes would be the 31<sup>st</sup> legislative day of the 2024 short session, which would occur after May 1, 2024, when the Shellfish Relay Program will have ended.

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Nov. 16, 2022  
Dec. 5, 2022  
Jan. 6, 2023  
Jan. 19, 2023  
Feb. 2, 2023

1 **Appendix I.**

2  
3 15A NCAC 03K .0103 is readopted as published in 36:07 NCR 470-471 as follows:

4  
5 **15A NCAC 03K .0103 SHELLFISH MANAGEMENT AREAS**

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

8 (1) ~~conditions of bottom type, salinity, currents, cover or cultch necessary for shellfish growth;~~

9 (2) ~~shellfish populations or shellfish enhancement projects that may:~~

10 (A) ~~produce commercial quantities of shellfish at 10 bushels or more per acre;~~

11 (B) ~~produce shellfish suitable for transplanting as seed or for relaying from prohibited~~  
12 ~~(polluted) areas; or~~

13 (C) ~~serve as sanctuaries to increase spawning and disease resistance or to prevent predation.~~

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

17 (1) planted cultch;

18 (2) existing shell; or

19 (3) existing live shellfish.

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

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

28 ~~(c)(d) It is shall be unlawful to take shellfish from any Shellfish Management Area which that has been closed and~~  
29 ~~posted, in accordance with Paragraph (b) of this Rule, except that the Fisheries Director may, by proclamation, open~~  
30 ~~specific areas to allow the taking of shellfish and may designate time, place, character, or dimensions of any method~~  
31 ~~or equipment that may be employed. impose any of the following requirements based on biological impacts or user~~  
32 conflicts:

33 (1) specify time;

34 (2) specify area;

35 (3) specify means and methods except as set forth in Paragraph (c) of this Rule;

36 (4) specify season;

37 (5) specify size;



**NOTE: RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION), SHOWN HERE WITH GRAY SHADING. NO ADDITIONAL CHANGES ARE PROPOSED.**

1            (6)        specify quantity; and

2            (7)        specify marking requirements.

3

4    *History Note:*    *Authority G.S. 113-134; 113-182; 113-204; ~~113-221~~; 113.221.1; 143B-289.52;*

5                    *Eff. January 1, 1991;*

6                    *Amended Eff. March 1, 1994;*

7                    *Temporary Amendment Eff. October 1, 2001;*

8                    *Amended Eff. October 1, 2008; February 1, 2008; April 1, 2003;*

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

1 15A NCAC 03K .0107 is readopted as published in 36:07 NCR 471-472 as follows:

2  
3 **15A NCAC 03K .0107 DEPURATION OF ~~SHELLFISH~~CLAMS AND OYSTERS**

4 (a) It ~~is shall be~~ unlawful to take clams or oysters from ~~the polluted public or private prohibited (polluted)~~ waters or  
5 ~~franchises~~ of the ~~state~~State for the purpose of depuration except when the harvest will utilize ~~shellfish clams or oysters~~  
6 that would otherwise be destroyed in maintenance dredging operations. All harvest and transport activities within the  
7 State of North Carolina related to depuration shall be under the supervision of the Division of Marine ~~Fisheries or the~~  
8 ~~Division of Environmental Health Fisheries. For the purpose of this Rule, the term depuration does not include~~  
9 ~~relaying of clams or oysters from shellfish leases or franchises as authorized by 15A NCAC 03K .0104.~~

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

- 12 (1) ~~Specify specify~~ species;
- 13 (2) ~~Specify areas specify areas,~~ except harvest ~~will shall~~ not be allowed from designated buffer zones  
14 adjacent to sewage outfall facilities;
- 15 (3) ~~Specify specify~~ harvest days;
- 16 (4) ~~Specify time period; specify time;~~
- 17 (5) ~~Specify specify quantity or size;~~
- 18 (6) ~~specify quantity;~~
- 19 (6)(7) ~~Specify specify~~ harvest methods; and
- 20 (7)(8) ~~Specify specify~~ record keeping requirements.

21 (c) Depuration permits:

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

36 (d) Transport of clams or oysters for depuration:

**NOTE: RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION), SHOWN HERE WITH GRAY SHADING. NO ADDITIONAL CHANGES ARE PROPOSED.**

1           (1)    ~~Clams-clams~~ or oysters harvested from ~~prohibited (polluted)-polluted~~ waters for depuration in a  
2                    depuration operation located within the State of North Carolina shall be transported under the  
3                    supervision of the ~~Division of Marine Fisheries or the Division of Environmental Health~~Division.

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

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

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

12  
13 *History Note:*    Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52;  
14                    Eff. January 1, 1991;  
15                    Temporary Amendment Eff. October 1, 2001;  
16                    Amended Eff. October 1, 2008; April 1, 2003;  
17                    Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

## Appendix II.

### § 113-203. Transplanting of oysters and clams.

(a) Repealed by Session Laws 2009-433, s. 6, effective August 7, 2009 (subdivision (a)(2)), and by Session Laws 2014-120, s. 26, effective September 18, 2014 (remainder of subsection (a)).

(a1) Repealed by Session Laws 2014-120, s. 26, effective September 18, 2014.

(a2) It is unlawful to do any of the following:

- (1) Transplant oysters or clams taken from public grounds to private beds except when lawfully taken during open season and transported directly to a private bed in accordance with rules of the Marine Fisheries Commission.
- (2) Transplant oysters or clams taken from permitted aquaculture operations to private beds except from waters in the approved classification.
- (3) Transplant oysters or clams from public grounds or permitted aquaculture operations utilizing waters in the restricted or conditionally approved classification to private beds except when the transplanting is done in accordance with the provisions of this section and implementing rules.

(a3) Unless the Secretary determines that the nursery of shellfish in an area will present a risk to public health, it is lawful to transplant seed oysters or seed clams taken from permitted aquaculture operations that use waters in the prohibited, restricted, or conditionally approved classification to private beds pursuant to an Aquaculture Seed Transplant Permit issued by the Secretary that sets times during which transplant is permissible and other reasonable restrictions imposed by the Secretary under either of the following circumstances:

- (1) When transplanting seed clams less than 12 millimeters in their largest dimension.
- (2) When transplanting seed oysters less than 25 millimeters in their largest dimension.

(a4) It is unlawful to conduct a seed transplanting operation pursuant to subsection (a3) of this section if the seed transplanting operation is not conducted in compliance with its Aquaculture Seed Transplant Permit.

(b) It is lawful to transplant from public bottoms to private beds oysters or clams taken from waters in the restricted or conditionally approved classifications with a permit from the Secretary setting out the waters from which the oysters or clams may be taken, the quantities which may be taken, the times during which the taking is permissible, and other reasonable restrictions imposed by the Secretary for the regulation of transplanting operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

(c) Repealed by Session Laws 2009-433, s. 6, effective August 7, 2009.

(d) It is lawful to transplant to private beds in North Carolina oysters taken from natural or managed public beds designated by the Marine Fisheries Commission as seed oyster management areas. The Secretary shall issue permits to all qualified individuals who are residents of North Carolina without regard to county of residence to transplant seed oysters from said designated seed oyster management areas, setting out the quantity which may be taken, the times which the taking is permissible and other reasonable restrictions imposed to aid the Secretary in the Secretary's duty of regulating such transplanting operations. Persons taking such seed oysters may, in the discretion of the Marine Fisheries Commission, be required to pay to the Department for oysters taken an amount to reimburse the Department in full or in part for the costs of seed oyster management operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

(e) The Marine Fisheries Commission may implement the provisions of this section by rules governing sale, possession, transportation, storage, handling, planting, and harvesting of oysters and clams and setting out any system of marking oysters and clams or of permits or receipts relating to them generally, from both public and private beds, as necessary to regulate the lawful transplanting of seed oysters and oysters or clams taken from or placed on public or private beds.

(f) The Commission may establish a fee for each permit established pursuant to this subsection in an amount that compensates the Division for the administrative costs associated with the permit but that does not exceed one hundred dollars (\$100.00) per permit.

(g) Advance Sale of Permits; Permit Revenue. - To ensure an orderly transition from one permit year to the next, the Division may issue a permit prior to July 1 of the permit year for which the permit is valid. Revenue that the Division receives for the issuance of a permit prior to the beginning of a permit year shall not revert at the end of the fiscal year in which the revenue is received and shall be credited and available to the Division for the permit year in which the permit is valid. (1921, c. 132, s. 2; C.S., s. 1959(b); 1961, c. 1189, s. 1; 1965, c. 957, s. 2; 1967, c. 878; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1987, c. 641, s. 6; c. 827, s. 98; 1989, c. 727, s. 100; 1997-400, s. 5.7; 2007-495, s. 3; 2009-433, s. 6; 2013-360, s. 14.8(s); 2014-120, s. 26; 2019-37, s. 5.)