



RULEMAKING UPDATE

Rule Suspension Memo

Rulemaking Update Memo

April 1, 2022 MFC Rules
Supplement and News Release

2021-2022 Rulemaking Cycle
"Package C" Update



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

May 12th, 2022

MEMORANDUM

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

Issue

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

Findings

The National Marine Fisheries Service announced the final rule implementing management measures from the South Atlantic Fishery Management Council's Amendment 10 to the Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic. Management measures in the amendment include a decrease of the recreational vessel limit of dolphin from 60 to 54 fish per vessel. Current NCMFC Rule 15A NCAC 03M. 0515 specifies a vessel limit of 60 fish per vessel except for Headboats, which may possess 10 fish per person. In order to compliment management of dolphin, the division requests an indefinite suspension of the portion of the rule that specifies the vessel limit. The new vessel limit requirements are implemented in proclamation [FF-30-2022](#).

Amendment 2 to the North Carolina Shrimp Fishery Management Plan adopted in February of 2022 modified the recreational possession limits of shrimp for cast nets by removing the four quarts heads on and two and a half quarts heads off prohibition from waters closed to shrimping. To implement new management measures, a portion of the current NCMFC Rule 15A NCAC 03L .0105 was suspended in proclamation [SH-4-2022](#).

Action Needed

****Vote to suspend section (a)(2) of NCMFC Rule 15A NCAC 03M .0515 Dolphin and section 2 of NCMFC Rule 15A NCAC 03L .0105 RECREATIONAL SHRIMP LIMITS for an indefinite period****

Overview

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

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

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

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

Suspension of portions of this rule is for an indefinite period. Suspension of this rule allows the division to revise the boundaries for the Drum Inlet and Barden Inlet crab spawning sanctuaries in accordance with Amendment 3 to the N.C. Blue Crab Fishery Management Plan. This suspension was implemented in Proclamation M-7-2020 and continues in M-11-2022.

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

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

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

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

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

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

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

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



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

May 5, 2022

MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: Catherine Blum, Rulemaking Coordinator
Marine Fisheries Commission Office

SUBJECT: Rulemaking Update

Issue

Update the N.C. Marine Fisheries Commission (MFC) on the status of rulemaking in support of the Periodic Review and Expiration of Existing Rules per N.C.G.S. § 150B-21.3A.

Findings

- Periodic Review and Readoption of Rules – Requirements
 - North Carolina G.S. 150B-21.3A, enacted in 2013, requires state agencies to review existing rules every 10 years in accordance with a prescribed process that includes rule readoption.
 - 15A NCAC 03 – Marine Fisheries: On June 14, 2018, the Rules Review Commission (RRC) approved the readoption schedule of June 30, 2022 for 172 MFC rules.
 - 15A NCAC 18A – Sanitation: On Jan. 16, 2020, the RRC approved the readoption schedule of June 30, 2024 for 164 MFC rules.
 - The MFC must readopt these rules by these deadlines or the rules will expire and be removed from the N.C. Administrative Code.
- At its May meeting, the MFC is scheduled to receive an update about the four ongoing packages of proposed rules. No action is scheduled to occur at this meeting.

2020-2021 Annual Rulemaking Cycle Update

At its August 2020 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for the 50 rules in "Package B". Three of the proposed rules address user conflicts associated with shellfish leases while supporting a productive shellfish aquaculture industry, as required by NCGA Session Law 2019-37. The proposed changes would increase setback requirements from developed shorelines for new shellfish leases; limit the allowable number of corner markers for demarcating shellfish leases to simplify the polygon shapes; set new criteria for shellfish lease stakes and signage to alleviate navigation concerns; and, initiate a new shellfish leaseholder training program that emphasizes user conflict reduction strategies. The MFC gave final approval of the rules at its February 2021 meeting. The rules are automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1. The proposed rules could be effective as early as the 31st legislative day of the 2022 short session.

2021-2022 Annual Rulemaking Cycle Update

"Package A" (56 rules)

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

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

The MFC gave final approval of the rules at its November 2021 business meeting. The rules that are not automatically subject to legislative review became effective April 1, 2022. A news release was issued and a rulebook supplement is available on the Division of Marine Fisheries (DMF) website on the "Rules" webpage; both documents are also provided in the briefing materials. There were no impactful changes, only technical and conforming ones. There are 13 of the 56 rules are automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1, including rules to prohibit the repacking of foreign crab meat in North Carolina into another container. The proposed rules could be effective on the earlier of the 31st legislative day of the 2022 short session or the day of adjournment.

"Package B" (109 rules)

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

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

The MFC gave final approval of the rules at its February 2022 business meeting. The rules were submitted to the RRC for review at its April 21, 2022 meeting. The RRC approved a portion of the rules and extended the period of review for the remaining rules in order to allow additional time to address technical change requests; DMF staff are continuing to address the requests. The next RRC meeting is scheduled to be held May 19, 2022. The intended effective date of the rule package is June 1 or July 1, 2022. Of the 109 rules, 71 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 of these rules, covering highly efficient gears, artificial reefs, and research sanctuaries, were approved by the RRC April 21 and will be available for legislative review during the 2022 short session. The remaining 68 rules would be available for legislative review during the 2023 long session.

"Package C" (9 rules)

At its March 2022 special meeting, the MFC approved Notice of Text for Rulemaking to begin the process for nine 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 are proposed for readoption with no changes. On April 18, 2022 a news release was issued and the proposed rules were published in the *N.C. Register*; both documents are also provided in the briefing materials. The MFC is accepting public comments on the proposed rules from April 18 through 5 p.m. June 17, 2022. To date, no public comments have been received. An online public hearing was held via WebEx on May 4, 2022 at 6 p.m.; no members of the public were in attendance. To meet the readoption deadline, the MFC will need to meet in late June to vote on final approval of the rules. The rules have an earliest effective date of Sept. 1, 2022. A table showing the steps in the process is provided in the briefing materials.

2022-2023 Annual Rulemaking Cycle Preview

DMF staff will provide a preview of potential rules in the MFC’s 2022-2023 annual rulemaking cycle at its May 2022 business meeting. Additional rules in 15A NCAC 18A proposed for readoption are expected to be part of the rulemaking cycle. Please see Figure 1, detailed in the Background Information section below, that shows the MFC’s rule readoption schedule. This cycle is scheduled to begin the rulemaking process at the MFC's August 2022 business meeting. Proposed rules would have an earliest effective date of May 1, 2023, except for rules automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1. Rules that are subject would be reviewed during the 2024 short session.

Background Information

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

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

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

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

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

Roy Cooper
Governor

Elizabeth S. Biser
Secretary



Kathy B. Rawls
Director

Release: Immediate
Date: April 1, 2022

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

Various readopted marine fisheries rules take effect today

MOREHEAD CITY – Forty-three readopted fisheries rules become effective today, but fishermen will see very little change.

The rules, readopted under a state-mandated periodic review schedule, are a portion of existing fisheries rules in 15A NCAC 03I, 03J, 03L, 03M, and 18A.

Most of the rules pertain to sanitation standards for commercial crustacea processing procedures and contain minor updates.

Other changes pertain to rules for interjurisdictional species and remove harvest requirements that are out of date, relying on proclamations instead to respond to interstate and federal management changes.

Several rules about general requirements and fishing gears contain only minor grammatical changes.

Full text of the rules can be found in the April 1, 2022 Supplement to the 2020 N.C. Marine Fisheries Commission Rulebook at <https://deq.nc.gov/DMF-Rules>.

The rules were readopted by the N.C. Marine Fisheries Commission at its February 2022 meeting.

Thirteen other rules adopted at the February commission meeting are under a mandatory legislative review period and will not become effective until at least the 30th legislative day of the 2022 short session of the N.C. General Assembly. These rules include amendments to three rules in 15A NCAC 03L and 18A that will prohibit the repacking of foreign crab meat in North Carolina.

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

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NORTH CAROLINA
MARINE FISHERIES COMMISSION
RULES

APRIL 1, 2020



SUPPLEMENT – APRIL 1, 2022

MARINE FISHERIES COMMISSION
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DEPARTMENT OF ENVIRONMENTAL QUALITY
Elizabeth S. Biser, Secretary

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

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EFFECTIVE MARCH 17, 2021; MAY 1, 2021; OR APRIL 1, 2022.

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

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

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

SUBCHAPTER 03I – GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0108 OCEAN FISHING PIERS

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

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

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

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

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

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

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

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

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

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

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

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

(9) the ratio between the natural life expectancy of the species and the period of its probable survival when, having been reared in a hatchery, it is released to the wild.

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

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

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

(f) Cost of investigations:

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

*History Note: Authority G.S. 113-134; 113-182; 113-267; 143B-289.52;
Eff. March 1, 1995;
Recodified from 15A NCAC 3I .0015 Eff. December 17, 1996;
Readopted Eff. April 1, 2022.*

15A NCAC 03I .0122 USER CONFLICT RESOLUTION

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

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

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

(b) Request for user conflict resolution:

- (1) any person desiring user conflict resolution may make such request in writing addressed to the Director of the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. A request shall contain the following information:
 - (A) a map of the affected area including an inset vicinity map showing the location of the area with detail sufficient to permit on-site identification and location;
 - (B) identification of the user conflict causing a need for user conflict resolution;
 - (C) recommended solution for resolving user conflict; and
 - (D) name and address of the person requesting user conflict resolution.
- (2) within 90 days of the receipt of the information required in Subparagraph (b)(1) of this Paragraph, the Fisheries Director shall review the information and determine if user conflict resolution is necessary. If user conflict resolution is not necessary, the Fisheries Director shall deny the request. If user conflict resolution is necessary, the Fisheries Director or his or her designee shall hold a public meeting in the area of the user conflict. The requestor shall present his or her request at the public meeting.
- (3) following the public meeting as described in Subparagraph (b)(2) of this Paragraph, the Fisheries Director shall refer the users in the conflict for mediation or deny the request. If the user conflict cannot be resolved through mediation, the Fisheries Director shall submit for approval a proclamation to the Marine Fisheries Commission that addresses the conflict.
- (4) proclamations issued under this Rule shall suspend appropriate rules or portions of rules under the authority of the Marine Fisheries Commission as specified in the proclamation. The provisions of Rule .0102 of this Section terminating suspension of a rule pending the next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under this Rule.

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

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

SECTION .0400 – FISHING GEAR

15A NCAC 03J .0401 FISHING GEAR

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

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

- (1) all or part of the Atlantic Ocean, up to one-half mile from the beach;
- (2) up to one-half mile in all directions of Oregon Inlet;
- (3) up to one-half mile in all directions of Hatteras Inlet;
- (4) up to one-half mile in all directions of Ocracoke Inlet;
- (5) up to one-half mile of the Cape Lookout Rock Jetty;

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

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

SUBCHAPTER 03L – SHRIMP, CRABS, AND LOBSTER

SECTION .0200 – CRABS

15A NCAC 03L .0207 HORSESHOE CRABS

- (a) The annual (January through December) commercial quota for North Carolina for horseshoe crabs is established by the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab.
- (b) The Fisheries Director may, by proclamation, impose any of the following restrictions on the taking of horseshoe crabs to maintain compliance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab or to implement State management measures:
- (1) specify time;
 - (2) specify area;
 - (3) specify means and methods;
 - (4) specify season;
 - (5) specify size; and
 - (6) specify quantity.

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

15A NCAC 03L .0302 SPINY LOBSTER

- The Fisheries Director may, by proclamation, impose any of the following restrictions on the taking of spiny lobster to maintain compliance with the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and the South Atlantic or to implement State management measures:
- (1) specify time;
 - (2) specify area;
 - (3) specify means and methods;
 - (4) specify season;
 - (5) specify size; and
 - (6) specify quantity.

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

SUBCHAPTER 03M – FINFISH

SECTION .0300 – SPANISH AND KING MACKEREL

15A NCAC 03M .0301 SPANISH AND KING MACKEREL

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

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0509 TARPON

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

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

15A NCAC 03M .0511 BLUEFISH

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

15A NCAC 03M .0516 COBIA

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

SUBCHAPTER 030 – LICENSES, LEASES, FRANCHISES, AND PERMITS

SECTION .0100 – LICENSES

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

- (a) To transfer a license or Commercial Fishing Vessel Registration, the license or registration shall not be expired prior to transfer.
- (b) Upon transfer of a license or Commercial Fishing Vessel Registration, the transferee becomes the licensee and assumes the privileges of holding the license or Commercial Fishing Vessel Registration.
- (c) A transfer application including a certification statement form shall be provided by the Division of Marine Fisheries. A transfer application shall be completed for each transfer including, but not limited to:
 - (1) the information required as set forth in Rule .0101(a) of this Section;
 - (2) a notarized statement from the transferee listing any violations involving marine or estuarine resources in the State of North Carolina during the previous three years; and
 - (3) a notarized statement from the transferee that the information and supporting documentation submitted with the transfer application is true and correct, and that the transferee acknowledges that it is unlawful for a person to accept transfer of a license for which they are ineligible.
- (d) A completed transfer application shall be returned to an office of the Division by mail or in person, except as set forth in Paragraph (e) of this Rule.

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

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

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

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

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

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

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

(1) It is unlawful for a person to accept transfer of a Standard or Retired Standard Commercial Fishing License for which they are ineligible. Grandparents, grandchildren, and legal guardians of an individual are eligible to transfer a license and receive a transferred license.

(2) A Standard or Retired Standard Commercial Fishing License shall only be transferred if both the transferor and the transferee have no current suspensions or revocations of any Marine Fisheries license privileges. In the event of the death of the transferor, this requirement shall only apply to the transferee.

(3) For purposes of effecting transfers under this Paragraph:

(A) "business" shall mean corporations and limited liability companies that have been registered with the Secretary of State; and

(B) "owner" shall mean owner, shareholder, or manager of a business.

(4) At the time of the transfer of a Standard or Retired Standard Commercial Fishing License, the transferor shall indicate the retainment or transfer of the landings history associated with that Standard or Retired Standard Commercial Fishing License. The transferor may retain a landings history only if the transferor holds an additional Standard or Retired Standard Commercial Fishing License. Transfer of a landings history is all or none.

(5) To transfer a Standard or Retired Standard Commercial Fishing License, in addition to the requirements in Paragraph (c) of this Rule, the following information is required:

(A) information on the transferee as set forth in Rule .0101 of this Section;

(B) notarization of the transferor's and the transferee's signatures on the transfer application; and

(C) if the transferor is retiring from commercial fishing, evidence showing that such retirement has in fact occurred, which may include, but is not limited to, evidence of the transfer of all the transferor's Standard Commercial Fishing Licenses, sale of all the transferor's registered vessels, or discontinuation of any active involvement in commercial fishing.

(6) The Standard or Retired Standard Commercial Fishing License that is being transferred shall be surrendered to the Division at the time of the transfer application.

(7) Fees:

(A) The transferee shall pay a replacement fee as set forth in Rule .0107 of this Section.

(B) The transferee shall pay the differences in fees as specified in G.S. 113-168.2(e) or G.S. 113-168.3(b) if the transferee is a non-resident.

(C) The transferee shall pay the differences in fees as specified in G.S. 113-168.2(e) if the license to be transferred is a Retired Standard Commercial Fishing License and the transferee is less than 65 years old.

(8) Transfer of Standard or Retired Standard Commercial Fishing License for a Business:

(A) An individual holding a Standard or Retired Standard Commercial Fishing License may transfer their license to a business in which the license holder is also an owner of the business in accordance with application requirements as set forth in Rule .0101(a) of this Section.

(B) If a business is dissolved, the business may transfer the license or licenses of the business to an individual owner of the dissolved business. A dissolved business holding multiple licenses may transfer one license or multiple licenses to one owner or multiple owners or any combination thereof. A notarized statement showing agreement for the transfer of all owners of the business is required to complete this transaction.

(C) If a business is sold, the business may transfer the license or licenses of the business to the successor business at the time of sale.

- (D) If an owner leaves the business, any license owned by that owner may be transferred back to themselves as an individual at the time the owner leaves the business, provided the owner was the last individual to own the license before the business owned the license. A notarized statement showing agreement for the transfer of all owners of the business is required to complete this transaction.
- (9) Transfer of Standard or Retired Standard Commercial Fishing License for a Deceased Licensee:
 - (A) If an immediate surviving family member of the deceased licensee is eligible to hold the deceased licensee's Standard Commercial Fishing License or Retired Standard Commercial Fishing License, the Administrator or Executor shall give written notification within six months after the Administrator or Executor qualifies under G.S. 28A to the Division of the request to transfer the deceased's license to the estate Administrator or Executor.
 - (B) A transfer to the Administrator or Executor shall be made according to the provisions of Subparagraphs (2) through (4) of this Paragraph. The Administrator or Executor shall provide a copy of the deceased licensee's death certificate, a copy of the certificate of administration, and a list of eligible immediate family members to the Division.
 - (C) The Administrator or Executor shall only transfer a license in the Administrator or Executor name on behalf of the estate to an eligible surviving family member. The surviving family member transferee shall only transfer the license to a third party purchaser of the deceased licensee's fishing vessel. Transfers shall be made according to the provisions of Subparagraphs (2) through (4) of this Paragraph.

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

SUBCHAPTER 03R – DESCRIPTIVE BOUNDARIES

SECTION .0100 – DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0104 PERMANENT SECONDARY NURSERY AREAS

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

- (1) Roanoke Sound:
 - Inner Shallowbag Bay - west of a line beginning on the northeast shore at a point 35° 54.6729' N – 75° 39.8099' W; running southerly to the southeast shore to a point 35° 54.1722' N – 75° 39.6806' W;
- (2) in the Pamlico Long Sound Area:
 - (a) Long Shoal River - north of a line beginning at the 5th Avenue Canal at a point 35° 35.2120' N – 75° 53.2232' W; running easterly to the east shore on Pains Point to a point 35° 35.0666' N – 75° 51.2000' W;
 - (b) Pains Bay - east of a line beginning on Pains Point at a point 35° 35.0666' N – 75° 51.2000' W; running southerly to Rawls Island to a point 35° 34.4666' N – 75° 50.9666' W; running easterly to the east shore to a point 35° 34.2309' N – 75° 50.2695' W;
 - (c) Wysocking Bay - northwest of a line beginning at Benson Point at a point 35° 22.9684' N – 76° 03.7129' W; running northeasterly to Long Point to a point 35° 24.6895' N – 76° 01.3155' W;
 - (d) Juniper Bay-Cunning Harbor - north of a line beginning on the west shore of Juniper Bay at a point 35° 20.6217' N – 76° 15.5447' W; running easterly to a point 35° 20.4372' N – 76° 13.2697' W; running easterly to the east shore of Cunning Harbor to a point 35° 20.3413' N – 76° 12.3378' W;
 - (e) Swanquarter Bay - north of a line beginning at The Narrows at a point 35° 20.9500' N – 76° 20.6409' W; running easterly to the east shore to a point 35° 21.5959' N – 76° 18.3580' W;
 - (f) Deep Cove - The Narrows - north and east of a line beginning on the west shore at a point 35° 20.9790' N – 76° 23.8577' W; running southeasterly to Swanquarter Island to a point 35° 20.5321' N – 76° 22.7869' W; and west of a line at The Narrows beginning on the north shore to a point 35° 20.9500' N – 76° 20.6409' W; running southerly to Swanquarter Island to a point 35° 20.7025' N – 76° 20.5620' W;
 - (g) Rose Bay - north of a line beginning on Long Point at a point 35° 23.3404' N – 76° 26.2491' W; running southeasterly to Drum Point to a point 35° 22.4891' N – 76° 25.2012' W;
 - (h) Spencer Bay - northwest of a line beginning on Roos Point at a point 35° 22.3866' N – 76° 27.9225' W; running northeasterly to Long Point to a point 35° 23.3404' N – 76° 26.2491' W;

- (i) Abel Bay - northeast of a line beginning on the west shore at a point 35° 23.6463' N – 76° 31.0003' W; running southeasterly to the east shore to a point 35° 22.9353' N – 76° 29.7215' W;
 - (j) Mouse Harbor - west of a line beginning on Persimmon Tree Point at a point 35° 18.3915' N – 76° 29.0454' W; running southerly to Yaupon Hammock Point to a point 35° 17.1825' N – 76° 28.8713' W;
 - (k) Big Porpoise Bay - northwest of a line beginning on Big Porpoise Point at a point 35° 15.6993' N – 76° 28.2041' W; running southwesterly to Middle Bay Point to a point 35° 14.9276' N – 76° 28.8658' W;
 - (l) Middle Bay - west of a line beginning on Deep Point at a point 35° 14.8003' N – 76° 29.1923' W; running southerly to Little Fishing Point to a point 35° 13.5419' N – 76° 29.6123' W;
 - (m) Jones Bay - west of a line beginning on Mink Trap Point at a point 35° 13.4968' N – 76° 31.1040' W; running southerly to Boar Point to a point 35° 12.3253' N – 76° 31.2767' W; and
 - (n) in the Bay River Area:
 - (i) Bonner Bay - southeast of a line beginning on the west shore at a point 35° 09.6281' N – 76° 36.2185' W; running northeasterly to Davis Island Point to a point 35° 10.0888' N – 76° 35.2587' W; and
 - (ii) Gales Creek-Bear Creek - north and west of a line beginning on Sanders Point at a point 35° 11.2833' N – 76° 35.9000' W; running northeasterly to the east shore to a point 35° 11.9000' N – 76° 34.2833' W;
- (3) in the Pamlico and Pungo Rivers Area:
- (a) Pungo River - north of a line beginning on the west shore at a point 35° 32.2000' N – 76° 29.2500' W; running east near Beacon "21" to the east shore to a point 35° 32.0833' N – 76° 28.1500' W;
 - (b) Pungo Creek - west of a line beginning on Persimmon Tree Point at a point 35° 30.7633' N – 76° 38.2831' W; running southwesterly to Windmill Point to a point 35° 31.1546' N – 76° 37.7590' W;
 - (c) Scranton Creek - south and east of a line beginning on the west shore at a point 35° 30.6810' N – 76° 28.3435' W; running easterly to the east shore to a point 35° 30.7075' N – 76° 28.6766' W;
 - (d) Slade Creek - east of a line beginning on the west shore at a point 35° 27.8879' N – 76° 32.9906' W; running southeasterly to the east shore to a point 35° 27.6510' N – 76° 32.7361' W;
 - (e) Fortescue Creek - east of a line beginning on Pasture Point at a point 35° 25.9213' N – 76° 31.9135' W; running southerly to the Lupton Point shore to a point 35° 25.6012' N – 76° 31.9641' W;
 - (f) Pamlico River - west of a line beginning on Ragged Point at a point 35° 27.5768' N – 76° 54.3612' W; running southwesterly to Mauls Point to a point 35° 26.9176' N – 76° 55.5253' W;
 - (g) North Creek - north of a line beginning on the west shore at a point 35° 25.3988' N – 76° 40.0455' W; running southeasterly to the east shore to a point 35° 25.1384' N – 76° 39.6712' W;
 - (h) South Creek - west of a line beginning on Hickory Point at a point 35° 21.7385' N – 76° 41.5907' W; running southerly to Fork Point to a point 35° 20.7534' N – 76° 41.7870' W;
 - (i) Bond Creek/Muddy Creek - south of a line beginning on Fork Point at a point 35° 20.7534' N – 76° 41.7870' W; running southeasterly to Gum Point to a point 35° 20.5632' N – 76° 41.4645' W;
 - (j) in the Goose Creek Area, Campbell Creek - west of a line beginning on the north shore at a point 35° 17.3600' N – 76° 37.1096' W; running southerly to the south shore to a point 35° 16.9876' N – 76° 37.0965' W; and
 - (k) Oyster Creek-Middle Prong - southwest of a line beginning on Pine Hammock at a point 35° 19.5586' N – 76° 32.8830' W; running easterly to Cedar Island to a point 35° 19.5490' N – 76° 32.7365' W; and southwest of a line beginning on Cedar Island at a point 35° 19.4921' N – 76° 32.2590' W; running southeasterly to Beard Island Point to a point 35° 19.1265' N – 76° 31.7226' W;
- (4) in the Neuse River Area:
- (a) Lower Broad Creek - west of a line beginning on the north shore at a point 35° 05.8314' N – 76° 35.3845' W; running southwesterly to the south shore to a point 35° 05.5505' N – 76° 35.7249' W;
 - (b) Greens Creek - north of a line beginning on the west shore of Greens Creek at a point 35° 01.3476' N – 76° 42.1740' W; running northeasterly to the east shore to a point 35° 01.4899' N – 76° 41.9961' W;
 - (c) Dawson Creek - north of a line beginning on the west shore at a point 34° 59.5920' N – 76° 45.4620' W; running southeasterly to the east shore to a point 34° 59.5800' N – 76° 45.4140' W;
 - (d) Goose Creek - north and east of a line beginning at a point on the west shore at a point 35° 02.6642' N – 76° 56.4710' W; running southeasterly to a point on Cooper Point 35° 02.0908' N – 76° 56.0092' W;
 - (e) Upper Broad Creek - northeast of a line beginning at a point on Rowland Point on the north shore at a point 35° 02.6166' N – 76° 56.4500' W; running southeasterly to the south shore to a point 35° 02.8960' N – 76° 56.7865' W;
 - (f) Clubfoot Creek - south of a line beginning on the west shore at a point 34° 54.5424' N – 76° 45.7252' W; running easterly to the east shore to a point 34° 54.4853' N – 76° 45.4022' W; and

- (g) in the Adams Creek Area, Cedar Creek - east of a line beginning on the north shore at a point 34° 56.1203' N – 76° 38.7988' W; running southerly to the south shore to a point 34° 55.8745' N – 76° 38.8153' W;
- (5) Newport River - west of a line beginning near Penn Point on the south shore at a point 34° 45.6960' N – 76° 43.5180' W; running northeasterly to the north shore to a point 34° 46.8490' N – 76° 43.3296' W;
- (6) Virginia Creek - all waters of the natural channel northwest of the primary nursery area line;
- (7) Old Topsail Creek - all waters of the dredged channel northwest of the primary nursery area line;
- (8) Mill Creek - all waters west of a line beginning on the north shore at a point 34° 20.6420' N – 77° 42.1220' W; running southwesterly to the south shore to a point 34° 20.3360' N – 77° 42.2400' W;
- (9) Pages Creek - all waters west of a line beginning on the north shore at a point 34° 16.1610' N – 77° 45.9930' W; running southwesterly to the south shore to a point 34° 15.9430' N – 77° 46.1670' W;
- (10) Bradley Creek - all waters west of a line beginning on the north shore at a point 34° 12.7030' N – 77° 49.1230' W; running southerly near the dredged channel to a point 34° 12.4130' N – 77° 49.2110' W;
- (11) Cape Fear River - all waters bounded by a line beginning on the south side of the Spoil Island at the intersection of the Intracoastal Waterway and the Cape Fear River ship channel at a point 34° 01.5780' N – 77° 56.0010' W; running easterly to the east shore of the Cape Fear River to a point 34° 01.7230' N – 77° 55.1010' W; running southerly and bounded by the shoreline to the Ferry Slip at Federal Point at a point 33° 57.8080' N – 77° 56.4120' W; running northerly to Bird Island to a point 33° 58.3870' N – 77° 56.5780' W; running northerly along the west shoreline of Bird Island and the Cape Fear River spoil islands back to the point of origin;
- (12) Lockwood Folly River - all waters north of a line beginning on Howells Point at a point 33° 55.3680' N – 78° 12.7930' W and running in a westerly direction along the Intracoastal Waterway near Intracoastal Waterway Marker "46" to a point 33° 55.3650' N – 78° 13.8500' W;
- (13) Saucepan Creek - all waters north of a line beginning on the west shore at a point 33° 54.6290' N – 78° 22.9170' W; running northeasterly to the east shore to a point 33° 54.6550' N – 78° 22.8670' W; and
- (14) Davis Creek - all waters east of a line beginning on Horse Island at a point 33° 55.0160' N – 78° 12.7380' W; running southerly to Oak Island to a point 33° 54.9190' N – 78° 12.7170' W; continuing upstream to the primary nursery line and Davis Canal, all waters southeast of a line beginning on Pinner Point at a point 33° 55.2930' N – 78° 11.6390' W; running southwesterly across the mouth of Davis Canal to the spoil island at the southwest intersection of the Intracoastal Waterway and Davis Canal to a point 33° 55.2690' N – 78° 11.6550' W.

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

15A NCAC 03R .0105 SPECIAL SECONDARY NURSERY AREAS

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

- (1) Roanoke Sound:
 - (a) Outer Shallowbag Bay - west of a line beginning on Baum Point at a point 35° 55.1461' N – 75° 39.5618' W; running southeasterly to Ballast Point to a point 35° 54.6250' N – 75° 38.8656' W; including the canal on the southeast shore of Shallowbag Bay; and
 - (b) Kitty Hawk Bay/Buzzard Bay - within the area designated by a line beginning at a point on the east shore of Colington Creek at a point 36° 02.4360' N – 75° 42.3189' W; running westerly to a point 36° 02.6630' N – 75° 41.4102' W; running along the shoreline to a point 36° 02.3264' N – 75° 42.3889' W; running southwesterly to a point 36° 02.1483' N – 75° 42.4329' W; running along the shoreline to a point 36° 01.6736' N – 75° 42.5313' W; running southwesterly to a point 36° 01.5704' N – 75° 42.5899' W; running along the shoreline to a point 36° 00.9162' N – 75° 42.2035' W; running southeasterly to a point 36° 00.8253' N – 75° 42.0886' W; running along the shoreline to a point 35° 59.9886' N – 75° 41.7284' W; running southwesterly to a point 35° 59.9597' N – 75° 41.7682' W; running along the shoreline to the mouth of Buzzard Bay to a point 35° 59.6480' N – 75° 32.9906' W; running easterly to Mann Point to a point 35° 59.4171' N – 75° 32.7361' W; running northerly along the shoreline to the point of beginning;
- (2) in the West Bay Area:

- (a) West Thorofare Bay - south of a line beginning on the west shore at a point 34° 57.2199' N – 76° 24.0947' W; running easterly to the east shore to a point 34° 57.4871' N – 76° 23.0737' W;
- (b) Long Bay-Ditch Bay - west of a line beginning on the north shore of Ditch Bay at a point 34° 57.9388' N – 76° 27.0781' W; running southwesterly to the south shore of Ditch Bay to a point 34° 57.2120' N – 76° 27.2185' W; then south of a line running southeasterly to the east shore of Long Bay to a point 34° 56.7633' N – 76° 26.3927' W; and
- (c) Turnagain Bay - south of a line beginning on the west shore at a point 34° 59.4065' N – 76° 30.1906' W; running easterly to the east shore to a point 34° 59.5668' N – 76° 29.3557' W;
- (3) in the Core Sound Area:
 - (a) Cedar Island Bay - northwest of a line beginning near the gun club dock at a point 34° 58.7203' N – 76° 15.9645' W; running northeasterly to the south shore to a point 34° 57.7690' N – 76° 16.8781' W;
 - (b) Thorofare Bay-Barry Bay - northwest of a line beginning on Rumley Hammock at a point 34° 55.4853' N – 76° 18.2487' W; running northeasterly to Hall Point to a point 34° 54.4227' N – 76° 19.1908' W;
 - (c) Nelson Bay - northwest of a line beginning on the west shore of Nelson Bay at a point 34° 51.1353' N – 76° 24.5866' W; running northeasterly to Drum Point to a point 34° 51.6417' N – 76° 23.7620' W;
 - (d) Brett Bay - north of a line beginning on the west shore at a point 34° 49.4019' N – 76° 26.0227' W; running easterly to Piney Point to a point 34° 49.5799' N – 76° 25.0534' W; and
 - (e) Jarrett Bay - north of a line beginning on the west shore near Old Chimney at a point 34° 45.5743' N – 76° 30.0076' W; running easterly to a point east of Davis Island 34° 45.8325' N – 76° 28.7955' W;
- (4) in the North River Area:
 - (a) North River - north of a line beginning on the west shore at a point 34° 46.0383' N – 76° 37.0633' W; running easterly to a point on the east shore 34° 46.2667' N – 76° 35.4933' W; and
 - (b) Ward Creek - east of a line beginning on the north shore at a point 34° 46.2667' N – 76° 35.4933' W; running southerly to the south shore to a point 34° 45.4517' N – 76° 35.1767' W;
- (5) New River - all waters upstream of a line beginning on the north side of the N.C. Highway 172 Bridge at a point 34° 34.7680' N – 77° 23.9940' W; running southerly to the south side of the bridge at a point 34° 34.6000' N – 77° 23.9710' W;
- (6) Chadwick Bay - all waters west of a line beginning on the northeast side of Chadwick Bay at a point 34° 32.5630' N – 77° 21.6280' W; running southeasterly to a point near Marker "6" at 34° 32.4180' N – 77° 21.6080' W; running westerly to Roses Point at a point 34° 32.2240' N – 77° 22.2880' W; following the shoreline in Fullard Creek to a point 34° 32.0340' N – 77° 22.7160' W; running northwesterly to a point 34° 32.2210' N – 77° 22.8080' W; following the shoreline to the west point of Bump's Creek at a point 34° 32.3430' N – 77° 22.4570' W; running northeasterly to the east shore to a point 34° 32.4400' N – 77° 22.3830' W; following the shoreline of Chadwick Bay back to the point of origin; and
- (7) Intracoastal Waterway - all waters in the Intracoastal Waterway maintained channel from a point near Marker "17" north of Alligator Bay 34° 30.7930' N – 77° 23.1290' W; to a point near Marker "49" at Morris Landing at a point 34° 28.0820' N – 77° 30.4710' W; and all waters in the Intracoastal Waterway maintained channel and 100 feet on either side from Marker "49" to the N.C. Highway 50-210 Bridge at Surf City.

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

15A NCAC 03R .0117 OYSTER SANCTUARIES

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

- (1) Pamlico Sound area:
 - (a) Croatan Sound: within the area described by a line beginning at a point 35° 48.2842' N - 75° 38.3360' W; running southerly to a point 35° 48.1918' N - 75° 38.3360' W; running westerly to a point 35° 48.1918' N - 75° 38.4575' W; running northerly to a point 35° 48.2842' N - 75° 38.4575' W; running easterly to the point of beginning.
 - (b) Crab Hole: within the area described by a line beginning at a point 35° 43.6833' N - 75° 40.5083' W; running southerly to a point 35° 43.5000' N - 75° 40.5083' W; running westerly to a point 35° 43.5000' N - 75°

- 40.7500' W; running northerly to a point 35° 43.6833' N - 75° 40.7500' W; running easterly to the point of beginning.
- (c) Pea Island: within the area described by a line beginning at a point 35° 05.4760' N - 76° 23.5370' W; running southerly to a point 35° 05.4760' N - 76° 23.4040' W; running westerly to a point 35° 05.3680' N - 76° 23.4040' W; running northerly to a point 35° 05.3680' N - 76° 23.5370' W; running easterly to the point of beginning.
 - (d) Long Shoal: within the area described by a line beginning at a point 35° 33.8600' N - 75° 49.9000' W; running southerly to a point 35° 33.8600' N - 75° 49.7670' W; running westerly to a point 35° 33.7510' N - 75° 49.7670' W; running northerly to a point 35° 33.7510' N - 75° 49.9000' W; running easterly to the point of beginning.
 - (e) Gibbs Shoal: within the area described by a line beginning at a point 35° 27.3550' N - 75° 55.9190' W; running southerly to a point 35° 27.1010' N - 75° 55.9190' W; running westerly to a point 35° 27.1010' N - 75° 56.2300' W; running northerly to a point 35° 27.3550' N - 75° 56.2300' W; running easterly to the point of beginning.
 - (f) Deep Bay: within the area described by a line beginning at a point 35° 22.9126' N - 76° 22.1612' W; running southerly to a point 35° 22.7717' N - 76° 22.1612' W; running westerly to a point 35° 22.7717' N - 76° 22.3377' W; running northerly to a point 35° 22.9126' N - 76° 22.3377' W; running easterly to the point of beginning.
 - (g) West Bluff: within the area described by a line beginning at a point 35° 18.3160' N - 76° 10.2960' W; running southerly to a point 35° 18.3160' N - 76° 10.0690' W; running westerly to a point 35° 18.1290' N - 76° 10.0690' W; running northerly to a point 35° 18.1290' N - 76° 10.2960' W; running easterly to the point of beginning.
 - (h) Middle Bay: within the area described by a line beginning at a point 35° 14.1580' N - 76° 30.1780' W; running southerly to a point 35° 14.1150' N - 76° 30.1780' W; running westerly to a point 35° 14.1150' N - 76° 30.3320' W; running northerly to a point 35° 14.1580' N - 76° 30.3320' W; running easterly to the point of beginning.
 - (i) Swan Island: within the area described by a line beginning at a point 35° 05.6170' N - 76° 27.5040' W; running southerly to a point 35° 05.6020' N - 76° 26.7650' W; running westerly to a point 35° 05.4850' N - 76° 26.7640' W; running northerly to a point 35° 05.4990' N - 76° 27.5030' W; running easterly to the point of beginning.
 - (j) Raccoon Island: within the area described by a line beginning at a point 35° 05.4760' N - 76° 23.5370' W; running southerly to a point 35° 05.4760' N - 76° 23.4040' W; running westerly to a point 35° 05.3860' N - 76° 23.4040' W; running northerly to a point 35° 05.3680' N - 76° 23.5370' W; running easterly to the point of beginning.
 - (k) West Bay: within the area described by a line beginning at a point 34° 58.8517' N - 76° 21.3632' W; running southerly to a point 34° 58.7661' N - 76° 21.3632' W; running westerly to a point 34° 58.7661' N - 76° 21.4735' W; running northerly to a point 34° 58.8517' N - 76° 21.4735' W; running easterly to the point of beginning.
- (2) Neuse River area:
- (a) Little Creek: within the area described by a line beginning at a point 35° 02.6940' N - 76° 30.9840' W; running southerly to a point 35° 02.6940' N - 76° 30.7940' W; running westerly to a point 35° 02.5380' N - 76° 30.7940' W; running northerly to a point 35° 02.5380' N - 76° 30.9840' W; running easterly to the point of beginning.
 - (b) Neuse River: within the area described by a line beginning at a point 35° 00.4910' N - 76° 31.9350' W; running southerly to a point 35° 00.3750' N - 76° 31.9350' W; running westerly to a point 35° 00.3750' N - 76° 32.0750' W; running northerly to a point 35° 00.4910' N - 76° 32.0750' W; running easterly to the point of beginning.

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

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

SUBCHAPTER 18A – SANITATION

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

15A NCAC 18A .0134 DEFINITIONS

The following definitions shall apply to this Section; however, nothing in this Section shall be construed as expanding or restricting the definitions in G.S. 106-129 and G.S. 106-130:

- (1) "Adulterated" as defined in G.S. 106-129 shall include the following:
 - (a) any cooked crustacea or crustacea meat that does not comply with the Rules in this Section;
 - (b) any cooked crustacea or crustacea meat that exceeds the bacteriological standards in Rule .0182 of this Section; or
 - (c) any cooked crustacea or crustacea meat that has been deemed to be an imminent hazard.
- (2) "Clean" means free from dirt, debris, dust, marks, stains, waste materials, litter, or foreign material.
- (3) "Code date" means the date legibly placed on the container to indicate the date that the product was packed.
- (4) "Cook" means to prepare or treat raw crustacea by heating.
- (5) "Critical control point" means a point, step, or procedure in a food process at which a control can be applied and a food safety hazard can, as a result, be prevented, eliminated, or reduced to acceptable levels.
- (6) "Critical limit" means the maximum or minimum value to which a biological, chemical, or physical parameter shall be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard.
- (7) "Crustacea meat" means the meat of crabs, lobster, shrimp, or crayfish.
- (8) "Division" means the Division of Marine Fisheries.
- (9) "Easily cleanable" has the same meaning as defined in the 2017 U.S. Food Code. This definition is incorporated by reference not including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/fda-food-code/food-code-2017>, at no cost.
- (10) "Food-contact surface" means the parts of equipment, including auxiliary equipment, that may be in contact with the food being processed, or that may drain into the portion of equipment with which food is in contact.
- (11) "Food safety hazard" means any biological, chemical, or physical property that may cause a food to be unsafe for human consumption.
- (12) "Foreign" means any place or location outside the United States.
- (13) "Fresh crustacea" means a live, raw, or frozen raw crab, lobster, shrimp, or crayfish that shows no decomposition.
- (14) "Good repair" means maintained in order to function as designed and without defect.
- (15) "HACCP plan" means a written document that delineates the procedures a dealer follows to implement food safety controls.
- (16) "Hazard analysis critical control point (HACCP)" means a system of inspection, control, and monitoring measures initiated by a dealer to identify microbiological, chemical, or physical food safety hazards that are likely to occur in shellfish products produced by the dealer.
- (17) "Imminent hazard" has the same meaning as defined in G.S. 130A-2.
- (18) "Internal temperature" means the temperature of the product as opposed to the ambient temperature.
- (19) "Misbranded" as defined in G.S. 106-130 shall include any container of cooked crustacea or crustacea meat that is not labeled in compliance with the Rules in this Section.
- (20) "Most probable number (MPN)" means a statistical estimate of the number of bacteria per unit volume and is determined from the number of positive results in a series of fermentation tubes.
- (21) "Operating season" means the season of the year during which a crustacea product is processed.
- (22) "Pasteurization" means the process of heating every particle of crustacea meat in a hermetically-sealed container to a temperature of at least 185° F (85° C) and holding it continuously at or above this temperature for at least one minute at the geometric center of a container in equipment being operated in compliance with the Process Validation Study Report. The term includes any other process that has been found equally effective by the Division.
- (23) "Pasteurization date" means a code legibly placed on the container to indicate the date that the product was pasteurized.
- (24) "Process Validation Study Report" means a report of tests that shows a piece of equipment can produce time-temperature results as required by the Rules of this Section, and the procedures required to achieve such results.

- (25) "Processing" means any of the following operations when carried out in conjunction with the cooking of crustacea or crustacea meat: receiving, refrigerating, air-cooling, picking, packing, repacking, thermal processing, or pasteurizing.
- (26) "Repacker" means a facility that repacks cooked crustacea meat into other containers.
- (27) "Responsible individual" means the individual present in a cooked crustacea facility who is the apparent supervisor of the cooked crustacea facility at the time of the inspection. If no individual is the apparent supervisor, then any employee is the responsible individual.
- (28) "Retort" means a pressure vessel used to cook raw crustacea.
- (29) "Sanitize" has the same meaning as defined in 21 CFR 110.3, which is incorporated by reference including subsequent amendments and editions. A copy of the reference material can be found at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-110/subpart-A/section-110.3>, at no cost.
- (30) "Thermal processing" means the heating of previously cooked crustacea or crustacea meat to a desired temperature for a specified time at the geometric center of a container in equipment being operated in compliance with the Process Validation Study Report.

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

15A NCAC 18A .0137 GENERAL REQUIREMENTS FOR OPERATION

- (a) During the operating season the processing portion of the facility shall be used for no purpose other than the processing of cooked crustacea or crustacea meat.
- (b) Retail sales of cooked crustacea or crustacea meat shall not be made from any processing portion of the facility.
- (c) Accurate records of all purchases and sales of crustacea and crustacea meat shall be maintained for one year. The records shall be available for inspection by the Division of Marine Fisheries.

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

15A NCAC 18A .0138 SUPERVISION

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

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

15A NCAC 18A .0139 FACILITY FLOODING

- (a) If the facility floors are flooded, processing shall be discontinued until flood waters have receded and the facility and equipment are cleaned and sanitized.
- (b) Any cooked crustacea or crustacea meat that may have been contaminated by flood waters shall be deemed adulterated and disposed of in accordance with G.S. 113-221.4 and Rule .0181 of this Section.

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

15A NCAC 18A .0140 FLOORS

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

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

15A NCAC 18A .0141 WALLS AND CEILINGS

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

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

15A NCAC 18A .0142 LIGHTING

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

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

15A NCAC 18A .0143 VENTILATION

All rooms and areas shall be ventilated.

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

15A NCAC 18A .0144 INSECT CONTROL

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

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

15A NCAC 18A .0145 RODENT AND ANIMAL CONTROL

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

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

15A NCAC 18A .0146 PREMISES

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

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

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

15A NCAC 18A .0147 WATER SUPPLY

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

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

15A NCAC 18A .0148 ICE

- (a) Ice shall be obtained from a water supply approved by the Division of Marine Fisheries pursuant to Rule .0147 of this Section and shall be stored and handled in a manner to prevent contamination and keep the ice clean.
- (b) All equipment used in the handling of ice shall be used for no other purpose and shall be cleaned and sanitized at least once each day the facility is in operation.

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

15A NCAC 18A .0149 PLUMBING

- (a) Plumbing fixtures shall be located to facilitate the flow of processing activities and to prevent the splashing of water on food-contact surfaces or cooked crustacea and crustacea meat.
- (b) Fixtures, ducts, and pipes shall not be suspended over working areas.
- (c) Handwash lavatories shall be located so that the supervisor can observe that employees wash and sanitize their hands before beginning work and after each interruption.
- (d) Handwash lavatories shall be provided in the following locations:
 - (1) packing room or area;
 - (2) toilet or lounge area; and
 - (3) picking room.
- (e) At least one handwash lavatory shall be provided for every 20 employees among the first 100 employees and at least one handwash lavatory shall be provided for every 25 employees in excess of the first 100 employees.
- (f) Additional lavatories required by Paragraph (e) of this Rule shall be located in the picking room.
- (g) A container shall be located near each handwash lavatory in the picking room and packing room or area to sanitize hands in a solution containing at least 100 parts per million (ppm) of available chlorine or other equally effective bactericide. A testing method or equipment shall be available and used to test chemical sanitizers to ensure minimum prescribed strengths.
- (h) Soap and single service towels in protected dispensers shall be available near the handwash lavatories. Other hand drying devices that are found equally effective by the Division of Marine Fisheries may be used.
- (i) All pre-cool rooms, picking rooms, packing rooms or areas, and cooking areas shall be provided with hose bibs and wash down hoses. Storage racks shall be provided to keep the hoses elevated off the floor when not in use.
- (j) An automatically regulated hot-water system shall be provided to furnish a sufficient volume of hot water with a temperature of at least 130° F (54.5° C) to carry out all processing operations.
- (k) All handwash lavatories and sinks shall be equipped with mixing faucets.
- (l) A three-compartment sink with drainboards, large enough to wash the largest utensils used in the facility, shall be located in the picking room near the delivery shelf. One three-compartment sink, with drainboards, shall be provided for every 50 employees or fraction thereof.
- (m) The floor drains in coolers shall not be connected directly to a sewer in processing or repacking facilities constructed after October 1, 1992.

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

15A NCAC 18A .0150 SEWAGE DISPOSAL

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

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

15A NCAC 18A .0151 TOILETS

- (a) Toilets shall be provided by the owner or responsible person in the facility.
- (b) Toilet tissue shall be provided by the owner or responsible person in a holder.
- (c) Toilet room doors shall not open directly into processing areas of the facility and shall be self-closing.

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

15A NCAC 18A .0152 SOLID WASTE

- (a) Cooked crustacea scrap and other putrescible wastes shall be removed from the premises at least daily. Other solid wastes shall be removed from the premises at least weekly.
- (b) Scrap containers shall be removed from the picking room immediately after filling and placed in storage areas approved by the Division of Marine Fisheries.
- (c) Scrap containers shall be non-corrosive and cleaned at least daily.
- (d) Scrap containers shall be cleaned in an area approved by the Division.

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

15A NCAC 18A .0153 PERSONAL HYGIENE

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

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

15A NCAC 18A .0154 EMPLOYEES' PERSONAL ARTICLES

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

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

15A NCAC 18A .0155 SUPPLY STORAGE

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

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

15A NCAC 18A .0156 EQUIPMENT AND UTENSIL CONSTRUCTION

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

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

15A NCAC 18A .0157 FACILITY AND EQUIPMENT SANITATION

(a) The walls and floors in the picking and packing areas shall be kept clean while operating and shall be sanitized at least daily and whenever there is evidence of contamination, such as splatter of crustacea meat or juices.

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

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

(d) Sanitizing methods shall be as follows:

- (1) by steam in a steam chamber or box equipped with an indicating thermometer located in the coldest zone, with exposure to a temperature of 170° F (77° C) for at least 15 minutes or to a temperature of 200° F (93° C) for at least five minutes.
- (2) by immersion for at least one minute in the third compartment in clean hot water at a temperature of at least 170° F (77° C). A thermometer accurate to 3° F (1.5° C) shall be available to the compartment. Where hot water is used for bactericidal treatment, a booster heater that maintains a water temperature of at least 170° F (77° C) in the third compartment at all times when utensils are being washed shall be provided. The heating device may be integral with the immersion compartment.
- (3) by immersion for at least one minute in, or exposure for at least one minute to a constant flow of, a solution containing not less than 100 ppm chlorine residual. Utensils and equipment that have to be washed in place shall be washed, rinsed, and sanitized.
- (4) by other equivalent products and procedures approved in 21 CFR 178.1010 "Sanitizing solutions", which is hereby incorporated by reference including any subsequent amendments and editions. A copy of the reference material can be found at https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=17d119b223f9451322279713caa2e6ab&ty=HTML&h=L&mc=true&n=pt21.3.178&r=PART#se21.3.178_11010, at no cost. A testing method or equipment shall be available and used to test chemical sanitizers to ensure minimum prescribed strengths.

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

15A NCAC 18A .0158 EQUIPMENT STORAGE

Equipment and utensils that have been cleaned and sanitized shall be stored in a manner to protect against contamination and keep the equipment and utensils clean.

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

15A NCAC 18A .0159 SEPARATION OF OPERATIONS

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

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

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

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

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

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

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

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

15A NCAC 18A .0161 CRUSTACEA COOKING

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

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

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

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

(d) The retorts shall be equipped with:

- (1) an accurate, indicating thermometer with a range that will include 170-270° F (77-132° C) and located with the sensor extending into the heat chamber;

- (2) an operating pressure indicator, at least three inches in diameter, with a 0-30 psig range and located adjacent to the indicating thermometer; and
 - (3) a safety valve operational at 18-30 psig, located in the upper portion of the retort, protected from tampering, and designed to prevent injury to the operator.
- (e) The boiler shall be of such capacity as to maintain 45 to 100 psig during cooking. The steam line from the boiler to the retort shall be at least one and one-fourth inch inside diameter.
- (f) Overhead hoists shall be equipped with chain bags or other means of preventing foreign material from falling onto the cooked product.
- (g) Retort cooking baskets shall be of stainless steel or equally impervious, non-corrosive material, and shall be designed to allow for equal steam disbursement, ease of handling, dumping, and cleaning.
- (h) All construction or replacement of retorts after October 1, 1992 shall be "flow-through" type and open directly into the air-cool room or a protected passageway into the air-cool room.
- (i) All construction of new or replacement retorts shall require a Process Validation Study Report approved by the Division prior to use based upon documentation of the ability to produce time-temperature results as required by the Rules of this Section.

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

15A NCAC 18A .0162 COOKED CRUSTACEA AIR-COOL

- (a) Cooked crustacea, after removal from the retort, shall be moved immediately to the cooked crustacea air-cool area to be air cooled to ambient temperature without being disturbed. Cooked crustacea shall be stored in the original cooking basket.
- (b) The construction and arrangement of the air-cool room shall be designed to provide protection from contamination of the cooked crustacea. The air-cool room shall open directly into the cooked crustacea cooler or other protected area.

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

15A NCAC 18A .0163 COOKED CRUSTACEA REFRIGERATION

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

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

15A NCAC 18A .0164 COOKED CRUSTACEA PICKING

- (a) The picking operation shall be conducted in accordance with the Rules of this Section such that crustacea meat does not become adulterated.
- (b) All cooked crustacea shall be picked before a new supply is delivered to the picking table.
- (c) Picked crustacea meat shall be delivered to the packing room at least every 90 minutes or upon the accumulation of five pounds per picker, whichever is sooner.
- (d) Paper towels used at the picking table shall be discarded after initial use.
- (e) If provided, bactericidal solutions at picking tables shall be maintained at 100 ppm chlorine solution or an equivalent bactericidal solution. A testing method or equipment shall be available and used to ensure minimum prescribed strengths of the chlorine solution or equivalent bactericidal solution.
- (f) Handles of picking knives shall not be covered with any material.
- (g) Crustacea shall be cooked and picked in the same permitted facility unless a written plan for interfacility shipment has been filed with the Division. The plan shall address and be approved based on the following:
 - (1) time-temperature requirements;
 - (2) shipping destination;
 - (3) handling;
 - (4) labeling;

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

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

15A NCAC 18A .0165 PACKING

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

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

15A NCAC 18A .0166 PICKED CRUSTACEA MEAT REFRIGERATION

- (a) The refrigeration room or ice box shall be of sufficient size so that a full day's production, with ice, can be stored such that the crustacea meat does not become adulterated. The refrigeration room or ice box shall be equipped with an accurate, operating thermometer.
- (b) Ice boxes shall be easily cleanable, non-corrosive, and non-toxic with an impervious lining and a drain.
- (c) Picked crustacea meat shall be stored at 40° F (4.4° C) or below.

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

15A NCAC 18A .0167 DELIVERY WINDOW OR SHELF

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

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

15A NCAC 18A .0168 SINGLE-SERVICE CONTAINERS

- (a) Single-service containers used for packing or repacking cooked crustacea and crustacea meat shall be made from food-safe materials approved by the United States Food and Drug Administration.

- (b) Containers shall not be reused for packing or repacking cooked crustacea and crustacea meat.
- (c) No person shall use containers bearing a permit number other than the number assigned to the facility.
- (d) Each container or lid shall be legibly impressed, embossed, or lithographed with the name and address of the original packer, repacker, or distributor. The original packer's or repacker's permit number preceded by the state abbreviation shall be legibly impressed, embossed, or lithographed on each container or lid.
- (e) Each container or lid shall be permanently and legibly identified with a code date.
- (f) All containers and lids shall be stored and handled in a manner to prevent contamination and keep them clean, sanitized by a procedure as stated in Rule .0157 of this Section, and drained prior to filling.
- (g) All containers shall be sealed so that tampering can be detected. The words "Sealed For Your Protection" or equivalent shall be legibly displayed on the container or lid.

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

15A NCAC 18A .0169 FREEZING

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

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

15A NCAC 18A .0170 SHIPPING

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

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

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

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

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

15A NCAC 18A .0172 COOKED CLAW SHIPPING CONDITIONS

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

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

15A NCAC 18A .0174 PASTEURIZATION PROCESS CONTROLS - THERMOMETERS

(a) All pasteurizing equipment shall have a time-temperature recording thermometer with a temperature controller (combined or separately) and an indicating thermometer. The thermometers shall be located to give a true representation of the operating temperature of the water bath. The recording thermometer chart shall be at least a 12-hour chart and at least 10 inches in diameter.

(b) The recording thermometer shall be installed so that it will be protected from vibration and from striking by loading operations or facility traffic. The thermometer mechanism shall be protected from moisture under prevailing conditions. The thermometer case shall not be opened during the pasteurizing cycle, except for temperature check or for emergency or repair. A record shall be made when the thermometer case has been opened.

(c) The recording thermometer shall have a range of at least 120-220° F (48.9-104.4° C). It shall be accurate within plus or minus 1° F between 160° F (71° C) and 200° F (93° C). The chart shall be scaled at a maximum of 2° F intervals in the range of 160° F (71° C) and 200° F (93° C).

(d) The indicating thermometer shall be a thermometer with an accuracy and readability of plus or minus 1° F between 160° F (71° C) and 200° F (93° C). The thermometer shall be protected against damage.

(e) The recording thermometer shall be equipped with a spring-operated or electrically operated clock. The recorded elapsed time as indicated by the chart rotation shall not exceed the true elapsed time as shown by an accurate watch. The rotating chart support shall be provided with pins upon which the chart shall be affixed by puncturing the chart.

(f) The pasteurization unit shall not be operated without a recording thermometer chart in place, the pen in contact with the chart, and an inked record being made of the operating time-temperature cycle. Falsification of a thermometer chart by an individual with access to or that is an operator of a pasteurization unit shall constitute failure to comply with the requirements of this Paragraph. A permanent file of the used thermometer charts shall be maintained by the pasteurizer and kept available for inspection by the Division of Marine Fisheries for a period of one year. The following information shall be recorded within the confines of the pen markings after the pasteurization cycle has been completed:

- (1) date of pasteurization;
- (2) quantity of each batch pasteurized (pounds of crustacea meat or number and size of containers);
- (3) processor's code of each pack;
- (4) if the pasteurizer processes crustacea meat for someone else, then the packer's name, address, and permit number shall be recorded. A copy of the recording chart shall be provided to the owner of the crustacea meat;
- (5) notation of mechanical or power failure or opening of the recording thermometer case for adjustment or repair during the pasteurizing cycle;
- (6) after the temperature in the water bath has been reached and during the holding time, as set forth in Rule .0176 of this Section, the reading of the indicating thermometer and the time of reading shall be recorded on the chart; and
- (7) signature of the pasteurizer operator.

(g) A constant flow steam control valve is required, if steam is used as a source of heat.

(h) The water bath shall be provided with effective agitation to maintain a uniform temperature.

(i) Other technologies shall be approved by the Division if they are shown to provide equivalent data, information, and records as required in this Rule.

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

15A NCAC 18A .0175 PREPARATION OF CRUSTACEA MEAT FOR PASTEURIZATION

The preparation of crustacea meat for pasteurization shall be in compliance with the following:

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

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

15A NCAC 18A .0176 PASTEURIZATION OF CRUSTACEA MEAT

(a) All pasteurization operations shall require a Process Validation Study Report approved by the Division of Marine Fisheries prior to operation based upon documentation of the ability to produce time-temperature results as required by the Rules of this Section.

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

- (1) the minimum pasteurization specifications shall be heating every particle of crustacea meat in a hermetically-sealed container to a temperature of at least 185° F (85° C) and holding it continuously at or above this temperature for at least one minute at the geometric center of a container in equipment being operated in compliance with the Process Validation Study Report. A copy of the procedures for operating the pasteurizing equipment shall be posted adjacent to the pasteurization vat. The pasteurizer shall keep the report on file and shall provide the Division a copy of such report;
- (2) alteration of the equipment or loading of containers shall require a new Process Validation Study Report;
- (3) the containers of crustacea meat shall be cooled to 50° F (10° C) or below within three hours of the completion of pasteurization; and
- (4) refrigerated storage shall be provided for the cooled crustacea meat and shall maintain a storage temperature at or below 38° F (3.3° C).

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

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

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

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

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

15A NCAC 18A .0178 INTERFACILITY PASTEURIZATION PROCEDURES

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

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

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

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

15A NCAC 18A .0179 RECALL PROCEDURE

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

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

15A NCAC 18A .0180 SAMPLING AND TESTING

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

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

15A NCAC 18A .0181 EMBARGO OR DISPOSAL OF COOKED CRUSTACEA OR CRUSTACEA MEAT

(a) When it has been determined by the Division of Marine Fisheries that cooked crustacea or crustacea meat have not been stored, transported, handled, cooked, picked, packed, or offered for sale in compliance with this Section, the cooked crustacea or crustacea meat shall be deemed adulterated.

(b) Cooked crustacea or crustacea meat determined to be adulterated or misbranded shall be subject to embargo or disposal by the Division in accordance with G.S. 113-221.4.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 113-221.4, 143B-289.52;
Eff. October 1, 1992;
Amended Eff. April 1, 1997;
Readopted Eff. April 1, 2022.*

15A NCAC 18A .0182 BACTERIOLOGICAL AND CONTAMINATION STANDARDS

(a) Cooked crustacea or crustacea meat shall not exceed *Escherichia coli* Most Probable Number (MPN) of 36 per 100 grams of sample or exceed a standard plate count of 100,000 per gram.

(b) Pasteurized crustacea meat shall contain no *Escherichia coli* or fecal coliform. Samples of pasteurized crustacea meat, taken within 24 hours of pasteurizing, shall not have a standard plate count of more than 3,000 per gram.

(c) Thermally processed crustacea or crustacea meat shall not exceed *Escherichia coli* MPN of 36 per 100 grams of sample or exceed a standard plate count of 100,000 per gram.

(d) Cooked crustacea or crustacea meat shall be handled in accordance with the Rules of this Section.

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

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

15A NCAC 18A .0183 ALTERNATIVE LABELING

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

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

15A NCAC 18A .0184 THERMAL PROCESSING CONTROLS - THERMOMETERS

(a) All thermal processing equipment shall have a time-temperature recording thermometer with a temperature controller (combined or separately) and an indicating thermometer. The thermometers shall be located to give a true representation of the operating temperature of the process. The recording thermometer chart shall be at least a 12-hour chart and at least 10 inches in diameter.

(b) The recording thermometer shall be installed so that it will be protected from vibration and from striking by loading operations or facility traffic. The thermometer mechanism shall be protected from moisture under prevailing conditions. The thermometer case shall not be opened during the thermal processing cycle, except for temperature check or for emergency or repair. A record shall be made when the thermometer case has been opened.

(c) The recording thermometer shall have a range of at least 120-220° F (48.9-104.4° C). It shall be accurate within plus or minus 1° F between 160° F (71° C) and 200° F (93° C). The chart shall be scaled at a maximum of 2° F intervals in the range of 160° F (71° C) and 200° F (93° C).

(d) The indicating thermometer shall be a thermometer with an accuracy and readability of plus or minus 1° F between 160° F (71° C) and 200° F (93° C). The thermometer shall be protected against damage.

(e) The recording thermometer shall be equipped with a spring-operated or electrically operated clock. The recorded elapsed time as indicated by the chart rotation shall not exceed the true elapsed time as shown by an accurate watch. The rotating chart support shall be provided with pins upon which the chart shall be affixed by puncturing the chart.

(f) The thermal processing unit shall not be operated without a recording thermometer chart in place, the pen in contact with the chart, and an inked record being made of the operating time-temperature cycle. Falsification of a thermometer chart by an individual with access to or that is an operator of a thermal processing unit shall constitute failure to comply with the requirements of this Paragraph. A permanent file of the used thermometer charts shall be maintained by the thermal processor and kept available for inspection by the Division of Marine Fisheries for a period of one year. The following information shall be recorded within the confines of the pen markings after the thermal processing cycle has been completed:

- (1) date of thermal processing;
- (2) quantity of each batch thermally processed (pounds of crustacea meat or number and size of containers);
- (3) thermal processor's code of each pack;
- (4) if the thermal processor processes crustacea meat for someone else, then the packer's name, address, and permit number shall be recorded. A copy of the recording chart shall be provided to the owner of the crustacea meat;
- (5) notation of mechanical or power failure or opening of the recording thermometer case for adjustment or repair during the thermal processing cycle;
- (6) after the temperature in the thermal process has been reached and during the holding time, as set forth in Rule .0185 of this Section, the reading of the indicating thermometer and the time of reading shall be recorded on the chart; and
- (7) signature of the thermal process operator.

(g) A constant flow steam control valve is required, if steam is used as a source of heat.

(h) The thermal processing unit shall be provided with effective and uniform temperature.

(i) Other technologies shall be approved by the Division if they are shown to provide equivalent data, information, and records as required in this Rule.

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

15A NCAC 18A .0185 THERMAL PROCESSING OF CRUSTACEA AND CRUSTACEA MEAT

(a) All thermal processing operations shall require a Process Validation Study Report approved by the Division of Marine Fisheries prior to operation based upon documentation of the ability to produce time-temperature results as required by the Rules of this Section.

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

- (1) the minimum thermal processing specifications shall be the heating of previously cooked crustacea or crustacea meat to a desired temperature for a specified time at the geometric center of a container in equipment being operated in compliance with the Process Validation Study Report. A copy of the procedures for operating the thermal processing equipment shall be posted adjacent to the thermal processing unit. The thermal processor shall keep the report on file and shall provide the Division a copy of such report;
- (2) alteration of the equipment or loading of containers shall require a new Process Validation Study Report;
- (3) the containers of crustacea or crustacea meat shall be cooled to 50° F (10° C) or below within three hours of the completion of the thermal process; and
- (4) refrigerated storage shall be provided for the cooled crustacea or crustacea meat and shall maintain a storage temperature at or below 36° F (2.2° C).

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

15A NCAC 18A .0186 LABELING OF THERMALLY PROCESSED CRUSTACEA OR CRUSTACEA MEAT

Labeling of thermally processed crustacea or crustacea meat shall be in compliance with the following:

- (1) the label used shall legibly identify the contents of the container as thermally processed crustacea or crustacea meat;

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

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

15A NCAC 18A .0187 INTERFACILITY THERMAL PROCESSING PROCEDURES

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

- (1) crustacea or crustacea meat shall be packed, labeled, and refrigerated in compliance with Rules .0134 through .0187 of this Section. Records shall be maintained to identify each batch of crustacea or crustacea meat thermally processed;
- (2) crustacea or crustacea meat shall be shipped in an enclosed, easily cleanable vehicle at a temperature of 40° F (4.4° C) or below; and
- (3) crustacea or crustacea meat shall be thermally processed in compliance with Rules .0184 through .0187 of this Section. The thermal processor shall provide a copy of each thermal processing chart to the original packer.

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

15A NCAC 18A .0188 HAZARD ANALYSIS

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

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

15A NCAC 18A .0189 HACCP PLAN

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

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

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

15A NCAC 18A .0190 SANITATION MONITORING REQUIREMENTS

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

- (1) safety of water;
- (2) condition and cleanliness of food contact surfaces;
- (3) prevention of cross contamination;
- (4) maintenance of hand washing, hand sanitizing, and toilet facilities;
- (5) protection of crustacea or crustacea meat, crustacea or crustacea meat packaging materials, and food contact surfaces from adulteration;

- (6) proper labeling, storage, and use of toxic compounds;
- (7) control of employees with adverse health conditions; and
- (8) exclusion of pests from the facility.

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

15A NCAC 18A .0191 MONITORING RECORDS

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

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

SECTION .0400 – SANITATION OF SHELLFISH - GENERAL OPERATION STANDARDS

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

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

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

15A NCAC 18A .0704 LABORATORY PROCEDURES

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

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

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

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

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

SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS

15A NCAC 18A .0901 DEFINITIONS

The following definitions shall apply to this Section.

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

- (26) "Systematic random sampling strategy" means a sampling strategy designed to assess the bacteriological water quality of shellfish growing waters impacted by non-point sources of pollution and scheduled sufficiently far in advance to support random collection with respect to environmental conditions.

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

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

(a) All shellfish growing waters shall be classified by the Division of Marine Fisheries as to their suitability for shellfish harvesting. Shellfish growing waters shall be designated with one of the following classifications:

- (1) approved;
- (2) conditionally approved;
- (3) restricted; or
- (4) prohibited.

(b) Maps showing the classification of shellfish growing waters shall be maintained by the Division.

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

15A NCAC 18A .0903 SANITARY SURVEY

(a) Shellfish growing waters shall be divided into shellfish growing areas by the Division of Marine Fisheries. Maps showing the boundaries of these shellfish growing areas shall be maintained by the Division and can be found at: <https://deq.nc.gov/polluted-area-proclamations>.

(b) Except in shellfish growing areas where all shellfish growing waters are classified as prohibited, the Division shall complete a sanitary survey report for each shellfish growing area at least once every three years.

(c) A sanitary survey report shall include the following:

- (1) a shoreline survey.
- (2) an evaluation of meteorological, hydrodynamic, and geographic factors that may affect distribution of pollutants.
- (3) a microbiological survey to assess water quality. A microbiological survey shall include the collection of water samples and their analysis for fecal coliforms. The number and location of sampling stations shall be selected to produce the data necessary to effectively evaluate all point and non-point pollution sources identified during the shoreline survey. A minimum of six samples shall be collected annually from each designated sampling station.
- (4) a determination of the appropriate classification for all shellfish growing waters within the shellfish growing area in accordance with Rule .0902 of this Section.

(d) A sanitary survey report shall be required to designate any portion of a shellfish growing area with a classification other than prohibited, or for a reclassification from:

- (1) prohibited to any other classification;
- (2) restricted to conditionally approved or approved; or
- (3) conditionally approved to approved.

All other reclassifications may be made without a sanitary survey.

(e) In each calendar year that a shellfish growing area is not evaluated with a sanitary survey, a written annual evaluation report shall be completed by the Division and shall include the following:

- (1) a microbiological survey to assess water quality as set forth in Subparagraph (c)(3) of this Rule.
- (2) an evaluation of changes in pollution source impacts that may affect the classifications of the shellfish growing area.

If the annual evaluation determines conditions have changed and a classification for shellfish growing waters is incorrect, the Division shall initiate action to reclassify the shellfish growing waters in accordance with Rule .0902 of this Section.

(f) Sanitary survey reports and annual evaluation reports shall be maintained by the Division.

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

15A NCAC 18A .0904 APPROVED WATERS

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

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

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

15A NCAC 18A .0905 CONDITIONALLY APPROVED WATERS

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

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

15A NCAC 18A .0906 RESTRICTED AREAS

- (a) Shellfish growing waters may be classified as restricted if:
 - (1) a sanitary survey indicates there are no significant point sources of pollution; and
 - (2) levels of fecal pollution, human pathogens, or poisonous or deleterious substances are at such levels that shellstock can be made safe for human consumption by either relaying or depuration.
- (b) Relaying of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and 15A NCAC 18A .0300.
- (c) Depuration of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and 15A NCAC 18A .0300 and .0700.
- (d) For shellfish growing waters classified as restricted and used as a source of shellstock for depuration, the microbiological survey, as set forth in Rule .0903(c)(3) of this Section, shall indicate the bacteriological water quality does not exceed the following standards based on results generated using the systematic random sampling strategy:
 - (1) a median fecal coliform most probable number (MPN) or geometric mean MPN of 88 per 100 milliliters;
 - (2) a median fecal coliform colony-forming units (CFU) or geometric mean CFU of 88 per 100 milliliters;

- (3) an estimated 90th percentile of 260 MPN per 100 milliliters for a five-tube decimal dilution test; or
- (4) an estimated 90th percentile of 163 CFU per 100 milliliters for a membrane filter membrane-Thermotolerant Escherichia coli (mTEC) test.

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

15A NCAC 18A .0907 PROHIBITED WATERS

Shellfish growing waters shall be classified as prohibited if:

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

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

15A NCAC 18A .0908 UNSURVEYED AREAS

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

15A NCAC 18A .0909 BUFFER ZONES

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

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

(b) Buffer zones shall be classified as prohibited.

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

15A NCAC 18A .0910 RECLASSIFICATION

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

15A NCAC 18A .0913 PUBLIC HEALTH EMERGENCY

(a) The Division of Marine Fisheries shall immediately close any potentially impacted shellfish growing waters to the harvesting of shellfish in the event of a public health emergency.

(b) The Division may re-open shellfish growing waters if the condition causing the public health emergency no longer exists and shellfish have had time to purify naturally from possible contamination.

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

Readopted Eff. May 1, 2021.

15A NCAC 18A .0914 LABORATORY PROCEDURES

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

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

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

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

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

15A NCAC 18A .3401 DEFINITIONS

The following definitions shall apply to this Section:

- (1) "Division" means the Division of Marine Fisheries or its authorized agent.
- (2) "Enterococcus" means a gram positive coccoid-shaped bacteria that is found in the intestinal tracts of warm-blooded animals that include *Enterococcus faecalis*, *Enterococcus faecium*, *Enterococcus avium*, and *Enterococcus gallinarum*.
- (3) "Geometric mean" means the mean of "n" positive numbers obtained by taking the "nth" root of the product of the numbers with at least five samples collected within a 30-day period.
- (4) "Pending swimming advisory" means a notification to the public that recommends no primary contact with the water in a designated swimming area when bacteriological limits are exceeded, but does not close a swimming area to the public. A pending swimming advisory shall include a public notification via social media release to notify the public of the risks of swimming in the area. A pending swimming advisory shall be followed by a resample that will determine if a swimming advisory will be issued.
- (5) "Point source discharge" means the discharge of liquids through a pipe, drain, ditch, or other conveyance into a swimming area.
- (6) "Primary contact" means an activity in water in which a person's head is partially or completely submerged.
- (7) "Resample" means a water sample that is collected by the Division of Marine Fisheries or its authorized agent after the results of the initial water sample collected are processed by the Division and the results are analyzed by the Division.
- (8) "Storm water discharge" means any natural or manmade conveyance of rainwater or the resultant runoff into coastal recreational waters.
- (9) "Swimming advisory" means a notification to the public that recommends no primary contact with the water in a designated swimming area when bacteriological limits are exceeded, but does not close a swimming area to the public. A swimming advisory shall include a sign posted at the site of the advisory and a public notification via social media and news release to notify the public of the risks of swimming in the area.
- (10) "Swimming area" means a coastal recreation area that is used for primary contact located within waters classified by the Division of Water Resources as SC, SA, or SB as set forth in 15A NCAC 02B .0220 through .0222, and is hereby incorporated by reference including subsequent amendments.
- (11) "Swimming season" means from April 1 through October 31 of each year.

- (12) "Tier I swimming area" means a swimming area used daily during the swimming season, including all oceanfront beaches that are monitored by the Division.
- (13) "Tier II swimming area" means a swimming area that is not used daily during the swimming season.

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

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

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

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

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

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

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

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

- (a) The Division of Marine Fisheries shall post at least one sign at a wastewater treatment plant that discharges into swimming waters, which shall stay posted until the discharge is removed. The sign for a wastewater treatment plant discharge shall state the following:
WARNING! SEWAGE TREATMENT EFFLUENT DISCHARGE SITE. SWIMMING IS NOT ADVISED IN THESE WATERS BECAUSE OF THE INCREASED RISK OF ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.
- (b) A swimming advisory shall be issued by the Division and at least one sign shall be posted at the public access to swimming waters that have been impacted by a wastewater system failure. The sign for waters impacted by a wastewater spill shall state the following:
WARNING! WASTEWATER SPILL. SWIMMING IS NOT ADVISED IN THESE WATERS BECAUSE OF THE INCREASED RISK OF ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

INDEX

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

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

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

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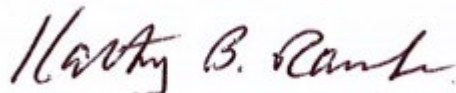
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THE ORIGINAL AND OFFICIAL COPY OF TITLE 15A,
CHAPTER 03 AND SUBCHAPTER 18A OF THE N.C.
ADMINISTRATIVE CODE ARE ON FILE IN THE OFFICE OF
ADMINISTRATIVE HEARINGS AND ARE AVAILABLE FOR
PUBLIC INSPECTION DURING NORMAL WORKING HOURS.

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

CERTIFICATION

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



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

Roy Cooper
Governor

Elizabeth S. Biser
Secretary DEQ



Kathy B. Rawls
Director

Release: Immediate
Date: April 18, 2022

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

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

MOREHEAD CITY –The N.C. Marine Fisheries Commission is accepting public comment on proposed amendments and re-adoption of nine rules under a state-mandated periodic review schedule. The rules are proposed for re-adoption without changes and pertain to joint fishing waters that are managed jointly with the N.C. Wildlife Resources Commission.

A public hearing will be held by web conference on May 4 at 6 p.m. The public may join the meeting online; however, those who wish to comment during the hearing must register to speak by noon on the day of the hearing.

Members of the public also may submit written comments through an online form or through the mail to N.C. Marine Fisheries Commission Rules Comments, P.O. Box 769, Morehead City, N.C. 28557. Comments must be posted online or be received by the N.C. Division of Marine Fisheries by 5 p.m. June 17, 2022.

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

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

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

WHO:	N.C. Marine Fisheries Commission
WHAT:	Public Hearing for Proposed Rules
WHEN:	May 4 at 6 p.m.
WHERE:	Meeting by Web Conference Click Here for Information and to Sign Up to Speak

###

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NORTH CAROLINA REGISTER

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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 th day from publication in the Register
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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.

by both parties. Any reimbursement check shall be sent directly to the ~~owner or operator~~ owner, operator, or landowner.

(d) Payment of ~~third-party~~ third-party claims shall be made to the owner or operator, or jointly to the owner or operator and the ~~third party~~ third-party claimant.

(e) Any request for reimbursement that has not been returned to the owner, operator, or landowner, or reimbursed to the owner, operator, or landowner within 90 days of submittal of such a request may be considered by the owner, operator, or landowner as having been denied by the Department.

Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282.

15A NCAC 02P .0406 REIMBURSEMENT APPORTIONMENT

(a) ~~Where multiple occurrences are addressed in a single cleanup action, expenses will be reimbursed based on apportionment among the occurrences. The method of apportionment will be as follows:~~

- (1) ~~Expenses related directly to a particular occurrence shall be applied only to that occurrence;~~
- (2) ~~Expenses that are related to more than one occurrence will be apportioned equally among the occurrences.~~

(a)(b) ~~Where~~ If not all underground storage tanks contributing to an occurrence are eligible for reimbursement, reimbursement will shall be made at a rate equal to the number of tanks contributing to the occurrence which that are eligible for reimbursement divided by the total number of tanks contributing to the occurrence.

(b)(e) If multiple underground storage tanks at a single property are contributing to a single occurrence and the tanks are owned or operated by different persons, reimbursement may be made to any of the owners or operators as if the occurrence were caused solely entirely by that person's underground storage tanks.

(c) If multiple storage tanks, either above ground or underground, at a single facility are contributing to a single occurrence, reimbursement shall be apportioned based upon the volume of eligible tanks divided by the total volume of all tanks contributing to the release.

(d) Where multiple occurrences are addressed in a single cleanup action, expenses shall be reimbursed based on apportionment among the occurrences. The method of apportionment shall be as follows:

- (1) expenses related to a particular occurrence shall be applied only to that occurrence; or
- (2) expenses that are related to more than one occurrence shall be apportioned on a pro rata basis among the occurrences.

Authority G.S. 143-215.3; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282.

15A NCAC 02P .0407 FINAL ACTION APPEAL RIGHTS

(a) The Director, ~~or his delegate,~~ Underground Storage Tank Section Chief, or Trust Fund Branch Head of the Division of

Waste Management shall make the agency decision on a written application for eligibility for reimbursement from the appropriate fund. Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. The Director, or his delegate, Underground Storage Tank Section Chief, or Trust Fund Branch Head shall make the agency decision on any written request claim for reimbursement made subsequent to an initial application. once an applicant has been granted eligibility.

(b) ~~An owner or operator~~ owner, operator, or landowner who has ~~not received a written notification of decision been denied of~~ eligibility to or for reimbursement from the appropriate fund Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund within 90 days of after submittal of a written application in accordance with the ~~procedures~~ rules of this Subchapter, or who has had any written reimbursement request denied after submittal in accordance with the procedures of this Subchapter, shall be notified of the right to petition for a contested case in the Office of Administrative Hearings in accordance with the procedure set out in G.S. 150B-23. The Secretary of the Department of Environment, Health, and Natural Resources shall make the final agency decision in any contested case pursuant to G.S. 150B-36. Subchapter may elect to consider the application to have been denied and may file an appeal as provided in Article 3 of Chapter 150B of the General Statutes.

(c) An owner, operator, or landowner who has received a written notification of eligibility to or for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund after submittal of a written application in accordance with the rules of this Subchapter and disagrees with the notification may elect to file an informal appeal supplying additional information. Following review of the additional information, the Director, Underground Storage Tank Section Chief, or Trust Fund Branch Head shall issue a written agency decision. If the written decision by the Director, Underground Storage Tank Section Chief, or Trust Fund Branch Head does not change the original decision of eligibility to or for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund, the Department shall notify the owner, operator, or landowner of the right to petition for a contested case in the Office of Administrative Hearings in accordance with G.S. 150B-23.

(d) An owner, operator, or landowner who has received a written notification of eligibility to or for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund after submittal of a written application in accordance with the rules of this Subchapter and disagrees with the notification may elect to file a petition for a contested case in the Office of Administrative Hearings in accordance with G.S. 150B-23 without providing any additional information.

Authority G.S. 143-215.3; 143-215.94B; ~~143-215.94D;~~ 143-215.94E; 143-215.94L; 143-215.94T; 143B-282; 150B-23; ~~150B-36.~~

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Marine Fisheries Commission intends to

readopt without substantive changes the rules cited as 15A NCAC 03Q .0101-.0109.

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

Proposed Effective Date:

15A NCAC 03Q .0101, .0102, .0103, .0104, .0105, .0106, .0108, .0109 – September 1, 2022

15A NCAC 03Q .0107 – Automatically subject to legislative review, S.L. 2019-198

Public Hearing:

Date: May 4, 2022

Time: 6:00 p.m.

Location: Webex Events meeting link:

<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e8cd072d4a64ebd5d402a3e3b38387adf>

Event number: 2422 476 9859 Event password: 1234

Event phone number: 1-415-655-0003

Reason for Proposed Action: *In accordance with G.S. 150B-21.3A, these 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 are proposed for readoption by the N.C. Marine Fisheries Commission with no changes.*

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: June 17, 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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. 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 03Q .0107

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 03Q - JURISDICTION OF AGENCIES:
CLASSIFICATION OF WATERS**

SECTION .0100 - GENERAL REGULATIONS: JOINT

15A NCAC 03Q .0101 SCOPE AND PURPOSE

The rules in this Section pertain to the classification of the waters of North Carolina as coastal fishing waters, inland fishing waters and joint fishing waters. These rules are adopted jointly by the Marine Fisheries Commission and the Wildlife Resources Commission. In addition to the classification of the waters of the state these joint rules set forth guidelines to determine which fishing activities in joint waters are regulated by the Marine Fisheries Commission and which are regulated by the Wildlife Resources Commission. Finally, the joint rules set forth special fishing regulations applicable in joint waters that can be enforced by officers of the Division of Marine Fisheries and the Wildlife Resources Commission. These regulations do not affect the jurisdiction of the Marine Fisheries Commission and the Wildlife Resources Commission in any matters other than those specifically set out.

Authority G.S. 113-132; 113-134; 143B-289.52.

15A NCAC 03Q .0102 INLAND FISHING WATERS

Inland fishing waters are all inland waters except private ponds; and all waters connecting with or tributary to coastal sounds or the ocean extending inland from the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. All waters which are tributary to inland fishing waters and which are not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are inland fishing waters. The regulation and licensing of fishing in inland fishing waters is under the jurisdiction of the Wildlife Resources Commission. Regulations and laws administered by the Wildlife Resources Commission regarding fishing in inland fishing waters are enforced by wildlife enforcement officers.

Authority G.S. 113-132; 113-134; 143B-289.52.

15A NCAC 03Q .0103 COASTAL FISHING WATERS

Coastal fishing waters are the Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. All waters which are tributary to coastal fishing waters and which are not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are coastal fishing waters. The regulations and licensing of fishing in coastal fishing waters is under the jurisdiction of the Marine Fisheries Commission; except

that inland game fish (exclusive of spotted seatrout, weakfish, and striped bass) are subject to regulations by the Wildlife Resources Commission in coastal fishing waters. Regulations and laws administered by the Marine Fisheries Commission regarding fishing in coastal waters are enforced by fisheries enforcement officers. Regulations regarding inland game fish in coastal fishing waters are enforced by wildlife enforcement officers unless otherwise agreed to by the Wildlife Resources Commission.

Authority G.S. 113-132; 113-134; 143B-289.52.

15A NCAC 03Q .0104 JOINT FISHING WATERS

Joint fishing waters are those coastal fishing waters, hereinafter set out, denominated by agreement of the Marine Fisheries Commission and the Wildlife Resources Commission pursuant to G.S. 113-132(e) as joint fishing waters. All waters which are tributary to joint fishing waters and which are not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are classified as joint fishing waters. The regulation and licensing of fishing in joint waters shall be as stated in 15A NCAC 3Q .0106.

Authority G.S. 113-132; 113-134; 143B-289.52.

15A NCAC 03Q .0105 POSTING DIVIDING LINES

The dividing lines of all major bodies of water and watercourses which are divided by the agreement of the Marine Fisheries Commission and the Wildlife Resources Commission so that portions of the same are constituted inland fishing waters, coastal fishing waters, or joint fishing waters shall be marked with signs in so far as may be practicable. Unmarked and undesignated tributaries shall have the same classification as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the classification of any body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any regulation pertaining to any such body of water or portion thereof.

Authority G.S. 113-132; 113-134; 143B-289.52.

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

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

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

- (1) all laws and regulations pertaining to inland game fishes,
- (2) all laws and regulations pertaining to inland fishing license requirements for hook and line fishing,

- (3) all laws and regulations pertaining to hook and line fishing except as hereinafter provided.

Authority G.S. 113-132; 113-134; 143B-289.52.

15A NCAC 03Q .0107 SPECIAL REGULATIONS: JOINT WATERS

In order to effectively manage all fisheries resources in joint waters and in order to confer enforcement powers on both fisheries enforcement officers and wildlife enforcement officers with respect to certain rules, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to adopt special rules for joint waters. Such rules supersede any inconsistent rules of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise be applicable in joint waters under the provisions of 15A NCAC 03Q .0106:

- (1) Striped Bass
 - (a) It is unlawful to possess any striped bass or striped bass hybrid that is less than 18 inches long (total length).
 - (b) It is unlawful to possess striped bass or striped bass hybrids between the lengths of 22 and 27 inches (total length) in joint fishing waters of the Central Southern Management Area as designated in 15A NCAC 03R .0201.
 - (c) It is unlawful to possess striped bass or striped bass hybrids May through September in the joint fishing waters of the Central Southern Management Area and the Albemarle Sound Management Area.
 - (d) It is unlawful to possess striped bass or striped bass hybrids taken from the joint fishing waters of the Cape Fear River.
 - (e) It is unlawful to possess more than one daily creel limit of striped bass or striped bass hybrids, in the aggregate, per person per day, regardless of the number of management areas fished.
 - (f) Possession of fish shall be assessed for the creel and size limits of the management area in which the individual is found to be fishing, regardless of the size or creel limits for other management areas visited by that individual in a given day.
 - (g) It is unlawful to engage in net fishing for striped bass or striped bass hybrids in joint waters except as authorized by rules of the Marine Fisheries Commission.
- (2) Lake Mattamuskeet:
 - (a) It is unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint waters.

- (b) It is unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint waters.
- (3) Cape Fear River. It is unlawful to use or attempt to use any net, net stakes or electrical fishing device within 800 feet of the dam at Lock No.1 on the Cape Fear River.
- (4) Shad: It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line.

- (2) seasons or areas to harvest in the Roanoke River management area.
- (2) In the Albemarle Sound Management Area, the exclusive authority to open and close seasons and areas and establish size and creel limits, whether coastal or joint fishing waters shall be vested in the Marine Fisheries Commission. The season shall close by proclamation if the quota is about to be exceeded. In the Albemarle Sound Management Area administered by the Marine Fisheries Commission, a proclamation affecting the harvest in joint and coastal waters, excluding the Roanoke River Management Area, shall automatically be implemented and effective as a Wildlife Resources Commission action in the inland waters and tributaries to the waters affected.

Authority G.S. 113-132; 113-134; 143B-289.52.

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

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

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

Authority G.S. 113-132; 113-134; 113-182; 143B-289.52.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .0304, .0306, .0309, and .0310.

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

Proposed Effective Date: August 1, 2022

Public Hearing:

Date: May 3, 2022

Time: 11:00 a.m.

Location: Brunswick County Government Center
30 Government Center Drive
Bolivia, NC 28422
Commission Chambers

Date: May 3, 2022

Time: 2:30 p.m.

Location: New Hanover County Public Library
1241 Military Cutoff Road
Wilmington, NC 28405

Date: May 9, 2022

Time: 3:00 p.m.

Location: Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557
Upstairs Conference Room

Date: May 10, 2022

Time: 10:00 a.m.

Location: Onslow County Public Library
1330 NC Hwy 210
Sneads Ferry, NC 28460
Room #105

Authority G.S. 113-132; 113-134; 143B-289.52.

15A NCAC 03Q .0109 IMPLEMENTATION OF ESTUARINE STRIPED BASS MANAGEMENT PLANS: RECREATIONAL FISHING

The Marine Fisheries and Wildlife Resources Commissions shall implement their respective striped bass management actions for recreational fishing pursuant to their respective rule-making powers. To preserve jurisdictional authority of each Commission, the following means are established through which management measures can be implemented by a single instrument in the following management areas:

- (1) In the Roanoke River Management Area, the exclusive authority to open and close seasons and areas, and establish size and creel limits whether inland or joint fishing waters shall be vested in the Wildlife Resources Commission. An instrument closing any management area in joint waters shall operate as and shall be a jointly issued instrument opening or closing

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

May 2022

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